

APPENDIX H

FOR DISCUSSION PURPOSES ONLY. SUBJECT TO CONTRACT.

FORM OF DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of _____, 202_, (the "Effective Date") by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and political subdivision under the laws of the State of Minnesota ("DEDA"), and [DEVELOPER], a Minnesota [ENTITY TYPE], ("Developer"), relating to that certain real property located in St. Louis County, State of Minnesota and more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").

RECITALS

WHEREAS, DEDA and Developer have entered into the Agreement for the sale and purchase of the Property, containing terms and conditions that the Developer will be allowed to make use of it which DEDA considers necessary and proper to protect the public interest; and

WHEREAS, Developer proposes to construct [DESCRIPTION OF PROJECT] (the hereinafter-described "Project") on the Property; and

WHEREAS, DEDA has determined that the conveyance of the property to Developer for the Project is in the best interest of the City of Duluth ("City") and its people, and that the transaction furthers its general plan of economic development.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth in in the Agreement, DEDA and Developer agree on the terms, and subject to the conditions set forth in the Agreement, among which are the following:

1. Developer Investment Commitment. To fulfill the economic development purposes of the sale of the Property, Developer agrees: to develop the Project, a [DESCRIPTION OF PROJECT] (the "Project"), and operate for a duration of [XX] years, the ("Term").

2. Final Plans. Prior to construction, Developer shall provide to DEDA, which shall be subject to the approval of the DEDA Executive Director (the "Director") in writing, which approval shall not be unreasonably withheld, the final plans and specifications, for the development of the Real Property; the detail of the plans and specifications shall enable DEDA to determine with reasonable certainty that the Project on the Real Property is or will be in compliance with the law and will, if carried out, provide for the intended use.

3. Conformance with Plans. Developer agrees that its development of the Property shall be constructed and installed only in conformance with approved plans and must conform to all applicable building, zoning, or other codes or ordinances, including

compliance with the terms of the City of Duluth Comprehensive Plan. Developer will acquire any and all necessary permits for the construction on the Property.

4. One-year Deadline. Pursuant to Minnesota Statutes Section 469.105, subd. 5, within one (1) year of the date of conveyance of the Property to Developer, Developer shall devote the Property to the intended use as set forth in the Agreement or begin improvements to the Property to devote it to that use. Developer shall not transfer title to the Property within one (1) year of purchase without the consent of DEDA.

If Developer fails to commence work on time or devote the Property to its intended use on time, DEDA may cancel the sale and title to the Property shall revert to DEDA, at DEDA's election, and in that event, Developer shall promptly offer a deed for the Property legally described herein, to DEDA, who will then refund Developer the amount of the Purchase Price paid by Developer to DEDA, without interest, less any taxes or other encumbrances affecting the marketability of title. Notwithstanding the foregoing, the DEDA Executive Director may, at their discretion, consider an extension of time for good cause shown by Developer, and upon conditions to protect the public interest. In the event an extension is granted, such extension shall be to a date certain.

5. Construction. Developer hereby agrees that no later than [DATE] Developer will have completed the construction of the Project, as defined, on the Property. For the purposes of this Agreement, the "Project" shall consist of the construction on the Property of [DESCRIPTION OF PROJECT], for the length of the Term, from the date that the City Building Official has issued Certificates of Occupancy under the State Building Code for all units. The Project shall be constructed only in conformance with the plans and specifications for the Project approved by DEDA's Executive Director or their designee, which consent shall not be unreasonably withheld, and must conform to all applicable building, zoning, or other codes or ordinances. The Developer will acquire any and all necessary permits for the construction of the project.

6. Release of right to receive reconveyance. Upon the determination by DEDA's Executive Director that construction of the Project has been completed and upon Developer's request therefore, DEDA will furnish to the Developer a Release of Right to Receive Reconveyance ("Release") certifying the completion of the Project. The Release shall satisfy and terminate the development obligations of the Developer in this Agreement. The Developer may cause the Release to be recorded in the proper office for recordation of deeds and other instruments pertaining to the Property, however the Release shall in no way release Developer from its obligations set forth in Section 1 [OPERATION OBLIGATIONS], or the operation obligations of Developer as set forth herein, for the duration of the Term.

7. Operating Obligations Developer agrees that in its operation and use of the Project and the Property, in accordance with industry standards, Developer shall:

- a. Maintenance by Developer. Developer agrees to maintain the Property and operate [HOUSING: all units; DEVELOPMENT: the Project] after construction is completed in a [HOUSING: clean and habitable manner as set forth in Chapter 29A of the City of Duluth Municipal Code. All units shall remain in compliance with local building and maintenance codes throughout the Term of this Agreement and any and all rental licenses shall not lapse; DEVELOPMENT: neat and orderly condition]. Developer shall perform all needed and proper repairs, renewals, and replacements necessary be made to the Project and Property. The maintenance of the Project and the Property shall include, but not be limited to, maintenance of all foundations, external walls, doors, windows, utility openings, and all roofing systems, as well as outside maintenance including snow removal, landscape maintenance, and all exterior maintenance to the Property and the Project.
- b. Utilities, Licenses, Permits, Taxes and Assessments. Developer shall: unless disputed, pay or cause to be paid any and all charges for utilities furnished to the Project and the Property; preserve the existence of all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs relating to the Project and the Property and be qualified to do business in the State of Minnesota; Conduct its affairs and carry on its business and operations with respect to the Project and the Property in such a manner as to comply with any and all applicable laws related to the conduct of its business and the ownership of the Project and the Property; promptly pay or cause to be paid all lawful taxes and governmental charges, including real estate taxes and assessments at any time levied upon or against it or the Project and the Property, subject to the right to contest in good faith in accordance with Minnesota law; and pay or cause to be paid when due or payable all special assessments levied upon or with respect to the Project and/or the Property, or any part thereof, and to pay all fees, charges and rentals for utilities, service or extensions for the Project and the Property and all other charges lawfully made by any governmental body for public improvements.
- c. [OTHER OPERATING COVENANTS: [Living Wage. Developer agrees to abide by the requirements of the Living Wage Ordinance.];[Continued Use. Developer shall continue use of the Project and Property as a [OPERATION] for [TERM].]]

8. Provision Against Liens. Developer shall not create or permit any mortgage, encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Property or any part thereof which would materially or adversely affect DEDA's interest in the Property or this Agreement during the term of this

Agreement, provided that if Developer shall first notify DEDA of its intention to do so and post such security as DEDA reasonably deems necessary, Developer may, in good faith, contest any such mechanic's or other liens filed or established as long as DEDA does not deem its interest or rights in this Agreement to be subject to foreclosure by reason of such context.

9. Provision Against Assignments, Transfers or Change in Identity of Developer. The parties hereto acknowledge that DEDA is relying upon the qualifications and identity of Developer to develop the Property. Therefore, except for the purposes of obtaining financing as hereinafter described or otherwise approved by this Agreement, Developer represents and agrees for itself, its successors and assigns, that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, and has not or will not otherwise transfer in any other way all or any portion of the Property or of its rights under this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Developer will not make or create or suffer to be made any such transfer of Developer's rights hereunder without the prior approval of DEDA. Provided, however, that the Developer shall have the right at its sole discretion at any time to assign all of its interest in and to this Agreement to an affiliate of Developer controlled by Developer provided that Developer shall continue to be responsible for fulfilling all of the obligations of Developer under this Agreement.

10. Default and Remedies. In the event that Developer fails to perform or to comply with any of the terms, covenants and conditions of this Agreement, and said failure to so perform or comply shall continue for a term of thirty (30) days after notice from DEDA to Developer of such nonperformance or noncompliance, Developer shall be in default of its obligations hereunder and DEDA may, at its option, exercise any one or more of the following rights and remedies. The remedies provided for under this Paragraph shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be a waiver of any other remedy with regard to any occasion of default hereunder. Further, the waiver by DEDA of any default on the part of Developer hereunder or the failure of DEDA to declare default on the part of Developer of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of Developer of the same or any other obligation of Developer hereunder and, to be effective, any waiver of any default by Developer hereunder shall be in writing by DEDA.

- a. DEDA may terminate this Agreement.
- b. DEDA may seek and be entitled to monetary damages from Developer for any actual damages incurred by DEDA as a result of Developer's default.

c. DEDA may seek and be entitled to receive reconveyance of the Property from Developer, free and clear of all liens and encumbrances whatsoever, if said default occurs prior to certification by DEDA's Executive Director of the completion of the Project (which certification shall not be unreasonably withheld).

d. DEDA may seek and be entitled to injunctive and declaratory relief as is necessary to prevent Developer's violation of the terms and conditions.

e. DEDA may seek such other legal or equitable relief as a court of competent jurisdiction may be determined as available to DEDA.

Notwithstanding the foregoing, if the default reasonably requires more than thirty (30) days to cure, such default shall not constitute an event of default, provided that the curing of the default is promptly commenced upon receipt by the Developer of the notice of the default, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that Developer keeps DEDA informed of its progress in curing the default; provided in no event shall such additional cure period extend beyond 90 days.

11. Indemnification.

a. Generally. Developer will to the fullest extent permitted by law, protect, indemnify and save DEDA and its officers, agents, employees and any person who controls DEDA (the "DEDA Parties") within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature ("Losses") arising therefrom:

- i. Any bodily injury to or death of any person or damage to the Property, or growing out of or in connection with the use or non-use, condition or occupancy of the Property or any part resulting from Developer's presence on the Property. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the Developer, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts;
- ii. Any material violation by Developer of any provision of this Agreement;
- iii. Any violation of any contract, agreement or restriction related to Developer's use of the Property which shall have existed at the commencement of the Term of this Agreement or shall have been approved by the Developer; and

iv. Any violation of any law, ordinance, court order or regulation affecting the Property or the ownership, occupancy or use thereof.

b. Limitations. The foregoing indemnification shall not apply if such losses are caused by any fraud, intentional act or omission, willful misconduct or gross negligence on the part of DEDA.

c. Indemnification Procedures. Promptly after receipt by DEDA of notice of the commencement of any action with respect to which the Developer is required to indemnify such person under this Article, DEDA shall notify the Developer in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, the Developer shall assume the defense of such action. Insofar as such action shall relate to any alleged liability of DEDA with respect to which indemnity may be sought against the Developer, DEDA shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Developer.

12. Insurance. Developer shall procure and continuously maintain insurance covering all risks of injury to or death of persons or damage to Property arising in any way out of or as a result of Developer's occupancy of or use of the Property, carried in the names of the Developer and DEDA as additional insured on the commercial general liability and umbrella liability policies, but only to the extent of Developer's acts or omissions. Developer shall carry the policies of insurance with minimum limits as follows:

a. Liability Insurance. The Developer shall procure and maintain continuously in force Commercial General Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than Two Million and No/100 Dollars (\$2,000,000.00) aggregate per occurrence for personal bodily injury and death, and limits of Two Million and No/100 Dollars (\$2,000,000.00) for Property damage liability. If person limits are specified, they shall be for not less than Two Million and No/100 Dollars (\$2,000,000.00) per person and be for the same coverages. The above limits may be met through a combination of the underlying policy limits and an excess or umbrella policy. DEDA shall be named as an additional insured therein. Insurance shall cover:

- i. Public liability, including premises and operations coverage.
- ii. Independent contractors--protective contingent liability.
- iii. Personal injury.
- iv. Owned, non-owned and hired vehicles.
- v. Contractual liability covering the indemnity obligations set forth herein.

vi. Property of others.

b. Property Insurance. During construction on the Project, Developer shall provide "All Risk" builders' risk insurance on all work on the Project, including foundations, permanent fixtures and attachments, machinery and equipment included in or installed under the construction contract, debris removal, engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the Project, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Fifty Thousand Dollars (\$50,000) per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Project. Such insurance shall be provided by Developer as set forth below and shall bear a payee clause in favor of DEDA with loss proceeds under any property policies made payable to DEDA, to the extent of its interest. Said insurance may be written in the name of Developer or may be provided by Developer's Contractor in which case it shall name both Developer, DEDA, and the City as additional insureds. The Developer shall be solely responsible for ensuring that such insurance is provided. Contractor, subcontractors, and suppliers and Developer shall waive all rights against the City and DEDA for damages caused by fire or insured perils, except such rights as are set forth hereunder to the proceeds of such insurance payable in the event of such loss.

c. Workers' Compensation. Developer shall procure and maintain Workers' Compensation Coverage, in accordance with Minnesota Statutes.

d. Requirements for All Insurance. All insurance required in this Section 12 shall be taken out and maintained with responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota.

e. Certifications. Developer shall provide certificates of insurance evidencing such coverage to DEDA with 30-day's notice of cancellation, non-renewal or material change provisions, such as a reduction in the scope of the coverage or in the coverage amount, included. DEDA does not represent or guarantee that these types or limits of coverage are adequate to protect the Developer's insurance provider's interests and liabilities. If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify DEDA without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to DEDA will render any such change or changes in said policy or coverages ineffective as against DEDA.

13. Notices. Any notice, demand or other communication under this agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is

dispatched by registered or certified mail, postage prepaid, to:

In the Case of DEDA: Duluth Economic Development Authority
City Hall – Room 160
Attn: Executive Director
411 West 1st Street
Duluth, MN 55802

In the Case of Developer:

14. Assignment. Developer agrees that it shall not assign this Agreement or any interest herein without the prior written approval of DEDA.

15. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

16. Construction of Agreement. The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring a party by virtue of the authorship of any of the provisions of this Agreement.

17. Headings. The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as defining or as limiting in any way the scope or intent of the provisions hereof.

18. Invalidity. If for any reason any portion or paragraph of this Agreement shall be declared void or unenforceable, the remaining provisions shall remain in full force and effect and shall be binding upon the parties hereto.

19. No Rights or Benefits to Third Parties. The parties do not intend to create rights in, or to grant remedies to, any third-party as a beneficiary of this Agreement or to create any duty to, or standard of care on behalf of, any third-party by any covenant, obligation or undertaking established in this Agreement. There are no incidental third-party beneficiaries to this Agreement.

20. Entire Agreement. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof. No modification, amendment or waiver may be made to the terms of this Agreement without the written consent of both parties.

21. Counterparts. This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

22. Applicable Law. This Agreement, together with all of its paragraphs, terms and conditions, is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

23. Recording. Developer agrees to record this Development Agreement in the office of the St. Louis County Recorder and/or Registrar of Title against the Property and to pay all costs associated therewith. Upon recordation, Developer shall promptly submit to DEDA evidence of recording showing the date and document numbers of record.

(Signature pages to follow)

SAMPLE

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

[DEVELOPER]

By: _____
_____, Its President

By: _____
Name: _____
Its: _____

By: _____
_____, Its Secretary

SAMPLE

STATE OF MINNESOTA)
) SS
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 202__, by _____, the Executive Director of the Duluth Economic Development Authority, an economic development authority under Minnesota Statutes Chapter 459, on behalf of the authority.

Notary Public

STATE OF MINNESOTA)
) SS
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 202__, by _____, the _____ of the [DEVELOPER] Minnesota [ENTITY TYPE], on behalf of the [ENTITY TYPE].

Notary Public

Drafted by:

Attorney for the Duluth Economic Development Authority
411 West First Street, Room 410
Duluth, MN 55802

**Exhibit A to Development Agreement
Legal Description of Property**

Real property in St. Louis County, Minnesota legally described as follows:

PID:

SAMPLE

Exhibit B to Development Agreement

FORM OF RELEASE OF RIGHT TO RECEIVE RECONVEYANCE

Dated: _____, 20__

The development obligations of the Developer under that certain Development Agreement between the Duluth Economic Development Authority, an economic development authority under current codification of Minnesota Statutes Chapter 469, therein after referred to as “DEDA” and _____ therein after referred to as “Developer”, with regard to the below described property (the “Property”), which Agreement is dated _____, 202__ and filed of record on _____, 202__ in the office of the County Recorder for St. Louis County, Minnesota, as Document Number _____, and/or in the office of the Registrar of Title for St. Louis County, Minnesota as Document Number _____, having been performed, the undersigned, on behalf of DEDA, hereby certifies that such development obligations under said Agreement have been satisfied and hereby releases any right to receive reconveyance of the Property, however this Release shall in no way release Developer from its obligations set forth in Section 1 to [OPERATION OBLIGATION], or the maintenance obligations of Developer as set forth in the Development Agreement for the duration of the Term.

Further, the undersign certifies that the covenant running with the land for DEDA’s right to receive reconveyance of the Property contained in that certain quit claim deed, dated _____, 202__ and filed of record on _____, 202__ in the office of the County Recorder for St. Louis County, Minnesota, as Document Number _____, and/or in the office of the Registrar of Title for St. Louis County, Minnesota as Document Number _____, is hereby canceled and released and shall have no further force and effect.

Real property in St. Louis County, Minnesota legally described as follows:

[LEGAL DESCRIPTION]

PID: [PID]

(Remainder of page intentionally left blank; signature page to follow)

