

**MEETING OF THE  
DULUTH ECONOMIC DEVELOPMENT AUTHORITY  
WEDNESDAY, SEPTEMBER 23, 2020 – 5:15 P.M.  
VIA ELECTRONIC MEANS PURSUANT TO MINNESOTA STATUTES  
SECTION 13D.021  
AGENDA**

Please take notice that the Duluth Economic Development Authority will hold a public hearing by other electronic means pursuant to Minnesota Statutes Section 13D.021 on Wednesday, September 23, 2020, at 5:15 p.m. All persons interested may monitor and participate in the hearing by visiting: <http://dulutheda.org/live-meeting> promptly at 5:15 p.m. on Wednesday, September 23, 2020, and written comments may be submitted to DEDA in advance of the meeting via the DEDA's web site at <http://dulutheda.org/contact-us/> or via email at [afulton@duluthmn.gov](mailto:afulton@duluthmn.gov), and DEDA will decide if the conveyance is advisable.

The regular meeting place of DEDA is the Duluth City Council Chambers at City Hall, 411 West First Street, in Duluth, Minnesota. At this time board members of DEDA do not intend to attend the meeting in person; due to continually evolving restrictions and guidance from state and federal officials and agencies, the board members of DEDA will attend the meeting remotely via telephone or other electronic means pursuant to Minnesota Statutes Section 13D.021.

**1. CALL TO ORDER**

**2. PUBLIC TO ADDRESS THE COMMISSION**

**3. PUBLIC HEARINGS**

**RESOLUTION 20D-60: RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH DULUTH LINCOLN PARK1, LLC FOR THE DEVELOPMENT OF THE LINCOLN PARK FLATS MULTI-FAMILY RESIDENTIAL PROJECT**

**RESOLUTION 20D-61: RESOLUTION ADOPTING A MODIFICATION TO THE DEVELOPMENT PROGRAM FOR DEVELOPMENT DISTRICT NO. 17, ESTABLISHING TAX INCREMENT FINANCING DISTRICT NO. 33: REDEVELOPMENT DISTRICT THEREIN AND ADOPTING A TAX INCREMENT FINANCING PLAN THEREFOR**

**4. APPROVAL OF MINUTES**

**MEETING MINUTES FROM AUGUST 25, 2020**

**5. APPROVAL OF CASH TRANSACTIONS**

**AUGUST 1, 2020 TO AUGUST 31, 2020**

**6. NEW BUSINESS**

## **7. RESOLUTIONS FOR APPROVAL**

**RESOLUTION 20D-60:** RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH DULUTH LINCOLN PARK1, LLC FOR THE DEVELOPMENT OF THE LINCOLN PARK FLATS MULTI-FAMILY RESIDENTIAL PROJECT

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**RESOLUTION 20D-62:** RESOLUTION AUTHORIZING ACQUISITION OF CERTAIN REAL PROPERTY FROM THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH, MINNESOTA RELATED TO THE REBUILD DULUTH PROGRAM

**RESOLUTION 20D-63:** RESOLUTION AUTHORIZING ACQUISITION OF CERTAIN TAX FORFEITED REAL PROPERTY FROM THE STATE OF MINNESOTA THROUGH ST. LOUIS COUNTY RELATED TO THE REBUILD DULUTH PROGRAM

**RESOLUTION 20D-64:** RESOLUTION AUTHORIZING LEASE OF BAYFRONT PROPERTY TO THE CITY OF DULUTH RELATED TO THE CITY OF DULUTH

**RESOLUTION 20D-65:** RESOLUTION AUTHORIZING FIRST AMENDMENT TO AGREEMENT WITH DULUTH SEAWAY PORT AUTHORITY FOR USE OF A PORTION OF LOT D

**RESOLUTION 20D-66:** RESOLUTION AUTHORIZING SECOND AMENDMENT TO AGREEMENT WITH MERGE LLC. PERTAINING TO THE PASTORET TERRACE/ROBISON BALLROOM PROPERTY, EXTENDING THE TERM THEREOF

**RESOLUTION 20D-67:** RESOLUTION AUTHORIZING A LICENSE AGREEMENT WITH THE CITY OF DULUTH FOR THE USE OF DEDA LOT D

**RESOLUTION 20D-68:** RESOLUTION AUTHORIZING SUBRECIPIENT AND PREDEVELOPMENT AGREEMENT WITH STAR NW LLC FOR THE NORTHWEST IRON LOT IN THE AMOUNT OF \$50,000

**RESOLUTION 20D-69:** RESOLUTION AUTHORIZING AGREEMENT WITH JMM LLLP FOR MODIFICATIONS TO THE HOLIDAY MALL PARKING RAMP IN THE AMOUNT OF \$25,339.54

**8. DISCUSSION**

**Summary Overview: 2021 Preliminary Budget**

**9. ADJORN**

## RESOLUTION 20D-60

### RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH DULUTH LINCOLN PARK1, LLC FOR THE DEVELOPMENT OF THE LINCOLN PARK FLATS MULTI- FAMILY RESIDENTIAL PROJECT

WHEREAS, Duluth Lincoln Park1, LLC (“Developer”), proposes to redevelop property located at the southwest corner of Superior Street and 21<sup>st</sup> Avenue West in Duluth, Minnesota into a multi-family residential facility with apartment units (the “Project”);

WHEREAS, DEDA has determined that it is reasonable and necessary to provide certain financial assistance to Developer in order to facilitate Developer’s plans for the Project and to that end, DEDA and Developer have negotiated a Development Agreement for the Project; and

WHEREAS, DEDA has approved the establishment of Tax Increment Financing District No. 33, a Redevelopment District (the “TIF District”) pursuant to Minnesota Statutes §§469.174 to 469.1794, as amended; and

WHEREAS, pursuant the terms of the Development Agreement, DEDA proposes to provide certain tax increment financing assistance to Developer consisting of a pay-as-you-go tax increment revenue note (the “TIF Assistance”) payable from the TIF District; and

WHEREAS, the TIF Assistance constitutes a business subsidy within the meaning of Resolution 18-0515R of the City of Duluth (the “Business Subsidy Resolution”) and Minnesota Statutes §§116J.993 through 116J.995 (the “Business Subsidy Act”), and the Development Agreement constitutes a “business subsidy agreement” under the Business Subsidy Resolution and a subsidy agreement pursuant to the Business Subsidy Act; and

WHEREAS, pursuant to the Business Subsidy Act, after a public hearing, if the creation or retention of jobs is determined not to be a goal, the wage and job goals may be set at zero; and

WHEREAS, DEDA on this same date held a duly noticed public hearing on the granting of a business subsidy to Developer pursuant to the Development Agreement and on setting the wage and job goals at zero in accordance with the Business Subsidy Act; and

NOW, THEREFORE, BE IT RESOLVED:

1. DEDA finds that the Development Agreement is in the best interests of the City and the welfare of its residents, and in accordance with the public

purposes and provisions of the applicable State and local laws and requirements under which the development will be undertaken.

2. DEDA hereby determines that the Project will enhance the economic diversity of the City and the City's tax base, enhance the quality of life of the City's residents by investing in neglected neighborhoods or business areas and stimulating the redevelopment of underutilized, blighted or obsolete land uses including demolition of commercial areas in the City and substandard structures, expand the City's tax base and realize a reasonable rate of return on the public investment; encourage the development of commercial areas in the City that result in higher quality development and private investment, and achieve development on a site which would not be developed without assistance.
3. DEDA hereby determines that the creation or retention of jobs is not a goal of the Project for purposes of the Business Subsidy Act, therefore, the wage and job goals may be and hereby are set at zero in the Development Agreement in accordance with the Business Subsidy Act.
4. DEDA hereby authorizes the proper DEDA officials to enter into a Development Agreement with Developer substantially in the form of that attached hereto (DEDA Contract No. 20-860-\_\_\_\_), together with any related documents necessary in connection therewith.
5. DEDA staff, officials and consultants are authorized to implement the terms of the Development Agreement as provided therein and carry out DEDA's obligations under the Development Agreement.

Approved by the Duluth Economic Development Authority this 23<sup>rd</sup> day of September 2020.

ATTEST:

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Executive Director

#### STATEMENT OF PURPOSE:

This resolution authorizes a Development Agreement with Duluth Lincoln Park1, LLC for the development of the Lincoln Park Flats project located at the southwest corner of Superior Street and 21<sup>st</sup> Avenue West. The project will be located on property currently occupied by the building that previously housed the Robert's Home Furniture store and a

parking lot to the west of that building. The area will be designated as Tax Increment Financing District No. 33, a Redevelopment District. DEDA Resolution 20D-61 accompanying this resolution will create the District and a resolution approving the creation of TIF District No. 33 will be on the September 28, 2020, City Council agenda.

The Development Agreement provides for the demolition of existing, blighted structures and new development by Developer of a multi-family residential development with not less than 74 studio, 1-bedroom and 2-bedroom apartments; not less than 23 of which will be occupied by households at 80% or less of area median income. The project includes approximately 41 indoor parking stalls under the structure and approximately 44 outside, on-grade parking stalls on the property together with related utilities, landscaping, and other amenities at a total development cost of approximately \$13,800,000. DEDA will provide 90% of the TIF generated by the project up to \$2,350,000 plus interest at the rate of 4.25% to pay for Eligible Costs on a pay-as-you-go basis. The term of the TIF Note is for a period of twenty six (26) years from the date of receipt by DEDA from the St. Louis County Auditor's Office of the first payment of Captured Tax Increment, or until the principal and interest on the TIF Note has been paid in full, whichever is sooner.

Tax base impact statement: The current market value (2020, payable 2021) of the properties located in TIF District 33 is \$585,000 and the property is generating \$10,950 in net tax capacity. After the improvements are completed, the taxable market value will increase to approximately \$8,510,000. After the TIF District is terminated, the development is anticipated to generate over \$106,375 per year in net tax capacity, based on the County Assessor's valuation of the completed property, not including inflation, the proceeds of which will be distributed to the taxing jurisdictions).

**DEVELOPMENT AGREEMENT  
DULUTH ECONOMIC DEVELOPMENT AUTHORITY  
DULUTH LINCOLN PARK1 LLC  
LINCOLN PARK FLATS PROJECT**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "DEDA", and DULUTH LINCOLN PARK1 LLC, a Minnesota limited liability company, hereinafter referred to as "Developer".

WHEREAS, Developer is acquiring certain Property, hereinafter described, and the buildings located thereon, which Property is located at the southwest corner of Superior Street and 21<sup>st</sup> Avenue West and has proposed to develop the Project as hereinafter described which includes the demolition of the existing buildings and the construction on said Property of not less than 74 apartment units, not less than 23 of which will be available for rent to persons having an income at or below 80% of the area median income and a combination of in-door and on-grade parking totaling approximately 85 spaces; and

WHEREAS, portions of said Property are contaminated by various environmental contaminants which will require remediation, increasing the cost of the Project and rendering it potentially financially infeasible without public assistance; and

WHEREAS, DEDA has applied for and received a grant from the Minnesota State Department of Employment and Economic Development in the amount of \$134,946 to assist DEDA and Developer in remediating said Property, contingent on the Project proceeding; and

WHEREAS, Developer has requested assistance from DEDA for acquisition of the Property, demolition of the existing buildings, site preparation and infrastructure costs and other costs eligible for public financing related to the redevelopment of said Property and the development of said Project as is hereinafter set forth since, without

such assistance, the Project would not be economically viable; and

WHEREAS, DEDA has further determined that the interests of the citizens of the City of Duluth and the wellbeing and quality of life in the City of Duluth would be enhanced by nurturing and encouraging the development of the Project; and

WHEREAS, after careful analysis of the projected costs of the Project and of the financial resources available and economic feasibility of such funding to pay for the costs of the Project described herein, DEDA has determined that:

- A. a "gap" exists between the cost to Developer of the Project and the funds presently available to or known to Developer and DEDA to be available to finance those costs at rates that would make the Project economically feasible as hereafter described, which gap, based on the best currently-available estimates, is at least \$2,350,000;
- B. without the tax increment assistance to be provided pursuant to this Agreement, the cost of developing the Project would be more than can be supported by the amounts that are reasonable to be charged for the rental and the available resources would be inadequate to fund the development of said Project on a financially feasible basis and that therefore, but for the tax increment assistance to be provided for hereunder, the Project could not reasonably be expected to be constructed in the foreseeable future; and
- C. the increased market value of the Property that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from the Project after subtracting the present value of the projected tax increment for the duration of this Agreement.

WHEREAS, the public purpose of the tax increment assistance to be provided pursuant to this Agreement is to stimulate the redevelopment of underutilized, blighted or obsolete land uses including demolition of substandard structures, to encourage the development of residential rental housing, especially low and moderate income housing, in an area of the city that is in dire need of such housing, to achieve development on property which would not be redeveloped without assistance, and to enhance and

diversify the tax base of the City of Duluth; and

WHEREAS, the Property is located in a redevelopment district within the meaning of Minnesota Statutes §469.174 et. seq. (Tax Increment Financing District No.33).

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## **ARTICLE I**

### Definitions

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

- A. Available Tax Increment means 90% of the Captured Tax Increment in the six (6) month period preceding each Scheduled Payment Date, as defined in the TIF Note.
- B. Certificate of Completion: means a written certification executed by the Director in recordable form certifying that the construction of the Project in conformance with the Plans has been totally completed and that the remediation work described in Article II below has been totally completed in accordance with the Remediation Plans.
- C. Captured Tax Increment: means all real estate taxes resulting solely from the payment of real estate taxes on the Original Captured Net Tax Capacity, as defined in Minnesota Statutes Section 469.74, Subd, 4, of the Property resulting from the Project remitted to DEDA by the St. Louis County Auditor and received by DEDA.
- D. City means the City of Duluth.
- E. Director means the Executive Director of DEDA or such person or persons designated in writing by said Director to act on behalf of him/her with regard to this Agreement or any portion thereof.

- F. DEED: shall mean the Minnesota State Department of Employment and Economic Development.
- G. DEED Grant: means that DEED Contamination Cleanup Grant bearing grant no. CCGP-20-0002-Z-FY20 in the amount of \$134,946 received by DEDA to assist in funding the environmental remediation of the Property as described in Article III below in furtherance of the Project.
- H. Eligible Project Costs means those costs as set forth in Exhibit A which may be legally funded with tax increment proceeds under Minnesota Statutes §469.174 et. seq. and case law. The current estimate of Eligible Project Costs is approximately \$2,408,150.
- I. ESA II: means the Phase II Environmental Site Assessment of the Property performed by Environmental Troubleshooters, Inc. dated January 7, 2020, a copy of which is on file in the office of the Director.
- J. MPCA: means the Minnesota State Pollution Control Agency.
- K. Plans: means the plans, specifications and elevations for the Project together with detailed site grading, utility and landscaping plans and elevations for the Project as approved pursuant to Article VI below. The remediation work covered by Article III below shall not be included in the Project.
- L. Project means the development on the Property by Developer of not less than 74 residential apartment units totaling approximately 53,000 square feet in size, not less than 23 of which will be available for rent to persons having an income at or below 80% of the area median income, 41 in-door parking stalls under the apartment development and approximately 44 outside, at-grade parking stalls, together with related utilities, landscaping and other amenities, all at a cost of not less than \$13,800,000, and all according to the plans approved by the Director pursuant to Article VI and pursuant to required City approvals.
- M, Project Costs: shall mean the sum of the Eligible Costs and in addition those costs of the Project described in Exhibit B attached hereto and made a part hereof.
- N. Property means that Property located in St. Louis County, Minnesota, described on Exhibit C attached hereto and made a part hereof.

- O. Remediation Plans: means the plans and specifications for the remediation of the environmental contamination on the Property identified by the ESA II, as such plans and specifications have been approved by the Director and DEED.
- P. TIF Act means Minnesota Statutes, Sections 469.174 through 469.179, as the same may be amended from time to time.
- Q. TIF District No. 33 means DEDA's Tax Increment Financing District No.33.
- R. TIF Note means a limited revenue tax increment financing note ("pay-as-you-go" note) to be issued by DEDA to the Developer pursuant to Article IX of this Agreement in substantially the form of that attached hereto as Exhibit D.
- S. TIF Plan means the Tax Increment Financing Plan for TIF District No. 33 authorized in accordance with the TIF Act, which TIF Plan is on file in the office of the Director.

## **ARTICLE II**

### Application Fee and Reimbursement of Consultant Costs

In consideration of the financial assistance provided by DEDA to Developer pursuant to the terms of this Agreement, Developer has paid to DEDA a non-refundable application fee of Three Thousand and No/100 Dollars (\$3,000.00). Additionally, Developer agrees to reimburse DEDA upon invoice for services of Ehlers & Associates, Inc. to perform a "but for compliance test" for the Project and to prepare and process the TIF Plan in an amount up to, and not to exceed, Eighteen Thousand and no/100ths Dollars (\$18,000).

## **ARTICLE III**

### Property Remediation

- A. Grant—General: DEDA has applied for and has been awarded the DEED Grant to fund a portion of the anticipated cost of remediating the environmental contamination on the Property identified in the ESA II. Subject to receipt thereof from DEED and acceptance thereof by DEDA, DEDA agrees to use the funds received by it from the DEED Grant to reimburse the Developer for the costs of

said site remediation subject to the terms and conditions set forth in this Agreement and particularly this Article thereof.

- B. Remediation Obligation: Prior to the issuance of the Certificate of Completion as provided for in Paragraph D of Article VII below, Developer shall have caused the Property to be remediated of all contaminants identified in the ESA II in conformance with the requirements of this Agreement and the applicable standards of the MPCA.
  
- C. Remediation Plans: Not less than thirty (30) days prior to the commencement of any remediation work under this Article, Developer shall have submitted the Remediation Plans, prepared by Environmental Troubleshooters, Inc. or another environmental engineering firm approved by the Director, to the Director for the Director's review and approval. The Remediation Plans shall conform to all applicable laws, rules and regulations of the Federal Environmental Protection Agency, the State of Minnesota including those of DEED and the MPCA, and the City. Developer shall be responsible for obtaining all necessary approvals of and permits for the Remediation Plans and the work to be performed to implement them. If the Director determines that the Plans fail to meet the requirements of this Agreement, the Director shall promptly notify the Developer of that determination along with the reasons therefore and Developer shall promptly make any necessary and appropriate modifications so the Remediation Plans to correct any identified deficiencies. The process of review, approval and modification shall continue until the Director approves the Remediation Plans.
  
- D. Remediation Work: Upon approval of the Remediation Plans as provided for in Paragraph C above, Developer shall award a contract for the remediation of the Property in accordance with the approved Remediation Plans to a contractor with a proven track record of performing such work in conformance with all federal, state and City requirements. Said contract shall further require such contractor to comply with all applicable federal, state and local laws, ordinances and regulation including but not limited to the federal Hazardous Waste Operations

and Emergency Response Standards (29 CFR 1910.120 and 29 CFR 1926.65). Upon total completion of all of the work required under the Remediation Plans, Environmental Troubleshooters, Inc. or another environmental consultant approved by the Director shall provide a certification thereof to the Director in a form acceptable to the Director in the exercise of the Director's discretion.

- E. Reimbursement of Costs: Upon receipt by the Director of the certification provided for in Paragraph D above and the provision of the following documentation, City will reimburse Developer for Seventy-five (75%) Percent of the cost of the work as set forth in Paragraph D above and as are eligible for reimbursement under the terms of the Grant; provided that such reimbursement amount shall not exceed \$134,946. Before being entitled to such reimbursement Developer shall have supplied complete and thorough documentation of said cost along with proof of payment thereof along with such supporting documentation as the Director may reasonably request in the exercise of the Director's discretion. Upon receipt of the required documentation that Director will promptly authorize the reimbursement of Developer for said portion of the costs of said work
- F. DEED Grant Requirements Incorporated and Controlling: It is understood by Developer that the reimbursement for the remediation of the Property provided for in this Article is funded by the DEED Grant. Therefore, Developer agrees that all of the terms and conditions of the DEED Grant are hereby incorporated by reference and shall be deemed to be controlling and an obligation of Developer except to the extent that said obligations can only be fulfilled by DEDA as the grantee. And to the extent that any such obligations can only be fulfilled by DEDA, Developer hereby agrees to provide any assistance in its power to assist DEDA in fulfilling such grant obligations. Further Developer agrees that the funds reimbursed to Developer under this Article are grant funds subject to the terms of the DEED Grant which cannot be used, treated or converted into any type of loan.

## ARTICLE IV

### Preconditions to Project Construction

Prior to the commencement of construction of the Project and as a precondition to the commencement thereof, Developer shall provide to DEDA the following items:

- A. Title. Proof reasonably satisfactory to DEDA that Developer owns the Property in fee simple.
- B. Construction Costs. Developer's certified estimate of the total cost of construction of the Project.
- C. Construction Contract. A copy of the executed contract between Developer and a general contractor necessary to complete the demolition of the structures on the Property and the construction of the Project in accordance with Plans approved pursuant to Article VI. Such construction contract shall provide that payments for the work thereunder are the sole obligation of Developer. Said contract shall include the requirement that said contractor agree to enter into a Project Labor Agreement conforming to the requirements of Article IV of Chapter 2 of the Duluth City Code, 1959, as amended and to conform to the Community Benefits Requirements as set forth in Exhibit E, attached hereto and made a part hereof and that the laborers, mechanics or apprentice-trainees employed in the construction of the Project to be paid the wage rates as provided in the federal Davis Bacon Act, as amended. Payroll for the construction trades must be submitted to the Director on a monthly basis. Said contract shall further require such contractor to comply with all applicable federal, state and local laws, ordinances and regulation including but not limited to the federal Hazardous Waste Operations and Emergency Response Standards (29 CFR 1910.120 and 29 CFR 1926.65).
- D. Construction Financing. Copies of loan commitments and other financing commitments obtained by Developer for the Project, the total of said commitments and any equity contribution to be in an amount not less than the total contract price between Developer and its general contractor as described in Paragraph C above.
- E. Survey. A survey of the Property performed by a Registered Land Surveyor

under the laws of the State of Minnesota.

- F. Vacations: Proof that the easement for Michigan Street between the westerly right-of-way line of 21<sup>st</sup> Avenue West and the westerly line of Lot 342, Block 38, all as platted on the Plat of DULUTH PROPER Second Division, on file in the office of County Recorder for St. Louis County, Minnesota, and the easement for slopes and fill on file in said Recorder's office as Document Number. 240925.0 have been legally vacated and that the vacations thereof have been duly filed and recorded in said Recorder's office.

## **ARTICLE V**

### **Minimum Assessment Agreement**

The parties agree to enter into an Assessment Agreement in the form of that attached hereto as Exhibit F and to use their best efforts to cause the St. Louis County Assessor to execute the same. Promptly upon execution of the Assessment Agreement, Developer agrees to record the Assessment Agreement in the office of the St. Louis County Recorder and/or Registrar of Title and to pay all costs associated therewith. Upon recordation, Developer shall promptly submit to DEDA an executed original of the Assessment Agreement showing the date and document numbers of record, or a certified copy of the filed original.

## **ARTICLE VI**

### **Project Plans**

- A. Plans, Specifications and Elevations. No less than thirty (30) days prior to the commencement of construction of the Project, or such lesser time as approved by the Director, Developer shall submit the Plans for the Project to the Director for approval. All such Plans shall be in conformance with this Agreement, with the schematic design previously submitted to the Director which shall consist of drawings and other documents illustrating scale and relationship of various Project components, and with all applicable laws, ordinances, rules, regulations and requirements of DEDA, the City, the State of Minnesota and the United

States of America. The Director shall review the Plans within fifteen (15) days of submission of the Plans by Developer. The Director's approval shall be provided to the Developer in writing. If the Director rejects the Plans in whole or in part as not being in compliance with the foregoing requirements, and upon notification to Developer of said rejection together with the reason or reasons therefor, Developer shall submit new or corrected Plans meeting said objections within fifteen (15) days of said notice. The provisions of this Paragraph relating to approval, rejection and resubmission of corrected Plans herein provided for with respect to the originally submitted Plans shall continue to apply until said Plans have been approved in writing by the Director. The Director's approval of Developer's Plans shall not constitute a guaranty that the Plans conform to the requirements of applicable building, zoning or other codes or ordinances or constitute a waiver of building code or zoning ordinance or other applicable codes or ordinances imposed in the future upon Developer by law. Developer expressly agrees to be solely responsible for all costs, including architectural fees connected with the Plans and any revisions thereto.

- B. Changes after Initial Approval. Any material or substantial changes made to Plans by Developer after initial review of the Director shall be submitted to the Director for approval in the same manner provided for in Paragraph A above.

## **ARTICLE VII**

### **Construction**

- A. Construction. Upon the fulfillment of the preconditions to construction provided for in Articles IV, V and VI above, but in no event later than April 30, 2021 (but subject to unavoidable delays as detailed in Article XXVI below), Developer shall commence construction of the Project in conformance with the plans approved pursuant to Article VI. Said construction work shall be completed not later than December 31, 2022 (subject to unavoidable delays as detailed in Article XXVI below). Notwithstanding the above, the construction period may be extended for up to ninety (90) days in addition to delays permitted pursuant to Article XXVI below upon the prior written approval of the Director.

- B. Developer to Bear All Costs. Except for payments by DEDA provided for in Article IX, Developer specifically agrees to bear all costs related to the construction of the Project and any modifications thereto.
- C. Progress Reports. Until construction of the entire Project and remediation of the Property as described in Article II above have been completed, Developer shall make reports in such detail and at such times as may reasonably be requested by the Director as to the actual progress of Developer with respect to the Project and said remediation. Additionally, upon reasonable notice, the Developer also agrees that it will permit DEDA access to the Property.
- D. Project Costs/Certificate of Completion. Promptly upon completion by Developer of the construction of the Project and the remediation of the Property in accordance with this Agreement and MPCA standards, Developer shall submit to the Director written evidence in a form satisfactory to the Director of Eligible Project Costs incurred and paid. Such evidence shall include, at a minimum, paid invoices, receipts, canceled checks, mechanic lien waivers or comparable evidence of payment of at least the amount of the Construction Contract, the costs of the remediation work provided for in Article II above and any other eligible Project costs claimed by Developer. DEDA and its representatives shall have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Developer relating to the Eligible Project Costs and the Project. Such records shall be kept and maintained by Developer for a period of six (6) years following the issuance of the Certificate of Completion. Upon furnishing by Developer of said written evidence of such costs and upon completion by Developer of the construction of the Project and said remediation work in accordance with this Agreement, DEDA through its Director shall within thirty days of written request from Developer furnish to Developer a Certificate of Completion in the form of that attached hereto as Exhibit G so certifying. A Certificate of Completion shall not be issued until all elements of the Project and said remediation have been completed. The Certificate of Completion shall constitute a conclusive determination of satisfaction of the construction obligations of Developer undertaken pursuant to this Agreement and may be

recorded against the Property.

## **ARTICLE VIII**

### **TIF Payment Obligations**

- A. Upon DEDA's issuance of the Certificate of Completion pursuant to Paragraph D of Article VII and the submission of the audit provided for in Paragraph B below, DEDA shall execute and deliver to Developer a Note in substantially the form of Exhibit D. The principal amount of the TIF Note shall be \$2,350,000 or the amount of documented Eligible Project Costs, whichever is less; provided that in the event that the Project Costs is less than \$13,800,000, the amount of the TIF Note will be further reduced by an amount equal to one-half (1/2) of the difference between \$13,800,000 and the amount of the Project Costs determined in the manner set forth in Paragraph B below.
- B. Upon completion of the construction of the Project, Developer shall cause an audit of the Project Costs to be prepared by a certified public accountant and submitted to DEDA. The Developer may select the certified public accountant to perform the audit but that person or entity shall be subject to the prior approval of the Director in writing.
- C. Pursuant to the TIF Plan, DEDA's first receipt of Available Tax Increment will be in 2023. Interest payable on the TIF Note(s) in the amount of 5% per annum shall start to accrue on the date of execution of the TIF Note. There shall be no accrual of interest on unpaid interest. As required by statute, the amount of Available Tax Increment shall not exceed the amount of Eligible Project Costs incurred, paid, or otherwise contracted for by the Developer.
- D. Developer acknowledges and agrees, as provided in the TIF Note, that payments under the TIF Note shall be bi-annual payments in the amount of the Available Tax Increment attributed to Property received by DEDA in the six months preceding each Scheduled Payment Date as defined in the TIF Note. There shall be no interest on unpaid interest as it accrues. DEDA shall not be obligated to make any payments except as provided in the TIF Note.

- E. The TIF Note(s) will be issued without registration under the State or federal securities laws pursuant to an exemption for such issuance; and, accordingly, the TIF Note(s) may not be assigned, transferred or pledged, in whole or in part, except as specifically set forth herein.
- E. DEDA's financial commitment for payment of the TIF Note under this Agreement is a revenue obligation only and will be paid by DEDA only out of Available Tax Increment. Developer acknowledges that DEDA makes no representations or warranties that the Available Tax Increment will be sufficient to pay Developer on the TIF Note. Developer acknowledges that Available Tax Increment is subject to calculation by St. Louis County and changes in state statute and that some or all of the amount of the TIF Note may not be paid and in such event, the amount of payments otherwise due to Developer under Paragraph A above shall be deemed upon termination of this Agreement to have been paid in full and DEDA shall have no further obligations for payments of said amounts.
- F. Developer acknowledges that the estimates of Available Tax Increment and tax projections, which may have been made by DEDA or its agents, officers or employees are estimates only, are made for the sole use and benefit of DEDA and are not intended for Developer's reliance. DEDA does not warrant that it will have throughout the term of this Agreement the continuing legal ability under State law to apply Available Tax Increment to the payment of the TIF Note.
- G. Notwithstanding anything to the contrary in this Agreement, the TIF Note may be assigned, transferred or pledged without the approval of DEDA; provided that notice of the assignment, transfer or pledge is provided to the Director along with a completed certificate of registration as contemplated under the TIF Note(s).

## **ARTICLE IX**

### Operating Covenants

Developer agrees that in its operations and use of the Property and the Project, in accordance with industry standards, Developer shall:

- A. Maintenance. At all times cause the Project and the Property to be operated and maintained in a neat, orderly condition, to maintain and preserve and keep in

good repair, working order and condition said Property and Project and to perform all needed and proper repairs, renewals and replacements necessary to be made thereto. 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, grass cutting and landscape maintenance, parking ramp cleaning, repair and striping and all other exterior maintenance to said Property and the Project.

- B. Rental Restriction: Developer agrees and commits that, during the Term of this Agreement as set forth in Article XVII below that at least twenty-three (23) of the apartment units in the Project will be rented to persons or families whose income is equal to or less than eighty (80%) percent of the area median income as determined annually by the United States Department of Housing and Urban Development.
- C. Utilities. Unless disputed, pay or cause to be paid any and all charges for utilities furnished to the Project and the Property including but not limited to hook-up charges and assessments related to all utilities, including but not limited to steam, water, sewer, gas, telephone, cable or satellite TV, and electrical power.
- D. Licenses and Permits. Preserve the existence and 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 to be qualified to do business in the State of Minnesota.
- E. Obey All Laws. 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 of the United States and the State of Minnesota including all laws related to unlawful discrimination and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Project and the Property; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity thereof shall be contested in good faith through proper legal action provided that

such protest shall in no way affect Developer's title to the Project and the Property.

- F. Payment of Taxes. 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 or the Property, subject to the right to contest in good faith in accordance with Minnesota law.
- G. Assessment Fees and Charges. Pay or cause to be paid when due or payable all special assessments levied upon or with respect to the Project and 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.
- H. Obligations and Claims. Promptly to pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against the Project and the Property as and when the same become due and payable other than any thereof whose validity, amount or collect ability is being contested in good faith by appropriate proceedings.
- I. Living Wage. Abide by the requirements of Article XXVI of Chapter 2 of the Duluth City Code, 1959, as amended (the "Duluth Living Wage Ordinance") to require those construction workers directly employed in the construction of the Project to be paid Prevailing Wage Rates as that term is defined in Section 2-25 of the Duluth City Code.

## **ARTICLE X**

### Provision against Liens, Assignments and Transfers

- A. Provision against Liens. Except for encumbrances permitted pursuant to this Article, the Developer shall not create or permit any mortgage or encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Project and the Property or any part thereof which would materially or adversely affect DEDA's interest in 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.

Notwithstanding the above, encumbrances in the nature of easements, licenses or the like, but not to include mechanic's or materialmen's lien, may be created or permitted after the issuance of a Certificate of Completion without the approval of DEDA.

- B. Transfers prior to Issuance of a Certificate of Completion. The parties hereto acknowledge that DEDA is relying upon the qualifications and identity of Developer to construct, operate and maintain the Project and the Property. Therefore, except for the purposes of obtaining financing as hereinafter described or as otherwise approved by this Agreement, prior to the issuance of a Certificate of Completion, Developer represents and agrees 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, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, the Project, Developer, 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 transfer of all or of a controlling interest in Developer to Ryan Nelson and Peter Pavlovich shall not constitute a violation of the provisions of this Paragraph and shall not require the prior approval of DEDA.
- C. Permitted Encumbrances. Notwithstanding anything in this Article to the contrary, Developer is authorized, without the approval of DEDA, to obtain construction and permanent financing for the Project and to mortgage the Project and Property to provide security for the construction and permanent financing. In addition, Developer is authorized to lease the apartment units to tenants at all

times without the approval of DEDA.

D. Transfers after Issuance of a Certificate of Completion.

Following the issuance of a Certificate of Completion, Developer may sell, convey or otherwise transfer the Property or any tract or parcel thereof with the prior written consent of DEDA, which consent shall not be unreasonably withheld, provided the following has been satisfied:

1. Thirty days' prior written notice of the transfer is provided to the Director.
2. The transferee shall agree by affidavit to comply with all the terms and conditions of this Agreement not otherwise extinguished by the completion and Certification of Construction of the Project. The affidavit shall comply with the terms of this Paragraph 2 and shall be provided to the Director.
3. Notwithstanding the above transfer, the payment of the tax increment pursuant to Article IX shall be made to the Registered Owner of the Note.

Failure to comply with the requirement of subsection 1 and 2 above shall be an event of default under this Agreement.

E. Modification; Subordination. In the event any portion of the Developer's funds is provided through mortgage financing, subject to the following, DEDA agrees to subordinate its rights under this Agreement to the holder of any mortgage securing construction or permanent financing, in accordance with the terms of a subordination agreement in a form reasonably acceptable to DEDA and such holder. Provided, however, that the form of any such subordination shall specifically require that in the event that the holder of any such mortgage and/or any successor in interest thereto becomes the owner of the Property, such holder or successor in interest shall continue to operate the Project in a manner which continues to provide not less than 23 residential apartment units which are made available for rent to persons having an income at or below 80% of the area median income for the Term of this Agreement.

## **ARTICLE XI**

### Indemnification

A. Generally. Developer shall, to the fullest extent permitted by law, protect,

indemnify and save DEDA and the City and their officers, agents, servants, employees and any person who controls DEDA 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 arising from:

1. Any injury to or death of any person or damage to property in or upon the Project or the Property, or growing out of or in connection with the use or non-use, condition or occupancy of the Project or the Property or any part thereof and also, without limitation, the construction or installation of the Project or any portion of the Project. 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 Developer, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.
2. Any violation by Developer of any provision of this Agreement.
3. Any violation of any contract, agreement or restriction related to the Project or the Property which shall have existed at the commencement of the term of this Agreement or shall have been approved by Developer; or
4. Any violation of any law, ordinance, court order or regulation affecting the Project or the Property, or the ownership, occupancy or use thereof.

B. Environmental Indemnification. In addition to the generality of the above, Developer hereby agrees that for itself, its successors and assigns that it will indemnify and save DEDA and the City and their officers, agents, servants and employees and any person who controls DEDA or the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition existing in the Project or on the Property, whether pre-existing or after-created, which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the

government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Project or on the Property, or the release or threatened release of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property, and that indemnification granted hereby shall include all costs of clean-up and remediation and response costs, together with the costs incurred in proceedings before a court of law or administrative agency including attorneys' fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing in the Project or on the Property.

- C. Indemnification Procedures. Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Developer is required to indemnify DEDA or the City under this Article, DEDA shall notify Developer in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, Developer shall assume the defense of such action, including the employment of legal counsel satisfactory to DEDA or the City and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA or the City with respect to which indemnity may be sought against Developer, DEDA and the City 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.
- D. Exceptions to Indemnification. In no event shall Developer be required to indemnify DEDA or the City under this Article for liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising solely from the negligent or intentional misconduct of DEDA or the City or their officers, agents, servants,

employees.

## ARTICLE XII

### Insurance

Developer shall provide for purchase and maintenance of such insurance as will protect Developer, DEDA and the City against risk of loss or damage to the Project and the Property and any other property permanently located or exclusively used at the Project site and against claims which may arise or result from the maintenance and use of the Project, including operations conducted in connection with construction of improvements thereupon. Such coverages shall include but shall not necessarily be limited to the following:

- A. Insurance during Construction. Developer, prior to entering on the Property for construction work, shall procure or cause to be procured and maintain or require all contractors to procure and maintain the following insurance at not less than the limits of coverage or liability indicated during the period of construction as follows:
  1. Property Insurance. Developer shall provide "All Risk" builder's risk insurance under a completed value form 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, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the Project and the Property, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Project and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force.
  2. Public Liability Insurance. Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Insurance and Automobile Liability Insurance Form with "Broad Form" property

damage liability coverage, with XCU exclusion removed, in limits of not less than \$2,000,000 aggregate per occurrence for personal injury, bodily injury and death, and limits of \$2,000,000 for property damage liability. If per person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. DEDA and the City shall be named as additional insureds on the Commercial General Liability Insurance and Automobile Liability Insurance policies. Contractor shall also require such liability coverage of its subcontractors unless they be insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

- a. Contractors public liability--premises and operations;
- b. Independent contractors' protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnify provisions;
- f. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employers' liability coverage shall be maintained in limits of \$100,000 per employee.

B. Permanent Insurance. Developer shall procure and continuously maintain, except as otherwise provided below, 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 ownership of, occupancy of or use of the Project and the Property, carried in the name of Developer as follows:

1. Property Insurance. Prior to expiration of the buildings' risk coverage specified above, the Project and the Property, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a deductible amount not to exceed \$50,000 per occurrence. For the purposes hereof, "all risk" means insurance

equivalent in scope to protect against all risks of direct physical loss ordinarily insured against in the region. Developer and DEDA hereby mutually waive any and all claims or causes of action against the other party for damages caused by an insured peril hereunder, except such rights hereinafter set forth to an interest in the insurance proceeds payable in the event of such loss.

2. Liability Insurance. During the construction period (unless covered under the policies required previously) and permanently thereafter for the balance of the term of this Agreement, Developer shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Commercial General Liability Insurance and Automobile Liability Insurance Form in limits of not less than \$2,000,000 per occurrence for personal bodily injury and death, and limits of \$2,000,000 for property damage liability. If person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. DEDA and the City shall be named as additional insureds therein. Insurance shall cover:
    - a. Public liability, including premises and operations coverage;
    - b. Independent contractors--protective contingent liability;
    - c. Personal injury;
    - d. Owned, non-owned and hired vehicles;
    - e. Contractual liability covering the indemnity obligations set forth herein;
    - f. Products--completed operations.
  3. Workers' Compensation. Workers' Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law, and evidence of such qualification is furnished to DEDA. Employees' liability insurance shall be carried in limits of \$100,000 per employee.
- C. Modification of Insurance Requirements. It is agreed between the parties that DEDA shall have the right to modify the forms of the insurance provided for in

Paragraphs A and B above and the limits set forth with regard thereto provided that any such modification and policy forms or limits shall be of such a character and in such amounts as are reasonably necessary to provide DEDA with the types and amounts of protection provided for in this Agreement at the time of its execution. In the event that DEDA shall desire to so modify said insurance requirements, DEDA shall notify Developer of the proposed modifications not less than sixty (60) days prior to the date set by DEDA for said modifications to go into effect.

- D. Requirements for All Insurance. All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in Minnesota.
- E. Certifications. Developer shall be required to supply to DEDA written certifications of insurance requiring the insurer to give DEDA thirty (30) days' written notice prior to cancellation or modification of said insurance for any reason other than non-payment of premium and ten (10) days' written notice prior to cancellation for non-payment of premium of said insurance.
- F. Reconstruction Obligation and Uninsured Loss. In the event the Project or any portion thereof is destroyed by fire or other casualty, Developer shall forthwith repair, reconstruct, and restore the improvements to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction, or construct improvements in a manner which meets the minimum assessment valuation requirements of the Assessment Agreement and which is approved by DEDA, such approval which shall not be unreasonably withheld, and to the extent necessary to accomplish such repair, reconstruction, restoration, or construction, Developer shall apply the proceeds of any insurance received by Developer to the payment or reimbursement of the costs thereof. Developer shall, however, complete the repair, reconstruction and restoration of the improvements whether or not the proceeds of any insurance received by Developer are sufficient to pay for such repair, restoration, and reconstruction.
- G. Reconstruction Obligation Contingency Nothing to the contrary in Paragraph F

above, in the event that the Project is substantially or totally destroyed and the parties agree in good faith that under present economic or social conditions the Project is no longer economically viable or does not constitute the highest and best use of the Property, the parties hereby commit to meet and confer in good faith to determine the use of the Property which will be of greatest economic, social and practical use to the Developer, to the City, to DEDA and to the Lincoln Park business district and use their best efforts to negotiate an amendment of this Agreement to implement that use and to apply the proceeds of any insurance to implementation of that use.

### **ARTICLE XIII**

#### **Defaults and Remedies Therefor**

- A. Developer's Default. The following shall be deemed to be events of default by Developer under the terms and conditions of this Agreement to which the remedies set forth in Section B below shall be applicable.
1. Developer shall fail to pay real estate taxes as and when due and payable.
  2. Developer shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it pursuant to this Agreement and such failure shall continue for a period of 30 calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to Developer of such default or, in the event that such default shall be incapable of cure with reasonable diligence during said 30 day period, shall have failed to commence to cure said default within 30 days of the date of said notice and to diligently pursue the same to completion.
  3. Developer shall permit valid liens, not cured or contested within thirty 30 days, to be placed on the Project or the Property or Developer loses title to the Project or the Property or both.
  4. Developer makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency is made as to Developer or its business; or

Developer files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similar action under any present or future bankruptcy or insolvency, statute, law or regulation; or Developer files an answer admitting to or not contesting to the material allegations of a petition filed against it in such proceeding or fails to have dismissed or vacated within sixty (60) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of Developer's properties or fails to have dismissed or vacated within sixty (60) days after the appointment without the consent or acquiescence of Developer of any trustee, receiver or liquidator of any material part of Developer's properties.

B. DEDA's Remedies for Developer's Defaults. DEDA shall have the following remedies in the event of a default:

1. Terminate this Agreement or the TIF Note or both.
2. Withhold the performance of any obligation owed by DEDA under this Agreement or the TIF Note or both.
3. Seek and be entitled to monetary damages for any damages incurred by DEDA as a result of a default.
4. Cease making payments under this Agreement and the TIF Note of Available Tax Increment as defined in the TIF Note.
5. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent violation of the terms and conditions of this Agreement or to compel Developer's performance of its obligations hereunder.
6. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.

C. Non-Waiver. The waiver by DEDA of any default on the part of Developer 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 of any other obligation of Developer under this Agreement. To be effective, any waiver of any

default by Developer hereunder must be in writing by the Director.

- D. Default by DEDA. The failure of DEDA to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, and the continuation of such failure for a period of thirty (30) days after written notice of such failure from any party hereto shall be an event of default by DEDA. Whenever an event of default occurs by DEDA, Developer shall be entitled to all remedies available at law or equity, and Developer may take whatever action, including legal, equitable, or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.
- E. Remedies Cumulative. The remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.
- F. Attorneys' Fees. In the event that either party is in default of any of the terms and conditions of this Agreement and the non-defaulting party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, the non-defaulting party shall be entitled to reimbursement for its reasonable attorneys' fees and costs and disbursements occasioned in enforcing its rights hereunder.

#### **ARTICLE XIV**

##### Representations by DEDA

DEDA makes the following representations as the basis for the undertaking on its part herein contained:

- A. It is a lawfully constituted economic development authority under the laws of the State of Minnesota, it is not in material violation of any provisions of State law and it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- B. There are not actions, suits or proceedings pending, or to the knowledge of

DEDA, threatened against DEDA or any property of DEDA in any court or before any federal, state, municipal or governmental agency which, if decided adversely to DEDA, would have a material adverse effect upon DEDA or any business or property of DEDA and DEDA is not in default with respect to any order of any court or government agency.

- C. DEDA will perform all of its obligations under this Agreement.
- D. Based on reasonable knowledge and belief, DEDA believes that the Project contemplated by this Agreement is in conformance with the development objectives set forth in the TIF Plan.
- E. As of the execution of this Agreement, the City and DEDA have approved the TIF Plan in accordance with the requirements of the TIF Act.

## **ARTICLE XV**

### Developer's Representations and Warranties

Developer represents and warrants that:

- A. The Developer is a Minnesota limited liability company duly organized and authorized to transact business in the State, it is fully competent to acquire the Property and to construct the Project thereon, it is not in violation of any provisions of its articles of organization, member control agreement, or the laws of the State, it has the power to enter into this Agreement, and has duly authorized the execution, delivery and performance of this Agreement by proper action of its members.
- B. Developer will perform all of its obligations under this Agreement. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of the terms, conditions, or provisions of any agreement or instrument of whatever nature to which the Developer is now a party or by which Developer is bound, or constitutes a default under the foregoing.
- C. No actions, suits, or proceedings are pending or, to the knowledge of Developer, threatened against Developer or any property of Developer in any court or before any federal, state, or municipal or other governmental agency that, if decided

adversely to Developer, would have a material adverse effect upon Developer, the Property, or the Project, and Developer is not in default of any order of any court or governmental agency which, if decided adversely to Developer, would have a material adverse effect upon the Property or the Project.

- D. The Developer shall be responsible for constructing the Project in accordance with the terms of this Agreement and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations, and federal Davis-Bacon). The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.
- E. Developer is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been incurred.
- F. Developer shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to DEDA or any third party under this Agreement to be true, correct, and complete in all material respects.
- I. That without the assistance to be provided by DEDA hereunder, Developer's cost of constructing the Project would be more than can be supported by the amounts that are reasonable to be charged for the rental and the available resources would be inadequate and not economically feasible to construct the Project and that, therefore, but for the DEDA assistance to be provided for hereunder, the Project would not be economically feasible for Developer; and Developer would not have developed the Project and operated the same in the reasonably foreseeable future.

## **ARTICLE XVI**

### Term

The term of this Agreement shall commence on the date first shown above and

shall continue for a period of 26 years from the date of receipt by DEDA from the St. Louis County Auditor's Office of the first payment of Captured Tax Increment unless changes in law prevent DEDA from any receipt of further payments of Captured Tax Increment in which event the Agreement is terminated, or unless this Agreement is otherwise terminated as provided for herein. Termination shall not terminate any indemnification provisions or any other provisions which by their nature survive termination and shall not terminate any other rights or remedies arising under this Agreement due to any event of default which occurred prior to such termination.

## **ARTICLE XVII**

### Agreement Personal to Parties

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties to the extent assignment is permitted hereunder. This Agreement shall run with the land.

## **ARTICLE XVIII**

### 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:       DEDA  
Room 402 City Hall  
411 West First Street  
Duluth, MN 55802  
Attn: Director

In the case of Developer:  
Duluth Lincoln Park1 LLC.  
4180 Napier Court NE  
St. Michael, MN 55376  
Attn: David Stradtman

With copy to:           Larkin Hoffman Daly & Lindgren Ltd.  
8300 Norman Center Drive, Suite 1000  
Minneapolis, MN 55437  
Attn: Ryan N. Boe

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this section.

## **ARTICLE XIX**

### **Recordation**

Immediately upon execution of this Agreement, Developer agrees to record this Agreement in the office of the St. Louis County Recorder and/or Registrar of Title and to pay all costs associated therewith. Upon recordation, Developer shall immediately submit to DEDA an executed original of the Agreement showing the date and document numbers of record, or a certified copy of the filed original.

## **ARTICLE XX**

### **Disclaimer of Relationships**

Developer acknowledges that nothing contained in this Agreement nor any act by the City, DEDA or the Developer shall be deemed or construed by Developer or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between DEDA, Developer and/or any third party.

## **ARTICLE XXI**

### **Applicable Law**

This Agreement together with all of its Articles, paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in Duluth, Minnesota.

## **ARTICLE XXII**

### Judicial Interpretation

Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or attorney prepared the same, it being agreed that the agents and attorneys of both parties have participated in the preparation hereof.

## **ARTICLE XXIII**

### Authorization to Execute Agreement

Developer represents to DEDA that the execution of this Agreement has been duly and fully authorized by its governing body or board, that the officers of Developer who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement when thus executed by said officers on its behalf will constitute and be the binding obligation and agreement of Developer in accordance with the terms and conditions thereof.

## **ARTICLE XXIV**

### Title of Articles

Any title, Articles and Sections in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

## **ARTICLE XXV**

### Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

## **ARTICLE XXVI**

### **Unavoidable Delays**

Neither party shall be held responsible for, and neither party shall be in default of this Agreement as a result of, delay or default caused by fire, riot, acts of God, war, government actions, judicial actions by third parties, labor disputes, pandemics or adverse weather conditions, except for delays caused by government and judicial actions which could have been avoided by compliance with publicly available laws, rules and regulations of which either party had knowledge or should have reasonably had knowledge.

## **ARTICLE XXVII**

### **Entire Agreement**

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

## **ARTICLE XXVIII**

### **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





## Lincoln Park Flats

### **Exhibit A- Eligible Costs**

1. Site Acquisition: \$655,000
2. Site preparation (demolition, earthwork, site utilities): \$768,000
3. Providing parking facilities: \$985,150
  - a. Concrete work: \$255,150
  - b. Precast concrete (post, beam, and plank): \$350,000
  - c. Blockwork and Brickwork for podium level parking area: \$380,000

**Total = \$2,408,150**

Lincoln Park Flats  
**Exhibit B- Project Costs**

Land Acquisition

Construction/Development

Municipal Fee/SAC/WAC

Survey

Architectural/Engineering

Soils& Environmental

Title

Legal Costs

Market Studies

Taxes

Insurance

Furniture, Fixtures, Equipment

Pre-opening Marketing

Financing/Interest/LOC Fees

Lincoln Park Flats

**Exhibit C- Property Description**

Lot 338, Block 38, Duluth Proper Second Division, St. Louis County, Minnesota.  
Torrens Property-Torrens Certificate No. 238921.0.

Lot Three Hundred Forty (340), in Block Thirty-eight (38), Duluth Proper Second  
Division, according to the plat thereof, St. Louis County, Minnesota.  
Abstract Property

Lot Three Hundred Forty-two (342), in Block Thirty-eight (38), Duluth Proper Second  
Division, according to the plat thereof, St. Louis County, Minnesota.  
Abstract Property

Lot 344, Block 38, Duluth Proper Second Division, St. Louis County, Minnesota.  
Torrens Property- Torrens Certificate No. 240925.0.

Lot 346 EXCEPT the W'ly 40 feet thereof Block 38, Duluth Proper Second Division, St.  
Louis County,  
Minnesota.  
Torrens Property-Torrens Certificate No. 328213.0.

## EXHIBIT D

### CERTIFICATE OF COMPLETION

#### RECITALS:

A. On \_\_\_\_\_, 2020, the Duluth Economic Development Authority, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 (“DEDA”), and DULUTH LINCOLN PARK1, LLC, a Minnesota limited liability company (“Developer”), entered into a Development Agreement, which agreement was recorded in the Office of the St. Louis County Registrar of Title on \_\_\_\_\_, 2020, as Document No. \_\_\_\_\_ (the “Development Agreement”), relating to property located in St. Louis County, Minnesota, and legally described in the attached Exhibit A (the “Property”).

B. Capitalized terms used in this Certificate of Completion but not defined herein shall have the meanings ascribed to them in the Development Agreement.

C. Paragraph D of Article VII of the Development Agreement provides that a Certificate of Completion be issued by DEDA’s Executive Director upon, among other things, completion by Developer of the construction of the Project in accordance with the Development Agreement.

D. Developer has completed construction of the Project in a manner deemed sufficient by DEDA to permit execution and recording of this Certificate of Completion.

#### NOW, THEREFORE:

1. Construction of the Project required to be performed by Developer pursuant to the Development Agreement with respect to the Property, has been completed, and those requirements under the Development Agreement which relate solely to construction obligations of the Project have been fulfilled, but all other conditions and restrictions contained in the Development Agreement shall remain in effect.

2. The Registrar of Titles in and for St. Louis County, Minnesota, are hereby authorized to accept for recording and to record this instrument.



## **CERTIFICATE OF COMPLETION**

### **EXHIBIT A**

#### **Legal Description of Property**

That real property legally described as follows:

Lot 338, Block 38, Duluth Proper Second Division, St. Louis County, Minnesota.  
Torrens Property-Torrens Certificate No. 238921.0.

Lot Three Hundred Forty (340), in Block Thirty-eight (38), Duluth Proper Second Division, according to the plat thereof, St. Louis County, Minnesota.  
Abstract Property

Lot Three Hundred Forty-two (342), in Block Thirty-eight (38), Duluth Proper Second Division, according to the plat thereof, St. Louis County, Minnesota.  
Abstract Property

Lot 344, Block 38, Duluth Proper Second Division, St. Louis County, Minnesota.  
Torrens Property- Torrens Certificate No. 240925.0.

Lot 346 EXCEPT the W'ly 40 feet thereof Block 38, Duluth Proper Second Division, St. Louis County,  
Minnesota.  
Torrens Property-Torrens Certificate No. 328213.0.

Lincoln Park Flats

**Exhibit E- Community Benefits Requirements**

**Memorandum of Understanding  
Regarding The  
COMMUNITY BENEFITS PROGRAM**

**As it applies to the \_\_\_\_\_ Project**

This MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the City of Duluth through its Workforce Development Department, (the “City”), \_\_\_\_\_, (the “Developer”), and \_\_\_\_\_, (the “Contractor”) for the purpose of memorializing the commitments between the parties to implement the City’s Community Benefits Program (the “Program”) as hereinafter set forth in conjunction with the construction of the \_\_\_\_\_ Project. The Developer is the developer of the Project and the Contractor is a contractor under contract with the Developer to perform work on the Project. The Duluth Economic Development Authority (“DEDA”) is providing financial assistance to the Project.

The City has determined that it is critical to the economic vitality of the City and its citizens that construction projects receiving City support commit to assisting in developing a trained and skilled workforce. In acknowledgement of this goal, the City, the Developer, and the Contractor agree to implement the Program as hereinafter set forth in this MOU and to cooperate fully with the City’s Workforce Development Department to so implement the Program. Further Contractor agrees to require any subcontractor of Contractor working on the Project covered by this MOU to so use their best efforts to implement the Program.

**I. Definitions**

For the purposes of this MOU, the following terms shall have the meanings hereinafter ascribed to them:

- A. Best Efforts: shall mean such efforts as are reasonable in light of the Contractor’s ability and the means at its disposal.

- B. Best Efforts Plan: shall mean a plan developed and approved between the Contractor and the Workforce Development Department to implement the Contractor's Best Efforts obligations under this MOU.
- C. Contractor: shall mean the Contractor named above performing work on the Project, and all of its Subcontractors.
- D. Eligible Workers: shall refer to women, people of color, and other individuals who are considered socially disadvantaged, and whose work hours on the Project shall count toward the Community Benefits Goals outlined in this MOU. An individual with one or more of the following characteristics shall be considered an Eligible Worker:
- Woman;
  - Person of color;
  - Is currently homeless;
  - Has received public assistance of any kind within the last 12 months;
  - Has a criminal record of conviction;
  - Is currently in, or has been emancipated from, the public foster care system;
  - Is a disadvantaged or at-risk youth, as defined by the Workforce Investment and Opportunity Act (WIOA), between the ages of 18 and 24;
  - Has a disability, including disabled veterans;
  - Has a household income below 200% of Federal Poverty Level.
- E. Program: shall mean the Community Benefits Program as set forth in this MOU.
- F. Project: shall mean the construction of the \_\_\_\_\_ Project as approved by the [(City)(Duluth Economic Development Authority)] by its Resolution No. \_\_\_\_\_ on \_\_\_\_\_, 20\_\_.
- G. Subcontractors: shall mean all subcontractors of Contractor of whatever tier engaged in on-site work on the Project covered by this Agreement.
- H. Work Hours: shall mean the total number of hours of construction trade work performed on the Project by Eligible Workers.

## II PROGRAM GOALS

All Contractors entering into contracts for the Project will use their best efforts, as described below, in the performance of those contracts to attain

the following Program goals:

A. Eligible Worker—General:

For the Project, the Contractor shall use its best efforts to cause ten percent (10%) of total hours of work performed with respect to the Project to be Work Hours performed by Eligible Workers.

B. Women

One-half of Work Hours as defined herein shall be performed by Eligible Workers who are women.

**III DEVELOPER AND CONTRACTOR—BEST EFFORT**

A. Plan

Within Thirty (30) days of the date the Contractor executes a contract for the Project or prior to commencement of work on the Project by the Contractor, whichever is earlier, Contractor shall have agreed with the Workforce Development Department to a Best Efforts Plan for achieving the Program Goals set forth in Section II above for the construction of the Project. The Contractor shall not commence construction of the Project unless the required Best Efforts Plan has been approved by the Workforce Development Department. The Best Efforts Plan may include but shall not be limited to the following commitments by the Contractor:

1. To participate in local job fairs and hiring events, including those at high schools, CareerForce, and Lake Superior College.
2. To proactively work with the Workforce Development Department and with unions with which they have agreements to sponsor new Eligible Workers into such union's apprenticeship programs.
3. To proactively work with Native American tribes and appropriate community organizations to recruit Eligible Workers.
4. To support and actively participate in apprenticeship exploration programs and other construction career training opportunities.
5. To require the Contractor's Subcontractors to join with and cooperate fully with Contractor in the implementation of the Contractor's Best Efforts Plan.

6. To take such other actions as is reasonably agreed between Contactor and the Workforce Development Department that will encourage participation of Eligible Workers in the construction of Project, while not adding cost to the Project.

7. To take, and to require its Subcontractors to take, appropriate corrective action when notified by the Workforce Development Department that its Program efforts have failed to meet the Best Efforts requirements of the Program.

B. Reporting

1. Monthly Reporting

No later than Thirty (30) days following the end of the month in which Work Hours are performed on the Project, the Contractor shall submit a written report(s) to the Workforce Development Department certifying the names and identities of all Eligible Workers performing work on the Project in the prior month, the number of hours of Work Hours performed by each such Eligible Worker and the total number of hours of work performed by all workers working on the Project; the report(s) shall include the same information regarding employees of and work performed by Subcontractors. In determining the identity of Eligible Workers, Contractors and Subcontractors may use then-current lists of Eligible Workers certified by the Workforce Development Department or self-attestation forms signed by Eligible Workers collected by the Contractor or Subcontractor and provided to the Workforce Development Department, or a combination thereof.

2. Completion Report

No later than Sixty (60) days following the end of completion of construction on the Project, the Contractor shall submit a written report(s) to the Workforce Development Department certifying the names and identities of all Eligible Workers performing work on the Project from commencement of construction to its completion, the number of hours of Work Hours performed by each such Eligible Worker and the total number of hours of work performed by all workers working on the Project; the report(s) shall include the same information regarding employees of and work performed by Subcontractors. Eligible Workers shall be certified as provided for in subparagraph 1 of Paragraph B above. In addition, if the

Completion Report establishes that the Program Goals has not been met, the Completion Report shall set forth in detail all efforts actually effectuated to implement the Best Efforts Plan and may set forth any explanations or extenuating circumstances for not having met the Program Goals.

#### **IV. CITY-PROGRAM OBLIGATIONS**

As they pertain to the implementation of the Program, the City, through its Workforce Development Department, shall:

- A. Work with and assist Contractor and all Subcontractors in developing the Best Efforts Plan for the Project covered by this Agreement.
- B. Promptly review and approve the Best Efforts Plan as and when appropriate.
- C. Actively recruit potential Eligible Workers to enter into the building and construction trades and to participate in educational and training programs aimed at making them employable in said trades.
- D. Work with and collaborate with educational institutions, community partners and apprenticeship programs to build accessible pathways into employment in the building and construction trades and assist in resolving barriers which might inhibit the availability of employment in such trades to Disadvantaged Workers.
- E. Receive and review the Monthly Reports referred to in Subparagraph 1 of Paragraph B of Section III above and notify any reporting Contractor or Subcontractor that is not meeting the Best Efforts requirements of the Program of any deficiency and collaborate on identification of steps that such Contractor or Subcontractor can perform to address the deficiency.
- F. Receive and review the Completion Reports referred to in Subparagraph 2 of Paragraph B of Section III above and notify any reporting Contractor or Subcontractor that has not met the Best Efforts requirements of the Program of that deficiency. Document and report any explanations or extenuating circumstances provided by Contractor or any Subcontractor for not having met the Program Goals.

CITY OF DULUTH, by its Workforce Development Department

By: \_\_\_\_\_

Its Director

\_\_\_\_\_(Insert Developer Name)

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_(Insert Contractor Name)

By: \_\_\_\_\_

Its: \_\_\_\_\_

## MINIMUM MARKET VALUE ASSESSMENT AGREEMENT

THIS MINIMUM MARKET VALUE ASSESSMENT AGREEMENT (“Agreement”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2020, between DULUTH LINCOLN PARK1, LLC, a Minnesota limited liability company (“Developer”), DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 (“DEDA”), and the COUNTY ASSESSOR FOR ST. LOUIS COUNTY, MINNESOTA, acting as assessor for the CITY OF DULUTH (the “Assessor”).

### BACKGROUND:

A. DEDA and Developer are entering into a development agreement of even date herewith (the “Development Agreement”), for the development/redevelopment of property located in the City of Duluth (“City”) legally described on attached Exhibit A (the “Land”) into approximately 53,000 gross building square feet, approximately 17,600 gross square feet of parking structure, and land area of 38,000 square feet with Superior Street frontage (the “Project”).

B. The development of the Project will be financed in part with the proceeds of a tax increment pay-as-you-go note pursuant to Minnesota Statutes Sections 469.174 through 469.1799, inclusive (the “TIF Act”), to be issued by DEDA; the debt service on the related note will be paid from tax increments generated by the Project.

C. The Tax Increment Financing District (“TIF District 33”) for the Project has been approved by DEDA and by the City.

D. In accordance with the Development Agreement, Developer desires to establish a minimum market value for the Land and the improvements constructed or to be constructed thereon, pursuant to Minnesota Statutes, Section 469.177, subd. 8.

E. The Assessor has reviewed plans and specifications for the Project and reviewed the market value previously assigned to the land upon which the Project is to be constructed.

### AGREEMENT:

In consideration of the foregoing and other valuable consideration, the parties agree as follows:

1. The minimum market value assessed for the Project (“Assessor’s Minimum Market Value”), shall, from and after January 2, 2023, be not less than \$8,625,000 which shall be attributed to the apartment classification of the Project.

2. During the duration of this Agreement, Assessor shall value the Property under Minnesota Statutes section 273.11, except that the market value assigned shall not be less than the Assessor's Minimum Market Value established by this Agreement.

3. The Assessor's Minimum Market Value shall be as specified in this Agreement, regardless of actual market values that may result from incomplete construction of improvements, destruction, or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity.

4. Developer agrees that, solely with respect to ad valorem taxes (including taxes payable under Minn. Stat. 272.01, subd. 2) arising from the Assessor's Minimum Market Value, during the term of this Agreement:

a) Developer will not seek administrative or judicial review of the assessment valuation unless the assessment valuation exceeds the Assessor's Minimum Market Value. Developer will not seek administrative or judicial review of the Assessor's classification of the Property except as set forth in Paragraph 9. Developer also will not seek judicial review of the applicability or constitutionality of any tax statute relating to the taxation of real property in the Project determined by any tax official to be applicable to the Project or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; provided, however, that "tax statute" does not include any local ordinance or resolution levying a tax; and

b) Developer will not seek any deferral or abatement of the ad valorem taxes arising from the Assessor's Minimum Market Value and penalties or interest payable on all taxes.

5. The Assessor's Minimum Market Value established pursuant to this Agreement shall terminate and shall be of no further force and effect on the date that is the earlier of: (a) the date that TIF District 33 terminates or is decertified; or (b) the date that the Development Agreement or the TIF Note thereunder is terminated by DEDA for any reason; or (c) the date that the tax increment is no longer paid to DEDA; or (d) December 31, 2048. This Agreement shall terminate at that time also.

6. DEDA shall provide St. Louis County written notice no less than 60 days prior to the termination of this Agreement under Paragraph 5 above.

7. Upon its execution, Developer shall promptly record and/or register this Assessment Agreement in the Office of the St. Louis County Recorder and/or the Office of the St. Louis County Registrar of Titles and pay all costs associated therewith. Upon recordation, Developer shall promptly submit to DEDA and the St. Louis County Assessor an executed original of this Assessment Agreement showing the date and document numbers of record, or duly certified copies of the filed originals.

8. The Assessor represents that the Assessor has reviewed the plans and specifications for the Project and the market value previously assigned to the Land, and represents that the Assessor's Minimum Market Value as set forth in this Agreement is a reasonable estimate.

9. Nothing in this Agreement limits the discretion of the Assessor to assign to the Project a market value in excess of the Assessor's Minimum Market Value or prohibits Developer from seeking through the exercise of legal or administrative remedies a reduction in such market value for property tax purposes; provided however, that a reduction of such market value shall not be sought below the Assessor's Minimum Market Value so long as this Agreement remains in effect.

10. This Agreement may only be modified by the written consent of all parties.

11. Neither the preamble nor provisions of this Agreement are intended to modify, nor shall they be construed as modifying, the terms of the Development Agreement.

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

The parties have executed this Agreement as of the date first stated above.

DULUTH LINCOLN PARK1, LLC  
A Minnesota limited liability company

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY

By: \_\_\_\_\_  
Its: Managing Member

By: \_\_\_\_\_  
Its President

By: \_\_\_\_\_  
Its Secretary





**MINIMUM MARKET VALUE ASSESSMENT AGREEMENT**

**EXHIBIT A**

**Legal Description of Development Property**

Lot 338, Block 38, Duluth Proper Second Division, St. Louis County, Minnesota.  
Torrens Property-Torrens Certificate No. 238921.0.

Lot Three Hundred Forty (340), in Block Thirty-eight (38), Duluth Proper Second  
Division, according to the plat thereof, St. Louis County, Minnesota.  
Abstract Property

Lot Three Hundred Forty-two (342), in Block Thirty-eight (38), Duluth Proper Second  
Division, according to the plat thereof, St. Louis County, Minnesota.  
Abstract Property

Lot 344, Block 38, Duluth Proper Second Division, St. Louis County, Minnesota.  
Torrens Property- Torrens Certificate No. 240925.0.

Lot 346 EXCEPT the W'ly 40 feet thereof Block 38, Duluth Proper Second Division, St.  
Louis County,  
Minnesota.  
Torrens Property-Torrens Certificate No. 328213.0.

Lincoln Park Flats

**Exhibit G- TIF Note**

Principal Amount

Annual Rate

\$ \_\_\_\_\_

5.00%

UNITED STATES OF AMERICA

STATE OF MINNESOTA

COUNTY OF ST. LOUIS

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

TAX INCREMENT FINANCING (TIF) REVENUE NOTE

(LILCOLN PARK FLATS DEVELOPMENT)

The Duluth Economic Development Authority, an economic development authority created and existing pursuant to Minnesota Statutes Chapter 469 (“DEDA”), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay Duluth Lincoln Park1, LLC, a Minnesota limited liability company (the “Developer”), or its registered assigns (the “Registered Owner”), the principal amount of \$ \_\_\_\_\_ and \_\_\_\_/100<sup>th</sup> Dollars (\$ \_\_\_\_\_), which is the amount determined in Paragraph A of Article VIII of that certain Development Agreement between DEDA and the Developer dated \_\_\_\_\_, 2020, and bearing DEDA Contract No. \_\_\_\_\_, as may be amended from time to time (the “Agreement”), but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided.

This TIF Note is issued pursuant to the Agreement. Terms are defined in this TIF Note or in the Agreement. The principal amount of this TIF Note, as adjusted above, shall bear interest at the annual rate specified above and interest shall start to accrue as of the date of execution of this TIF Note. There shall be no accrual of interest on unpaid interest. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

This Note is issued and payable solely from Available Tax Increment, as defined in the Agreement, actually received and retained by DEDA. DEDA shall pay to the Registered Owner of the TIF Note bi-annual payments in the amount of the Available Tax Increment payable on August 1 and February 1 of each year, commencing on August 1, 2023, to and including February 1, 2048, or, if the 1st should not be a business day the next succeeding business day (the "Scheduled Payment Dates"). Available Tax Increment shall first be applied to accrued interest and then to principal.

This Note shall terminate and be of no further force and effect following (a) February 1, 2048; (b) any date upon which the Agreement or this TIF Note has terminated under said Agreement; or (c) on the date that all principal and interest payable hereunder shall have been paid in full; whichever occurs earliest. This TIF Note may be prepaid in whole or in part at any time without penalty.

DEDA makes no representation or covenant, express or implied, that the Available Tax Increment will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

DEDA's payment obligations hereunder shall be further conditioned on the fact that no Event of Default by Developer under the Agreement shall have occurred and be continuing, but such unpaid amounts shall become payable, without interest accruing thereon in the meantime, if said Event of Default shall thereafter have been cured; and, further, if pursuant to the occurrence of an Event of Default under the Agreement DEDA elects to terminate the Agreement or this TIF Note, DEDA shall have no further debt or obligation under this Note whatsoever. Reference is hereby made to all of the provisions of the Agreement for a fuller statement of the rights and obligations of DEDA to pay the principal of this TIF Note and the interest thereon, and said provisions are hereby incorporated into this TIF Note as though set out in full herein.

THIS TIF NOTE IS A SPECIAL, LIMITED REVENUE OBLIGATION AND NOT A GENERAL OBLIGATION OF DEDA OR THE CITY OF DULUTH (THE "CITY") AND IS PAYABLE BY DEDA ONLY FROM THE SOURCES AND SUBJECT TO THE QUALIFICATIONS STATED OR REFERENCED HEREIN. THIS TIF NOTE IS NOT A GENERAL OBLIGATION OF DEDA OR THE CITY, AND NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWERS OF DEDA OR THE CITY ARE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS TIF NOTE AND NO PROPERTY OR OTHER ASSET OF DEDA OR THE CITY, SAVE AND EXCEPT THE ABOVE REFERENCED PLEDGED AVAILABLE RELATED TAX INCREMENTS, IS OR SHALL BE A SOURCE OF PAYMENT OF DEDA'S OBLIGATIONS HEREUNDER.

The Registered Owner shall never have or be deemed to have the right to compel any exercise of any taxing power of DEDA, the City or of any other public body, and neither DEDA, the City nor any person executing or registering this TIF Note shall be liable personally hereon by reason of the issuance or registration thereof or otherwise.

This TIF Note is issued by DEDA in aid of financing a project pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes §§469.174 to 469.1799, the Minnesota Tax Increment Act.

THIS TIF NOTE HAS NOT BEEN REGISTERED UNDER ANY FEDERAL OR STATE SECURITIES LAWS AND MAY NOT BE SOLD, ASSIGNED, PLEDGED, OR OTHERWISE DISPOSED OF OR TRANSFERRED EXCEPT AS PROVIDED FOR IN THE AGREEMENT.

This TIF Note may be assigned only as provided in the Agreement and, upon such assignment, the assignor shall promptly notify DEDA at the office of the Executive Director by registered mail, and the assignee shall surrender the same to the Executive Director either in exchange for a new fully registered note or for transfer of this Note on the registration records for the TIF Note maintained by DEDA. Each permitted assignee shall take this TIF Note subject to the foregoing conditions and subject to all provisions stated or referenced herein and in the Agreement.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this TIF Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this TIF Note, together with all other indebtedness of DEDA outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of DEDA to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, the Duluth Economic Development Authority, by its Board of Commissioners, has caused this TIF Note to be executed by the manual signatures of the President and the Secretary of DEDA and has caused this Note to be issued on and dated \_\_\_\_\_, 20\_\_\_\_.

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY

By: \_\_\_\_\_

Its President

By: \_\_\_\_\_

Its Secretary

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Approved as to form

Assistant City Attorney

## RESOLUTION 20D-61

### RESOLUTION ADOPTING A MODIFICATION TO THE DEVELOPMENT PROGRAM FOR DEVELOPMENT DISTRICT NO. 17, ESTABLISHING TAX INCREMENT FINANCING DISTRICT NO. 33: REDEVELOPMENT DISTRICT THEREIN AND ADOPTING A TAX INCREMENT FINANCING PLAN THEREFOR

WHEREAS, it has been proposed by the Board of Commissioners (the "Board") of the Duluth Economic Development Authority ("DEDA") and the City of Duluth (the "City") that DEDA adopt a Modification to the Redevelopment Project / Municipal Development District adopted pursuant to Resolution 89D-03 (the "Development Program Modification") for the Redevelopment District (the "Project Area") and establish Tax Increment Financing District No. 33 (the "TIF District 33") and adopt a Tax Increment Financing Plan (the "TIF Plan") therefor (the Development Program Modification and the TIF Plan are referred to collectively herein as the "Program and Plan"), all pursuant to and in conformity with applicable law, including Minnesota Statutes, Sections 469.090 to 469.1082, and Sections 469.174 to 469.1794, inclusive, as amended (the "Act"), all as reflected in the Program and Plan and presented for the Board's consideration; and

WHEREAS, DEDA has investigated the facts relating to the Program and Plan and has caused the Program and Plan to be prepared; and

WHEREAS, DEDA has performed all actions required by law to be performed prior to the adoption of the Program and Plan.

NOW, THEREFORE, BE IT RESOLVED by the Board as follows:

1. DEDA hereby finds that the establishment of TIF District 33 is in the public interest and is a "Redevelopment District" under M.S., Section 469.174, Subd. 10 and M.S., Section 469.1794, and finds that the adoption of the proposed Program and Plan conform in all respects to the requirements of the Act and will help fulfill a need to redevelop an area of the State of Minnesota, remediating blighted property and constructing additional affordable and high-quality housing.
2. DEDA further finds that the Program and Plan will afford maximum opportunity, consistent with the sound needs for the City as a whole, for the development of the Project Area by private enterprise in that the intent is to provide only that public assistance necessary to make the private developments financially feasible.
3. The boundaries of the Project Area are not being expanded.

4. The reasons and facts supporting the findings in this resolution as set forth in the Program and Plan are hereby affirmed.
5. Conditioned upon the approval thereof by the City Council following its public hearing thereon, the Program and Plan, as presented to DEDA on this date, are hereby approved, established and adopted and shall be placed on file in the office of the Executive Director of DEDA.
6. Upon approval of the Program and Plan by the City Council, the staff, DEDA's advisors and legal counsel are authorized and directed to proceed with the implementation of the Program and Plan and for this purpose to negotiate, draft, prepare and present to this Board for its consideration all further plans, resolutions, documents and contracts necessary for this purpose. Approval of the Program and Plan does not constitute approval of any project or a Development Agreement with any developer.
7. Upon approval of the Program and Plan by the City Council, the Executive Director of DEDA is authorized and directed to forward a copy of the Program and Plan to the Minnesota Department of Revenue and the Office of the State Auditor pursuant to Minnesota Statutes 469.175, Subd. 4a.
8. The Executive Director of DEDA is authorized and directed to forward a copy of the Program and Plan to the St. Louis County Auditor and request that the Auditor certify the original tax capacity of TIF District 33 as described in the Program and Plan, all in accordance with Minnesota Statutes 469.177.

Approved by the Duluth Economic Development Authority on this 23rd day of September 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The purpose of this Resolution is to adopt a modification to the Development Program for the Development District, establish TIF District No. 33 and adopt a Tax Increment Financing Plan for TIF District No. 33 related to the Lincoln Park Flats multi-family residential facility located at the southwest corner of Superior Street and 21<sup>st</sup> Avenue West, and future construction of a multi-family residential and mixed use commercial facility located at 2001 West Superior Street.



# MODIFICATION TO THE DEVELOPMENT PROGRAM

Development District No. 17

- AND -

# TAX INCREMENT FINANCING PLAN

Establishment of Tax Increment Financing District No. 33:  
Superior Street Apartments  
(a redevelopment district)

Duluth Economic Development Authority  
City of Duluth, St. Louis County, Minnesota

Public Hearing: September 28, 2020

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# Modification to the Development Program for Development District No. 17

## Foreword

The following text represents a Modification to the Development Program for Development District No. 17. This modification represents a continuation of the goals and objectives set forth in the Development Program for Development District No. 17. Generally, the substantive changes include the establishment of Tax Increment Financing District No. 33: Superior Street Apartments.

For further information, a review of the Development Program for Development District No. 17, is recommended. It is available from the Senior Housing Developer at the City of Duluth. Other relevant information is contained in the Tax Increment Financing Plans for the Tax Increment Financing Districts located within Development District No. 17.

# Tax Increment Financing Plan for Tax Increment Financing District No. 33: Superior Street Apartments

## Foreword

The Duluth Economic Development Authority (the "EDA"), the City of Duluth (the "City"), staff and consultants have prepared the following information to expedite the Establishment of Tax Increment Financing District No. 33: Superior Street Apartments (the "District"), a redevelopment tax increment financing district, located in Development District No. 17.

## Statutory Authority

Within the City, there exist areas where public involvement is necessary to cause development or redevelopment to occur. To this end, the EDA and City have certain statutory powers pursuant to *Minnesota Statutes ("M.S."), Sections 469.090 - 469.1082*, inclusive, as amended, and *M.S., Sections 469.174 to 469.1794*, inclusive, as amended (the "Tax Increment Financing Act" or "TIF Act"), to assist in financing public costs related to this project.

This section contains the Tax Increment Financing Plan (the "TIF Plan") for the District. Other relevant information is contained in the Modification to the Development Program for Development District No. 17.

## Statement of Objectives

The District currently consists of six parcels of land and adjacent and internal rights-of-way. The District is being created to facilitate the construction of an approximate 74-unit market rate apartment as well as future construction of approximately 42 apartment units and accompanying commercial use in the City. The EDA intends to enter into an agreement with one or more developers to fulfill the objectives within the Plan. Development is anticipated to begin in 2021. This TIF Plan is expected to achieve many of the objectives outlined in the Development Program for Development District No. 17.

The activities contemplated in the Modification to the Development Program and the TIF Plan do not preclude the undertaking of other qualified development or redevelopment activities. These activities are anticipated to occur over the life of Development District No. 17 and the District.

## Development Program Overview

Pursuant to the Development Program and authorizing state statutes, the EDA or City is authorized to undertake the following activities in the District:

1. Property to be Acquired - Although not anticipated at this time, selected property located within the District may be acquired by the EDA or City and is further described in this TIF Plan.

2. Relocation - Relocation services, to the extent required by law, are available pursuant to *M.S., Chapter 117* and other relevant state and federal laws.
3. Upon approval of a developer's plan relating to the project and completion of the necessary legal requirements, the EDA or City may sell to a developer selected properties that it may acquire within the District or may lease land or facilities to a developer.
4. The EDA or City may perform or provide for some or all necessary acquisition, construction, relocation, demolition, and required utilities and public street work within the District.

## Description of Property in the District and Property to be Acquired

The District encompasses all property and adjacent rights-of-way and abutting roadways identified by the parcels listed below.

Parcel number	Address	Owner
010-1120-02740	2102 W Superior St.	Arrowhead Supply Co
010-1120-02750	2104 W Superior St.	Arrowhead Supply Co
010-1120-02760	2110 W Superior St.	Arrowhead Supply Co
010-1120-02770	Unassigned	Arrowhead Supply Co
010-1120-02780	Unassigned	Arrowhead Supply Co
010-1120-05090	2001 W Superior St	Duluth HRA

Please also see the map in Appendix A for further information on the location of the District.

The EDA or City may acquire any parcel within the District including interior and adjacent street rights of way. Any properties identified for acquisition will be acquired by the EDA or City only in order to accomplish one or more of the following: storm sewer improvements; provide land for needed public streets, utilities and facilities; carry out land acquisition, site improvements, clearance and/or development to accomplish the uses and objectives set forth in this plan. The EDA or City may acquire property by gift, dedication, condemnation or direct purchase from willing sellers in order to achieve the objectives of this TIF Plan. Such acquisitions will be undertaken only when there is assurance of funding to finance the acquisition and related costs.

## Classification of the District

The EDA and City, in determining the need to create a tax increment financing district in accordance with *M.S., Sections 469.174 to 469.1794*, as amended, inclusive, find that the District, to be established, is a redevelopment district pursuant to *M.S., Section 469.174, Subd. 10(a)(1)*.

- The District is a redevelopment district consisting of six parcels.
- An inventory shows that parcels consisting of more than 70 percent of the area in the District are occupied by buildings, streets, utilities, paved or gravel parking lots or other similar structures.
- An inspection of the buildings located within the District finds that more than 50 percent of the buildings are structurally substandard as defined in the TIF Act. (See Appendix D).

Pursuant to *M.S., Section 469.176, Subd. 7*, the District does not contain any parcel or part of a parcel that qualified under the provisions of *M.S., Sections 273.111, 273.112, or 273.114 or Chapter 473H* for taxes payable in any of the five calendar years before the filing of the request for certification of the District.

## **Duration and First Year of Tax Increment of the District**

Pursuant to *M.S., Section 469.175, Subd. 1, and Section 469.176, Subd. 1*, the duration and first year of tax increment of the District must be indicated within the TIF Plan. Pursuant to *M.S., Section 469.176, Subd. 1b.*, the duration of the District will be 25 years after receipt of the first increment by the EDA or City (a total of 26 years of tax increment). The EDA or City elects to receive the first tax increment in 2022, which is no later than four years following the year of approval of the District.

Thus, it is estimated that the District, including any modifications of the TIF Plan for subsequent phases or other changes, would terminate after 2047, or when the TIF Plan is satisfied. The EDA or City reserves the right to decertify the District prior to the legally required date.

## **Original Tax Capacity, Tax Rate and Estimated Captured Net Tax Capacity Value/Increment and Notification of Prior Planned Improvements**

Pursuant to *M.S., Section 469.174, Subd. 7 and M.S., Section 469.177, Subd. 1*, the Original Net Tax Capacity (ONTC) as certified for the District will be based on the market values placed on the property by the assessor in 2020 for taxes payable 2021.

Pursuant to *M.S., Section 469.177, Subds. 1 and 2*, the County Auditor shall certify in each year (beginning in the payment year 2022) the amount by which the original value has increased or decreased as a result of:

1. Change in tax exempt status of property;
2. Reduction or enlargement of the geographic boundaries of the district;
3. Change due to adjustments, negotiated or court-ordered abatements;
4. Change in the use of the property and classification;
5. Change in state law governing class rates; or
6. Change in previously issued building permits.

In any year in which the current Net Tax Capacity (NTC) value of the District declines below the ONTC, no value will be captured and no tax increment will be payable to the EDA or City.

The original local tax rate for the District will be the local tax rate for taxes payable 2021, assuming the request for certification is made before June 30, 2021). The ONTC and the Original Local Tax Rate for the District appear in the table below.

Pursuant to *M.S., Section 469.174 Subd. 4 and M.S., Section 469.177, Subd. 1, 2, and 4*, the estimated Captured Net Tax Capacity (CTC) of the District, within Development District No. 17, upon completion of the projects within the District, will annually approximate tax increment

revenues as shown in the table below. The EDA and City request 100 percent of the available increase in tax capacity for repayment of its obligations and current expenditures, beginning in the tax year payable 2022. The Project Tax Capacity (PTC) listed is an estimate of values when the projects within the District are completed.

Project Tax Capacity		
Project estimated Tax Capacity upon completion	358,412	
Original estimated Net Tax Capacity	11,894	
Fiscal Disparities	0	
<b>Estimated Captured Tax Capacity</b>	<b>346,518</b>	
Original Local Tax Rate	146.4390%	Pay 2020
<b>Estimated Annual Tax Increment</b>	<b>\$507,438</b>	
Percent Retained by the City	100%	

Note: Tax capacity includes a 3.0% inflation factor for the duration of the District. The tax capacity included in this chart is the estimated tax capacity of the District in year 25. The tax capacity of the District in year one is estimated to be \$44,079.

Pursuant to *M.S., Section 469.177, Subd. 4*, the EDA shall, after a due and diligent search, accompany its request for certification to the County Auditor or its notice of the District enlargement pursuant to *M.S., Section 469.175, Subd. 4*, with a listing of all properties within the District or area of enlargement for which building permits have been issued during the eighteen (18) months immediately preceding approval of the TIF Plan by the municipality pursuant to *M.S., Section 469.175, Subd. 3*. The County Auditor shall increase the original net tax capacity of the District by the net tax capacity of improvements for which a building permit was issued.

The City is reviewing the area to be included in the District to determine if any building permits have been issued during the 18 months immediately preceding approval of the TIF Plan by the City.

## Sources of Revenue/Bonds to be Issued

The total estimated tax increment revenues for the District are shown in the table below:

SOURCES		
Tax Increment	\$	8,992,768
Interest		899,277
<b>TOTAL</b>	<b>\$</b>	<b>9,892,045</b>

The costs outlined in the Uses of Funds will be financed primarily through the annual collection of tax increments. The EDA or City reserves the right to incur bonds or other indebtedness as a result of the TIF Plan. As presently proposed, the projects within the District will be financed by pay-as-you-go notes and interfund loans. Any refunding amounts will be deemed a budgeted cost without a formal TIF Plan Modification. This provision does not obligate the EDA or City to incur debt. The EDA or City will issue bonds or incur other debt only upon the determination that such action is in the best interest of the City.

The EDA or City may issue bonds (as defined in the TIF Act) secured in whole or in part with tax increments from the District in a maximum principal amount of \$6,023,595. Such bonds may be in the form of pay-as-you-go notes, revenue bonds or notes, general obligation bonds, or interfund loans. This estimate of total bonded indebtedness is a cumulative statement of authority under this TIF Plan as of the date of approval.

## Uses of Funds

Currently under consideration for the District is a proposal to facilitate the construction of an approximate 74-unit market rate apartment as well as future construction of approximately 42 apartment units and accompanying commercial use. The EDA and City have determined that it will be necessary to provide assistance to the project(s) for certain District costs, as described.

The EDA has studied the feasibility of the development or redevelopment of property in and around the District. To facilitate the establishment and development or redevelopment of the District, this TIF Plan authorizes the use of tax increment financing to pay for the cost of certain eligible expenses. The estimate of public costs and uses of funds associated with the District is outlined in the following table.

<b>USES</b>	
Land/Building Acquisition	\$ 1,000,000
Site Improvements/Preparation	2,500,000
Utilities	1,150,000
Other Qualifying Improvements	474,317
Administrative Costs (up to 10%)	899,278
<b>PROJECT COSTS TOTAL</b>	<b>\$ 6,023,595</b>
Interest	3,868,450
<b>PROJECT AND INTEREST COSTS TOTAL</b>	<b>\$ 9,892,045</b>

The total project cost, including financing costs (interest) listed in the table above does not exceed the total projected tax increments for the District as shown in the Sources of Revenue section.

Estimated costs associated with the District are subject to change among categories without a modification to this TIF Plan. The cost of all activities to be considered for tax increment financing will not exceed, without formal modification, the budget above pursuant to the applicable statutory requirements. Pursuant to *M.S., Section 469.1763, Subd. 2*, no more than 25 percent of the tax increment paid by property within the District will be spent on activities related to development or redevelopment outside of the District but within the boundaries of Development District No. 17, (including administrative costs, which are considered to be spent outside of the District) subject to the limitations as described in this TIF Plan.

# Estimated Impact on Other Taxing Jurisdictions

The estimated impact on other taxing jurisdictions assumes that the redevelopment contemplated by the TIF Plan would occur without the creation of the District. However, the EDA or City has determined that such development or redevelopment would not occur "but for" tax increment financing and that, therefore, the fiscal impact on other taxing jurisdictions is \$0. The estimated fiscal impact of the District would be as follows if the "but for" test was not met:

Impact on Tax Base			
Entity	2019/Pay 2020 Total Net Tax Capacity	Estimated Captured Tax Capacity (CTC) upon completion	Percent of CTC to Entity Total
St. Louis County	197,663,469	346,518	0.1753%
City of Duluth	78,693,924	346,518	0.4403%
ISD 709 (Duluth)	88,224,893	346,518	0.3928%

Impact on Tax Rates				
Entity	Pay 2020 Extension Rate	Percent of Total	CTC	Potential Taxes
St. Louis County	67.7300%	46.25%	346,518	\$ 234,697
City of Duluth	42.9970%	29.36%	346,518	148,992
ISD 709 (Duluth)	29.4940%	20.14%	346,518	102,202
Other	6.2180%	4.25%	346,518	21,547
	<b>146.4390%</b>	<b>100.00%</b>		<b>\$ 507,438</b>

The estimates listed above display the captured tax capacity when all construction is completed. The tax rate used for calculations is the Pay 2020 rate. The total net capacity for the entities listed above are based on Pay 2020 figures. The District will be certified under the Pay 2021 rates, which were unavailable at the time this TIF Plan was prepared.

Pursuant to *M.S. Section 469.175 Subd. 2(b)*:

- (1) Estimate of total tax increment. It is estimated that the total amount of tax increment that will be generated over the life of the District is \$8,992,768;
- (2) Probable impact of the District on city provided services and ability to issue debt.

An impact of the District on police protection is expected. The police department would anticipate an increase in officer time due to police services that may be needed. An officer's response to and time spent on proactive and reactive police responses, as well as proactively addressing quality of life issues, repeat calls for service, and excessive use of police services have both a financial and non-financial impact to police operations and public safety. The police department believes a positive and productive relationship can be attained with apartment building management to problem solve public safety and quality of life issues that may arise.

The police department can manage the financial and non-financial impacts that may arise from this development under our current operations and budget. The City does not expect that the proposed development, in and of itself, will necessitate new capital investment in vehicles or facilities.

The probable impact of the District on fire protection is not expected to be significant. With any new residential development there is a possibility of medical or assist calls from the fire department. There is not an expectation that calls to these areas would increase significantly. The project will replace non-sprinklered buildings with new sprinklered buildings. This increases the safety of that building, the buildings around it and the fire fighters responding to any structure fires. While no immediate staffing or capital investment is necessary solely as a result of this project, there may be a need for an additional rental inspector in the future. At that time a small vehicle would be needed.

The impact of the District on public infrastructure is expected to be minimal. The development is not expected to significantly impact any traffic movements in the area. The project will necessitate sewer and water extensions which will be financed as part of the project without impact to taxpayers. Based on the development plans, there are no significant costs associated with street maintenance, sweeping, plowing, lighting and sidewalks.

The probable impact of any District general obligation tax increment bonds on the ability to issue debt for general fund purposes is expected to be minimal. It is not anticipated that there will be any general obligation debt issued in relation to this project, therefore there will be no impact on the City's ability to issue future debt or on the City's debt limit.

- (3) Estimated amount of tax increment attributable to school district levies. It is estimated that the amount of tax increments over the life of the District that would be attributable to school district levies, assuming the school district's share of the total local tax rate for all taxing jurisdictions remained the same, is \$1,811,276;
- (4) Estimated amount of tax increment attributable to county levies. It is estimated that the amount of tax increments over the life of the District that would be attributable to county levies, assuming the county's share of the total local tax rate for all taxing jurisdictions remained the same, is \$4,159,276;
- (5) Additional information requested by the county or school district. The City is not aware of any standard questions in a county or school district written policy regarding tax increment districts and impact on county or school district services. The county or school district must request additional information pursuant to *M.S. Section 469.175 Subd. 2(b)* within 15 days after receipt of the tax increment financing plan.

No requests for additional information from the county or school district regarding the proposed development for the District have been received.

## Supporting Documentation

Pursuant to *M.S. Section 469.175, Subd. 1 (a), clause 7* the TIF Plan must contain identification and description of studies and analyses used to make the determination set forth in *M.S. Section 469.175, Subd. 3, clause (b)(2)* and the findings are required in the resolution approving the District.

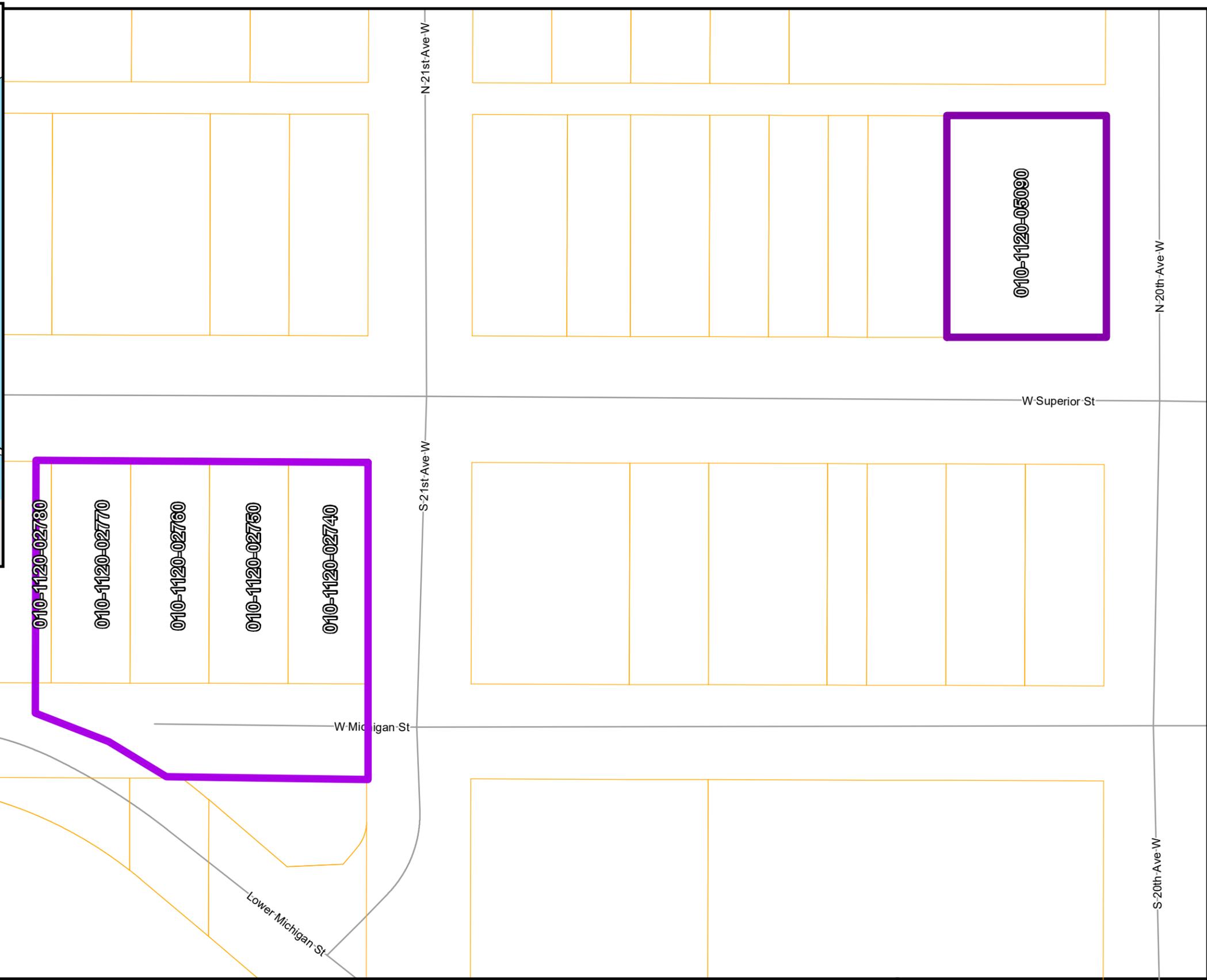
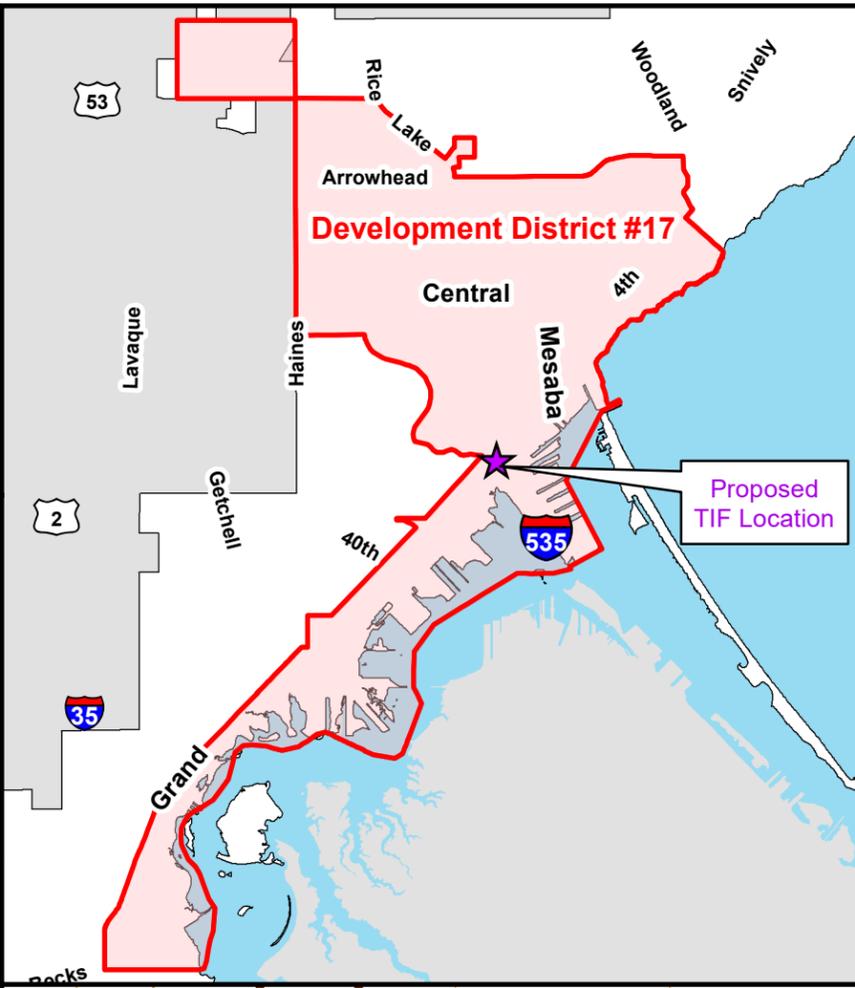
- (i) In making said determination, reliance has been placed upon (1) written representation made by the developer to such effects, (2) review of the developer's pro forma; and (3) City staff awareness of the feasibility of developing the project site within the District, which is further outlined in the City Council resolution approving the establishment of the TIF District and Appendix C.
- (ii) A comparative analysis of estimated market value both with and without establishment of the TIF District and the use of tax increments has been performed. Such analysis is included with the cashflow in Appendix B and indicates that the increase in estimated market value of the proposed development (less the indicated subtractions) exceeds the estimated market value of the site absent the establishment of the TIF District and the use of tax increments.

## Administration of the District

Administration of the District will be handled by the Senior Housing Developer.

**Appendix A: Map of Development District No. 17 and the TIF District**

Path: I:\DEVELOPMENT\BUS\_DEV\New BD\MAPS\GIS Maps\Potential\DistrictTIF33.mxd kmontgomery 7/16/2020

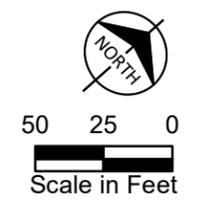


-  Proposed TIF District #33 Boundary
-  Development District #17 Boundary
-  Parcel Boundary



The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

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**Proposed TIF District #33**

**Appendix B: Estimated Cash Flow for the District**



**TIF District #33 - 3% Inflation**

City of Duluth, MN

74-Unit Market Rate Apartment; 42-Unit Market Rate Apartment and 6,447 Sq Ft Retail

**ASSUMPTIONS AND RATES**

<b>DistrictType:</b>	Redevelopment
<b>District Name/Number:</b>	
<b>County District #:</b>	
<b>First Year Construction or Inflation on Value</b>	<b>2020</b>
<b>Existing District - Specify No. Years Remaining</b>	
Inflation Rate - Every Year:	<b>3.00%</b>
Interest Rate:	<b>4.50%</b>
Present Value Date:	<b>1-Aug-21</b>
First Period Ending	1-Feb-22
Tax Year District was Certified:	<b>Pay 2021</b>
Cashflow Assumes First Tax Increment For Development:	2022
Years of Tax Increment	26
Assumes Last Year of Tax Increment	2047
Fiscal Disparities Election [Outside (A), Inside (B), or NA]	NA
Incremental or Total Fiscal Disparities	NA
Fiscal Disparities Contribution Ratio	NA Pay 2020
Fiscal Disparities Metro-Wide Tax Rate	NA Pay 2020
Maximum/Frozen Local Tax Rate:	146.439% Pay 2020
Current Local Tax Rate: (Use lesser of Current or Max.)	146.439% Pay 2020
State-wide Tax Rate (Comm./Ind. only used for total taxes)	38.8460% Pay 2020
Market Value Tax Rate (Used for total taxes)	0.18994% Pay 2020

Tax Rates	
Exempt Class Rate (Exempt)	0.00%
Commercial Industrial Preferred Class Rate (C/I Pref.)	
First \$150,000	1.50%
Over \$150,000	2.00%
Commercial Industrial Class Rate (C/I)	2.00%
Rental Housing Class Rate (Rental)	1.25%
Affordable Rental Housing Class Rate (Aff. Rental)	
First \$162,000	0.75%
Over \$162,000	0.25%
Non-Homestead Residential (Non-H Res. 1 Unit)	
First \$500,000	1.00%
Over \$500,000	1.25%
Homestead Residential Class Rate (Hmstd. Res.)	
First \$500,000	1.00%
Over \$500,000	1.25%
Agricultural Non-Homestead	1.00%

**BASE VALUE INFORMATION (Original Tax Capacity)**

Map ID	PID	Owner	Address	Land Market Value	Building Market Value	Total Market Value	Percentage Of Value Used for District	Original Market Value	Tax Year Original Market Value	Property Tax Class	Current Original Tax Capacity	Class After Conversion	After Conversion Orig. Tax Cap.	Area/Phase
010-1120-02740		Arrowhead Supply Co	2102 W Superior St.	84,000	117,700	201,700	100%	201,700	Pay 2021	C/I Pref.	3,284	Rental	2,521	1
010-1120-02750		Arrowhead Supply Co	2104 W Superior St.	55,900	117,700	173,600	100%	173,600	Pay 2021	C/I	3,472	Rental	2,170	1
010-1120-02760		Arrowhead Supply Co	2110 W Superior St.	55,900	117,700	173,600	100%	173,600	Pay 2021	C/I	3,472	Rental	2,170	1
010-1120-02770		Arrowhead Supply Co	Unassigned	28,000	0	28,000	100%	28,000	Pay 2021	C/I	560	Rental	350	1
010-1120-02780		Arrowhead Supply Co	Unassigned	5,600	2,500	8,100	100%	8,100	Pay 2021	C/I	162	Rental	101	1
010-1120-05090		Duluth HRA	2001 W Superior St	84,000	209,100	293,100	100%	293,100	Pay 2021	Rental	3,664	Rental	3,664	2
010-1120-05090		Duluth HRA	2001 W Superior St	55,900	5,300	61,200	100%	61,200	Pay 2021	C/I Pref.	918	C/I Pref.	918	2
				<b>369,300</b>	<b>570,000</b>	<b>939,300</b>		<b>939,300</b>			<b>15,532</b>		<b>11,894</b>	

**Note:**

1. Base values are for pay 2021 based upon review of County website on 7-10-20.
2. Located in UTA 010-0709-00-02-00-00

**EHLERS**  
PUBLIC FINANCE ADVISORS  
**TIF District #33 - 3% Inflation**

City of Duluth, MN

74-Unit Market Rate Apartment; 42-Unit Market Rate Apartment and 6,447 Sq Ft Retail

PROJECT INFORMATION (Project Tax Capacity)														
Area/Phase	New Use	Estimated Market Value Per Sq. Ft./Unit	Taxable Market Value Per Sq. Ft./Unit	Total Sq. Ft./Units	Total Taxable Market Value	Property Tax Class	Project Tax Capacity	Project Tax Capacity/Unit	Percentage Completed 2020	Percentage Completed 2021	Percentage Completed 2022	Percentage Completed 2023	First Year Full Taxes Payable	
1	Apartments	115,000	115,000	74	8,510,000	Rental	106,375	1,438	25%	100%	100%	100%	2023	
2	Apartments	115,000	115,000	42	4,830,000	Rental	60,375	1,438	25%	100%	100%	100%	2023	
2	Retail	80	80	6,447	515,760	C/I Pref.	9,565	1	25%	100%	100%	100%	2023	
<b>TOTAL</b>					<b>13,855,760</b>		<b>176,315</b>							
Subtotal Residential				116	13,340,000		166,750							
Subtotal Commercial/Ind.				6,447	515,760		9,565							

**Note:**

1. Market values are based upon discussions with the City.

TAX CALCULATIONS									
New Use	Total Tax Capacity	Fiscal Disparities Tax Capacity	Local Tax Capacity	Local Property Taxes	Fiscal Disparities Taxes	State-wide Property Taxes	Market Value Taxes	Total Taxes	Taxes Per Sq. Ft./Unit
Apartments	106,375	0	106,375	155,774	0	0	16,164	171,938	2,323.49
Apartments	60,375	0	60,375	88,413	0	0	9,174	97,587	2,323.49
Retail	9,565	0	9,565	14,007	0	3,133	980	18,120	2.81
<b>TOTAL</b>	<b>176,315</b>	<b>0</b>	<b>176,315</b>	<b>258,194</b>	<b>0</b>	<b>3,133</b>	<b>26,318</b>	<b>287,645</b>	

**Note:**

1. Taxes and tax increment will vary significantly from year to year depending upon values, rates, state law, fiscal disparities and other factors which cannot be predicted.

WHAT IS EXCLUDED FROM TIF?	
Total Property Taxes	287,645
less State-wide Taxes	(3,133)
less Fiscal Disp. Adj.	0
less Market Value Taxes	(26,318)
less Base Value Taxes	(17,418)
<b>Annual Gross TIF</b>	<b>240,776</b>

MARKET VALUE BUT / FOR ANALYSIS	
Current Market Value - Est.	939,300
New Market Value - Est.	13,855,760
Difference	12,916,460
Present Value of Tax Increment	4,711,448
Difference	8,205,012
Value likely to occur without Tax Increment is less than:	8,205,012



**TIF District #33 - 3% Inflation**

City of Duluth, MN

74-Unit Market Rate Apartment; 42-Unit Market Rate Apartment and 6,447 Sq Ft Retail

TAX INCREMENT CASH FLOW														
% of OTC	Project Tax Capacity	Original Tax Capacity	Fiscal Disparities NA	Captured Tax Capacity	Local Tax Rate	Annual Gross Tax Increment	Semi-Annual Gross Tax Increment	State Auditor 0.36%	Admin. at 10%	Semi-Annual Net Tax Increment	Semi-Annual Present Value	PERIOD ENDING Yrs.	Tax Year	Payment Date
100%	44,079	(11,894)	-	32,185	146.439%	47,131	23,565	(85)	(2,348)	21,132	20,212	0.5	2022	08/01/22
							23,565	(85)	(2,348)	21,132	39,980	1	2022	02/01/23
100%	176,315	(11,894)	-	164,421	146.439%	240,776	120,388	(433)	(11,996)	107,959	138,745	1.5	2023	08/01/23
							120,388	(433)	(11,996)	107,959	235,337	2	2023	02/01/24
100%	181,605	(11,894)	-	169,710	146.439%	248,522	124,261	(447)	(12,381)	111,433	332,844	2.5	2024	08/01/24
							124,261	(447)	(12,381)	111,433	428,205	3	2024	02/01/25
100%	187,053	(11,894)	-	175,159	146.439%	256,500	128,250	(462)	(12,779)	115,009	524,460	3.5	2025	08/01/25
							128,250	(462)	(12,779)	115,009	618,598	4	2025	02/01/26
100%	192,664	(11,894)	-	180,770	146.439%	264,718	132,359	(476)	(13,188)	118,695	713,614	4.5	2026	08/01/26
							132,359	(476)	(13,188)	118,695	806,540	5	2026	02/01/27
100%	198,444	(11,894)	-	186,550	146.439%	273,182	136,591	(492)	(13,610)	122,489	900,326	5.5	2027	08/01/27
							136,591	(492)	(13,610)	122,489	992,048	6	2027	02/01/28
100%	204,398	(11,894)	-	192,503	146.439%	281,900	140,950	(507)	(14,044)	126,399	1,084,615	6.5	2028	08/01/28
							140,950	(507)	(14,044)	126,399	1,175,146	7	2028	02/01/29
100%	210,530	(11,894)	-	198,635	146.439%	290,880	145,440	(524)	(14,492)	130,424	1,266,503	7.5	2029	08/01/29
							145,440	(524)	(14,492)	130,424	1,355,850	8	2029	02/01/30
100%	216,845	(11,894)	-	204,951	146.439%	300,128	150,064	(540)	(14,952)	134,572	1,446,011	8.5	2030	08/01/30
							150,064	(540)	(14,952)	134,572	1,534,187	9	2030	02/01/31
100%	223,351	(11,894)	-	211,457	146.439%	309,655	154,827	(557)	(15,427)	138,843	1,623,160	9.5	2031	08/01/31
							154,827	(557)	(15,427)	138,843	1,710,175	10	2031	02/01/32
100%	230,051	(11,894)	-	218,157	146.439%	319,467	159,734	(575)	(15,916)	143,243	1,797,972	10.5	2032	08/01/32
							159,734	(575)	(15,916)	143,243	1,883,837	11	2032	02/01/33
100%	236,953	(11,894)	-	225,059	146.439%	329,574	164,787	(593)	(16,419)	147,775	1,970,470	11.5	2033	08/01/33
							164,787	(593)	(16,419)	147,775	2,055,196	12	2033	02/01/34
100%	244,061	(11,894)	-	232,167	146.439%	339,983	169,992	(612)	(16,938)	152,442	2,140,675	12.5	2034	08/01/34
							169,992	(612)	(16,938)	152,442	2,224,273	13	2034	02/01/35
100%	251,383	(11,894)	-	239,489	146.439%	350,705	175,353	(631)	(17,472)	157,250	2,308,610	13.5	2035	08/01/35
							175,353	(631)	(17,472)	157,250	2,391,091	14	2035	02/01/36
100%	258,925	(11,894)	-	247,031	146.439%	361,749	180,875	(651)	(18,022)	162,202	2,474,297	14.5	2036	08/01/36
							180,875	(651)	(18,022)	162,202	2,555,672	15	2036	02/01/37
100%	266,693	(11,894)	-	254,798	146.439%	373,124	186,562	(672)	(18,589)	167,301	2,637,759	15.5	2037	08/01/37
							186,562	(672)	(18,589)	167,301	2,718,039	16	2037	02/01/38
100%	274,693	(11,894)	-	262,799	146.439%	384,840	192,420	(693)	(19,173)	172,554	2,799,018	16.5	2038	08/01/38
							192,420	(693)	(19,173)	172,554	2,878,215	17	2038	02/01/39
100%	282,934	(11,894)	-	271,040	146.439%	396,908	198,454	(714)	(19,774)	177,966	2,958,099	17.5	2039	08/01/39
							198,454	(714)	(19,774)	177,966	3,036,225	18	2039	02/01/40
100%	291,422	(11,894)	-	279,528	146.439%	409,338	204,669	(737)	(20,393)	183,539	3,115,024	18.5	2040	08/01/40
							204,669	(737)	(20,393)	183,539	3,192,089	19	2040	02/01/41
100%	300,165	(11,894)	-	288,271	146.439%	422,141	211,070	(760)	(21,031)	189,279	3,269,816	19.5	2041	08/01/41
							211,070	(760)	(21,031)	189,279	3,345,832	20	2041	02/01/42
100%	309,170	(11,894)	-	297,276	146.439%	435,327	217,664	(784)	(21,688)	195,192	3,422,498	20.5	2042	08/01/42
							217,664	(784)	(21,688)	195,192	3,497,477	21	2042	02/01/43
100%	318,445	(11,894)	-	306,551	146.439%	448,910	224,455	(808)	(22,365)	201,282	3,573,094	21.5	2043	08/01/43
							224,455	(808)	(22,365)	201,282	3,647,047	22	2043	02/01/44
100%	327,998	(11,894)	-	316,104	146.439%	462,899	231,450	(833)	(23,062)	207,555	3,721,627	22.5	2044	08/01/44
							231,450	(833)	(23,062)	207,555	3,794,565	23	2044	02/01/45
100%	337,838	(11,894)	-	325,944	146.439%	477,309	238,654	(859)	(23,780)	214,015	3,868,119	23.5	2045	08/01/45
							238,654	(859)	(23,780)	214,015	3,940,054	24	2045	02/01/46
100%	347,973	(11,894)	-	336,079	146.439%	492,151	246,075	(886)	(24,519)	220,670	4,012,594	24.5	2046	08/01/46
							246,075	(886)	(24,519)	220,670	4,083,538	25	2046	02/01/47
100%	358,412	(11,894)	-	346,518	146.439%	507,438	253,719	(913)	(25,281)	227,525	4,155,076	25.5	2047	08/01/47
							253,719	(913)	(25,281)	227,525	4,225,040	26	2047	02/01/48
<b>Total</b>						<b>9,025,256</b>	<b>(32,488)</b>	<b>(899,278)</b>	<b>(899,278)</b>	<b>8,093,490</b>				
<b>Present Value From 08/01/2020</b>				<b>Present Value Rate</b>	<b>4.50%</b>	<b>4,711,448</b>	<b>(16,959)</b>	<b>(469,449)</b>	<b>4,225,040</b>					

## Appendix C: Findings Including But/For Qualifications

The reasons and facts supporting the findings for the adoption of the Tax Increment Financing Plan (TIF Plan) for Tax Increment Financing District No. 33: Superior Street Apartments (the “District”), as required pursuant to Minnesota Statutes, Section 469.175, Subdivision 3 are as follows:

1. *Finding that Tax Increment Financing District No. 33: Superior Street Apartments is a redevelopment district as defined in M.S., Section 469.174, Subd. 10.*

The District consists of 6 parcels and vacant right-of-way, with plans to redevelop the area for the construction of an approximate 74-unit market rate apartment as well as future construction of approximately 42 apartment units and accompanying commercial use in the City. Parcels consisting of 70 percent of the area of the District are occupied by buildings, streets, utilities, paved or gravel parking lots or other similar structures and more than 50 percent of the buildings in the District, not including outbuildings, are structurally substandard to a degree requiring substantial renovation or clearance. (See Appendix D of the TIF Plan.)

2. *Finding that the proposed development, in the opinion of the City Council, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future and that the increased market value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from the proposed development after subtracting the present value of the projected tax increments for the maximum duration of Tax Increment Financing District No. 33: Superior Street Apartments permitted by the TIF Plan.*

*The proposed development, in the opinion of the City, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future:* This finding is supported by the fact that the redevelopment proposed in the TIF Plan meets the City's objectives for redevelopment. Due to the high cost of redevelopment on the parcels currently occupied by substandard buildings, the high cost of land assembly, demolition costs, the provision of parking, and the cost of financing the proposed improvements, this project is feasible only through assistance, in part, from tax increment financing. The developer was asked for and provided a letter and a pro forma as justification that the developer would not have gone forward without tax increment assistance.

*The increased market value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in market value estimated to result from the proposed development after subtracting the present value of the projected tax increments for the maximum duration of the District permitted by the TIF Plan:* This finding is justified on the grounds that the cost of assembling multiple parcels of land, demolition, parking, and site improvement costs add to the total redevelopment cost. Historically, the costs in this area have made redevelopment infeasible without tax increment assistance. The City reasonably determines that no other redevelopment of similar scope is anticipated on this site without substantially similar assistance being provided to the development.

Therefore, the City concludes as follows:

- a. The City's estimate of the amount by which the market value of the entire District will increase without the use of tax increment financing is \$0.
  - b. If the proposed development occurs, the total increase in market value will be \$12,916,460
  - c. The present value of tax increments from the District for the maximum duration of the district permitted by the TIF Plan is estimated to be \$4,711,448.
  - d. Even if some development other than the proposed development were to occur, the Council finds that no alternative would occur that would produce a market value increase greater than \$8,205,012 (the amount in clause b less the amount in clause c) without tax increment assistance.
3. *Finding that the TIF Plan for the District conforms to the general plan for the development or redevelopment of the municipality as a whole.*

The Planning Commission will review the TIF Plan on 09/08/2020 to find that the TIF Plan conforms to the general development plan of the City.

4. *Finding that the TIF Plan for Tax Increment Financing District No. 33: Superior Street Apartments will afford maximum opportunity, consistent with the sound needs of the City as a whole, for the development or redevelopment of Development District No. 17 by private enterprise.*

The project to be assisted by the District will result in increased employment in the City and the State of Minnesota, the renovation of substandard properties, increased tax base of the State and add a high-quality development to the City.

Through the implementation of the TIF Plan, EDA or the City will increase the availability of safe and decent life-cycle housing in the City.

# Appendix D: Redevelopment Qualifications for the District

Report of Inspection Procedures and Results for  
Determining Qualifications of a  
Tax Increment Financing District as a Redevelopment District

## Lincoln Park Non-Contiguous Redevelopment TIF District Duluth, Minnesota



July 17, 2019

Prepared For the  
**City of Duluth**

Prepared by:



LHB, Inc.  
701 Washington Avenue North, Suite 200  
Minneapolis, Minnesota 55401

LHB Project No. 190416

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## PART 1 – EXECUTIVE SUMMARY

### PURPOSE OF EVALUATION

LHB was hired by the City of Duluth to inspect and evaluate the properties within a Tax Increment Financing Redevelopment District (“TIF District”) proposed to be established by the City. The proposed TIF District is located in two non-contiguous areas. The first is at the west corner of North 20<sup>th</sup> Avenue West and West Superior Street, and the second is bounded by West Superior Street, South 21<sup>st</sup> Avenue West, and Lower Michigan Street (Diagram 1).

The purpose of LHB’s work is to determine whether the proposed TIF District meets the statutory requirements for coverage, and whether two (2) buildings on seven (7) parcels and one (1) right-of-way parcel, located within the proposed TIF District, meet the qualifications required for a Redevelopment District with two noncontiguous areas.



## **SCOPE OF WORK**

The proposed TIF District consists of seven (7) parcels and one (1) right-of-way parcel, with two (2) buildings. Two (2) buildings were inspected on June 13, 2019. Building code and Condition Deficiency Reports for the buildings that were inspected are located in Appendix B.

## **CONCLUSION**

After inspecting and evaluating the properties within the proposed TIF District and applying current statutory criteria for a Redevelopment District under *Minnesota Statutes, Section 469.174, Subdivision 10*, it is our professional opinion that the proposed TIF District qualifies as a Redevelopment District because:

- The proposed TIF District has a coverage calculation of 100 percent which is above the 70 percent requirement.
- 100 percent of the buildings are structurally substandard which is above the 50 percent requirement.
- The substandard buildings are reasonably distributed.
- The proposed TIF District meets the requirements for two or more noncontiguous areas under *Minnesota Statutes, Section 469.174, Subdivision 10 (f)* which states: "...each area must qualify as a redevelopment district under paragraph (a) to be included in the district, and the entire area of the district must satisfy paragraph (a)."

The remainder of this report describes our process and findings in detail.

## **PART 2 – MINNESOTA STATUTE 469.174, SUBDIVISION 10 REQUIREMENTS**

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The properties were inspected in accordance with the following requirements under *Minnesota Statutes, Section 469.174, Subdivision 10(c)*, which states:

### **INTERIOR INSPECTION**

"The municipality may not make such determination [that the building is structurally substandard] without an interior inspection of the property..."

### **EXTERIOR INSPECTION AND OTHER MEANS**

"An interior inspection of the property is not required, if the municipality finds that

- (1) the municipality or authority is unable to gain access to the property after using its best efforts to obtain permission from the party that owns or controls the property; and
- (2) the evidence otherwise supports a reasonable conclusion that the building is structurally substandard."

## DOCUMENTATION

“Written documentation of the findings and reasons why an interior inspection was not conducted must be made and retained under section 469.175, subdivision 3(1).”

## QUALIFICATION REQUIREMENTS

*Minnesota Statutes, Section 469.174, Subdivision 10 (a) (1)* requires three tests for occupied parcels:

### A. COVERAGE TEST

...“parcels consisting of 70 percent of the area of the district are occupied by buildings, streets, utilities, or paved or gravel parking lots...”

The coverage required by the parcel to be considered occupied is defined under *Minnesota Statutes, Section 469.174, Subdivision 10(e)*, which states: “For purposes of this subdivision, a parcel is not occupied by buildings, streets, utilities, paved or gravel parking lots, or other similar structures unless 15 percent of the area of the parcel contains buildings, streets, utilities, paved or gravel parking lots, or other similar structures.”

### B. CONDITION OF BUILDINGS TEST

*Minnesota Statutes, Section 469.174, Subdivision 10(a)* states, “...and more than 50 percent of the buildings, not including outbuildings, are structurally substandard to a degree requiring substantial renovation or clearance;”

1. Structurally substandard is defined under *Minnesota Statutes, Section 469.174, Subdivision 10(b)*, which states: “For purposes of this subdivision, ‘structurally substandard’ shall mean containing defects in structural elements or a combination of deficiencies in essential utilities and facilities, light and ventilation, fire protection including adequate egress, layout and condition of interior partitions, or similar factors, which defects or deficiencies are of sufficient total significance to justify substantial renovation or clearance.”

a. We do not count energy code deficiencies toward the thresholds required by *Minnesota Statutes, Section 469.174, Subdivision 10(b)* defined as “structurally substandard”, due to concerns expressed by the State of Minnesota Court of Appeals in the *Walser Auto Sales, Inc. vs. City of Richfield* case filed November 13, 2001.

2. Buildings are not eligible to be considered structurally substandard unless they meet certain additional criteria, as set forth in Subdivision 10(c) which states:

“A building is not structurally substandard if it is in compliance with the building code applicable to new buildings or could be modified to satisfy the building code at a cost of less than 15 percent of the cost of constructing a new structure of the same square footage and type on the site. The municipality may find that a building is not disqualified as structurally substandard under the preceding sentence on the basis of reasonably available evidence, such as the size, type, and age of the building, the average cost of plumbing, electrical, or structural repairs, or other similar reliable evidence.”

“Items of evidence that support such a conclusion [that the building is not disqualified] include recent fire or police inspections, on-site property tax appraisals or housing inspections, exterior evidence of deterioration, or other similar reliable evidence.”

LHB counts energy code deficiencies toward the 15 percent code threshold required by *Minnesota Statutes, Section 469.174, Subdivision 10(c)* for the following reasons:

- The Minnesota energy code is one of ten building code areas highlighted by the Minnesota Department of Labor and Industry website where minimum construction standards are required by law.
- Chapter 13 of the 2015 *Minnesota Building Code* states, “Buildings shall be designed and constructed in accordance with the *International Energy Conservation Code*.” Furthermore, Minnesota Rules, Chapter 1305.0021 Subpart 9 states, “References to the *International Energy Conservation Code* in this code mean the *Minnesota Energy Code*...”
- The Senior Building Code Representative for the Construction Codes and Licensing Division of the Minnesota Department of Labor and Industry confirmed that the Minnesota Energy Code is being enforced throughout the State of Minnesota.
- In a January 2002 report to the Minnesota Legislature, the Management Analysis Division of the Minnesota Department of Administration confirmed that the construction cost of new buildings complying with the Minnesota Energy Code is higher than buildings built prior to the enactment of the code.
- Proper TIF analysis requires a comparison between the replacement value of a new building built under current code standards with the repairs that would be necessary to bring the existing building up to current code standards. In order for an equal comparison to be made, all applicable code chapters should be applied to both scenarios. Since current construction estimating software automatically applies the construction cost of complying with the Minnesota Energy Code, energy code deficiencies should also be identified in the existing structures.

### **C. DISTRIBUTION OF SUBSTANDARD BUILDINGS**

*Minnesota Statutes, Section 469.174, Subdivision 10*, defines a Redevelopment District and requires one or more of the following conditions, “reasonably distributed throughout the district.”

- (1) “Parcels consisting of 70 percent of the area of the district are occupied by buildings, streets, utilities, paved or gravel parking lots, or other similar structures and more than 50 percent of the buildings, not including outbuildings, are structurally substandard to a degree requiring substantial renovation or clearance;
- (2) the property consists of vacant, unused, underused, inappropriately used, or infrequently used rail yards, rail storage facilities, or excessive or vacated railroad rights-of-way;
- (3) tank facilities, or property whose immediately previous use was for tank facilities...”

Our interpretation of the distribution requirement is that the substandard buildings must be reasonably distributed throughout the district as compared to the location of all buildings in the district. For example, if all of the buildings in a district are located on one half of the area of the district, with the other half occupied by parking lots (meeting the required 70

percent coverage for the district), we would evaluate the distribution of the substandard buildings compared with only the half of the district where the buildings are located. If all of the buildings in a district are located evenly throughout the entire area of the district, the substandard buildings must be reasonably distributed throughout the entire area of the district. We believe this is consistent with the opinion expressed by the State of Minnesota Court of Appeals in the *Walser Auto Sales, Inc. vs. City of Richfield* case filed November 13, 2001.

## **PART 3 – PROCEDURES FOLLOWED**

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LHB inspected two (2) of the two (2) buildings during the day of June 13, 2019.

## **PART 4 – FINDINGS**

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### **A. COVERAGE TEST**

1. The total square foot area of the parcel in the proposed TIF District was obtained from City records, GIS mapping and site verification.
2. The total square foot area of buildings and site improvements on the parcels in the proposed TIF District was obtained from City records, GIS mapping and site verification.
3. The percentage of coverage for each parcel in the proposed TIF District was computed to determine if the 15 percent minimum requirement was met. The total square footage of parcels meeting the 15 percent requirement was divided into the total square footage of the entire district to determine if the 70 percent requirement was met.

### **FINDING:**

The proposed TIF District met the coverage test under *Minnesota Statutes, Section 469.174, Subdivision 10(e)*, which resulted in parcels consisting of 100 percent of the area of the proposed TIF District being occupied by buildings, streets, utilities, paved or gravel parking lots, or other similar structures (Diagram 2). This exceeds the 70 percent area coverage requirement for the proposed TIF District under *Minnesota Statutes, Section 469.174, Subdivision (a) (1)*.



Shaded area depicts a parcel more than 15 percent occupied by buildings, streets, utilities, paved or gravel parking lots or other similar structures

## B. CONDITION OF BUILDING TEST

### 1. BUILDING INSPECTION

The first step in the evaluation process is the building inspection. After an initial walk-thru, the inspector makes a judgment whether or not a building “appears” to have enough defects or deficiencies of sufficient total significance to justify substantial renovation or clearance. If it does, the inspector documents with notes and photographs code and non-code deficiencies in the building.

## 2. REPLACEMENT COST

The second step in evaluating a building to determine if it is substandard to a degree requiring substantial renovation or clearance is to determine its replacement cost. This is the cost of constructing a new structure of the same square footage and type on site. Replacement costs were researched using R.S. Means Cost Works square foot models for 2019.

A replacement cost was calculated by first establishing building use (office, retail, residential, etc.), building construction type (wood, concrete, masonry, etc.), and building size to obtain the appropriate median replacement cost, which factors in the costs of construction in Duluth, Minnesota.

Replacement cost includes labor, materials, and the contractor's overhead and profit. Replacement costs do not include architectural fees, legal fees or other "soft" costs not directly related to construction activities. Replacement cost for each building is tabulated in Appendix A.

## 3. CODE DEFICIENCIES

The next step in evaluating a building is to determine what code deficiencies exist with respect to such building. Code deficiencies are those conditions for a building which are not in compliance with current building codes applicable to new buildings in the State of Minnesota.

*Minnesota Statutes, Section 469.174, Subdivision 10(c)*, specifically provides that a building cannot be considered structurally substandard if its code deficiencies are not at least 15 percent of the replacement cost of the building. As a result, it was necessary to determine the extent of code deficiencies for each building in the proposed TIF District.

The evaluation was made by reviewing all available information with respect to such buildings contained in City Building Inspection records and making interior and exterior inspections of the buildings. LHB utilizes the current Minnesota State Building Code as the official code for our evaluations. The Minnesota State Building Code is actually a series of provisional codes written specifically for Minnesota only requirements, adoption of several international codes, and amendments to the adopted international codes.

After identifying the code deficiencies in each building, we used R.S. Means Cost Works 2019; Unit and Assembly Costs to determine the cost of correcting the identified deficiencies. We were then able to compare the correction costs with the replacement cost of each building to determine if the costs for correcting code deficiencies meet the required 15 percent threshold.

### FINDING:

Two (2) out of two (2) buildings (100 percent) in the proposed TIF District contained code deficiencies exceeding the 15 percent threshold required by *Minnesota Statutes, Section 469.174, Subdivision 10(c)*. Building Code, Condition Deficiency and Context Analysis reports for the buildings in the proposed TIF District can be found in Appendix B of this report.

#### **4. SYSTEM CONDITION DEFICIENCIES**

If a building meets the minimum code deficiency threshold under *Minnesota Statutes, Section 469.174, Subdivision 10(c)*, then in order for such building to be “structurally substandard” under *Minnesota Statutes, Section 469.174, Subdivision 10(b)*, the building’s defects or deficiencies should be of sufficient total significance to justify “substantial renovation or clearance.” Based on this definition, LHB re-evaluated each of the buildings that met the code deficiency threshold under *Minnesota Statutes, Section 469.174, Subdivision 10(c)*, to determine if the total deficiencies warranted “substantial renovation or clearance” based on the criteria we outlined above.

System condition deficiencies are a measurement of defects or substantial deterioration in site elements, structure, exterior envelope, mechanical and electrical components, fire protection and emergency systems, interior partitions, ceilings, floors and doors.

The evaluation of system condition deficiencies was made by reviewing all available information contained in City records, and making interior and exterior inspections of the buildings. LHB only identified system condition deficiencies that were visible upon our inspection of the building or contained in City records. We did not consider the amount of “service life” used up for a particular component unless it was an obvious part of that component’s deficiencies.

After identifying the system condition deficiencies in each building, we used our professional judgment to determine if the list of defects or deficiencies is of sufficient total significance to justify “substantial renovation or clearance.”

#### **FINDING:**

In our professional opinion, two (2) out of two (2) buildings (100 percent) in the proposed TIF District are structurally substandard to a degree requiring substantial renovation or clearance, because of defects in structural elements or a combination of deficiencies in essential utilities and facilities, light and ventilation, fire protection including adequate egress, layout and condition of interior partitions, or similar factors which defects or deficiencies are of sufficient total significance to justify substantial renovation or clearance. This exceeds the 50 percent requirement of Subdivision 10a(1).

#### **C. DISTRIBUTION OF SUBSTANDARD STRUCTURES**

Much of this report has focused on the condition of individual buildings as they relate to requirements identified by *Minnesota Statutes, Section 469.174, Subdivision 10*. It is also important to look at the distribution of substandard buildings throughout the geographic area of the proposed TIF District (Diagram 3).

**FINDING:**

The parcels with substandard buildings are reasonably distributed compared to all parcels that contain buildings.



Shaded green area depicts parcels with substandard buildings.

## **PART 5 - TEAM CREDENTIALS**

---

### ***Michael A. Fischer, AIA, LEED AP - Project Principal/TIF Analyst***

Michael has 31 years of experience as project principal, project manager, project designer and project architect on planning, urban design, educational, commercial and governmental projects. He has become an expert on Tax Increment Finance District analysis assisting over 100 cities with strategic planning for TIF Districts. He is an Architectural Principal at LHB and currently leads the Minneapolis office.

Michael completed a two-year Bush Fellowship, studying at MIT and Harvard in 1999, earning Masters degrees in City Planning and Real Estate Development from MIT. He has served on more than 50 committees, boards and community task forces, including a term as a City Council President and as Chair of a Metropolitan Planning Organization. Most recently, he served as Chair of the Edina, Minnesota planning commission and is currently a member of the Edina city council. Michael has also managed and designed several award-winning architectural projects, and was one of four architects in the Country to receive the AIA Young Architects Citation in 1997.

### ***Philip Waugh – Project Manager/TIF Analyst***

Philip is a project manager with 13 years of experience in historic preservation, building investigations, material research, and construction methods. He previously worked as a historic preservationist and also served as the preservation specialist at the St. Paul Heritage Preservation Commission. Currently, Phil sits on the Board of Directors for the Preservation Alliance of Minnesota. His current responsibilities include project management of historic preservation projects, performing building condition surveys and analysis, TIF analysis, writing preservation specifications, historic design reviews, writing Historic Preservation Tax Credit applications, preservation planning, and grant writing.

### ***Phil Fisher – Inspector***

For 35 years, Phil Fisher worked in the field of Building Operations in Minnesota including White Bear Lake Area Schools. At the University of Minnesota he earned his Bachelor of Science in Industrial Technology. He is a Certified Playground Safety Inspector, Certified Plant Engineer, and is trained in Minnesota Enterprise Real Properties (MERP) Facility Condition Assessment (FCA). His FCA training was recently applied to the Minnesota Department of Natural Resources Facilities Condition Assessment project involving over 2,000 buildings.

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## **APPENDICES**

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APPENDIX A	Property Condition Assessment Summary Sheet
APPENDIX B	Building Code and Condition Deficiencies Reports
APPENDIX C	Building Replacement Cost Reports Code Deficiency Cost Reports Photographs

# **APPENDIX A**

Property Condition Assessment Summary Sheet

**Lincoln Park Non-Contiguous Redevelopment TIF District**

Property Condition Assessment Summary Sheet

TIF Map No.	PID #	Property Address	Improved or Vacant	Survey Method Used	Site Area (S.F.)	Coverage Area of Improvements (S.F.)	Coverage Percent of Improvements	Coverage Quantity (S.F.)	No. of Buildings	Building Replacement Cost	15% of Replacement Cost	Building Code Deficiencies	No. of Buildings Exceeding 15% Criteria	No. of buildings determined substandard
<b>Area 1</b>														
A	010-1120-05090	2001 W Superior St	Improved	Interior/Exterior	14,114	14,114	100.0%	14,114	1	\$2,766,501	\$414,975	\$928,210	1	1
<b>Area 1 Subtotals</b>					<b>14,114</b>			<b>14,114</b>	<b>1</b>				<b>1</b>	<b>1</b>
								<b>Total Coverage Percent:</b>	<b>100%</b>				<b>100%</b>	
												<b>Percent of buildings exceeding 15 percent code deficiency threshold:</b>	<b>100%</b>	
												<b>Percent of buildings determined substandard:</b>	<b>100%</b>	
<b>Area 2</b>														
B	010-1120-02740	2102 W Superior St	Improved	Interior/Exterior	7,085	7,085	100.0%	7,085	1	\$3,205,622	\$480,843	\$1,186,198	1	1
C	010-1120-02750	2104 W Superior St	Improved		7,046	7,046	100.0%	7,046						
D	010-1120-02760	2112 W Superior St	Improved		7,002	7,002	100.0%	7,002						
E	010-1120-02770	N/A	Improved	Exterior	7,133	7,133	100.0%	7,133	0					
F	010-1120-02780	N/A	Improved	Exterior	1,418	1,418	100.0%	1,418	0					
G	R.O.W.	N/A	Improved	Exterior	9,931	8,185	82.4%	9,931	0					
H	010-1120-00091	N/A	Improved	Exterior	4,461	2,389	53.6%	4,461	0					
<b>Area 2 Subtotals</b>					<b>44,076</b>			<b>44,076</b>	<b>1</b>				<b>1</b>	<b>1</b>
								<b>Total Coverage Percent:</b>	<b>100%</b>				<b>100%</b>	
												<b>Percent of buildings exceeding 15 percent code deficiency threshold:</b>	<b>100%</b>	
												<b>Percent of buildings determined substandard:</b>	<b>100%</b>	
<b>Overall Totals</b>					<b>58,190</b>			<b>58,190</b>	<b>2</b>				<b>2</b>	<b>2</b>
								<b>Total Coverage Percent:</b>	<b>100.0%</b>				<b>100.0%</b>	
												<b>Percent of buildings exceeding 15 percent code deficiency threshold:</b>	<b>100.0%</b>	
												<b>Percent of buildings determined substandard:</b>	<b>100.0%</b>	

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## **APPENDIX B**

Building Code, Condition Deficiency and Context Analysis Reports

# Lincoln Park Non-Contiguous Redevelopment TIF District

## Building Code, Condition Deficiency and Context Analysis Report

Parcel No. & Building Name: Parcel No. A Esmond Building  
Address: 2001 W Superior St, Duluth MN 55806  
Parcel ID: 010-1120-05090  
Inspection Date(s) & Time(s): June 13, 2019 1:30 PM  
Inspection Type: Interior and Exterior  
Summary of Deficiencies: It is our professional opinion that this building is Substandard because:  
- Substantial renovation is required to correct Conditions found.  
- Building Code deficiencies total more than 15% of replacement cost, NOT including energy code deficiencies.

Estimated Replacement Cost: \$2,766,501  
Estimated Cost to Correct Building Code Deficiencies: \$928,210  
Percentage of Replacement Cost for Building Code Deficiencies: 33.55%

### Defects in Structural Elements

1. None observed.

### Combination of Deficiencies

1. Essential Utilities and Facilities
  - a. There is no code-required accessible parking.
  - b. There is no code-required accessible route into the building.
  - c. There is no code-required accessible route to all levels.
  - d. Door hardware is not code-compliant.
  - e. There are no code-required accessible restrooms.
  - f. There are no code-required accessible rooms to rent.
  - g. The plumbing system is not code-compliant.
2. Light and Ventilation
  - a. The lighting system is not code-compliant.
  - b. The electrical wiring system is not code-compliant.
  - c. The HVAC system is not code-compliant.
3. Fire Protection/Adequate Egress
  - a. Thresholds do not comply with code for maximum height.
  - b. Stairways do not comply with code.
  - c. Flooring material is damaged/missing, creating an impediment to emergency egress, contrary to code.
  - d. Exterior fire escape system does not comply with code.
  - e. Install code-required fire proofing.
  - f. There are no code-required smoke detectors in the building.

- g. Emergency lighting is not code-compliant.
  - h. The emergency notification system is not code-compliant.
  - i. The building sprinkler system is not code-compliant.
  - j. There are no code-required Ground Fault Circuit Interrupters.
  - k. There are no code-required Arc Fault Circuit Interrupters.
  - l. There are no code-required Carbon Monoxide detectors.
4. Layout and Condition of Interior Partitions/Materials
- a. Interior walls should be repaired/repainted.
  - b. Interior ceilings should be repaired/repainted.
  - c. Doors are damaged and should be repaired.
5. Exterior Construction
- a. The exterior brick is failing, allowing for water intrusion, contrary to code.
  - b. Windows are failing, allowing for water intrusion, contrary to code.

### **Description of Code Deficiencies**

1. Code-required accessible parking should be created.
2. Code-required accessible route into the building should be created.
3. Code-required accessible route to all levels of the building should be created.
4. Code-compliant door hardware should be installed.
5. The plumbing system is not code-compliant.
6. A code-required accessible restroom should be installed.
7. A code-required accessible rented room space should be created.
8. The lighting system is not code-compliant.
9. The electrical wiring system is not code-compliant.
10. The HVAC system is not code-compliant.
11. Thresholds should be modified to comply with code for maximum height.
12. Stairways should be modified to comply with code.
13. Flooring material should be repaired/replaced to create in unimpeded means of emergency egress per code.
14. Install code-required fire proofing.
15. The exterior fire escape system should be modified to comply with code.
16. Code-required smoke detectors should be installed.
17. A code-compliant emergency lighting system should be installed.
18. A code-compliant emergency notification system should be installed.
19. The building sprinkler system is not code-compliant.
20. Code-required GFCI's should be installed.
21. Code-required AFCI's should be installed.
22. Code-required carbon monoxide detectors should be installed.
23. Exterior brick should be repaired/replaced to prevent water intrusion per code.
24. Failed windows should be replaced to prevent water intrusion per code.

### **Overview of Deficiencies**

This building was originally constructed as a hotel. It is now being used as an apartment house. Code-required accessibility is not apparent anywhere in the building. Interior walls and ceilings should be repaired/repainted. Flooring material should be repaired/replaced to create an unimpeded means for emergency egress per code. The plumbing, lighting, electrical wiring and HVAC systems are not code-compliant. Exterior brick is failing, allowing for water intrusion, contrary to code. The window system has failed allowing for water intrusion, contrary to code. The exterior fire escape system is not code-compliant.

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# Lincoln Park Non-Contiguous Redevelopment TIF District

## Building Code, Condition Deficiency and Context Analysis Report

Parcel No. & Building Name: Parcels B, C and D Roberts Furniture Building  
Address and Parcel ID: 2102 W Superior St, Duluth, MN 55806 PID 010-1120-02740  
2104 W Superior St, Duluth, MN 55806 PID 010-1120-02750  
2112 W Superior St, Duluth, MN 55806 PID 010-1120-02760  
Inspection Date(s) & Time(s): June 13, 2019 3:00 PM  
Inspection Type: Interior and Exterior  
Summary of Deficiencies: It is our professional opinion that this building is Substandard because:  
- Substantial renovation is required to correct Conditions found.  
- Building Code deficiencies total more than 15% of replacement cost, NOT including energy code deficiencies.

Estimated Replacement Cost: \$3,205,622  
Estimated Cost to Correct Building Code Deficiencies: \$1,186,198  
Percentage of Replacement Cost for Building Code Deficiencies: 37%

### Defects in Structural Elements

1. None observed.

### Combination of Deficiencies

1. Essential Utilities and Facilities
  - a. There is no code-required accessible parking.
  - b. There is no code-compliant accessible route into the building.
  - c. There is no code-required accessible route to all levels.
  - d. Door hardware is not code-compliant.
  - e. There are no code-required accessible restrooms.
2. Light and Ventilation
  - a. The lighting system is not code-compliant.
  - b. The electrical wiring system is not code-compliant.
  - c. The HVAC system is not code-compliant.
3. Fire Protection/Adequate Egress
  - a. Thresholds do not comply with code for maximum height.
  - b. Stairways do not comply with code.
  - c. Install code-required fire proofing.
  - d. There are no code-required smoke detectors in the building.
  - e. Emergency lighting is not code-compliant.
  - f. The emergency notification system is not code-compliant.
  - g. There is no code-required building sprinkler system.
  - h. Exterior glass doors are not code-compliant.

4. Layout and Condition of Interior Partitions/Materials
  - a. Interior walls should be repaired/repainted.
  - b. Interior ceilings should be repaired/repainted/replaced
  - c. Doors are damaged and should be repaired.
  
5. Exterior Construction
  - a. The Exterior Insulation Finish System is damaged, allowing for water intrusion, contrary to code.
  - b. Windows are failing, allowing for water intrusion, contrary to code.

### **Description of Code Deficiencies**

1. Code-required accessible parking should be created.
2. Code-required accessible route into the building should be created.
3. Code-required accessible route to all levels of the building should be created.
4. Code-compliant door hardware should be installed.
5. A code-required accessible restroom should be installed.
6. The lighting system is not code-compliant.
7. The electrical wiring system is not code-compliant.
8. The HVAC system is not code-compliant.
9. Thresholds should be modified to comply with code for maximum height.
10. Stairways should be modified to comply with code.
11. Install code-required fire proofing.
12. Code-required smoke detectors should be installed.
13. A code-compliant emergency lighting system should be installed.
14. A code-compliant emergency notification system should be installed.
15. A code-required building sprinkler system should be installed.
16. Exterior glass doors should have 10-inch kick plates installed per code.
17. Exterior Insulation Finish System should be repaired/replaced to prevent water intrusion per code.
18. Failed windows should be replaced to prevent water intrusion per code.

### **Overview of Deficiencies**

This two-story building recently housed a home furnishing store and is now used as a warehouse. Code deficient accessibility items include parking, access into the building, access to all levels of the building and restrooms. Code deficient life safety systems include, smoke detectors, emergency lighting, emergency notification, and building sprinklers. The Exterior Insulation Finish System is damaged, allowing for water intrusion, contrary to code. Windows are failing, allowing for water intrusion, contrary to code. The current lighting system, wiring system and HVAC system does not comply with code. All interior walls should be repainted. All interior floors should be repaired, cleaned or replaced. Stairways are not code-compliant.

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## **APPENDIX C**

Building Replacement Cost Reports  
Code Deficiency Cost Reports  
Photographs

# Lincoln Park Non-Contiguous Redevelopment TIF District

## Replacement Cost Report

RSMeans data  
from GORDIAN

Square Foot Cost Estimate Report

Date: 6/27/2019

Estimate Name:	2001 West Superior Street	Esmond Building
Building Type:	Apartment, 1-3 Story with Stone Veneer / Wood Frame	
Location:	DULUTH, MN 55806	
Story Count:	3	
Story Height (L.F.):	10.00	
Floor Area (S.F.):	13400	
Labor Type:	OPN	
Basement Included:	Yes	
Data Release:	Year 2019	
Cost Per Square Foot:	\$206.46	
Building Cost:	\$2,766,501.67	



Costs are derived from a building model with basic components.  
Scope differences and market conditions can cause costs to vary significantly.

		% of Total	Cost Per S.F.	Cost
<b>A</b>	<b>Substructure</b>	<b>9.60%</b>	<b>\$17.23</b>	<b>\$230,874.54</b>
<b>A1010</b>	<b>Standard Foundations</b>		<b>\$5.92</b>	<b>\$79,271.60</b>
A10101102700	Strip footing, concrete, reinforced, load 11.1 KLF, soil bearing capacity 6 KSF, 12" deep x 24" wide		\$1.36	\$18,258.39
A10102107700	Spread footings, 3000 PSI concrete, load 200K, soil bearing capacity 6 KSF, 6' - 0" square x 20" deep		\$4.55	\$61,013.21
<b>A1030</b>	<b>Slab on Grade</b>		<b>\$1.74</b>	<b>\$23,359.60</b>
A10301202240	Slab on grade, 4" thick, non industrial, reinforced		\$1.74	\$23,359.60
<b>A2010</b>	<b>Basement Excavation</b>		<b>\$1.15</b>	<b>\$15,423.76</b>
A20101104620	Excavate and fill, 10,000 SF, 8' deep, sand, gravel, or common earth, on site storage		\$1.15	\$15,423.76
<b>A2020</b>	<b>Basement Walls</b>		<b>\$8.42</b>	<b>\$112,819.58</b>
A20201107260	Foundation wall, CIP, 12' wall height, pumped, .444 CY/LF, 21.59 PLF, 12" thick		\$8.42	\$112,819.58
<b>B</b>	<b>Shell</b>	<b>41.61%</b>	<b>\$74.70</b>	<b>\$1,001,043.96</b>
<b>B1010</b>	<b>Floor Construction</b>		<b>\$23.88</b>	<b>\$319,973.80</b>
B10102030860	Cast-in-place concrete column, 12" square, tied, 200K load, 12' story height, 142 lbs/LF, 4000PSI		\$5.02	\$67,287.14
B10102103450	Wood column, 8" x 8", 20' x 20' bay, 10' unsupported height, 133 BF/MSF, 160 PSF total allowable load		\$0.42	\$5,681.87
B10102221720	Flat slab, concrete, with drop panels, 6" slab/2.5" panel, 12" column, 15'x15' bay, 75 PSF superimposed load, 153 PSF total load		\$4.43	\$59,416.49
B10102643050	Wood beam and joist floor, 12"x16" girder, 8"x16" beam, 2x10 joists @ 16", 20'x20' bay, 75 PSF LL, 102 PSF total load		\$11.35	\$152,104.56
B10107203750	Fireproofing, gypsum board, fire rated, 3 layer, 1.5" thick, 8" steel column, 3 hour rating, 23 PLF		\$2.65	\$35,483.74
<b>B1020</b>	<b>Roof Construction</b>		<b>\$8.33</b>	<b>\$111,622.00</b>
* B10201026100	Wood roof, flat rafter, 3" x 12", 12" O.C.		\$8.33	\$111,622.00
<b>B2010</b>	<b>Exterior Walls</b>		<b>\$31.32</b>	<b>\$419,718.66</b>
B20101282000	Stone wall, ashlar veneer, 4" thick, 8' high, 2x4@16" stud back-up, low priced stone		\$30.11	\$403,508.43
B20101907600	Insulation, fiberglass batts, 6" thick, R19		\$1.21	\$16,210.23
<b>B2020</b>	<b>Exterior Windows</b>		<b>\$6.75</b>	<b>\$90,450.58</b>

B20201066650	Windows, aluminum, sliding, standard glass, 5' x 3'		\$6.75	\$90,450.58
<b>B2030</b>	<b>Exterior Doors</b>		<b>\$0.51</b>	<b>\$6,884.92</b>
B20302203500	Door, steel 18 gauge, hollow metal, 1 door with frame, no label, 3'-6" x 7'-0" opening		\$0.51	\$6,884.92
<b>B3010</b>	<b>Roof Coverings</b>		<b>\$3.91</b>	<b>\$52,394.00</b>
* B30101052300	Roofing, asphalt flood coat, gravel, coated glass base sheet, 4 plies glass (type IV), mopped		\$3.91	\$52,394.00
<b>C</b>	<b>Interiors</b>	<b>19.25%</b>	<b>\$34.56</b>	<b>\$463,140.82</b>
<b>C1010</b>	<b>Partitions</b>		<b>\$6.76</b>	<b>\$90,586.64</b>
C10101241200	Wood partition, 5/8" fire rated gypsum board face, none base, 2 x 4, @ 16" OC framing, same opposite face, 0 insul		\$2.01	\$26,917.80
C10101241425	Wood partition, 5/8" fire rated gypsum board face, 1/4" sound deadening gypsum board, 2x4 @ 16" OC framing, same opposite face, sound attenuation insul		\$3.49	\$46,718.83
C10101280700	Gypsum board, 1 face only, exterior sheathing, fire resistant, 5/8"		\$0.78	\$10,445.90
C10101280960	Add for the following: taping and finishing		\$0.49	\$6,504.11
<b>C1020</b>	<b>Interior Doors</b>		<b>\$10.18</b>	<b>\$136,383.01</b>
C10201022600	Door, single leaf, kd steel frame, hollow metal, commercial quality, flush, 3'-0" x 7'-0" x 1-3/8"		\$9.06	\$121,394.26
C10201101600	Doors, interior fire door, drywall frame, 1-3/8" thick, 3'-0" x 7'-0"		\$1.12	\$14,988.75
<b>C1030</b>	<b>Fittings</b>		<b>\$5.16</b>	<b>\$69,114.82</b>
C10308300115	Cabinets, residential, base, hardwood, 1 top drawer & 1 door below x 24" W		\$2.65	\$35,460.96
C10308300140	Cabinets, residential, wall, two doors x 48" wide		\$1.77	\$23,773.94
C10308300150	Cabinets, residential, counter top-laminated plastic, stock, economy		\$0.74	\$9,879.92
<b>C2010</b>	<b>Stair Construction</b>		<b>\$0.75</b>	<b>\$10,045.36</b>
C20101101120	Stairs, wood, prefab box type, oak treads, wood rails 3'-6" wide, 14 risers		\$0.75	\$10,045.36
<b>C3010</b>	<b>Wall Finishes</b>		<b>\$2.68</b>	<b>\$35,873.64</b>
C30102300140	Painting, interior on plaster and drywall, walls & ceilings, roller work, primer & 2 coats		\$1.35	\$18,138.38
C30102300140	Painting, interior on plaster and drywall, walls & ceilings, roller work, primer & 2 coats		\$0.68	\$9,117.64
C30102301940	Ceramic tile, thin set, 4-1/4" x 4-1/4"		\$0.64	\$8,617.62
<b>C3020</b>	<b>Floor Finishes</b>		<b>\$5.06</b>	<b>\$67,845.82</b>
C30204100060	Carpet tile, nylon, fusion bonded, 18" x 18" or 24" x 24", 24 oz		\$2.36	\$31,583.02
C30204100080	Carpet tile, nylon, fusion bonded, 18" x 18" or 24" x 24", 35 oz		\$1.26	\$16,920.72
C30204101600	Vinyl, composition tile, maximum		\$0.34	\$4,571.90
C30204101720	Tile, ceramic natural clay		\$1.10	\$14,770.18
<b>C3030</b>	<b>Ceiling Finishes</b>		<b>\$3.98</b>	<b>\$53,291.53</b>
C30301105400	Gypsum board ceilings, 1/2" fire rated gypsum board, painted and textured finish, 7/8" resilient channel furring, 24" OC support		\$3.98	\$53,291.53
<b>D</b>	<b>Services</b>	<b>28.76%</b>	<b>\$51.63</b>	<b>\$691,842.45</b>
<b>D1010</b>	<b>Elevators and Lifts</b>		<b>\$4.86</b>	<b>\$65,061.59</b>
D10101109050	Hydraulic passenger elevator, 3500 lb., 3 floors, 10' story height, 125 FPM		\$4.86	\$65,061.59
<b>D2010</b>	<b>Plumbing Fixtures</b>		<b>\$6.37</b>	<b>\$85,390.35</b>
D20104101880	Kitchen sink w/trim, countertop, stainless steel, 19" x 18" single bowl		\$1.40	\$18,716.33

D20104202040	Laundry sink w/trim, plastic, on wall or legs, 18" x 23" single compartment		\$0.20	\$2,658.42
D20104404260	Service sink w/trim, PE on CI, corner floor, 28" x 28", w/rim guard		\$0.41	\$5,493.24
D20109262160	Bathroom, three fixture, 2 wall plumbing, lavatory, water closet & bathtub, stand alone		\$4.37	\$58,522.36
<b>D2020</b>	<b>Domestic Water Distribution</b>		<b>\$8.34</b>	<b>\$111,699.53</b>
D20202401820	Electric water heater, commercial, 100< F rise, 50 gallon tank, 9 KW 37 GPH		\$8.34	\$111,699.53
<b>D2040</b>	<b>Rain Water Drainage</b>		<b>\$0.45</b>	<b>\$5,976.57</b>
D20402102040	Roof drain, DWV PVC, 4" diam, diam, 10' high		\$0.27	\$3,639.11
D20402102080	Roof drain, DWV PVC, 4" diam, for each additional foot add		\$0.17	\$2,337.46
<b>D3010</b>	<b>Energy Supply</b>		<b>\$7.42</b>	<b>\$99,394.50</b>
D30105101840	Apartment building heating system, fin tube radiation, forced hot water, 20,000 SF area,200,000 CF vol		\$7.42	\$99,394.50
<b>D3030</b>	<b>Cooling Generating Systems</b>		<b>\$8.00</b>	<b>\$107,242.75</b>
D30301103240	Packaged chiller, air cooled, with fan coil unit, medical centers, 20,000 SF, 46.66 ton		\$8.00	\$107,242.75
<b>D4010</b>	<b>Sprinklers</b>		<b>\$3.21</b>	<b>\$43,001.38</b>
D40104100600	Wet pipe sprinkler systems, steel, light hazard, 1 floor, 5000 SF		\$1.51	\$20,280.75
D40104100720	Wet pipe sprinkler systems, steel, light hazard, each additional floor, 5000 SF		\$1.70	\$22,720.63
<b>D5010</b>	<b>Electrical Service/Distribution</b>		<b>\$4.16</b>	<b>\$55,788.95</b>
D50101200400	Overhead service installation, includes breakers, metering, 20' conduit & wire, 3 phase, 4 wire, 120/208 V, 800 A		\$0.85	\$11,410.95
D50102300400	Feeder installation 600 V, including RGS conduit and XHHW wire, 800 A		\$1.98	\$26,556.90
D50102400280	Switchgear installation, incl switchboard, panels & circuit breaker, 120/208 V, 3 phase, 800 A		\$1.33	\$17,821.10
<b>D5020</b>	<b>Lighting and Branch Wiring</b>		<b>\$6.97</b>	<b>\$93,411.03</b>
D50201100520	Receptacles incl plate, box, conduit, wire, 10 per 1000 SF, 1.2 watts per SF		\$2.78	\$37,313.64
D50201300320	Wall switches, 2.5 per 1000 SF		\$0.53	\$7,040.36
D50201350440	Miscellaneous power, 2 watts		\$0.50	\$6,755.74
D50201400240	Central air conditioning power, 3 watts		\$0.54	\$7,277.81
D50201450720	Motor installation, three phase, 200 V, 15 HP motor size		\$0.24	\$3,265.75
D50202160200	Incandescent fixtures recess mounted, type A, 1 watt per SF, 8 FC, 6 fixtures per 1000 SF		\$2.37	\$31,757.73
<b>D5030</b>	<b>Communications and Security</b>		<b>\$1.86</b>	<b>\$24,875.80</b>
D50309100452	Communication and alarm systems, fire detection, addressable, 25 detectors, includes outlets, boxes, conduit and wire		\$0.88	\$11,794.80
D50309100460	Fire alarm command center, addressable without voice, excl. wire & conduit		\$0.45	\$5,987.60
D50309200102	Internet wiring, 2 data/voice outlets per 1000 S.F.		\$0.53	\$7,093.40
<b>E</b>	<b>Equipment &amp; Furnishings</b>	<b>0.78%</b>	<b>\$1.40</b>	<b>\$18,751.86</b>
<b>E1090</b>	<b>Other Equipment</b>		<b>\$1.40</b>	<b>\$18,751.86</b>
E10904100135	Architectural equipment, appliances, range, 30" free standing, 1 oven, gas, average		\$0.97	\$12,972.78
E10904100170	Architectural equipment, appliances, dish washer, built-in, 2 cycles, economy		\$0.43	\$5,779.08
<b>F</b>	<b>Special Construction</b>	<b>0.00%</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>G</b>	<b>Building Sitework</b>	<b>0.00%</b>	<b>\$0.00</b>	<b>\$0.00</b>

<b>SubTotal</b>	<b>100%</b>	<b>\$179.53</b>	<b>\$2,405,653.63</b>
<b>Contractor Fees (General Conditions,Overhead,Profit)</b>	<b>15.0 %</b>	<b>\$26.93</b>	<b>\$360,848.04</b>
<b>Architectural Fees</b>	<b>0.0 %</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>User Fees</b>	<b>0.0 %</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Total Building Cost</b>		<b>\$206.46</b>	<b>\$2,766,501.67</b>

# Lincoln Park Non-Contiguous Redevelopment TIF District

## Code Deficiency Cost Report

Parcel A - 2001 W Superior St, Duluth, MN 55806 - PID 010-1120-05090

Esmond Building

Code	Related Cost Items	Unit Cost	Units	Unit Quantity	Total
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### Accessibility Items

#### Parking

Create a code required parking space	\$ 100.00	EA	1	\$ 100.00
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#### Accessible Routes

Create a code required accessible route into the building	\$ 2,500.00	Lump	1	\$ 2,500.00
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Create a code required accessible route to all levels of the building	\$ 4.86	SF	13,400	\$ 65,124.00
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### Structural Elements

\$ -

### Exiting

#### Door Hardware

Install code compliant door hardware	\$ 250.00	EA	70	\$ 17,500.00
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#### Thresholds

Modify thresholds to comply with code.	\$ 5,000.00	Lump	1	\$ 5,000.00
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#### Stairways

Modify stairways to comply with code.	\$ 0.75	SF	13,400	\$ 10,050.00
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#### Flooring Material

Install code compliant flooring to create an unimpeded means of egress	\$ 5.06	SF	13,400	\$ 67,804.00
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#### Fire Escape System

Install a code compliant fire escape system	\$ 10,000.00	Lump	1	\$ 10,000.00
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### Fire Protection

#### Smoke Detectors

Install code required smoke detectors	\$ 0.88	SF	13,400	\$ 11,792.00
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#### Emergency Lighting

Install code compliant emergency lighting	\$ 0.75	SF	13,400	\$ 10,050.00
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#### Emergency Notification System

Install code compliant emergency notification system	\$ 0.45	SF	13,400	\$ 6,030.00
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#### Building Sprinkler System

Install code compliant building sprinkler system	\$ 1.66	SF	13,400	\$ 22,244.00
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#### GFCI's

Install code required GFCI's	\$ 0.25	SF	13,400	\$ 3,350.00
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#### AFCI's

Install code required AFCI's	\$ 0.25	SF	13,400	\$ 3,350.00
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#### Carbon Monoxide Detector

Install code required carbon monoxide detectors	\$ 0.25	SF	13,400	\$ 3,350.00
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Code	Related Cost Items	Unit Cost	Units	Unit Quantity	Total
	Fire Proofing				
	Install code required fire proofing	\$ 2.65	SF	13,400	\$ 35,510.00
<b>Exterior Construction</b>					
	Brick				
	Repair/replace brick and mortar to prevent water intrusion per code	\$ 2.12	SF	13,400	\$ 28,408.00
	Windows				
	Replace failed window system to prevent water intrusion per code	\$ 6.75	SF	13,400	\$ 90,450.00
<b>Roof Construction</b>					
					\$ -
<b>Mechanical- Electrical</b>					
	Mechanical				
	Install code compliant HVAC system	\$ 15.42	SF	13,400	\$ 206,628.00
	Install code compliant plumbing system	\$ 14.71	SF	13,400	\$ 197,114.00
	Electrical				
	Install code compliant electrical wiring system	\$ 7.47	SF	13,400	\$ 100,098.00
	Install code compliant lighting system	\$ 2.37	SF	13,400	\$ 31,758.00
<b>Total Code Improvements</b>					<b>\$ 928,210</b>

# Lincoln Park Non-Contiguous Redevelopment TIF District

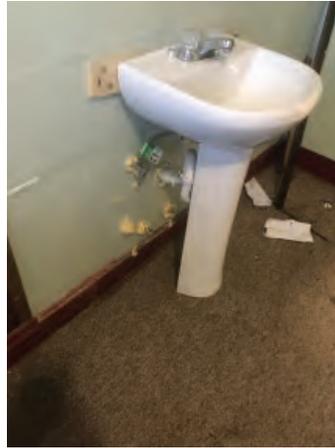
Photos: Parcel A - Parcel A - 2001 W Superior St - Esmond Building



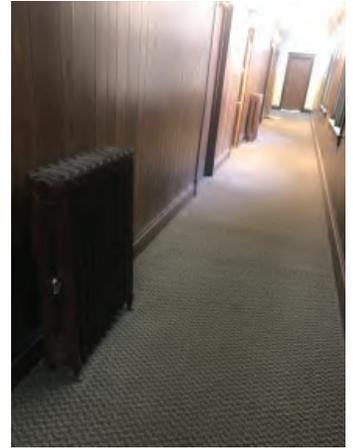
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# Lincoln Park Non-Contiguous Redevelopment TIF District

Photos: Parcel A - Parcel A - 2001 W Superior St - Esmond Building



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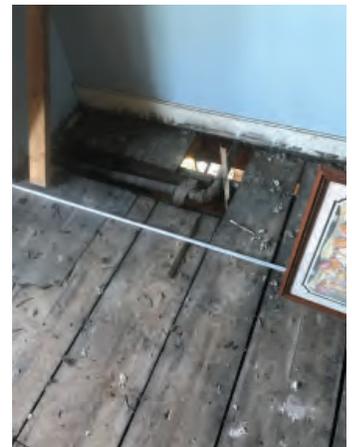
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# Lincoln Park Non-Contiguous Redevelopment TIF District

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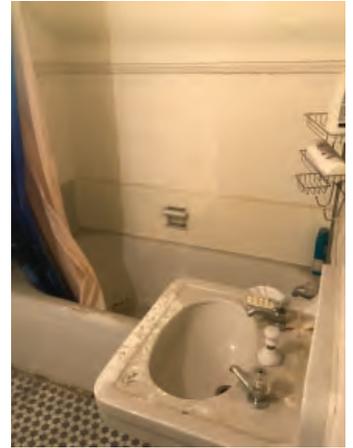
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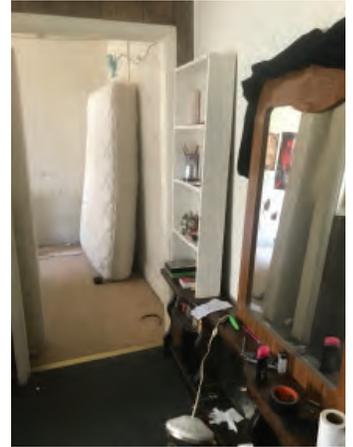
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# Lincoln Park Non-Contiguous Redevelopment TIF District

Photos: Parcel A - Parcel A - 2001 W Superior St - Esmond Building



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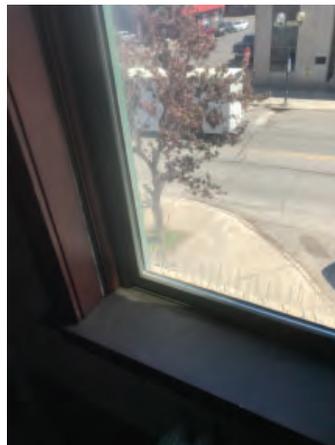
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# Lincoln Park Non-Contiguous Redevelopment TIF District

Photos: Parcel A - Parcel A - 2001 W Superior St - Esmond Building



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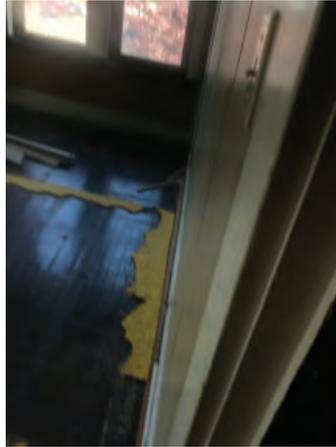
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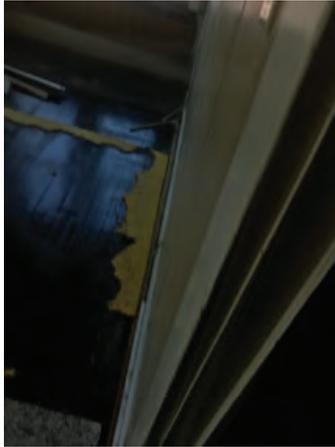
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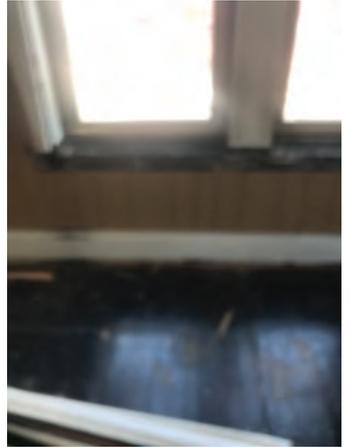
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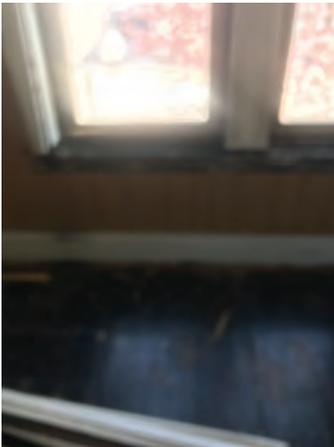
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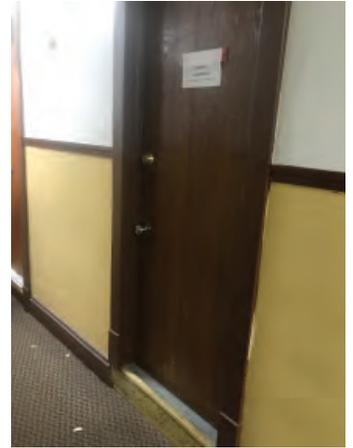
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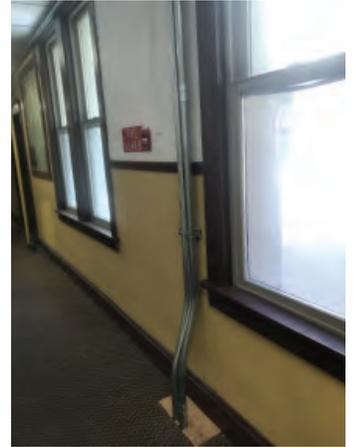
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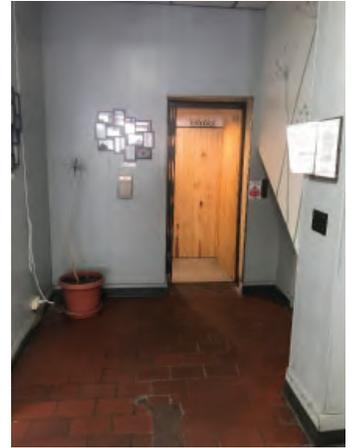
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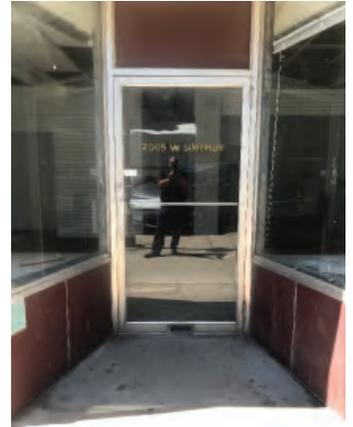
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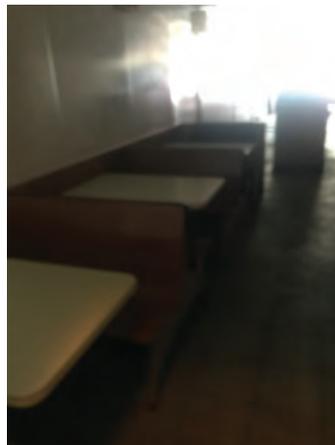
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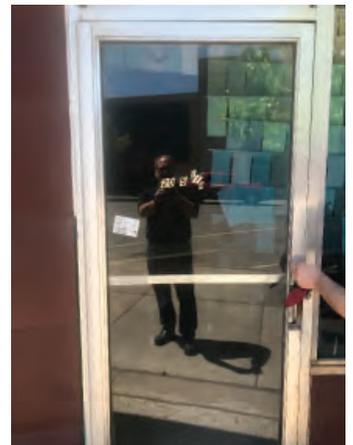
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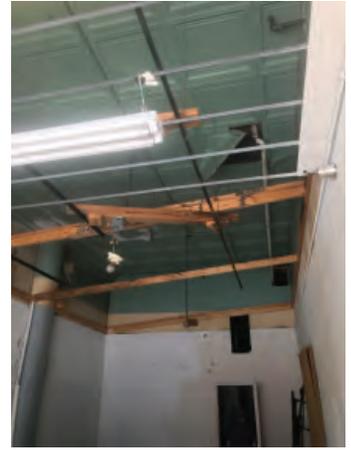
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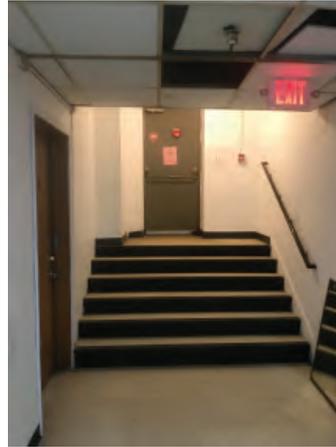
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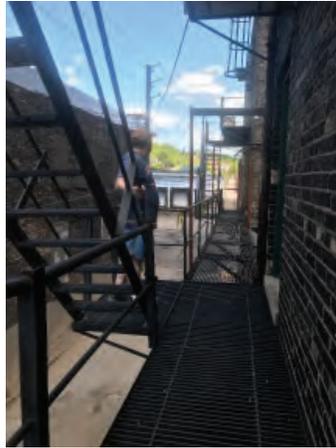
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# Lincoln Park Non-Contiguous Redevelopment TIF District

Photos: Parcel A - Parcel A - 2001 W Superior St - Esmond Building



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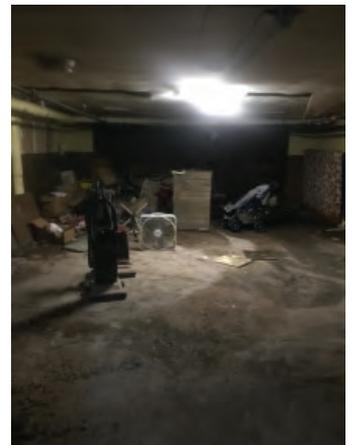
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Photos: Parcel A - Parcel A - 2001 W Superior St - Esmond Building



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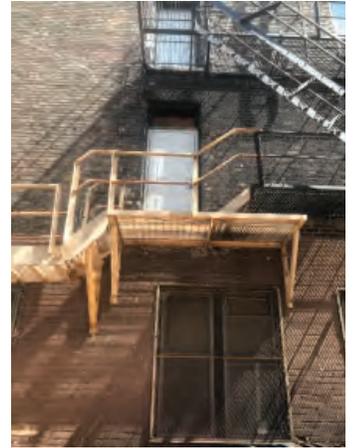
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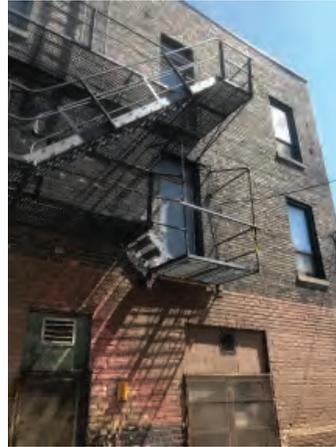
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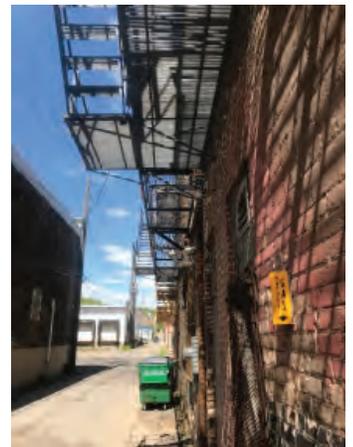
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# Lincoln Park Non-Contiguous Redevelopment TIF District

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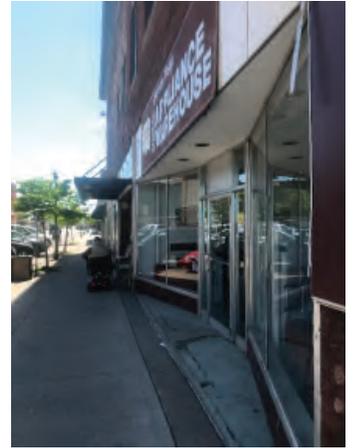
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# Lincoln Park Non-Contiguous Redevelopment TIF District

## Replacement Cost Report

RSMeans data  
from GORDIAN

Square Foot Cost Estimate Report

Date: 6/27/2019

Estimate Name:	<b>Roberts Furniture</b>	
Building Type:	<b>Store, 2-4 Story with Vinyl Clapboard / Wood Frame</b>	
Location:	<b>2102, 2104, and 2112 W Superior St, Duluth, MN 55806</b>	 <p>Costs are derived from a building model with basic components. Scope differences and market conditions can cause costs to vary significantly.</p>
Story Count:	<b>2</b>	
Story Height (L.F.):	<b>12.00</b>	
Floor Area (S.F.):	<b>18200</b>	
Labor Type:	<b>OPN</b>	
Basement Included:	<b>Yes</b>	
Data Release:	<b>Year 2019</b>	
Cost Per Square Foot:	<b>\$176.13</b>	
Building Cost:	<b>\$3,205,622.06</b>	

		% of Total	Cost Per S.F.	Cost
<b>A</b>	<b>Substructure</b>	<b>13.60%</b>	<b>\$20.84</b>	<b>\$379,217.72</b>
<b>A1010</b>	<b>Standard Foundations</b>		<b>\$7.71</b>	<b>\$140,257.12</b>
A10101102700	Strip footing, concrete, reinforced, load 11.1 KLF, soil bearing capacity 6 KSF, 12" deep x 24" wide		\$1.42	\$25,885.31
A10102107700	Spread footings, 3000 PSI concrete, load 200K, soil bearing capacity 6 KSF, 6' - 0" square x 20" deep		\$6.28	\$114,371.81
<b>A1030</b>	<b>Slab on Grade</b>		<b>\$2.61</b>	<b>\$47,590.82</b>
A10301202240	Slab on grade, 4" thick, non industrial, reinforced		\$2.61	\$47,590.82
<b>A2010</b>	<b>Basement Excavation</b>		<b>\$1.73</b>	<b>\$31,423.03</b>
A20101104620	Excavate and fill, 10,000 SF, 8' deep, sand, gravel, or common earth, on site storage		\$1.73	\$31,423.03
<b>A2020</b>	<b>Basement Walls</b>		<b>\$8.79</b>	<b>\$159,946.75</b>
A20201107260	Foundation wall, CIP, 12' wall height, pumped, .444 CY/LF, 21.59 PLF, 12" thick		\$8.79	\$159,946.75
<b>B</b>	<b>Shell</b>	<b>34.28%</b>	<b>\$52.50</b>	<b>\$955,445.70</b>
<b>B1010</b>	<b>Floor Construction</b>		<b>\$26.72</b>	<b>\$486,266.84</b>
B10102030860	Cast-in-place concrete column, 12" square, tied, 200K load, 12' story height, 142 lbs/LF, 4000PSI		\$6.93	\$126,132.54
B10102103450	Wood column, 8" x 8", 20' x 20' bay, 10' unsupported height, 133 BF/MSF, 160 PSF total allowable load		\$0.21	\$3,858.58
B10102103450	Wood column, 8" x 8", 20' x 20' bay, 10' unsupported height, 133 BF/MSF, 160 PSF total allowable load		\$0.21	\$3,858.58
B10102221720	Flat slab, concrete, with drop panels, 6" slab/2.5" panel, 12" column, 15'x15' bay, 75 PSF superimposed load, 153 PSF total load		\$6.65	\$121,050.02
B10102643050	Wood beam and joist floor, 12"x16" girder, 8"x16" beam, 2x10 joists @ 16", 20'x20' bay, 75 PSF LL, 102 PSF total load		\$8.51	\$154,942.33
B10107203700	Fireproofing, gypsum board, fire rated, 2 layer, 1" thick, 14" steel column, 3 hour rating, 22 PLF		\$4.20	\$76,424.79
<b>B1020</b>	<b>Roof Construction</b>		<b>\$4.83</b>	<b>\$87,906.00</b>
* B10201024100	Wood roof, flat rafter, 2" x 12", 12" O.C.		\$4.83	\$87,906.00
<b>B2010</b>	<b>Exterior Walls</b>		<b>\$10.37</b>	<b>\$188,705.61</b>
B20101484850	Wood, 2"x6" studs 16"OC, E.I.F.S.		\$9.66	\$175,738.56
B20101907600	Insulation, fiberglass batts, 6" thick, R19		\$0.71	\$12,967.05

<b>B2020</b>	<b>Exterior Windows</b>		<b>\$5.18</b>	<b>\$94,261.15</b>
B20201066550	Windows, aluminum, awning, insulated glass, 4'-5" x 5'-3"		\$5.18	\$94,261.15
<b>B2030</b>	<b>Exterior Doors</b>		<b>\$1.27</b>	<b>\$23,190.48</b>
B20301106950	Door, aluminum & glass, with transom, narrow stile, double door, hardware, 6'-0" x 10'-0" opening		\$0.67	\$12,113.60
B20301107300	Door, aluminum & glass, with transom, bronze finish, hardware, 3'-0" x 10'-0" opening		\$0.34	\$6,264.44
B20302203450	Door, steel 18 gauge, hollow metal, 1 door with frame, no label, 3'-0" x 7'-0" opening		\$0.26	\$4,812.44
<b>B3010</b>	<b>Roof Coverings</b>		<b>\$4.13</b>	<b>\$75,115.62</b>
* B30101052300	Roofing, asphalt flood coat, gravel, coated glass base sheet, 4 plies glass (type IV), mopped		\$3.91	\$71,162.00
B30106100050	Gutters, box, aluminum, .027" thick, 5", enameled finish		\$0.16	\$2,824.71
B30106200100	Downspout, aluminum, rectangular, 2" x 3", embossed mill finish, .020" thick		\$0.06	\$1,128.91
<b>C</b>	<b>Interiors</b>	<b>15.61%</b>	<b>\$23.91</b>	<b>\$435,079.84</b>
<b>C1010</b>	<b>Partitions</b>		<b>\$3.26</b>	<b>\$59,389.68</b>
C10101241200	Wood partition, 5/8" fire rated gypsum board face, none base, 2 x 4, @ 16" OC framing, same opposite face, 0 insul		\$1.27	\$23,032.80
C10101241425	Wood partition, 5/8" fire rated gypsum board face, 1/4" sound deadening gypsum board, 2x4 @ 16" OC framing, same opposite face, sound attenuation insul		\$0.94	\$17,132.56
C10101280700	Gypsum board, 1 face only, exterior sheathing, fire resistant, 5/8"		\$0.65	\$11,847.50
C10101280960	Add for the following: taping and finishing		\$0.41	\$7,376.82
<b>C1020</b>	<b>Interior Doors</b>		<b>\$3.83</b>	<b>\$69,756.40</b>
C10201022600	Door, single leaf, kd steel frame, hollow metal, commercial quality, flush, 3'-0" x 7'-0" x 1-3/8"		\$3.83	\$69,756.40
<b>C1030</b>	<b>Fittings</b>		<b>\$0.22</b>	<b>\$3,940.50</b>
C10301100420	Toilet partitions, cubicles, ceiling hung, plastic laminate		\$0.22	\$3,940.50
<b>C2010</b>	<b>Stair Construction</b>		<b>\$4.31</b>	<b>\$78,359.92</b>
C20101100720	Stairs, steel, pan tread for conc in-fill, picket rail, 12 risers w/ landing		\$4.31	\$78,359.92
<b>C3010</b>	<b>Wall Finishes</b>		<b>\$1.21</b>	<b>\$22,010.57</b>
C30102300140	Painting, interior on plaster and drywall, walls & ceilings, roller work, primer & 2 coats		\$0.64	\$11,669.55
C30102300140	Painting, interior on plaster and drywall, walls & ceilings, roller work, primer & 2 coats		\$0.57	\$10,341.02
<b>C3020</b>	<b>Floor Finishes</b>		<b>\$4.99</b>	<b>\$90,741.45</b>
C30204100080	Carpet tile, nylon, fusion bonded, 18" x 18" or 24" x 24", 35 oz		\$3.03	\$55,156.48
C30204101600	Vinyl, composition tile, maximum		\$0.85	\$15,523.98
C30204101720	Tile, ceramic natural clay		\$1.10	\$20,060.99
<b>C3030</b>	<b>Ceiling Finishes</b>		<b>\$6.09</b>	<b>\$110,881.32</b>
C30302106000	Acoustic ceilings, 3/4" fiberglass board, 24" x 48" tile, tee grid, suspended support		\$6.09	\$110,881.32
<b>D</b>	<b>Services</b>	<b>36.51%</b>	<b>\$55.92</b>	<b>\$1,017,754.18</b>
<b>D1010</b>	<b>Elevators and Lifts</b>		<b>\$11.64</b>	<b>\$211,896.05</b>
D10101108900	Hydraulic passenger elevator, 3000 lb, 3 floors, 12' story height, 2 car group, 125 FPM		\$11.64	\$211,896.05
<b>D2010</b>	<b>Plumbing Fixtures</b>		<b>\$2.02</b>	<b>\$36,771.67</b>
D20101102080	Water closet, vitreous china, bowl only with flush valve, wall hung		\$0.83	\$15,150.82
D20102102000	Urinal, vitreous china, wall hung		\$0.13	\$2,319.23

D20103101560	Lavatory w/trim, vanity top, PE on CI, 20" x 18"		\$0.24	\$4,375.01
D20104404340	Service sink w/trim, PE on CI, wall hung w/rim guard, 24" x 20"		\$0.55	\$9,920.34
D20108201920	Water cooler, electric, wall hung, wheelchair type, 7.5 GPH		\$0.28	\$5,006.27
<b>D2020</b>	<b>Domestic Water Distribution</b>		<b>\$0.58</b>	<b>\$10,621.57</b>
D20202501860	Gas fired water heater, commercial, 100< F rise, 100 MBH input, 91 GPH		\$0.58	\$10,621.57
<b>D3050</b>	<b>Terminal &amp; Package Units</b>		<b>\$16.38</b>	<b>\$298,099.62</b>
D30501553960	Rooftop, multizone, air conditioner, offices, 25,000 SF, 79.16 ton		\$16.38	\$298,099.62
<b>D4010</b>	<b>Sprinklers</b>		<b>\$3.49</b>	<b>\$63,476.17</b>
D40104100600	Wet pipe sprinkler systems, steel, light hazard, 1 floor, 5000 SF		\$1.56	\$28,380.21
D40104100720	Wet pipe sprinkler systems, steel, light hazard, each additional floor, 5000 SF		\$1.67	\$30,398.77
D40104108930	Standard High Rise Accessory Package 3 story		\$0.26	\$4,697.19
<b>D4020</b>	<b>Standpipes</b>		<b>\$0.98</b>	<b>\$17,760.24</b>
D40203101540	Wet standpipe risers, class III, steel, black, sch 40, 4" diam pipe, 1 floor		\$0.53	\$9,648.45
D40203101560	Wet standpipe risers, class III, steel, black, sch 40, 4" diam pipe, additional floors		\$0.45	\$8,111.79
<b>D5010</b>	<b>Electrical Service/Distribution</b>		<b>\$3.72</b>	<b>\$67,617.11</b>
D50101200440	Overhead service installation, includes breakers, metering, 20' conduit & wire, 3 phase, 4 wire, 120/208 V, 1000 A		\$0.97	\$17,589.25
D50102300440	Feeder installation 600 V, including RGS conduit and XHHW wire, 1000 A		\$1.24	\$22,492.00
D50102400320	Switchgear installation, incl switchboard, panels & circuit breaker, 120/208 V, 3 phase, 1200 A		\$1.51	\$27,535.86
<b>D5020</b>	<b>Lighting and Branch Wiring</b>		<b>\$11.41</b>	<b>\$207,677.88</b>
D50201100640	Receptacles incl plate, box, conduit, wire, 16.5 per 1000 SF, 2.0 W per SF, with transformer		\$4.52	\$82,325.15
D50201350320	Miscellaneous power, 1.2 watts		\$0.31	\$5,687.50
D50201400280	Central air conditioning power, 4 watts		\$0.56	\$10,247.33
D50201452080	Motor installation, three phase, 460 V, 15 HP motor size		\$0.26	\$4,737.76
D50202100520	Fluorescent fixtures recess mounted in ceiling, 1.6 watt per SF, 40 FC, 10 fixtures @32watt per 1000 SF		\$5.75	\$104,680.14
<b>D5030</b>	<b>Communications and Security</b>		<b>\$5.71</b>	<b>\$103,833.87</b>
D50303101020	Telephone wiring for offices & laboratories, 8 jacks/MSF		\$1.53	\$27,835.08
D50309100454	Communication and alarm systems, fire detection, addressable, 50 detectors, includes outlets, boxes, conduit and wire		\$1.92	\$34,872.29
D50309100462	Fire alarm command center, addressable with voice, excl. wire & conduit		\$0.60	\$10,989.21
D50309200110	Internet wiring, 8 data/voice outlets per 1000 S.F.		\$1.66	\$30,137.29
<b>E</b>	<b>Equipment &amp; Furnishings</b>	<b>0.00%</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>E1090</b>	<b>Other Equipment</b>		<b>\$0.00</b>	<b>\$0.00</b>
<b>F</b>	<b>Special Construction</b>	<b>0.00%</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>G</b>	<b>Building Sitework</b>	<b>0.00%</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>SubTotal</b>		<b>100%</b>	<b>\$153.16</b>	<b>\$2,787,497.44</b>
<b>Contractor Fees (General Conditions,Overhead,Profit)</b>		<b>15.0 %</b>	<b>\$22.97</b>	<b>\$418,124.62</b>
<b>Architectural Fees</b>		<b>0.0 %</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>User Fees</b>		<b>0.0 %</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Total Building Cost</b>			<b>\$176.13</b>	<b>\$3,205,622.06</b>

# Lincoln Park Non-Contiguous Redevelopment TIF District

## Code Deficiency Cost Report

Parcels B, C, and D - 2102, 2104, and 2112 W Superior St, Duluth, MN 55806

Parcel IDs: 010-1120-02740, 010-1120-02750, 010-1120-02760

Roberts Furniture

Code	Related Cost Items	Unit Cost	Units	Unit Quantity	Total
<b>Accessibility Items</b>					
	Parking				
	Create a code required parking space	\$ 100.00	EA	1	\$ 100.00
	Accessible Routes				
	Create a code required accessible route into the building	\$ 5,000.00	Lump	1	\$ 5,000.00
	Create a code required accessible route to all levels of the building	\$ 11.64	SF	18,200	\$ 211,848.00
	Restrooms				
	Install code compliant restroom	\$ 1.42	SF	18,200	\$ 25,844.00
<b>Structural Elements</b>					
					\$ -
<b>Exiting</b>					
	Door Hardware				
	Install code compliant door hardware	\$ 250.00	EA	35	\$ 8,750.00
	Thresholds				
	Modify thresholds to comply with code.	\$ 5,000.00	Lump	1	\$ 5,000.00
	Stairways				
	Modify stairways to comply with code.	\$ 4.31	SF	18,200	\$ 78,442.00
<b>Fire Protection</b>					
	Smoke Detectors				
	Install code required smoke detectors	\$ 1.92	SF	18,200	\$ 34,944.00
	Emergency Lighting				
	Install code compliant emergency lighting	\$ 0.75	SF	18,200	\$ 13,650.00
	Emergency Notification System				
	Install code compliant emergency notification system	\$ 0.60	SF	18,200	\$ 10,920.00
	Building Sprinkler System				
	Install code required building sprinkler system	\$ 4.47	SF	18,200	\$ 81,354.00
	Fire Proofing				
	Install code required fire proofing	\$ 4.20	SF	18,200	\$ 76,440.00
<b>Exterior Construction</b>					
	Exterior Insulation Finish System				
	Repair/replace E.F.I.S. to prevent water intrusion per code	\$ 0.25	SF	18,200	\$ 4,550.00

Code	Related Cost Items	Unit Cost	Units	Unit Quantity	Total
	Windows				
	Replace failed window system to prevent water intrusion per code	\$ 5.18	SF	18,200	\$ 94,276.00
<b>Roof Construction</b>					\$ -
<b>Mechanical- Electrical</b>					
	Mechanical				
	Install code compliant HVAC system	\$ 16.38	SF	18,200	\$ 298,116.00
	Electrical				
	Install code compliant electrical wiring system	\$ 7.27	SF	18,200	\$ 132,314.00
	Install code compliant lighting system	\$ 5.75	SF	18,200	\$ 104,650.00
<b>Total Code Improvements</b>					<b>\$ 1,186,198</b>

# Lincoln Park Non-Contiguous Redevelopment TIF District

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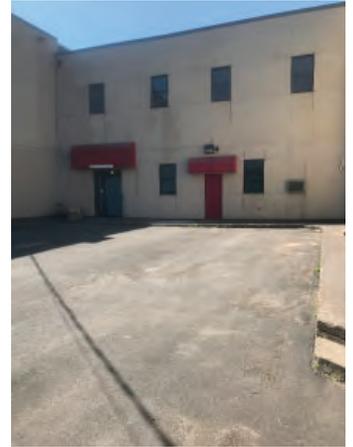
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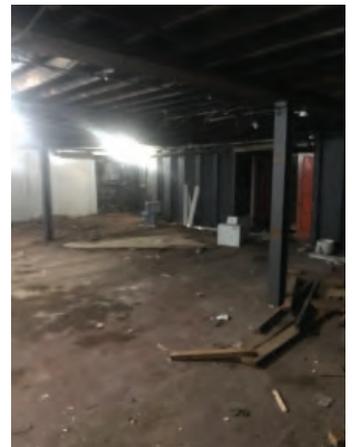
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# Lincoln Park Non-Contiguous Redevelopment TIF District

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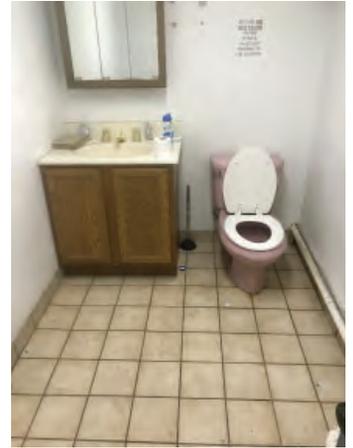
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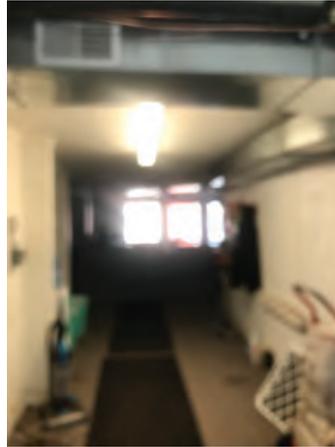
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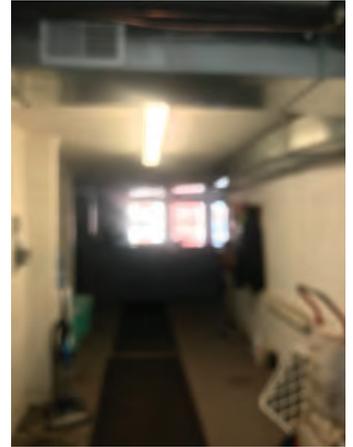
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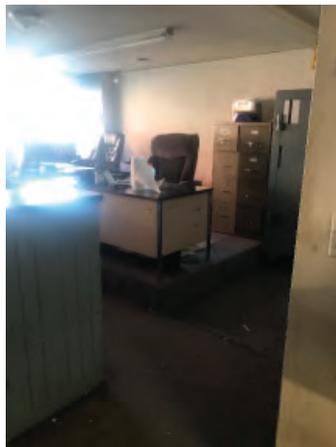
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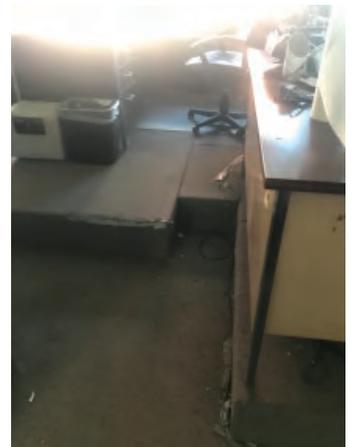
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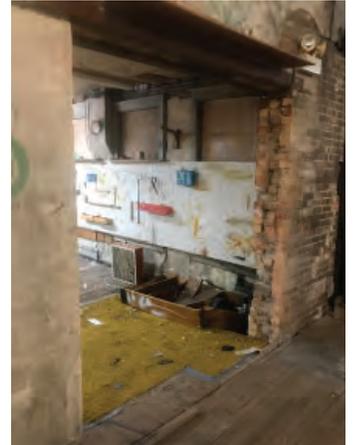
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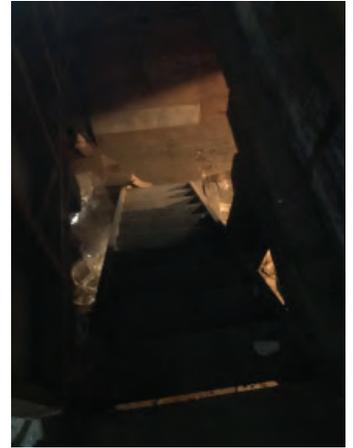
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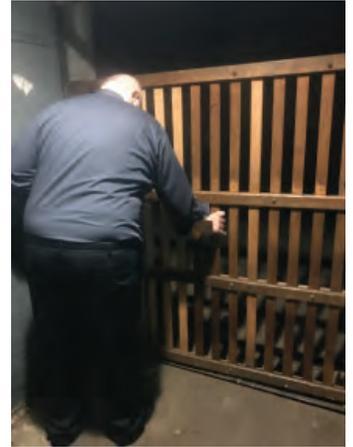
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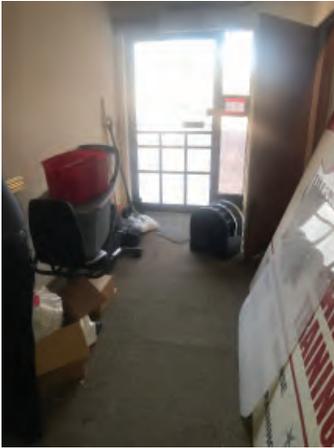
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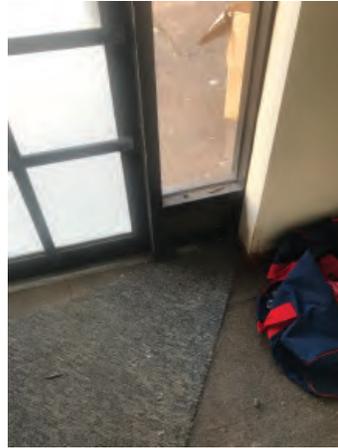
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# Lincoln Park Non-Contiguous Redevelopment TIF District

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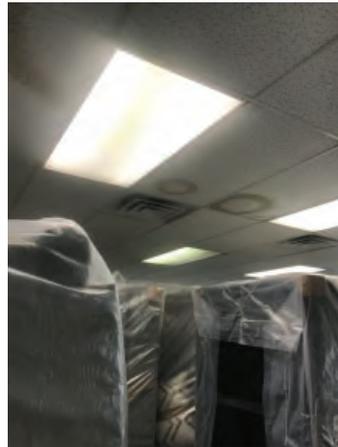
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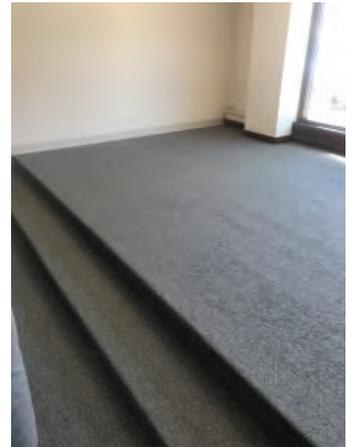
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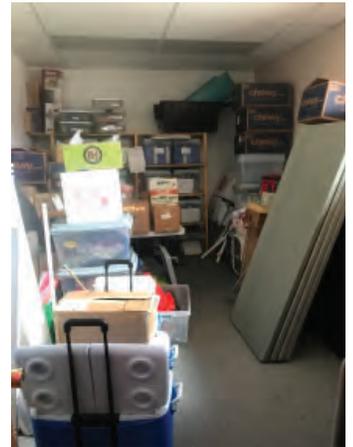
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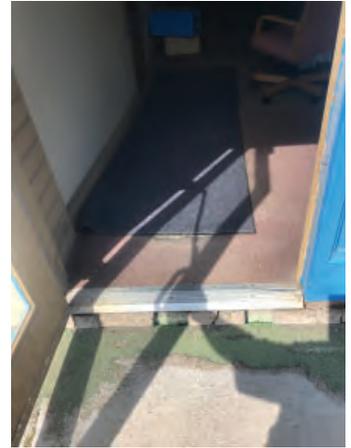
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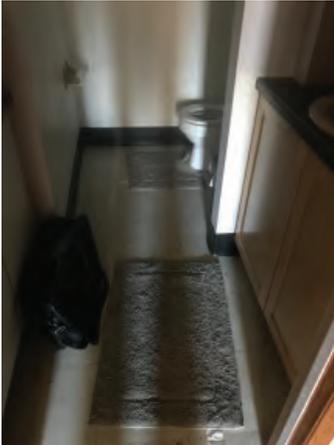
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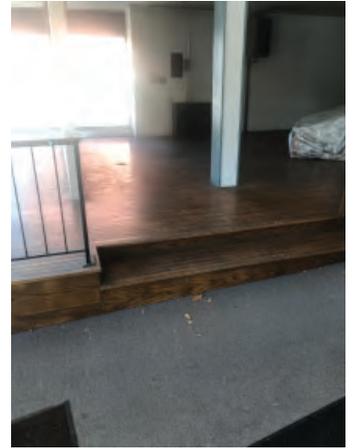
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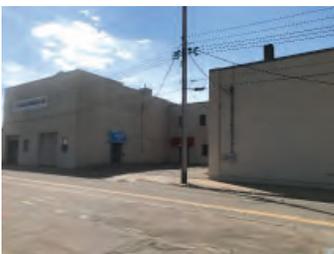
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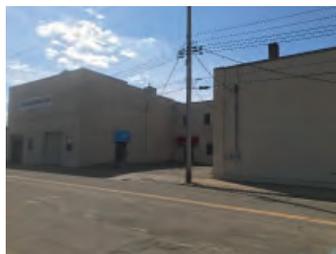
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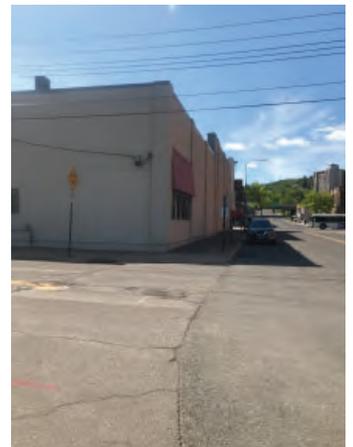
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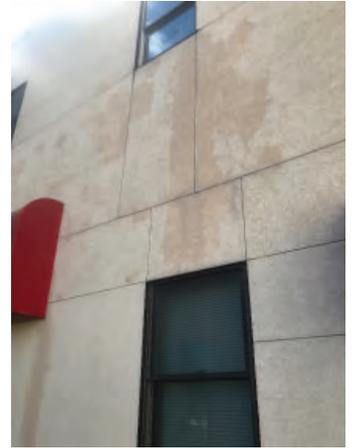
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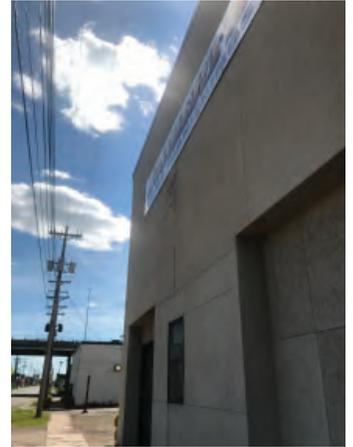
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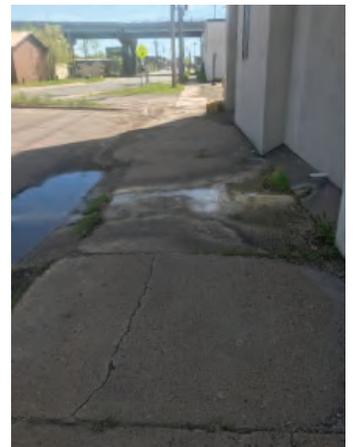
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# Lincoln Park Non-Contiguous Redevelopment TIF District

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# Duluth Economic Development Authority

## July 2020 Cash Activity - all DEDA Funds

ACCUMULATED TRANSACTION LISTING, G/L Date Range 08/01/20 - 08/31/20 (as of 9/16/2020)

G/L Date	Journal Number	Sub Ledg	Name	Net Amount	Description
<b><u>FUND 860 - OPERATING FUND</u></b>				<b>Beginning Balance</b>	<b>\$ 2,465,363.50 TB</b>
08/01/20	2020-0000359	GL	Cost Allocation - DEDA	(33,333.33)	Cost Allocation - DEDA
08/03/20	2020-00005550	AP	Beauty Lawn Care Service	(110.00)	Lawn Care 6/11 6/30
08/03/20	2020-00005550	AP	Duluth Public Utilities - Comfort Systems	(822.15)	335 W Superior St 5/30-6/29/20
08/03/20	2020-00005550	AP	Ehlers and Associates Inc	(375.00)	C19-860-902-Economic development and TIF professional services
08/03/20	2020-00005550	AP	LHB Engineers & Architects	(4,375.50)	L30321 - Demolition of RR Bridge L8493 - Oneota St
08/04/20	2020-00005626	RA	Pay Group Oreilly	437.09	DEDA Lease Payment
08/14/20	2020-00005889	RA	Duluth Seaway Port Authority	2,500.00	August Lot D rent
08/17/20	2020-00005876	AP	Duluth Public Utilities - Comfort Systems	(822.15)	335 W Superior St 6/30-7/29/20
08/17/20	2020-00005876	AP	Duluth News Tribune	(30.00)	DEDA Ad 8/3/20
08/17/20	2020-00005876	AP	Duluth News Tribune	(30.00)	DEDA Ad 8/3/20
08/17/20	2020-00005913	RA	Red Wagon Popcorn LLC	1,920.85	July 2020 Rent payment
08/17/20	2020-00005913	RA	Interstate Parking	78,040.82	Parking Revenue
08/19/20	2020-00005977	RA	Passport Labs	4,080.14	July Mobile Phone Parking Meter Payments 8-18
08/19/20	2020-00005977	RA	MN State MMB	179,500.00	Land Sale
08/31/20	2020-00006215	AP	Duluth News Tribune	(100.80)	2019 TIF District Legal Ad
08/31/20	2020-00006215	AP	Minnesota State Auditor	(1,368.00)	Audit Service DEDA 4/15-7/21/20
08/31/20	2020-00006255	RA	Red Wagon Popcorn LLC	50.00	July 2020 Electrical Usage
08/31/20	2020-00006287	GL	Investment Earnings for August	1,824.00	Investment Earnings for August
<b><u>FUND 860 - OPERATING FUND</u></b>				<b>Ending Balance - 8-31-2020</b>	<b>2,692,349.47 TB</b>
<b><u>FUND 861 - DEBT SERVICE</u></b>				<b>Beginning Balance</b>	<b>1,413,259.51 TB</b>
08/31/20	2020-00006215	AP	A & L Duluth Renaissance LLC	(14,757.20)	1st Half 2020 TIF
08/31/20	2020-00006215	AP	Central Hillside Development LLP	(7,089.09)	1st Half 2020 TIF
08/31/20	2020-00006215	AP	Glen Place Apartments Ltd	(44,342.83)	1st Half 2020 TIF
08/31/20	2020-00006215	AP	Garfield Business Park I LLC	(10,857.62)	1st Half 2020 TIF
08/31/20	2020-00006215	AP	Summit Management, LLC	(144,336.33)	1st Half 2020 TIF
08/31/20	2020-00006215	AP	Scottsdale Capital LLC	(160,801.00)	1st Half 2020 TIF
08/31/20	2020-00006215	AP	Chester Park View Note LLC	(99,092.00)	1st half 2020 TIF
08/31/20	2020-00006215	AP	NorShor Theatre LLC	(95,686.84)	1st Half 2020 TIF
08/31/20	2020-00006215	AP	NorShor Theatre LLC	(65,267.25)	1st Half 2020
08/31/20	2020-00006215	AP	Sherman Associates, Inc.	(119,608.55)	1st Half 2020 TIF
08/31/20	2020-00006287	GL	Investment Earnings for August	994.00	Investment Earnings for August
<b><u>FUND 861 - DEBT SERVICE</u></b>				<b>Ending Balance - 8-31-2020</b>	<b>652,414.80 TB</b>
<b><u>FUND 865 - CAPITAL PROJECTS</u></b>				<b>Beginning Balance</b>	<b>3,247,125.26 TB</b>
08/31/20	2020-00006287	GL	Investment Earnings for August	2,325.00	Investment Earnings for August
<b><u>FUND 865 - CAPITAL PROJECTS</u></b>				<b>Ending Balance - 8-31-2020</b>	<b>3,249,450.26 TB</b>
<b><u>FUND 866 - MRO FACILITY</u></b>				<b>Beginning Balance</b>	<b>785,309.97 TB</b>
08/31/20	2020-00006215	AP	Duluth Airport Authority	(300.00)	Lawn Mowing
08/31/20	2020-00006215	AP	Leo A Daly Company	(437.50)	D20-860-949 MRO Fire Suppression System Design
08/31/20	2020-00006255	RA	AAR Aircraft Services, Inc	7,791.30	Invoice #2020-00000065
08/31/20	2020-00006287	GL	Investment Earnings for August	562.00	Investment Earnings for August
<b><u>FUND 866 - MRO FACILITY</u></b>				<b>Ending Balance - 8-31-2020</b>	<b>792,925.77 TB</b>
<b><u>FUND 867 - STOREFRONT LOANS</u></b>				<b>Beginning Balance</b>	<b>239,768.27 TB</b>
08/13/20	2020-00005871	RA	North Shore Bank	660.42	DEDA July Payment Women in Construction
08/13/20	2020-00005871	RA	North Shore Bank	659.26	DEDA June Payment Women in Construction
08/19/20	2020-00005977	RA	Alerus Financial	1,037.10	DEDA WT
08/31/20	2020-00006287	GL	Investment Earnings for August	173.00	Investment Earnings for August
<b><u>FUND 867 - STOREFRONT LOANS</u></b>				<b>Ending Balance - 8-31-2020</b>	<b>242,298.05 TB</b>

## RESOLUTION 20D-60

### RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH DULUTH LINCOLN PARK1, LLC FOR THE DEVELOPMENT OF THE LINCOLN PARK FLATS MULTI- FAMILY RESIDENTIAL PROJECT

WHEREAS, Duluth Lincoln Park1, LLC (“Developer”), proposes to redevelop property located at the southwest corner of Superior Street and 21<sup>st</sup> Avenue West in Duluth, Minnesota into a multi-family residential facility with apartment units (the “Project”);

WHEREAS, DEDA has determined that it is reasonable and necessary to provide certain financial assistance to Developer in order to facilitate Developer’s plans for the Project and to that end, DEDA and Developer have negotiated a Development Agreement for the Project; and

WHEREAS, DEDA has approved the establishment of Tax Increment Financing District No. 33, a Redevelopment District (the “TIF District”) pursuant to Minnesota Statutes §§469.174 to 469.1794, as amended; and

WHEREAS, pursuant the terms of the Development Agreement, DEDA proposes to provide certain tax increment financing assistance to Developer consisting of a pay-as-you-go tax increment revenue note (the “TIF Assistance”) payable from the TIF District; and

WHEREAS, the TIF Assistance constitutes a business subsidy within the meaning of Resolution 18-0515R of the City of Duluth (the “Business Subsidy Resolution”) and Minnesota Statutes §§116J.993 through 116J.995 (the “Business Subsidy Act”), and the Development Agreement constitutes a “business subsidy agreement” under the Business Subsidy Resolution and a subsidy agreement pursuant to the Business Subsidy Act; and

WHEREAS, pursuant to the Business Subsidy Act, after a public hearing, if the creation or retention of jobs is determined not to be a goal, the wage and job goals may be set at zero; and

WHEREAS, DEDA on this same date held a duly noticed public hearing on the granting of a business subsidy to Developer pursuant to the Development Agreement and on setting the wage and job goals at zero in accordance with the Business Subsidy Act; and

NOW, THEREFORE, BE IT RESOLVED:

1. DEDA finds that the Development Agreement is in the best interests of the City and the welfare of its residents, and in accordance with the public

purposes and provisions of the applicable State and local laws and requirements under which the development will be undertaken.

2. DEDA hereby determines that the Project will enhance the economic diversity of the City and the City's tax base, enhance the quality of life of the City's residents by investing in neglected neighborhoods or business areas and stimulating the redevelopment of underutilized, blighted or obsolete land uses including demolition of commercial areas in the City and substandard structures, expand the City's tax base and realize a reasonable rate of return on the public investment; encourage the development of commercial areas in the City that result in higher quality development and private investment, and achieve development on a site which would not be developed without assistance.
3. DEDA hereby determines that the creation or retention of jobs is not a goal of the Project for purposes of the Business Subsidy Act, therefore, the wage and job goals may be and hereby are set at zero in the Development Agreement in accordance with the Business Subsidy Act.
4. DEDA hereby authorizes the proper DEDA officials to enter into a Development Agreement with Developer substantially in the form of that attached hereto (DEDA Contract No. 20-860-\_\_\_\_), together with any related documents necessary in connection therewith.
5. DEDA staff, officials and consultants are authorized to implement the terms of the Development Agreement as provided therein and carry out DEDA's obligations under the Development Agreement.

Approved by the Duluth Economic Development Authority this 23<sup>rd</sup> day of September 2020.

ATTEST:

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Executive Director

#### STATEMENT OF PURPOSE:

This resolution authorizes a Development Agreement with Duluth Lincoln Park1, LLC for the development of the Lincoln Park Flats project located at the southwest corner of Superior Street and 21<sup>st</sup> Avenue West. The project will be located on property currently occupied by the building that previously housed the Robert's Home Furniture store and a

parking lot to the west of that building. The area will be designated as Tax Increment Financing District No. 33, a Redevelopment District. DEDA Resolution 20D-61 accompanying this resolution will create the District and a resolution approving the creation of TIF District No. 33 will be on the September 28, 2020, City Council agenda.

The Development Agreement provides for the demolition of existing, blighted structures and new development by Developer of a multi-family residential development with not less than 74 studio, 1-bedroom and 2-bedroom apartments; not less than 23 of which will be occupied by households at 80% or less of area median income. The project includes approximately 41 indoor parking stalls under the structure and approximately 44 outside, on-grade parking stalls on the property together with related utilities, landscaping, and other amenities at a total development cost of approximately \$13,800,000. DEDA will provide 90% of the TIF generated by the project up to \$2,350,000 plus interest at the rate of 4.25% to pay for Eligible Costs on a pay-as-you-go basis. The term of the TIF Note is for a period of twenty six (26) years from the date of receipt by DEDA from the St. Louis County Auditor's Office of the first payment of Captured Tax Increment, or until the principal and interest on the TIF Note has been paid in full, whichever is sooner.

Tax base impact statement: The current market value (2020, payable 2021) of the properties located in TIF District 33 is \$585,000 and the property is generating \$10,950 in net tax capacity. After the improvements are completed, the taxable market value will increase to approximately \$8,510,000. After the TIF District is terminated, the development is anticipated to generate over \$106,375 per year in net tax capacity, based on the County Assessor's valuation of the completed property, not including inflation, the proceeds of which will be distributed to the taxing jurisdictions).

**DEVELOPMENT AGREEMENT  
DULUTH ECONOMIC DEVELOPMENT AUTHORITY  
DULUTH LINCOLN PARK1 LLC  
LINCOLN PARK FLATS PROJECT**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "DEDA", and DULUTH LINCOLN PARK1 LLC, a Minnesota limited liability company, hereinafter referred to as "Developer".

WHEREAS, Developer is acquiring certain Property, hereinafter described, and the buildings located thereon, which Property is located at the southwest corner of Superior Street and 21<sup>st</sup> Avenue West and has proposed to develop the Project as hereinafter described which includes the demolition of the existing buildings and the construction on said Property of not less than 74 apartment units, not less than 23 of which will be available for rent to persons having an income at or below 80% of the area median income and a combination of in-door and on-grade parking totaling approximately 85 spaces; and

WHEREAS, portions of said Property are contaminated by various environmental contaminants which will require remediation, increasing the cost of the Project and rendering it potentially financially infeasible without public assistance; and

WHEREAS, DEDA has applied for and received a grant from the Minnesota State Department of Employment and Economic Development in the amount of \$134,946 to assist DEDA and Developer in remediating said Property, contingent on the Project proceeding; and

WHEREAS, Developer has requested assistance from DEDA for acquisition of the Property, demolition of the existing buildings, site preparation and infrastructure costs and other costs eligible for public financing related to the redevelopment of said Property and the development of said Project as is hereinafter set forth since, without

such assistance, the Project would not be economically viable; and

WHEREAS, DEDA has further determined that the interests of the citizens of the City of Duluth and the wellbeing and quality of life in the City of Duluth would be enhanced by nurturing and encouraging the development of the Project; and

WHEREAS, after careful analysis of the projected costs of the Project and of the financial resources available and economic feasibility of such funding to pay for the costs of the Project described herein, DEDA has determined that:

- A. a "gap" exists between the cost to Developer of the Project and the funds presently available to or known to Developer and DEDA to be available to finance those costs at rates that would make the Project economically feasible as hereafter described, which gap, based on the best currently-available estimates, is at least \$2,350,000;
- B. without the tax increment assistance to be provided pursuant to this Agreement, the cost of developing the Project would be more than can be supported by the amounts that are reasonable to be charged for the rental and the available resources would be inadequate to fund the development of said Project on a financially feasible basis and that therefore, but for the tax increment assistance to be provided for hereunder, the Project could not reasonably be expected to be constructed in the foreseeable future; and
- C. the increased market value of the Property that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from the Project after subtracting the present value of the projected tax increment for the duration of this Agreement.

WHEREAS, the public purpose of the tax increment assistance to be provided pursuant to this Agreement is to stimulate the redevelopment of underutilized, blighted or obsolete land uses including demolition of substandard structures, to encourage the development of residential rental housing, especially low and moderate income housing, in an area of the city that is in dire need of such housing, to achieve development on property which would not be redeveloped without assistance, and to enhance and

diversify the tax base of the City of Duluth; and

WHEREAS, the Property is located in a redevelopment district within the meaning of Minnesota Statutes §469.174 et. seq. (Tax Increment Financing District No.33).

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## **ARTICLE I**

### **Definitions**

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

- A. Available Tax Increment means 90% of the Captured Tax Increment in the six (6) month period preceding each Scheduled Payment Date, as defined in the TIF Note.
- B. Certificate of Completion: means a written certification executed by the Director in recordable form certifying that the construction of the Project in conformance with the Plans has been totally completed and that the remediation work described in Article II below has been totally completed in accordance with the Remediation Plans.
- C. Captured Tax Increment: means all real estate taxes resulting solely from the payment of real estate taxes on the Original Captured Net Tax Capacity, as defined in Minnesota Statutes Section 469.74, Subd, 4, of the Property resulting from the Project remitted to DEDA by the St. Louis County Auditor and received by DEDA.
- D. City means the City of Duluth.
- E. Director means the Executive Director of DEDA or such person or persons designated in writing by said Director to act on behalf of him/her with regard to this Agreement or any portion thereof.

- F. DEED: shall mean the Minnesota State Department of Employment and Economic Development.
- G. DEED Grant: means that DEED Contamination Cleanup Grant bearing grant no. CCGP-20-0002-Z-FY20 in the amount of \$134,946 received by DEDA to assist in funding the environmental remediation of the Property as described in Article III below in furtherance of the Project.
- H. Eligible Project Costs means those costs as set forth in Exhibit A which may be legally funded with tax increment proceeds under Minnesota Statutes §469.174 et. seq. and case law. The current estimate of Eligible Project Costs is approximately \$2,408,150.
- I. ESA II: means the Phase II Environmental Site Assessment of the Property performed by Environmental Troubleshooters, Inc. dated January 7, 2020, a copy of which is on file in the office of the Director.
- J. MPCA: means the Minnesota State Pollution Control Agency.
- K. Plans: means the plans, specifications and elevations for the Project together with detailed site grading, utility and landscaping plans and elevations for the Project as approved pursuant to Article VI below. The remediation work covered by Article III below shall not be included in the Project.
- L. Project means the development on the Property by Developer of not less than 74 residential apartment units totaling approximately 53,000 square feet in size, not less than 23 of which will be available for rent to persons having an income at or below 80% of the area median income, 41 in-door parking stalls under the apartment development and approximately 44 outside, at-grade parking stalls, together with related utilities, landscaping and other amenities, all at a cost of not less than \$13,800,000, and all according to the plans approved by the Director pursuant to Article VI and pursuant to required City approvals.
- M, Project Costs: shall mean the sum of the Eligible Costs and in addition those costs of the Project described in Exhibit B attached hereto and made a part hereof.
- N. Property means that Property located in St. Louis County, Minnesota, described on Exhibit C attached hereto and made a part hereof.

- O. Remediation Plans: means the plans and specifications for the remediation of the environmental contamination on the Property identified by the ESA II, as such plans and specifications have been approved by the Director and DEED.
- P. TIF Act means Minnesota Statutes, Sections 469.174 through 469.179, as the same may be amended from time to time.
- Q. TIF District No. 33 means DEDA's Tax Increment Financing District No.33.
- R. TIF Note means a limited revenue tax increment financing note ("pay-as-you-go" note) to be issued by DEDA to the Developer pursuant to Article IX of this Agreement in substantially the form of that attached hereto as Exhibit D.
- S. TIF Plan means the Tax Increment Financing Plan for TIF District No. 33 authorized in accordance with the TIF Act, which TIF Plan is on file in the office of the Director.

## **ARTICLE II**

### Application Fee and Reimbursement of Consultant Costs

In consideration of the financial assistance provided by DEDA to Developer pursuant to the terms of this Agreement, Developer has paid to DEDA a non-refundable application fee of Three Thousand and No/100 Dollars (\$3,000.00). Additionally, Developer agrees to reimburse DEDA upon invoice for services of Ehlers & Associates, Inc. to perform a "but for compliance test" for the Project and to prepare and process the TIF Plan in an amount up to, and not to exceed, Eighteen Thousand and no/100ths Dollars (\$18,000).

## **ARTICLE III**

### Property Remediation

- A. Grant—General: DEDA has applied for and has been awarded the DEED Grant to fund a portion of the anticipated cost of remediating the environmental contamination on the Property identified in the ESA II. Subject to receipt thereof from DEED and acceptance thereof by DEDA, DEDA agrees to use the funds received by it from the DEED Grant to reimburse the Developer for the costs of

said site remediation subject to the terms and conditions set forth in this Agreement and particularly this Article thereof.

- B. Remediation Obligation: Prior to the issuance of the Certificate of Completion as provided for in Paragraph D of Article VII below, Developer shall have caused the Property to be remediated of all contaminants identified in the ESA II in conformance with the requirements of this Agreement and the applicable standards of the MPCA.
  
- C. Remediation Plans: Not less than thirty (30) days prior to the commencement of any remediation work under this Article, Developer shall have submitted the Remediation Plans, prepared by Environmental Troubleshooters, Inc. or another environmental engineering firm approved by the Director, to the Director for the Director's review and approval. The Remediation Plans shall conform to all applicable laws, rules and regulations of the Federal Environmental Protection Agency, the State of Minnesota including those of DEED and the MPCA, and the City. Developer shall be responsible for obtaining all necessary approvals of and permits for the Remediation Plans and the work to be performed to implement them. If the Director determines that the Plans fail to meet the requirements of this Agreement, the Director shall promptly notify the Developer of that determination along with the reasons therefore and Developer shall promptly make any necessary and appropriate modifications so the Remediation Plans to correct any identified deficiencies. The process of review, approval and modification shall continue until the Director approves the Remediation Plans.
  
- D. Remediation Work: Upon approval of the Remediation Plans as provided for in Paragraph C above, Developer shall award a contract for the remediation of the Property in accordance with the approved Remediation Plans to a contractor with a proven track record of performing such work in conformance with all federal, state and City requirements. Said contract shall further require such contractor to comply with all applicable federal, state and local laws, ordinances and regulation including but not limited to the federal Hazardous Waste Operations

and Emergency Response Standards (29 CFR 1910.120 and 29 CFR 1926.65). Upon total completion of all of the work required under the Remediation Plans, Environmental Troubleshooters, Inc. or another environmental consultant approved by the Director shall provide a certification thereof to the Director in a form acceptable to the Director in the exercise of the Director's discretion.

- E. Reimbursement of Costs: Upon receipt by the Director of the certification provided for in Paragraph D above and the provision of the following documentation, City will reimburse Developer for Seventy-five (75%) Percent of the cost of the work as set forth in Paragraph D above and as are eligible for reimbursement under the terms of the Grant; provided that such reimbursement amount shall not exceed \$134,946. Before being entitled to such reimbursement Developer shall have supplied complete and thorough documentation of said cost along with proof of payment thereof along with such supporting documentation as the Director may reasonably request in the exercise of the Director's discretion. Upon receipt of the required documentation that Director will promptly authorize the reimbursement of Developer for said portion of the costs of said work
- F. DEED Grant Requirements Incorporated and Controlling: It is understood by Developer that the reimbursement for the remediation of the Property provided for in this Article is funded by the DEED Grant. Therefore, Developer agrees that all of the terms and conditions of the DEED Grant are hereby incorporated by reference and shall be deemed to be controlling and an obligation of Developer except to the extent that said obligations can only be fulfilled by DEDA as the grantee. And to the extent that any such obligations can only be fulfilled by DEDA, Developer hereby agrees to provide any assistance in its power to assist DEDA in fulfilling such grant obligations. Further Developer agrees that the funds reimbursed to Developer under this Article are grant funds subject to the terms of the DEED Grant which cannot be used, treated or converted into any type of loan.

## ARTICLE IV

### Preconditions to Project Construction

Prior to the commencement of construction of the Project and as a precondition to the commencement thereof, Developer shall provide to DEDA the following items:

- A. Title. Proof reasonably satisfactory to DEDA that Developer owns the Property in fee simple.
- B. Construction Costs. Developer's certified estimate of the total cost of construction of the Project.
- C. Construction Contract. A copy of the executed contract between Developer and a general contractor necessary to complete the demolition of the structures on the Property and the construction of the Project in accordance with Plans approved pursuant to Article VI. Such construction contract shall provide that payments for the work thereunder are the sole obligation of Developer. Said contract shall include the requirement that said contractor agree to enter into a Project Labor Agreement conforming to the requirements of Article IV of Chapter 2 of the Duluth City Code, 1959, as amended and to conform to the Community Benefits Requirements as set forth in Exhibit E, attached hereto and made a part hereof and that the laborers, mechanics or apprentice-trainees employed in the construction of the Project to be paid the wage rates as provided in the federal Davis Bacon Act, as amended. Payroll for the construction trades must be submitted to the Director on a monthly basis. Said contract shall further require such contractor to comply with all applicable federal, state and local laws, ordinances and regulation including but not limited to the federal Hazardous Waste Operations and Emergency Response Standards (29 CFR 1910.120 and 29 CFR 1926.65).
- D. Construction Financing. Copies of loan commitments and other financing commitments obtained by Developer for the Project, the total of said commitments and any equity contribution to be in an amount not less than the total contract price between Developer and its general contractor as described in Paragraph C above.
- E. Survey. A survey of the Property performed by a Registered Land Surveyor

under the laws of the State of Minnesota.

- F. Vacations: Proof that the easement for Michigan Street between the westerly right-of-way line of 21<sup>st</sup> Avenue West and the westerly line of Lot 342, Block 38, all as platted on the Plat of DULUTH PROPER Second Division, on file in the office of County Recorder for St. Louis County, Minnesota, and the easement for slopes and fill on file in said Recorder's office as Document Number. 240925.0 have been legally vacated and that the vacations thereof have been duly filed and recorded in said Recorder's office.

## **ARTICLE V**

### **Minimum Assessment Agreement**

The parties agree to enter into an Assessment Agreement in the form of that attached hereto as Exhibit F and to use their best efforts to cause the St. Louis County Assessor to execute the same. Promptly upon execution of the Assessment Agreement, Developer agrees to record the Assessment Agreement in the office of the St. Louis County Recorder and/or Registrar of Title and to pay all costs associated therewith. Upon recordation, Developer shall promptly submit to DEDA an executed original of the Assessment Agreement showing the date and document numbers of record, or a certified copy of the filed original.

## **ARTICLE VI**

### **Project Plans**

- A. Plans, Specifications and Elevations. No less than thirty (30) days prior to the commencement of construction of the Project, or such lesser time as approved by the Director, Developer shall submit the Plans for the Project to the Director for approval. All such Plans shall be in conformance with this Agreement, with the schematic design previously submitted to the Director which shall consist of drawings and other documents illustrating scale and relationship of various Project components, and with all applicable laws, ordinances, rules, regulations and requirements of DEDA, the City, the State of Minnesota and the United

States of America. The Director shall review the Plans within fifteen (15) days of submission of the Plans by Developer. The Director's approval shall be provided to the Developer in writing. If the Director rejects the Plans in whole or in part as not being in compliance with the foregoing requirements, and upon notification to Developer of said rejection together with the reason or reasons therefor, Developer shall submit new or corrected Plans meeting said objections within fifteen (15) days of said notice. The provisions of this Paragraph relating to approval, rejection and resubmission of corrected Plans herein provided for with respect to the originally submitted Plans shall continue to apply until said Plans have been approved in writing by the Director. The Director's approval of Developer's Plans shall not constitute a guaranty that the Plans conform to the requirements of applicable building, zoning or other codes or ordinances or constitute a waiver of building code or zoning ordinance or other applicable codes or ordinances imposed in the future upon Developer by law. Developer expressly agrees to be solely responsible for all costs, including architectural fees connected with the Plans and any revisions thereto.

- B. Changes after Initial Approval. Any material or substantial changes made to Plans by Developer after initial review of the Director shall be submitted to the Director for approval in the same manner provided for in Paragraph A above.

## **ARTICLE VII**

### Construction

- A. Construction. Upon the fulfillment of the preconditions to construction provided for in Articles IV, V and VI above, but in no event later than April 30, 2021 (but subject to unavoidable delays as detailed in Article XXVI below), Developer shall commence construction of the Project in conformance with the plans approved pursuant to Article VI. Said construction work shall be completed not later than December 31, 2022 (subject to unavoidable delays as detailed in Article XXVI below). Notwithstanding the above, the construction period may be extended for up to ninety (90) days in addition to delays permitted pursuant to Article XXVI below upon the prior written approval of the Director.

- B. Developer to Bear All Costs. Except for payments by DEDA provided for in Article IX, Developer specifically agrees to bear all costs related to the construction of the Project and any modifications thereto.
- C. Progress Reports. Until construction of the entire Project and remediation of the Property as described in Article II above have been completed, Developer shall make reports in such detail and at such times as may reasonably be requested by the Director as to the actual progress of Developer with respect to the Project and said remediation. Additionally, upon reasonable notice, the Developer also agrees that it will permit DEDA access to the Property.
- D. Project Costs/Certificate of Completion. Promptly upon completion by Developer of the construction of the Project and the remediation of the Property in accordance with this Agreement and MPCA standards, Developer shall submit to the Director written evidence in a form satisfactory to the Director of Eligible Project Costs incurred and paid. Such evidence shall include, at a minimum, paid invoices, receipts, canceled checks, mechanic lien waivers or comparable evidence of payment of at least the amount of the Construction Contract, the costs of the remediation work provided for in Article II above and any other eligible Project costs claimed by Developer. DEDA and its representatives shall have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Developer relating to the Eligible Project Costs and the Project. Such records shall be kept and maintained by Developer for a period of six (6) years following the issuance of the Certificate of Completion. Upon furnishing by Developer of said written evidence of such costs and upon completion by Developer of the construction of the Project and said remediation work in accordance with this Agreement, DEDA through its Director shall within thirty days of written request from Developer furnish to Developer a Certificate of Completion in the form of that attached hereto as Exhibit G so certifying. A Certificate of Completion shall not be issued until all elements of the Project and said remediation have been completed. The Certificate of Completion shall constitute a conclusive determination of satisfaction of the construction obligations of Developer undertaken pursuant to this Agreement and may be

recorded against the Property.

## **ARTICLE VIII**

### **TIF Payment Obligations**

- A. Upon DEDA's issuance of the Certificate of Completion pursuant to Paragraph D of Article VII and the submission of the audit provided for in Paragraph B below, DEDA shall execute and deliver to Developer a Note in substantially the form of Exhibit D. The principal amount of the TIF Note shall be \$2,350,000 or the amount of documented Eligible Project Costs, whichever is less; provided that in the event that the Project Costs is less than \$13,800,000, the amount of the TIF Note will be further reduced by an amount equal to one-half (1/2) of the difference between \$13,800,000 and the amount of the Project Costs determined in the manner set forth in Paragraph B below.
- B. Upon completion of the construction of the Project, Developer shall cause an audit of the Project Costs to be prepared by a certified public accountant and submitted to DEDA. The Developer may select the certified public accountant to perform the audit but that person or entity shall be subject to the prior approval of the Director in writing.
- C. Pursuant to the TIF Plan, DEDA's first receipt of Available Tax Increment will be in 2023. Interest payable on the TIF Note(s) in the amount of 5% per annum shall start to accrue on the date of execution of the TIF Note. There shall be no accrual of interest on unpaid interest. As required by statute, the amount of Available Tax Increment shall not exceed the amount of Eligible Project Costs incurred, paid, or otherwise contracted for by the Developer.
- D. Developer acknowledges and agrees, as provided in the TIF Note, that payments under the TIF Note shall be bi-annual payments in the amount of the Available Tax Increment attributed to Property received by DEDA in the six months preceding each Scheduled Payment Date as defined in the TIF Note. There shall be no interest on unpaid interest as it accrues. DEDA shall not be obligated to make any payments except as provided in the TIF Note.

- E. The TIF Note(s) will be issued without registration under the State or federal securities laws pursuant to an exemption for such issuance; and, accordingly, the TIF Note(s) may not be assigned, transferred or pledged, in whole or in part, except as specifically set forth herein.
- E. DEDA's financial commitment for payment of the TIF Note under this Agreement is a revenue obligation only and will be paid by DEDA only out of Available Tax Increment. Developer acknowledges that DEDA makes no representations or warranties that the Available Tax Increment will be sufficient to pay Developer on the TIF Note. Developer acknowledges that Available Tax Increment is subject to calculation by St. Louis County and changes in state statute and that some or all of the amount of the TIF Note may not be paid and in such event, the amount of payments otherwise due to Developer under Paragraph A above shall be deemed upon termination of this Agreement to have been paid in full and DEDA shall have no further obligations for payments of said amounts.
- F. Developer acknowledges that the estimates of Available Tax Increment and tax projections, which may have been made by DEDA or its agents, officers or employees are estimates only, are made for the sole use and benefit of DEDA and are not intended for Developer's reliance. DEDA does not warrant that it will have throughout the term of this Agreement the continuing legal ability under State law to apply Available Tax Increment to the payment of the TIF Note.
- G. Notwithstanding anything to the contrary in this Agreement, the TIF Note may be assigned, transferred or pledged without the approval of DEDA; provided that notice of the assignment, transfer or pledge is provided to the Director along with a completed certificate of registration as contemplated under the TIF Note(s).

## **ARTICLE IX**

### Operating Covenants

Developer agrees that in its operations and use of the Property and the Project, in accordance with industry standards, Developer shall:

- A. Maintenance. At all times cause the Project and the Property to be operated and maintained in a neat, orderly condition, to maintain and preserve and keep in

good repair, working order and condition said Property and Project and to perform all needed and proper repairs, renewals and replacements necessary to be made thereto. 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, grass cutting and landscape maintenance, parking ramp cleaning, repair and striping and all other exterior maintenance to said Property and the Project.

- B. Rental Restriction: Developer agrees and commits that, during the Term of this Agreement as set forth in Article XVII below that at least twenty-three (23) of the apartment units in the Project will be rented to persons or families whose income is equal to or less than eighty (80%) percent of the area median income as determined annually by the United States Department of Housing and Urban Development.
- C. Utilities. Unless disputed, pay or cause to be paid any and all charges for utilities furnished to the Project and the Property including but not limited to hook-up charges and assessments related to all utilities, including but not limited to steam, water, sewer, gas, telephone, cable or satellite TV, and electrical power.
- D. Licenses and Permits. Preserve the existence and 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 to be qualified to do business in the State of Minnesota.
- E. Obey All Laws. 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 of the United States and the State of Minnesota including all laws related to unlawful discrimination and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Project and the Property; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity thereof shall be contested in good faith through proper legal action provided that

such protest shall in no way affect Developer's title to the Project and the Property.

- F. Payment of Taxes. 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 or the Property, subject to the right to contest in good faith in accordance with Minnesota law.
- G. Assessment Fees and Charges. Pay or cause to be paid when due or payable all special assessments levied upon or with respect to the Project and 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.
- H. Obligations and Claims. Promptly to pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against the Project and the Property as and when the same become due and payable other than any thereof whose validity, amount or collect ability is being contested in good faith by appropriate proceedings.
- I. Living Wage. Abide by the requirements of Article XXVI of Chapter 2 of the Duluth City Code, 1959, as amended (the "Duluth Living Wage Ordinance") to require those construction workers directly employed in the construction of the Project to be paid Prevailing Wage Rates as that term is defined in Section 2-25 of the Duluth City Code.

## **ARTICLE X**

### Provision against Liens, Assignments and Transfers

- A. Provision against Liens. Except for encumbrances permitted pursuant to this Article, the Developer shall not create or permit any mortgage or encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Project and the Property or any part thereof which would materially or adversely affect DEDA's interest in 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.

Notwithstanding the above, encumbrances in the nature of easements, licenses or the like, but not to include mechanic's or materialmen's lien, may be created or permitted after the issuance of a Certificate of Completion without the approval of DEDA.

- B. Transfers prior to Issuance of a Certificate of Completion. The parties hereto acknowledge that DEDA is relying upon the qualifications and identity of Developer to construct, operate and maintain the Project and the Property. Therefore, except for the purposes of obtaining financing as hereinafter described or as otherwise approved by this Agreement, prior to the issuance of a Certificate of Completion, Developer represents and agrees 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, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, the Project, Developer, 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 transfer of all or of a controlling interest in Developer to Ryan Nelson and Peter Pavlovich shall not constitute a violation of the provisions of this Paragraph and shall not require the prior approval of DEDA.
- C. Permitted Encumbrances. Notwithstanding anything in this Article to the contrary, Developer is authorized, without the approval of DEDA, to obtain construction and permanent financing for the Project and to mortgage the Project and Property to provide security for the construction and permanent financing. In addition, Developer is authorized to lease the apartment units to tenants at all

times without the approval of DEDA.

D. Transfers after Issuance of a Certificate of Completion.

Following the issuance of a Certificate of Completion, Developer may sell, convey or otherwise transfer the Property or any tract or parcel thereof with the prior written consent of DEDA, which consent shall not be unreasonably withheld, provided the following has been satisfied:

1. Thirty days' prior written notice of the transfer is provided to the Director.
2. The transferee shall agree by affidavit to comply with all the terms and conditions of this Agreement not otherwise extinguished by the completion and Certification of Construction of the Project. The affidavit shall comply with the terms of this Paragraph 2 and shall be provided to the Director.
3. Notwithstanding the above transfer, the payment of the tax increment pursuant to Article IX shall be made to the Registered Owner of the Note.

Failure to comply with the requirement of subsection 1 and 2 above shall be an event of default under this Agreement.

E. Modification; Subordination. In the event any portion of the Developer's funds is provided through mortgage financing, subject to the following, DEDA agrees to subordinate its rights under this Agreement to the holder of any mortgage securing construction or permanent financing, in accordance with the terms of a subordination agreement in a form reasonably acceptable to DEDA and such holder. Provided, however, that the form of any such subordination shall specifically require that in the event that the holder of any such mortgage and/or any successor in interest thereto becomes the owner of the Property, such holder or successor in interest shall continue to operate the Project in a manner which continues to provide not less than 23 residential apartment units which are made available for rent to persons having an income at or below 80% of the area median income for the Term of this Agreement.

## **ARTICLE XI**

### Indemnification

A. Generally. Developer shall, to the fullest extent permitted by law, protect,

indemnify and save DEDA and the City and their officers, agents, servants, employees and any person who controls DEDA 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 arising from:

1. Any injury to or death of any person or damage to property in or upon the Project or the Property, or growing out of or in connection with the use or non-use, condition or occupancy of the Project or the Property or any part thereof and also, without limitation, the construction or installation of the Project or any portion of the Project. 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 Developer, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.
2. Any violation by Developer of any provision of this Agreement.
3. Any violation of any contract, agreement or restriction related to the Project or the Property which shall have existed at the commencement of the term of this Agreement or shall have been approved by Developer; or
4. Any violation of any law, ordinance, court order or regulation affecting the Project or the Property, or the ownership, occupancy or use thereof.

B. Environmental Indemnification. In addition to the generality of the above, Developer hereby agrees that for itself, its successors and assigns that it will indemnify and save DEDA and the City and their officers, agents, servants and employees and any person who controls DEDA or the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition existing in the Project or on the Property, whether pre-existing or after-created, which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the

government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Project or on the Property, or the release or threatened release of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property, and that indemnification granted hereby shall include all costs of clean-up and remediation and response costs, together with the costs incurred in proceedings before a court of law or administrative agency including attorneys' fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing in the Project or on the Property.

- C. Indemnification Procedures. Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Developer is required to indemnify DEDA or the City under this Article, DEDA shall notify Developer in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, Developer shall assume the defense of such action, including the employment of legal counsel satisfactory to DEDA or the City and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA or the City with respect to which indemnity may be sought against Developer, DEDA and the City 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.
- D. Exceptions to Indemnification. In no event shall Developer be required to indemnify DEDA or the City under this Article for liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising solely from the negligent or intentional misconduct of DEDA or the City or their officers, agents, servants,

employees.

## ARTICLE XII

### Insurance

Developer shall provide for purchase and maintenance of such insurance as will protect Developer, DEDA and the City against risk of loss or damage to the Project and the Property and any other property permanently located or exclusively used at the Project site and against claims which may arise or result from the maintenance and use of the Project, including operations conducted in connection with construction of improvements thereupon. Such coverages shall include but shall not necessarily be limited to the following:

- A. Insurance during Construction. Developer, prior to entering on the Property for construction work, shall procure or cause to be procured and maintain or require all contractors to procure and maintain the following insurance at not less than the limits of coverage or liability indicated during the period of construction as follows:
  1. Property Insurance. Developer shall provide "All Risk" builder's risk insurance under a completed value form 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, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the Project and the Property, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Project and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force.
  2. Public Liability Insurance. Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Insurance and Automobile Liability Insurance Form with "Broad Form" property

damage liability coverage, with XCU exclusion removed, in limits of not less than \$2,000,000 aggregate per occurrence for personal injury, bodily injury and death, and limits of \$2,000,000 for property damage liability. If per person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. DEDA and the City shall be named as additional insureds on the Commercial General Liability Insurance and Automobile Liability Insurance policies. Contractor shall also require such liability coverage of its subcontractors unless they be insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

- a. Contractors public liability--premises and operations;
- b. Independent contractors' protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnify provisions;
- f. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employers' liability coverage shall be maintained in limits of \$100,000 per employee.

B. Permanent Insurance. Developer shall procure and continuously maintain, except as otherwise provided below, 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 ownership of, occupancy of or use of the Project and the Property, carried in the name of Developer as follows:

1. Property Insurance. Prior to expiration of the buildings' risk coverage specified above, the Project and the Property, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a deductible amount not to exceed \$50,000 per occurrence. For the purposes hereof, "all risk" means insurance

equivalent in scope to protect against all risks of direct physical loss ordinarily insured against in the region. Developer and DEDA hereby mutually waive any and all claims or causes of action against the other party for damages caused by an insured peril hereunder, except such rights hereinafter set forth to an interest in the insurance proceeds payable in the event of such loss.

2. Liability Insurance. During the construction period (unless covered under the policies required previously) and permanently thereafter for the balance of the term of this Agreement, Developer shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Commercial General Liability Insurance and Automobile Liability Insurance Form in limits of not less than \$2,000,000 per occurrence for personal bodily injury and death, and limits of \$2,000,000 for property damage liability. If person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. DEDA and the City shall be named as additional insureds therein. Insurance shall cover:
    - a. Public liability, including premises and operations coverage;
    - b. Independent contractors--protective contingent liability;
    - c. Personal injury;
    - d. Owned, non-owned and hired vehicles;
    - e. Contractual liability covering the indemnity obligations set forth herein;
    - f. Products--completed operations.
  3. Workers' Compensation. Workers' Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law, and evidence of such qualification is furnished to DEDA. Employees' liability insurance shall be carried in limits of \$100,000 per employee.
- C. Modification of Insurance Requirements. It is agreed between the parties that DEDA shall have the right to modify the forms of the insurance provided for in

Paragraphs A and B above and the limits set forth with regard thereto provided that any such modification and policy forms or limits shall be of such a character and in such amounts as are reasonably necessary to provide DEDA with the types and amounts of protection provided for in this Agreement at the time of its execution. In the event that DEDA shall desire to so modify said insurance requirements, DEDA shall notify Developer of the proposed modifications not less than sixty (60) days prior to the date set by DEDA for said modifications to go into effect.

- D. Requirements for All Insurance. All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in Minnesota.
- E. Certifications. Developer shall be required to supply to DEDA written certifications of insurance requiring the insurer to give DEDA thirty (30) days' written notice prior to cancellation or modification of said insurance for any reason other than non-payment of premium and ten (10) days' written notice prior to cancellation for non-payment of premium of said insurance.
- F. Reconstruction Obligation and Uninsured Loss. In the event the Project or any portion thereof is destroyed by fire or other casualty, Developer shall forthwith repair, reconstruct, and restore the improvements to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction, or construct improvements in a manner which meets the minimum assessment valuation requirements of the Assessment Agreement and which is approved by DEDA, such approval which shall not be unreasonably withheld, and to the extent necessary to accomplish such repair, reconstruction, restoration, or construction, Developer shall apply the proceeds of any insurance received by Developer to the payment or reimbursement of the costs thereof. Developer shall, however, complete the repair, reconstruction and restoration of the improvements whether or not the proceeds of any insurance received by Developer are sufficient to pay for such repair, restoration, and reconstruction.
- G. Reconstruction Obligation Contingency Nothing to the contrary in Paragraph F

above, in the event that the Project is substantially or totally destroyed and the parties agree in good faith that under present economic or social conditions the Project is no longer economically viable or does not constitute the highest and best use of the Property, the parties hereby commit to meet and confer in good faith to determine the use of the Property which will be of greatest economic, social and practical use to the Developer, to the City, to DEDA and to the Lincoln Park business district and use their best efforts to negotiate an amendment of this Agreement to implement that use and to apply the proceeds of any insurance to implementation of that use.

### **ARTICLE XIII**

#### **Defaults and Remedies Therefor**

- A. Developer's Default. The following shall be deemed to be events of default by Developer under the terms and conditions of this Agreement to which the remedies set forth in Section B below shall be applicable.
1. Developer shall fail to pay real estate taxes as and when due and payable.
  2. Developer shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it pursuant to this Agreement and such failure shall continue for a period of 30 calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to Developer of such default or, in the event that such default shall be incapable of cure with reasonable diligence during said 30 day period, shall have failed to commence to cure said default within 30 days of the date of said notice and to diligently pursue the same to completion.
  3. Developer shall permit valid liens, not cured or contested within thirty 30 days, to be placed on the Project or the Property or Developer loses title to the Project or the Property or both.
  4. Developer makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency is made as to Developer or its business; or

Developer files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similar action under any present or future bankruptcy or insolvency, statute, law or regulation; or Developer files an answer admitting to or not contesting to the material allegations of a petition filed against it in such proceeding or fails to have dismissed or vacated within sixty (60) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of Developer's properties or fails to have dismissed or vacated within sixty (60) days after the appointment without the consent or acquiescence of Developer of any trustee, receiver or liquidator of any material part of Developer's properties.

B. DEDA's Remedies for Developer's Defaults. DEDA shall have the following remedies in the event of a default:

1. Terminate this Agreement or the TIF Note or both.
2. Withhold the performance of any obligation owed by DEDA under this Agreement or the TIF Note or both.
3. Seek and be entitled to monetary damages for any damages incurred by DEDA as a result of a default.
4. Cease making payments under this Agreement and the TIF Note of Available Tax Increment as defined in the TIF Note.
5. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent violation of the terms and conditions of this Agreement or to compel Developer's performance of its obligations hereunder.
6. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.

C. Non-Waiver. The waiver by DEDA of any default on the part of Developer 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 of any other obligation of Developer under this Agreement. To be effective, any waiver of any

default by Developer hereunder must be in writing by the Director.

- D. Default by DEDA. The failure of DEDA to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, and the continuation of such failure for a period of thirty (30) days after written notice of such failure from any party hereto shall be an event of default by DEDA. Whenever an event of default occurs by DEDA, Developer shall be entitled to all remedies available at law or equity, and Developer may take whatever action, including legal, equitable, or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.
- E. Remedies Cumulative. The remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.
- F. Attorneys' Fees. In the event that either party is in default of any of the terms and conditions of this Agreement and the non-defaulting party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, the non-defaulting party shall be entitled to reimbursement for its reasonable attorneys' fees and costs and disbursements occasioned in enforcing its rights hereunder.

#### **ARTICLE XIV**

##### Representations by DEDA

DEDA makes the following representations as the basis for the undertaking on its part herein contained:

- A. It is a lawfully constituted economic development authority under the laws of the State of Minnesota, it is not in material violation of any provisions of State law and it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- B. There are not actions, suits or proceedings pending, or to the knowledge of

DEDA, threatened against DEDA or any property of DEDA in any court or before any federal, state, municipal or governmental agency which, if decided adversely to DEDA, would have a material adverse effect upon DEDA or any business or property of DEDA and DEDA is not in default with respect to any order of any court or government agency.

- C. DEDA will perform all of its obligations under this Agreement.
- D. Based on reasonable knowledge and belief, DEDA believes that the Project contemplated by this Agreement is in conformance with the development objectives set forth in the TIF Plan.
- E. As of the execution of this Agreement, the City and DEDA have approved the TIF Plan in accordance with the requirements of the TIF Act.

## **ARTICLE XV**

### Developer's Representations and Warranties

Developer represents and warrants that:

- A. The Developer is a Minnesota limited liability company duly organized and authorized to transact business in the State, it is fully competent to acquire the Property and to construct the Project thereon, it is not in violation of any provisions of its articles of organization, member control agreement, or the laws of the State, it has the power to enter into this Agreement, and has duly authorized the execution, delivery and performance of this Agreement by proper action of its members.
- B. Developer will perform all of its obligations under this Agreement. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of the terms, conditions, or provisions of any agreement or instrument of whatever nature to which the Developer is now a party or by which Developer is bound, or constitutes a default under the foregoing.
- C. No actions, suits, or proceedings are pending or, to the knowledge of Developer, threatened against Developer or any property of Developer in any court or before any federal, state, or municipal or other governmental agency that, if decided

adversely to Developer, would have a material adverse effect upon Developer, the Property, or the Project, and Developer is not in default of any order of any court or governmental agency which, if decided adversely to Developer, would have a material adverse effect upon the Property or the Project.

- D. The Developer shall be responsible for constructing the Project in accordance with the terms of this Agreement and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations, and federal Davis-Bacon). The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.
- E. Developer is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been incurred.
- F. Developer shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to DEDA or any third party under this Agreement to be true, correct, and complete in all material respects.
- I. That without the assistance to be provided by DEDA hereunder, Developer's cost of constructing the Project would be more than can be supported by the amounts that are reasonable to be charged for the rental and the available resources would be inadequate and not economically feasible to construct the Project and that, therefore, but for the DEDA assistance to be provided for hereunder, the Project would not be economically feasible for Developer; and Developer would not have developed the Project and operated the same in the reasonably foreseeable future.

## **ARTICLE XVI**

### Term

The term of this Agreement shall commence on the date first shown above and

shall continue for a period of 26 years from the date of receipt by DEDA from the St. Louis County Auditor's Office of the first payment of Captured Tax Increment unless changes in law prevent DEDA from any receipt of further payments of Captured Tax Increment in which event the Agreement is terminated, or unless this Agreement is otherwise terminated as provided for herein. Termination shall not terminate any indemnification provisions or any other provisions which by their nature survive termination and shall not terminate any other rights or remedies arising under this Agreement due to any event of default which occurred prior to such termination.

## **ARTICLE XVII**

### Agreement Personal to Parties

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties to the extent assignment is permitted hereunder. This Agreement shall run with the land.

## **ARTICLE XVIII**

### 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:       DEDA  
Room 402 City Hall  
411 West First Street  
Duluth, MN 55802  
Attn: Director

In the case of Developer:  
Duluth Lincoln Park1 LLC.  
4180 Napier Court NE  
St. Michael, MN 55376  
Attn: David Stradtman

With copy to:           Larkin Hoffman Daly & Lindgren Ltd.  
8300 Norman Center Drive, Suite 1000  
Minneapolis, MN 55437  
Attn: Ryan N. Boe

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this section.

## **ARTICLE XIX**

### **Recordation**

Immediately upon execution of this Agreement, Developer agrees to record this Agreement in the office of the St. Louis County Recorder and/or Registrar of Title and to pay all costs associated therewith. Upon recordation, Developer shall immediately submit to DEDA an executed original of the Agreement showing the date and document numbers of record, or a certified copy of the filed original.

## **ARTICLE XX**

### **Disclaimer of Relationships**

Developer acknowledges that nothing contained in this Agreement nor any act by the City, DEDA or the Developer shall be deemed or construed by Developer or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between DEDA, Developer and/or any third party.

## **ARTICLE XXI**

### **Applicable Law**

This Agreement together with all of its Articles, paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in Duluth, Minnesota.

## **ARTICLE XXII**

### Judicial Interpretation

Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or attorney prepared the same, it being agreed that the agents and attorneys of both parties have participated in the preparation hereof.

## **ARTICLE XXIII**

### Authorization to Execute Agreement

Developer represents to DEDA that the execution of this Agreement has been duly and fully authorized by its governing body or board, that the officers of Developer who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement when thus executed by said officers on its behalf will constitute and be the binding obligation and agreement of Developer in accordance with the terms and conditions thereof.

## **ARTICLE XXIV**

### Title of Articles

Any title, Articles and Sections in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

## **ARTICLE XXV**

### Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

## **ARTICLE XXVI**

### **Unavoidable Delays**

Neither party shall be held responsible for, and neither party shall be in default of this Agreement as a result of, delay or default caused by fire, riot, acts of God, war, government actions, judicial actions by third parties, labor disputes, pandemics or adverse weather conditions, except for delays caused by government and judicial actions which could have been avoided by compliance with publicly available laws, rules and regulations of which either party had knowledge or should have reasonably had knowledge.

## **ARTICLE XXVII**

### **Entire Agreement**

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

## **ARTICLE XXVIII**

### **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





## Lincoln Park Flats

### **Exhibit A- Eligible Costs**

1. Site Acquisition: \$655,000
2. Site preparation (demolition, earthwork, site utilities): \$768,000
3. Providing parking facilities: \$985,150
  - a. Concrete work: \$255,150
  - b. Precast concrete (post, beam, and plank): \$350,000
  - c. Blockwork and Brickwork for podium level parking area: \$380,000

**Total = \$2,408,150**

Lincoln Park Flats  
**Exhibit B- Project Costs**

Land Acquisition

Construction/Development

Municipal Fee/SAC/WAC

Survey

Architectural/Engineering

Soils& Environmental

Title

Legal Costs

Market Studies

Taxes

Insurance

Furniture, Fixtures, Equipment

Pre-opening Marketing

Financing/Interest/LOC Fees

Lincoln Park Flats

**Exhibit C- Property Description**

Lot 338, Block 38, Duluth Proper Second Division, St. Louis County, Minnesota.  
Torrens Property-Torrens Certificate No. 238921.0.

Lot Three Hundred Forty (340), in Block Thirty-eight (38), Duluth Proper Second  
Division, according to the plat thereof, St. Louis County, Minnesota.  
Abstract Property

Lot Three Hundred Forty-two (342), in Block Thirty-eight (38), Duluth Proper Second  
Division, according to the plat thereof, St. Louis County, Minnesota.  
Abstract Property

Lot 344, Block 38, Duluth Proper Second Division, St. Louis County, Minnesota.  
Torrens Property- Torrens Certificate No. 240925.0.

Lot 346 EXCEPT the W'ly 40 feet thereof Block 38, Duluth Proper Second Division, St.  
Louis County,  
Minnesota.  
Torrens Property-Torrens Certificate No. 328213.0.

## EXHIBIT D

### CERTIFICATE OF COMPLETION

#### RECITALS:

A. On \_\_\_\_\_, 2020, the Duluth Economic Development Authority, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 (“DEDA”), and DULUTH LINCOLN PARK1, LLC, a Minnesota limited liability company (“Developer”), entered into a Development Agreement, which agreement was recorded in the Office of the St. Louis County Registrar of Title on \_\_\_\_\_, 2020, as Document No. \_\_\_\_\_ (the “Development Agreement”), relating to property located in St. Louis County, Minnesota, and legally described in the attached Exhibit A (the “Property”).

B. Capitalized terms used in this Certificate of Completion but not defined herein shall have the meanings ascribed to them in the Development Agreement.

C. Paragraph D of Article VII of the Development Agreement provides that a Certificate of Completion be issued by DEDA’s Executive Director upon, among other things, completion by Developer of the construction of the Project in accordance with the Development Agreement.

D. Developer has completed construction of the Project in a manner deemed sufficient by DEDA to permit execution and recording of this Certificate of Completion.

#### NOW, THEREFORE:

1. Construction of the Project required to be performed by Developer pursuant to the Development Agreement with respect to the Property, has been completed, and those requirements under the Development Agreement which relate solely to construction obligations of the Project have been fulfilled, but all other conditions and restrictions contained in the Development Agreement shall remain in effect.

2. The Registrar of Titles in and for St. Louis County, Minnesota, are hereby authorized to accept for recording and to record this instrument.



## **CERTIFICATE OF COMPLETION**

### **EXHIBIT A**

#### **Legal Description of Property**

That real property legally described as follows:

Lot 338, Block 38, Duluth Proper Second Division, St. Louis County, Minnesota.  
Torrens Property-Torrens Certificate No. 238921.0.

Lot Three Hundred Forty (340), in Block Thirty-eight (38), Duluth Proper Second Division, according to the plat thereof, St. Louis County, Minnesota.  
Abstract Property

Lot Three Hundred Forty-two (342), in Block Thirty-eight (38), Duluth Proper Second Division, according to the plat thereof, St. Louis County, Minnesota.  
Abstract Property

Lot 344, Block 38, Duluth Proper Second Division, St. Louis County, Minnesota.  
Torrens Property- Torrens Certificate No. 240925.0.

Lot 346 EXCEPT the W'ly 40 feet thereof Block 38, Duluth Proper Second Division, St. Louis County,  
Minnesota.  
Torrens Property-Torrens Certificate No. 328213.0.

Lincoln Park Flats

**Exhibit E- Community Benefits Requirements**

**Memorandum of Understanding  
Regarding The  
COMMUNITY BENEFITS PROGRAM**

**As it applies to the \_\_\_\_\_ Project**

This MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the City of Duluth through its Workforce Development Department, (the “City”), \_\_\_\_\_, (the “Developer”), and \_\_\_\_\_, (the “Contractor”) for the purpose of memorializing the commitments between the parties to implement the City’s Community Benefits Program (the “Program”) as hereinafter set forth in conjunction with the construction of the \_\_\_\_\_ Project. The Developer is the developer of the Project and the Contractor is a contractor under contract with the Developer to perform work on the Project. The Duluth Economic Development Authority (“DEDA”) is providing financial assistance to the Project.

The City has determined that it is critical to the economic vitality of the City and its citizens that construction projects receiving City support commit to assisting in developing a trained and skilled workforce. In acknowledgement of this goal, the City, the Developer, and the Contractor agree to implement the Program as hereinafter set forth in this MOU and to cooperate fully with the City’s Workforce Development Department to so implement the Program. Further Contractor agrees to require any subcontractor of Contractor working on the Project covered by this MOU to so use their best efforts to implement the Program.

**I. Definitions**

For the purposes of this MOU, the following terms shall have the meanings hereinafter ascribed to them:

- A. Best Efforts: shall mean such efforts as are reasonable in light of the Contractor’s ability and the means at its disposal.

- B. Best Efforts Plan: shall mean a plan developed and approved between the Contractor and the Workforce Development Department to implement the Contractor's Best Efforts obligations under this MOU.
- C. Contractor: shall mean the Contractor named above performing work on the Project, and all of its Subcontractors.
- D. Eligible Workers: shall refer to women, people of color, and other individuals who are considered socially disadvantaged, and whose work hours on the Project shall count toward the Community Benefits Goals outlined in this MOU. An individual with one or more of the following characteristics shall be considered an Eligible Worker:
- Woman;
  - Person of color;
  - Is currently homeless;
  - Has received public assistance of any kind within the last 12 months;
  - Has a criminal record of conviction;
  - Is currently in, or has been emancipated from, the public foster care system;
  - Is a disadvantaged or at-risk youth, as defined by the Workforce Investment and Opportunity Act (WIOA), between the ages of 18 and 24;
  - Has a disability, including disabled veterans;
  - Has a household income below 200% of Federal Poverty Level.
- E. Program: shall mean the Community Benefits Program as set forth in this MOU.
- F. Project: shall mean the construction of the \_\_\_\_\_ Project as approved by the [(City)(Duluth Economic Development Authority)] by its Resolution No. \_\_\_\_\_ on \_\_\_\_\_, 20\_\_.
- G. Subcontractors: shall mean all subcontractors of Contractor of whatever tier engaged in on-site work on the Project covered by this Agreement.
- H. Work Hours: shall mean the total number of hours of construction trade work performed on the Project by Eligible Workers.

## II PROGRAM GOALS

All Contractors entering into contracts for the Project will use their best efforts, as described below, in the performance of those contracts to attain

the following Program goals:

A. Eligible Worker—General:

For the Project, the Contractor shall use its best efforts to cause ten percent (10%) of total hours of work performed with respect to the Project to be Work Hours performed by Eligible Workers.

B. Women

One-half of Work Hours as defined herein shall be performed by Eligible Workers who are women.

**III DEVELOPER AND CONTRACTOR—BEST EFFORT**

A. Plan

Within Thirty (30) days of the date the Contractor executes a contract for the Project or prior to commencement of work on the Project by the Contractor, whichever is earlier, Contractor shall have agreed with the Workforce Development Department to a Best Efforts Plan for achieving the Program Goals set forth in Section II above for the construction of the Project. The Contractor shall not commence construction of the Project unless the required Best Efforts Plan has been approved by the Workforce Development Department. The Best Efforts Plan may include but shall not be limited to the following commitments by the Contractor:

1. To participate in local job fairs and hiring events, including those at high schools, CareerForce, and Lake Superior College.
2. To proactively work with the Workforce Development Department and with unions with which they have agreements to sponsor new Eligible Workers into such union's apprenticeship programs.
3. To proactively work with Native American tribes and appropriate community organizations to recruit Eligible Workers.
4. To support and actively participate in apprenticeship exploration programs and other construction career training opportunities.
5. To require the Contractor's Subcontractors to join with and cooperate fully with Contractor in the implementation of the Contractor's Best Efforts Plan.

6. To take such other actions as is reasonably agreed between Contactor and the Workforce Development Department that will encourage participation of Eligible Workers in the construction of Project, while not adding cost to the Project.

7. To take, and to require its Subcontractors to take, appropriate corrective action when notified by the Workforce Development Department that its Program efforts have failed to meet the Best Efforts requirements of the Program.

B. Reporting

1. Monthly Reporting

No later than Thirty (30) days following the end of the month in which Work Hours are performed on the Project, the Contractor shall submit a written report(s) to the Workforce Development Department certifying the names and identities of all Eligible Workers performing work on the Project in the prior month, the number of hours of Work Hours performed by each such Eligible Worker and the total number of hours of work performed by all workers working on the Project; the report(s) shall include the same information regarding employees of and work performed by Subcontractors. In determining the identity of Eligible Workers, Contractors and Subcontractors may use then-current lists of Eligible Workers certified by the Workforce Development Department or self-attestation forms signed by Eligible Workers collected by the Contractor or Subcontractor and provided to the Workforce Development Department, or a combination thereof.

2. Completion Report

No later than Sixty (60) days following the end of completion of construction on the Project, the Contractor shall submit a written report(s) to the Workforce Development Department certifying the names and identities of all Eligible Workers performing work on the Project from commencement of construction to its completion, the number of hours of Work Hours performed by each such Eligible Worker and the total number of hours of work performed by all workers working on the Project; the report(s) shall include the same information regarding employees of and work performed by Subcontractors. Eligible Workers shall be certified as provided for in subparagraph 1 of Paragraph B above. In addition, if the

Completion Report establishes that the Program Goals has not been met, the Completion Report shall set forth in detail all efforts actually effectuated to implement the Best Efforts Plan and may set forth any explanations or extenuating circumstances for not having met the Program Goals.

#### **IV. CITY-PROGRAM OBLIGATIONS**

As they pertain to the implementation of the Program, the City, through its Workforce Development Department, shall:

- A. Work with and assist Contractor and all Subcontractors in developing the Best Efforts Plan for the Project covered by this Agreement.
- B. Promptly review and approve the Best Efforts Plan as and when appropriate.
- C. Actively recruit potential Eligible Workers to enter into the building and construction trades and to participate in educational and training programs aimed at making them employable in said trades.
- D. Work with and collaborate with educational institutions, community partners and apprenticeship programs to build accessible pathways into employment in the building and construction trades and assist in resolving barriers which might inhibit the availability of employment in such trades to Disadvantaged Workers.
- E. Receive and review the Monthly Reports referred to in Subparagraph 1 of Paragraph B of Section III above and notify any reporting Contractor or Subcontractor that is not meeting the Best Efforts requirements of the Program of any deficiency and collaborate on identification of steps that such Contractor or Subcontractor can perform to address the deficiency.
- F. Receive and review the Completion Reports referred to in Subparagraph 2 of Paragraph B of Section III above and notify any reporting Contractor or Subcontractor that has not met the Best Efforts requirements of the Program of that deficiency. Document and report any explanations or extenuating circumstances provided by Contractor or any Subcontractor for not having met the Program Goals.

CITY OF DULUTH, by its Workforce Development Department

By: \_\_\_\_\_

Its Director

\_\_\_\_\_(Insert Developer Name)

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_(Insert Contractor Name)

By: \_\_\_\_\_

Its: \_\_\_\_\_

## MINIMUM MARKET VALUE ASSESSMENT AGREEMENT

THIS MINIMUM MARKET VALUE ASSESSMENT AGREEMENT (“Agreement”) is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020, between DULUTH LINCOLN PARK1, LLC, a Minnesota limited liability company (“Developer”), DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 (“DEDA”), and the COUNTY ASSESSOR FOR ST. LOUIS COUNTY, MINNESOTA, acting as assessor for the CITY OF DULUTH (the “Assessor”).

### BACKGROUND:

A. DEDA and Developer are entering into a development agreement of even date herewith (the “Development Agreement”), for the development/redevelopment of property located in the City of Duluth (“City”) legally described on attached Exhibit A (the “Land”) into approximately 53,000 gross building square feet, approximately 17,600 gross square feet of parking structure, and land area of 38,000 square feet with Superior Street frontage (the “Project”).

B. The development of the Project will be financed in part with the proceeds of a tax increment pay-as-you-go note pursuant to Minnesota Statutes Sections 469.174 through 469.1799, inclusive (the “TIF Act”), to be issued by DEDA; the debt service on the related note will be paid from tax increments generated by the Project.

C. The Tax Increment Financing District (“TIF District 33”) for the Project has been approved by DEDA and by the City.

D. In accordance with the Development Agreement, Developer desires to establish a minimum market value for the Land and the improvements constructed or to be constructed thereon, pursuant to Minnesota Statutes, Section 469.177, subd. 8.

E. The Assessor has reviewed plans and specifications for the Project and reviewed the market value previously assigned to the land upon which the Project is to be constructed.

### AGREEMENT:

In consideration of the foregoing and other valuable consideration, the parties agree as follows:

1. The minimum market value assessed for the Project (“Assessor’s Minimum Market Value”), shall, from and after January 2, 2023, be not less than \$8,625,000 which shall be attributed to the apartment classification of the Project.

2. During the duration of this Agreement, Assessor shall value the Property under Minnesota Statutes section 273.11, except that the market value assigned shall not be less than the Assessor's Minimum Market Value established by this Agreement.

3. The Assessor's Minimum Market Value shall be as specified in this Agreement, regardless of actual market values that may result from incomplete construction of improvements, destruction, or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity.

4. Developer agrees that, solely with respect to ad valorem taxes (including taxes payable under Minn. Stat. 272.01, subd. 2) arising from the Assessor's Minimum Market Value, during the term of this Agreement:

a) Developer will not seek administrative or judicial review of the assessment valuation unless the assessment valuation exceeds the Assessor's Minimum Market Value. Developer will not seek administrative or judicial review of the Assessor's classification of the Property except as set forth in Paragraph 9. Developer also will not seek judicial review of the applicability or constitutionality of any tax statute relating to the taxation of real property in the Project determined by any tax official to be applicable to the Project or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; provided, however, that "tax statute" does not include any local ordinance or resolution levying a tax; and

b) Developer will not seek any deferral or abatement of the ad valorem taxes arising from the Assessor's Minimum Market Value and penalties or interest payable on all taxes.

5. The Assessor's Minimum Market Value established pursuant to this Agreement shall terminate and shall be of no further force and effect on the date that is the earlier of: (a) the date that TIF District 33 terminates or is decertified; or (b) the date that the Development Agreement or the TIF Note thereunder is terminated by DEDA for any reason; or (c) the date that the tax increment is no longer paid to DEDA; or (d) December 31, 2048. This Agreement shall terminate at that time also.

6. DEDA shall provide St. Louis County written notice no less than 60 days prior to the termination of this Agreement under Paragraph 5 above.

7. Upon its execution, Developer shall promptly record and/or register this Assessment Agreement in the Office of the St. Louis County Recorder and/or the Office of the St. Louis County Registrar of Titles and pay all costs associated therewith. Upon recordation, Developer shall promptly submit to DEDA and the St. Louis County Assessor an executed original of this Assessment Agreement showing the date and document numbers of record, or duly certified copies of the filed originals.

8. The Assessor represents that the Assessor has reviewed the plans and specifications for the Project and the market value previously assigned to the Land, and represents that the Assessor's Minimum Market Value as set forth in this Agreement is a reasonable estimate.

9. Nothing in this Agreement limits the discretion of the Assessor to assign to the Project a market value in excess of the Assessor's Minimum Market Value or prohibits Developer from seeking through the exercise of legal or administrative remedies a reduction in such market value for property tax purposes; provided however, that a reduction of such market value shall not be sought below the Assessor's Minimum Market Value so long as this Agreement remains in effect.

10. This Agreement may only be modified by the written consent of all parties.

11. Neither the preamble nor provisions of this Agreement are intended to modify, nor shall they be construed as modifying, the terms of the Development Agreement.

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

The parties have executed this Agreement as of the date first stated above.

DULUTH LINCOLN PARK1, LLC  
A Minnesota limited liability company

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY

By: \_\_\_\_\_  
Its: Managing Member

By: \_\_\_\_\_  
Its President

By: \_\_\_\_\_  
Its Secretary





**MINIMUM MARKET VALUE ASSESSMENT AGREEMENT**

**EXHIBIT A**

**Legal Description of Development Property**

Lot 338, Block 38, Duluth Proper Second Division, St. Louis County, Minnesota.  
Torrens Property-Torrens Certificate No. 238921.0.

Lot Three Hundred Forty (340), in Block Thirty-eight (38), Duluth Proper Second  
Division, according to the plat thereof, St. Louis County, Minnesota.  
Abstract Property

Lot Three Hundred Forty-two (342), in Block Thirty-eight (38), Duluth Proper Second  
Division, according to the plat thereof, St. Louis County, Minnesota.  
Abstract Property

Lot 344, Block 38, Duluth Proper Second Division, St. Louis County, Minnesota.  
Torrens Property- Torrens Certificate No. 240925.0.

Lot 346 EXCEPT the W'ly 40 feet thereof Block 38, Duluth Proper Second Division, St.  
Louis County,  
Minnesota.  
Torrens Property-Torrens Certificate No. 328213.0.

Lincoln Park Flats

**Exhibit G- TIF Note**

Principal Amount

Annual Rate

\$ \_\_\_\_\_

5.00%

UNITED STATES OF AMERICA

STATE OF MINNESOTA

COUNTY OF ST. LOUIS

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

TAX INCREMENT FINANCING (TIF) REVENUE NOTE

(LILCOLN PARK FLATS DEVELOPMENT)

The Duluth Economic Development Authority, an economic development authority created and existing pursuant to Minnesota Statutes Chapter 469 (“DEDA”), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay Duluth Lincoln Park1, LLC, a Minnesota limited liability company (the “Developer”), or its registered assigns (the “Registered Owner”), the principal amount of \$ \_\_\_\_\_ and \_\_\_\_/100<sup>th</sup> Dollars (\$ \_\_\_\_\_), which is the amount determined in Paragraph A of Article VIII of that certain Development Agreement between DEDA and the Developer dated \_\_\_\_\_, 2020, and bearing DEDA Contract No. \_\_\_\_\_, as may be amended from time to time (the “Agreement”), but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided.

This TIF Note is issued pursuant to the Agreement. Terms are defined in this TIF Note or in the Agreement. The principal amount of this TIF Note, as adjusted above, shall bear interest at the annual rate specified above and interest shall start to accrue as of the date of execution of this TIF Note. There shall be no accrual of interest on unpaid interest. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

This Note is issued and payable solely from Available Tax Increment, as defined in the Agreement, actually received and retained by DEDA. DEDA shall pay to the Registered Owner of the TIF Note bi-annual payments in the amount of the Available Tax Increment payable on August 1 and February 1 of each year, commencing on August 1, 2023, to and including February 1, 2048, or, if the 1st should not be a business day the next succeeding business day (the "Scheduled Payment Dates"). Available Tax Increment shall first be applied to accrued interest and then to principal.

This Note shall terminate and be of no further force and effect following (a) February 1, 2048; (b) any date upon which the Agreement or this TIF Note has terminated under said Agreement; or (c) on the date that all principal and interest payable hereunder shall have been paid in full; whichever occurs earliest. This TIF Note may be prepaid in whole or in part at any time without penalty.

DEDA makes no representation or covenant, express or implied, that the Available Tax Increment will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

DEDA's payment obligations hereunder shall be further conditioned on the fact that no Event of Default by Developer under the Agreement shall have occurred and be continuing, but such unpaid amounts shall become payable, without interest accruing thereon in the meantime, if said Event of Default shall thereafter have been cured; and, further, if pursuant to the occurrence of an Event of Default under the Agreement DEDA elects to terminate the Agreement or this TIF Note, DEDA shall have no further debt or obligation under this Note whatsoever. Reference is hereby made to all of the provisions of the Agreement for a fuller statement of the rights and obligations of DEDA to pay the principal of this TIF Note and the interest thereon, and said provisions are hereby incorporated into this TIF Note as though set out in full herein.

THIS TIF NOTE IS A SPECIAL, LIMITED REVENUE OBLIGATION AND NOT A GENERAL OBLIGATION OF DEDA OR THE CITY OF DULUTH (THE "CITY") AND IS PAYABLE BY DEDA ONLY FROM THE SOURCES AND SUBJECT TO THE QUALIFICATIONS STATED OR REFERENCED HEREIN. THIS TIF NOTE IS NOT A GENERAL OBLIGATION OF DEDA OR THE CITY, AND NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWERS OF DEDA OR THE CITY ARE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS TIF NOTE AND NO PROPERTY OR OTHER ASSET OF DEDA OR THE CITY, SAVE AND EXCEPT THE ABOVE REFERENCED PLEDGED AVAILABLE RELATED TAX INCREMENTS, IS OR SHALL BE A SOURCE OF PAYMENT OF DEDA'S OBLIGATIONS HEREUNDER.

The Registered Owner shall never have or be deemed to have the right to compel any exercise of any taxing power of DEDA, the City or of any other public body, and neither DEDA, the City nor any person executing or registering this TIF Note shall be liable personally hereon by reason of the issuance or registration thereof or otherwise.

This TIF Note is issued by DEDA in aid of financing a project pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes §§469.174 to 469.1799, the Minnesota Tax Increment Act.

THIS TIF NOTE HAS NOT BEEN REGISTERED UNDER ANY FEDERAL OR STATE SECURITIES LAWS AND MAY NOT BE SOLD, ASSIGNED, PLEDGED, OR OTHERWISE DISPOSED OF OR TRANSFERRED EXCEPT AS PROVIDED FOR IN THE AGREEMENT.

This TIF Note may be assigned only as provided in the Agreement and, upon such assignment, the assignor shall promptly notify DEDA at the office of the Executive Director by registered mail, and the assignee shall surrender the same to the Executive Director either in exchange for a new fully registered note or for transfer of this Note on the registration records for the TIF Note maintained by DEDA. Each permitted assignee shall take this TIF Note subject to the foregoing conditions and subject to all provisions stated or referenced herein and in the Agreement.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this TIF Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this TIF Note, together with all other indebtedness of DEDA outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of DEDA to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, the Duluth Economic Development Authority, by its Board of Commissioners, has caused this TIF Note to be executed by the manual signatures of the President and the Secretary of DEDA and has caused this Note to be issued on and dated \_\_\_\_\_, 20\_\_\_\_.

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY

By: \_\_\_\_\_

Its President

By: \_\_\_\_\_

Its Secretary

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Approved as to form

Assistant City Attorney

## RESOLUTION 20D-61

### RESOLUTION ADOPTING A MODIFICATION TO THE DEVELOPMENT PROGRAM FOR DEVELOPMENT DISTRICT NO. 17, ESTABLISHING TAX INCREMENT FINANCING DISTRICT NO. 33: REDEVELOPMENT DISTRICT THEREIN AND ADOPTING A TAX INCREMENT FINANCING PLAN THEREFOR

WHEREAS, it has been proposed by the Board of Commissioners (the "Board") of the Duluth Economic Development Authority ("DEDA") and the City of Duluth (the "City") that DEDA adopt a Modification to the Redevelopment Project / Municipal Development District adopted pursuant to Resolution 89D-03 (the "Development Program Modification") for the Redevelopment District (the "Project Area") and establish Tax Increment Financing District No. 33 (the "TIF District 33") and adopt a Tax Increment Financing Plan (the "TIF Plan") therefor (the Development Program Modification and the TIF Plan are referred to collectively herein as the "Program and Plan"), all pursuant to and in conformity with applicable law, including Minnesota Statutes, Sections 469.090 to 469.1082, and Sections 469.174 to 469.1794, inclusive, as amended (the "Act"), all as reflected in the Program and Plan and presented for the Board's consideration; and

WHEREAS, DEDA has investigated the facts relating to the Program and Plan and has caused the Program and Plan to be prepared; and

WHEREAS, DEDA has performed all actions required by law to be performed prior to the adoption of the Program and Plan.

NOW, THEREFORE, BE IT RESOLVED by the Board as follows:

1. DEDA hereby finds that the establishment of TIF District 33 is in the public interest and is a "Redevelopment District" under M.S., Section 469.174, Subd. 10 and M.S., Section 469.1794, and finds that the adoption of the proposed Program and Plan conform in all respects to the requirements of the Act and will help fulfill a need to redevelop an area of the State of Minnesota, remediating blighted property and constructing additional affordable and high-quality housing.
2. DEDA further finds that the Program and Plan will afford maximum opportunity, consistent with the sound needs for the City as a whole, for the development of the Project Area by private enterprise in that the intent is to provide only that public assistance necessary to make the private developments financially feasible.
3. The boundaries of the Project Area are not being expanded.

4. The reasons and facts supporting the findings in this resolution as set forth in the Program and Plan are hereby affirmed.
5. Conditioned upon the approval thereof by the City Council following its public hearing thereon, the Program and Plan, as presented to DEDA on this date, are hereby approved, established and adopted and shall be placed on file in the office of the Executive Director of DEDA.
6. Upon approval of the Program and Plan by the City Council, the staff, DEDA's advisors and legal counsel are authorized and directed to proceed with the implementation of the Program and Plan and for this purpose to negotiate, draft, prepare and present to this Board for its consideration all further plans, resolutions, documents and contracts necessary for this purpose. Approval of the Program and Plan does not constitute approval of any project or a Development Agreement with any developer.
7. Upon approval of the Program and Plan by the City Council, the Executive Director of DEDA is authorized and directed to forward a copy of the Program and Plan to the Minnesota Department of Revenue and the Office of the State Auditor pursuant to Minnesota Statutes 469.175, Subd. 4a.
8. The Executive Director of DEDA is authorized and directed to forward a copy of the Program and Plan to the St. Louis County Auditor and request that the Auditor certify the original tax capacity of TIF District 33 as described in the Program and Plan, all in accordance with Minnesota Statutes 469.177.

Approved by the Duluth Economic Development Authority on this 23rd day of September 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The purpose of this Resolution is to adopt a modification to the Development Program for the Development District, establish TIF District No. 33 and adopt a Tax Increment Financing Plan for TIF District No. 33 related to the Lincoln Park Flats multi-family residential facility located at the southwest corner of Superior Street and 21<sup>st</sup> Avenue West, and future construction of a multi-family residential and mixed use commercial facility located at 2001 West Superior Street.



# MODIFICATION TO THE DEVELOPMENT PROGRAM

Development District No. 17

- AND -

# TAX INCREMENT FINANCING PLAN

Establishment of Tax Increment Financing District No. 33:  
Superior Street Apartments  
(a redevelopment district)

Duluth Economic Development Authority  
City of Duluth, St. Louis County, Minnesota

Public Hearing: September 28, 2020

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# Modification to the Development Program for Development District No. 17

## Foreword

The following text represents a Modification to the Development Program for Development District No. 17. This modification represents a continuation of the goals and objectives set forth in the Development Program for Development District No. 17. Generally, the substantive changes include the establishment of Tax Increment Financing District No. 33: Superior Street Apartments.

For further information, a review of the Development Program for Development District No. 17, is recommended. It is available from the Senior Housing Developer at the City of Duluth. Other relevant information is contained in the Tax Increment Financing Plans for the Tax Increment Financing Districts located within Development District No. 17.

# Tax Increment Financing Plan for Tax Increment Financing District No. 33: Superior Street Apartments

## Foreword

The Duluth Economic Development Authority (the "EDA"), the City of Duluth (the "City"), staff and consultants have prepared the following information to expedite the Establishment of Tax Increment Financing District No. 33: Superior Street Apartments (the "District"), a redevelopment tax increment financing district, located in Development District No. 17.

## Statutory Authority

Within the City, there exist areas where public involvement is necessary to cause development or redevelopment to occur. To this end, the EDA and City have certain statutory powers pursuant to *Minnesota Statutes ("M.S."), Sections 469.090 - 469.1082*, inclusive, as amended, and *M.S., Sections 469.174 to 469.1794*, inclusive, as amended (the "Tax Increment Financing Act" or "TIF Act"), to assist in financing public costs related to this project.

This section contains the Tax Increment Financing Plan (the "TIF Plan") for the District. Other relevant information is contained in the Modification to the Development Program for Development District No. 17.

## Statement of Objectives

The District currently consists of six parcels of land and adjacent and internal rights-of-way. The District is being created to facilitate the construction of an approximate 74-unit market rate apartment as well as future construction of approximately 42 apartment units and accompanying commercial use in the City. The EDA intends to enter into an agreement with one or more developers to fulfill the objectives within the Plan. Development is anticipated to begin in 2021. This TIF Plan is expected to achieve many of the objectives outlined in the Development Program for Development District No. 17.

The activities contemplated in the Modification to the Development Program and the TIF Plan do not preclude the undertaking of other qualified development or redevelopment activities. These activities are anticipated to occur over the life of Development District No. 17 and the District.

## Development Program Overview

Pursuant to the Development Program and authorizing state statutes, the EDA or City is authorized to undertake the following activities in the District:

1. Property to be Acquired - Although not anticipated at this time, selected property located within the District may be acquired by the EDA or City and is further described in this TIF Plan.

2. Relocation - Relocation services, to the extent required by law, are available pursuant to *M.S., Chapter 117* and other relevant state and federal laws.
3. Upon approval of a developer's plan relating to the project and completion of the necessary legal requirements, the EDA or City may sell to a developer selected properties that it may acquire within the District or may lease land or facilities to a developer.
4. The EDA or City may perform or provide for some or all necessary acquisition, construction, relocation, demolition, and required utilities and public street work within the District.

## Description of Property in the District and Property to be Acquired

The District encompasses all property and adjacent rights-of-way and abutting roadways identified by the parcels listed below.

Parcel number	Address	Owner
010-1120-02740	2102 W Superior St.	Arrowhead Supply Co
010-1120-02750	2104 W Superior St.	Arrowhead Supply Co
010-1120-02760	2110 W Superior St.	Arrowhead Supply Co
010-1120-02770	Unassigned	Arrowhead Supply Co
010-1120-02780	Unassigned	Arrowhead Supply Co
010-1120-05090	2001 W Superior St	Duluth HRA

Please also see the map in Appendix A for further information on the location of the District.

The EDA or City may acquire any parcel within the District including interior and adjacent street rights of way. Any properties identified for acquisition will be acquired by the EDA or City only in order to accomplish one or more of the following: storm sewer improvements; provide land for needed public streets, utilities and facilities; carry out land acquisition, site improvements, clearance and/or development to accomplish the uses and objectives set forth in this plan. The EDA or City may acquire property by gift, dedication, condemnation or direct purchase from willing sellers in order to achieve the objectives of this TIF Plan. Such acquisitions will be undertaken only when there is assurance of funding to finance the acquisition and related costs.

## Classification of the District

The EDA and City, in determining the need to create a tax increment financing district in accordance with *M.S., Sections 469.174 to 469.1794*, as amended, inclusive, find that the District, to be established, is a redevelopment district pursuant to *M.S., Section 469.174, Subd. 10(a)(1)*.

- The District is a redevelopment district consisting of six parcels.
- An inventory shows that parcels consisting of more than 70 percent of the area in the District are occupied by buildings, streets, utilities, paved or gravel parking lots or other similar structures.
- An inspection of the buildings located within the District finds that more than 50 percent of the buildings are structurally substandard as defined in the TIF Act. (See Appendix D).

Pursuant to *M.S., Section 469.176, Subd. 7*, the District does not contain any parcel or part of a parcel that qualified under the provisions of *M.S., Sections 273.111, 273.112, or 273.114 or Chapter 473H* for taxes payable in any of the five calendar years before the filing of the request for certification of the District.

## **Duration and First Year of Tax Increment of the District**

Pursuant to *M.S., Section 469.175, Subd. 1, and Section 469.176, Subd. 1*, the duration and first year of tax increment of the District must be indicated within the TIF Plan. Pursuant to *M.S., Section 469.176, Subd. 1b.*, the duration of the District will be 25 years after receipt of the first increment by the EDA or City (a total of 26 years of tax increment). The EDA or City elects to receive the first tax increment in 2022, which is no later than four years following the year of approval of the District.

Thus, it is estimated that the District, including any modifications of the TIF Plan for subsequent phases or other changes, would terminate after 2047, or when the TIF Plan is satisfied. The EDA or City reserves the right to decertify the District prior to the legally required date.

## **Original Tax Capacity, Tax Rate and Estimated Captured Net Tax Capacity Value/Increment and Notification of Prior Planned Improvements**

Pursuant to *M.S., Section 469.174, Subd. 7 and M.S., Section 469.177, Subd. 1*, the Original Net Tax Capacity (ONTC) as certified for the District will be based on the market values placed on the property by the assessor in 2020 for taxes payable 2021.

Pursuant to *M.S., Section 469.177, Subds. 1 and 2*, the County Auditor shall certify in each year (beginning in the payment year 2022) the amount by which the original value has increased or decreased as a result of:

1. Change in tax exempt status of property;
2. Reduction or enlargement of the geographic boundaries of the district;
3. Change due to adjustments, negotiated or court-ordered abatements;
4. Change in the use of the property and classification;
5. Change in state law governing class rates; or
6. Change in previously issued building permits.

In any year in which the current Net Tax Capacity (NTC) value of the District declines below the ONTC, no value will be captured and no tax increment will be payable to the EDA or City.

The original local tax rate for the District will be the local tax rate for taxes payable 2021, assuming the request for certification is made before June 30, 2021). The ONTC and the Original Local Tax Rate for the District appear in the table below.

Pursuant to *M.S., Section 469.174 Subd. 4 and M.S., Section 469.177, Subd. 1, 2, and 4*, the estimated Captured Net Tax Capacity (CTC) of the District, within Development District No. 17, upon completion of the projects within the District, will annually approximate tax increment

revenues as shown in the table below. The EDA and City request 100 percent of the available increase in tax capacity for repayment of its obligations and current expenditures, beginning in the tax year payable 2022. The Project Tax Capacity (PTC) listed is an estimate of values when the projects within the District are completed.

<b>Project Tax Capacity</b>		
Project estimated Tax Capacity upon completion	358,412	
Original estimated Net Tax Capacity	11,894	
Fiscal Disparities	<u>0</u>	
<b>Estimated Captured Tax Capacity</b>	<b>346,518</b>	
Original Local Tax Rate	<u>146.4390%</u>	Pay 2020
<b>Estimated Annual Tax Increment</b>	<b>\$507,438</b>	
Percent Retained by the City	100%	

Note: Tax capacity includes a 3.0% inflation factor for the duration of the District. The tax capacity included in this chart is the estimated tax capacity of the District in year 25. The tax capacity of the District in year one is estimated to be \$44,079.

Pursuant to *M.S., Section 469.177, Subd. 4*, the EDA shall, after a due and diligent search, accompany its request for certification to the County Auditor or its notice of the District enlargement pursuant to *M.S., Section 469.175, Subd. 4*, with a listing of all properties within the District or area of enlargement for which building permits have been issued during the eighteen (18) months immediately preceding approval of the TIF Plan by the municipality pursuant to *M.S., Section 469.175, Subd. 3*. The County Auditor shall increase the original net tax capacity of the District by the net tax capacity of improvements for which a building permit was issued.

The City is reviewing the area to be included in the District to determine if any building permits have been issued during the 18 months immediately preceding approval of the TIF Plan by the City.

## Sources of Revenue/Bonds to be Issued

The total estimated tax increment revenues for the District are shown in the table below:

<b>SOURCES</b>		
Tax Increment	\$	8,992,768
Interest		<u>899,277</u>
<b>TOTAL</b>	<b>\$</b>	<b>9,892,045</b>

The costs outlined in the Uses of Funds will be financed primarily through the annual collection of tax increments. The EDA or City reserves the right to incur bonds or other indebtedness as a result of the TIF Plan. As presently proposed, the projects within the District will be financed by pay-as-you-go notes and interfund loans. Any refunding amounts will be deemed a budgeted cost without a formal TIF Plan Modification. This provision does not obligate the EDA or City to incur debt. The EDA or City will issue bonds or incur other debt only upon the determination that such action is in the best interest of the City.

The EDA or City may issue bonds (as defined in the TIF Act) secured in whole or in part with tax increments from the District in a maximum principal amount of \$6,023,595. Such bonds may be in the form of pay-as-you-go notes, revenue bonds or notes, general obligation bonds, or interfund loans. This estimate of total bonded indebtedness is a cumulative statement of authority under this TIF Plan as of the date of approval.

## Uses of Funds

Currently under consideration for the District is a proposal to facilitate the construction of an approximate 74-unit market rate apartment as well as future construction of approximately 42 apartment units and accompanying commercial use. The EDA and City have determined that it will be necessary to provide assistance to the project(s) for certain District costs, as described.

The EDA has studied the feasibility of the development or redevelopment of property in and around the District. To facilitate the establishment and development or redevelopment of the District, this TIF Plan authorizes the use of tax increment financing to pay for the cost of certain eligible expenses. The estimate of public costs and uses of funds associated with the District is outlined in the following table.

<b>USES</b>	
Land/Building Acquisition	\$ 1,000,000
Site Improvements/Preparation	2,500,000
Utilities	1,150,000
Other Qualifying Improvements	474,317
Administrative Costs (up to 10%)	899,278
<b>PROJECT COSTS TOTAL</b>	<b>\$ 6,023,595</b>
Interest	3,868,450
<b>PROJECT AND INTEREST COSTS TOTAL</b>	<b>\$ 9,892,045</b>

The total project cost, including financing costs (interest) listed in the table above does not exceed the total projected tax increments for the District as shown in the Sources of Revenue section.

Estimated costs associated with the District are subject to change among categories without a modification to this TIF Plan. The cost of all activities to be considered for tax increment financing will not exceed, without formal modification, the budget above pursuant to the applicable statutory requirements. Pursuant to *M.S., Section 469.1763, Subd. 2*, no more than 25 percent of the tax increment paid by property within the District will be spent on activities related to development or redevelopment outside of the District but within the boundaries of Development District No. 17, (including administrative costs, which are considered to be spent outside of the District) subject to the limitations as described in this TIF Plan.

# Estimated Impact on Other Taxing Jurisdictions

The estimated impact on other taxing jurisdictions assumes that the redevelopment contemplated by the TIF Plan would occur without the creation of the District. However, the EDA or City has determined that such development or redevelopment would not occur "but for" tax increment financing and that, therefore, the fiscal impact on other taxing jurisdictions is \$0. The estimated fiscal impact of the District would be as follows if the "but for" test was not met:

Impact on Tax Base			
Entity	2019/Pay 2020 Total Net Tax Capacity	Estimated Captured Tax Capacity (CTC) upon completion	Percent of CTC to Entity Total
St. Louis County	197,663,469	346,518	0.1753%
City of Duluth	78,693,924	346,518	0.4403%
ISD 709 (Duluth)	88,224,893	346,518	0.3928%

Impact on Tax Rates				
Entity	Pay 2020 Extension Rate	Percent of Total	CTC	Potential Taxes
St. Louis County	67.7300%	46.25%	346,518	\$ 234,697
City of Duluth	42.9970%	29.36%	346,518	148,992
ISD 709 (Duluth)	29.4940%	20.14%	346,518	102,202
Other	6.2180%	4.25%	346,518	21,547
	<b>146.4390%</b>	<b>100.00%</b>		<b>\$ 507,438</b>

The estimates listed above display the captured tax capacity when all construction is completed. The tax rate used for calculations is the Pay 2020 rate. The total net capacity for the entities listed above are based on Pay 2020 figures. The District will be certified under the Pay 2021 rates, which were unavailable at the time this TIF Plan was prepared.

Pursuant to *M.S. Section 469.175 Subd. 2(b)*:

- (1) Estimate of total tax increment. It is estimated that the total amount of tax increment that will be generated over the life of the District is \$8,992,768;
- (2) Probable impact of the District on city provided services and ability to issue debt.

An impact of the District on police protection is expected. The police department would anticipate an increase in officer time due to police services that may be needed. An officer's response to and time spent on proactive and reactive police responses, as well as proactively addressing quality of life issues, repeat calls for service, and excessive use of police services have both a financial and non-financial impact to police operations and public safety. The police department believes a positive and productive relationship can be attained with apartment building management to problem solve public safety and quality of life issues that may arise.

The police department can manage the financial and non-financial impacts that may arise from this development under our current operations and budget. The City does not expect that the proposed development, in and of itself, will necessitate new capital investment in vehicles or facilities.

The probable impact of the District on fire protection is not expected to be significant. With any new residential development there is a possibility of medical or assist calls from the fire department. There is not an expectation that calls to these areas would increase significantly. The project will replace non-sprinklered buildings with new sprinklered buildings. This increases the safety of that building, the buildings around it and the fire fighters responding to any structure fires. While no immediate staffing or capital investment is necessary solely as a result of this project, there may be a need for an additional rental inspector in the future. At that time a small vehicle would be needed.

The impact of the District on public infrastructure is expected to be minimal. The development is not expected to significantly impact any traffic movements in the area. The project will necessitate sewer and water extensions which will be financed as part of the project without impact to taxpayers. Based on the development plans, there are no significant costs associated with street maintenance, sweeping, plowing, lighting and sidewalks.

The probable impact of any District general obligation tax increment bonds on the ability to issue debt for general fund purposes is expected to be minimal. It is not anticipated that there will be any general obligation debt issued in relation to this project, therefore there will be no impact on the City's ability to issue future debt or on the City's debt limit.

- (3) Estimated amount of tax increment attributable to school district levies. It is estimated that the amount of tax increments over the life of the District that would be attributable to school district levies, assuming the school district's share of the total local tax rate for all taxing jurisdictions remained the same, is \$1,811,276;
- (4) Estimated amount of tax increment attributable to county levies. It is estimated that the amount of tax increments over the life of the District that would be attributable to county levies, assuming the county's share of the total local tax rate for all taxing jurisdictions remained the same, is \$4,159,276;
- (5) Additional information requested by the county or school district. The City is not aware of any standard questions in a county or school district written policy regarding tax increment districts and impact on county or school district services. The county or school district must request additional information pursuant to *M.S. Section 469.175 Subd. 2(b)* within 15 days after receipt of the tax increment financing plan.

No requests for additional information from the county or school district regarding the proposed development for the District have been received.

## Supporting Documentation

Pursuant to *M.S. Section 469.175, Subd. 1 (a), clause 7* the TIF Plan must contain identification and description of studies and analyses used to make the determination set forth in *M.S. Section 469.175, Subd. 3, clause (b)(2)* and the findings are required in the resolution approving the District.

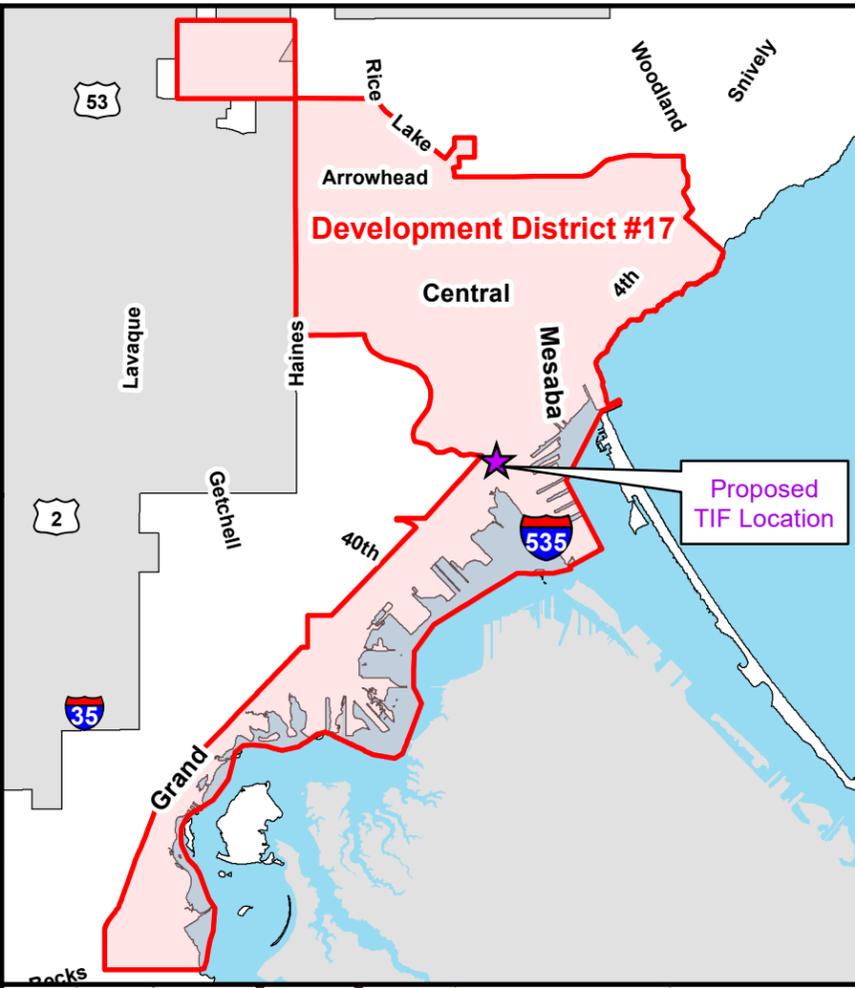
- (i) In making said determination, reliance has been placed upon (1) written representation made by the developer to such effects, (2) review of the developer's pro forma; and (3) City staff awareness of the feasibility of developing the project site within the District, which is further outlined in the City Council resolution approving the establishment of the TIF District and Appendix C.
- (ii) A comparative analysis of estimated market value both with and without establishment of the TIF District and the use of tax increments has been performed. Such analysis is included with the cashflow in Appendix B and indicates that the increase in estimated market value of the proposed development (less the indicated subtractions) exceeds the estimated market value of the site absent the establishment of the TIF District and the use of tax increments.

## Administration of the District

Administration of the District will be handled by the Senior Housing Developer.

**Appendix A: Map of Development District No. 17 and the TIF District**

Path: I:\DEVELOPMENT\BUS\_DEV\New BD\MAPS\GIS Maps\Potential\DistrictTIF33.mxd kmontgomery 7/16/2020

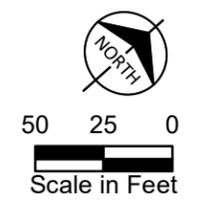


-  Proposed TIF District #33 Boundary
-  Development District #17 Boundary
-  Parcel Boundary



The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

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**Proposed TIF District #33**

**Appendix B: Estimated Cash Flow for the District**



**TIF District #33 - 3% Inflation**

City of Duluth, MN

74-Unit Market Rate Apartment; 42-Unit Market Rate Apartment and 6,447 Sq Ft Retail

**ASSUMPTIONS AND RATES**

<b>DistrictType:</b>	Redevelopment
<b>District Name/Number:</b>	
<b>County District #:</b>	
<b>First Year Construction or Inflation on Value</b>	<b>2020</b>
<b>Existing District - Specify No. Years Remaining</b>	
Inflation Rate - Every Year:	<b>3.00%</b>
Interest Rate:	<b>4.50%</b>
Present Value Date:	<b>1-Aug-21</b>
First Period Ending	1-Feb-22
Tax Year District was Certified:	<b>Pay 2021</b>
Cashflow Assumes First Tax Increment For Development:	2022
Years of Tax Increment	26
Assumes Last Year of Tax Increment	2047
Fiscal Disparities Election [Outside (A), Inside (B), or NA]	NA
Incremental or Total Fiscal Disparities	NA
Fiscal Disparities Contribution Ratio	NA Pay 2020
Fiscal Disparities Metro-Wide Tax Rate	NA Pay 2020
Maximum/Frozen Local Tax Rate:	146.439% Pay 2020
Current Local Tax Rate: (Use lesser of Current or Max.)	146.439% Pay 2020
State-wide Tax Rate (Comm./Ind. only used for total taxes)	38.8460% Pay 2020
Market Value Tax Rate (Used for total taxes)	0.18994% Pay 2020

Tax Rates	
Exempt Class Rate (Exempt)	0.00%
Commercial Industrial Preferred Class Rate (C/I Pref.)	
First \$150,000	1.50%
Over \$150,000	2.00%
Commercial Industrial Class Rate (C/I)	2.00%
Rental Housing Class Rate (Rental)	1.25%
Affordable Rental Housing Class Rate (Aff. Rental)	
First \$162,000	0.75%
Over \$162,000	0.25%
Non-Homestead Residential (Non-H Res. 1 Unit)	
First \$500,000	1.00%
Over \$500,000	1.25%
Homestead Residential Class Rate (Hmstd. Res.)	
First \$500,000	1.00%
Over \$500,000	1.25%
Agricultural Non-Homestead	1.00%

**BASE VALUE INFORMATION (Original Tax Capacity)**

Map ID	PID	Owner	Address	Land Market Value	Building Market Value	Total Market Value	Percentage Of Value Used for District	Original Market Value	Tax Year Original Market Value	Property Tax Class	Current Original Tax Capacity	Class After Conversion	After Conversion Orig. Tax Cap.	Area/Phase
010-1120-02740		Arrowhead Supply Co	2102 W Superior St.	84,000	117,700	201,700	100%	201,700	Pay 2021	C/I Pref.	3,284	Rental	2,521	1
010-1120-02750		Arrowhead Supply Co	2104 W Superior St.	55,900	117,700	173,600	100%	173,600	Pay 2021	C/I	3,472	Rental	2,170	1
010-1120-02760		Arrowhead Supply Co	2110 W Superior St.	55,900	117,700	173,600	100%	173,600	Pay 2021	C/I	3,472	Rental	2,170	1
010-1120-02770		Arrowhead Supply Co	Unassigned	28,000	0	28,000	100%	28,000	Pay 2021	C/I	560	Rental	350	1
010-1120-02780		Arrowhead Supply Co	Unassigned	5,600	2,500	8,100	100%	8,100	Pay 2021	C/I	162	Rental	101	1
010-1120-05090		Duluth HRA	2001 W Superior St	84,000	209,100	293,100	100%	293,100	Pay 2021	Rental	3,664	Rental	3,664	2
010-1120-05090		Duluth HRA	2001 W Superior St	55,900	5,300	61,200	100%	61,200	Pay 2021	C/I Pref.	918	C/I Pref.	918	2
				<b>369,300</b>	<b>570,000</b>	<b>939,300</b>		<b>939,300</b>			<b>15,532</b>		<b>11,894</b>	

**Note:**

1. Base values are for pay 2021 based upon review of County website on 7-10-20.
2. Located in UTA 010-0709-00-02-00-00


  
**TIF District #33 - 3% Inflation**

City of Duluth, MN

74-Unit Market Rate Apartment; 42-Unit Market Rate Apartment and 6,447 Sq Ft Retail

PROJECT INFORMATION (Project Tax Capacity)														
Area/Phase	New Use	Estimated Market Value Per Sq. Ft./Unit	Taxable Market Value Per Sq. Ft./Unit	Total Sq. Ft./Units	Total Taxable Market Value	Property Tax Class	Project Tax Capacity	Project Tax Capacity/Unit	Percentage Completed 2020	Percentage Completed 2021	Percentage Completed 2022	Percentage Completed 2023	First Year Full Taxes Payable	
1	Apartments	115,000	115,000	74	8,510,000	Rental	106,375	1,438	25%	100%	100%	100%	2023	
2	Apartments	115,000	115,000	42	4,830,000	Rental	60,375	1,438	25%	100%	100%	100%	2023	
2	Retail	80	80	6,447	515,760	C/I Pref.	9,565	1	25%	100%	100%	100%	2023	
<b>TOTAL</b>					<b>13,855,760</b>		<b>176,315</b>							
Subtotal Residential					116		13,340,000						166,750	
Subtotal Commercial/Ind.					6,447		515,760						9,565	

**Note:**

1. Market values are based upon discussions with the City.

TAX CALCULATIONS									
New Use	Total Tax Capacity	Fiscal Disparities Tax Capacity	Local Tax Capacity	Local Property Taxes	Fiscal Disparities Taxes	State-wide Property Taxes	Market Value Taxes	Total Taxes	Taxes Per Sq. Ft./Unit
Apartments	106,375	0	106,375	155,774	0	0	16,164	171,938	2,323.49
Apartments	60,375	0	60,375	88,413	0	0	9,174	97,587	2,323.49
Retail	9,565	0	9,565	14,007	0	3,133	980	18,120	2.81
<b>TOTAL</b>	<b>176,315</b>	<b>0</b>	<b>176,315</b>	<b>258,194</b>	<b>0</b>	<b>3,133</b>	<b>26,318</b>	<b>287,645</b>	

**Note:**

1. Taxes and tax increment will vary significantly from year to year depending upon values, rates, state law, fiscal disparities and other factors which cannot be predicted.

WHAT IS EXCLUDED FROM TIF?	
Total Property Taxes	287,645
less State-wide Taxes	(3,133)
less Fiscal Disp. Adj.	0
less Market Value Taxes	(26,318)
less Base Value Taxes	(17,418)
<b>Annual Gross TIF</b>	<b>240,776</b>

MARKET VALUE BUT / FOR ANALYSIS	
Current Market Value - Est.	939,300
New Market Value - Est.	13,855,760
Difference	12,916,460
Present Value of Tax Increment	4,711,448
Difference	8,205,012
Value likely to occur without Tax Increment is less than:	8,205,012



**TIF District #33 - 3% Inflation**

City of Duluth, MN

74-Unit Market Rate Apartment; 42-Unit Market Rate Apartment and 6,447 Sq Ft Retail

TAX INCREMENT CASH FLOW														
% of OTC	Project Tax Capacity	Original Tax Capacity	Fiscal Disparities NA	Captured Tax Capacity	Local Tax Rate	Annual Gross Tax Increment	Semi-Annual Gross Tax Increment	State Auditor 0.36%	Admin. at 10%	Semi-Annual Net Tax Increment	Semi-Annual Present Value	PERIOD ENDING Yrs.	Tax Year	Payment Date
100%	44,079	(11,894)	-	32,185	146.439%	47,131	23,565	(85)	(2,348)	21,132	20,212	0.5	2022	08/01/22
							23,565	(85)	(2,348)	21,132	39,980	1	2022	02/01/23
100%	176,315	(11,894)	-	164,421	146.439%	240,776	120,388	(433)	(11,996)	107,959	138,745	1.5	2023	08/01/23
							120,388	(433)	(11,996)	107,959	235,337	2	2023	02/01/24
100%	181,605	(11,894)	-	169,710	146.439%	248,522	124,261	(447)	(12,381)	111,433	332,844	2.5	2024	08/01/24
							124,261	(447)	(12,381)	111,433	428,205	3	2024	02/01/25
100%	187,053	(11,894)	-	175,159	146.439%	256,500	128,250	(462)	(12,779)	115,009	524,460	3.5	2025	08/01/25
							128,250	(462)	(12,779)	115,009	618,598	4	2025	02/01/26
100%	192,664	(11,894)	-	180,770	146.439%	264,718	132,359	(476)	(13,188)	118,695	713,614	4.5	2026	08/01/26
							132,359	(476)	(13,188)	118,695	806,540	5	2026	02/01/27
100%	198,444	(11,894)	-	186,550	146.439%	273,182	136,591	(492)	(13,610)	122,489	900,326	5.5	2027	08/01/27
							136,591	(492)	(13,610)	122,489	992,048	6	2027	02/01/28
100%	204,398	(11,894)	-	192,503	146.439%	281,900	140,950	(507)	(14,044)	126,399	1,084,615	6.5	2028	08/01/28
							140,950	(507)	(14,044)	126,399	1,175,146	7	2028	02/01/29
100%	210,530	(11,894)	-	198,635	146.439%	290,880	145,440	(524)	(14,492)	130,424	1,266,503	7.5	2029	08/01/29
							145,440	(524)	(14,492)	130,424	1,355,850	8	2029	02/01/30
100%	216,845	(11,894)	-	204,951	146.439%	300,128	150,064	(540)	(14,952)	134,572	1,446,011	8.5	2030	08/01/30
							150,064	(540)	(14,952)	134,572	1,534,187	9	2030	02/01/31
100%	223,351	(11,894)	-	211,457	146.439%	309,655	154,827	(557)	(15,427)	138,843	1,623,160	9.5	2031	08/01/31
							154,827	(557)	(15,427)	138,843	1,710,175	10	2031	02/01/32
100%	230,051	(11,894)	-	218,157	146.439%	319,467	159,734	(575)	(15,916)	143,243	1,797,972	10.5	2032	08/01/32
							159,734	(575)	(15,916)	143,243	1,883,837	11	2032	02/01/33
100%	236,953	(11,894)	-	225,059	146.439%	329,574	164,787	(593)	(16,419)	147,775	1,970,470	11.5	2033	08/01/33
							164,787	(593)	(16,419)	147,775	2,055,196	12	2033	02/01/34
100%	244,061	(11,894)	-	232,167	146.439%	339,983	169,992	(612)	(16,938)	152,442	2,140,675	12.5	2034	08/01/34
							169,992	(612)	(16,938)	152,442	2,224,273	13	2034	02/01/35
100%	251,383	(11,894)	-	239,489	146.439%	350,705	175,353	(631)	(17,472)	157,250	2,308,610	13.5	2035	08/01/35
							175,353	(631)	(17,472)	157,250	2,391,091	14	2035	02/01/36
100%	258,925	(11,894)	-	247,031	146.439%	361,749	180,875	(651)	(18,022)	162,202	2,474,297	14.5	2036	08/01/36
							180,875	(651)	(18,022)	162,202	2,555,672	15	2036	02/01/37
100%	266,693	(11,894)	-	254,798	146.439%	373,124	186,562	(672)	(18,589)	167,301	2,637,759	15.5	2037	08/01/37
							186,562	(672)	(18,589)	167,301	2,718,039	16	2037	02/01/38
100%	274,693	(11,894)	-	262,799	146.439%	384,840	192,420	(693)	(19,173)	172,554	2,799,018	16.5	2038	08/01/38
							192,420	(693)	(19,173)	172,554	2,878,215	17	2038	02/01/39
100%	282,934	(11,894)	-	271,040	146.439%	396,908	198,454	(714)	(19,774)	177,966	2,958,099	17.5	2039	08/01/39
							198,454	(714)	(19,774)	177,966	3,036,225	18	2039	02/01/40
100%	291,422	(11,894)	-	279,528	146.439%	409,338	204,669	(737)	(20,393)	183,539	3,115,024	18.5	2040	08/01/40
							204,669	(737)	(20,393)	183,539	3,192,089	19	2040	02/01/41
100%	300,165	(11,894)	-	288,271	146.439%	422,141	211,070	(760)	(21,031)	189,279	3,269,816	19.5	2041	08/01/41
							211,070	(760)	(21,031)	189,279	3,345,832	20	2041	02/01/42
100%	309,170	(11,894)	-	297,276	146.439%	435,327	217,664	(784)	(21,688)	195,192	3,422,498	20.5	2042	08/01/42
							217,664	(784)	(21,688)	195,192	3,497,477	21	2042	02/01/43
100%	318,445	(11,894)	-	306,551	146.439%	448,910	224,455	(808)	(22,365)	201,282	3,573,094	21.5	2043	08/01/43
							224,455	(808)	(22,365)	201,282	3,647,047	22	2043	02/01/44
100%	327,998	(11,894)	-	316,104	146.439%	462,899	231,450	(833)	(23,062)	207,555	3,721,627	22.5	2044	08/01/44
							231,450	(833)	(23,062)	207,555	3,794,565	23	2044	02/01/45
100%	337,838	(11,894)	-	325,944	146.439%	477,309	238,654	(859)	(23,780)	214,015	3,868,119	23.5	2045	08/01/45
							238,654	(859)	(23,780)	214,015	3,940,054	24	2045	02/01/46
100%	347,973	(11,894)	-	336,079	146.439%	492,151	246,075	(886)	(24,519)	220,670	4,012,594	24.5	2046	08/01/46
							246,075	(886)	(24,519)	220,670	4,083,538	25	2046	02/01/47
100%	358,412	(11,894)	-	346,518	146.439%	507,438	253,719	(913)	(25,281)	227,525	4,155,076	25.5	2047	08/01/47
							253,719	(913)	(25,281)	227,525	4,225,040	26	2047	02/01/48
<b>Total</b>						<b>9,025,256</b>	<b>(32,488)</b>	<b>(899,278)</b>	<b>(899,278)</b>	<b>8,093,490</b>				
<b>Present Value From 08/01/2020</b>				<b>Present Value Rate</b>	<b>4.50%</b>	<b>4,711,448</b>	<b>(16,959)</b>	<b>(469,449)</b>	<b>4,225,040</b>					

## Appendix C: Findings Including But/For Qualifications

The reasons and facts supporting the findings for the adoption of the Tax Increment Financing Plan (TIF Plan) for Tax Increment Financing District No. 33: Superior Street Apartments (the "District"), as required pursuant to Minnesota Statutes, Section 469.175, Subdivision 3 are as follows:

1. *Finding that Tax Increment Financing District No. 33: Superior Street Apartments is a redevelopment district as defined in M.S., Section 469.174, Subd. 10.*

The District consists of 6 parcels and vacant right-of-way, with plans to redevelop the area for the construction of an approximate 74-unit market rate apartment as well as future construction of approximately 42 apartment units and accompanying commercial use in the City. Parcels consisting of 70 percent of the area of the District are occupied by buildings, streets, utilities, paved or gravel parking lots or other similar structures and more than 50 percent of the buildings in the District, not including outbuildings, are structurally substandard to a degree requiring substantial renovation or clearance. (See Appendix D of the TIF Plan.)

2. *Finding that the proposed development, in the opinion of the City Council, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future and that the increased market value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from the proposed development after subtracting the present value of the projected tax increments for the maximum duration of Tax Increment Financing District No. 33: Superior Street Apartments permitted by the TIF Plan.*

*The proposed development, in the opinion of the City, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future:* This finding is supported by the fact that the redevelopment proposed in the TIF Plan meets the City's objectives for redevelopment. Due to the high cost of redevelopment on the parcels currently occupied by substandard buildings, the high cost of land assembly, demolition costs, the provision of parking, and the cost of financing the proposed improvements, this project is feasible only through assistance, in part, from tax increment financing. The developer was asked for and provided a letter and a pro forma as justification that the developer would not have gone forward without tax increment assistance.

*The increased market value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in market value estimated to result from the proposed development after subtracting the present value of the projected tax increments for the maximum duration of the District permitted by the TIF Plan:* This finding is justified on the grounds that the cost of assembling multiple parcels of land, demolition, parking, and site improvement costs add to the total redevelopment cost. Historically, the costs in this area have made redevelopment infeasible without tax increment assistance. The City reasonably determines that no other redevelopment of similar scope is anticipated on this site without substantially similar assistance being provided to the development.

Therefore, the City concludes as follows:

- a. The City's estimate of the amount by which the market value of the entire District will increase without the use of tax increment financing is \$0.
  - b. If the proposed development occurs, the total increase in market value will be \$12,916,460
  - c. The present value of tax increments from the District for the maximum duration of the district permitted by the TIF Plan is estimated to be \$4,711,448.
  - d. Even if some development other than the proposed development were to occur, the Council finds that no alternative would occur that would produce a market value increase greater than \$8,205,012 (the amount in clause b less the amount in clause c) without tax increment assistance.
3. *Finding that the TIF Plan for the District conforms to the general plan for the development or redevelopment of the municipality as a whole.*

The Planning Commission will review the TIF Plan on 09/08/2020 to find that the TIF Plan conforms to the general development plan of the City.

4. *Finding that the TIF Plan for Tax Increment Financing District No. 33: Superior Street Apartments will afford maximum opportunity, consistent with the sound needs of the City as a whole, for the development or redevelopment of Development District No. 17 by private enterprise.*

The project to be assisted by the District will result in increased employment in the City and the State of Minnesota, the renovation of substandard properties, increased tax base of the State and add a high-quality development to the City.

Through the implementation of the TIF Plan, EDA or the City will increase the availability of safe and decent life-cycle housing in the City.

# Appendix D: Redevelopment Qualifications for the District

Report of Inspection Procedures and Results for  
Determining Qualifications of a  
Tax Increment Financing District as a Redevelopment District

## Lincoln Park Non-Contiguous Redevelopment TIF District Duluth, Minnesota



July 17, 2019

Prepared For the  
**City of Duluth**

Prepared by:



LHB, Inc.  
701 Washington Avenue North, Suite 200  
Minneapolis, Minnesota 55401

LHB Project No. 190416

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## PART 1 – EXECUTIVE SUMMARY

### PURPOSE OF EVALUATION

LHB was hired by the City of Duluth to inspect and evaluate the properties within a Tax Increment Financing Redevelopment District (“TIF District”) proposed to be established by the City. The proposed TIF District is located in two non-contiguous areas. The first is at the west corner of North 20<sup>th</sup> Avenue West and West Superior Street, and the second is bounded by West Superior Street, South 21<sup>st</sup> Avenue West, and Lower Michigan Street (Diagram 1).

The purpose of LHB’s work is to determine whether the proposed TIF District meets the statutory requirements for coverage, and whether two (2) buildings on seven (7) parcels and one (1) right-of-way parcel, located within the proposed TIF District, meet the qualifications required for a Redevelopment District with two noncontiguous areas.



## **SCOPE OF WORK**

The proposed TIF District consists of seven (7) parcels and one (1) right-of-way parcel, with two (2) buildings. Two (2) buildings were inspected on June 13, 2019. Building code and Condition Deficiency Reports for the buildings that were inspected are located in Appendix B.

## **CONCLUSION**

After inspecting and evaluating the properties within the proposed TIF District and applying current statutory criteria for a Redevelopment District under *Minnesota Statutes, Section 469.174, Subdivision 10*, it is our professional opinion that the proposed TIF District qualifies as a Redevelopment District because:

- The proposed TIF District has a coverage calculation of 100 percent which is above the 70 percent requirement.
- 100 percent of the buildings are structurally substandard which is above the 50 percent requirement.
- The substandard buildings are reasonably distributed.
- The proposed TIF District meets the requirements for two or more noncontiguous areas under *Minnesota Statutes, Section 469.174, Subdivision 10 (f)* which states: "...each area must qualify as a redevelopment district under paragraph (a) to be included in the district, and the entire area of the district must satisfy paragraph (a)."

The remainder of this report describes our process and findings in detail.

## **PART 2 – MINNESOTA STATUTE 469.174, SUBDIVISION 10 REQUIREMENTS**

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The properties were inspected in accordance with the following requirements under *Minnesota Statutes, Section 469.174, Subdivision 10(c)*, which states:

### **INTERIOR INSPECTION**

"The municipality may not make such determination [that the building is structurally substandard] without an interior inspection of the property..."

### **EXTERIOR INSPECTION AND OTHER MEANS**

"An interior inspection of the property is not required, if the municipality finds that

- (1) the municipality or authority is unable to gain access to the property after using its best efforts to obtain permission from the party that owns or controls the property; and
- (2) the evidence otherwise supports a reasonable conclusion that the building is structurally substandard."

## DOCUMENTATION

“Written documentation of the findings and reasons why an interior inspection was not conducted must be made and retained under section 469.175, subdivision 3(1).”

## QUALIFICATION REQUIREMENTS

*Minnesota Statutes, Section 469.174, Subdivision 10 (a) (1)* requires three tests for occupied parcels:

### A. COVERAGE TEST

...“parcels consisting of 70 percent of the area of the district are occupied by buildings, streets, utilities, or paved or gravel parking lots...”

The coverage required by the parcel to be considered occupied is defined under *Minnesota Statutes, Section 469.174, Subdivision 10(e)*, which states: “For purposes of this subdivision, a parcel is not occupied by buildings, streets, utilities, paved or gravel parking lots, or other similar structures unless 15 percent of the area of the parcel contains buildings, streets, utilities, paved or gravel parking lots, or other similar structures.”

### B. CONDITION OF BUILDINGS TEST

*Minnesota Statutes, Section 469.174, Subdivision 10(a)* states, “...and more than 50 percent of the buildings, not including outbuildings, are structurally substandard to a degree requiring substantial renovation or clearance;”

1. Structurally substandard is defined under *Minnesota Statutes, Section 469.174, Subdivision 10(b)*, which states: “For purposes of this subdivision, ‘structurally substandard’ shall mean containing defects in structural elements or a combination of deficiencies in essential utilities and facilities, light and ventilation, fire protection including adequate egress, layout and condition of interior partitions, or similar factors, which defects or deficiencies are of sufficient total significance to justify substantial renovation or clearance.”

a. We do not count energy code deficiencies toward the thresholds required by *Minnesota Statutes, Section 469.174, Subdivision 10(b)* defined as “structurally substandard”, due to concerns expressed by the State of Minnesota Court of Appeals in the *Walser Auto Sales, Inc. vs. City of Richfield* case filed November 13, 2001.

2. Buildings are not eligible to be considered structurally substandard unless they meet certain additional criteria, as set forth in Subdivision 10(c) which states:

“A building is not structurally substandard if it is in compliance with the building code applicable to new buildings or could be modified to satisfy the building code at a cost of less than 15 percent of the cost of constructing a new structure of the same square footage and type on the site. The municipality may find that a building is not disqualified as structurally substandard under the preceding sentence on the basis of reasonably available evidence, such as the size, type, and age of the building, the average cost of plumbing, electrical, or structural repairs, or other similar reliable evidence.”

“Items of evidence that support such a conclusion [that the building is not disqualified] include recent fire or police inspections, on-site property tax appraisals or housing inspections, exterior evidence of deterioration, or other similar reliable evidence.”

LHB counts energy code deficiencies toward the 15 percent code threshold required by *Minnesota Statutes, Section 469.174, Subdivision 10(c)* for the following reasons:

- The Minnesota energy code is one of ten building code areas highlighted by the Minnesota Department of Labor and Industry website where minimum construction standards are required by law.
- Chapter 13 of the 2015 *Minnesota Building Code* states, “Buildings shall be designed and constructed in accordance with the *International Energy Conservation Code*.” Furthermore, Minnesota Rules, Chapter 1305.0021 Subpart 9 states, “References to the *International Energy Conservation Code* in this code mean the *Minnesota Energy Code*...”
- The Senior Building Code Representative for the Construction Codes and Licensing Division of the Minnesota Department of Labor and Industry confirmed that the Minnesota Energy Code is being enforced throughout the State of Minnesota.
- In a January 2002 report to the Minnesota Legislature, the Management Analysis Division of the Minnesota Department of Administration confirmed that the construction cost of new buildings complying with the Minnesota Energy Code is higher than buildings built prior to the enactment of the code.
- Proper TIF analysis requires a comparison between the replacement value of a new building built under current code standards with the repairs that would be necessary to bring the existing building up to current code standards. In order for an equal comparison to be made, all applicable code chapters should be applied to both scenarios. Since current construction estimating software automatically applies the construction cost of complying with the Minnesota Energy Code, energy code deficiencies should also be identified in the existing structures.

### **C. DISTRIBUTION OF SUBSTANDARD BUILDINGS**

*Minnesota Statutes, Section 469.174, Subdivision 10*, defines a Redevelopment District and requires one or more of the following conditions, “reasonably distributed throughout the district.”

- (1) “Parcels consisting of 70 percent of the area of the district are occupied by buildings, streets, utilities, paved or gravel parking lots, or other similar structures and more than 50 percent of the buildings, not including outbuildings, are structurally substandard to a degree requiring substantial renovation or clearance;
- (2) the property consists of vacant, unused, underused, inappropriately used, or infrequently used rail yards, rail storage facilities, or excessive or vacated railroad rights-of-way;
- (3) tank facilities, or property whose immediately previous use was for tank facilities...”

Our interpretation of the distribution requirement is that the substandard buildings must be reasonably distributed throughout the district as compared to the location of all buildings in the district. For example, if all of the buildings in a district are located on one half of the area of the district, with the other half occupied by parking lots (meeting the required 70

percent coverage for the district), we would evaluate the distribution of the substandard buildings compared with only the half of the district where the buildings are located. If all of the buildings in a district are located evenly throughout the entire area of the district, the substandard buildings must be reasonably distributed throughout the entire area of the district. We believe this is consistent with the opinion expressed by the State of Minnesota Court of Appeals in the *Walser Auto Sales, Inc. vs. City of Richfield* case filed November 13, 2001.

## **PART 3 – PROCEDURES FOLLOWED**

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LHB inspected two (2) of the two (2) buildings during the day of June 13, 2019.

## **PART 4 – FINDINGS**

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### **A. COVERAGE TEST**

1. The total square foot area of the parcel in the proposed TIF District was obtained from City records, GIS mapping and site verification.
2. The total square foot area of buildings and site improvements on the parcels in the proposed TIF District was obtained from City records, GIS mapping and site verification.
3. The percentage of coverage for each parcel in the proposed TIF District was computed to determine if the 15 percent minimum requirement was met. The total square footage of parcels meeting the 15 percent requirement was divided into the total square footage of the entire district to determine if the 70 percent requirement was met.

### **FINDING:**

The proposed TIF District met the coverage test under *Minnesota Statutes, Section 469.174, Subdivision 10(e)*, which resulted in parcels consisting of 100 percent of the area of the proposed TIF District being occupied by buildings, streets, utilities, paved or gravel parking lots, or other similar structures (Diagram 2). This exceeds the 70 percent area coverage requirement for the proposed TIF District under *Minnesota Statutes, Section 469.174, Subdivision (a) (1)*.



Shaded area depicts a parcel more than 15 percent occupied by buildings, streets, utilities, paved or gravel parking lots or other similar structures

## B. CONDITION OF BUILDING TEST

### 1. BUILDING INSPECTION

The first step in the evaluation process is the building inspection. After an initial walk-thru, the inspector makes a judgment whether or not a building “appears” to have enough defects or deficiencies of sufficient total significance to justify substantial renovation or clearance. If it does, the inspector documents with notes and photographs code and non-code deficiencies in the building.

## 2. REPLACEMENT COST

The second step in evaluating a building to determine if it is substandard to a degree requiring substantial renovation or clearance is to determine its replacement cost. This is the cost of constructing a new structure of the same square footage and type on site. Replacement costs were researched using R.S. Means Cost Works square foot models for 2019.

A replacement cost was calculated by first establishing building use (office, retail, residential, etc.), building construction type (wood, concrete, masonry, etc.), and building size to obtain the appropriate median replacement cost, which factors in the costs of construction in Duluth, Minnesota.

Replacement cost includes labor, materials, and the contractor's overhead and profit. Replacement costs do not include architectural fees, legal fees or other "soft" costs not directly related to construction activities. Replacement cost for each building is tabulated in Appendix A.

## 3. CODE DEFICIENCIES

The next step in evaluating a building is to determine what code deficiencies exist with respect to such building. Code deficiencies are those conditions for a building which are not in compliance with current building codes applicable to new buildings in the State of Minnesota.

*Minnesota Statutes, Section 469.174, Subdivision 10(c)*, specifically provides that a building cannot be considered structurally substandard if its code deficiencies are not at least 15 percent of the replacement cost of the building. As a result, it was necessary to determine the extent of code deficiencies for each building in the proposed TIF District.

The evaluation was made by reviewing all available information with respect to such buildings contained in City Building Inspection records and making interior and exterior inspections of the buildings. LHB utilizes the current Minnesota State Building Code as the official code for our evaluations. The Minnesota State Building Code is actually a series of provisional codes written specifically for Minnesota only requirements, adoption of several international codes, and amendments to the adopted international codes.

After identifying the code deficiencies in each building, we used R.S. Means Cost Works 2019; Unit and Assembly Costs to determine the cost of correcting the identified deficiencies. We were then able to compare the correction costs with the replacement cost of each building to determine if the costs for correcting code deficiencies meet the required 15 percent threshold.

### FINDING:

Two (2) out of two (2) buildings (100 percent) in the proposed TIF District contained code deficiencies exceeding the 15 percent threshold required by *Minnesota Statutes, Section 469.174, Subdivision 10(c)*. Building Code, Condition Deficiency and Context Analysis reports for the buildings in the proposed TIF District can be found in Appendix B of this report.

#### **4. SYSTEM CONDITION DEFICIENCIES**

If a building meets the minimum code deficiency threshold under *Minnesota Statutes, Section 469.174, Subdivision 10(c)*, then in order for such building to be “structurally substandard” under *Minnesota Statutes, Section 469.174, Subdivision 10(b)*, the building’s defects or deficiencies should be of sufficient total significance to justify “substantial renovation or clearance.” Based on this definition, LHB re-evaluated each of the buildings that met the code deficiency threshold under *Minnesota Statutes, Section 469.174, Subdivision 10(c)*, to determine if the total deficiencies warranted “substantial renovation or clearance” based on the criteria we outlined above.

System condition deficiencies are a measurement of defects or substantial deterioration in site elements, structure, exterior envelope, mechanical and electrical components, fire protection and emergency systems, interior partitions, ceilings, floors and doors.

The evaluation of system condition deficiencies was made by reviewing all available information contained in City records, and making interior and exterior inspections of the buildings. LHB only identified system condition deficiencies that were visible upon our inspection of the building or contained in City records. We did not consider the amount of “service life” used up for a particular component unless it was an obvious part of that component’s deficiencies.

After identifying the system condition deficiencies in each building, we used our professional judgment to determine if the list of defects or deficiencies is of sufficient total significance to justify “substantial renovation or clearance.”

#### **FINDING:**

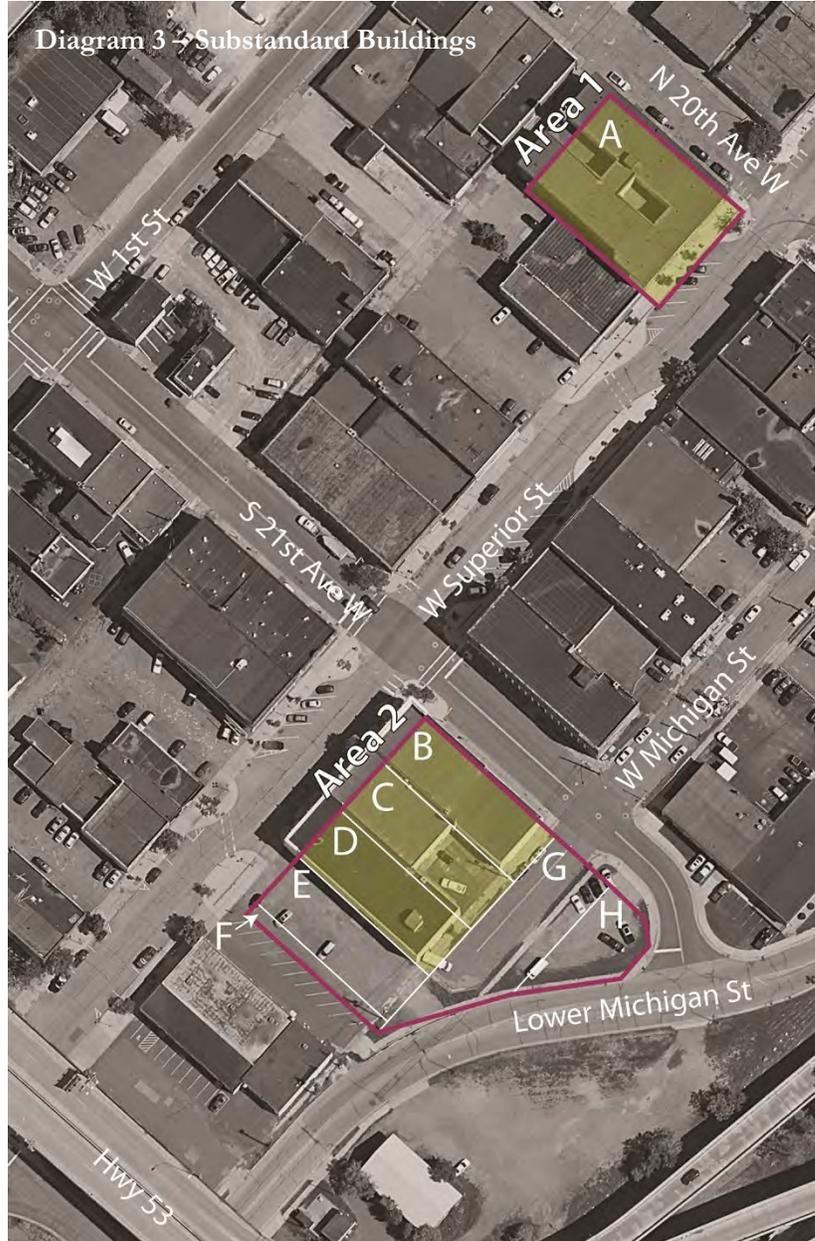
In our professional opinion, two (2) out of two (2) buildings (100 percent) in the proposed TIF District are structurally substandard to a degree requiring substantial renovation or clearance, because of defects in structural elements or a combination of deficiencies in essential utilities and facilities, light and ventilation, fire protection including adequate egress, layout and condition of interior partitions, or similar factors which defects or deficiencies are of sufficient total significance to justify substantial renovation or clearance. This exceeds the 50 percent requirement of Subdivision 10a(1).

#### **C. DISTRIBUTION OF SUBSTANDARD STRUCTURES**

Much of this report has focused on the condition of individual buildings as they relate to requirements identified by *Minnesota Statutes, Section 469.174, Subdivision 10*. It is also important to look at the distribution of substandard buildings throughout the geographic area of the proposed TIF District (Diagram 3).

**FINDING:**

The parcels with substandard buildings are reasonably distributed compared to all parcels that contain buildings.



Shaded green area depicts parcels with substandard buildings.

## PART 5 - TEAM CREDENTIALS

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### ***Michael A. Fischer, AIA, LEED AP - Project Principal/TIF Analyst***

Michael has 31 years of experience as project principal, project manager, project designer and project architect on planning, urban design, educational, commercial and governmental projects. He has become an expert on Tax Increment Finance District analysis assisting over 100 cities with strategic planning for TIF Districts. He is an Architectural Principal at LHB and currently leads the Minneapolis office.

Michael completed a two-year Bush Fellowship, studying at MIT and Harvard in 1999, earning Masters degrees in City Planning and Real Estate Development from MIT. He has served on more than 50 committees, boards and community task forces, including a term as a City Council President and as Chair of a Metropolitan Planning Organization. Most recently, he served as Chair of the Edina, Minnesota planning commission and is currently a member of the Edina city council. Michael has also managed and designed several award-winning architectural projects, and was one of four architects in the Country to receive the AIA Young Architects Citation in 1997.

### ***Philip Waugh – Project Manager/TIF Analyst***

Philip is a project manager with 13 years of experience in historic preservation, building investigations, material research, and construction methods. He previously worked as a historic preservationist and also served as the preservation specialist at the St. Paul Heritage Preservation Commission. Currently, Phil sits on the Board of Directors for the Preservation Alliance of Minnesota. His current responsibilities include project management of historic preservation projects, performing building condition surveys and analysis, TIF analysis, writing preservation specifications, historic design reviews, writing Historic Preservation Tax Credit applications, preservation planning, and grant writing.

### ***Phil Fisher – Inspector***

For 35 years, Phil Fisher worked in the field of Building Operations in Minnesota including White Bear Lake Area Schools. At the University of Minnesota he earned his Bachelor of Science in Industrial Technology. He is a Certified Playground Safety Inspector, Certified Plant Engineer, and is trained in Minnesota Enterprise Real Properties (MERP) Facility Condition Assessment (FCA). His FCA training was recently applied to the Minnesota Department of Natural Resources Facilities Condition Assessment project involving over 2,000 buildings.

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## APPENDICES

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APPENDIX A	Property Condition Assessment Summary Sheet
APPENDIX B	Building Code and Condition Deficiencies Reports
APPENDIX C	Building Replacement Cost Reports Code Deficiency Cost Reports Photographs

# **APPENDIX A**

Property Condition Assessment Summary Sheet

**Lincoln Park Non-Contiguous Redevelopment TIF District**

Property Condition Assessment Summary Sheet

TIF Map No.	PID #	Property Address	Improved or Vacant	Survey Method Used	Site Area (S.F.)	Coverage Area of Improvements (S.F.)	Coverage Percent of Improvements	Coverage Quantity (S.F.)	No. of Buildings	Building Replacement Cost	15% of Replacement Cost	Building Code Deficiencies	No. of Buildings Exceeding 15% Criteria	No. of buildings determined substandard
<b>Area 1</b>														
A	010-1120-05090	2001 W Superior St	Improved	Interior/Exterior	14,114	14,114	100.0%	14,114	1	\$2,766,501	\$414,975	\$928,210	1	1
<b>Area 1 Subtotals</b>					<b>14,114</b>			<b>14,114</b>	<b>1</b>				<b>1</b>	<b>1</b>
								<b>Total Coverage Percent:</b>	<b>100%</b>				<b>100%</b>	
												<b>Percent of buildings exceeding 15 percent code deficiency threshold:</b>	<b>100%</b>	
												<b>Percent of buildings determined substandard:</b>	<b>100%</b>	
<b>Area 2</b>														
B	010-1120-02740	2102 W Superior St	Improved	Interior/Exterior	7,085	7,085	100.0%	7,085	1	\$3,205,622	\$480,843	\$1,186,198	1	1
C	010-1120-02750	2104 W Superior St	Improved		7,046	7,046	100.0%	7,046						
D	010-1120-02760	2112 W Superior St	Improved		7,002	7,002	100.0%	7,002						
E	010-1120-02770	N/A	Improved	Exterior	7,133	7,133	100.0%	7,133	0					
F	010-1120-02780	N/A	Improved	Exterior	1,418	1,418	100.0%	1,418	0					
G	R.O.W.	N/A	Improved	Exterior	9,931	8,185	82.4%	9,931	0					
H	010-1120-00091	N/A	Improved	Exterior	4,461	2,389	53.6%	4,461	0					
<b>Area 2 Subtotals</b>					<b>44,076</b>			<b>44,076</b>	<b>1</b>				<b>1</b>	<b>1</b>
								<b>Total Coverage Percent:</b>	<b>100%</b>				<b>100%</b>	
												<b>Percent of buildings exceeding 15 percent code deficiency threshold:</b>	<b>100%</b>	
												<b>Percent of buildings determined substandard:</b>	<b>100%</b>	
<b>Overall Totals</b>					<b>58,190</b>			<b>58,190</b>	<b>2</b>				<b>2</b>	<b>2</b>
								<b>Total Coverage Percent:</b>	<b>100.0%</b>				<b>100.0%</b>	
												<b>Percent of buildings exceeding 15 percent code deficiency threshold:</b>	<b>100.0%</b>	
												<b>Percent of buildings determined substandard:</b>	<b>100.0%</b>	

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## **APPENDIX B**

Building Code, Condition Deficiency and Context Analysis Reports

# Lincoln Park Non-Contiguous Redevelopment TIF District

## Building Code, Condition Deficiency and Context Analysis Report

Parcel No. & Building Name: Parcel No. A Esmond Building  
Address: 2001 W Superior St, Duluth MN 55806  
Parcel ID: 010-1120-05090  
Inspection Date(s) & Time(s): June 13, 2019 1:30 PM  
Inspection Type: Interior and Exterior  
Summary of Deficiencies: It is our professional opinion that this building is Substandard because:  
- Substantial renovation is required to correct Conditions found.  
- Building Code deficiencies total more than 15% of replacement cost, NOT including energy code deficiencies.

Estimated Replacement Cost: \$2,766,501  
Estimated Cost to Correct Building Code Deficiencies: \$928,210  
Percentage of Replacement Cost for Building Code Deficiencies: 33.55%

### Defects in Structural Elements

1. None observed.

### Combination of Deficiencies

1. Essential Utilities and Facilities
  - a. There is no code-required accessible parking.
  - b. There is no code-required accessible route into the building.
  - c. There is no code-required accessible route to all levels.
  - d. Door hardware is not code-compliant.
  - e. There are no code-required accessible restrooms.
  - f. There are no code-required accessible rooms to rent.
  - g. The plumbing system is not code-compliant.
2. Light and Ventilation
  - a. The lighting system is not code-compliant.
  - b. The electrical wiring system is not code-compliant.
  - c. The HVAC system is not code-compliant.
3. Fire Protection/Adequate Egress
  - a. Thresholds do not comply with code for maximum height.
  - b. Stairways do not comply with code.
  - c. Flooring material is damaged/missing, creating an impediment to emergency egress, contrary to code.
  - d. Exterior fire escape system does not comply with code.
  - e. Install code-required fire proofing.
  - f. There are no code-required smoke detectors in the building.

- g. Emergency lighting is not code-compliant.
  - h. The emergency notification system is not code-compliant.
  - i. The building sprinkler system is not code-compliant.
  - j. There are no code-required Ground Fault Circuit Interrupters.
  - k. There are no code-required Arc Fault Circuit Interrupters.
  - l. There are no code-required Carbon Monoxide detectors.
4. Layout and Condition of Interior Partitions/Materials
    - a. Interior walls should be repaired/repainted.
    - b. Interior ceilings should be repaired/repainted.
    - c. Doors are damaged and should be repaired.
  5. Exterior Construction
    - a. The exterior brick is failing, allowing for water intrusion, contrary to code.
    - b. Windows are failing, allowing for water intrusion, contrary to code.

### **Description of Code Deficiencies**

1. Code-required accessible parking should be created.
2. Code-required accessible route into the building should be created.
3. Code-required accessible route to all levels of the building should be created.
4. Code-compliant door hardware should be installed.
5. The plumbing system is not code-compliant.
6. A code-required accessible restroom should be installed.
7. A code-required accessible rented room space should be created.
8. The lighting system is not code-compliant.
9. The electrical wiring system is not code-compliant.
10. The HVAC system is not code-compliant.
11. Thresholds should be modified to comply with code for maximum height.
12. Stairways should be modified to comply with code.
13. Flooring material should be repaired/replaced to create in unimpeded means of emergency egress per code.
14. Install code-required fire proofing.
15. The exterior fire escape system should be modified to comply with code.
16. Code-required smoke detectors should be installed.
17. A code-compliant emergency lighting system should be installed.
18. A code-compliant emergency notification system should be installed.
19. The building sprinkler system is not code-compliant.
20. Code-required GFCI's should be installed.
21. Code-required AFCI's should be installed.
22. Code-required carbon monoxide detectors should be installed.
23. Exterior brick should be repaired/replaced to prevent water intrusion per code.
24. Failed windows should be replaced to prevent water intrusion per code.

### **Overview of Deficiencies**

This building was originally constructed as a hotel. It is now being used as an apartment house. Code-required accessibility is not apparent anywhere in the building. Interior walls and ceilings should be repaired/repainted. Flooring material should be repaired/replaced to create an unimpeded means for emergency egress per code. The plumbing, lighting, electrical wiring and HVAC systems are not code-compliant. Exterior brick is failing, allowing for water intrusion, contrary to code. The window system has failed allowing for water intrusion, contrary to code. The exterior fire escape system is not code-compliant.

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# Lincoln Park Non-Contiguous Redevelopment TIF District

## Building Code, Condition Deficiency and Context Analysis Report

Parcel No. & Building Name: Parcels B, C and D Roberts Furniture Building  
Address and Parcel ID: 2102 W Superior St, Duluth, MN 55806 PID 010-1120-02740  
2104 W Superior St, Duluth, MN 55806 PID 010-1120-02750  
2112 W Superior St, Duluth, MN 55806 PID 010-1120-02760  
Inspection Date(s) & Time(s): June 13, 2019 3:00 PM  
Inspection Type: Interior and Exterior  
Summary of Deficiencies: It is our professional opinion that this building is Substandard because:  
- Substantial renovation is required to correct Conditions found.  
- Building Code deficiencies total more than 15% of replacement cost, NOT including energy code deficiencies.

Estimated Replacement Cost: \$3,205,622  
Estimated Cost to Correct Building Code Deficiencies: \$1,186,198  
Percentage of Replacement Cost for Building Code Deficiencies: 37%

### Defects in Structural Elements

1. None observed.

### Combination of Deficiencies

1. Essential Utilities and Facilities
  - a. There is no code-required accessible parking.
  - b. There is no code-compliant accessible route into the building.
  - c. There is no code-required accessible route to all levels.
  - d. Door hardware is not code-compliant.
  - e. There are no code-required accessible restrooms.
2. Light and Ventilation
  - a. The lighting system is not code-compliant.
  - b. The electrical wiring system is not code-compliant.
  - c. The HVAC system is not code-compliant.
3. Fire Protection/Adequate Egress
  - a. Thresholds do not comply with code for maximum height.
  - b. Stairways do not comply with code.
  - c. Install code-required fire proofing.
  - d. There are no code-required smoke detectors in the building.
  - e. Emergency lighting is not code-compliant.
  - f. The emergency notification system is not code-compliant.
  - g. There is no code-required building sprinkler system.
  - h. Exterior glass doors are not code-compliant.

4. Layout and Condition of Interior Partitions/Materials
  - a. Interior walls should be repaired/repainted.
  - b. Interior ceilings should be repaired/repainted/replaced
  - c. Doors are damaged and should be repaired.
  
5. Exterior Construction
  - a. The Exterior Insulation Finish System is damaged, allowing for water intrusion, contrary to code.
  - b. Windows are failing, allowing for water intrusion, contrary to code.

### **Description of Code Deficiencies**

1. Code-required accessible parking should be created.
2. Code-required accessible route into the building should be created.
3. Code-required accessible route to all levels of the building should be created.
4. Code-compliant door hardware should be installed.
5. A code-required accessible restroom should be installed.
6. The lighting system is not code-compliant.
7. The electrical wiring system is not code-compliant.
8. The HVAC system is not code-compliant.
9. Thresholds should be modified to comply with code for maximum height.
10. Stairways should be modified to comply with code.
11. Install code-required fire proofing.
12. Code-required smoke detectors should be installed.
13. A code-compliant emergency lighting system should be installed.
14. A code-compliant emergency notification system should be installed.
15. A code-required building sprinkler system should be installed.
16. Exterior glass doors should have 10-inch kick plates installed per code.
17. Exterior Insulation Finish System should be repaired/replaced to prevent water intrusion per code.
18. Failed windows should be replaced to prevent water intrusion per code.

### **Overview of Deficiencies**

This two-story building recently housed a home furnishing store and is now used as a warehouse. Code deficient accessibility items include parking, access into the building, access to all levels of the building and restrooms. Code deficient life safety systems include, smoke detectors, emergency lighting, emergency notification, and building sprinklers. The Exterior Insulation Finish System is damaged, allowing for water intrusion, contrary to code. Windows are failing, allowing for water intrusion, contrary to code. The current lighting system, wiring system and HVAC system does not comply with code. All interior walls should be repainted. All interior floors should be repaired, cleaned or replaced. Stairways are not code-compliant.

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## **APPENDIX C**

Building Replacement Cost Reports  
Code Deficiency Cost Reports  
Photographs

# Lincoln Park Non-Contiguous Redevelopment TIF District

## Replacement Cost Report

RSMeans data  
from GORDIAN

Square Foot Cost Estimate Report

Date: 6/27/2019

Estimate Name:	2001 West Superior Street	Esmond Building
Building Type:	Apartment, 1-3 Story with Stone Veneer / Wood Frame	
Location:	DULUTH, MN 55806	
Story Count:	3	
Story Height (L.F.):	10.00	
Floor Area (S.F.):	13400	
Labor Type:	OPN	
Basement Included:	Yes	
Data Release:	Year 2019	
Cost Per Square Foot:	\$206.46	
Building Cost:	\$2,766,501.67	



Costs are derived from a building model with basic components.  
Scope differences and market conditions can cause costs to vary significantly.

		% of Total	Cost Per S.F.	Cost
<b>A</b>	<b>Substructure</b>	<b>9.60%</b>	<b>\$17.23</b>	<b>\$230,874.54</b>
<b>A1010</b>	<b>Standard Foundations</b>		<b>\$5.92</b>	<b>\$79,271.60</b>
A10101102700	Strip footing, concrete, reinforced, load 11.1 KLF, soil bearing capacity 6 KSF, 12" deep x 24" wide		\$1.36	\$18,258.39
A10102107700	Spread footings, 3000 PSI concrete, load 200K, soil bearing capacity 6 KSF, 6' - 0" square x 20" deep		\$4.55	\$61,013.21
<b>A1030</b>	<b>Slab on Grade</b>		<b>\$1.74</b>	<b>\$23,359.60</b>
A10301202240	Slab on grade, 4" thick, non industrial, reinforced		\$1.74	\$23,359.60
<b>A2010</b>	<b>Basement Excavation</b>		<b>\$1.15</b>	<b>\$15,423.76</b>
A20101104620	Excavate and fill, 10,000 SF, 8' deep, sand, gravel, or common earth, on site storage		\$1.15	\$15,423.76
<b>A2020</b>	<b>Basement Walls</b>		<b>\$8.42</b>	<b>\$112,819.58</b>
A20201107260	Foundation wall, CIP, 12' wall height, pumped, .444 CY/LF, 21.59 PLF, 12" thick		\$8.42	\$112,819.58
<b>B</b>	<b>Shell</b>	<b>41.61%</b>	<b>\$74.70</b>	<b>\$1,001,043.96</b>
<b>B1010</b>	<b>Floor Construction</b>		<b>\$23.88</b>	<b>\$319,973.80</b>
B10102030860	Cast-in-place concrete column, 12" square, tied, 200K load, 12' story height, 142 lbs/LF, 4000PSI		\$5.02	\$67,287.14
B10102103450	Wood column, 8" x 8", 20' x 20' bay, 10' unsupported height, 133 BF/MSF, 160 PSF total allowable load		\$0.42	\$5,681.87
B10102221720	Flat slab, concrete, with drop panels, 6" slab/2.5" panel, 12" column, 15'x15' bay, 75 PSF superimposed load, 153 PSF total load		\$4.43	\$59,416.49
B10102643050	Wood beam and joist floor, 12"x16" girder, 8"x16" beam, 2x10 joists @ 16", 20'x20' bay, 75 PSF LL, 102 PSF total load		\$11.35	\$152,104.56
B10107203750	Fireproofing, gypsum board, fire rated, 3 layer, 1.5" thick, 8" steel column, 3 hour rating, 23 PLF		\$2.65	\$35,483.74
<b>B1020</b>	<b>Roof Construction</b>		<b>\$8.33</b>	<b>\$111,622.00</b>
* B10201026100	Wood roof, flat rafter, 3" x 12", 12" O.C.		\$8.33	\$111,622.00
<b>B2010</b>	<b>Exterior Walls</b>		<b>\$31.32</b>	<b>\$419,718.66</b>
B20101282000	Stone wall, ashlar veneer, 4" thick, 8' high, 2x4@16" stud back-up, low priced stone		\$30.11	\$403,508.43
B20101907600	Insulation, fiberglass batts, 6" thick, R19		\$1.21	\$16,210.23
<b>B2020</b>	<b>Exterior Windows</b>		<b>\$6.75</b>	<b>\$90,450.58</b>

B20201066650	Windows, aluminum, sliding, standard glass, 5' x 3'		\$6.75	\$90,450.58
<b>B2030</b>	<b>Exterior Doors</b>		<b>\$0.51</b>	<b>\$6,884.92</b>
B20302203500	Door, steel 18 gauge, hollow metal, 1 door with frame, no label, 3'-6" x 7'-0" opening		\$0.51	\$6,884.92
<b>B3010</b>	<b>Roof Coverings</b>		<b>\$3.91</b>	<b>\$52,394.00</b>
* B30101052300	Roofing, asphalt flood coat, gravel, coated glass base sheet, 4 plies glass (type IV), mopped		\$3.91	\$52,394.00
<b>C</b>	<b>Interiors</b>	<b>19.25%</b>	<b>\$34.56</b>	<b>\$463,140.82</b>
<b>C1010</b>	<b>Partitions</b>		<b>\$6.76</b>	<b>\$90,586.64</b>
C10101241200	Wood partition, 5/8" fire rated gypsum board face, none base, 2 x 4, @ 16" OC framing, same opposite face, 0 insul		\$2.01	\$26,917.80
C10101241425	Wood partition, 5/8" fire rated gypsum board face, 1/4" sound deadening gypsum board, 2x4 @ 16" OC framing, same opposite face, sound attenuation insul		\$3.49	\$46,718.83
C10101280700	Gypsum board, 1 face only, exterior sheathing, fire resistant, 5/8"		\$0.78	\$10,445.90
C10101280960	Add for the following: taping and finishing		\$0.49	\$6,504.11
<b>C1020</b>	<b>Interior Doors</b>		<b>\$10.18</b>	<b>\$136,383.01</b>
C10201022600	Door, single leaf, kd steel frame, hollow metal, commercial quality, flush, 3'-0" x 7'-0" x 1-3/8"		\$9.06	\$121,394.26
C10201101600	Doors, interior fire door, drywall frame, 1-3/8" thick, 3'-0" x 7'-0"		\$1.12	\$14,988.75
<b>C1030</b>	<b>Fittings</b>		<b>\$5.16</b>	<b>\$69,114.82</b>
C10308300115	Cabinets, residential, base, hardwood, 1 top drawer & 1 door below x 24" W		\$2.65	\$35,460.96
C10308300140	Cabinets, residential, wall, two doors x 48" wide		\$1.77	\$23,773.94
C10308300150	Cabinets, residential, counter top-laminated plastic, stock, economy		\$0.74	\$9,879.92
<b>C2010</b>	<b>Stair Construction</b>		<b>\$0.75</b>	<b>\$10,045.36</b>
C20101101120	Stairs, wood, prefab box type, oak treads, wood rails 3'-6" wide, 14 risers		\$0.75	\$10,045.36
<b>C3010</b>	<b>Wall Finishes</b>		<b>\$2.68</b>	<b>\$35,873.64</b>
C30102300140	Painting, interior on plaster and drywall, walls & ceilings, roller work, primer & 2 coats		\$1.35	\$18,138.38
C30102300140	Painting, interior on plaster and drywall, walls & ceilings, roller work, primer & 2 coats		\$0.68	\$9,117.64
C30102301940	Ceramic tile, thin set, 4-1/4" x 4-1/4"		\$0.64	\$8,617.62
<b>C3020</b>	<b>Floor Finishes</b>		<b>\$5.06</b>	<b>\$67,845.82</b>
C30204100060	Carpet tile, nylon, fusion bonded, 18" x 18" or 24" x 24", 24 oz		\$2.36	\$31,583.02
C30204100080	Carpet tile, nylon, fusion bonded, 18" x 18" or 24" x 24", 35 oz		\$1.26	\$16,920.72
C30204101600	Vinyl, composition tile, maximum		\$0.34	\$4,571.90
C30204101720	Tile, ceramic natural clay		\$1.10	\$14,770.18
<b>C3030</b>	<b>Ceiling Finishes</b>		<b>\$3.98</b>	<b>\$53,291.53</b>
C30301105400	Gypsum board ceilings, 1/2" fire rated gypsum board, painted and textured finish, 7/8" resilient channel furring, 24" OC support		\$3.98	\$53,291.53
<b>D</b>	<b>Services</b>	<b>28.76%</b>	<b>\$51.63</b>	<b>\$691,842.45</b>
<b>D1010</b>	<b>Elevators and Lifts</b>		<b>\$4.86</b>	<b>\$65,061.59</b>
D10101109050	Hydraulic passenger elevator, 3500 lb., 3 floors, 10' story height, 125 FPM		\$4.86	\$65,061.59
<b>D2010</b>	<b>Plumbing Fixtures</b>		<b>\$6.37</b>	<b>\$85,390.35</b>
D20104101880	Kitchen sink w/trim, countertop, stainless steel, 19" x 18" single bowl		\$1.40	\$18,716.33

D20104202040	Laundry sink w/trim, plastic, on wall or legs, 18" x 23" single compartment		\$0.20	\$2,658.42
D20104404260	Service sink w/trim, PE on CI, corner floor, 28" x 28", w/rim guard		\$0.41	\$5,493.24
D20109262160	Bathroom, three fixture, 2 wall plumbing, lavatory, water closet & bathtub, stand alone		\$4.37	\$58,522.36
<b>D2020</b>	<b>Domestic Water Distribution</b>		<b>\$8.34</b>	<b>\$111,699.53</b>
D20202401820	Electric water heater, commercial, 100< F rise, 50 gallon tank, 9 KW 37 GPH		\$8.34	\$111,699.53
<b>D2040</b>	<b>Rain Water Drainage</b>		<b>\$0.45</b>	<b>\$5,976.57</b>
D20402102040	Roof drain, DWV PVC, 4" diam, diam, 10' high		\$0.27	\$3,639.11
D20402102080	Roof drain, DWV PVC, 4" diam, for each additional foot add		\$0.17	\$2,337.46
<b>D3010</b>	<b>Energy Supply</b>		<b>\$7.42</b>	<b>\$99,394.50</b>
D30105101840	Apartment building heating system, fin tube radiation, forced hot water, 20,000 SF area,200,000 CF vol		\$7.42	\$99,394.50
<b>D3030</b>	<b>Cooling Generating Systems</b>		<b>\$8.00</b>	<b>\$107,242.75</b>
D30301103240	Packaged chiller, air cooled, with fan coil unit, medical centers, 20,000 SF, 46.66 ton		\$8.00	\$107,242.75
<b>D4010</b>	<b>Sprinklers</b>		<b>\$3.21</b>	<b>\$43,001.38</b>
D40104100600	Wet pipe sprinkler systems, steel, light hazard, 1 floor, 5000 SF		\$1.51	\$20,280.75
D40104100720	Wet pipe sprinkler systems, steel, light hazard, each additional floor, 5000 SF		\$1.70	\$22,720.63
<b>D5010</b>	<b>Electrical Service/Distribution</b>		<b>\$4.16</b>	<b>\$55,788.95</b>
D50101200400	Overhead service installation, includes breakers, metering, 20' conduit & wire, 3 phase, 4 wire, 120/208 V, 800 A		\$0.85	\$11,410.95
D50102300400	Feeder installation 600 V, including RGS conduit and XHHW wire, 800 A		\$1.98	\$26,556.90
D50102400280	Switchgear installation, incl switchboard, panels & circuit breaker, 120/208 V, 3 phase, 800 A		\$1.33	\$17,821.10
<b>D5020</b>	<b>Lighting and Branch Wiring</b>		<b>\$6.97</b>	<b>\$93,411.03</b>
D50201100520	Receptacles incl plate, box, conduit, wire, 10 per 1000 SF, 1.2 watts per SF		\$2.78	\$37,313.64
D50201300320	Wall switches, 2.5 per 1000 SF		\$0.53	\$7,040.36
D50201350440	Miscellaneous power, 2 watts		\$0.50	\$6,755.74
D50201400240	Central air conditioning power, 3 watts		\$0.54	\$7,277.81
D50201450720	Motor installation, three phase, 200 V, 15 HP motor size		\$0.24	\$3,265.75
D50202160200	Incandescent fixtures recess mounted, type A, 1 watt per SF, 8 FC, 6 fixtures per 1000 SF		\$2.37	\$31,757.73
<b>D5030</b>	<b>Communications and Security</b>		<b>\$1.86</b>	<b>\$24,875.80</b>
D50309100452	Communication and alarm systems, fire detection, addressable, 25 detectors, includes outlets, boxes, conduit and wire		\$0.88	\$11,794.80
D50309100460	Fire alarm command center, addressable without voice, excl. wire & conduit		\$0.45	\$5,987.60
D50309200102	Internet wiring, 2 data/voice outlets per 1000 S.F.		\$0.53	\$7,093.40
<b>E</b>	<b>Equipment &amp; Furnishings</b>	<b>0.78%</b>	<b>\$1.40</b>	<b>\$18,751.86</b>
<b>E1090</b>	<b>Other Equipment</b>		<b>\$1.40</b>	<b>\$18,751.86</b>
E10904100135	Architectural equipment, appliances, range, 30" free standing, 1 oven, gas, average		\$0.97	\$12,972.78
E10904100170	Architectural equipment, appliances, dish washer, built-in, 2 cycles, economy		\$0.43	\$5,779.08
<b>F</b>	<b>Special Construction</b>	<b>0.00%</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>G</b>	<b>Building Sitework</b>	<b>0.00%</b>	<b>\$0.00</b>	<b>\$0.00</b>

<b>SubTotal</b>	<b>100%</b>	<b>\$179.53</b>	<b>\$2,405,653.63</b>
<b>Contractor Fees (General Conditions,Overhead,Profit)</b>	<b>15.0 %</b>	<b>\$26.93</b>	<b>\$360,848.04</b>
<b>Architectural Fees</b>	<b>0.0 %</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>User Fees</b>	<b>0.0 %</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Total Building Cost</b>		<b>\$206.46</b>	<b>\$2,766,501.67</b>

# Lincoln Park Non-Contiguous Redevelopment TIF District

## Code Deficiency Cost Report

Parcel A - 2001 W Superior St, Duluth, MN 55806 - PID 010-1120-05090

Esmond Building

Code	Related Cost Items	Unit Cost	Units	Unit Quantity	Total
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### Accessibility Items

#### Parking

Create a code required parking space	\$ 100.00	EA	1	\$ 100.00
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#### Accessible Routes

Create a code required accessible route into the building	\$ 2,500.00	Lump	1	\$ 2,500.00
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Create a code required accessible route to all levels of the building	\$ 4.86	SF	13,400	\$ 65,124.00
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### Structural Elements

\$ -

### Exiting

#### Door Hardware

Install code compliant door hardware	\$ 250.00	EA	70	\$ 17,500.00
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#### Thresholds

Modify thresholds to comply with code.	\$ 5,000.00	Lump	1	\$ 5,000.00
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#### Stairways

Modify stairways to comply with code.	\$ 0.75	SF	13,400	\$ 10,050.00
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#### Flooring Material

Install code compliant flooring to create an unimpeded means of egress	\$ 5.06	SF	13,400	\$ 67,804.00
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#### Fire Escape System

Install a code compliant fire escape system	\$ 10,000.00	Lump	1	\$ 10,000.00
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### Fire Protection

#### Smoke Detectors

Install code required smoke detectors	\$ 0.88	SF	13,400	\$ 11,792.00
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#### Emergency Lighting

Install code compliant emergency lighting	\$ 0.75	SF	13,400	\$ 10,050.00
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#### Emergency Notification System

Install code compliant emergency notification system	\$ 0.45	SF	13,400	\$ 6,030.00
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#### Building Sprinkler System

Install code compliant building sprinkler system	\$ 1.66	SF	13,400	\$ 22,244.00
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#### GFCI's

Install code required GFCI's	\$ 0.25	SF	13,400	\$ 3,350.00
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#### AFCI's

Install code required AFCI's	\$ 0.25	SF	13,400	\$ 3,350.00
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#### Carbon Monoxide Detector

Install code required carbon monoxide detectors	\$ 0.25	SF	13,400	\$ 3,350.00
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Code	Related Cost Items	Unit Cost	Units	Unit Quantity	Total
	Fire Proofing				
	Install code required fire proofing	\$ 2.65	SF	13,400	\$ 35,510.00
<b>Exterior Construction</b>					
	Brick				
	Repair/replace brick and mortar to prevent water intrusion per code	\$ 2.12	SF	13,400	\$ 28,408.00
	Windows				
	Replace failed window system to prevent water intrusion per code	\$ 6.75	SF	13,400	\$ 90,450.00
<b>Roof Construction</b>					
					\$ -
<b>Mechanical- Electrical</b>					
	Mechanical				
	Install code compliant HVAC system	\$ 15.42	SF	13,400	\$ 206,628.00
	Install code compliant plumbing system	\$ 14.71	SF	13,400	\$ 197,114.00
	Electrical				
	Install code compliant electrical wiring system	\$ 7.47	SF	13,400	\$ 100,098.00
	Install code compliant lighting system	\$ 2.37	SF	13,400	\$ 31,758.00
<b>Total Code Improvements</b>					<b>\$ 928,210</b>

# Lincoln Park Non-Contiguous Redevelopment TIF District

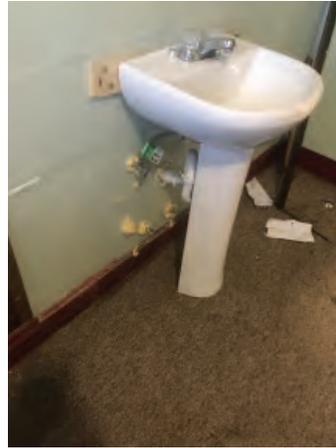
Photos: Parcel A - Parcel A - 2001 W Superior St - Esmond Building



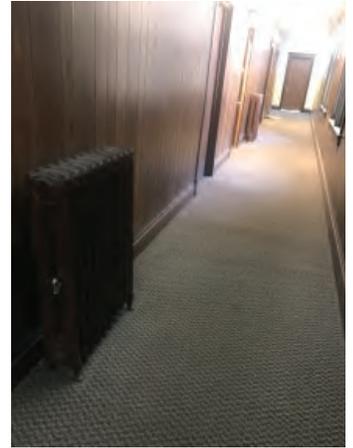
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# Lincoln Park Non-Contiguous Redevelopment TIF District

Photos: Parcel A - Parcel A - 2001 W Superior St - Esmond Building



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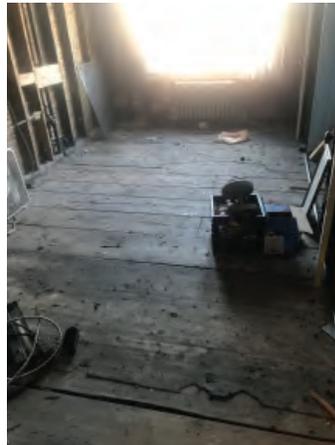
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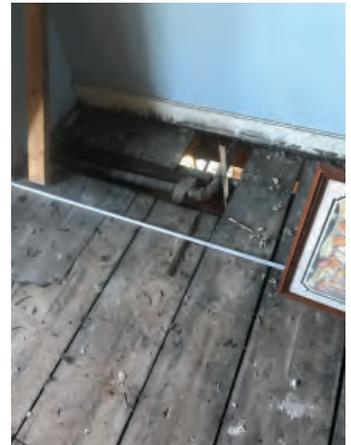
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# Lincoln Park Non-Contiguous Redevelopment TIF District

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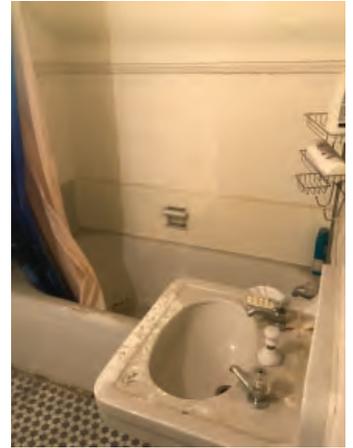
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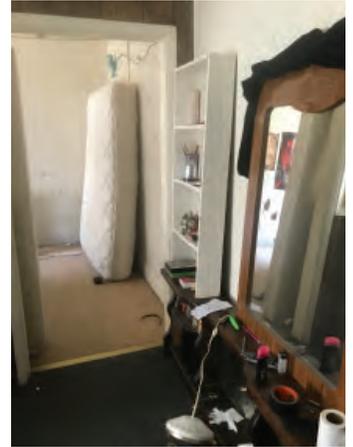
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# Lincoln Park Non-Contiguous Redevelopment TIF District

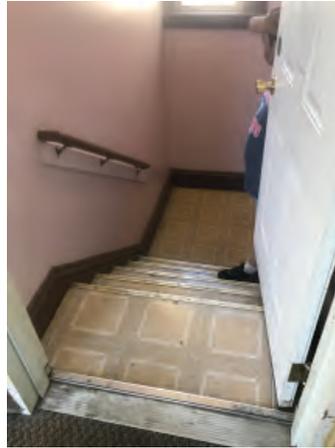
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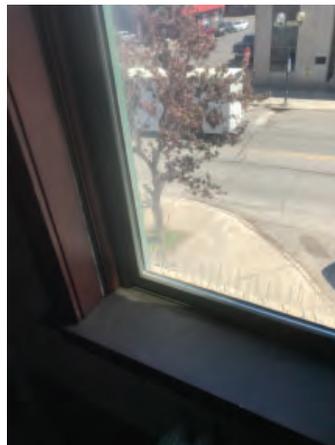
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# Lincoln Park Non-Contiguous Redevelopment TIF District

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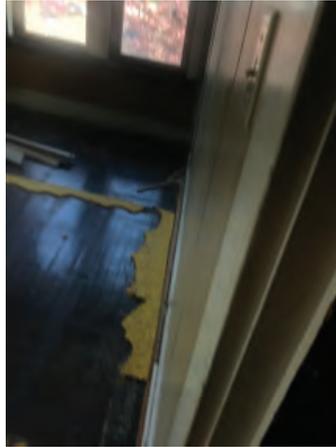
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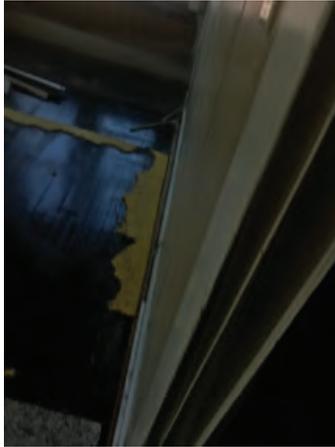
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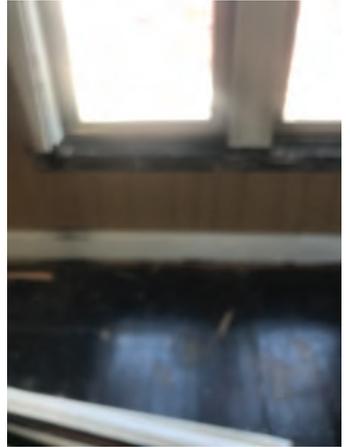
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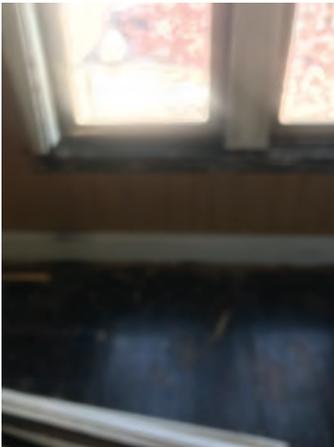
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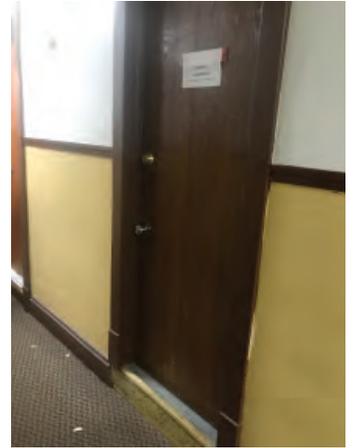
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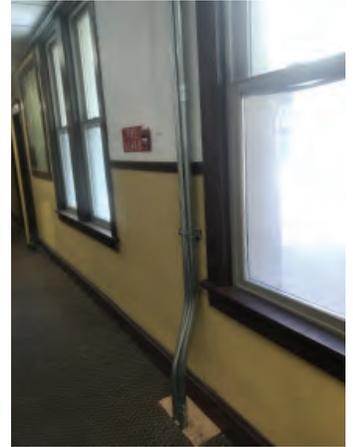
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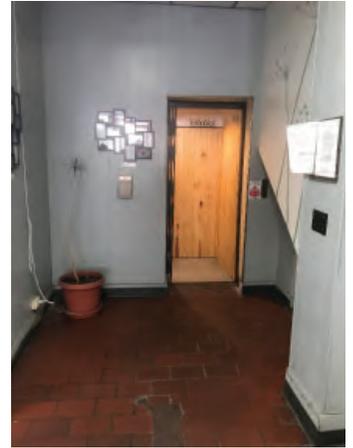
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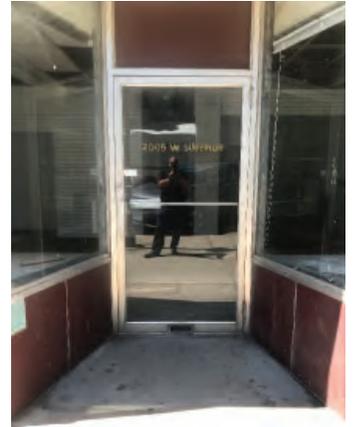
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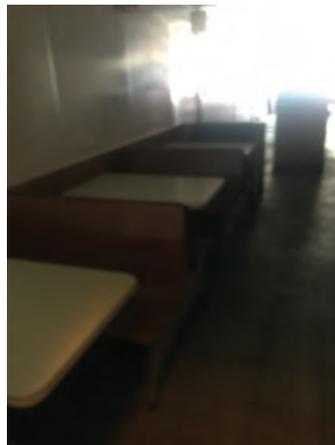
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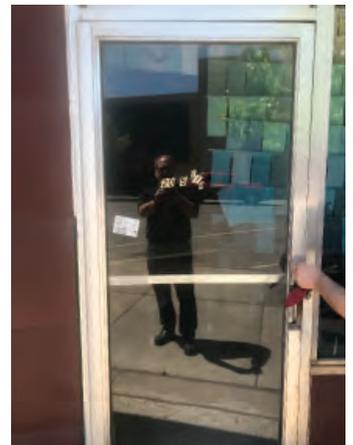
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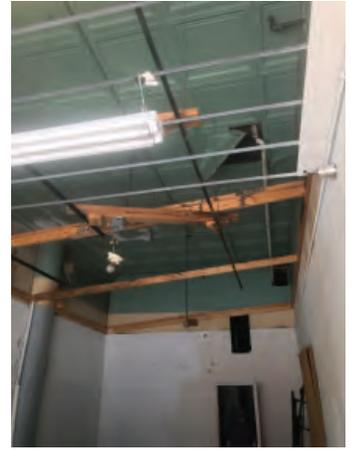
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# Lincoln Park Non-Contiguous Redevelopment TIF District

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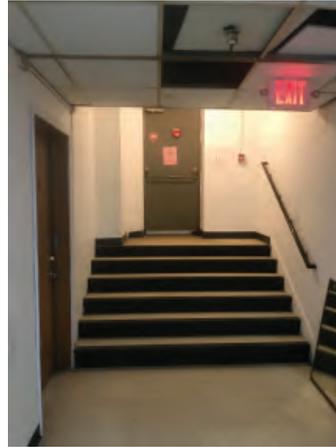
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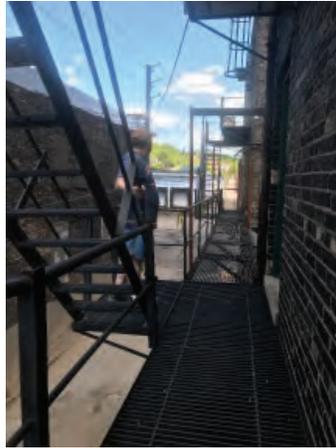
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# Lincoln Park Non-Contiguous Redevelopment TIF District

Photos: Parcel A - Parcel A - 2001 W Superior St - Esmond Building



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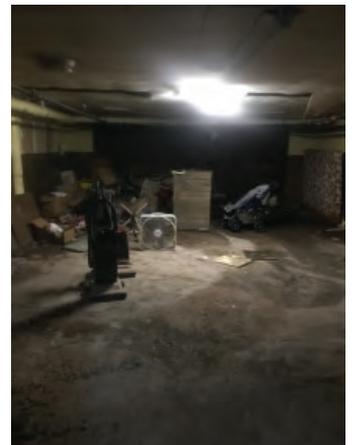
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# Lincoln Park Non-Contiguous Redevelopment TIF District

Photos: Parcel A - Parcel A - 2001 W Superior St - Esmond Building



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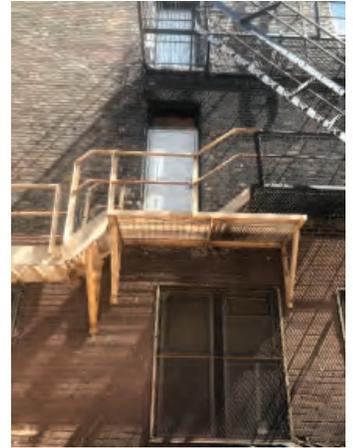
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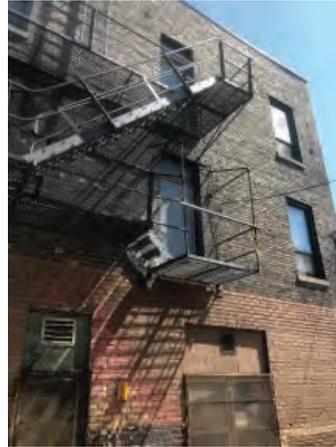
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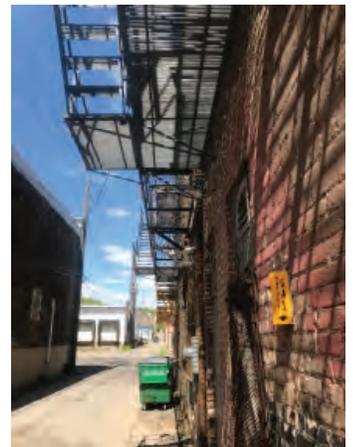
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# Lincoln Park Non-Contiguous Redevelopment TIF District

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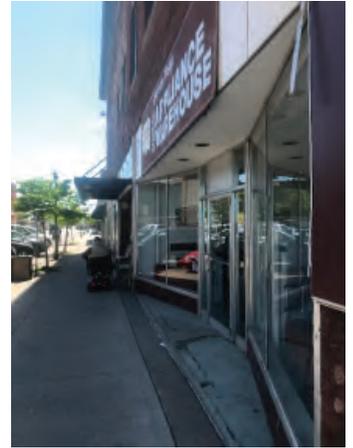
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# Lincoln Park Non-Contiguous Redevelopment TIF District

## Replacement Cost Report

RSMeans data  
from GORDIAN

Square Foot Cost Estimate Report

Date: 6/27/2019

Estimate Name:	<b>Roberts Furniture</b>	
Building Type:	<b>Store, 2-4 Story with Vinyl Clapboard / Wood Frame</b>	
Location:	<b>2102, 2104, and 2112 W Superior St, Duluth, MN 55806</b>	 <p>Costs are derived from a building model with basic components. Scope differences and market conditions can cause costs to vary significantly.</p>
Story Count:	<b>2</b>	
Story Height (L.F.):	<b>12.00</b>	
Floor Area (S.F.):	<b>18200</b>	
Labor Type:	<b>OPN</b>	
Basement Included:	<b>Yes</b>	
Data Release:	<b>Year 2019</b>	
Cost Per Square Foot:	<b>\$176.13</b>	
Building Cost:	<b>\$3,205,622.06</b>	

		% of Total	Cost Per S.F.	Cost
<b>A</b>	<b>Substructure</b>	<b>13.60%</b>	<b>\$20.84</b>	<b>\$379,217.72</b>
<b>A1010</b>	<b>Standard Foundations</b>		<b>\$7.71</b>	<b>\$140,257.12</b>
A10101102700	Strip footing, concrete, reinforced, load 11.1 KLF, soil bearing capacity 6 KSF, 12" deep x 24" wide		\$1.42	\$25,885.31
A10102107700	Spread footings, 3000 PSI concrete, load 200K, soil bearing capacity 6 KSF, 6' - 0" square x 20" deep		\$6.28	\$114,371.81
<b>A1030</b>	<b>Slab on Grade</b>		<b>\$2.61</b>	<b>\$47,590.82</b>
A10301202240	Slab on grade, 4" thick, non industrial, reinforced		\$2.61	\$47,590.82
<b>A2010</b>	<b>Basement Excavation</b>		<b>\$1.73</b>	<b>\$31,423.03</b>
A20101104620	Excavate and fill, 10,000 SF, 8' deep, sand, gravel, or common earth, on site storage		\$1.73	\$31,423.03
<b>A2020</b>	<b>Basement Walls</b>		<b>\$8.79</b>	<b>\$159,946.75</b>
A20201107260	Foundation wall, CIP, 12' wall height, pumped, .444 CY/LF, 21.59 PLF, 12" thick		\$8.79	\$159,946.75
<b>B</b>	<b>Shell</b>	<b>34.28%</b>	<b>\$52.50</b>	<b>\$955,445.70</b>
<b>B1010</b>	<b>Floor Construction</b>		<b>\$26.72</b>	<b>\$486,266.84</b>
B10102030860	Cast-in-place concrete column, 12" square, tied, 200K load, 12' story height, 142 lbs/LF, 4000PSI		\$6.93	\$126,132.54
B10102103450	Wood column, 8" x 8", 20' x 20' bay, 10' unsupported height, 133 BF/MSF, 160 PSF total allowable load		\$0.21	\$3,858.58
B10102103450	Wood column, 8" x 8", 20' x 20' bay, 10' unsupported height, 133 BF/MSF, 160 PSF total allowable load		\$0.21	\$3,858.58
B10102221720	Flat slab, concrete, with drop panels, 6" slab/2.5" panel, 12" column, 15'x15' bay, 75 PSF superimposed load, 153 PSF total load		\$6.65	\$121,050.02
B10102643050	Wood beam and joist floor, 12"x16" girder, 8"x16" beam, 2x10 joists @ 16", 20'x20' bay, 75 PSF LL, 102 PSF total load		\$8.51	\$154,942.33
B10107203700	Fireproofing, gypsum board, fire rated, 2 layer, 1" thick, 14" steel column, 3 hour rating, 22 PLF		\$4.20	\$76,424.79
<b>B1020</b>	<b>Roof Construction</b>		<b>\$4.83</b>	<b>\$87,906.00</b>
* B10201024100	Wood roof, flat rafter, 2" x 12", 12" O.C.		\$4.83	\$87,906.00
<b>B2010</b>	<b>Exterior Walls</b>		<b>\$10.37</b>	<b>\$188,705.61</b>
B20101484850	Wood, 2"x6" studs 16"OC, E.I.F.S.		\$9.66	\$175,738.56
B20101907600	Insulation, fiberglass batts, 6" thick, R19		\$0.71	\$12,967.05

<b>B2020</b>	<b>Exterior Windows</b>		<b>\$5.18</b>	<b>\$94,261.15</b>
B20201066550	Windows, aluminum, awning, insulated glass, 4'-5" x 5'-3"		\$5.18	\$94,261.15
<b>B2030</b>	<b>Exterior Doors</b>		<b>\$1.27</b>	<b>\$23,190.48</b>
B20301106950	Door, aluminum & glass, with transom, narrow stile, double door, hardware, 6'-0" x 10'-0" opening		\$0.67	\$12,113.60
B20301107300	Door, aluminum & glass, with transom, bronze finish, hardware, 3'-0" x 10'-0" opening		\$0.34	\$6,264.44
B20302203450	Door, steel 18 gauge, hollow metal, 1 door with frame, no label, 3'-0" x 7'-0" opening		\$0.26	\$4,812.44
<b>B3010</b>	<b>Roof Coverings</b>		<b>\$4.13</b>	<b>\$75,115.62</b>
* B30101052300	Roofing, asphalt flood coat, gravel, coated glass base sheet, 4 plies glass (type IV), mopped		\$3.91	\$71,162.00
B30106100050	Gutters, box, aluminum, .027" thick, 5", enameled finish		\$0.16	\$2,824.71
B30106200100	Downspout, aluminum, rectangular, 2" x 3", embossed mill finish, .020" thick		\$0.06	\$1,128.91
<b>C</b>	<b>Interiors</b>	<b>15.61%</b>	<b>\$23.91</b>	<b>\$435,079.84</b>
<b>C1010</b>	<b>Partitions</b>		<b>\$3.26</b>	<b>\$59,389.68</b>
C10101241200	Wood partition, 5/8" fire rated gypsum board face, none base, 2 x 4, @ 16" OC framing, same opposite face, 0 insul		\$1.27	\$23,032.80
C10101241425	Wood partition, 5/8" fire rated gypsum board face, 1/4" sound deadening gypsum board, 2x4 @ 16" OC framing, same opposite face, sound attenuation insul		\$0.94	\$17,132.56
C10101280700	Gypsum board, 1 face only, exterior sheathing, fire resistant, 5/8"		\$0.65	\$11,847.50
C10101280960	Add for the following: taping and finishing		\$0.41	\$7,376.82
<b>C1020</b>	<b>Interior Doors</b>		<b>\$3.83</b>	<b>\$69,756.40</b>
C10201022600	Door, single leaf, kd steel frame, hollow metal, commercial quality, flush, 3'-0" x 7'-0" x 1-3/8"		\$3.83	\$69,756.40
<b>C1030</b>	<b>Fittings</b>		<b>\$0.22</b>	<b>\$3,940.50</b>
C10301100420	Toilet partitions, cubicles, ceiling hung, plastic laminate		\$0.22	\$3,940.50
<b>C2010</b>	<b>Stair Construction</b>		<b>\$4.31</b>	<b>\$78,359.92</b>
C20101100720	Stairs, steel, pan tread for conc in-fill, picket rail, 12 risers w/ landing		\$4.31	\$78,359.92
<b>C3010</b>	<b>Wall Finishes</b>		<b>\$1.21</b>	<b>\$22,010.57</b>
C30102300140	Painting, interior on plaster and drywall, walls & ceilings, roller work, primer & 2 coats		\$0.64	\$11,669.55
C30102300140	Painting, interior on plaster and drywall, walls & ceilings, roller work, primer & 2 coats		\$0.57	\$10,341.02
<b>C3020</b>	<b>Floor Finishes</b>		<b>\$4.99</b>	<b>\$90,741.45</b>
C30204100080	Carpet tile, nylon, fusion bonded, 18" x 18" or 24" x 24", 35 oz		\$3.03	\$55,156.48
C30204101600	Vinyl, composition tile, maximum		\$0.85	\$15,523.98
C30204101720	Tile, ceramic natural clay		\$1.10	\$20,060.99
<b>C3030</b>	<b>Ceiling Finishes</b>		<b>\$6.09</b>	<b>\$110,881.32</b>
C30302106000	Acoustic ceilings, 3/4" fiberglass board, 24" x 48" tile, tee grid, suspended support		\$6.09	\$110,881.32
<b>D</b>	<b>Services</b>	<b>36.51%</b>	<b>\$55.92</b>	<b>\$1,017,754.18</b>
<b>D1010</b>	<b>Elevators and Lifts</b>		<b>\$11.64</b>	<b>\$211,896.05</b>
D10101108900	Hydraulic passenger elevator, 3000 lb, 3 floors, 12' story height, 2 car group, 125 FPM		\$11.64	\$211,896.05
<b>D2010</b>	<b>Plumbing Fixtures</b>		<b>\$2.02</b>	<b>\$36,771.67</b>
D20101102080	Water closet, vitreous china, bowl only with flush valve, wall hung		\$0.83	\$15,150.82
D20102102000	Urinal, vitreous china, wall hung		\$0.13	\$2,319.23

D20103101560	Lavatory w/trim, vanity top, PE on CI, 20" x 18"		\$0.24	\$4,375.01
D20104404340	Service sink w/trim, PE on CI, wall hung w/rim guard, 24" x 20"		\$0.55	\$9,920.34
D20108201920	Water cooler, electric, wall hung, wheelchair type, 7.5 GPH		\$0.28	\$5,006.27
<b>D2020</b>	<b>Domestic Water Distribution</b>		<b>\$0.58</b>	<b>\$10,621.57</b>
D20202501860	Gas fired water heater, commercial, 100< F rise, 100 MBH input, 91 GPH		\$0.58	\$10,621.57
<b>D3050</b>	<b>Terminal &amp; Package Units</b>		<b>\$16.38</b>	<b>\$298,099.62</b>
D30501553960	Rooftop, multizone, air conditioner, offices, 25,000 SF, 79.16 ton		\$16.38	\$298,099.62
<b>D4010</b>	<b>Sprinklers</b>		<b>\$3.49</b>	<b>\$63,476.17</b>
D40104100600	Wet pipe sprinkler systems, steel, light hazard, 1 floor, 5000 SF		\$1.56	\$28,380.21
D40104100720	Wet pipe sprinkler systems, steel, light hazard, each additional floor, 5000 SF		\$1.67	\$30,398.77
D40104108930	Standard High Rise Accessory Package 3 story		\$0.26	\$4,697.19
<b>D4020</b>	<b>Standpipes</b>		<b>\$0.98</b>	<b>\$17,760.24</b>
D40203101540	Wet standpipe risers, class III, steel, black, sch 40, 4" diam pipe, 1 floor		\$0.53	\$9,648.45
D40203101560	Wet standpipe risers, class III, steel, black, sch 40, 4" diam pipe, additional floors		\$0.45	\$8,111.79
<b>D5010</b>	<b>Electrical Service/Distribution</b>		<b>\$3.72</b>	<b>\$67,617.11</b>
D50101200440	Overhead service installation, includes breakers, metering, 20' conduit & wire, 3 phase, 4 wire, 120/208 V, 1000 A		\$0.97	\$17,589.25
D50102300440	Feeder installation 600 V, including RGS conduit and XHHW wire, 1000 A		\$1.24	\$22,492.00
D50102400320	Switchgear installation, incl switchboard, panels & circuit breaker, 120/208 V, 3 phase, 1200 A		\$1.51	\$27,535.86
<b>D5020</b>	<b>Lighting and Branch Wiring</b>		<b>\$11.41</b>	<b>\$207,677.88</b>
D50201100640	Receptacles incl plate, box, conduit, wire, 16.5 per 1000 SF, 2.0 W per SF, with transformer		\$4.52	\$82,325.15
D50201350320	Miscellaneous power, 1.2 watts		\$0.31	\$5,687.50
D50201400280	Central air conditioning power, 4 watts		\$0.56	\$10,247.33
D50201452080	Motor installation, three phase, 460 V, 15 HP motor size		\$0.26	\$4,737.76
D50202100520	Fluorescent fixtures recess mounted in ceiling, 1.6 watt per SF, 40 FC, 10 fixtures @32watt per 1000 SF		\$5.75	\$104,680.14
<b>D5030</b>	<b>Communications and Security</b>		<b>\$5.71</b>	<b>\$103,833.87</b>
D50303101020	Telephone wiring for offices & laboratories, 8 jacks/MSF		\$1.53	\$27,835.08
D50309100454	Communication and alarm systems, fire detection, addressable, 50 detectors, includes outlets, boxes, conduit and wire		\$1.92	\$34,872.29
D50309100462	Fire alarm command center, addressable with voice, excl. wire & conduit		\$0.60	\$10,989.21
D50309200110	Internet wiring, 8 data/voice outlets per 1000 S.F.		\$1.66	\$30,137.29
<b>E</b>	<b>Equipment &amp; Furnishings</b>	<b>0.00%</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>E1090</b>	<b>Other Equipment</b>		<b>\$0.00</b>	<b>\$0.00</b>
<b>F</b>	<b>Special Construction</b>	<b>0.00%</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>G</b>	<b>Building Sitework</b>	<b>0.00%</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>SubTotal</b>		<b>100%</b>	<b>\$153.16</b>	<b>\$2,787,497.44</b>
<b>Contractor Fees (General Conditions,Overhead,Profit)</b>		<b>15.0 %</b>	<b>\$22.97</b>	<b>\$418,124.62</b>
<b>Architectural Fees</b>		<b>0.0 %</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>User Fees</b>		<b>0.0 %</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Total Building Cost</b>			<b>\$176.13</b>	<b>\$3,205,622.06</b>

# Lincoln Park Non-Contiguous Redevelopment TIF District

## Code Deficiency Cost Report

Parcels B, C, and D - 2102, 2104, and 2112 W Superior St, Duluth, MN 55806

Parcel IDs: 010-1120-02740, 010-1120-02750, 010-1120-02760

Roberts Furniture

Code	Related Cost Items	Unit Cost	Units	Unit Quantity	Total
<b>Accessibility Items</b>					
	Parking				
	Create a code required parking space	\$ 100.00	EA	1	\$ 100.00
	Accessible Routes				
	Create a code required accessible route into the building	\$ 5,000.00	Lump	1	\$ 5,000.00
	Create a code required accessible route to all levels of the building	\$ 11.64	SF	18,200	\$ 211,848.00
	Restrooms				
	Install code compliant restroom	\$ 1.42	SF	18,200	\$ 25,844.00
<b>Structural Elements</b>					
					\$ -
<b>Exiting</b>					
	Door Hardware				
	Install code compliant door hardware	\$ 250.00	EA	35	\$ 8,750.00
	Thresholds				
	Modify thresholds to comply with code.	\$ 5,000.00	Lump	1	\$ 5,000.00
	Stairways				
	Modify stairways to comply with code.	\$ 4.31	SF	18,200	\$ 78,442.00
<b>Fire Protection</b>					
	Smoke Detectors				
	Install code required smoke detectors	\$ 1.92	SF	18,200	\$ 34,944.00
	Emergency Lighting				
	Install code compliant emergency lighting	\$ 0.75	SF	18,200	\$ 13,650.00
	Emergency Notification System				
	Install code compliant emergency notification system	\$ 0.60	SF	18,200	\$ 10,920.00
	Building Sprinkler System				
	Install code required building sprinkler system	\$ 4.47	SF	18,200	\$ 81,354.00
	Fire Proofing				
	Install code required fire proofing	\$ 4.20	SF	18,200	\$ 76,440.00
<b>Exterior Construction</b>					
	Exterior Insulation Finish System				
	Repair/replace E.F.I.S. to prevent water intrusion per code	\$ 0.25	SF	18,200	\$ 4,550.00

Code	Related Cost Items	Unit Cost	Units	Unit Quantity	Total
	Windows				
	Replace failed window system to prevent water intrusion per code	\$ 5.18	SF	18,200	\$ 94,276.00
<b>Roof Construction</b>					\$ -
<b>Mechanical- Electrical</b>					
	Mechanical				
	Install code compliant HVAC system	\$ 16.38	SF	18,200	\$ 298,116.00
	Electrical				
	Install code compliant electrical wiring system	\$ 7.27	SF	18,200	\$ 132,314.00
	Install code compliant lighting system	\$ 5.75	SF	18,200	\$ 104,650.00
<b>Total Code Improvements</b>					<b>\$ 1,186,198</b>

# Lincoln Park Non-Contiguous Redevelopment TIF District

Photos: Parcels B, C, and D - 2102, 2104 and 2112 W Superior St - Roberts Furniture



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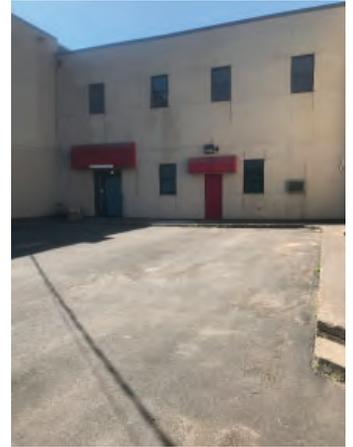
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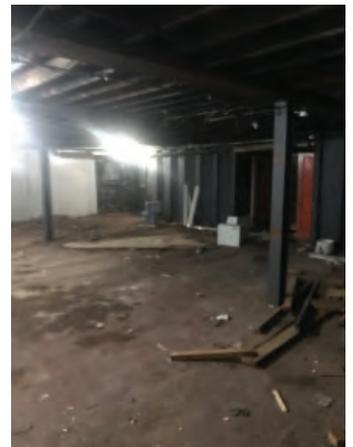
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# Lincoln Park Non-Contiguous Redevelopment TIF District

Photos: Parcels B, C, and D - 2102, 2104 and 2112 W Superior St - Roberts Furniture



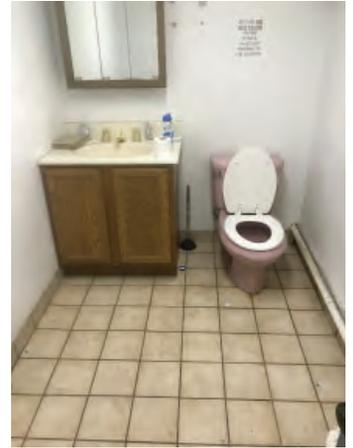
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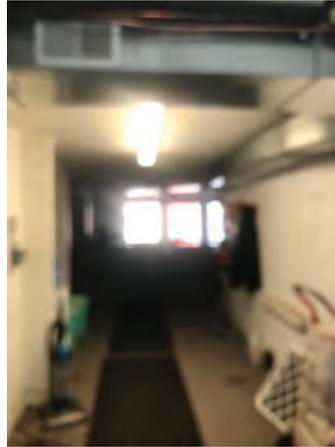
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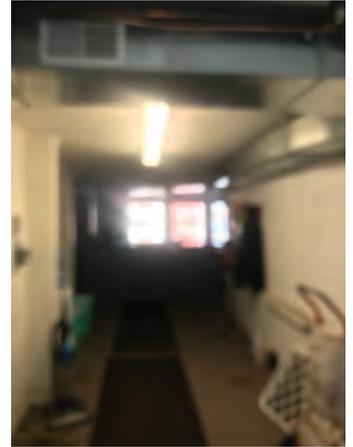
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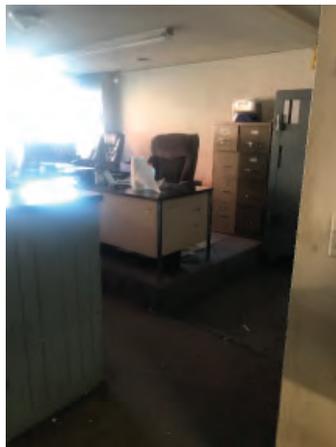
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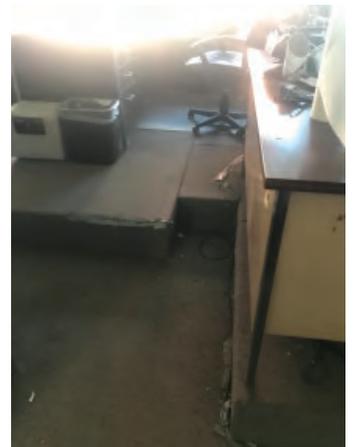
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# Lincoln Park Non-Contiguous Redevelopment TIF District

Photos: Parcels B, C, and D - 2102, 2104 and 2112 W Superior St - Roberts Furniture



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# Lincoln Park Non-Contiguous Redevelopment TIF District

Photos: Parcels B, C, and D - 2102, 2104 and 2112 W Superior St - Roberts Furniture



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# Lincoln Park Non-Contiguous Redevelopment TIF District

Photos: Parcels B, C, and D - 2102, 2104 and 2112 W Superior St - Roberts Furniture



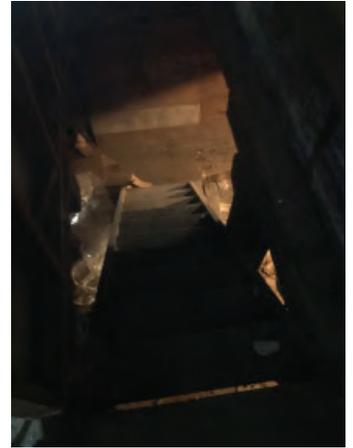
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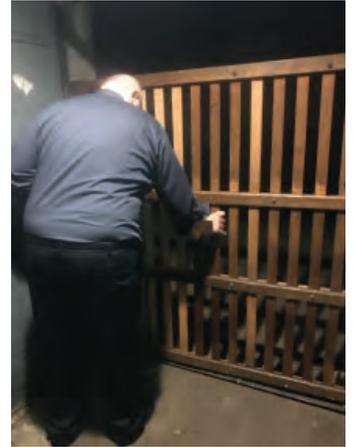
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# Lincoln Park Non-Contiguous Redevelopment TIF District

Photos: Parcels B, C, and D - 2102, 2104 and 2112 W Superior St - Roberts Furniture



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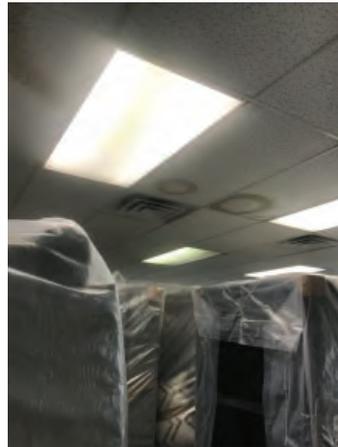
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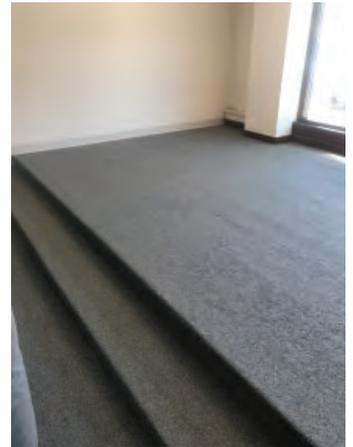
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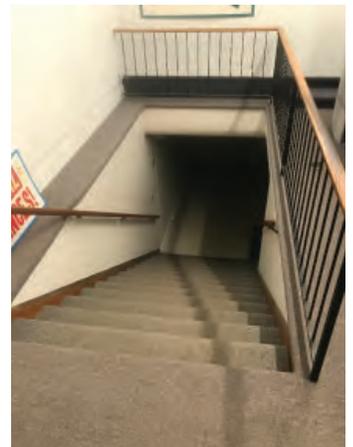
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# Lincoln Park Non-Contiguous Redevelopment TIF District

Photos: Parcels B, C, and D - 2102, 2104 and 2112 W Superior St - Roberts Furniture



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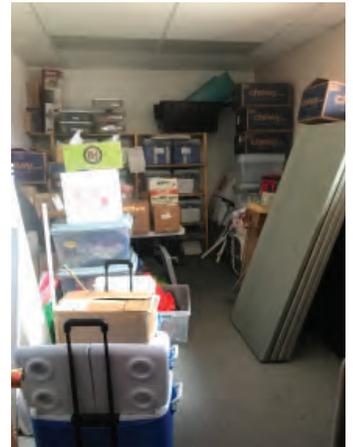
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# Lincoln Park Non-Contiguous Redevelopment TIF District

Photos: Parcels B, C, and D - 2102, 2104 and 2112 W Superior St - Roberts Furniture



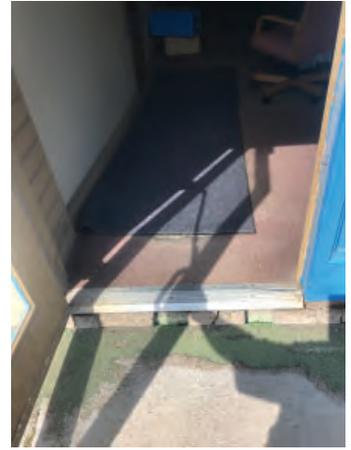
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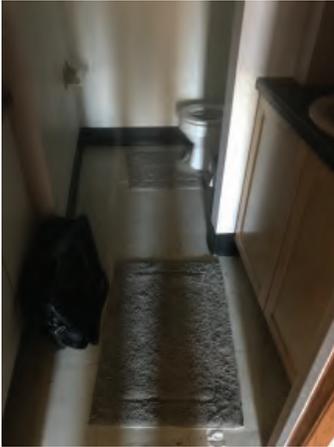
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# Lincoln Park Non-Contiguous Redevelopment TIF District

Photos: Parcels B, C, and D - 2102, 2104 and 2112 W Superior St - Roberts Furniture



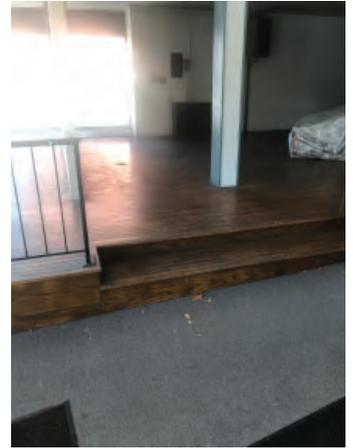
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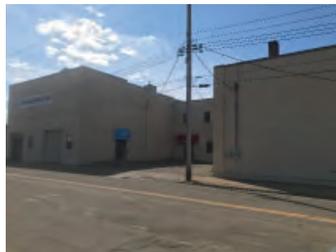
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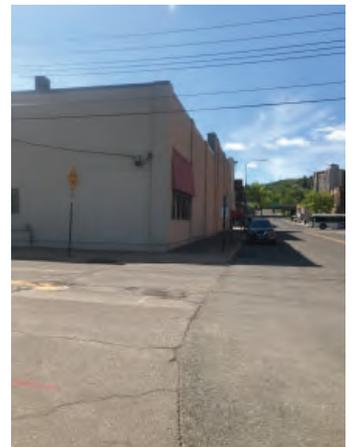
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# Lincoln Park Non-Contiguous Redevelopment TIF District

Photos: Parcels B, C, and D - 2102, 2104 and 2112 W Superior St - Roberts Furniture



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# Lincoln Park Non-Contiguous Redevelopment TIF District

Photos: Parcels B, C, and D - 2102, 2104 and 2112 W Superior St - Roberts Furniture



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## RESOLUTION 20D-62

### RESOLUTION AUTHORIZING ACQUISITION OF CERTAIN REAL PROPERTY FROM THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH, MINNESOTA RELATED TO THE REBUILD DULUTH PROGRAM

RESOLVED, by the Duluth Economic Development Authority ("DEDA"), that the proper DEDA officials are hereby authorized to acquire by quitclaim deed the below-described properties from the Housing and Redevelopment Authority of Duluth, Minnesota ("HRA") as part of the Rebuild Duluth Program at no cost to DEDA:

Lot 10, Block 128, PORTLAND DIVISION OF DULUTH

Lot 11, Block 128, PORTLAND DIVISION OF DULUTH

W ½ of Lot 12, East 5<sup>th</sup> Street, DULUTH PROPER First Division; and

E ½ of Lot 12, East 5<sup>th</sup> Street, DULUTH PROPER First Division

Approved by the Duluth Economic Development Authority this 23<sup>rd</sup> day of September, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: This resolution authorizes the acquisition of certain tax-forfeited parcels in the East Hillside and Central Hillside neighborhoods of Duluth for purposes assembling lots for the "Rebuild Duluth" program, which was announced in Mayor Larson's 2019 State of the City speech. Round two of the Rebuild Duluth program will offer eight parcels of land free of charge to builders and developers who come forward with viable plans to construct housing on the sites. These parcels will be included in Round two. Additional parcels are being acquired from the City of Duluth.



Exhibit A  
 PID 010-1010-01120  
 010-1010-01110

### Legend

- Lots
- Parcels
- Subdivision Boundaries
- Boundary Lines
- <all other values>
- Subtype, ROW\_TYPE
- Lot Line
- Parcel Line
- ROW (Road)
- ROW (Not Road)
- Subdivision Line
- Water Line
- Survey Line
- Municipal Boundary
- Zoning Boundaries
- Trout Stream (GPS)
- Other Stream (GPS)

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.



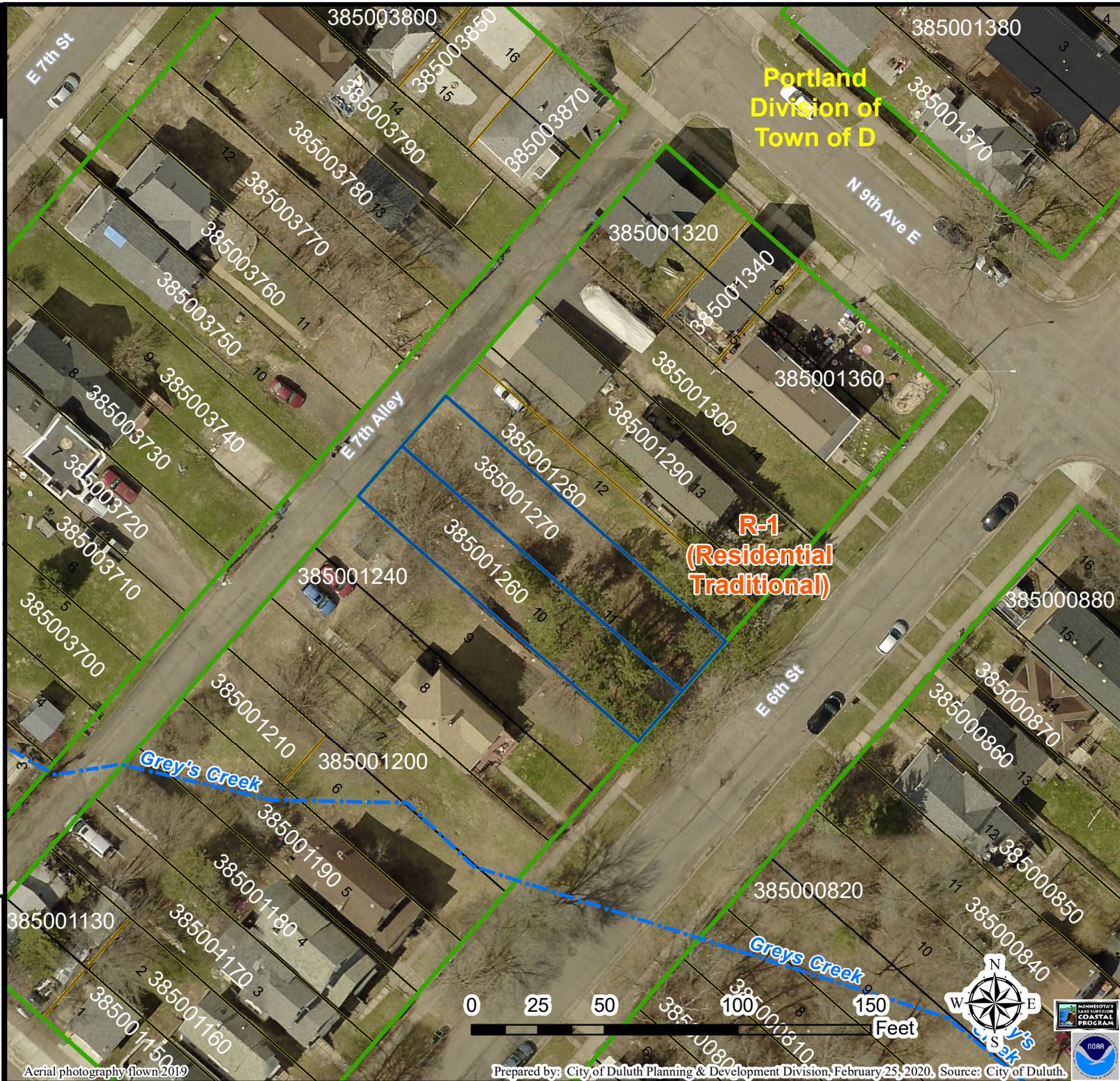
Aerial photography flown 2019



Exhibit A  
PID 010-3850-01270/01260

### Legend

- Lots
- Parcels
- Subdivision Boundaries
- Boundary Lines
- <all other values>
- Subtype, ROW\_TYPE
- Lot Line
- Parcel Line
- ROW (Road)
- ROW (Not Road)
- Subdivision Line
- Water Line
- Survey Line
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Aerial photography flown 2019



Prepared by: City of Duluth Planning & Development Division, February 25, 2020, Source: City of Duluth.

## RESOLUTION 20D-63

### RESOLUTION AUTHORIZING ACQUISITION OF CERTAIN TAX FORFEITED REAL PROPERTY FROM THE STATE OF MINNESOTA THROUGH ST. LOUIS COUNTY RELATED TO THE REBUILD DULUTH PROGRAM

RESOLVED, by the Duluth Economic Development Authority ("DEDA"), that the proper DEDA officials are hereby authorized to acquire by quit claim deed the below-described tax-forfeited property from the State of Minnesota through St. Louis County as part of the Rebuild Duluth Program for the amount of \$2,763.07, payable from Fund 860-860-8640-5510:

East ½ of Lot 442, Block 80, Duluth Proper Second Division

Approved by the Duluth Economic Development Authority this 23rd day of September, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: This resolution authorizes the acquisition of a certain tax-forfeited parcel in the Lincoln Park neighborhood of Duluth for purposes assembling lots for the "Rebuild Duluth" program, which was announced in Mayor Larson's 2019 State of the City speech. Round two of the Rebuild Duluth Program will offer eight parcels of land free of charge to builders and developers who come forward with viable plans to construct housing on the sites. These parcels will be included in round two. Additional parcels are being acquired from the City of Duluth and the Housing and Redevelopment Authority of Duluth, Minnesota.

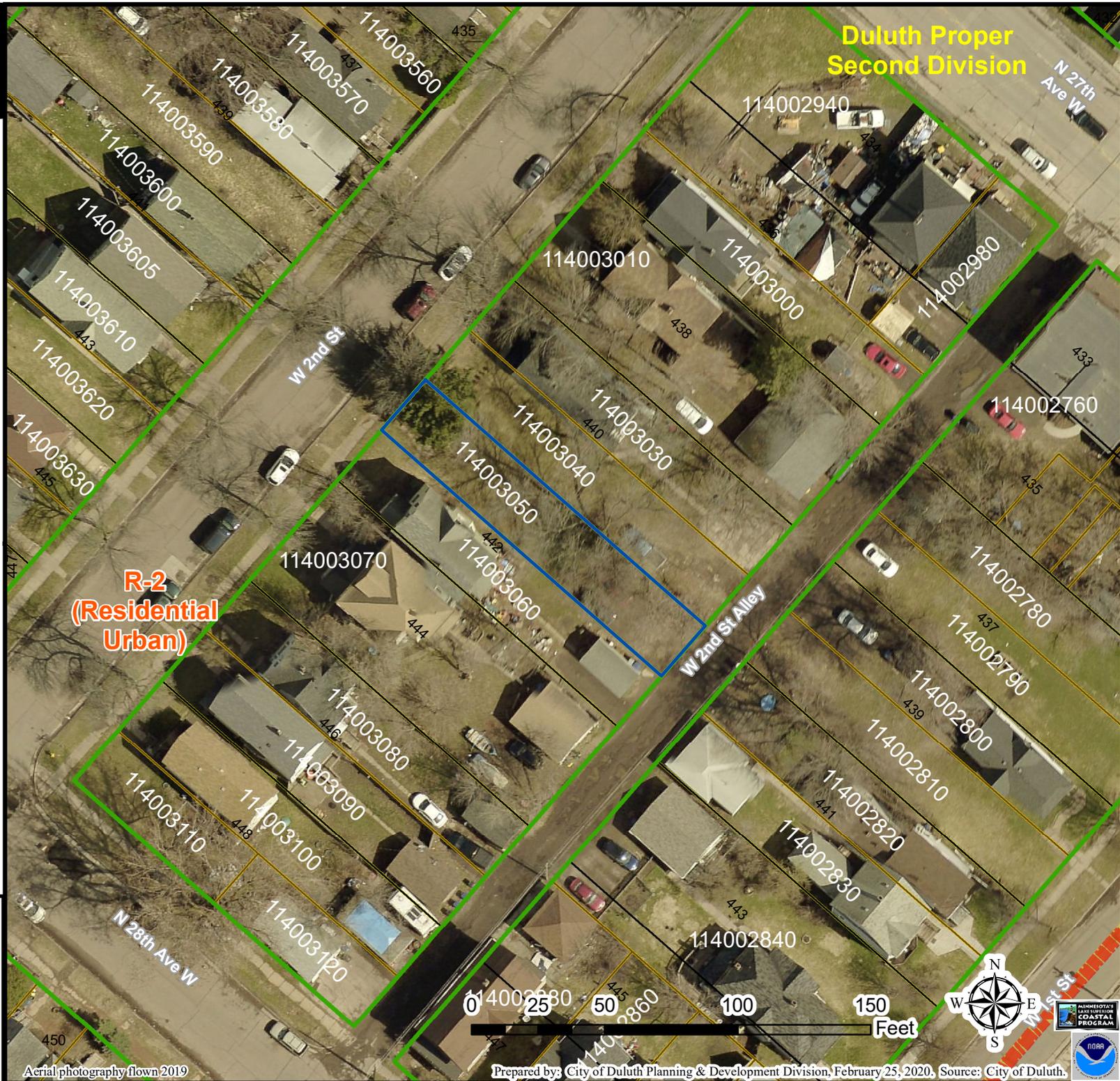


Exhibit A  
PID 010-1140-03050

Duluth Proper  
Second Division

### Legend

- Lots
- Parcels
- Subdivision Boundaries
- Boundary Lines
  - <all other values>
  - Subtype, ROW\_TYPE
    - Lot Line
    - Parcel Line
    - ROW (Road)
    - ROW (Not Road)
    - Subdivision Line
    - Water Line
    - Survey Line
  - Municipal Boundary
  - Zoning Boundaries
  - Trout Stream (GPS)
  - Other Stream (GPS)



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Aerial photography flown 2019



Prepared by: City of Duluth Planning & Development Division, February 25, 2020, Source: City of Duluth.

**RESOLUTION 20D-64**

**RESOLUTION AUTHORIZING LEASE OF BAYFRONT PROPERTY TO THE CITY OF  
DULUTH RELATED TO THE CITY OF DULUTH**

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to lease the property in Bayfront known as Lot D and the adjacent property, a copy of which is attached hereto as Exhibit A, to the City of Duluth for public parking and other uses consistent with Bayfront Festival Park at no cost.

Approved by the Duluth Economic Development Authority this 23<sup>rd</sup> day of September, 2020.

Attest:

\_\_\_\_\_  
Executive Director

**STATEMENT OF PURPOSE:**

The purpose of this resolution is to authorize the leasing of Lot D in Bayfront and the adjacent DEDA property to the City through May 31, 2021 or until the property conveyance authorized by DEDA Resolution 19D-24 can be completed. The permitted uses are parking and other uses compatible with Bayfront Festival Park.

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT is entered into by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under the laws of the State of Minnesota, (“DEDA”), and the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, (“City”).

The parties acknowledge the following:

A. The City owns certain property located in the Bayfront area of the City of Duluth known as Bayfront Festival Park upon which various festivals and activities occur (“Bayfront Festival Park”).

B. DEDA owns certain property located in the Bayfront area of the City of Duluth indicated as DEDA Parking Lot B (the “DEDA Lot”) and certain property adjacent to the DEDA Lot (the “Adjoining DEDA Property”), as outlined in yellow and red, respectively, on the attached Exhibit A.

C. DEDA and the City desire to enter into this License Agreement to allow the City to operate the DEDA Lot for vehicular parking only and to allow the City use of the Adjoining DEDA Property for Bayfront Festival Park-related purposes.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. THE LICENSE. Subject to the terms and conditions set forth herein, DEDA grants to the City an exclusive license for use, during the term set forth below, of the DEDA Lot and the Adjoining DEDA Property (collectively, the “Licensed Premises”).

2. USE OF THE LICENSED PREMISES. The DEDA Lot shall be used for the purpose of vehicular parking. Notwithstanding the above, in addition to the use of the DEDA Lot for vehicular parking, at the sole discretion and upon the prior written approval of the Executive Director, the City may use the DEDA Lot for other approved uses. The Adjoining DEDA Property shall be used solely for purposes consistent with the use of the remainder of Bayfront Festival Park.

3. THIRD PARTY AGREEMENTS. If the City enters into third party agreements for vehicular parking or other approved uses with respect to the DEDA Lot B or for purposes consistent with the use of the remainder of Bayfront Festival Park with respect to the Adjoining DEDA Property, such third party agreements shall require that the third party indemnify DEDA and name DEDA as an additional insured on its commercial general liability insurance and, if appropriate, its automobile insurance policies, and, unless otherwise agreed to in writing by the Executive Director, shall further require insurance limits of not less than \$1.5 million and twice the limits provided

when a claim arises out of the release or threatened release of a hazardous substance or such increased liability limits as set forth in Minnesota Statutes Section 466.04. Upon request, an executed copy of each agreement, along with evidence of insurance, shall be promptly provided to the Executive Director.

4. TERM OF THE AGREEMENT. Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on September 1, 2020, and shall continue through May 31, 2021, or until such time as the Licensed Premises are conveyed to the City, whichever is earlier.

5. LICENSE FEE. The City shall have the use of the Licensed Premises for no cost.

6. DEDA WARRANTY. DEDA makes no representation that the Licensed Premises are suitable for any specific uses and the City accepts the Licensed Premises in an "as is" condition without representations or warranties of any kind. The operation of parking and all other activities on the Licensed Premises shall be at the sole risk of the City. DEDA shall not be obligated to make any alterations or improvements on or to the Licensed Premises.

7. MAINTENANCE. The City agrees to exercise reasonable care in the maintenance of the Licensed Premises during the term of this Agreement. The City shall not make any alterations or improvements to the Licensed Premises without the prior written consent of the Executive Director and upon the terms and conditions which may be imposed by the Executive Director in his/her sole discretion. The City shall plow snow from the Licensed Premises and provide for litter clean up and trash removal on the Licensed Premises, in the quality and quantity as the City performs these duties to Bayfront Festival Park. The City shall surrender the Licensed Premises at the termination of this Agreement in the condition found prior to the commencement of this Agreement at no expense to DEDA, reasonable wear and tear excepted. The City agrees to pay upon demand any damage done to the Licensed Premises by the City, its employees, servants, agents, contractors, invitees and licensees during the term of this Agreement.

8. UTILITIES. The City shall be responsible for the cost of all utilities to the Licensed Premises.

9. ACCESS. DEDA expressly reserves the right to the unlimited access to the Licensed Premises for authorized personnel at any time while this Agreement is in force for the purposes of inspection and ensuring that the provisions of this Agreement are complied with by the City.

10. HOLD HARMLESS. DEDA shall not in any way be liable or responsible for any accident or damage that may occur in the City's use of the Licensed Premises during the term of this Agreement. The City agrees to defend, indemnify, and save harmless DEDA, and its officers, agents, servants, and employees from any and all

liens, judgments, claims including those for contribution and indemnity, suits, demands, liability, costs, damages, and expenses asserted by any person or persons including agents or employees of DEDA or the City by reason of death or injury to person or persons or the loss or damage to property or any cause of action arising out of or in connection with or relating to the City's use or occupancy of the Licensed Premises except those claims, causes of action, liabilities or damages relating to or arising from or based upon the negligence, willful acts or omissions of DEDA and its officers, agents, servants or employees. On ten days' written notice from DEDA, the City will appear and defend all lawsuits against DEDA growing out of such injuries or damages.

11. INSURANCE. During the term of this Agreement, the City, at its own cost and expense, shall self insure comprehensive liability and property damage insurance applicable to the Licensed Premises and the City's employees, servants, agents, contractors, invitees and licensees, sufficient to protect the interests of DEDA with a combined single limit of at least \$1,500,000; for each occurrence \$500,000; and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance. DEDA shall be considered an additional insured.

12. INDEPENDENT CONTRACTOR. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the City as an agent, representative, or employee of DEDA for any purpose or in any manner whatsoever. The City and its employees shall not be considered employees of DEDA and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of the City's employees or agents while so engaged, and any and all claims whatsoever on behalf of the City's employees and agents arising out of employment shall in no way be the responsibility of DEDA. The City's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from DEDA, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Insurance, disability or severance pay, and PERA.

13. ASSIGNMENT. The City shall not in any way assign or transfer its rights or interests under this Agreement or subcontract with any other party without the prior written consent of the Executive Director. Notwithstanding the above, DEDA consents to the DECC undertaking some or all of the City's rights and interests hereunder.

14. LAWS, RULES AND REGULATIONS. During the term of this Agreement, the City, agrees to operate the Licensed Premises and all activities conducted on the Licensed Premises in strict compliance with the United States Constitution and with the laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, City of Duluth, and DEDA, including, but not limited to, all laws, rules, and regulations relating to accessibility standards under the Americans with Disabilities Act. The City shall not unlawfully discriminate and shall comply with all applicable federal and state laws regarding non-discrimination. The City agrees to

procure, at the City's expense, all licenses and permits necessary for carrying out the provisions of this Agreement.

15. WAIVER. The waiver by DEDA or the City of any breach of any term, covenant, or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition herein contained.

16. NO THIRD PARTY RIGHTS. This Agreement is to be construed and understood solely as an agreement between the parties hereto and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that they are a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the parties hereto, may be waived at any time by mutual agreement between the parties hereto.

17. DEFAULT. If the City fails in keeping and performing any term or condition of this Agreement and such a default continues for thirty (30) days after DEDA has given written notice to the City of said default, or, in the event that such default shall be incapable of cure during said thirty-day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion, DEDA may terminate this Agreement by written notice to the City setting forth the date of termination. In such event, DEDA may seek and be entitled to monetary damages from the City, may seek and be entitled to injunctive and declaratory relief, and may seek other legal or equitable relief.

18. NOTICES. Notices shall be sufficient if sent by regular United States mail, postage prepaid, addressed to DEDA, 418 City Hall, 411 West First Street, Duluth, Minnesota 55802, ATTN: Executive Director; and addressed to City of Duluth, 418 City Hall, 411 West First Street, Duluth, MN 55802, ATTN: Chief Administrative Officer or to such other persons or addresses as the parties may designate to each other in writing from time to time.

19. CAPITAL IMPROVEMENTS. The City shall not make any capital improvements to the Licensed Premises without the prior written consent of the Executive Director and upon the terms and conditions which may be imposed by the Executive Director in his/her sole discretion. The City shall be responsible for securing all necessary permits and approvals required by the City and all other regulatory agencies having jurisdictional authority over any of the work to be performed.

Prior to any work being performed, the City shall provide to the Executive Director for written approval complete contract drawings and specifications on all work to occur on the Licensed Premises. All such work shall conform to all applicable regulations, building codes and health standards and shall be done by competent contractors in the time and manner approved by the Executive Director. The City shall require all contractors to obtain construction bonds as well as public liability and property insurance in such amounts that will protect DEDA's interest in the Licensed Premises, and DEDA shall be named as an additional insured on all such insurance

policies. The City shall pay for all costs in connection with improvements to the Licensed Premises including but not limited to permit fees, engineering fees and construction costs.

20. COMPLIANCE WITH AGREEMENT. The rights of the City to use the Licensed Premises shall continue only so long as all of the undertakings, provisions, covenants, and conditions herein contained are complied with promptly by the City.

21. APPLICABLE LAW. This Agreement, together with all of its paragraphs, terms, and provisions, is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

22. AMENDMENTS. Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

23. AUTHORITY TO EXECUTE AGREEMENT. The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their governing bodies or boards, that the officers of the parties who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of said parties on their behalf will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

24. ENTIRE AGREEMENT. This Agreement, including Exhibit A, constitutes the entire Agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have set their hands the day and date first shown below.

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY

CITY OF DULUTH

By: \_\_\_\_\_  
Its President

By: \_\_\_\_\_  
Its Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its Secretary

Attest: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
City Auditor

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney



1:2,400  
1 inch = 200 feet  
0 100 200 300 Feet  
Photo Date: May 2013  
Print Date: 6/8/2015  
Prepared By: The City of Duluth GIS Office

# City of Duluth Bayfront Park Site Map

EXHIBIT A

**RESOLUTION 20D-65**

**RESOLUTION AUTHORIZING FIRST AMENDMENT TO AGREEMENT  
WITH DULUTH SEAWAY PORT AUTHORITY FOR USE OF A PORTION OF LOT D**

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into the First Amendment to License Agreement (DEDA Contract No. 20 860 970<sub>(1)</sub>) amending DEDA Contract No. 20 860 970 with the Duluth Seaway Port Authority extending the term thereof by 30 days and increasing the amount receivable by \$2,500, said sum to be payable to Fund 860.

Approved by the Duluth Economic Development Authority this 23<sup>rd</sup> day of September, 2020.

ATTEST:

---

Executive Director

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize the execution of a First Amendment to License Agreement with the Duluth Seaway Port Authority (DSPA") to extend the term thereof by 30 days and increase the total amount of rent DEDA is to receive commensurately.

The License was originally granted to DSPA to allow them to allow Altec Industries, Inc., their tenant, to temporarily store a portion of the inventory on the Lot D property for which use Altec pays \$2,500 per month. This amendment extends that authorization for an additional month.

FIRST AMENDMENT TO  
LICENSE AGREEMENT  
DEDA AND DSPA

THIS FIRST AMENDMENT TO LICENSE AGREEMENT, entered into this \_\_ day of September, 2020 by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority under Minnesota Statutes (1989, Chapter 469, hereinafter referred to as “DEDA” and the DULUTH SEAWAY PORT AUTHORITY, a body corporate and politic under the laws of the State of Minnesota, hereinafter referred to as “DSPA”.

WHEREAS, as of June 25, 2020, DEDA and DSPA entered into a License Agreement bearing DEDA contract no. 20 860 970 (the “License Agreement”) to allow DSPA to allow Altec Industries Inc. to store equipment on a portion of DEDA’s Lot D through October 31, 2020; and

WHEREAS, the parties thereto are desirous of extending the term of the License agreement for an additional thirty days as hereinafter provided for.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto hereby agree as follows:

1. That Article I of the License Agreement is hereby amended by striking therefrom the date of October 31, 2020 and by substituting therefore the date of November 30, 2020.
2. That Article VIII of the License Agreement is hereby amended by striking therefrom the dollar amount of \$10,000 and by substituting therefore the dollar amount of \$12,500.

3. That in all other respects, the License Agreement together with all of its terms, covenants and conditions is hereby confirmed in its entirety.

IN WITNESS WHEREOF, the parties have hereunto set their hands the date and date first above shown.

DULUTH ECONOMIC  
DEVELOPMENT AUTHORITY  
A Minnesota economic development  
Authority

DULUTH SEAWAY PORT  
AUTHORITY, a Minnesota  
port authority

By: \_\_\_\_\_  
Its President

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its Secretary

Approved:

Attest'

\_\_\_\_\_  
Asst. City Attorney

\_\_\_\_\_  
Auditor

**RESOLUTION 20D-66**

**RESOLUTION AUTHORIZING SECOND AMENDMENT TO AGREEMENT  
WITH MERGE LLC. PERTAINING TO THE PASTORET  
TERRACE/ROBISON BALLROOM PROPERTY, EXTENDING  
THE TERM THEREOF.**

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into the Second Amendment to Agreement for Professional Services (DEDA Contract No. 20 860 942<sup>(1)</sup>) amending DEDA Contract No. 19 860 9111/20 860 942 with Merge, LLC, an Iowa limited liability company, d/b/a Merge Urban Development Group, substantially in the form of that attached hereto, to extend the term of the agreement through May 30, 2022.

Approved by the Duluth Economic Development Authority this 23<sup>rd</sup> day of September, 2020.

ATTEST:

---

Executive Director

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize the execution of a Second Amendment to Agreement with Merge, LLC, an Iowa limited liability company, d/b/a Merge Urban Development Group ("Merge") to extend the term of the agreement through May 30, 2022.

On May 29, 2019 DEDA entered into an agreement with Merge giving Merge and option to purchase DEDA's Pastoret Terrace Building and the Robison Ballroom Building (the "Property") to allow Merge to explore options for the redevelopment of the Property. DEDA had acquired the Property, which was at the time tax forfeit from the State through St. Louis County with the goal of either renovating and redeveloping the existing buildings or of razing them and redeveloping the underlying property. The buildings had suffered several fires, we vacant and derelict and constituted a nuisance and a blight on the neighborhood.

However, the buildings were also listed on the National Register of historic properties. But the owners of the Property had done nothing to preserve the buildings, let alone redevelopment them.

DEDA first made every effort to solicit proposals for the redevelopment of the Property which would include historically sound renovation and redevelopment of the buildings. The only responses DEDA received were either lacking in financial and practical substance or out of step with the City of Duluth's policy for housing in the area or both so those proposals were rejected. Having failed in its attempt to secure development, which would preserve the buildings, DEDA opened up the process to proposals which would involve demolition of buildings.

Merge submitted a proposal to investigate viable options for reuse of the Property which would involve demolition of the buildings and on May 29, 2019 the parties signed an option agreement granting Merge a conditional option to acquire the Property for redevelopment, which option ran through May 29, 2020 which was extended by the First Amendment to September 30, 2020.

In the meantime, the vendor on the contract for deed which conveyed the Property (before tax forfeiture) to Eric Ringsred sued the County and DEDA to overturn the County's sale of the Property to DEDA and a group of which Ringsred is a part sued to enjoin the demolition of the Property under the Minnesota Environment Rights Act. Both actions are still in process, rendering action to redevelop the Property impossible.

Merge would still like to continue pursuing the Project. Therefore this amendment would extend the term of the conditional option to May 30, 2022 and extend the timeframe for Merge's performance of the intervening Milestones toward a development agreement. It would also clarify that if the lawsuits were to prevent DEDA from fulfilling its obligations under the conditional option, it would be excused from such performance.

**OPTION AGREEMENT  
SECOND AMENDMENT**

THIS SECOND AMENDMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, is by and between the Duluth Economic Development Authority, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "DEDA" and Merge, LLC, an Iowa limited liability company, d/b/a Merge Urban Development Group, hereinafter referred to as "Developer".

WHEREAS, on May 29, 2019, the parties entered into an Option Agreement bearing DEDA Contract No, 19 860 9111 in order to grant a conditional option to Developer to allow Developer to make the investment in time, money and effort to determine whether the Pastoret Terrace Building and the Paul Robeson Ballroom (the "Property") can be feasibly developed, which Option Agreement was amended by the First Amendment to Option Agreement bearing DEDA Contract No. 20 860 942 dated January 30, 2020, which Option Agreement and First Amendment to Option Agreement are hereinafter jointly referred to as the "Agreement" and

WHEREAS, the Property includes contributing structures to the Duluth Commercial Historic District and is or was the subject of three lawsuits: Respect Starts Here v. DEDA, 69DU-CV-18-953; Temple Corp. v. City of Duluth, 69DU-CV-18-2655; and King v. St. Louis County, 69DU-CV-17-529; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. That Section A of Article II of the Agreement is hereby amended to read as follows:

In consideration of the terms and conditions of this Agreement, DEDA hereby grants to Developer an exclusive Conditional Option to purchase the Property for

the amount of the Purchase Price, which Conditional Option shall be effective beginning on the Commencement Date and continuing until May 30, 2022, or final resolution of the Lawsuits via Court order including all rights of appeal, settlement or other manner (the "Final Resolution of the Lawsuits"), whichever is later; unless sooner exercised, extended or terminated as hereinafter provided. The Executive Director shall give Developer notice of the Final Resolution of the Lawsuits. During the term of the Conditional Option, Developer will determine site conditions and will analyze the market for various kinds of development, and the terms and conditions of the Development Agreement will be finalized. If the Conditional Option is not exercised as of the latter of May 30, 2022, or the final resolution of the Lawsuits, the Conditional Option herein granted shall terminate and be of no further force and effect unless extended in writing and approved by a resolution of DEDA's Board of Commissioners.

2. That Article VI of the Agreement is hereby amended to read as follows:

The parties agree that it is critical to both of them that the development process for the Project proceed in an expeditious and orderly manner and, therefore, the parties agree that the following Milestones be met in the timeframes herein established, subject to the right of the parties to later agree to modifications thereof. Developer shall submit to the Executive Director in writing evidence reasonably satisfactory to the Executive Director that the requirements of the Milestones have been fulfilled in the time frames set forth below. Failure by the Developer to do so will permit but not require DEDA to terminate this Option Agreement.

A. Milestone 1.

No later than October 31, 2021, Developer shall have presented to the Executive Director an outline of Developer's proposed Project which includes a list of proposed uses to be developed on the Property, their approximate size in square feet, the footprint and elevations of structures

or other improvements proposed for the Property, the estimated cost of acquiring, constructing and installing any such improvements, and written description of types and characters of proposed tenancies thereof.

B. Milestone 2.

No later than December 31, 2021, Developer shall have presented to the Executive Director refined plans for the Project including architectural plans which are at least to the schematic level for any improvements to be constructed thereon, a proposed ownership structure for the development entity or entities to be involved, a proposed “sources and uses” statement for the Project, and a specific statement of what, if any, public assistance will be required for the Project to be developed and the proposed sources of such public assistance.

C. Milestone 3.

No later than May 30, 2022, or the final resolution of the Lawsuits, whichever is later, Developer shall have received approval from the DEDA Board of Commissioners and from any other required or appropriate local governmental agencies, including but not limited to the City of Duluth, of a Development Agreement and of any other means of financing requiring approval of such agencies.

3. That Article VIII of the Agreement is hereby amended to read as follows:

## ARTICLE VIII

### Exercise

A. In General

Exercise of this Conditional Option shall be accomplished by the approval of the Development Agreement by the DEDA Board of Commissioners and any other required or appropriate local governmental agencies, including but not limited to

the City of Duluth, and the execution by the appropriate officials of DEDA and Developer of the Development Agreement meeting the requirements of this Agreement on or before the last day of the term of this Conditional Option. The manner of implementing the closing on the purchase of the Property, and the documentation related thereto and the apportionment of costs shall be set forth in the Development Agreement.

B. Termination by DEDA

Nothing to the contrary in the Agreement, as amended, withstanding, in the event that, as a result of the final determination of either or both of the Lawsuits, DEDA loses title or ownership of the Property or is prevented from conveying title to the Property to Developer or is prevented from demolishing either or both of the buildings on the Property or is prevented from granting to Developer the right to demolish either or both of the buildings on the Property, DEDA shall have the right to terminate this Agreement and, upon such termination, this Agreement shall be null and void and neither party shall have any further rights, responsibilities or liabilities with regard to the other party arising therefrom.

4. Except as provided in this Second Amendment, the terms and conditions of the Option Agreement shall remain in force and effect.

[Signature page to follow.]

IN WITNESS WHEREAS, the parties have hereunto set their hands the day and date first above shown.

DULUTH ECONOMIC DEVELOPMENT

MERGE, LLC, an Iowa limited liability company, d/b/a MERGE URBAN DEVELOPMENT GROUP

AUTHORITY

By: \_\_\_\_\_  
Its President

By: \_\_\_\_\_  
Brent Dahlstrom  
Its: Manager

By: \_\_\_\_\_  
Its Secretary

STATE OF IOWA                    )  
  ) ss.  
COUNTY OF BLACK HAWK    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_ Brent Dahlstrom, the Manager of Merge, LLC, an Iowa limited liability company, d/b/a Merge Urban Development Group, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ and \_\_\_\_\_, the President and Secretary of the Duluth Economic Development Authority, an economic development authority under the laws of the State of Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

This instrument was drafted by:

Robert Asleson  
Assistant City Attorney  
410 City Hall  
Duluth, MN 55802  
(218) 730-5273

**RESOLUTION 20D-67**

**RESOLUTION AUTHORIZING A LICENSE AGREEMENT WITH THE  
CITY OF DULUTH FOR THE USE OF DEDA LOT D**

RESOLVED, by the Duluth Economic Development Authority (“DEDA”) that the proper DEDA officials are hereby authorized to execute a License Agreement (DEDA Contract No. 20 860 \_\_\_), substantially in the form of that attached hereto, with the City of Duluth for storage of bulk construction rock for Lakewalk restoration until May 31, 2021, unless extended under the terms of the License Agreement.

Approved by the Duluth Economic Development Authority this 23<sup>rd</sup> day of September, 2020.

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Executive Director

**STATEMENT OF PURPOSE:**

The purpose of this resolution is to authorize a License Agreement between DEDA and the City, for a small portion of the Lot D property located nearest Railroad Street. The Agreement will go into effect on October 1, 2020, and will terminate May 31, 2021.

The City of Duluth requires space to store bulk rock for future use in Lakewalk restoration. To ensure this process can proceed in the most effective and cost efficient manner, the City has requested to use Lot D to temporarily store that rock over the winter of 2020/2021.

## **LICENSE AGREEMENT**

THIS AGREEMENT is made by and between the Duluth Economic Development Authority (DEDA) and the City of Duluth (City).

In consideration of the mutual covenants and conditions hereinafter contained, the parties hereto hereby agree as follows:

### **ARTICLE I LICENSE AND TERM**

DEDA hereby grants to City an exclusive license upon the terms and provisions stated herein, to enter onto certain property on DEDA "Lot D" as shown outlined in Blue on Exhibit "A" attached hereto (the Licensed Premises) for the sole purpose of storing bulk rock for purposes of future use for Lake Superior shoreline revetment. Such rock shall be stored only on that portion of the Licensed Premises denoted as "Storage Area" on said Exhibit A. The term of this License Agreement shall commence on October 1, 2020, and shall continue until May 31, 2021, unless extended in writing by DEDA's Executive Director (the "Executive Director"), at the Executive Director's sole discretion, for one additional six-month period not to extend beyond November 30, 2021.

### **ARTICLE II COMPLIANCE WITH LAWS, PROTECTION OF OTHER PROPERTIES**

During the term of this Agreement, City, its officers, agents, employees, invitees and sub-licensee shall fully comply with all applicable laws. City, its officers, agents, employees, invitees, or sub-licensee, nor anyone accompanying City, its officers, agents, employees, invitees or sub-licensee shall not place or deposit or allow to be placed or deposited any trash or garbage or allow to be deposited solid waste or liquid waste on or commit waste on or damage to the Licensed Premises or allow any public or private nuisance or other unlawful act or thing to take place on and from the Licensed Premises.

### **ARTICLE III DEDA WARRANTY**

DEDA makes no representation, either expressed or implied, as to merchantability or fitness for any particular uses or other representations or warranties with respect to the condition of the Licensed Premises. City accepts the Licensed Premises in an "as is" condition.

### **ARTICLE IV ACCESS**

DEDA expressly reserves the right to the unlimited access to the Licensed Premises for authorized personnel at any time while this Agreement is in force for the purposes of inspection, in the event emergency or necessity, and to ensure that the provisions of this Agreement are complied with by City and its sublicensee. DEDA will provide reasonable notice of such access to the City.

ARTICLE V  
INDEMNIFICATION

A. General Indemnification

As lawful consideration for using the Licensed Premises, City agrees to defend, indemnify, and hold harmless DEDA and their officers, agents, servants and employees from and against any and all losses, liens, claims, actions, demands, liabilities, judgments, penalties, injunctive relief, injury to person(s) or damage to the Licensed Premises, costs, damages and expenses by reason of any actual or alleged act or omission of City or its officers, agents, employees, invitees or sub-licensee in connection with or relating to City's use or occupancy of the Licensed Premises occurring during the term of this License Agreement, including spills or leaks. Upon ten (10) days' written notice, City shall appear and defend all claims and lawsuits against DEDA growing out of any such injuries or damages. DEDA does not waive their immunities under state or federal law. DEDA shall have all rights available pursuant to the terms of this Article III against City under the provisions of Chapter 466, Tort Liability, Political Subdivisions, of the Minnesota Statutes, but subject to the limitations set forth in the provisions of Chapter 466, Tort Liability, Political Subdivisions, of the Minnesota Statutes.

B. Environmental Indemnification

In addition to the generality of the above, City hereby agrees that for itself, its successors and assigns that it will indemnify and save DEDA and its officers, agents, servants and employees and any person who controls DEDA within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition existing on the Property which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence on the Property, or the release or threatened release of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property, and that indemnification granted hereby shall include all costs of clean-up and remediation and response costs, together with the costs incurred in proceedings before a court of law or administrative agency including attorneys' fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing on the Property.

C. Indemnification Procedures.

Promptly after receipt by DEDA of notice of the commencement of any action with respect to which City is required to indemnify DEDA under this Article, DEDA shall notify City in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, City shall assume the defense of such action, including the employment of legal counsel satisfactory to DEDA and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA with respect to which

indemnity may be sought against City and 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.

ARTICLE VI  
ASSIGNMENT AND SUBLICENSING

The rights and obligations of City hereunder may not be assigned, subleased, sublicensed or in any other way transferred without the prior written approval of the Executive Director.

ARTICE VII  
LICENSE FEE

No License Fee shall be required as part of this agreement.

ARTICLE VIII  
USE AND MAINTENANCE

City agrees to exercise care in the use and maintenance of the Licensed Premises during the term of this License Agreement. City agrees to pay for or repair upon demand any damage done to the Licensed Premises during the term of this License, including but not limited to damage to fencing. City shall not make any alterations or improvements to the Licensed Premises without the prior written approval of the Executive Director. City shall surrender the Premises at the termination of this Agreement in the condition found at commencement of this Agreement at no expense to DEDA.

ARTICLE IX  
ENTRY TO AND CLEANING OF LICENSED PREMISES

In the event that DEDA determines that the City or its officers, agents, servants, employees, contractors or sub-licensees have caused or allowed any substance to be deposited on the Licensed Premises which would give rise to an indemnified event or circumstance pursuant to Article V above and an agency having proper jurisdiction requires clean up action, City shall properly clean up any such substance on the Licensed Premises or adjoining properties released during the term of this License Agreement in accordance with the agency's standards. In the event that City fails to clean-up such substance released or left on the Licensed Premises, DEDA may cause such clean-up and City shall be responsible for all costs of clean-up. Payment shall be made upon invoice. City shall not be responsible for the environmental condition of the Licensed Premises pre-dating this License Agreement.

ARTICLE XI  
CONSENTS

City shall contact and obtain consent of any regulatory agency having proper jurisdiction if such consent is required.

ARTICLE XII  
NOTICES

Notices hereunder shall be deemed sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses set forth below or to such other respective persons or addresses as the parties may designate to each other in writing from time to time. Notice by mail shall be effective three (3) days after mailing. In the event of an emergency, DEDA may give oral notice which shall be effective immediately.

If to DEDA:                   Executive Director  
                                  Duluth Economic Development Authority  
                                  411 West First Street  
                                  402 City Hall  
                                  Duluth, MN 55802

If to City:                    City of Duluth  
                                  City Clerk's Office  
                                  411 W. 1<sup>st</sup> Street  
                                  Duluth, MN 55802

ARTICLE XIII  
APPLICABLE LAW

This Agreement, together with all of its sections, terms and provision, is made in the State of Minnesota and shall be construed and interpreted according to the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota. However, litigation in the federal courts involving the parties shall be in the appropriate federal court within the State of Minnesota. The parties to this Agreement waive any objections to the jurisdiction of these courts, whether based on convenience or otherwise.

ARTICLE XIV  
SEVERABILITY

In the event any provision of this Agreement shall be deemed invalid or unenforceable, the remaining provisions shall continue in force and effect and shall be binding upon the parties to this Agreement.

ARTICLE XV  
NONWAIVER OF LIABILITY

Nothing in this Agreement constitutes a waiver by DEDA of any statutory or common law defenses, immunities, or limits on liability. The liability of DEDA shall be governed by the provisions of the Minnesota Municipal Liability Tort Act, Minn. Stat. 466.04.

ARTICLE XV  
WAIVER

Any waiver by either party of any provision of this Agreement will not imply a subsequent waiver of that or any other provision.

ARTICLE XVII  
AMENDMENTS

Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

ARTICLE XVIII  
NO THIRD PARTY RIGHTS

Nothing in this Agreement confers or purports to confer a third party any benefit or any right to enforce any term of this Agreement.

ARTICLE XIX  
LAWS, RULES AND REGULATIONS

The City agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City of Duluth with respect to their respective agencies which are applicable to its activities under this Agreement.

ARTICLE XX  
COUNTERPARTS/FACSIMILE/E-MAIL SIGNATURES

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute one and the same Agreement. Facsimile and E-mail signatures shall be binding on the transmitting party and shall have the same force and effect as if the original signature had been delivered.

ARTICLE XXI  
ENTIRE AGREEMENT

This Agreement, including Exhibit A, constitutes the entire agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereto. There are no representations, warranties, or stipulations either oral or written not herein contained.

IN WITNESS WHEREOF, DEDA and City have caused this Agreement to be executed by their duly authorized officers as of the date first below written.

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY

CITY OF DULUTH

\_\_\_\_\_  
President

\_\_\_\_\_  
Mayor

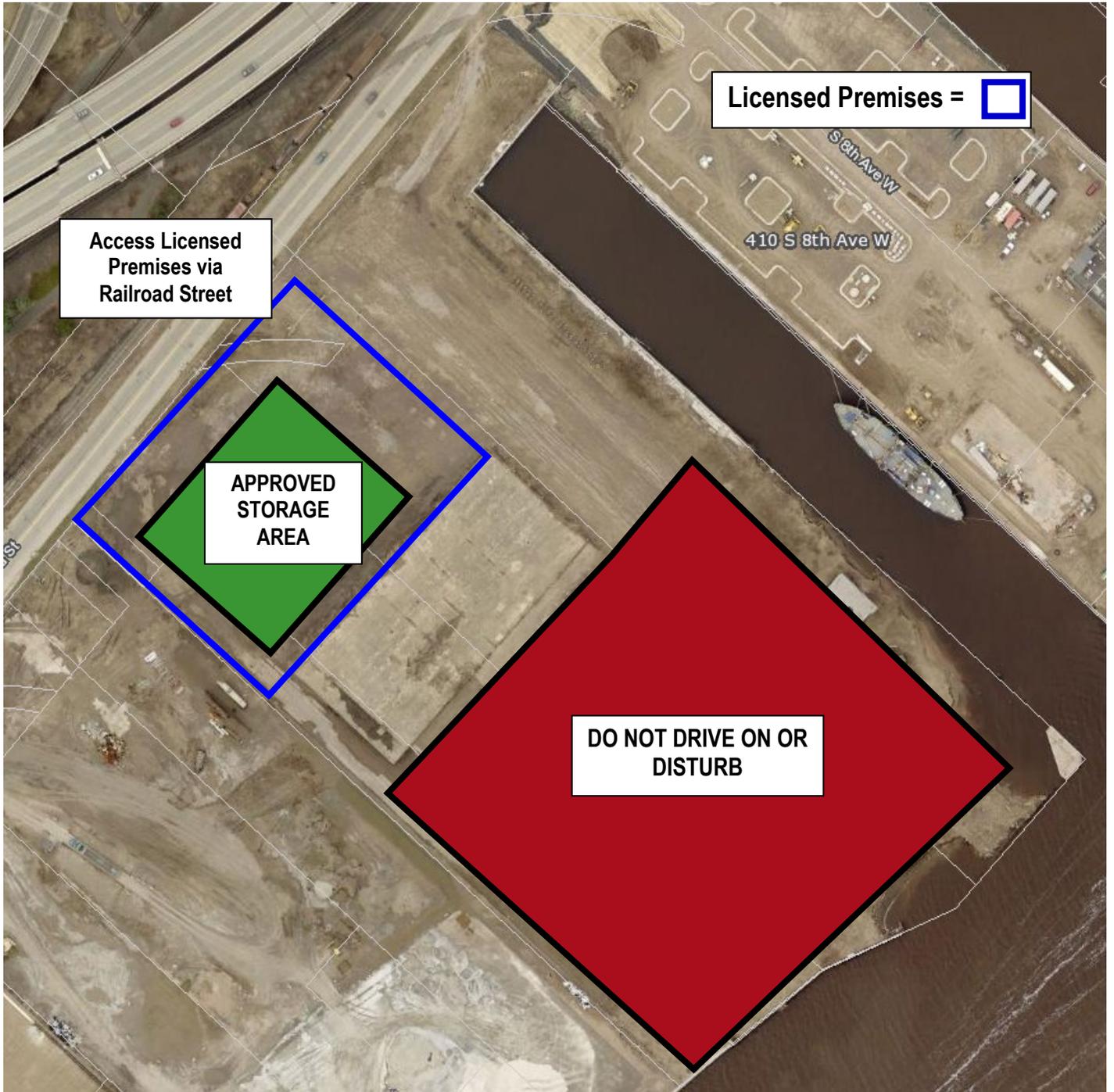
\_\_\_\_\_  
Secretary

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

EXHIBIT A



## RESOLUTION 20D-68

### RESOLUTION AUTHORIZING SUBRECIPIENT AND PREDEVELOPMENT AGREEMENT WITH STAR NW LLC FOR THE NORTHWEST IRON LOT IN THE AMOUNT OF \$50,000

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into a sub-recipient and predevelopment agreement (DEDA Contract No. 20 860 \_\_\_\_), substantially in the form of that attached hereto, with Star NW LLC. to act as the sub-recipient of the DEED grant to perform further investigation of the environmental conditions of the Northwest Iron Parking Lot and to engage in other pre-development work for the property in the amount of not-to-exceed \$50,000, payable to Fund 860.

Approved by the Duluth Economic Development Authority this 23<sup>rd</sup> day of September, 2020.

ATTEST:

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Executive Director

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize the execution of an agreement with Star NW LLC to act as the sub-recipient of the DEED grant to perform further environment investigation of the Marine Iron lot and to engage in further pre-development investigation to determine the how best to redevelop the lot for the mutual benefit of the owners, the City, DEDA and the Canal Park business district.

Approximately 2/3 of the Marine Iron lot, located between Grandma's and the DeWitt Seitz Building, is owned by or will soon be owned by Star NW. The remaining 1/2 is owned by the City and managed by DEDA by agreement. Previous to the present ownership, the property was used as a scrap yard. To date a significant amount of environmental investigation has been performed but more needs to be done.

DEDA requested and received a DEED grant for further investigation in the amount of \$50,000 based on the need for it and the desire of the owners to explore redevelopment of the lot to better utilize a very important piece of property in the Canal Park area. Under the Agreement, Star NW will cause the investigation to be carried out, the necessary reports to be made to DEED, will generate a Response Action Plan for the property and will cooperate with DEDA in developing plans for the redevelopment of the property. They will also supply the required matching funds for the DEED grant of almost \$17,000.

**PRE-DEVELOPMENT AGREEMENT**  
**DULUTH ECONOMIC DEVELOPMENT AUTHORITY**  
**STAR NW LLC**  
**NORTHWESTERN IRON PARKING LOT**

THIS AGREEMENT entered into as of September \_\_, 2020, between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, An economic development authority created and existing under Minnesota Statutes (198910 Chapter 469, hereinafter referred to as “DEDA”, and STAR NW LLC, a limited liability company created and existing under the laws of the State of Minnesota, hereinafter referred to as “Developer”.

WHEREAS, City of Duluth is the owner of the hereinafter-described “City Property” located in the Canal Park Business District of Duluth; and

WHEREAS, Developer is the owner of the hereinafter-described “Developer Property” located in the Canal Park Business District of Duluth; and

WHEREAS, by agreement between the parties, the City Property and the Developer Property, hereinafter-described as the “Property”, is presently operated by City as a public parking lot for the benefit of the Canal Park Business District and the visiting public; and

WHEREAS, said City has delegated the environmental clean-up and the redevelopment of the Property to DEDA; and

WHEREAS, by virtue of the use of the Property by prior owners, it is anticipate that the Property requires some environmental remediation of a yet-to-be-determined character and extent to allow for redevelopment and is in need of further environmental and geotechnical investigation to determine what level of remediation may be necessary and appropriate and to determine the future use of the Property; and

WHEREAS, the DEDA has secured a Contamination Investigation and RAP Development Program Grant from the State of Minnesota Department of Employment and Economic Development in the amount of \$50,000 to conduct

additional investigation, over and above that which has occurred to date, and to assist in the development of Response Action Plan for the remediation of the Property; and

WHEREAS, the parties have determined that it is in their best interests and the best interests of the Canal Park Business District to explore options for the highest and best reuse of the Property and means and methods of instituting such reuse.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto hereby agree as follows:

## ARTICLE I

### DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the meanings hereinafter ascribed to them:

- A. Application: shall mean DEDA's Application to DEED for a Contamination Investigation and RAP Development Grant for the Canal Park Redevelopment Project dated April 29, 2020, a copy of which is attached hereto and made a part hereof as Exhibit A.
- B. City: Shall mean the City of Duluth.
- C. City Property: shall mean that property in the Canal Park Business District of Duluth located in St. Louis County, Minnesota described on Exhibit B attached hereto and made a part here.
- D. DEED: shall mean the State of Minnesota Department of Employment and Economic Development.
- E. Developer Property: shall mean that property in the Canal Park District of Duluth located in St. Louis, Minnesota described on Exhibit C attached hereto and made a part here.
- F. Eligible Costs: shall mean Eligible Costs as defined in the Grant Agreement.
- G. Contractor: shall mean an environmental consultant contracted by Developer to implement the Work Plan and to draft and secure approval of the RAP, having proven expertise and experience in performing such work, the identity of which is approved by the Director.

- H. Director: shall mean the Executive Director of DEDA or the Director's designee.
- I. Grant: shall mean that Contamination Investigation and RAP Development Program Grant from the State of Minnesota Department of Employment and Economic Development, Business and Community Development Division to the DEDA bearing Grant No. CCGP-20-0010-Z-FY20, Canal Park Redevelopment Project in the amount of \$50,000.
- J. Grant Agreement: shall mean that Grant Agreement between the DEDA and DEED granting the Grant Funds to the DEDA pursuant to the Grant, a copy of which Grant Agreement is attached hereto and made a part hereof as Exhibit D. The Grant Agreement includes the Application by reference.
- K. Grant Funds: shall mean the funds granted to the DEDA pursuant to the Grant and the Grant Agreement.
- L. MPCA: shall mean the State of Minnesota Pollution Control Agency.
- M. Project: shall mean the implementation of the Work Plan and the drafting and securing of approval of the RAP.
- N. Property: shall mean the City Property and the Developer Property.
- O. RAP: shall mean a Remedial Action Plan for the remediation of environmental contamination on the Property meeting the standards of the MPCA and conforming to MPCA's format requirements.
- P. State: shall mean the State of Minnesota.
- Q. Work Plan: shall mean the "Work Plan for additional Investigation, Former Northwestern Iron & Metal Site, Duluth, MN 55802, MPCA Site ID: BF0001464" prepared for Developer and MPCA by Vieau Associates as Project No. 28.0240071 dated April 16, 2020, attached hereto and made a part hereof as Exhibit E, as modified by that certain letter to Kristine Barnes, STAR NW, LLC dated April 28, 2020 from Amy K. Hadiaris, P.G. , supervisor, Redevelopment Unit, Remediation Division and Mark E. Koplitz, Project Manager, Petroleum Brownfields Program Remediation Division, MPCA, a copy of which is attached hereto as Exhibit F.

## ARTICLE II

### GRANT

#### A. Subgrant to Developer

Subject to the terms and conditions of this Agreement, DEDA does hereby subgrant to Developer and Developer does hereby accept from DEDA the subgrant of the Grant Funds for the purpose of implementing the Project, all as described in the Work Plan, as is required by MPCA for the approval of the RAP and as further described herein, in the Grant Agreement and in the Application. In the event of a conflict between the terms of this Agreement, the Grant Agreement and the Application, the provisions of these documents shall be controlling in the following order: this Agreement; the Grant Agreement; and the Application.

#### B. Developer Bound

Developer agrees that to the extent that the Grant Agreement imposes any requirements or obligations on the implementation of the Project or upon the availability of Grant Funds to allow DEDA to meet its obligations under the Grant Agreement or to reimburse either the DEDA or Developer for any portion of the Eligible Costs of the Project, Developer shall be bound by the terms, conditions and limitations contained in the Grant Agreement.

#### C. Developer Cooperation

Developer hereby commits that it will cooperate fully with DEDA in assisting the DEDA to meet all of its obligations under the Grant Agreement to the extent that it can, including but not limited to providing all information and documentation required by DEED under the Grant Agreement in order to demonstrate compliance with the requirements of the Grant and allowing access to the Grant Funds.

#### D. Required Provisions

Developer shall be bound by all conditions of the Grant Agreement, including but not limited to the following:

- 1, Developer shall comply with all applicable state, federal and local laws, rules and regulations applicable to the performance of its work pertaining to the Project.

2. Developer shall be in compliance with all applicable OSHA regulations, especially the federal Hazardous Waste Operations and Emergency Response Standards (29 DFR 1910. 120 and 29 DFR 1926.65).
3. Developer shall ensure that all contractors and subcontractors performing work covered by this Agreement are paid for their work that is satisfactorily completed.
4. Developer shall list any vacant or new positions with the state workforce center if it receives \$200,000 or more a year in grants from the State. If applicable, the business or private enterprise shall list any job vacancy in its personnel complement with Minnesota Works.net at [www.minnesotaworks.net](http://www.minnesotaworks.net) as soon as it occurs.

### ARTICLE III

#### WORK PLAN AND RAP

##### A. Developer to Contract for Project

Developer shall contract for the services of a Contractor to provide all services required implementation of the Project, subject to the terms and conditions of this Agreement. The identity of the selected Contractor shall be subject to the prior approval of the Director, which approval shall not be unreasonably withheld. The agreement for the Contractor's services shall be solely between the Developer and the Contractor so selected and Developer shall be solely responsible for paying for the services of said Contractor.

##### B. Required Contract Provisions

The contract between Developer and the Contractor shall include the following provisions:

1. Developer agrees that it contract with Developer shall require that the Contractor shall deem DEDA to be its client along with Developer and the Contractor shall owe the same duties, responsibilities and obligations to DEDA to the same extent that it owes such duties, responsibilities and obligations to Developer.

2. Contractor and any subcontractors of Contractor shall comply with all applicable state, federal and local laws, rules and regulations applicable to the performance of its work pertaining to the Project.
3. Contractor and all subcontractors of Contractor shall be in compliance with all applicable OSHA regulations, especially the federal Hazardous Waste Operations and Emergency Response Standards (29 DFR 1910.120 and 29 DFR 1926.65).
4. Contractor shall agree that the RAP drafted by it as part of the Project shall be subject to the approval of Director and the Developer prior to its submission to the MPCA, shall submit said RAP to the MPCA on behalf of DEDA, the DEDA and the Developer and that Contractor shall perform all reasonable work necessary to progress toward the MPCA's approval of the RAP.

#### ARTICLE IV

#### REIMBURSEMENT FOR PROJECT ELIGIBLE COSTS

##### A. Request for Partial Reimbursement

Subject to the receipt by the DEDA of Grant Funds to reimburse Developer for Eligible Costs incurred by Developer in the implementation of the Project and subject to the limitations of Paragraph C below, Developer may, no more frequently than monthly, submit a request for reimbursement of Eligible Costs to the Director in a form approved by the Director and DEED; such request shall be accompanied by such documentation as the Director deems reasonably necessary to demonstrate compliance with the requirements of the Grant Agreement and this Agreement and shall also be accompanied by such other documentation as shall be reasonably requested by the Director which shall include evidence that all contractor and subcontractors of Developer and the Contractor have been paid. Funds expended by Developer for Eligible Costs prior to the effective date of this Agreement can be included for reimbursement under this Paragraph if approved by the Director and DEED.

B. Partial Reimbursements

Upon receipt of the request for partial reimbursement with supporting documentation approved by the Director as provided for in Paragraph A above, and subject to the provisions of that Paragraph, the DEDA will forward said request and documentation to DEED for their review, approval and for payment thereof by DEED from the Grant Funds. Upon receipt by DEDA of such Grant Funds, DEDA will reimburse Developer said Eligible Costs documented in said request for partial reimbursement up to the amount of Grant Funds so received, subject to the limitations of Paragraph C below.

C. Final Payment

Notwithstanding the provisions of Paragraphs A and B above, the parties agree that DEDA may hold and not be required to reimburse Developer up to \$10,000 of Grant Funds until such time as the MPCA has approved the RAP. Upon the Director's determination that MPCA has approved the RAP and that the Developer has satisfactorily performed its obligations under Articles II and III above, including the requirements of Paragraphs A and B above, DEDA shall make final payment of all Eligible Costs of the Project reimbursable under the terms of the Grant, the Grant Agreement and this Agreement to Developer.

D. Matching Funds

Developer agrees to provide matching funds for the Grant Funds as required by the Grant in the amount of not less than \$16,666.67 from sources other than DEDA, the City or the State of Minnesota. Funds expended by Developer for Eligible Costs prior to the effective date of this Agreement may be included as part of Developer's matching funds obligations under this Paragraph if approved by the Director and DEED. All requests for reimbursement shall include evidence satisfactory to the Director that Developer has paid matching funds to a third party equal to at least twenty-five (25%) percent of the amount of the reimbursement claimed over and above the amount of such reimbursement claimed.

E. Time for Submission of Reimbursement Claim

All claims for reimbursement of Grant Funds under this Agreement shall be submitted to DEDA no later than May 30, 2022.

F. Funding Source

All payments to Developer hereunder shall be payable from DEDA Fund 860.

ARTICLE V

TERM OF PROJECT

The parties agree that, subject to any delays in the MPCA's process of approval of the RAP, that the Project shall be completed by December 31, 2020 unless said term is extended in writing by mutual agreement of the Director and the Developer; provided the Term of this Agreement shall include the Term of the Grant Agreement, including the "Survival of Terms" as set forth in Section 1.3 thereof and any terms of this Agreement which by their nature extend beyond termination of this Agreement shall survive and bind the parties and their successors and assigns.

ARTICLE VI

FUTURE REDEVELOPMENT

A. General Intent

In addition to determining the extent of environmental issues existing on the Property and securing approval of the RAP, it is the intent of the parties to explore the practical and financial feasibility of various developments that could be developed on the Property and to determine their desirability and relative benefits to DEDA, to the City, to the Developer, to the Canal Park Business District and to the City of Duluth as a whole. With this as a goal, the parties commit to work together cooperatively to secure the relevant data and information which would contribute to plans to redevelop the Property in a manner meeting the goals of this Agreement.

B. Joint Development Plan for Property

In order to fulfill the goals and objectives set forth in Paragraph A above, the parties hereby agree to cooperate fully and to use their best efforts to develop a joint plan for the redevelopment of the Property which may

include new public parking including a parking structure, new retail development, other new private development, new infrastructure to serve new development on the Property and other modifications to the Property. Issues to be addressed in said joint plan will include any title issues with regard to either the City Property or the Developer Property, potential future ownership of the Property and any development thereon as well as use and control of the Property and such development, and the nature and character, type and extent any development on the Property.

C. Joint Technical Evaluation—Cost

The parties agree to work together to agree on the contracting for the services of consultants to provide the parties with information, data, investigation, analysis or other advice which they agree will be useful to the parties in determining the joint plan referenced above. Upon the Director and Developer agreeing in writing on the parameters of the services to be provided and the identity of the consultant to provide them, Developer shall enter into a contract or contracts for such services with such identified consultant and shall pay such consultant for the costs of such services. Any such contract will be subject to the prior written approval of the Director. Upon proof of payment by Developer of such costs for such agreed-upon services, DEDA will reimburse Developer for one-third (1/3) of the costs thereof, said sums to be payable from Fund 860. Such consultant shall owe the same duties, responsibilities and obligations to DEDA to the same extent that it owes such duties, responsibilities and obligations to Developer and the information, data, investigation, analysis or other advice produced by such consultant shall be deemed to jointly owned by both Developer and DEDA and both parties shall have equal access thereto. Provided, however, that DEDA shall not be obligated to reimburse Developer for the costs of any contract for consultant services pertaining to the development of information, data, investigation, analysis or other advice pertaining to the development of private development on the Property or pertaining to the provision of public financing of such development including, but not limited to, tax increment financing or tax abatement.

D. Separate Technical Evaluation—Cost

Nothing herein shall prevent either party from contracting at their sole initiative and cost the services of a consultant or consultant to provide the

contracting party with information, data, investigation, analysis or other advice without the agreement of the other party, provided that party so doing shall be solely responsible for paying for the costs thereof. Any information, data, investigation, analysis or other advice generated as a result of such a contract shall be the sole property of the contracting party and the contracting party shall not be obligated to share such information, data, investigation, analysis or other advice with the non-contracting party.

E. Article Commitment

The parties agree that the time frame in which the parties commitments under this Article can be completed is dependent on many factors beyond the control of the parties at this time and to the parties' reasoned ability to reach consensus on the above-referenced joint plan for redevelopment. Therefore, after satisfactory performance of all obligations under this Agreement except for the obligations of this Article, either party may terminate this Agreement without cause upon thirty (30) days prior notice to the other party; provided that in the event that the Director has approved any contract for services as provided for in Paragraph C above, DEDA shall continue to be obligated to pay its share of the costs of such contract, subject to satisfactory performance thereof.

## ARTICLE VII

### TERMINATION or REDUCTION

A. For Cause

DEDA may terminate this Agreement in the event that the Director or the State determines that the Developer or any contractor, including Contractor, providing services under the Agreement has violated any of the terms or conditions of this Agreement, that Grant Funds were improperly paid to by DEDA to Developer, that reasonable progress has not been made or that the purposes for which the Grant Funds were granted have not been or will not be fulfilled. In the event that Grant Funds were improperly paid to Developer, DEDA shall be entitled to recover the entire amount of any such improper payment from Developer.

B. By the State

In addition to the foregoing, DEDA may terminate this Agreement in the event that the State fails to obtain funding from the Minnesota State Legislature and as a result terminates the Grant or the State reduces the amount of the Grant Funds granted to DEDA for the Project. If the State so reduces the amount of Grants Funds for the Project, DEDA shall have the option of reducing the scope of services to be provided for the Project or of terminating this Agreement altogether. In the event that there are Grant Funds available to pay Eligible costs, DEDA will endeavor to reimburse Developer for Eligible Costs outstanding and unpaid up to the amount of such Grant Funds, subject to the provisions of Article IV above.

ARTICLE VIII

INDEPENDENT CONTRACTOR

Nothing contained in this Agreement is intended to, or may be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Developer will at all times remain an independent contractor with respect to the services to be performed under this Agreement. DEDA is exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance because the Developer is an independent contractor.

ARTICLE IX

INDEMNIFICATION AND HOLD HARMLESS

The Developer shall hold harmless, defend and indemnify the DEDA and DEED from any and all liability, claims, actions, suits, charges, damages, losses, costs, expenses, and judgments whatsoever, including reasonable attorneys' fees, that arise directly or indirectly out of the Developer's, its contractor's or subcontractor's performance or nonperformance under this Agreement. Claims included in this indemnification include any claims asserted pursuant to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes, Chapter 115B; the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) as amended, United States

Code Title 42, Sections 9601 et. seq.; and the Federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, United States Code Title 42, Sections 6901 et. seq.

## ARTICLE X

### INSURANCE

#### A. Insurance Required.

During the term of this Agreement, Developer and its contractors and subcontractors rendering services being paid with funds from this Agreement shall procure and maintain Public Liability and Automobile Liability Insurance written on an “occurrence” basis under a Comprehensive General Liability Form with “Broad Form” property damage liability coverage, with XCU exclusion removed, in limits of not less than \$1,500,000 per occurrence for personal injury, bodily injury and death, and limits of \$1,500,000 for property damage liability, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance. If per person limits are specified, they shall be for not less than \$1,500,000 per person and be for the same coverages. Coverages of Developer and its contractors/subcontractors shall include:

1. Public liability including premises and operations coverage;
2. Independent contractors’ protective contingent liability;
3. Personal injury;
4. Owned, non-owned, and hired vehicles;
5. Contractual liability covering customary construction contract and subcontract indemnity provisions;
6. Products—completed operations; and
7. Workers’ Compensation coverage in required statutory limits. Policy shall carry an “all states” endorsement.

#### B. Additional Insurance Requirements.

All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the United States and licensed to do business in Minnesota. DEDA shall be named as an additional insured under the Public Liability and Automobile Liability Insurance. DEDA does not represent or guarantee that the types of limits or

coverages provided above are adequate to protect Developer's interests and liabilities.

C. Certificates of Insurance.

Certificates showing that the above-described insurance is carried in the specified amounts shall be furnished to DEDA prior to the disbursement of any of the Subgrant proceeds, and a certificate showing continued maintenance of such insurance shall be on file with DEDA during the term of this Agreement. The form of each certificate of insurance 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.

D. Contractor/Subcontractor Evidence of Insurance.

The Developer must not commence work until any and all contractors/subcontractors have obtained the required proof of insurance which clearly evidences required insurance coverages. If the Developer fails to furnish proof of insurance coverages from the contractors/subcontractors when requested by the DEDA, the DEDA may withhold payments and/or pursue any other rights or remedy allowed under this Agreement, law, equity, and/or statute.

## ARTICLE XI

### ADMINISTRATIVE REQUIREMENTS

A. Accounting Standards.

Developer agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices to properly account for expenses incurred under this Agreement.

B. Records.

1. Retention.

Developer shall maintain adequate financial records consistent with generally accepted accounting principles. Audits and records, including but not limited to all financial and environmental documents

related to the funds provided under this Agreement, shall be accessible to authorized representatives of the DEDA for purposes of examination and audit. In addition, Developer shall give DEED, the Legislative Auditor, and the State Auditor's Office, through any authorized representatives, access to and the right to examine all records, books, papers, and documents related to this Agreement for a minimum of six years from the end of the Investigation Grant Agreement term end date.

2. Close-Out.

Developer's obligation to the DEDA does not end until all close-out requirements are completed. Activities during this close-out period include: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the DEDA), determining the custodianship of records and resolving audit findings.

C. Procurement.

Developer must maintain an inventory record of all nonexpendable personal property procured with funds provided under this Agreement. Program income is income generated from grant-funded activities, including interest earned on grant funds. All unexpended program income must revert to the DEDA upon termination of this Agreement.

## Article XII

### MISCELLANEOUS

A. Assignability.

Developer may not assign or transfer any interest in this Agreement (whether by assignment or novation) without the prior written consent of the Director; provided, however, that claims for money due or to become due to the Developer from the DEDA under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer must be furnished promptly to the DEDA.

B. Antitrust.

Developer hereby assigns to the State of Minnesota any and all claims for overcharges for goods and/or services provided in connection with this contract resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

C. Government Data Practices.

Developer must comply with the Minnesota Government Data Practices Act, Minnesota Statute Chapter 13, as it applies to all data provided by DEDA under this Agreement and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by Developer under this Agreement. The civil remedies of Minnesota Statute §13.08 apply to the release of the data referred to in this clause. If Developer receives a request to release the data referred to in this clause, Developer must immediately notify DEDA. DEDA will give Developer instructions concerning the release of the data to the requesting party before the data is released. Developer's response to the request shall comply with applicable law.

D. Intellectual Property Rights.

In the event that Developer secures a copyright protection on any of the materials, reports, or data created as part of the project, Developer agrees to and does hereby grant to the State of Minnesota and its officers, agents, and employees, acting within the scope of their official duties, a royalty-free, non-exclusive, and irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so for use by the State, its divisions, instrumentalities and local subdivisions, all material now or hereafter covered by any such copyright.

E. Publicity.

Any publicity regarding the subject matter of this Agreement must identify the State of Minnesota as the sponsoring agency. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Developer individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Agreement. For DEED logos and formatting, please contact Laura Winge at 651-259-7173 or [laura.winge@state.mn.us](mailto:laura.winge@state.mn.us).

F. Conflict of Interest.

The State of Minnesota through DEDA will take steps to prevent individual and organizational conflicts of interest in reference to Developer per Minn.Stat.§[16B.98](#) and Department of Administration, Office of Grants Management, Policy Number 08-01 [Conflict of Interest Policy for State Grant-Making](#). When a conflict of interest concerning State grant-making and subsequent DEDA grant-making is suspected, disclosed, or discovered, transparency shall be the guiding principle in addressing it.

G. Subcontractors

All of the above provisions apply to any subcontractors of Developer and subcontractors of such subcontractors and applicable language must be included in agreements with such parties.

### ARTICLE XIII

#### NOTICES

Communication and details concerning this Agreement must be transmitted by U.S. mail or by email addressed to the following Agreement representatives:

DEDA:

Duluth Economic Development Authority

Attn: Adam Fulton, Deputy Director, Planning and Development

Room 160 City Hall

411 W. 1<sup>st</sup> Street

Duluth, MN 55802

Telephone: (218) 730-5324

Developer:

Star NW LLC

C/O Grandma's Restaurant

Attn: Brian Daugherty

525 Lake Avenue South

Duluth, MN 55802

#### ARTICLE XIV

##### SEVERABILITY.

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

#### ARTICLE XV

##### ENTIRE AGREEMENT.

This Agreement, including all Exhibits thereto constitutes the entire Agreement between the DEDA and Developer and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereto.

#### ARTICLE XVI

##### GOVERNING LAW AND VENUE.

This Agreement will be governed by, and construed in accordance with, the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

#### ARTICLE XVII

##### COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of

which is deemed an original, but all of which taken together constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

DULUTH ECONOMIC  
DEVELOPMENT AUTHORITY  
an economic development authority  
under M.S. chapter 469

STAR NW LLC, a Minnesota  
limited liability company

By: \_\_\_\_\_  
Matt Cartier  
Its President

By: \_\_\_\_\_  
\_\_\_\_\_  
Its \_\_\_\_\_

By: \_\_\_\_\_  
Zack Filipovich  
Its Secretary

Approved:

Countersigned:

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
City Auditor

**RESOLUTION 20D-69**

**RESOLUTION AUTHORIZING AGREEMENT WITH JMM LLLP FOR MODIFICATONS TO THE HOLIDAY MALL PARKING RAMP IN THE AMOUNT OF \$25,339.54**

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into Agreement (DEDA Contract No. 20 860 \_\_\_), substantially in the form of that attached hereto, with JMM LLLP. To reimburse them for the costs of modifications to the Holiday Mall Parking Ramp related to the conversion of First Street to two-way traffic in the amount of not-to-exceed \$25,339.54, payable to Fund 860.

Approved by the Duluth Economic Development Authority this 23<sup>rd</sup> day of September, 2020.

ATTEST:

---

Executive Director

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize the execution of an agreement with JMM LLLP to reimburse costs associated with modifications to the Holiday Inn and Holiday Center parking ramp related to the conversion of First Street to two-way traffic. This work is needed to facilitate the functional use of the ramp for the benefit of the Downtown Business District.

The Holiday Inn and Holiday Center ramp will remain open for public parking, available both to businesses in the Holiday Center, along the skywalk, on First Street, and throughout downtown. The modifications to the ramp will allow for improved street functionality in this area of the downtown, supporting opportunities for improved business activity on First Street and enhancing the conditions for pedestrian safety.

**AGREEMENT  
DULUTH ECONOMIC DEVELOPMENT AUTHORITY  
JMM, LLLP**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "DEDA", and JMM, LLLP, a limited liability limited partnership under the laws of the State of Minnesota, hereinafter referred to as "Owner".

WHEREAS, Owner is the owner and operator of the Holiday Inn parking ramp (the "Ramp") along with the Holiday Inn hotel and the Holiday Center shopping mall in Duluth, Minnesota, located between West Superior Street and West 1<sup>st</sup> Street and 2<sup>nd</sup> and 3<sup>rd</sup> Avenues West; and

WHEREAS, since the above Ramp was designed and constructed, 1<sup>st</sup> Street has been a one-way street allowing only west-bound traffic and the Ramp was designed and constructed to conform to that traffic flow; and

WHEREAS, the City of Duluth has determined that, since the completion of Interstate Highway 35 through Downtown Duluth, the traffic flow in Downtown has changed and that it is therefore in the best interests of the Downtown Business District and the City as a whole that 1<sup>st</sup> Street be converted to two-way traffic; and

WHEREAS, in order to continue safe operations of the Ramp and the safe flow of traffic to and from the reconfigured 1<sup>st</sup> Street, traffic flow modifications to the Ramp traffic flow are required; and

WHEREAS, Owner has requested the assistance of DEDA in financing the costs of the required Ramp modifications; and

WHEREAS, DEDA has determined that there is significant public interest in supporting the economic viability of the Downtown Business

District by facilitating safe and convenient traffic flow to and from needed parking facilities in support of economic activity and tourism access to downtown amenities.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

## ARTICLE I

### Construction

#### A. Construction of Owner Projects

Upon the signing of this Agreement but in no event later than November 1, 2020, Owner shall promptly commence construction of the Project, as described and detailed in Exhibit A attached hereto and made a part hereof in conformance with said Exhibit A. Construction of the Project as herein defined shall be completed no later than December 31, 2020 except as hereinafter set forth in this Agreement. Provided, that the Executive Director may, in the exercise of his or her discretion, extend the time for completion of the Project for up to three (3) months, which extension shall be in writing.

#### B. Owner to Bear All Costs of Project

Subject to the terms and conditions of this Agreement, Owner specifically guarantees and agrees to bear all costs related to the development, completion and operation of the Project and any modifications thereto.

## ARTICLE II

### Reimbursement

Upon completion of the construction of the Project by Owner, Owner may request that DEDA reimburse Owner for its actual costs thereof, up to

the amount of not to exceed Twenty-five Thousand, Three Hundred Thirty-nine and 54/100s Dollars (\$25,339.54). Said request shall be accompanied by such documentation of actual costs paid as DEDA's Executive Director may reasonably require. Upon receipt of such request and such documentation and approval thereof by the Executive Director, DEDA will reimburse Owner for the actual costs of constructing the Project up to the amount set forth above, payable from Fund 860.

### ARTICLE III

#### Ramp Operating Commitment

Owner hereby agrees that it will continue to operate the entire Ramp at all times as a public parking ramp available to the general public for public parking on a first-come, first-served basis subject to specific requirements of the Hotel and Shopping Center which are open to the public.

### ARTICLE IV

#### Indemnification By Owner

##### A. Generally

Owner will to the fullest extent permitted by law, protect, indemnify and save DEDA and the City of Duluth and their officers, agents, servants, employees and any person who controls DEDA 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 judgements of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Ramp or growing out of or in connection with the use or non-use, condition or occupancy of the Project or the Ramp or any part

thereof and the construction or installation of the Project on any portion of the Project and the Ramp. 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 Owner, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.

2. Any violation by Owner of any provision of this Agreement.
3. Any violation of any contract, agreement or restriction related to the Project which shall have existed at the commencement of the term of this Agreement or shall have been approved by the Owner.
4. Any violation of any law, ordinance, court order or regulation affecting the Project or the Ramp, or the ownership, occupancy or use thereof.

B. Environmental Indemnification

In addition to the generality of the foregoing above, Owner hereby agrees that for itself, its successors and assigns that it will indemnify and save the DEDA and the City of Duluth and their officers, agents, servants and employees and any person who controls the DEDA or the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition created in the Project or the Ramp after the date of the signing of this Agreement which constitutes a violation of

any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Project or the Ramp of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property and that indemnification granted hereby shall include all costs of clean-up, remediation, together with the costs incurred in proceedings before court of law or administrative agency including attorney's fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing in the Project or on the Ramp.

C. Indemnification Procedures

Promptly after receipt by DEDA or the City of notice of the commencement of any action with respect to which the other party is required to indemnify the party receiving such notice under this Article, such indemnitee shall notify the indemnitor in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, the indemnitor shall assume the defense of such action, including the employment of counsel satisfactory to the indemnitee and the payment of

expenses. In so far as such action shall relate to any alleged liability of the indemnitee with respect to which indemnity may be sought against the indemnitor, the indemnitee 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 the indemnitor.

## ARTICLE V

### Insurance

Owner shall provide for purchase and maintenance of such insurance as will protect Owner, DEDA and the City of Duluth against risk of loss or damage to the Project and the Ramp and any other property permanently located or exclusively used at the Project site and against claims which may arise or result from the maintenance and use of the Project, including operations conducted in connection with construction of improvements thereupon. Such coverages shall include but shall not necessarily be limited to the following.

#### A. Insurance During Construction

Owner, prior to commencement of construction work, shall procure or cause to be procured and maintain or require all contractors to procure and maintain the following insurance at not less than the limits of coverage or liability indicated during the period of construction as follows:

##### 1. Public Liability Insurance

Public Liability Insurance written on an occurrence basis under a Comprehensive General Liability Form with Broad Form property damage liability coverage, with XCU exclusion removed, in limits of not less than One Million, Five Hundred Thousand and 00/100ths

(\$1,500,000.00) Dollars aggregate per occurrence for personal injury, bodily injury and death, and limits of Five Hundred Thousand and 00/100ths (\$500,000.00) Dollars for property damage liability. If per person limits are specified, they shall be for not less than One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars per person and be for the same coverages. Contractor shall also require such liability coverage of its subcontractors unless they be insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

- a. Contractors' public liability--premises and operations;
- b. Independent contractors' protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnify provisions; and
- f. Workers' Compensation coverage in required statutory limits. Policy shall carry an all states endorsement. In addition, employers' liability coverage shall be maintained in limits of One Hundred Thousand and 00/100ths (\$100,000.00) Dollars per employee.

B. Requirements for All Insurance

All insurance required in this Article XV shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed

to do business in Minnesota.

C. Certifications

The Owner shall be required to supply to the DEDA written certifications of insurance as required by the DEDA requiring the insurer to give the DEDA thirty (30) days' written notice prior to cancellation or modification of said insurance.

ARTICLE VI

Defaults and Remedies Therefore

A. Owner General Defaults and Remedies

1. General Events of Default

The following shall be deemed to be general events of default by Owner under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable except as otherwise set forth in this Agreement.

- a. Failure to pay Ad Valorem Real Estate Taxes as and when due and payable.
- b. Owner shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it or any successor or assigns of Owner pursuant to this Agreement and such failure shall continue for a period of sixty (60) calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to Owner of such default or, in the event that such default shall be incapable of cure during said sixty (60) day period, shall have failed to commence to cure said default within sixty (60) days of the

date of said notice and to diligently pursue the same to completion.

- c. Owner fails to complete its obligations under Articles IV or V as set forth above on or before December 31, 2020.

2. General Remedies

Except as otherwise set forth in this Agreement, DEDA shall have the following remedies in the event of a default by Owner:

- a. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Owner's violation of the terms and conditions of this Agreement or to compel Owner's performance of its obligations hereunder.
- b. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.

B. DEDA Defaults and Remedies

1. General Events of Default

The following shall be deemed to be general events of default by DEDA under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable except as otherwise set forth in this Agreement.

- a. DEDA shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar

days after Owner has, pursuant to the provisions of this Agreement, given written notice to DEDA of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.

- b. The failure of DEDA to abide by any of the terms and conditions of the Lease which, when taken together pursuant to those documents, constitute obligations of DEDA.

2. General Remedies

Except as otherwise set forth in this Agreement, Owner shall have the following remedies in the event of a default by DEDA:

- a. Seek such legal or equitable relief as a court of competent jurisdiction may determine is available to Owner.

C. Non-Waiver

The waiver by either party of any default on the part of the other party or the failure of said party to declare default on the part of the other party 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 the defaulting party of the same or of any other obligation of the defaulting party hereunder. And, to be effective, any waiver of any default by the defaulting party hereunder shall be in writing by the non-defaulting party.

D. Remedies Cumulative

Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

E. Attorneys' Fees

In the event that either party is in Default of any of the terms and conditions of this Agreement and the non-defaulting party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, such non-defaulting party shall be entitled to reimbursement for its reasonable attorney's fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

## ARTICLE VII

### Force Majeure

Under the terms of this Agreement, neither the DEDA nor Owner shall be considered in default or in breach of any of the terms with respect to the performance to their respective obligations under this Agreement in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of a public enemy, acts of the federal government, acts of another party, fire, floods, epidemics, strikes or embargoes, or for delays of subcontractors due to such causes. In the event of any such delay, any time for completion or delivery under this Agreement shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

## ARTICLE VIII

Representations by DEDA

DEDA represents and warrants that as of the date hereof:

- A. It is a lawfully constituted economic development authority under the laws of the State of Minnesota, it is not a material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- B. There are not actions, suits or proceedings pending, or to the knowledge of DEDA, threatened against DEDA or any property of DEDA in any court or before any Federal, State, municipal or governmental agency which, if decided adversely to DEDA, would have a material adverse effect upon DEDA or any business or property of DEDA or the DEDA Portion and DEDA is not in default with respect to any order of any court or government agency.
- C. DEDA has investigated and has no knowledge that the DEDA Executive Director or other member, official, or employee of DEDA is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.
- D. DEDA shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement or otherwise delivered to any third parties under this Agreement to be true, correct and complete in all material respects.

ARTICLE IX

Owner's Representations and Warranties

Owner represents and warrants that as of the date hereof:

- A. It is a lawfully constituted limited liability limited partnership under the laws of the State of Minnesota, is not in material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and to perform its obligations hereunder.
- B. It is fully competent to construct and equip the Project thereon under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction and that it agrees to comply with all applicable State, Federal acquisition and relocation laws, wages and hours laws, including Davis-Bacon and local versions thereof or similar laws at its own expense.
- C. There are no actions, suits or proceedings pending or, to the knowledge of Owner, threatened against Owner or any property of Owner in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Owner could have a material adverse effect upon Owner or the Ramp and the Project, and that Owner is not in default of any order of any court or governmental agency.
- D. It is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been occurred.
- E. That Owner has investigated and has no knowledge that any officer, director, agent or employee of Owner is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.
- F. Owner shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to any third

party under this Agreement to be true, correct and complete in all material and respects. If necessary Owner agrees to perform any survey work prior to construction and all descriptions and exhibits hereto and definitions herein shall be subject to such revisions as are necessary after completion of any survey.

#### ARTICLE X

##### Term

The term of this Agreement shall run from the date first above shown until December 31, 2020 unless this Agreement is otherwise terminated as herein before provided for; provided however that the obligations contained in Article III shall continue until December 31, 2025.

#### ARTICLE XI

##### 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  
Room 422 City Hall  
411 West First Street  
Duluth, MN 55802

In the case of Owner:

Mark Emmel  
Labovitz Enterprises  
227 W. 1st Street, Suite 950  
Duluth, MN 55802

#### ARTICLE XII

##### Applicable Law

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

### ARTICLE XIII

#### Electronic Signatures

The parties agree that this Agreement may be executed electronically by the parties and that the Agreement electronically executed shall be binding on the parties as provided for in Minnesota Statutes Chapter 325 L.

IN WITNESS WHEREAS, the parties have hereunto set their hands the day and date first above shown.

DULUTH ECONOMIC  
DEVELOPMENT AUTHORITY  
an economic development  
authority under M.S. Chapter  
469.

JMM, LLLP  
a Minnesota Limited  
Liability Limited Partnership

\_\_\_\_\_  
Its President

\_\_\_\_\_

\_\_\_\_\_  
Its Secretary

Its: \_\_\_\_\_

Approved:

\_\_\_\_\_

Asst. City Attorney