

**SPECIAL MEETING OF THE
DULUTH ECONOMIC DEVELOPMENT AUTHORITY
WEDNESDAY, July 10, 2019 - 5:45 P.M.
COUNCIL CHAMBERS, THIRD FLOOR, CITY HALL
AGENDA**

CALL TO ORDER

PUBLIC TO ADDRESS THE COMMISSION

PUBLIC HEARINGS

1. **RESOLUTION 19D-23:** RESOLUTION AUTHORIZING AN EASEMENT AGREEMENT WITH THE CITY OF DULUTH GRANTING AN EASEMENT FOR THE CROSS CITY TRAIL OVER DEDA-OWNED PROPERTY IN NEAR ERIE PIER

2. **RESOLUTION 19D-24:** RESOLUTION AUTHORIZING CONVEYANCE OF BAYFRONT PROPERTY TO CITY OF DULUTH IN EXCHANGE FOR CITY-OWNED PROPERTY ADJACENT TO LAKE SUPERIOR COLLEGE

3. **RESOLUTION 19D-25:** RESOLUTION ADOPTING A MODIFICATION TO THE HOUSING DEVELOPMENT PROJECT / MUNICIPAL DEVELOPMENT DISTRICT PROGRAM PLAN, ESTABLISHING TAX INCREMENT FINANCING DISTRICT NO. 32: BOARD OF TRADE THEREIN AND ADOPTING A TAX INCREMENT FINANCING PLAN THEREFOR

APPROVAL OF MINUTES: May 29, 2019 Meeting Minutes

APPROVAL OF CASH TRANSACTIONS – May 1, 2019 – May 31, 2019

NEW BUSINESS

RESOLUTIONS FOR APPROVAL

1. **RESOLUTION 19D-23:** RESOLUTION AUTHORIZING AN EASEMENT AGREEMENT WITH THE CITY OF DULUTH GRANTING AN EASEMENT FOR THE CROSS CITY TRAIL OVER DEDA-OWNED PROPERTY IN NEAR ERIE PIER

2. **RESOLUTION 19D-24:** RESOLUTION AUTHORIZING CONVEYANCE OF BAYFRONT PROPERTY TO CITY OF DULUTH IN EXCHANGE FOR CITY-OWNED PROPERTY ADJACENT TO LAKE SUPERIOR COLLEGE
3. **RESOLUTION 19D-25:** RESOLUTION ADOPTING A MODIFICATION TO THE HOUSING DEVELOPMENT PROJECT / MUNICIPAL DEVELOPMENT DISTRICT PROGRAM PLAN, ESTABLISHING TAX INCREMENT FINANCING DISTRICT NO. 32: BOARD OF TRADE THEREIN AND ADOPTING A TAX INCREMENT FINANCING PLAN THEREFOR
4. **RESOLUTION 19D-26:** RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH THREE D I, LLC FOR THE DEVELOPMENT OF THE BOARD OF TRADE MULTI-FAMILY RESIDENTIAL AND MIXED USE PROJECT
5. **RESOLUTION 19D-27:** RESOLUTION AUTHORIZING A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH LIFT BRIDGE PARTNERS LLC AND FURTHER AUTHORIZING A CONSENT TO COLLATERAL ASSIGNMENT OF DEVELOPMENT DOCUMENTS BY LIFT BRIDGE PARTNERS LLC IN FAVOR OF CIBC BANK USA RELATED TO THE LIFT BRIDGE PROJECT (ENDI)

DISCUSSION

1. **DIRECTOR'S REPORT**
STATE AUDIT UPDATE

ama

Duluth Economic Development Authority

May, 2019 Cash Activity - all DEDA Funds

ACCUMULATED TRANSACTION LISTING, G/L Date Range 05/01/19 - 05/31/19 (as of 06/14/2019)

G/L Date	Journal Number	Sub Ledg	Name	Net Amount	Description
FUND 860 - OPERATING FUND				Beginning Balance	2,497,559.36
05/01/19	2019-0000529	GL	Cost Allocation - DEDA	(33,333.33)	
05/02/19	2019-00003623	RA	PayGrpOReillyLLC	424.36	DEDA Lease Payments
05/13/19	2019-00003828	AP	Newman Sign Co	(136.90)	traffic control signs Tate & Lyle
05/13/19	2019-00003828	AP	St Louis County Recorder	(138.00)	resolutions/quit claim deed ASI
05/13/19	2019-00003828	AP	St Louis County Recorder	(138.00)	resolutions/quit claim deed ASI
05/13/19	2019-00003828	AP	Telephone Associates Inc	(86.86)	Temple Bldg expenses
05/13/19	2019-00003828	AP	Bruce L Duncan	(292.15)	rekeying/cylinders/bsmt padlock Temple Opera
05/13/19	2019-00003828	AP	Bruce L Duncan	(750.00)	Temple Bldg expenses
05/13/19	2019-00003828	AP	Minnesota Power	(98.34)	201-203 E Superior St
05/13/19	2019-00003828	AP	Minnesota Power	(13.93)	8 N 2nd Ave E
05/13/19	2019-00003828	AP	Minnesota Power	(13.93)	209 E Superior St
05/13/19	2019-00003828	AP	Minnesota Power	(309.57)	8 N 2nd Ave E
05/13/19	2019-00003828	AP	Duluth Public Utilities - Comfort Systems	(120.64)	201 E Superior St
05/13/19	2019-00003828	AP	Duluth Public Utilities - Comfort Systems	(131.83)	203 E Superior St
05/13/19	2019-00003828	AP	Duluth Public Utilities - Comfort Systems	(110.48)	8 N 2nd Av E
05/13/19	2019-00003828	AP	Duluth Public Utilities - Comfort Systems	(76.70)	8 N 2nd Ave E
05/13/19	2019-00003828	AP	Duluth Public Utilities - Comfort Systems	(59.79)	8 N 2nd Av E
05/13/19	2019-00003828	AP	Nancy R. Aronson-Norr	(35.00)	DEDA 4/24
05/13/19	2019-00003828	AP	Matthew T Cartier	(35.00)	DEDA 4/24
05/13/19	2019-00003828	AP	Zack Filipovich	(35.00)	DEDA 4/24
05/13/19	2019-00003828	AP	Noah Hobbs	(35.00)	DEDA 4/24
05/13/19	2019-00003828	AP	Timothy P McShane	(35.00)	DEDA 4/24
05/13/19	2019-00003828	AP	Barbara Russ	(35.00)	DEDA 4/24
05/13/19	2019-00003828	AP	Barr Engineering Co	(2,607.93)	Temple Opera Bldg environmental assist
05/13/19	2019-00003828	AP	Charter Communications	(79.97)	201 E Superior St internet
05/20/19	2019-00004081	RA	Titanium Partners LLC	25,000.00	DEDA Norshor Temple Opera Sale
05/22/19	2019-00004199	RA	Interstate	(4,369.15)	April 19 distribution
05/22/19	2019-00004199	RA	Interstate	720.00	Waterfront April 19
05/28/19	2019-00004263	AP	Area Partnership for Economic Expan. (APEX)	(2,449.00)	Northforce Talent Initiative-attraction/retention/placement
05/28/19	2019-00004263	AP	Duluth Public Utilities - Comfort Systems	(829.35)	335 W Superior St
05/28/19	2019-00004263	AP	Duluth News Tribune	(11.60)	Public hearing notice-SE 10' L4-9 BI 15 Marine Div
05/28/19	2019-00004263	AP	Ehlers and Associates Inc	(306.25)	C19-860-902-Economic development and TIF professional services
05/28/19	2019-00004263	AP	Ehlers and Associates Inc	(245.00)	C19-860-902-Economic development and TIF professional services
05/28/19	2019-00004263	AP	Minnesota State Auditor	(2,401.50)	DEDA 10/3/18-4/16/19
05/30/19	2019-00004438	RA	Rachel Development	3,000.00	DEDA - Application Fee for Lincoln Park Flats
05/31/19	2019-00004530	GL	Investment Earnings for May	4,566.00	Investment Earnings for May
FUND 860 - OPERATING FUND				Ending Balance - 05-31-2019	2,481,949.52
FUND 861 - DEBT SERVICE				Beginning Balance	733,552.18
05/31/19	2019-00004530	GL	Investment Earnings for May	1,352.00	Investment Earnings for May
FUND 861 - DEBT SERVICE				Ending Balance - 05-31-2019	734,904.18
FUND 865 - CAPITAL PROJECTS				Beginning Balance	1,814,439.69
05/31/19	2019-00004530	GL	Investment Earnings for May	3,345.00	Investment Earnings for May
FUND 865 - CAPITAL PROJECTS				Ending Balance - 05-31-2019	1,817,784.69
FUND 866 - MRO FACILITY				Beginning Balance	824,646.74
05/13/19	2019-00003828	AP	Jamar Company	(3,215.00)	roof leak repair AAR
05/13/19	2019-00003828	AP	Jamar Company	(781.00)	roof repair AAR
05/22/19	2019-00004199	RA	AAR Aircraft Services, Inc	36,510.78	Lease Payment
05/31/19	2019-00004530	GL	Investment Earnings for May	1,537.00	Investment Earnings for May
FUND 866 - MRO FACILITY				Ending Balance - 05-31-2019	858,698.52
FUND 867 - STOREFRONT LOANS				Beginning Balance	109,298.76
05/20/19	2019-00004081	RA	Alerus Financial DEDA Loan Payment	1,037.10	April DEDA Loan Payment for Old City Hall
05/22/19	2019-00004199	RA	Park State Bank DEDA Loan Payment	215.13	April DEDA Loan Payment for Building for Women
05/23/19	2019-00004272	RA	North Shore Bank DEDA Loan Payment	656.47	April DEDA Loan Payment for Women in Construction
05/31/19	2019-00004530	GL	Investment Earnings for May	203.00	Investment Earnings for May
FUND 867 - STOREFRONT LOANS				Ending Balance - 05-31-2019	111,410.46

RESOLUTION 19D-23

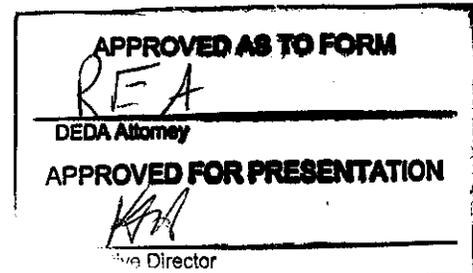
RESOLUTION AUTHORIZING AN EASEMENT AGREEMENT WITH THE CITY OF DULUTH GRANTING AN EASEMENT FOR THE CROSS CITY TRAIL OVER DEDA-OWNED PROPERTY IN NEAR ERIE PIER.

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized enter into the agreement attached hereto as Exhibit A (DEDA Contract No. 19-0860-____) with the City of Duluth to convey a recreational trail easement over the property described in said agreement for the cross City trail at no cost to the City:

Approved by the Duluth Economic Development Authority this 10th day of July, 2019.

ATTEST:

Executive Director



STATEMENT OF PURPOSE: The purpose of this resolution is to authorize DEDA to enter into an easement agreement with the City granting the City an easement for the Cross City Trail over DEDA-owned property in West Duluth between Erie Pier and Oneota Street at no cost to the City.

The property in question was originally acquired by DEDA as part of the acquisition of Soo Line Railroad right-of-way from Point of Rocks to approximately 43rd Avenue West. The primary impetus for the acquisition was to facilitate the development of New Michigan Street through the Lincoln Park Business District in the face of the Railroad's determination to dispose of unneeded right-of-way in the area on an "all or nothing" basis. Over the years virtually all of the property not needed for the road has been disposed of for the benefit of adjacent business owners but DEDA has consistently reserved easements for trail purposes over any of the property where it foresaw the potential for trail development.

The property over which the subject easement would be granted is property with limited potential for future economic development because of its geotechnical character and its proximity to the river. Conveying the easement to the City is consistent with DEDA's efforts to further the Cross City Trail development as an economic benefit to the community.

RECREATIONAL TRAIL EASEMENT AGREEMENT

THIS RECREATIONAL TRAIL EASEMENT AGREEMENT (this "Agreement") is entered into as of _____, 2019, by and between DULUTH ECONOMIC DEVELOPMENT AUTHORITY, a public body, corporate and politic and political subdivision created and existing under the laws of the State of Minnesota ("Grantor") and the CITY OF DULUTH, a municipal corporation and political subdivision created and existing under the laws of the State of Minnesota ("City").

WHEREAS, Grantor is the fee owner of the land legally described on the attached Exhibit A and depicted on the attached Exhibit B (the "Easement Area").

WHEREAS, City wishes to obtain and Grantor is willing to grant an easement over the Easement Area in favor of City on the terms set forth in this Agreement.

NOW THEREFORE, Grantor, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, does grant to City, its successors and assigns, a perpetual, non-exclusive easement for public recreational, walkway, and trail purposes (the "Easement") over, under and across the Easement Area.

The Easement includes the right of City, its contractors, agents, and employees to enter the Easement Area at all reasonable times for the purposes of locating,

constructing, operating, installing, maintaining, and repairing a multi-use recreational trail and other improvements within the Easement Area. City, its contractors, agents and employees may add, remove, cut, trim, or remove from the Easement Area bituminous material, bark, sand, stones, boards, grass, trees, shrubs, other vegetation, or other landscaping in City's discretion. City, its contractors, agents and employees may construct erosion control structures necessary to maintain a clear, dry passage through the Easement Area, including the right to install, maintain, repair and replace waterbars, steps, and other trail surface structures, as well as culverts as necessary to traverse surface waters within the Easement Area.

Grantor shall have no obligation or duty to maintain, repair, or replace any improvements or vegetation in the Easement Area.

This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. This Agreement may be amended only in writing, signed by both of the parties hereto and recorded in the real estate records in St. Louis County, Minnesota. This Agreement and each and every covenant, agreement, and other provision hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. The Easement shall be perpetual and the Easement and all other rights granted in this Agreement shall run with the land.

[Remainder of this page is intentionally left blank.]

EXHIBIT A

LEGAL DESCRIPTION FOR EASEMENT AREA

A variable width strip of land over, under, and across those parts of Government Lot 2, Section 5, Township 49 North, Range 14 West, according to the US Government survey thereof, St. Louis County, Minnesota, lying southeasterly of the southerly line of Oneota Street, according to recorded document in Book 40 of Deeds, Page 463, St. Louis County, Minnesota, southerly of the southerly line of TRIGGS AND KENNEDY'S BAY FRONT DIVISION OF DULUTH, according to the recorded plat thereof, St. Louis County, Minnesota, and northerly of the following described line:

Commencing at the northeast corner of Block 11, SUTPHIN'S ADDITION TO DULUTH, according to the recorded plat thereof, St. Louis County, Minnesota; thence South 74 degrees 57 minutes 16 seconds East, along the southeasterly line of said TRIGGS AND KENNEDY'S BAY FRONT DIVISION OF DULUTH, a distance of 91.23 feet to the southerly line of said Oneota Street; thence South 43 degrees 48 minutes 13 seconds West, along said southerly line a distance of 95.49 feet to the POINT OF BEGINNING; thence South 89 degrees 18 minutes 55 seconds East a distance of 79.18 feet; thence North 52 degrees 37 minutes 23 seconds East a distance of 80.85 feet to the said southerly line of TRIGGS AND KENNEDY'S BAY FRONT DIVISION OF DULUTH and there terminating.

AND

A 20.00 foot wide strip of land over, under, and across those parts of Lots 1 and 2, Block 12, and Lots 1 through 11, Block 9, TRIGGS AND KENNEDY'S BAY FRONT DIVISION OF DULUTH according to the recorded plat thereof, St. Louis County, Minnesota, lying 10.00 feet left and right of the following described centerline:

Commencing at the northeast corner of Block 11, SUTPHIN'S ADDITION TO DULUTH, according to the recorded plat thereof, St. Louis County, Minnesota; thence South 74 degrees 57 minutes 16 seconds East, along the southerly line of said TRIGGS AND KENNEDY'S BAY FRONT DIVISION OF DULUTH, a distance of 91.23 feet to the southerly line of Oneota Street, according to recorded document in Book 40 of Deeds, Page 463, St. Louis County, Minnesota; thence South 74 degrees 57 minutes 16 seconds East, continuing along said southerly line a distance of 80.06 feet to the west line of said Block 12; thence North 00 degrees 46 minutes 10 seconds West along said west line a distance of 58.59 feet to the POINT OF BEGINNING; thence North 17 degrees 19 minutes 02 seconds East a distance of 111.73 feet to the beginning of a tangential curve, concave to the southeast, having a radius of 90.00 feet and a central

angle of 73 degrees 01 minute 35 seconds; thence northeasterly along said curve a distance of 114.71 feet; thence South 89 degrees 39 minutes 24 seconds East a distance of 18.45 feet to the beginning of a tangential curve, concave to the north, having a radius of 100.00 feet and a central angle of 40 degrees 55 minutes 00 seconds; thence northeasterly along said curve a distance of 71.41 feet; thence North 49 degrees 25 minutes 36 seconds East a distance of 55.95 feet to the north line of said Block 9 and there terminating. The sidelines of said strip of land shall be shortened or prolonged so as to terminate on the said west line of Block 12 and said north line of Block 9. EXCEPT lands within platted public alley between said Blocks 9 and 12 according to said TRIGGS AND KENNEDY'S BAY FRONT DIVISION OF DULUTH.

CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.



Chris A. Larsen, PLS
Minnesota License No. 45848

June 7, 2019
Date

LINE AND CURVE TABLE

POINT ID	DELTA	RADIUS	LENGTH	BEARING
L251			91.23	S 74° 57' 16" E
L252			95.49	S 43° 48' 13" W
L253			79.18	S 89° 18' 55" E
L254			80.85	N 52° 37' 23" E
L255			58.59	N 00° 46' 10" W
L256			111.73	N 17° 19' 02" E
C211	073° 01' 35"	90.00	114.71	
L257			18.45	S 89° 39' 24" E
C212	040° 55' 00"	100.00	71.41	
L258			55.95	N 49° 25' 36" E

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the state of Minnesota.

Signature: *Chris A. Larsen* Lic. No. 43848

Printed Name: CHRIS A. LARSEN Date: 06/07/2019



NO.	BY	DATE	REVISIONS

SHARED USE PATH
DEDA
DULUTH, MN

I hereby certify that this exhibit has been checked and approved this _____ day of _____ 20____.

Signature: _____ City Engineer

Printed Name: _____ Date: _____

FILE NO.
DULUT 109680

DATE
06/07/2019

SHEET
2 OF 2

RESOLUTION 19D-24

**RESOLUTION AUTHORIZING CONVEYANCE OF BAYFRONT PROPERTY
TO CITY OF DULUTH IN EXCHANGE FOR CITY-OWNED
PROPERTY ADJACENT TO LAKE SUPERIOR COLLEGE.**

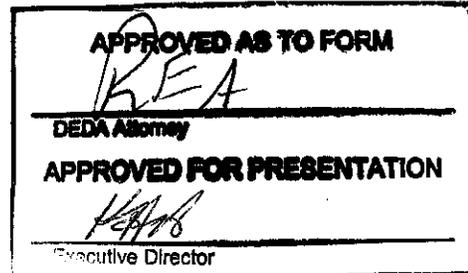
RESOLVED, by the Duluth Economic Development Authority ("DEDA") that

1. DEDA has determined that the conveyance to the City of Duluth of the property legally described on Exhibit A attached hereto and made a part hereof (the "Property") will facilitate and augment the development and redevelopment of the entire Bayfront Park area of Duluth and is therefore in the best interests of the City and its people.
2. DEDA further finds that that the conveyance will further the general plan for economic development of the Bayfront Parks area, the City's waterfront and the entire City.
3. The proper DEDA officials are hereby authorized convey the Property legally described in Exhibit A attached hereto to the City of Duluth in exchange for the conveyance by the City to DEDA of that property described in City of Duluth Ordinance No. 19-014 O

Approved by the Duluth Economic Development Authority this 10th day of July, 2019.

ATTEST:

Executive Director



STATEMENT OF PURPOSE: The purpose of this resolution is to authorize DEDA to convey its property located in the vicinity of Bayfront Festival Park to the City in exchange for City-owned property adjacent to Lake Superior College. The land exchange will allow DEDA to facilitate the development of student housing for serve the student population of LSC, thereby strengthening that institution and its contributions to the economic development of the community. It will also give the City control of the property adjacent to Bayfront Festival Park.

Parcel 1:

Lots 19 and 21 and the Southeast 43 feet of Lot 23, Block 6, BAY FRONT DIVISION OF DULUTH (formerly Commerce Division), together with that portion of vacated Seventh Avenue West that accrued thereto by reason of vacation thereof, and including all water and water rights relating to the property including all rights to the adjacent Slip No. 2, Plat of Bay Front Division of Duluth accruing to the above-described lots, EXCEPT the right to use Slip No. 2 accruing to the above-described lots, as conveyed by deed dated February 20, 2015 and recorded in the Office of the St. Louis County Recorder on February 24, 2015 as Document No. 1255657.

Parcel 2:

Northwesterly 7 feet of Lot 23 and Lots 25, 27, 29, 31, 33, and 35, Block 6, BAY FRONT DIVISION OF DULUTH, together with the adjacent vacated Seventh Avenue West, and including all hereditaments, appurtenances and riparian and water rights belonging thereto.

Parcel 3:

All that part of BAY FRONT DIVISION OF DULUTH, and of Government Lot 5 Section 27 and Government Lot 3 Section 34 Township 50 North Range 14 West of the Fourth Principal Meridian, lying within the following described lines:

1. *Line A. Commencing at a point of beginning on the NE'ly line of Slip No. 1 (now vacated), Bay Front Division of Duluth, which point is 22.33 feet SE'ly of the SE'ly line of Lot 18, Block 3, said plat; thence at a 90 degrees 00 minutes 03 seconds angle with said NE'ly line of Slip No. 1 (when measured from NW to SW) a distance of 120 feet, more or less to a point on the SW'ly line of Slip No. 1; thence NW'ly along the SW'ly line of Slip No. 1 a distance of 40 feet to a point; thence deflect to the left at a 90 degrees 00 minutes 03 seconds angle, a distance of 36.42 feet to a point; thence deflect to the right at an angle of 90 degrees 00 minutes for 25 feet to a point which is 1.06 feet NW'ly of the SE'ly line of Lot 9, Block 4, said plat; thence SW'ly in a straight line to a point on the SW'ly line of Seventh Avenue West, said plat, which point is also the most E'ly corner of Lot 1 Block 7, said plat, and there terminating; which line is the SE'ly right of way line of Interstate Highway 35 as established by an agreement for the establishment of boundary lines recorded as Document No. 123221 in the office of the Register of Deeds, said County and State.*

2. *Commencing at the point of intersection of the United States Government harbor line of the Bay of Superior, as approved by the Secretary of Army on July 18, 1966, with the extended centerline of Slip No. 1, said plat, thence N'ly along the center line of said Slip No. 1 to the point of intersection with Line A described above.*

3. *The duly established United States Government harbor line in the Bay of Superior, as approved by the Secretary of Army on July 18, 1966.*

4. *The centerline of Seventh Avenue West as platted in said plat of Bay Front Division of Duluth, and said centerline extended.*

The above described parcel includes and can be described, in part for purposes of clarity as follows:

All that part of the following: Block 5; Lot 9, Block 4; W'ly 1/2 of Slip No. 1 (now vacated) and the E'ly 1/2 of Seventh Avenue West, all as platted in Bay Front Division of Duluth and lying S'ly of Line A as established by Document No. 123221.

INCLUDING, all riparian rights appurtenant therein or thereto and all vacated street, vacated alleys, vacated slips and all other rights therein or appurtenant to said above described parcel.

EXCEPTING from the above described parcel: the SW'ly 1/2 of Slip No. 1 (now vacated), all as platted in Bay Front Division of Duluth and lying S'ly of Line A as established by Document No. 123221.

AND ALSO EXCEPTING from the above described parcel the following: All of Lots 1, 3, 5, 7, 9, 11, 13, 15 and 17, Block 6, and that part of Block 5 and that part of 7th Avenue West and that part of Slip No. 2, of the recorded plat of Bay Front Division of Duluth and that part of Section 34, Township 50 North, Range 14 West, bounded by the following described lines: On the East by the Easterly line of said Block 5 and the Southerly extension of said Easterly line; on the South by the U.S. Government harbor line as approved by the Secretary of War on November 17, 1899; on the West by the centerline of Slip No. 2 and the Southerly extension of said centerline; and on the North by the North boundary of Lot 17, Block 6, Bay Front Division of Duluth, and the Easterly and Westerly Extensions of said North boundary.

Parcel 4:

That part of Slip No. One, those parts of Blocks 3 and 2 and that part of 6th Avenue West, all in the recorded plat of Bay Front Division of Duluth, described as follows:

Beginning at the intersection of a line 638.95 feet distant and parallel with the U.S. Government Harbor Line as approved by the Secretary of War on November 17, 1899 with the West line of said Slip No. One, Thence Easterly, along said parallel line, a distance of 180.00 feet to a point 80.00 feet Westerly

of the Easterly line of said Block 3; Thence deflect 45°-00'-0" to the left in a Northerly direction a distance of 159.81 feet to the center line of said 6th Avenue West; Thence deflect 45°-00'-00" to the right in an Easterly direction a distance of 33.00 feet to the Westerly line of said Block 2; Thence deflect 90°-00'-00" to the left in a Northerly direction, along said Westerly line of Block 2, a distance of 54.33 feet to the Southwesterly corner of Lot 4 of said Block 2; Thence deflect 90°-00'-00" to the right in an Easterly direction, along the Southerly line of said Lot 4, a distance of 65.00 feet; Thence deflect 90°-00'-00" to the left in a Northerly direction a distance of 55.91 feet to the Southeasterly right-of-way line of Interstate Highway 35; Thence deflect 90°-00'-00" to the left in a Westerly direction, along said Southeasterly right-of-way line, a distance of 271.00 feet to the Easterly line of said Slip No. One; Thence deflect 90°-00'-00" to the left in a Southerly direction, along said Easterly line of said Slip No. One, a distance of 33.40 feet; Thence deflect 90°-00'-00" to the right in a Westerly direction a distance of 120.00 feet to the Westerly line of said Slip No. One; Thence deflect 90°-00'-00" to the left in a Southerly direction, along said Westerly line of Slip No. One, a distance of 189.84 feet to the point of beginning.

INCLUDING, without limitation, as to all said lands, all riparian rights appurtenant therein or thereto, and all vacated streets, vacated alleys, and vacated railroad easements and right therein or appurtenant thereto.

EXCEPT minerals and mineral rights, in, upon or under Block 3 and Lots 1 through 8, Block 4, BAY FRONT DIVISION OF DULUTH, as reserved and excepted in deed recorded as Microfilm Document No. 35157 in the office of the Register of Deeds, said County and State.

Parcel 5:

Parcel D:

Those parts of Lots 10, 11, 12, and 13, Block 3, Bay Front Division of Duluth, and that part of Sixth Avenue West, bounded by the following described lines:

On the South by the South line of Lot 10, Block 3, Bay Front Division of Duluth, and the Easterly extension of said South line; on the North by a line 638.95 feet distant Northerly and parallel with the U.S. Government Harbor Line as approved by the Secretary of War on November 17, 1899; on the West by a line 180.00 feet Easterly of, and parallel with, the West line of Slip No. 1; and on the East by the line described as follows: Beginning at the intersection of a line 201.28 feet distant Northerly of said U.S. Government Harbor Line with the Easterly line of Block 1, Bay Front Division of Duluth, thence Westerly, along said line 201.28 feet distant Northerly and parallel with said U.S. Government Harbor Line, to the intersection with a line 309.77 feet distant Easterly and parallel with the centerline of Slip No. 1, which intersection is the point of beginning of the line described herein, thence Northwesterly to the intersection of a line 638.95 feet distant and parallel with said U.S. Government Harbor Line with a line 165.81 feet distant Easterly and parallel with said centerline of Slip No. 1, and said line there terminating.

INCLUDING, without limitation, as to all said lands, all riparian rights appurtenant therein or thereto, and all vacated streets, vacated alleys, and vacated railroad easements and right therein or appurtenant thereto.

EXCEPT minerals and mineral rights, in, upon or under Block 3 and Lots 1 through 8, Block 4, BAY FRONT DIVISION OF DULUTH, as reserved and excepted in deed recorded as Microfilm Document No. 35157 in the office of the Register of Deeds, said County and State.

Parcel E:

Those parts of Lots 10, 11, 12, and 13, Block 3, Bay Front Division of Duluth, and that part of Slip No. 1, bounded by the following described lines: On the West by the Westerly line of Slip No. 1; on the South by the South line of Lot 10, Block 3, Bay Front Division of Duluth, and the Westerly extension of said South line; on the North by a line 638.95 feet distant Northerly and parallel with the U.S. Government Harbor Line as approved by the Secretary of War on November 17, 1899; and on the East by a line 180.00 feet Easterly of, and parallel with, the West line of Slip No. 1.

INCLUDING, without limitation, as to all said lands, all riparian rights appurtenant therein or thereto, and all vacated streets, vacated alleys, and vacated railroad easements and right therein or appurtenant thereto.

EXCEPT minerals and mineral rights, in, upon or under Block 3 and Lots 1 through 8, Block 4, BAY FRONT DIVISION OF DULUTH, as reserved and excepted in deed recorded as Microfilm Document No. 35157 in the office of the Register of Deeds, said County and State.

RESOLUTION 19D-25

RESOLUTION ADOPTING A MODIFICATION TO THE HOUSING DEVELOPMENT PROJECT / MUNICIPAL DEVELOPMENT DISTRICT PROGRAM PLAN, ESTABLISHING TAX INCREMENT FINANCING DISTRICT NO. 32: BOARD OF TRADE 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 Housing Development Project / Municipal Development District Program Plan adopted pursuant to Resolution 89D-03 (the "Development Program Modification") for the Housing Development District (the "Project Area") and establish Tax Increment Financing District No. 32: Board of Trade (the "TIF District 32") 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:

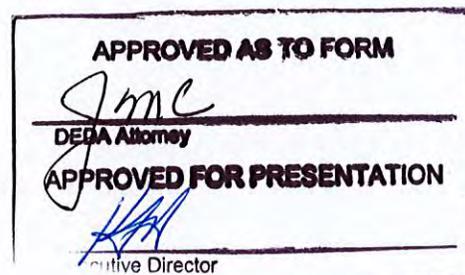
1. DEDA hereby finds that the District is in the public interest and is a "Housing District" under M.S., Section 469.174, Subd. 11 and M.S., Section 469.1761, and finds that the adoption of the proposed Program and Plan conform in all respects to the requirements of the Act and will help fulfill a need to develop an area of the State of Minnesota for 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 or redevelopment 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 are described in the Program and Plan.
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 the District as described in the Program and Plan, all in accordance with Minnesota Statutes 469.177.

Approved by the Duluth Economic Development Authority on this 10th day of July, 2019.

ATTEST:

Executive Director



STATEMENT OF PURPOSE: The purpose of this Resolution is to adopt a modification to the Development Program for the Housing Development District, establish TIF District No. 32 and adopt a Tax Increment Financing Plan for TIF District No. 32 related to the Board of Trade multi-family residential and mixed use facility at located at 301 West First Street.



MODIFICATION OF THE HOUSING
DEVELOPMENT PROJECT / MUNICIPAL
DEVELOPMENT DISTRICT PROGRAM PLAN

AND

TAX INCREMENT FINANCING PLAN
Establishment of Tax Increment Financing District No. 32:
Board of Trade
(a housing district)

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

Public Hearing: July 15, 2019



Table of Contents

Modification to the Housing Development Project / Municipal Development District Program Plan.....	3
Foreword.....	3
Tax Increment Financing Plan for Tax Increment Financing District No. 32: Board of Trade.....	4
Foreword.....	4
Statutory Authority.....	4
Statement of Objectives.....	4
Development Program Overview.....	4
Description of Property in the District and Property to be Acquired.....	5
Classification of the District.....	5
Duration and First Year of Tax Increment of the District.....	6
Original Tax Capacity, Tax Rate and Estimated Captured Net Tax Capacity Value/Increment and Notification of Prior Planned Improvements.....	6
Sources of Revenue/Bonds to be Issued.....	7
Uses of Funds.....	8
Estimated Impact on Other Taxing Jurisdictions.....	8
Supporting Documentation.....	10
Administration of the District.....	11
Appendix A: Map of the Housing Development Project / Municipal Development District Program and the District.....	12
Appendix B: Estimated Cash Flow for the District.....	13
Appendix C: Findings including But/For Qualifications.....	14

Modification to the Housing Development Project / Municipal Development District Program Plan

Foreword

The following text represents a Modification to the Housing Development Project / Municipal Development District Program Plan. This modification represents a continuation of the goals and objectives set forth in the Housing Development Project / Municipal Development District Program Plan. Generally, the substantive changes include the establishment of Tax Increment Financing (TIF) District No. 32: Board of Trade.

For further information, a review of Housing Development Project / Municipal Development District Program Plan is recommended. Other relevant information is contained in the Tax Increment Financing Plans for the Tax Increment Financing Districts located within the Housing Development Project / Municipal Development District Program Plan. The Housing Development Project / Municipal Development District Program Plan and the Tax Increment Financing Plans for the Tax Increment Financing Districts located within the Housing Development Project / Municipal Development District Program are available from the Director of Planning and Economic Development at Duluth City Hall in room 402.

Tax Increment Financing Plan for Tax Increment Financing District No. 32: Board of Trade

Foreword

The Duluth Economic Development Authority (the "DEDA"), the City of Duluth (the "City"), staff and consultants have prepared the following information to expedite the establishment of Tax Increment Financing District No. 32: Board of Trade (the "District"), a Housing Tax Increment Financing District, located in the Housing Development Project / Municipal Development District Program.

Statutory Authority

Within the City, there exist areas where public involvement is necessary to cause development or redevelopment to occur. To this end, the DEDA and City have certain statutory powers pursuant to *Minnesota Statutes ("M.S.")*, Sections 469.090 to 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 Housing Development Project / Municipal Development District Program Plan.

Statement of Objectives

The District currently consists of one parcel of land and adjacent and internal rights-of-way. The District is being created to facilitate rehabilitation of the historic Board of Trade Building. The rehabilitated building will include 84-units of rental housing, 17 of which will be affordable, and approximately 16,645 square feet of commercial space in the City. The DEDA and the City anticipate entering into an agreement with Three D I, LLC, and development is likely to begin in 2019. This TIF Plan is expected to achieve many of the objectives outlined in the the Housing Development Project for the Municipal Development District Program.

The activities contemplated in the Modification to the Housing Development Project / Municipal Development District Program Plan 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 the Housing Development Project / Municipal Development District Program and the District.

Development Program Overview

1. Property to be Acquired - Selected property located within the District may be acquired by the DEDA and 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 DEDA 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 DEDA 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
010-0940-00400	301 West 1st Street	Dubin Does Duluth, LLC

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

The DEDA 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 DEDA 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 DEDA 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 DEDA and City, in determining the need to create a tax increment financing district in accordance with *M.S., Sections 469.174 to 469.1794*, inclusive, as amended, find that the District, to be established, is a Housing District pursuant to *M.S., Section 469.174, Subd. 11 and M.S., Section 469.1761*.

In meeting the statutory criteria, the DEDA and City rely on the following facts and findings;

- The District consists of one parcel.
- The development will consist of 84-units of rental housing, 17 of which will be affordable, and approximately 16,645 square feet of commercial space in the City.
- 20% of the units will be occupied by persons or families with incomes less than 50% of median income.
- No more than 20 percent of the square footage of the building that receiving assistance from tax increments consists of commercial, retail, or other nonresidential uses.

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 DEDA and City. The DEDA and City elect 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 DEDA and City reserve 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 2019 for taxes payable 2020.

Pursuant to *M.S., Section 469.177, Subds. 1 and 2*, the County Auditor shall certify in each year (beginning in the payment year 2021) 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 City.

The original local tax rate for the District will be the local tax rate for taxes payable 2020, assuming the request for certification is made before June 30, 2020. 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 the Housing Development Project / Municipal Development District Program, upon completion of the project within the District, will annually approximate tax increment revenues as shown in the table below. The City requests 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 project within the District is completed.

Project Tax Capacity		
Project estimated Tax Capacity upon completion	\$229,161	
Original estimated Net Tax Capacity	\$11,253	
<u>Fiscal Disparities</u>	<u>\$0</u>	
Estimated Captured Tax Capacity	\$217,907	
Original Local Tax Rate	<u>144.7740%</u>	Pay 2019
Estimated Annual Tax Increment	\$315,473	
<u>Percent Retained by the City</u>	<u>100%</u>	

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 \$47,323.

Pursuant to *M.S., Section 469.177, Subd. 4*, the DEDA and City 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 has reviewed the area to be included in the District and found no parcels for which 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 costs outlined in the Uses of Funds will be financed primarily through the annual collection of tax increments. The DEDA and City reserve the right to incur bonds or other indebtedness as a result of the TIF Plan. As presently proposed, the project within the District will be financed by a pay-as-you-go note and interfund loan. Any refunding amounts will be deemed a budgeted cost without a formal TIF Plan Modification. This provision does not obligate the DEDA or City to incur debt. The DEDA and City will issue bonds or incur other debt only upon the determination that such action is in the best interest of the City.

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

SOURCES	
Tax Increment	\$ 5,571,951
<u>Interest</u>	<u>557,195</u>
TOTAL	\$ 6,129,146

The DEDA and 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 \$3,914,681. 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 rehabilitation of the historic Board of Trade Building. The rehabilitated building will include 84-units of rental housing, 17 of which will be affordable, and approximately 16,645 square feet of commercial space. The DEDA and City have determined that it will be necessary to provide assistance to the project for certain District costs, as described. The DEDA and City have 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.

USES	
Land/Building Acquisition	\$ 1,000,000
Site Improvements/Preparation	200,000
Affordable Housing	2,000,000
Utilities	100,000
Other Qualifying Improvements	57,486
<u>Administrative Costs (up to 10%)</u>	<u>557,195</u>
PROJECT AND INTEREST COSTS TOTAL	\$ 3,914,681
<u>Interest</u>	<u>2,214,464</u>
PROJECT AND INTEREST COSTS TOTAL	\$ 6,129,146

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 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 DEDA and City have 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	2018/Pay 2019 Total Net Tax Capacity	Estimated Captured Tax Capacity (CTC) upon completion	Percent of CTC to Entity Total
St. Louis County	191,650,690	217,907	0.1137%
City of Duluth	74,108,442	217,907	0.2940%
ISD 709	83,439,718	217,907	0.2612%

Impact on Tax Rates				
Entity	Pay 2019 Extension Rate	Percent of Total	CTC	Potential Taxes
St. Louis County	65.1630%	45.01%	217,907	141,995
City of Duluth	42.0940%	29.08%	217,907	91,726
ISD 709	31.4890%	21.75%	217,907	68,617
Other	6.0280%	4.16%	217,907	13,135
Total	144.7740%	100.00%		315,473

The estimates listed above display the captured tax capacity when all construction is completed. The tax rate used for calculations is the Pay 2019 rate. The total net capacity for the entities listed above are based on Pay 2019 figures. The District will be certified under the Pay 2020 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 \$5,571,951;
- (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. With any addition of new residents or businesses, police calls for service will be increased. New developments add an increase in traffic, and additional overall demands to the call load. 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. The improvements to the building and conversion to a residential building are anticipated to make the building safer to both the community and firefighters. Currently only the basement has an automatic sprinkler system. In addition, the building has only one standpipe. With the improvement, a second standpipe will be added along with code compliant fire alarms. These improvements are anticipated to make the building safer to occupants, firefighters and neighboring buildings.

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 current infrastructure for sanitary sewer, storm sewer and water will be able to

handle the additional volume generated from the proposed development. It is possible a larger pipe may be needed to accommodate the required sprinkler load; long-term plans include replacing current infrastructure with a larger main, but these plans are a few years in the future. Based on the development plans, there are no additional costs associated with street maintenance, sweeping, plowing, lighting and sidewalks. The development in the District is expected to contribute an estimated \$86,000 in fees.

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 \$1,211,925.
- (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 \$2,507,944.
- (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

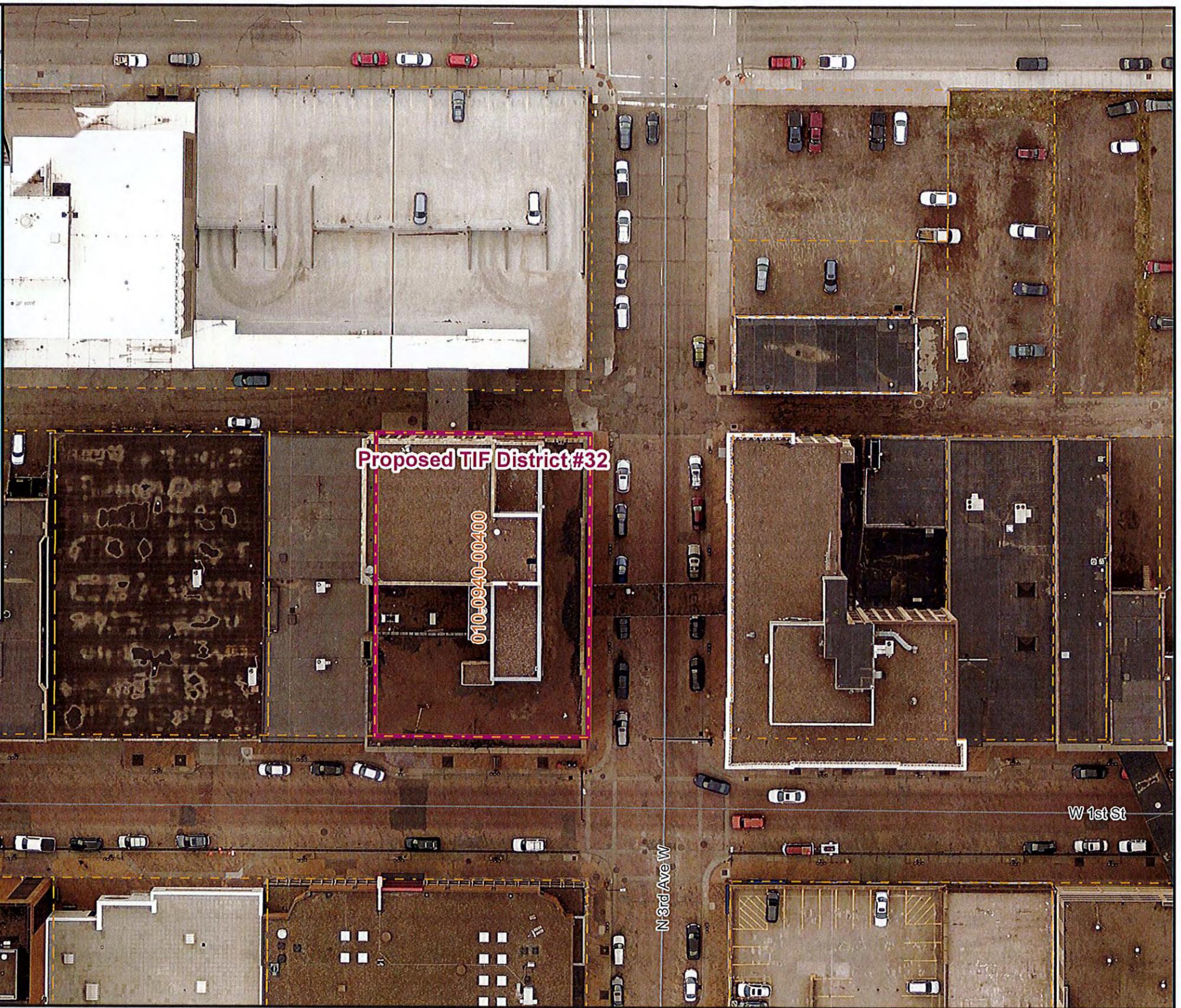
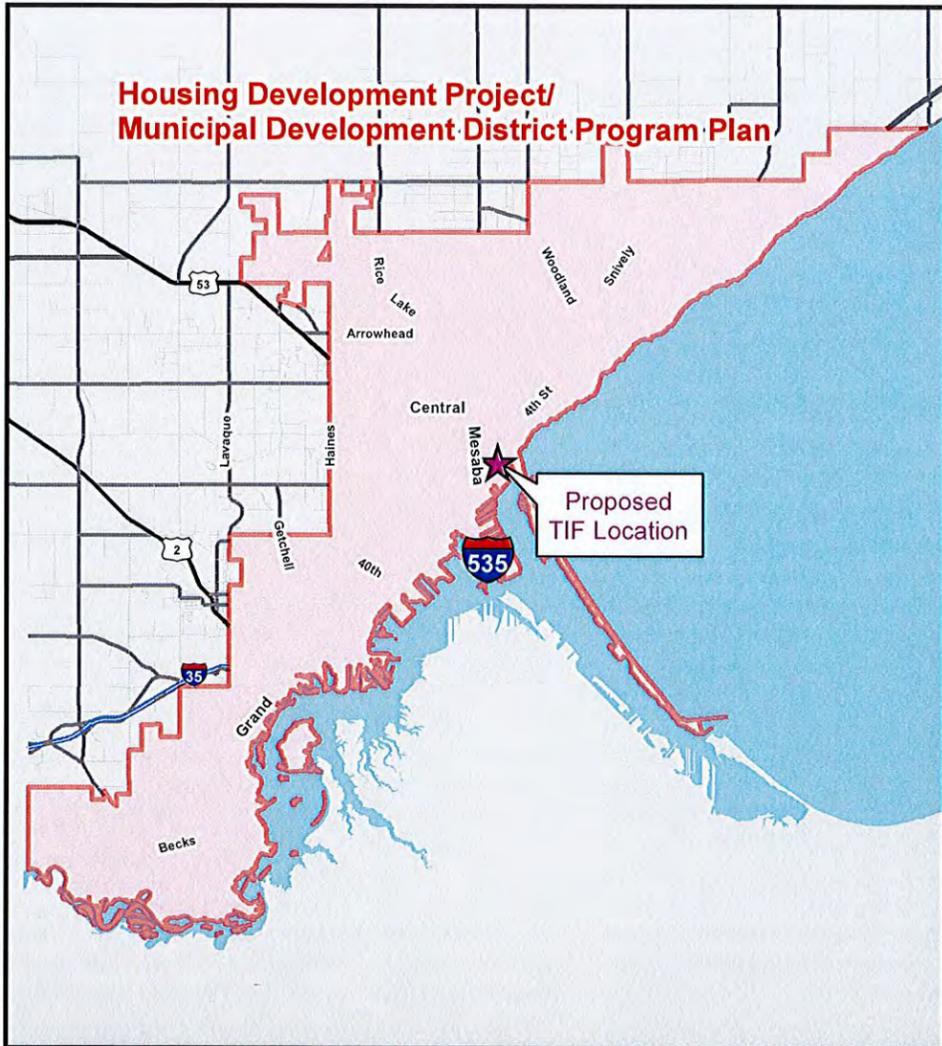
Pursuant to *M.S. Section 469.175, Subd. 1 (a), clause 7*, the TIF Plan must contain identification and description of studies and analyses used to make the determination set forth in *M.S. Section 469.175, Subd. 3, clause (b)(2)* and the findings are required in the resolution approving the District.

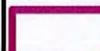
- (i) In making said determination, reliance has been placed upon (1) written representation made by the developer to such effects; and (2) City staff awareness of the feasibility of developing the project site within the District, which is further outlined in the city council resolution approving the establishment of the TIF District.
- (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 Director of Planning and Economic Development.

**Appendix A: Map of the Housing Development Project / Municipal
Development District Program and the District.**

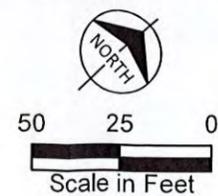


-  Proposed TIF District #32 Boundary
-  Parcel Boundary
-  Housing Development Project/
Municipal Development District Program Plan



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.

The City of Duluth requires that this map/data not be redistributed to any party in whole or in part, including any derivative works of products generated by combining the data with other data, unless authorized by the City of Duluth GIS office.



Proposed TIF District #32

Appendix B: Estimated Cash Flow for the District



Board of Trade Historic Redevelopment

City of Duluth, MN

67 Market Rate Apartments and 17 Affordable Apartments; 16,645 Sq. Ft. Commercial

ASSUMPTIONS AND RATES

DistrictType:		Housing		Tax Rates	
District Name/Number:	2020	Exempt Class Rate (Exempt)	0.00%	Commercial Industrial Preferred Class Rate (C/I Pref.)	
County District #:	3.00%	First \$150,000	1.50%	Over \$150,000	
First Year Construction or Inflation on Value	4.00%	Commercial Industrial Class Rate (C/I)	2.00%	Rental Housing Class Rate (Rental)	
Existing District - Specify No. Years Remaining	1-Aug-21	Affordable Rental Housing Class Rate (Aff. Rental)	1.25%	Non-Homestead Residential (Non-H Res. 1 Unit)	
Initiation Rate - Every Year:	1-Feb-22	First \$150,000	0.75%	Over \$500,000	
Interest Rate:	Pay 2020	First \$150,000	0.25%	Over \$500,000	
Present Value Date:	2022	First \$500,000	1.00%	Over \$500,000	
First Period Ending	2047	Homestead Residential Class Rate (Hmstd. Res.)	1.25%	Agricultural Non-Homestead	
Tax Year District was Certified:	NA	First \$500,000	1.00%		
Cashflow Assumes First Tax Increment For Development:	NA	Over \$500,000	1.25%		
Years of Tax Increment	NA	Homestead Residential Class Rate (Hmstd. Res.)	1.00%		
Assumes Last Year of Tax Increment	NA	First \$500,000	1.25%		
Fiscal Disparities Election (Outside (A), Inside (B), or NA)	NA	Over \$500,000	1.00%		
Incremental or Total Fiscal Disparities	NA	Homestead Residential Class Rate (Hmstd. Res.)	1.25%		
Fiscal Disparities Contribution Ratio	NA	First \$500,000	1.00%		
Fiscal Disparities Metro-Wide Tax Rate	144.774%	Over \$500,000	1.25%		
Maximum/Frozen Local Tax Rate:	144.774%	Agricultural Non-Homestead	1.00%		
Current Local Tax Rate: (Use lesser of Current or Max.)	42.4160%				
State-wide Tax Rate (Comm./Ind. only used for total taxes)	0.19418%				
Market Value Tax Rate (Used for total taxes)					

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	Tax Year		Property Tax Class	Current Original Tax Capacity	Class After Conversion	After Conversion Orig. Tax Cap.	Area/Phase
								Original Market Value	Pay 2020					
1	010-0940-00400	Dubin Does Duluth, LLC	111 N 3rd Ave. W	0	928,700	928,700	66%	612,942	Pay 2020	C/I Pref.	11,509	Rental	7,662	1
1	010-0940-00400	Dubin Does Duluth, LLC	111 N 3rd Ave. W	0	928,700	928,700	17%	157,879	Pay 2020	C/I	3,158	Aff. Rental	1,184	
1	010-0940-00400	Dubin Does Duluth, LLC	111 N 3rd Ave. W	0	928,700	928,700	17%	157,879	Pay 2020	C/I	3,158	C/I Pref.	2,408	
				0	2,786,100	2,786,100		928,700			17,824		11,253	

Note:

1. Base values are for pay 2020 based upon information received from the City.
2. UTA 010-0709-00-02-00-00



Board of Trade Historic Redevelopment

City of Duluth, MN

67 Market Rate Apartments and 17 Affordable Apartments; 16,645 Sq. Ft. Commercial

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 Market Value	Property Tax Class	Project Tax Capacity	Project Capacity/Unit	Percentage Completed 2020	Percentage Completed 2021	Percentage Completed 2022	Percentage Completed 2023	First Year Full Taxes Payable
1	Apartments	90,000	90,000	67	6,030,000	Rental	75,375	1,125	40%	100%	100%	100%	2023
1	Commercial	80	80	17	1,530,000	Aff. Rental	11,475	675	40%	100%	100%	100%	2023
TOTAL				84	7,560,000	C/I Pref.	112,732	2	40%	100%	100%	100%	2023
Subtotal Residential				84	8,891,600		86,850						
Subtotal Commercial/Ind.				16,645	1,331,600		25,882						

Note:

1. Market values are based upon estimates received from the County Appraiser.

TAX CALCULATIONS

New Use	Total Tax Capacity	Fiscal Disparities Tax Capacity		Local Property Taxes	Local Tax Capacity	State-wide Property Taxes		Market Value Taxes	Total Taxes	Taxes Per Sq. Ft./Unit
		Disparities Tax Capacity	Local Tax Capacity			Property Taxes	State-wide Property Taxes			
Apartments	75,375	0	75,375	109,123	0	0	11,709	120,832	1,803.47	
Commercial	25,882	0	25,882	37,470	0	10,342	2,586	50,398	1,151.99	
TOTAL	112,732	0	112,732	163,207	0	10,342	17,266	190,814	3.03	

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	190,814
less State-wide Taxes	(10,342)
less Fiscal Disp. Adj.	0
less Market Value Taxes	(17,266)
less Base Value Taxes	(16,292)
Annual Gross TIF	146,915

MARKET VALUE BUT / FOR ANALYSIS

Current Market Value - Est.	928,700
New Market Value - Est.	8,891,600
Difference	7,962,900
Present Value of Tax Increment	3,122,676
Difference	4,840,224
Value likely to occur without Tax increment is less than:	4,840,224



**Board of Trade Historic Redevelopment
City of Duluth, MN**

67 Market Rate Apartments and 17 Affordable Apartments; 16,645 Sq. Ft. Commercial

% of OTC	Project Tax Capacity	Original Tax Capacity	Fiscal Disparities NA	Captured Tax Capacity	Local Tax Rate	Annual Gross Tax Increase	Semi-Annual Gross Tax Increase	State Auditor 0.36%	Admin. at 10%	Semi-Annual Net Tax Increase	Semi-Annual Present Value	PERIOD ENDING Yrs.	Tax Year	Payment Date	
															TAX INCREMENT CASH FLOW
100%	45,093	(11,253)	-	33,839	144.774%	48,991	24,495	(88)	(2,441)	21,966	21,113	0.5	2022	08/01/22	
100%	112,732	(11,253)	-	101,479	144.774%	146,915	73,457	(88)	(2,441)	21,966	41,813	1	2022	08/01/23	
100%	116,114	(11,253)	-	104,861	144.774%	151,811	75,905	(264)	(7,319)	65,874	102,670	1.5	2023	08/01/23	
100%	119,597	(11,253)	-	108,344	144.774%	156,854	75,905	(273)	(7,563)	68,069	162,334	2	2023	02/01/24	
100%	123,185	(11,253)	-	111,932	144.774%	162,048	75,905	(273)	(7,563)	68,069	222,777	2.5	2024	08/01/24	
100%	126,881	(11,253)	-	115,627	144.774%	167,398	78,427	(282)	(7,814)	70,330	282,035	3	2024	08/01/25	
100%	130,687	(11,253)	-	119,434	144.774%	172,909	81,024	(292)	(8,073)	72,659	400,910	3.5	2025	08/01/26	
100%	134,608	(11,253)	-	123,354	144.774%	178,585	83,699	(301)	(8,340)	75,058	460,516	4	2025	08/01/26	
100%	138,646	(11,253)	-	127,393	144.774%	184,431	83,699	(301)	(8,340)	75,058	518,953	4.5	2026	08/01/26	
100%	142,806	(11,253)	-	131,552	144.774%	190,453	86,455	(311)	(8,614)	77,529	578,136	5	2026	08/01/27	
100%	147,090	(11,253)	-	135,836	144.774%	196,656	86,455	(311)	(8,614)	77,529	636,158	5.5	2027	08/01/27	
100%	151,502	(11,253)	-	140,249	144.774%	203,044	89,293	(321)	(8,897)	80,074	694,915	6	2027	02/01/28	
100%	156,047	(11,253)	-	144,794	144.774%	209,624	89,293	(321)	(8,897)	80,074	752,521	6.5	2028	08/01/28	
100%	160,729	(11,253)	-	149,475	144.774%	216,402	92,216	(332)	(9,188)	82,695	810,850	7	2028	02/01/29	
100%	165,551	(11,253)	-	154,297	144.774%	223,382	92,216	(332)	(9,188)	82,695	868,036	7.5	2029	08/01/29	
100%	170,517	(11,253)	-	159,264	144.774%	230,573	95,227	(343)	(9,488)	85,395	925,936	8	2029	02/01/30	
100%	175,633	(11,253)	-	164,379	144.774%	237,979	95,227	(343)	(9,488)	85,395	982,701	8.5	2030	08/01/30	
100%	180,902	(11,253)	-	169,648	144.774%	245,607	98,328	(354)	(9,797)	88,176	1,040,169	9	2030	02/01/31	
100%	186,329	(11,253)	-	175,075	144.774%	253,464	98,328	(354)	(9,797)	88,176	1,096,511	9.5	2031	08/01/31	
100%	191,919	(11,253)	-	180,665	144.774%	261,556	101,522	(365)	(10,116)	91,041	1,153,547	10	2031	02/01/32	
100%	197,676	(11,253)	-	186,423	144.774%	269,892	101,522	(365)	(10,116)	91,041	1,209,465	10.5	2032	08/01/32	
100%	203,607	(11,253)	-	192,353	144.774%	278,477	104,812	(377)	(10,443)	93,991	1,266,067	11	2032	02/01/33	
100%	209,715	(11,253)	-	198,461	144.774%	287,320	104,812	(377)	(10,443)	93,991	1,321,559	11.5	2033	08/01/33	
100%	216,006	(11,253)	-	204,753	144.774%	296,429	108,201	(390)	(10,781)	97,030	1,377,726	12	2033	02/01/34	
100%	222,486	(11,253)	-	211,233	144.774%	305,810	108,201	(390)	(10,781)	97,030	1,432,792	12.5	2034	08/01/34	
100%	229,161	(11,253)	-	217,907	144.774%	315,473	111,691	(402)	(11,129)	100,160	1,488,524	13	2034	02/01/35	
100%							111,691	(402)	(11,129)	100,160	1,543,163	13.5	2035	08/01/35	
100%							115,286	(415)	(11,487)	103,384	1,598,458	14	2035	02/01/36	
100%							115,286	(415)	(11,487)	103,384	1,652,669	14.5	2036	08/01/36	
100%							118,989	(428)	(11,856)	106,705	1,707,529	15	2036	02/01/37	
100%							118,989	(428)	(11,856)	106,705	1,761,312	15.5	2037	08/01/37	
100%							122,803	(442)	(12,236)	110,125	1,815,734	16	2037	02/01/38	
100%							122,803	(442)	(12,236)	110,125	1,869,090	16.5	2038	08/01/38	
100%							126,732	(456)	(12,628)	113,648	1,923,076	17	2038	02/01/39	
100%							126,732	(456)	(12,628)	113,648	1,976,003	17.5	2039	08/01/39	
100%							130,778	(471)	(13,031)	117,277	2,029,552	18	2039	02/01/40	
100%							130,778	(471)	(13,031)	117,277	2,082,052	18.5	2040	08/01/40	
100%							134,946	(486)	(13,446)	121,014	2,135,165	19	2040	02/01/41	
100%							134,946	(486)	(13,446)	121,014	2,187,237	19.5	2041	08/01/41	
100%							139,239	(501)	(13,874)	124,864	2,239,915	20	2041	02/01/42	
100%							139,239	(501)	(13,874)	124,864	2,291,560	20.5	2042	08/01/42	
100%							143,660	(517)	(14,314)	128,829	2,343,803	21	2042	02/01/43	
100%							143,660	(517)	(14,314)	128,829	2,395,022	21.5	2043	08/01/43	
100%							148,214	(534)	(14,768)	132,913	2,446,831	22	2043	02/01/44	
100%							148,214	(534)	(14,768)	132,913	2,497,624	22.5	2044	08/01/44	
100%							152,905	(550)	(15,235)	137,119	2,549,000	23	2044	02/01/45	
100%							152,905	(550)	(15,235)	137,119	2,599,368	23.5	2045	08/01/45	
100%							157,737	(568)	(15,717)	141,452	2,649,000	24	2045	02/01/46	
100%							157,737	(568)	(15,717)	141,452	2,699,368	24.5	2046	08/01/46	
100%							157,737	(568)	(15,717)	141,452	2,749,000	25	2046	02/01/47	
100%							157,737	(568)	(15,717)	141,452	2,799,368	25.5	2047	08/01/47	
100%							157,737	(568)	(15,717)	141,452	2,849,000	26	2047	02/01/48	
100%							157,737	(568)	(15,717)	141,452	2,899,368	26	2047	08/01/48	
	Total						5,592,082	(20,131)	(557,195)	5,014,756					
							3,122,676	(11,242)	(311,143)	2,800,291					

Appendix C: Findings including But/For Qualifications

The reasons and facts supporting the findings for the adoption of the Tax Increment Financing Plan for Tax Increment Financing District No. 32, as required pursuant to Minnesota Statutes, Section 469.175, Subdivision 3 are as follows:

1. *Finding that Tax Increment Financing District No. 32 is a housing district as defined in M.S., Section 469.174, Subd. 11.*

TIF District No. 32 consists of one parcel. The District is being created to facilitate rehabilitation of the historic Board of Trade Building. The rehabilitated building will include 84-units of rental housing, 17 of which will be affordable, and approximately 16,645 square feet of commercial space in the City, all or a portion of which will receive tax increment assistance and will meet income restrictions described in M.S. 469.1761. At least 20 percent of the units receiving assistance will have incomes at or below 50 percent of statewide median income.

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.*

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 development proposed in this plan is an adaptive reuse of a historic building that will contain affordable housing units meeting the City's objectives for development. The cost of building rehabilitation makes this housing development infeasible without City assistance. The cost to rehabilitate the building for housing is the same for affordable housing units as it is for market rate housing units. The decreased rental income from the affordable units means there is less cash flow available to service the operating and debt expenses for the project. That leaves a gap in funding for the project. The need to offset this reduction in rents for the affordable housing units makes this development 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 project 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 TIF District permitted by the TIF Plan: This finding is justified on the grounds that the costs of building acquisition, and rehabilitation for housing adds to the total development cost. Historically, the costs of construction and/or rehabilitation in the City have made development of affordable housing infeasible without tax increment assistance. Although other projects could potentially be proposed, the

City reasonably determines that no other redevelopment of similar scope providing the desired affordability can be anticipated on this site without substantially similar assistance being provided to the development.

3. *Finding that the TIF Plan for Tax Increment Financing District No. 32 conforms to the general plan for the development or redevelopment of the municipality as a whole.*

The Planning Commission reviewed the TIF Plan and found 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. 32 will afford maximum opportunity, consistent with the sound needs of the City as a whole, for the development or redevelopment of the Housing Development Project / Municipal Development District Program by private enterprise.*

Through the implementation of the TIF Plan, the DEDA or City will provide an impetus for residential development, which is desirable or necessary for increased population and an increased need for life-cycle housing within the City.



MINNWEST
BANK®

MONEYLINE: 1-888-616-BANK (2265)

www.minnwestbank.com

June 27, 2019

Naganat Guru
Principal / Partner
The Dubin Guru Group
607 Academy Drive
Northbrook, IL 60062

Dear Guru,

Per your request, I am sending this letter as an indication of our recent approval to move forward with your historic renovation of the Duluth Board of Trade Building. You have requested \$10 million of permanent debt, and as you know we currently have \$9.4 million loan approved.

We are expecting an updated appraisal that includes the value with based on the restricted rents per the developer agreement and the value of the larger TIF note contemplated. We are hopeful that the increase in the amount of TIF will assist in filling the \$600,000 current funding gap. Our loan will secure the land, building and have an assignment of the TIF payments.

As you know our approval is contingent upon the final due diligence items that we are working through at this time. We anticipate a closing as soon as the City approves the TIF in the amount adequate to fill the remaining gap.

If you or the City has questions regarding this letter, please call me at your convenience. I look forward to working with you to see this project to its completion.

Sincerely,



Greg Hohlen SVP

Beaver Creek | Belview | Danube | Dawson | Eagan | Gibbon | Hammond | Lake Wilson | Luverne - Downtown
Luverne - Highway 75 | Marshall | Minnetonka | Montevideo - Downtown | Montevideo - Highway 7 | Morton | Ortonville
Redwood Falls - Downtown | Redwood Falls - East | Rochester | Rochester Loan Production Office | Sioux Falls
Sioux Falls - East | Slayton | St. Cloud | Tracy



**Board of Trade Historic Redevelopment
City of Duluth**

Summary Sources and Uses

84 Mixed-Income Apts; 16,049 (sf) Commercial Space

SOURCES			
	Amount	Pct.	Per Unit
First Mortgage	9,973,384	49%	118,731
Equity	3,571,987	18%	42,524
Tax Credits	6,514,753	32%	77,557
Other Public Sources	315,694	2%	3,758
TOTAL SOURCES	20,375,818	100%	242,569

USES			
	Amount	Pct.	Per Unit
Acquisition Costs	1,200,000	6%	14,286
Construction Costs	12,859,498	63%	153,089
Environmental Abatement/Soil Correction	353,750	2%	4,211
Professional Services	932,000	5%	11,095
Financing Costs	1,755,970	9%	20,904
Developer Fee	2,468,476	12%	29,387
Cash Accounts/Escrows/Reserves	806,124	4%	9,597
TOTAL USES	20,375,818	100%	242,569

	Z0U0	Z0U1	Z0U2	Z0U3	Z0U4	Z0U5	Z0U6	Z0U7	Z0U8	Z0U9	Z0U10	Z0U11	Z0U12	Z0U13	Z0U14	Z0U15	Z0U16	Z0U17	Z0U18	Z0U19	Z0U3
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year	
tor		0.0%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
	890,352 (44,518) (638,531)	890,352 (44,518)	908,159 (45,408)	926,322 (46,316)	944,849 (47,242)	963,746 (48,187)	983,021 (49,151)	1,002,681 (50,134)	1,022,735 (51,137)	1,043,189 (52,159)	1,064,053 (53,203)	1,085,334 (54,267)	1,107,041 (55,352)	1,129,182 (56,459)	1,151,765 (57,588)	1,174,801 (58,740)	1,198,297 (59,915)	1,222,262 (61,113)	1,246,708 (62,335)	1,271	
	207,303	845,834	862,751	880,006	897,606	915,558	933,870	952,547	971,598	991,030	1,010,850	1,031,067	1,051,689	1,072,723	1,094,177	1,116,061	1,138,382	1,161,149	1,184,372	1,208	
tor		0%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%
	76,800	76,800	78,336	79,903	81,501	83,131	84,793	86,489	88,219	89,983	91,783	93,619	95,491	97,401	99,349	101,336	103,363	105,430	107,539	109	
	19,444	19,444	19,833	20,230	20,634	21,047	21,468	21,897	22,335	22,782	23,237	23,702	24,176	24,660	25,153	25,656	26,169	26,692	27,226	27	
	26,100	26,100	26,622	27,154	27,698	28,251	28,817	29,393	29,981	30,580	31,192	31,816	32,452	33,101	33,763	34,438	35,127	35,830	36,546	37	
	122,344	122,344	124,791	127,287	129,832	132,429	135,078	137,779	140,535	143,345	146,212	149,137	152,119	155,162	158,265	161,430	164,659	167,952	171,311	174	
	329,647	968,178	987,542	1,007,293	1,027,439	1,047,987	1,068,947	1,090,326	1,112,133	1,134,375	1,157,063	1,180,204	1,203,808	1,227,884	1,252,442	1,277,491	1,303,041	1,329,101	1,355,683	1,382	
	320,767 (16,038) 0	320,767 (16,038) 0	327,182 (16,359) 0	333,726 (16,686) 0	340,400 (17,020) 0	347,208 (17,360) 0	354,152 (17,708) 0	361,235 (18,062) 0	368,460 (18,423) 0	375,829 (18,791) 0	383,346 (19,167) 0	391,013 (19,551) 0	398,833 (19,942) 0	406,810 (20,340) 0	414,946 (20,747) 0	423,245 (21,162) 0	431,710 (21,585) 0	440,344 (22,017) 0	449,151 (22,458) 0	458	
	304,728	304,728	310,823	317,039	323,380	329,848	336,445	343,173	350,037	357,038	364,178	371,462	378,891	386,469	394,198	402,082	410,124	418,327	426,693	435	
	634,376	1,272,907	1,298,365	1,324,332	1,350,819	1,377,835	1,405,392	1,433,500	1,462,170	1,491,413	1,521,241	1,551,666	1,582,699	1,614,353	1,646,640	1,679,573	1,713,165	1,747,428	1,782,377	1,818	
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	203	
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year	
tor		0%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	
	167,640	223,520	227,990	232,550	237,201	241,945	246,784	251,720	256,754	261,889	267,127	272,470	277,919	283,477	289,147	294,930	300,828	306,845	312,982	319	
	84,027	112,036	114,613	117,249	119,946	122,704	125,527	128,414	131,367	134,389	137,480	140,642	143,876	147,186	150,571	154,034	157,577	161,201	164,909	168	
	17,000	32,217	140,416	143,225	146,089	149,011	151,991	155,031	158,131	161,294	164,520	167,810	171,167	174,590	178,082	181,643	185,276	188,982	192,761	196	
	15,750	21,000	21,420	21,848	22,285	22,731	23,186	23,649	24,122	24,605	25,097	25,599	26,111	26,633	27,166	27,709	28,263	28,828	29,405	29	
	284,417	388,773	504,439	514,872	525,521	536,392	547,487	558,814	570,375	582,177	594,224	606,521	619,073	631,886	644,965	658,316	671,945	685,856	700,057	714	
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	284,417	388,773	504,439	514,872	525,521	536,392	547,487	558,814	570,375	582,177	594,224	606,521	619,073	631,886	644,965	658,316	671,945	685,856	700,057	714	
	349,959	884,134	793,925	809,460	825,297	841,444	857,904	874,686	891,794	909,236	927,018	945,146	963,627	982,467	1,001,675	1,021,257	1,041,220	1,061,572	1,082,320	1,103	
	0	43,933	131,747	134,382	137,070	139,811	142,607	145,459	148,369	151,336	154,363	157,450	160,599	163,811	167,087	170,429	173,838	177,314	180,861	184	
	349,959	928,066	925,672	943,842	962,367	981,255	1,000,512	1,020,145	1,040,163	1,060,572	1,081,380	1,102,596	1,124,225	1,146,278	1,168,762	1,191,686	1,215,058	1,238,886	1,263,180	1,287	
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	203	
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year	
	0	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668	
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	0	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668,313	668	
	0%	139%	139%	141%	144%	147%	150%	153%	156%	159%	162%	165%	168%	172%	175%	178%	182%	185%	189%		
	0%	132%	119%	121%	123%	126%	128%	131%	133%	136%	139%	141%	144%	147%	150%	153%	156%	159%	162%		
	349,959	259,754	257,359	275,529	294,054	312,942	332,199	351,832	371,850	392,259	413,067	434,283	455,913	477,965	500,449	523,373	546,745	570,573	594,867	619	
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year	
		10,300	10,506	10,716	10,930	11,149	11,372	11,599	11,831	12,068	12,309	12,556	12,807	13,063	13,324	13,591	13,862	14,140	14,422	14	
		60,973	60,973	60,973	60,973	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
		0	0	0	0	152,431	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
		0	0	10,000	30,000	100,000	100,000	100,000	100,000	60,000	0	0	0	0	0	0	0	0	0	0	
	0	71,273	71,479	81,689	101,903	263,580	111,372	111,599	111,831	72,068	12,309	12,556	12,807	13,063	13,324	13,591	13,862	14,140	14,422	14	
	349,959	188,481	185,880	193,840	192,151	49,362	220,827	240,233	260,019	320,191	400,758	421,727	443,106	464,903	487,125	509,782	532,882	556,433	580,445	604	
	349,959	188,481	185,880	193,840	192,151	49,362	220,827	240,233	260,019	320,191	400,758	421,727	443,106	464,903	487,125	509,782	532,882	556,433	580,445	604	
	349,959	144,548	54,133	59,458	55,081	-90,449	78,219	94,773	111,650	168,855	246,395	264,277	282,507	301,092	320,038	339,353	359,045	379,119	399,584	421	
	9.8%	5.3%	5.2%	5.4%	5.4%	1.4%	6.2%	6.7%	7.3%	9.0%	11.2%	11.8%	12.4%	13.0%	13.6%	14.3%	14.9%	15.6%	16.2%	1	
	9.8%	7.5%	6.8%	6.4%	6.2%	5.4%	5.5%	5.7%	5.9%	6.2%	6.6%	7.1%	7.5%	7.9%	8.2%	8.6%	9.0%	9.4%	9.7%	1	
	9.8%	4.0%	1.5%	1.7%	1.5%	-2.5%	2.2%	2.7%	3.1%	4.7%	6.9%	7.4%	7.9%	8.4%	9.0%	9.5%	10.1%	10.6%	11.2%	1	
	9.8%	6.9%	5.1%	4.3%	3.7%	2.7%	2.6%	2.6%	2.7%	2.9%	3.2%	3.6%	3.9%	4.2%	4.6%	4.9%	5.2%	5.5%	5.8%		
	1.7%	4.6%	4.5%	4.6%	4.7%	4.8%	4.9%	5.0%	5.1%	5.2%	5.3%	5.4%	5.5%	5.6%	5.7%	5.8%	6.0%	6.1%	6.2%		
	1.7%	4.3%	3.9%	4.0%	4.1%	4.1%	4.2%	4.3%	4.4%	4.5%	4.5%	4.6%	4.7%	4.8%	4.9%	5.0%	5.1%	5.2%	5.3%		

RESOLUTION 19D-26

RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH THREE D I, LLC FOR THE DEVELOPMENT OF THE BOARD OF TRADE MULTI-FAMILY RESIDENTIAL AND MIXED USE PROJECT

WHEREAS, Three D I, LLC ("Developer"), proposes to redevelop property located at 301 West First Street in Duluth, Minnesota into a multi-family residential and mixed use facility with apartment units and commercial/retail space (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. 32, a Housing 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 the Development Agreement constitutes a "business subsidy agreement" under the Business Subsidy Resolution; and

WHEREAS, pursuant to Minnesota Statutes §§116J.993 through 116J.995 (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

WHEREAS, Developer's lender, Minnwest Bank ("Lender"), requires as a condition of its loan to Developer, that the Development Agreement is subordinated to the Lender Mortgages, Security Interests and Indebtedness as those terms are defined in the Subordination Agreement; and

WHEREAS, Lender further requires as a condition of its loan to Developer, that Developer collaterally assign to Lender the Developer's interest in the Development

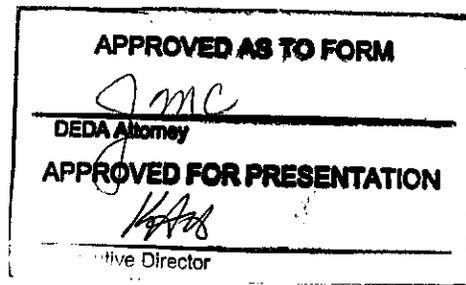
Agreement. Under the assignment, Lender has no right to enforce the provisions of the Development Agreement until an event of default has occurred.

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 or stimulating the redevelopment of underutilized, blighted or obsolete land uses including rehabilitation or 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 or redevelopment and private investment; and achieve development on sites which would not be developed without assistance. 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.
3. 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. _____), together with any related documents necessary in connection therewith.
4. DEDA staff, officials and consultants are authorized and directed to implement the terms of the Development Agreement as provided therein and carry out DEDA's obligations under the Development Agreement.
5. DEDA hereby authorizes the proper DEDA officials to enter into a Subordination Agreement with Lender substantially in the form of that attached hereto (DEDA Contract No. _____), together with any related documents necessary in connection therewith.
6. DEDA hereby authorizes the proper DEDA officials to execute the Acknowledgement, Consent and Agreement of DEDA attached to the Assignment of Development Agreement between Developer and Lender substantially in the form of that attached hereto (DEDA Contract No. _____), together with any related documents necessary in connection therewith.

Approved by the Duluth Economic Development Authority this 10th day of July, 2019.

ATTEST:



Executive Director

STATEMENT OF PURPOSE:

This resolution authorizes a Development Agreement with Three D I, LLC for the development of the Board of Trade project located at 301 West First Street. The project will be located in an area identified as Tax Increment Financing District No. 32, a Housing District. A resolution approving the creation of TIF District No. 32 will be on the July 15, 2019, City Council agenda.

The Development Agreement provides for the development/redevelopment by Developer of a multi-family residential and mixed use development with not less than 84 studio, 1-bedroom and 2-bedroom residential apartments, not less than 20% of which will be occupied by households at 50% or less of area median income, and up to 19,280 square feet of retail/commercial space on the property together with related utilities and other amenities at a cost of approximately \$20,000,000. DEDA will provide 90% of the TIF generated by the project up to \$1,800,000 plus interest at the rate of 5% to pay for public eligible costs of construction on a pay-as-you-go basis. The term of the TIF Note is for a period of twenty (20) 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.

Additionally, this resolution authorizes DEDA to execute two documents required by Developer's Lender: a Subordination Agreement and an Acknowledgement, Consent and Agreement of DEDA which is attached to the Assignment of Development Agreement between Developer and Lender.

Tax base impact statement: The current market value (2019, payable 2020) of the properties located in this 25 year Housing TIF District (to be created by DEDA) is \$928,700 and the property is generating \$17,824 in net tax capacity. After the improvements are completed, the taxable market value will increase to approximately \$9,000,000 and the annual tax increment will be provided to the Developer to facilitate the redevelopment. After the TIF District is terminated, the development is anticipated to generate over \$112,000 per year in net tax capacity (based on the County Assessor's valuation of the completed property, not including inflation).

**DEVELOPMENT AGREEMENT
DULUTH ECONOMIC DEVELOPMENT AUTHORITY
THREE D I, LLC
BOARD OF TRADE HOUSING DEVELOPMENT**

THIS AGREEMENT entered into this _____ day of _____, 2019, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, whose address is 402 City Hall, 411 West First Street, Duluth, MN 55802 (hereinafter referred to as "DEDA") and THREE D I, LLC, a Minnesota limited liability company, whose address is 3060 Peachtree Road, NW, Suite 1830, Atlanta, Georgia 30305 (hereinafter referred to as "Developer").

WHEREAS, Developer is the fee owner of property upon which the Board of Trade Building is located at 301 West First Street, Duluth, Minnesota, and has proposed the Project (described and defined herein) which includes the redevelopment of the building into approximately eighty-four (84) apartment units, not less than 20% of which will be occupied by households at 50% or less of area median income, and up to 19,280 square feet of commercial/retail space on the Property in downtown Duluth; and

WHEREAS, Developer has requested assistance from DEDA for infrastructure and other costs eligible for public financing related to the redevelopment of the site as are set forth herein since without such assistance the redevelopment would not be economically viable; and

WHEREAS, DEDA has further determined that the interests of the citizens of the City of Duluth and the well-being and quality of life in the City of Duluth would be enhanced by nurturing and encouraging the redevelopment of the site; and

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

- A. a "gap" exists between the cost to Developer of redeveloping the Project and the

funds presently available to or known to Developer and DEDA to finance those costs at rates that would be economically feasible as hereafter described. Based on the best estimates currently available to the parties, the amount of said "gap" equals \$1,800,000. In order to reduce this "gap," DEDA has committed to provide tax increment proceeds from the Project. Assuming payment over a 20-year term at a discount rate of 5% based upon financial projections which assume certain tax capacity and based on a minimum estimated market value assessment of \$9,170,320, DEDA has calculated that the present value of the anticipated and available tax increment cash flows is sufficient to fill said gap; and

- B. without the tax increment assistance to be provided pursuant to this Agreement, the cost of redevelopment of the Project would be more than can be supported by the amounts that are reasonable to be charged for the rental of the units, and the available resources would be inadequate and not economically feasible to redevelop said Project, and that therefore, but for the tax increment assistance to be provided for hereunder, the Project could not reasonably be expected to be redeveloped 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 maximum duration of the district permitted by the Tax Increment Financing Plan for TIF District No. 32.

WHEREAS, the public purpose of the tax increment assistance to be provided pursuant to this Agreement is to enhance the economic diversity of the City and the City's tax base; to enhance the quality of life of the City's residents by investing in neglected neighborhoods or business areas or stimulating the redevelopment of underutilized, blighted or obsolete land uses including rehabilitation or demolition of commercial areas in the City and substandard structures; to expand the City's tax base and realize a reasonable rate of return on the public investment; to encourage the development of commercial areas in the City that result in higher quality development or redevelopment and private investment; and to achieve development on sites which

would not be developed without assistance; and

WHEREAS, the Property is located in a housing district within the meaning of Minnesota Statutes §469.174 et. seq. (Tax Increment Financing District No. 32).

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 received by DEDA from St. Louis County with respect to the Property and the Project from TIF District No. 32 in the six (6) month period preceding each Scheduled Payment Date as defined in the TIF Note.
- B. Business Subsidy Act means Minnesota Statutes §§116J.993 through 116J.995.
- C. Captured Tax Increment means that portion of the real property taxes paid with respect to the Property and the Project, which is remitted to DEDA as tax increment under TIF District No. 32 pursuant to the TIF Act.
- D. City means the City of Duluth.
- E. Eligible Project Costs means costs of Project construction incurred by Developer 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 \$9,444,347.
- F. Executive Director means the Executive Director of DEDA or such person or persons designated in writing by said Executive Director to act on behalf of him/her with regard to this Agreement or any portion thereof.
- G. Housing District as defined in Minnesota Statutes §469.174, Subdivision 11, means a type of tax increment financing district which consists of a project, or a

portion of a project, intended for occupancy, in part, by persons or families of low and moderate income, as defined in Minnesota Statutes, Chapter 462A, Title II of the National Housing Act of 1934, the National Housing Act of 1959, the United States Housing Act of 1937, as amended, Title V of the Housing Act of 1949, as amended, any other similar present or future federal, state, or municipal legislation, or the regulations promulgated under any of those acts, and that satisfies the requirements of the TIF Act, §469.1761.

- H. Project means the redevelopment by Developer of a multi-family residential and mixed use development with not less than eighty-four (84) studio, 1-bedroom and 2-bedroom residential apartments, not less than 20% of which will be occupied by households at 50% or less of area median income, and up to 19,280 square feet of retail/commercial space on the Property together with related utilities and other amenities for a total redevelopment of approximately 96,403 square feet at a total project cost of approximately \$20,000,000, all according to the plans approved by the Executive Director pursuant to Article IV and pursuant to required City approvals.
- I. Property means that Property located in St. Louis County, Minnesota, described on Exhibit A.
- J. TIF Act means Minnesota Statutes §§469.174 through 469.1799, as the same may be amended from time to time.
- K. TIF District No. 32 means DEDA's Tax Increment Financing District No. 32.
- L. TIF Note means the limited revenue tax increment financing note ("pay-as-you-go" note) to be issued by DEDA to the Developer pursuant to Article VI of this Agreement.
- M. TIF Plan means the Tax Increment Financing Plan for TIF District No. 32 authorized in accordance with the TIF Act, which TIF Plan is on file in the office of the Executive 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 Eighteen Thousand and No/100ths Dollars (\$18,000.00).

ARTICLE III

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 absolute.
- 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 construction of the Project in accordance with plans, specifications and elevations, approved pursuant to Article IV. Such construction contract shall provide that payments for the work thereunder are the sole obligation of Developer.
- D. Construction Financing. Copies of loan commitments and other financing commitments obtained by Developer for the Project, the total of said commitments and the 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.

ARTICLE IV

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 Executive Director, Developer shall submit working drawings, specifications and elevations for the Project together with detailed site grading, utility and landscaping plans and elevations to the Executive Director for approval. All such plans, specifications and elevations shall be in material conformance with this Agreement, with the schematic design 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 Executive Director shall review such plans, specifications and elevations within fifteen (15) days of submission of same by Developer. The Executive Director's approval shall be provided to the Developer in writing. If the Executive Director rejects such plans, specifications and elevations 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, specifications and elevations meeting said objections within fifteen (15) days of said notice. The provisions of this Paragraph relating to approval, rejection and resubmission of corrected plans hereinafter provided for with respect to the originally submitted plans, specifications and elevations shall continue to apply until said plans, specifications and elevations have been approved in writing by the Executive Director. The Executive Director's approval of Developer's plans, specifications and elevations shall not 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 said plans, specifications and elevations and any revisions thereto.

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

ARTICLE V

Construction

- A. Construction. Upon the fulfillment of the preconditions to construction provided for in Articles III and IV above, but in no event later than December 31, 2019, Developer shall commence construction of the Project in conformance with the plans approved pursuant to Article IV. Construction of the Project shall be completed, as evidenced by receipt of a Certificate of Completion as set forth in paragraph D below not later than December 31, 2021. Notwithstanding the above, the time for completion of Project construction in accordance with this Agreement may be extended for a period of up to six (6) months upon the prior written approval of the Executive Director, but only if the Executive Director is given sixty (60) days advance written notice of Developer's request for an extension.
- B. Developer to Bear All Costs. Except for payments by DEDA provided for in Article VI, Developer specifically agrees to bear all costs related to the construction of the Project.
- C. Progress Reports. Until construction of the entire Project has been completed, Developer shall make reports in such detail and at such times as may reasonably be requested by the Executive Director as to the actual progress of Developer with respect to the Project, but no more often than monthly. Additionally, upon reasonable notice, the Developer also agrees that it will permit DEDA access to the Property during construction.
- D. Project Costs/Certificate of Completion. Promptly upon completion by Developer of the construction of the Project in accordance with this Agreement, Developer shall submit to the Executive Director written evidence in a form satisfactory to the Executive 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 \$1,800,000 or such lesser amount as may be approved in writing by the Executive Director. 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 Eligible Project Costs and upon completion by Developer of the construction of the Project in accordance with this Agreement, DEDA through its Executive Director shall furnish to Developer an appropriate certificate certifying completion of construction of the Project (Certificate of Completion) in the form of that attached hereto as Exhibit B. A Certificate of Completion shall not be issued until all elements of the Project have been completed consistent with this Agreement and applicable City code and ordinances. 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 VI

Payment Obligations

- A. Upon DEDA's issuance of the Certificate of Completion pursuant to Paragraph D of Article V, DEDA shall execute and deliver to Developer a Note substantially in the form of Exhibit C. The principal amount of the TIF Note shall be \$1,800,000 or the amount of documented Eligible Project Costs, whichever is less. The term of the TIF Note shall be for a period of twenty 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.
- B. Pursuant to the TIF Plan, DEDA's first receipt of Available Tax Increment will be in August 2022. Interest payable on the TIF Note 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 within 5 years of the date of certification by the St. Louis County Auditor of TIF District No. 32.

- C. Developer acknowledges and agrees, as provided in the TIF Note, that payments under the TIF Note are to be made only as and to the extent that DEDA shall receive and be able to retain Available Tax Increment on any Scheduled Payment Date as defined in the TIF Note. If there is insufficient Available Tax Increment on any Scheduled Payment Date, the Available Tax Increment shall be applied to interest first and thereafter to principal. 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.
- D. The TIF Note will be issued without registration under the State or federal securities laws pursuant to an exemption for such issuance; and, accordingly, the TIF Note may not be assigned, transferred or pledged, in whole or in part, except as specifically set forth herein. Notwithstanding anything to the contrary in this Agreement, prior to the issuance of a Certificate of Completion, the TIF Note may be assigned, transferred or pledged without the approval of DEDA for the purpose of securing financing to pay for costs of constructing the Project; provided that notice of the assignment, transfer or pledge is provided to the Executive Director along with a completed certification of registration as contemplated under the TIF Note. Following the issuance of a Certificate of Completion, the TIF Note may be assigned to private mortgage lenders as security for mortgage loans relating to the Project or to a purchaser of the Project if Developer and Purchaser comply with the provisions of Article X hereof; provided that notice of the assignment, transfer or pledge is provided to the Executive Director along with a completed certification of registration as contemplated under the TIF Note.
- 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 the TIF Note may not be paid prior to the final payment set forth in the TIF Note 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.

ARTICLE VII

Compliance with Low and Moderate Income Requirements.

- A. Developer understands and agrees that TIF District No. 32 constitutes a Housing District under §469.174, Subdivision 11 of the TIF Act. Accordingly, in compliance with §469.1761, Subdivision 3 of the TIF Act, Developer agrees that the Project must satisfy, or be treated as satisfying, the income requirements for a qualified residential rental project as defined in Section 142(d) of the Internal Revenue Code. Developer further agrees that not more than 20% of the square footage of the Project may consist of commercial, retail, or other nonresidential uses. Developer must meet the above requirements as follows:
 - 1. At least 20% of the residential units in the Project must be occupied by persons whose incomes do not exceed 50% of the St. Louis County median income; and
 - 2. The limits described in Subparagraph 1 must be satisfied throughout the term of this Agreement. Income for occupants of units described in subparagraph 1 shall be adjusted for family size in accordance with Section 142(d) of the Internal Revenue Code and related regulations.
- B. On or before each July 1 and January 1 during the period that the TIF Note is outstanding, commencing on July 1, 2022, Developer must deliver to DEDA a Compliance Certificate in the form of Exhibit D executed by Developer covering the preceding six (6) months together with written evidence satisfactory to DEDA of compliance with the covenants in this Article. This evidence must include a

statement of the household income of each of qualifying renter, a written determination that each qualifying renter's household income falls within the qualifying limits of this Article (and Section 142(d) of the Internal Revenue Code), and certification that the income documentation is correct and accurate (and that the determination of qualification was made in compliance with Section 142(d) of the Internal Revenue Code). Accuracy of the information contained in the Compliance Certificate is the sole responsibility of the Developer. DEDA may review, upon request, all documentation supporting Developer's submissions and statements. In determining compliance with this Article, Developer must use the St. Louis County median incomes for the year in which the payment is due on the TIF Note, as promulgated by the Minnesota Housing Finance Agency based on the area median incomes established by the United States Department of Housing and Urban Development.

- C. If DEDA receives notice from the Minnesota Department of Revenue, the Minnesota State Auditor, any tax official, or any court of competent jurisdiction that TIF District No. 32 does not or ceases to qualify as a Housing District due to the acts or omissions of Developer, such event shall be deemed an event of default under this Agreement. Additionally, failure of Developer to comply with the requirements of this Article VII shall constitute an event of default under this Agreement. Developer acknowledges such a default will cause DEDA irreparable harm and that in such event, DEDA is entitled to seek and obtain both temporary and permanent equitable relief. In addition to this remedy and any other remedies available to DEDA under Article XIII, Developer shall indemnify, defend and hold harmless DEDA for any damages, losses, or costs resulting therefrom. If DEDA receives notice from the Minnesota Department of Revenue, the Minnesota State Auditor, any tax official, or any court of competent jurisdiction that TIF District No. 32 does not or ceases to qualify as a Housing District due to acts or omissions other than those of Developer, no further payments shall be made under the TIF Note, this Agreement and the TIF Note shall terminate, and DEDA may recover any amounts paid under the TIF Note following the date TIF District No. 32 ceased to qualify as a Housing District.

ARTICLE VIII

Operating Covenants

Developer agrees that in its operations and use of the Property and the Project, in accordance with commercially reasonable standards for similar projects in the Duluth region, 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, landscape maintenance, and all other exterior maintenance to the Property and the Project.
- B. Utilities. Unless disputed, pay or cause to be paid any and all charges for utilities including hook-up charges and assessments furnished to the Project and the Property, including but not limited to steam, water, sewer, gas, telephone, cable or satellite TV, and electrical power, as applicable.
- C. 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.
- D. 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.

- E. 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.
- F. 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.
- G. 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 collectability is being contested in good faith by appropriate proceedings.
- H. Continued Use. Continue use of the Project and the Property as up to 19,280 square feet of retail/commercial space and not less than eighty-four (84) studio, 1-bedroom and 2-bedroom residential apartments, not less than 20% of which will be occupied by households at 50% or less of area median income, and provide reports evidencing the same.
- I. Living Wage. Pay to both current and new employees compensation that on an annualized basis is, at minimum, equal to at least 110 percent of the federal poverty level for a family of four, or a living wage as set forth in Section 2-137 (Living Wage) of the Duluth City Code, 1959, as amended, whichever is greater.
- J. Prevailing Wage. Cause the laborers, mechanics or apprentice-trainees employed directly upon the Project work site to be paid the prevailing wage rates as set forth in Section 2-25 (Wage Rates and Hours for City Projects). Payroll for the construction trades must be submitted to the Executive Director on a monthly basis and will be provided within 15 business days of the month to which it applies.

- K. Project Labor Agreement. Enter into a Project Labor Agreement in conformance with the requirements of Section 2-29 of the Duluth City Code, 1959, as amended, including the Community Benefits Provisions set forth in Paragraphs (c) and (d) of said Section 2-29.
- L. Community Benefits. Require its contractor to abide by the Community Benefits specifications on file in the Office of the City Purchasing Agent.

ARTICLE IX

Business Subsidy

The provisions of this Article constitute the "business subsidy agreement" for the purposes of the Business Subsidy Act.

- A. Definitions. For the purposes of determining whether the Business Subsidy Goal set forth in Paragraph E of this Article has been met, the following terms shall have the meanings hereinafter ascribed to them.
 - 1. Benefit Date means the date upon which a Certificate of Completion has been issued by DEDA as set forth in Paragraph D of Article V.
 - 2. Reporting Period means that calendar year, from January 1st of any year through December 31st of that calendar year for the period prior to the year in which a report referred to in Paragraph F of this Article is required.
- B. Business Subsidy. The business subsidy provided to Developer consists of the tax increment assistance in an amount up to \$1,800,000 net present value provided through the establishment of a Housing Tax Increment Financing District, TIF District No. 32.
- C. Need for Subsidy. Without the tax increment assistance to be provided pursuant to this Agreement, the cost of redevelopment of the Project would be more than can be supported by the amounts that are reasonable to be charged for the rental of the units, and the available resources would be inadequate and not economically feasible to redevelop the Project and that, therefore, but for the tax increment assistance to be provided for hereunder, the Project could not reasonably be expected to be redeveloped in the foreseeable future.
- D. Public Purpose. The public purpose of the tax increment assistance to be provided pursuant to this Agreement is to redevelop a Project which 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 or stimulating the redevelopment of underutilized, blighted or obsolete land uses including rehabilitation or 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 or redevelopment and private investment; and achieve development on sites which would not be developed without assistance.

- E. Business Subsidy Goal. Achievement of the Business Subsidy Goal in accordance with Minnesota Statutes §116J.994 shall be measured as follows: Developer agrees that on or before December 31, 2021, or such additional time as approved in writing by the Executive Director pursuant to Paragraph A of Article V, it shall have redeveloped the Project on the Property in accordance with this Agreement (the "Business Subsidy Goal"). In accordance with §116J.994, Subdivision 4, DEDA has determined after a public hearing that the creation or retention of jobs is not a goal of this redevelopment effort. Accordingly, the wage and job goals are set at zero.
- F. Reporting Requirement. On or before March 1st of each year following the commencement of this Agreement, Development shall file with DEDA and the City and for two (2) years after the Benefit Date, reports on forms developed by the Minnesota Department of Employment and Economic Development ("DEED") setting forth Developer's progress in meeting the Business Subsidy Goal during the preceding Reporting Period. Said report shall include the information required in Minnesota Statute §116J.994, Subdivision 7, and shall be accompanied by such documentation as the Executive Director shall reasonably request in writing. All such reports shall be signed on behalf of Developer by an officer of Developer with authority to bind Developer.
- G. Penalty. If DEDA does not receive the reports described in Paragraph F of this Article, it will send to Developer a warning by certified mail within one week of the required filing date. If within 14 days of the post marked date of the warning the

reports are not received, Developer agrees to pay DEDA a penalty of \$100 for each subsequent day until the report is filed, up to a maximum of \$1,000.

- H. Special Event of Default if Business Subsidy Goals Not Met. Developer agrees that if the Business Subsidy Goal of Project redevelopment is not met by December 31, 2021, or such additional time as approved in writing by the Executive Director pursuant to Paragraph A of Article V, as determined in the sole discretion of DEDA, Developer shall not receive any tax increment financing assistance under this Agreement.
- I. Additional Enforcement. In the event that Developer shall fail for any reason whatsoever to meet the reporting requirements of Paragraph F of this Article fully and completely and in a timely manner as required, said failure shall be deemed to be a material breach of the terms and conditions of this Agreement and, in addition to the rights and remedies available to DEDA pursuant to Paragraph G, DEDA shall be entitled to withhold any payment due from DEDA under this Agreement and to withhold the performance of any obligation owed by DEDA under this Agreement until Developer's reporting obligations pursuant to this Article have been fully complied with. Further, DEDA shall be entitled to reimbursement for any reasonable costs, including the value of staff time and attorneys' fees and costs, incurred by DEDA to secure Developer's compliance with the reporting requirements.
- J. Parent Corporation. None.
- K. Other Financial Assistance. City of Duluth Brownfield Revolving Loan Fund (\$119,912 for commercial portion of building and \$200,000 for residential portion of building).
- L. Continued Operations Covenant. Developer agrees to own and operate the Project and the Property and to not assign, convey, transfer, sell or change its identity in violation of Article X for at least five (5) years after the Benefit Date (the "Continued Operations Covenant").

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 or 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 expiration of the Continued Operations Covenant. 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. Additionally, the Business Subsidy Act requires that Developer own and operate the Project and the Property during the period of the Continued Operations Covenant. Therefore, except for the purposes of obtaining financing as hereinafter described or as otherwise approved by this Agreement, prior to the expiration of the Continued Operations Covenant, 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 written 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, and the Executive Director is authorized to subordinate this Agreement to such mortgaging of the Project and the Property. In addition, Developer is authorized to lease the residential units and the retail/commercial space to tenants at all times without the approval of DEDA.

D. Transfers after the expiration of the Continued Operations Covenant.

Following the expiration of the Continued Operations Covenant, Developer may sell, convey or otherwise transfer the Property or any tract or parcel thereof with the prior written consent of the Executive Director, which consent shall not be unreasonably withheld or delayed, provided the following has been satisfied:

1. Sixty (60) days' prior written notice of the transfer is provided to the Executive 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 Executive Director.
3. Developer shall assign the Development Agreement to the transferee in a form approved by the Executive Director.
4. Notwithstanding the above transfer, the payment of the tax increment pursuant to Article VI shall be made to the Registered Owner of the Note.

Failure to comply with the requirement of subsection 1, 2 and 3 above shall be an event of default under this Agreement.

Provided the above requirements are met, upon transfer of the Property, the obligations of Developer under this Agreement are terminated except as provided

for in Article XVI and except that Developer shall remain liable for any obligations that arose prior to the date of such transfer that were required to be performed prior to such transfer.

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 the 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 material violation by Developer of any provision of this Agreement.
 3. 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.
 4. Any material 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.

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 \$1,500,000 aggregate per occurrence for personal injury, bodily injury and death, and limits of \$1,500,000 for property damage liability. If per person limits are specified, they shall be for not less than \$1,500,000 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 hereby waives any and all claims or causes of action against DEDA 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 \$1,500,000 per occurrence for personal bodily injury and death, and limits of \$1,500,000 for property damage liability. If person limits are specified, they shall be for not less than \$1,500,000 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, 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.

ARTICLE XIII

Developer Defaults and Remedies Therefor

- A. Events of 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 unless contested in good faith by Developer.
 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 45 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 45 day period, shall have failed to commence to cure said default within 45 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. Remedies. DEDA shall have the following remedies in the event of a default, and after the expiration of any applicable cure periods:

1. Terminate this Agreement and/or the TIF Note.
2. Withhold the performance of any obligation owed by DEDA under this Agreement and/or the TIF Note.
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.
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 Executive Director.

D. 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.

E. Attorneys' Fees. In the event that Developer is in default of any of the terms and conditions of this Agreement and DEDA shall successfully take legal action to enforce said rights herein, in addition to the foregoing, DEDA 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, all actions of DEDA have been taken to establish Tax Increment Financing District No. 32 and duly approve the grant of Available Tax Increment and authorize the issuance of the TIF Note consistent with Article XI, and it has full power and authority to enter into this Agreement and perform all of 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.

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 of Minnesota, it has acquired the Property and is fully competent 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 of Minnesota, it has the power to enter into this Agreement, and it 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 living and prevailing wages). 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 on 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.
- G. The Project shall comply at all times with the requirements for a Housing District under Minnesota Statutes §469.174, Subdivision 11 and §469.1761, and at least

20% of the units will be occupied by individuals and family with incomes at 50% or less of the St. Louis County median income, and not more than 20% of the square footage of the Project will consist of commercial, retail, or other nonresidential uses.

- H. 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 rent 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 20 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 until the TIF Note obligation is paid in full, whichever is sooner, unless this Agreement is otherwise earlier terminated as provided for herein. Termination shall not terminate the indemnification provisions or any other provisions of this Agreement 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
 402 City Hall
 418 West First Street
 Duluth, MN 55802
 Attn: Executive Director

In the case of Developer: Three D I, LLC
 3060 Peachtree Road, NW, Suite 1830
 Atlanta, Georgia 30305
 Attn: Guru Naganat

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

Promptly upon execution of this Agreement, Developer agrees to record this Agreement in the offices of the St. Louis County Registrar of Title and to pay all costs associated therewith. Upon recordation, Developer shall promptly submit to DEDA an executed original of the Agreement showing the date and document number 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, or adverse weather conditions, except for delays caused by government and judicial actions which could have been avoided by compliance with 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

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

THREE D I, LLC,
a Minnesota limited liability company,

By: Strategic TC Properties DG Duluth, LLC,
a Georgia limited liability company
Its: Sole Member and Manager

By: Strategic TC Holdings, LLC,
a Georgia limited liability company
Its: Manager

By: Strategic Tax Solutions, LLC,
a Georgia limited liability company
Its: Sole Member

By: JRS Strategic Holdings, LLC,
a Georgia limited liability company
Its: Sole Member

By: _____
James W. Freeman, III
Manager

STATE OF GEORGIA)
) SS
COUNTY OF FULTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by James W. Freeman, III, the Manager of JRS Strategic Holdings, LLC, a Georgia limited liability company and the sole member of Strategic Tax Solutions, LLC, a Georgia limited liability company and the sole member of Strategic TC Holdings, LLC, a Georgia limited liability company and the manager of Strategic TC Properties DG Duluth, LLC, a Georgia limited liability company and the sole member and manager of Three D I, LLC, a Minnesota limited liability company, for and on behalf of the company.

Notary Public

This instrument was drafted by:

Joan M. Christensen
Assistant City Attorney
440 City Hall
411 West First Street
Duluth, MN 55802
(218) 730-5273

EXHIBIT A

Legal Description of Property

That real property legally described as follows:

Tracts A, B, C, D, E, F, G, H, I and J, Registered Land Survey No. 142, St. Louis County, Minnesota

EXHIBIT B

CERTIFICATE OF COMPLETION

RECITALS:

A. On _____, 2019, the Duluth Economic Development Authority, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 ("DEDA"), and Three D I, 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 _____, 2019, 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 V 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:

Tracts A, B, C, D, E, F, G, H, I and J, Registered Land Survey No. 142, St. Louis County, Minnesota

EXHIBIT C
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
(BOARD OF TRADE 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 Three D I, LLC, a Minnesota limited liability company (the "Developer"), or its registered assigns (the "Registered Owner"), the principal amount of \$ _____ and _____/100th Dollars (\$ _____), which is the amount determined in Paragraph A of Article VI of that certain Development Agreement between DEDA and the Developer dated _____, 2019, 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, 2022, to and including February 1, 2042, 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, 2042; (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

Approved as to form
Assistant City Attorney

CERTIFICATION OF REGISTRATION

It is hereby certified that the foregoing TIF Note, as originally issued on _____, 20____, was on said date registered in the name of Three D I, LLC, a Minnesota Limited Liability Company, and that, at the request of the Registered Owner of this TIF Note, the undersigned has this day registered the TIF Note in the name of such Registered Owner, as indicated in the registration blank below, on the books kept by the undersigned for such purposes.

<u>Name and Address of Registered Owner</u>	<u>Date of Registration</u>	<u>Signature of Secretary</u>
Three D I, LLC _____ _____	_____, 20____	_____

EXHIBIT D
COMPLIANCE CERTIFICATE

The undersigned, Three D I, LLC, does hereby certify that as of the date of this Certificate not less than 50% of the residential units in the Three D I, LLC Project located at 301 West First Street in Duluth, Minnesota (the "Project") are occupied by individuals whose income is 50% or less of the St. Louis County, Minnesota, median income.

Dated this ____ day of _____, 20__.

Three D I, LLC
a Minnesota limited liability company

By _____

Its _____

[Attach income verification required by Article VII of the Development Agreement]

ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS ASSIGNMENT OF DEVELOPMENT AGREEMENT is made and entered into as of the ____ day of July, 2019, by and between THREE D I, LLC, a Minnesota limited liability company (the "Company"), and MINNWEST BANK, a Minnesota banking corporation (the "Lender").

RECITALS

A. The Company and the Duluth Economic Development Authority (the "DEDA") have entered into a Development Agreement dated effective _____, 2019 (the "Development Agreement"), pertaining to improvements to be made to the Company's development located at 301-307 West 1st Street, Duluth, Minnesota (the "Project"), and certain tax increment financing for the Project.

B. At the request of the Company, the Lender has agreed to extend certain financial accommodations to the Company for the Project pursuant to the terms of that certain Loan Agreement dated on or about the date of this Assignment (the "Loan Agreement"). In accordance with the Loan Agreement, the Company executed and delivered to the Lender those certain three Promissory Notes of even date with the Loan Agreement, in the original principal amounts of \$8,400,000.00, \$4,500,000.00 and \$1,000,000.00, respectively (collectively, the "Notes").

C. In addition to: (i) that certain combination Mortgage, Security Agreement and Assignment of Rents and Leases given by Borrower of even date herewith, in the principal sum of \$9,400,000.00; and (ii) that certain combination Mortgage, Security Agreement and Assignment of Rents and Leases given by Borrower of even date herewith, in the principal sum of \$4,500,000.00 (collectively, the "Mortgages"), the obligations of the Company under the Notes and Loan Agreement are secured by a Security Agreement of even date with the Loan Agreement securing all personal property of the Company (the "Security Agreement").

D. In order to further secure performance by the Company of its obligations under the Notes and the Loan Agreement, the Company has agreed to make a collateral assignment to Lender of all of the Company's right, title and interest in and to the Development Agreement, including without limitation all rights to reimbursements from the DEDA using tax increment as provided in the Development Agreement which such rights are to be evidenced by that certain Tax Increment Financing (TIF) Revenue Note (Board of Trade Development) to be given by the DEDA to the Company (the "TIF Note") in accordance with, among other things, Article VI of the Development Agreement (collectively, the "Reimbursements").

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

1. **Collateral Assignment of Development Agreement, Reimbursements.** As additional security for performance by the Company of its obligations under the Loan Agreement and Notes, the Company does hereby bargain, sell, assign and set over unto the Lender, for so long as any indebtedness pursuant to the Loan Agreement shall remain outstanding, all of the Company's right, title and interest in and to the Development Agreement, including, but not limited to, Reimbursements now or hereafter payable under the Development Agreement and the TIF Note. This Assignment shall constitute a perfected, absolute and present assignment, provided that Lender shall have no right under this Assignment to enforce the provisions of said Development Agreement until the occurrence of an Event of Default as defined in the Loan Agreement or under any related instrument, document or agreement, including without limitation the Notes. Upon the occurrence of any Event of Default, Lender may, without affecting any of its rights or remedies against Company under any other instrument, document or agreement, exercise its rights under this Assignment as Company's attorney-in-fact in any manner permitted by law, and in addition, Lender shall have and possess, without limitation, any and all rights and remedies of a secured party under the Minnesota Uniform Commercial Code or otherwise provided by law. For purposes of exercising any available rights and remedies of a secured party, ten (10) days written notice shall constitute commercially reasonable notice where such is required by the Minnesota Uniform Commercial Code.

2. **Collection and Payment.** The Company hereby authorizes and directs the DEDA to pay all Reimbursements directly to the Lender unless and until such time that the Lender directs otherwise. The Lender may receive said Reimbursements without assuming performance of the Development Agreement, it being understood by the parties that in any event Reimbursements shall only be payable by the DEDA in accordance with the terms and conditions of the Development Agreement. The DEDA shall be fully protected and held harmless by the Company in paying such Reimbursements to the Lender, and the DEDA shall have no liability to the Company for any payments made by the DEDA to the Lender. The Company shall indemnify and hold harmless the DEDA for any losses, claims, liabilities and expenses incurred by the DEDA arising from this Assignment. The Company and the Lender acknowledge and agree that the DEDA is a third party beneficiary of the Company's obligations under this Section 2 the same as if the DEDA was a party to this Assignment.

3. **No Assumption of Liability by Lender.** The Company agrees that the Lender does not assume any of the obligations or duties of the Company under or with respect to the Development Agreement unless and until the Lender shall have given to the DEDA written notice that it has affirmatively exercised its right to exercise the collateral assignment created by this Assignment of Development Agreement and to assume performance under the Development Agreement. Furthermore, the Lender may, without assuming performance of the Development Agreement, receive from the DEDA all Reimbursements payable or which become payable under the Development Agreement, in accordance with the preceding Section 2.

4. **Continuing Authorization; Indemnification.** The Company's authorization to the DEDA contained in this Agreement, including Sections 2 and 3, above, is absolute and irrevocable. The Company hereby indemnifies and holds the DEDA harmless from and against

any claims or liabilities arising or purporting to arise from the DEDA's performance of its obligations under this Assignment.

5. Cure of Events of Default. The Lender may at its absolute discretion, but shall not be required to, cure any default by the Company under the Development Agreement. The Company hereby agrees that any monies advanced by the Lender in furtherance of any cure under the Development Agreement shall be an additional amount secured by and payable under the Notes and Mortgages given by the Company to the Lender.

6. Miscellaneous Provisions. The following miscellaneous provisions are a part of this Assignment:

- a. Accuracy of Recitals. The recitals set forth at the beginning of this Assignment are deemed incorporated herein, and the parties hereto represent they are true and correct.
- b. Caption Headings. Caption headings in this Assignment are for convenience purposes only and are not to be used to interpret or define the provisions of this Assignment.
- c. Amendments. This Assignment may not be amended or modified except in a writing executed by all parties hereto.
- d. Counterparts. It is understood and agreed that this Assignment may be executed in several counterparts, each of which shall, for all purposes, be deemed an original, and all of such counterparts, taken together, shall constitute one and the same Assignment, even though all of the parties hereto may not have executed the same counterpart of this Assignment.
- e. Choice of Law, Severability. This Assignment is made in the State of Minnesota and shall be construed in accordance with the laws thereof. If any provision hereof is in conflict with any statute or rule of law of the State of Minnesota and is otherwise unenforceable, such provisions shall be deemed null and void only to the extent of such conflict or unenforceability, and shall be deemed separate from and shall not invalidate any other provision of this Assignment.
- f. Time is of the Essence. Time is of the essence in the performance of this Assignment.
- g. Notices. All notices required to be given under this Assignment shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown below:

DEDA:

Duluth Economic Development Authority

Attn. Executive Director
418 City Hall
411 West 1st Street
Duluth, MN 55802

Lender: Minnwest Bank
Attn. Greg Hohlen
3130 Second Street South
St. Cloud, MN 56301

Company: Three D I, LLC
Attn. _____
301 West First Street
Duluth, MN 55802

Any party may change its address for notices under this Assignment by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address.

- h. Amendments. This Assignment constitutes the entire understanding and agreement of the parties as to the matters set forth in this Assignment. No alteration of or amendment to this Assignment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- i. Successors and Assigns. This Assignment shall bind the Company, the Lender and the DEDA and the successors and assigns of each.

IN WITNESS WHEREOF, the parties have executed this Assignment of Development Agreement as of the day and year first above written.

COMPANY:

THREE D I, LLC, a Minnesota limited liability company

By: Duluth BOT Managing Member, LLC, a _____ limited liability company

Its: Managing Member

By _____

Its _____

LENDER:

MINNWEST BANK, a Minnesota banking corporation

By _____
Gregory Hohlen
Its Senior Vice President

ACKNOWLEDGMENT, CONSENT AND AGREEMENT OF DEDA

The Duluth Economic Development Authority, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 (the "DEDA"), hereby acknowledges the above Assignment of Development Agreement, consents to such assignment to the Lender, and agrees to be bound by the above Assignment and to comply with the Lender's instructions with respect to the payments of Reimbursements under the Development Agreement.

Without limiting the foregoing, the DEDA hereby: (i) agrees that the Lender does not assume any of the obligations or duties of the Company under or with respect to the Development Agreement unless and until the Lender shall have given to the DEDA written notice that it has affirmatively exercised its right to exercise the collateral assignment created by the above Assignment of Development Agreement and to assume performance under the Development Agreement; and (ii) agrees that, notwithstanding the foregoing, the Lender may, without assuming performance of the Development Agreement, receive from the DEDA all Reimbursements due and payable or which become due and payable under the Development Agreement.

Upon learning of the occurrence of any Event of Default by the Company under the Development Agreement, the DEDA shall give the Company and the Lender notice thereof. The DEDA shall accept any cure of a default by the Lender in accordance with the Development Agreement as performance by the Company under the Development Agreement; provided, however, that nothing in the foregoing Assignment of Development Agreement will extend the deadline for curing defaults or otherwise limit the DEDA's rights to exercise its remedies as provided in the Development Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the DEDA has caused this Assignment of Development Agreement to be duly executed in its name and on its behalf effective as of July 9, 2019.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

By: _____
Tim McShane
Its President

By: _____
Zack Filipovich
Its Secretary

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT is made and entered into effective as of the ____ day of July, 2019, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 (the "DEDA"); and MINNWEST BANK, a Minnesota banking corporation (the "Lender").

RECITALS

A. Three D I, LLC, a Minnesota limited liability company (the "Borrower"), and the Lender have entered into a Loan Agreement, dated on or about the date hereof (the "Loan Agreement"), pursuant to which the Lender has agreed to extend certain financing to the Borrower, including as evidenced by those certain three Promissory Notes of even date with the Loan Agreement, in the original principal amounts of \$8,400,000.00, \$4,500,000.00 and \$1,000,000.00, respectively, executed and delivered by the Borrower to the Lender (collectively, the "Notes").

B. The indebtedness now or hereafter evidenced by or arising out of the Loan Agreement or the Notes, including as the same may hereafter be hereafter amended, supplemented, extended, restated or otherwise modified, is collectively referred to in this Agreement as the "Lender Indebtedness."

C. The Lender Indebtedness is secured by, among other things, security interests granted to the Lender by the Borrower in all real and personal property of the Borrower, in accordance with the following:

- i. That certain combination Mortgage, Security Agreement and Assignment of Rents and Leases in the principal sum of \$9,400,000.00, and that certain combination Mortgage, Security Agreement and Assignment of Rents and Leases in the principal sum of \$4,500,000.00, both given by the Borrower to and in favor of the Lender, and both dated on or about the date of the Loan

Agreement (collectively, the “Lender Mortgages”), and creating mortgage liens against the real property, improvements and other property of the Borrower located in the City of Duluth, St. Louis County, Minnesota, as described on Exhibit A to this Agreement (collectively, the “Real Property”); and

- ii. A Security Agreement of even date with the Loan Agreement (the “Lender Security Agreement”), and creating a security interest covering all of the personal property of the Borrower (collectively, the “Personal Property”).

The Real Property and the Personal Property are collectively referred to as the Collateral. The security interests created by the Lender Mortgages and the Lender Security Agreement are collectively referred to as the “Lender Security Interests.”

D. The DEDA and the Borrower are parties to that certain Development Agreement dated _____, 2019 (the “Development Agreement”), providing for the improvement of the Real Property. The Borrower is obligated to DEDA, and the DEDA has certain rights against the Borrower and the Real Property, in accordance with the terms of the Development Agreement. The Development Agreement provides that it may be subordinated to mortgages held by a lender extending financing to the Borrower for purposes of the Real Property.

E. The Lender is willing to extend the loans to the Borrower which are contemplated by the Loan Agreement and Notes, provided the DEDA subordinates the Development Agreement to the Lender Mortgages, and executes and delivers this Subordination Agreement to the Lender.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by all of the parties, the parties agree as follows:

1. **Subordination, Priority.** The Authority hereby subordinates the Development Agreement to the Lender Indebtedness, Lender Mortgages and Lender Security Interests. Without limiting the foregoing, the Authority hereby further subordinates all security interests, liens or encumbrances created or evidenced by the Development Agreement now or hereafter in favor of the DEDA to the Lender Mortgages and the other Lender Security Interests, and the DEDA hereby agrees that the Lender Mortgages and other Lender Security Interests are and shall remain superior to any right, title, interest, claim or lien which the DEDA has or hereafter acquires in or upon the property of the Borrower, whether the Real Property or the Personal Property, which interests of the DEDA shall be and shall remain fully subordinate to the Lender Security Interests. Notwithstanding: (i) the date, manner or order of perfection of any interests of the DEDA and the Lender Security Interests; (ii) the provisions of the UCC or any other

applicable laws or decisions; (iii) the provisions of any agreement or document in effect between the DEDA or the Lender and the Borrower, (iv) whether the DEDA or the Lender, or their agents or bailees, holds possession of any part or all of the Borrower's property; and (v) any purchase money security interest or other priority otherwise in favor of the DEDA, the Lender shall, as between the DEDA and the Lender, have a first priority security interest in all of the Collateral.

2. Termination of Agreement. Upon irrevocable payment in full of the Lender Indebtedness, this Agreement shall terminate, provided that if any payment received by the Lender and applied to the Lender Indebtedness is subsequently set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of the Borrower or any other obligor), the Lender Indebtedness to which such payment was applied shall for the purposes of this Agreement be deemed to have continued in existence, notwithstanding such application, and this Agreement shall be enforceable as to the Lender Indebtedness as fully as if such application had never been made. References in this Agreement to amounts "irrevocably paid" or to "irrevocable payment" refer to payments that cannot be set aside, recovered, rescinded or required to be returned for any reason.

3. Miscellaneous. This Agreement may not be amended or modified except in a writing executed by all parties hereto. It is understood and agreed that this Agreement may be executed in several counterparts, each of which shall, for all purposes, be deemed an original, and all of such counterparts, taken together, shall constitute one and the same agreement. This Agreement is made in the State of Minnesota and shall be construed in accordance with the laws thereof. This Agreement is binding upon and inures to the benefit of the permitted successors and assigns of the parties hereto, but does not otherwise create, and shall not be construed as creating, any rights enforceable by any other person not a party to this Agreement. This Agreement is intended by the parties as a final expression of their agreement and is intended as a complete statement of the terms and conditions of their agreement.

[Signature pages follow]

EXHIBIT A
LEGAL DESCRIPTION

That real property legally described as follows:

Tracts A, B, C, D, E, F, G, H, I and J, Registered Land Survey No. 142, St. Louis County,
Minnesota



Business Subsidy Agreement Pre-Approval Report
TIF District #32- Board of Trade Redevelopment Project

Business Subsidy Recipient Information

1. Name of Business or Organization: Three D I, LLC
2. Address: 607 Academy Drive, Northbrook, IL 60062
3. Does the recipient have a parent corporation?
No.
4. Did the recipient relocate as a result of signing this agreement?
No.

Summary Agreement Information

1. Brief description of the proposed project

The Project will consist of reconfiguring and remodeling the approximately 96,400 square foot, nine-story Board of Trade building. The building will host approximately 17,000 square feet of commercial space and 84 apartment units. Of the apartments units, 17 will be available at 50% or less of the Area Median Income. The building currently hosts some commercial tenants but remains largely vacant. This project will utilize state and federal historic tax credits and will reinvest in deferred maintenance for critical elements of the building, including the roof and elevators. The proposed business subsidy funds will be used toward the creation of the housing elements of the project.

2. Total value of proposed project

Total Development Costs:	Approximately \$20 million.
Total projected estimated market value:	\$9.2 million.

3. Summary of type(s) of subsidy and total dollar value for each
 - a. Type of assistance:
 - i. Tax Increment Financing
 - b. Grantor of assistance
 - i. DEDA/ City of Duluth

- c. Total dollar value of assistance
 - i. \$1.8 million or approximately 9% of the total project cost.
- 4. What other financing avenues were pursued?
 - a. Tax abatement
 - b. State historic tax credits (secured)
 - c. Federal historic tax credits (secured)
 - d. EPA Brownfield Revolving Loan fund (secured)

Applicability of Current Duluth and State Laws

- 1. Is this project covered under Duluth's Prevailing Wage law as defined in Article 2, Section 2-25? I
 - a. Yes.
- 2. Is this project covered under Duluth's Project Labor Agreement law as defined in Article 2, Section 2-29? If not, state the specific applicable exclusion.
 - a. Yes.
- 3. Is this project is covered by Duluth's Living Wage law as defined in Article 26, Chapter 2 of the Duluth City Code?
 - a. Yes.
- 4. Is this project is covered by the business subsidy statute as defined in Minnesota Statutes 116J.993-.995 and subject to reporting?
 - a. It is covered under the City's Business Subsidy criteria and will be subject to reporting.

Public Purpose and Public Benefit Criteria

- 1. Public Purpose Criteria. State which two (minimally) of the five public purposes this project meets with a brief explanation of why it the proposed project meets this criteria.
 - a. High quality jobs.
 - i. This project does not create any permanent high-quality jobs but will provide improved office and commercial spaces for expanding local businesses and new business looking for a downtown location close to housing and retail amenities.
 - b. Job retention
 - i. See (a) above.
 - c. Diversify Duluth's economy
 - i. The downtown district contains the highest concentration of the Duluth's workforce; the vast majority of downtown employees commute from outside the employment core. This is in part due to the limited availability of housing downtown, particularly housing with rents in the 50-100% AMI range. Additionally, the building is largely vacant, in part due to serious storm-related damage caused in the summer of 2016. This redevelopment will reinvest and make use of a historic building, reducing blight to our downtown.

- d. Quality of life
 - i. The removal of several blighted buildings and creation of quality housing improves our downtown and instills greater confidence and pride in our community. Again, housing below 100% AMI is in high demand and the direct connection to the skywalk system will enable employees without independent transportation to safely and conveniently walk to a variety of employment opportunities.
 - e. Tax Base
 - i. The tax base is projected to increase from the current net tax capacity of \$17,824 to a net tax capacity of approximately \$112,000.
2. Preferential Public Benefit Criteria. Which other preferential public benefit criteria does this project meet, if any? Provide a brief explanation of how it meets the criteria.
- a. Locally owned businesses
 - i. When available, local contractors will be hired to remodel and improve the building.
 - b. Workforce development and hiring low-income, unemployed and hard-to-employ residents
 - i. The construction of the project will be accompanied by hiring goals via a Community Benefit Agreement, including providing building trades-opportunities for women and those experiencing real barriers to employment.
 - c. Protected class business owners
 - i. See above.
 - d. Other community benefits
 - i. The availability of housing that is connected to the skywalk system may help reduce traffic in our downtown, extending the life of our infrastructure. Additionally, more people living downtown helps support our local businesses; people will be downtown both day and night, spending money. Lastly, an occupied building is a safer building: the Board of Trade is a beautiful remnant of our architectural past and this business subsidy enables this project to move forward.
3. Duluth Comprehensive Plan and other City Plans
- a. What current City plans, if any, cover this project? How does the project relate to the applicable plans?
 - i. The future land-use designation of the redevelopment site is Central Business Primary (CBP). According to the Imagine Duluth 2035 Comprehensive Plan, the CBP "encompasses a broad range of uses and intensities:
 1. - Governmental campus
 2. - Significant retail
 3. - Entertainment and lodging
 4. - Opportunities for high-density housing
 5. - Central plaza, public/ open space
 6. - Public parking facilities"

- b. Additionally, the project adheres to the following principles identified in the Comprehensive Plan:
 - 1. Principle #1 – Reuse previously developed lands
 - 2. Principle #4 – Support economic growth sectors
 - 3. Principle #8 – Encourage mix of activities, uses and densities
- c. Are there any special zoning or permitting exemptions that need to be made for this project? If yes, provide a brief explanation.
 - i. No.

Specific project goals

- 1. For each public purpose state the specific, measurable and tangible goals that were set for the project:
 - a. Public Purpose - Type of goal
 - i. All public purposes will be achieved by the reinvestment in and reuse of the nine-story, 96,400sf historic building.
 - b. Specific Goals established
 - i. Achievement of the Business Subsidy Goal in accordance with City Council Resolution 18-0515 shall be measured as follows: Developer agrees that on or before December 31, 2021, it shall have constructed the Project on the Property in accordance with the Development Agreement.
 - c. Target Attainment Dates
 - i. See above.
- 2. Progress toward these goals will be reported by the recipient of a business subsidy on an annual basis by March 1 for the preceding year (see Section 8 (d) - Business Subsidy Criteria), and provided to the Council by April 1.

RESOLUTION 19D-27

RESOLUTION AUTHORIZING A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH LIFT BRIDGE PARTNERS LLC AND FURTHER AUTHORIZING A CONSENT TO COLLATERAL ASSIGNMENT OF DEVELOPMENT DOCUMENTS BY LIFT BRIDGE PARTNERS LLC IN FAVOR OF CIBC BANK USA RELATED TO THE LIFT BRIDGE PROJECT (ENDI)

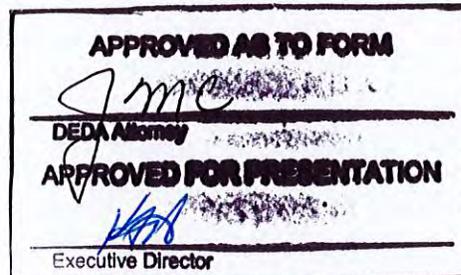
RESOLVED, by the Duluth Economic Development Authority (DEDA) that the proper DEDA officials are hereby authorized to execute the First Amendment to Development Agreement substantially in the form of that attached hereto (DEDA Contract No. _____), with Lift Bridge Partners LLC (Developer) adding a provision relating to collateral assignments of the Development Agreement and TIF Note to lenders.

FURTHER RESOLVED, that the proper DEDA officials are hereby authorized to execute the consent to the Collateral Assignment of Development Documents by (Developer) in favor of CIBC Bank USA (Administrative Agent) as administrative agent for certain financial institutions (Lenders) substantially in the form of that attached hereto (DEDA Contract No. _____), consenting to the collateral assignment of the Development Agreement between DEDA and DEDA which bears DEDA Contract No.15-860-770 and the related TIF Note to Administrative Agent on behalf of the Lenders as part of the refinancing of the Lift Bridge Project (Endi).

Approved by the Duluth Economic Development Authority this 10th day of July, 2019.

ATTEST:

Executive Director



STATEMENT OF PURPOSE: This resolution authorizes DEDA to enter into a First Amendment which allows Developer to collaterally assign the Development Agreement and TIF Note to Lenders as security for financing related to the Endi project. It also authorizes a consent to a Collateral Assignment of Development Documents by Developer in favor of the Administrative Agent on behalf of the Lenders. The Lenders require the Collateral Assignment as a condition of the refinancing of the debt on the property. Under the Consent, DEDA agrees to notify the Lenders of any breach of the Development Agreement and to give the Lenders the option of curing any breach.

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

By and Between

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

and

LIFT BRIDGE PARTNERS LLC

This First Amendment to Development Agreement, made on or as of the _____ day of July, 2019, by and between the Duluth Economic Development Authority, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 (“DEDA”), and Lift Bridge Partners LLC, a Minnesota limited liability company (“Developer”).

RECITALS

WHEREAS, on April 23, 2015, Developer and DEDA entered into a Development Agreement for construction of a project consisting of market-rate residential rental units and retail space on the southeast corner of London Road and 21st Avenue East which property is legally described on the attached Exhibit A and depicted on the attached Exhibit B; and

WHEREAS, the parties desire to amend the Development Agreement to add a provision relating to collateral assignments of the Development Agreement and the TIF Note (as those terms are defined in the Development Agreement) after issuance of a certificate of completion.

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

1. A new Paragraph D of ARTICLE VIII, PROVISION AGAINST LIENS, ASSIGNMENTS AND TRANSFERS, is hereby added:

D. Collateral Assignments to Lender

Notwithstanding the provisions of Paragraph C above, Developer may provide collateral assignments of the Development Agreement and TIF Note to one or more lenders as security for financing necessary to enable Developer or any successor in interest to the Property or any part thereof to perform its obligations under this Development Agreement, including refinancing debt incurred in order for Developer to perform its obligations under this Development Agreement. For purposes of this Paragraph, a collateral assignment is one in which the lender steps in the shoes of the Developer only in the event of a default under the Development

Agreement or a foreclosure of the Property. Developer shall provide prior written notice of the collateral assignment. A collateral assignment shall require the consent of DEDA.

2. Developer agrees to record this First Amendment 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 First Amendment showing the date and document numbers of record, or a certified copy of the filed original.

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

[Remainder of this page is intentionally left blank]

EXHIBIT A

Legal Description of Property located in St. Louis County, Minnesota:

LEGAL DESCRIPTION PER TITLE COMMITMENT NO. NCS-688255-MPLS

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), and Eight (8), Block Twenty-five (25), ENDION DIVISION OF DULUTH, EXCEPT that part of Lot One (1), Block Twenty-five, ENDION DIVISION OF DULUTH, which lies southwesterly of the line described as: beginning at a point on the northwesterly line of Lot One (1), distant 30 feet northeasterly of the most westerly corner thereof; thence run southeasterly to a point on the southeasterly line of said Lot One (1), distant 30 feet northeasterly of the most southerly corner thereof and there terminating.

LEGAL DESCRIPTION PER TITLE COMMITMENT NO. NCS-688695-MPLS

Northerly Forty-five (N'ly 45) feet of Lots Nine (9) and Ten (10), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

LEGAL DESCRIPTION PER TITLE COMMITMENT NO. NCS-691825-MPLS

PARCEL 1: The Southerly Thirty-five feet (S'ly 35') of Lots (9) and Ten (10), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

PARCEL 2: Southerly Thirty-five feet (S'ly 35') of the Northerly Eighty feet (N'ly 80') of Lots Nine (9) and Ten (10), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

PARCEL 3: Lot Eleven (11), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

PARCEL 4: Lots Twelve (12) and Thirteen (13), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

PARCEL 5: Lot Fourteen (14), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

LEGAL DESCRIPTION PER TITLE COMMITMENT NO. NVD-688704-MPLS

The Southerly Thirty-five (35) feet of the Northerly One Hundred-fifteen (115) feet of Lots Nine (9) and Ten (10), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

That part of Lots 15 and 16, Block 25, Endion Division of Duluth, according to the recorded plat thereof on file and of record in the office of the County Recorder in and for St. Louis County, Minnesota, lying northeasterly of a line run parallel with and distant 30 feet northeasterly of the southwesterly line thereof;

Subject to the following restriction:

No access shall be permitted to Trunk Highway No. 35 from the lands herein conveyed.

LEGAL DESCRIPTION FOR PART OF SOUTH ST CONVEYANCE

That part of the Northwesterly 33.00 feet of South Street as dedicated on ENDION DIVISION, according to the recorded plat thereof, St. Louis County, Minnesota, lying Northeasterly of the Southeasterly extension of the Northeasterly line of Lot 15, Block 25, said ENDION DIVISION and lying Southwesterly of the Southeasterly extension of the Northeasterly line of Block 25, said ENDION DIVISION.

Said parcel contains 9920.3 sq. ft. or 0.23 acres more or less.

LEGAL DESCRIPTION FOR PART OF SOUTH ST CONVEYANCE

That part of the Northwesterly 33.00 feet of South Street as dedicated on ENDION DIVISION, according to the recorded plat thereof, St. Louis County, Minnesota, lying Northeasterly of the Southeasterly extension of the Northeasterly line of the Southwesterly 30.00 feet of Lot 16, Block 25, said ENDION DIVISION and lying Southwesterly of the Southeasterly extension of the Northeasterly line of Lot 15, Block 25, said ENDION DIVISION.

Said parcel contains 2320.3 sq. ft. or 0.05 acres more or less.

COLLATERAL ASSIGNMENT OF DEVELOPMENT DOCUMENTS

This **COLLATERAL ASSIGNMENT OF DEVELOPMENT DOCUMENTS** (as the same may be amended, supplemented or otherwise modified from time to time, "Assignment"), dated as of July __, 2019, is made by **LIFT BRIDGE PARTNERS LLC**, a Minnesota limited liability company ("Borrower"), in favor of **CIBC BANK USA**, an Illinois state chartered bank, together with its successors and assigns ("Administrative Agent"), as administrative agent for certain financial institutions (together with their respective successors and assigns, the "Lenders") and for the benefit of the Lenders.

RECITALS:

A. Pursuant to that certain Loan and Security Agreement dated as of even date herewith by and among Borrower, the Administrative Agent, and the Lenders, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein (said Loan and Security Agreement, together with any and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefor, is referred to herein as the "Loan Agreement") the Lenders have extended certain credit facilities to Borrower in the aggregate, maximum principal amount of Thirty-Nine Million and 00/100 Dollars (\$39,000,000.00) (the "Loan"). All capitalized terms used in this Assignment and not otherwise defined shall have the meanings ascribed thereto in the Loan Agreement.

B. The Loan is evidenced by, among other things, those certain Promissory Notes, dated as of even date herewith, made by Borrower in favor of the Lenders in the aggregate maximum amount of Thirty-Nine Million and 00/100 Dollars (\$39,000,000.00) (said Promissory Note, together with any and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefor, are referred to herein, individually and collectively, as the "Note").

C. Borrower is a party to: (i) that certain Development Agreement dated as of April 23, 2015 by and between Borrower and the Duluth Economic Development Authority ("DEDA"), together with all documents related thereto, as the same may be amended, modified, supplemented or restated from time to time (the "Development Agreement"), in connection with the development of certain real property located in St. Louis County, Minnesota and legally and particularly described in **Exhibit A** attached hereto and made a part hereof; and (ii) that certain TIF Note dated as of July 16, 2018 made by DEDA for the benefit of Borrower in the principal amount of Two Million Five Hundred Sixty-Seven Thousand Five Hundred Twenty and 70/100 Dollars (\$2,567,520.70) (the "TIF Note"; together with the Development Agreement, the "Development Documents").

D. As a condition precedent to, and in consideration for, Lenders' extension of the Loan to Borrower, the Lenders have required the execution and delivery of this Assignment by Borrower.

E. In order to induce the Lenders to make the Loan, and all other monies to be advanced under the Note and the Loan Agreement, Borrower has agreed to execute and deliver this Assignment.

NOW THEREFORE, FOR VALUE RECEIVED, the parties hereto agree as follows:

1. Assignment. Borrower does hereby sell, assign, pledge, transfer, and set over to Administrative Agent all of its right, title and interest in, to and under the Development Documents. The Development Documents are hereby assigned as collateral security for certain indebtedness of Borrower to Administrative Agent, on behalf of the Lenders, evidenced by the Note and/or the other Loan Documents (as defined in the Loan Agreement) or so much as may be advanced by the Lenders to Borrower pursuant to the terms of the Note and the Loan Agreement.

2. Remedies Upon Event of Default. Upon the occurrence of an Event of Default (as defined in the Loan Agreement), Administrative Agent shall have the right (but not the obligation) to assume all rights and obligations of Borrower under the Development Documents. Nothing herein contained shall be deemed to affect or impair any rights which Administrative Agent and/or the Lenders may have under the Note or the other Loan Documents.

3. Representations and Warranties. Borrower hereby represents and warrants to Administrative Agent and the Lenders that: (a) a previous assignment of its interest in the TIF Note was made to Scottsdale Capital, LLC ("Scottsdale"), and the TIF Note was registered in the name of Scottsdale on July 16, 2018. A subsequent assignment of the TIF Note was made by Scottsdale to Borrower, and the TIF Note was registered in the name of Borrower on _____, 2019; (b) no previous assignment of its interest in the Development Agreement has been made; (c) the Development Documents are in full force and effect and constitutes a valid and legally enforceable obligation of the parties thereto; and (d) there are no defaults now existing thereunder by either party thereto as of the date hereof. Borrower agrees not to assign, sell, pledge, transfer, mortgage or otherwise encumber its interest in the Development Documents so long as this Assignment is in effect, or amend the Development Documents without Administrative Agent's prior written consent. This Assignment shall be binding upon Borrower and its successors and assigns and inure to the benefit of Administrative Agent and the Lenders, and their successors and assigns.

4. Miscellaneous.

(a) Headings. The titles and headings of the articles, sections and paragraphs of this Assignment have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions of this Assignment.

(b) Severability. Wherever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable law. Any term or provision of this Assignment that is invalid or unenforceable in any situation shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation. In the event that any clause, term, or condition of this Assignment shall be held invalid or contrary to law: (i) this Assignment shall remain in full force and effect as to all other clauses, terms, and conditions; (ii) the subject clause, term, or condition shall be revised to the minimum extent necessary to render the modified provision valid, legal and enforceable; and (iii) the remaining provisions of this Assignment shall be amended to the minimum extent necessary so as to render the Assignment as a whole most

nearly consistent with the parties' intentions in light of the modification or removal of the invalid or illegal provision.

(c) Effect of Extensions and Amendments. If the payment of the Obligations (as defined in the Loan Agreement), or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Obligations shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Administrative Agent, on behalf of the Lenders, notwithstanding any such extension, variation or release.

(d) Complete Agreement. This Assignment, the Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both Borrower and the Administrative Agent, on behalf of the Lenders.

(e) Survival. All of the representations, warranties, covenants, and indemnities hereunder, and any modification or amendment hereof, shall survive the closing and funding of the Loan, shall not be deemed to have merged herein, and shall (except to the extent expressly provided for herein) remain as continuing representations, warranties, covenants and indemnities so long as any of the Obligations are outstanding.

(f) Representation by Legal Counsel. Borrower acknowledges that it has been advised by Administrative Agent to seek the advice of legal counsel in connection with the negotiation and preparation of this Assignment. If Borrower has chosen not to obtain legal representation, whether due to cost considerations or for other reasons, the lack of such representation shall not furnish Borrower with any defense to the enforcement of Administrative Agent's and/or the Lenders' rights hereunder.

(g) Injunctive Relief. Borrower recognizes that in the event Borrower fails to perform, observe or discharge any of its obligations hereunder, no remedy of law will provide adequate relief to Administrative Agent and/or the Lenders, and agrees that Administrative Agent and/or the Lenders shall be entitled to pursue temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

(h) Further Assurances and Additional Documents. Borrower shall, at the request of Administrative Agent and/or any Lender, at any time and from time to time following the execution of this Assignment promptly execute and deliver, or cause to be executed and delivered, to Administrative Agent/Lender (as applicable) all such further documents and instruments and take all such further action as may be reasonably necessary or appropriate to confirm or carry out the provisions and intent of this Assignment.

(i) Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State in which the Property is located.

(j) Remedies Cumulative. Nothing contained in this Assignment and no act done or omitted by Administrative Agent pursuant to the powers and rights granted it hereunder

shall be deemed to be a waiver by Administrative Agent and/or the Lenders of its rights and remedies under the Note, the Loan Agreement or any other Loan Document or by or pursuant to law or in equity, by statute or otherwise, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Administrative Agent and/or the Lenders. Accordingly, any failure on the part of Administrative Agent promptly to exercise any option hereby given or reserved shall not prevent the exercise of any such option at any time thereafter. This Assignment may be enforced from time to time by Administrative Agent at its discretion. Administrative Agent may also at any time cease to enforce this Assignment. The right of Administrative Agent and/or the Lenders to collect any and all indebtedness held by it may be exercised by Administrative Agent either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

(k) Binding Provisions. The covenants, warranties, agreements, obligations, liabilities and responsibilities of Borrower under this Assignment shall be binding upon and enforceable against Borrower and its legal representatives, administrators, successors and permitted assigns.

(l) Counterparts. This Assignment may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Assignment. Copies of signatures transmitted by mail, facsimile, or email or any other electronic method, shall be considered authentic and binding.

(m) JURISDICTION AND VENUE. BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS ASSIGNMENT SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF ADMINISTRATIVE AGENT AND/OR THE LENDERS INITIATES SUCH ACTION, ANY COURT IN WHICH ADMINISTRATIVE AGENT AND/OR THE LENDERS SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. BORROWER HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY ADMINISTRATIVE AGENT AND/OR THE LENDERS IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS ASSIGNMENT. BORROWER WAIVES ANY CLAIM THAT CHICAGO, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD BORROWER, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, BORROWER SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY ADMINISTRATIVE AGENT AND/OR THE LENDERS AGAINST BORROWER AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR

BORROWER SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY ADMINISTRATIVE AGENT AND/OR THE LENDERS OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY ADMINISTRATIVE AGENT AND/OR THE LENDERS OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND BORROWER HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

(n) JURY WAIVER. BORROWER AND ADMINISTRATIVE AGENT AND/OR THE LENDERS HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND ADMINISTRATIVE AGENT AND/OR THE LENDERS ARISING OUT OF OR IN ANY WAY RELATED TO THIS ASSIGNMENT, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN BORROWER AND ADMINISTRATIVE AGENT AND/OR THE LENDERS. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE LENDERS TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed this Assignment as of the date first above written.

BORROWER:

LIFT BRIDGE PARTNERS LLC,
a Minnesota limited liability company

By: _____
Name: _____
Title: _____

CONSENT TO COLLATERAL ASSIGNMENT OF DEVELOPMENT DOCUMENTS

THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY ("DEDA"), hereby consents to the foregoing and attached Collateral Assignment of Development Documents (the "Assignment") between **LIFT BRIDGE PARTNERS LLC**, a Minnesota limited liability company ("Borrower"), and **CIBC BANK USA**, an Illinois state-chartered bank, its successors and assigns ("Administrative Agent"), as administrative agent for certain financial institutions (together with their respective successors and assigns, the "Lenders") and for the benefit of the Lenders.

Upon the occurrence of an Event of Default, DEDA hereby acknowledges and agrees that Administrative Agent shall have the right (but not the obligation) to assume all rights and obligations of Borrower under the Development Documents. Administrative Agent does not assume any of Borrower's obligations or duties concerning the Development Documents until and unless Administrative Agent shall exercise its rights hereunder to assume the obligations of Borrower with respect to the Development Documents or Administrative Agent, for the benefit of the Lenders, acquires title to the Property by its exercise of its right of foreclosure of the Property (as defined in the Note) or the exercise of any power of sale or conveyance in lieu of such sale or foreclosure. Nothing herein contained shall be deemed to affect or impair any rights which Administrative Agent and/or the Lenders may have under the Note or the other Loan Documents (as defined in the Loan Agreement).

DEDA agrees that, notwithstanding anything to the contrary contained in the Development Documents, in the event of any default (and after any applicable cure period) by Borrower in its duties and obligations under the Development Documents, prior to terminating the Development Documents or taking any adverse action against Borrower, DEDA shall send written notice of such default, specifying such default in detail, to Administrative Agent at 1110 Jorie Boulevard, Oak Brook, Illinois 60523, Attention: Michael McGrogan, either: (a) by personal delivery or registered or certified U.S. mail, first class, postage prepaid, return receipt requested; or (b) by nationally recognized overnight delivery service, and Administrative Agent shall have thirty (30) days after receipt of such written notice in which to cure such default (or such additional reasonable period of time as may be required in the case of a non-monetary default if such default cannot, with diligence, reasonably be cured within thirty (30) days, not to exceed ninety (90) days, inclusive of the original thirty (30) day period).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed this Consent as of the date first above written.

DEDA:

**DULUTH ECONOMIC DEVELOPMENT
AUTHORITY**

By: _____
Name: Tim McShane
Title: President

By: _____
Name: Zach Filipovich
Title: Secretary

\\ATTORNEY\DEDA (015)\Development Agreements (DA)\Voyageur Lakewalk Inn (17-0095)\CIBC - Endi Apts - Collateral Assignment of Development Documents - JC Redline 6-25-19.docx

EXHIBIT A

LEGAL DESCRIPTION

Legal Description of Borrower Property

The Borrower Property is legally described as follows:

LEGAL DESCRIPTION PER TITLE COMMITMENT NO. NCS-688255-MPLS

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), and Eight (8), Block Twenty-five (25), ENDION DIVISION OF DULUTH, EXCEPT that part of Lot One (1), Block Twenty-five, ENDION DIVISION OF DULUTH, which lies southwesterly of the line described as: beginning at a point on the northwesterly line of Lot One (1), distant 30 feet northeasterly of the most westerly corner thereof; thence run southeasterly to a point on the southeasterly line of said Lot One (1), distant 30 feet northeasterly of the most southerly corner thereof and there terminating.

LEGAL DESCRIPTION PER TITLE COMMITMENT NO. NCS-688695-MPLS

Northerly Forty-five (N'y 45) feet of Lots Nine (9) and Ten (10), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

LEGAL DESCRIPTION PER TITLE COMMITMENT NO. NCS-691825-MPLS

PARCEL 1: The Southerly Thirty-five feet (S'y 35') of Lots (9) and Ten (10), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

PARCEL 2: Southerly Thirty-five feet (S'y 35') of the Northerly Eighty feet (N'y 80') of Lots Nine (9) and Ten (10), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

PARCEL 3: Lot Eleven (11), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

PARCEL 4: Lots Twelve (12) and Thirteen (13), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

PARCEL 5: Lot Fourteen (14), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

LEGAL DESCRIPTION PER TITLE COMMITMENT NO. NVD-688704-MPLS

The Southerly Thirty-five (35) feet of the Northerly One Hundred-fifteen (115) feet of Lots Nine (9) and Ten (10), Block Twenty-five (25), ENDION DIVISION OF DULUTH.

Legal Description of MnDOT Property

The MnDOT Property is legally described as follows:

That part of Lots 15 and 16, Block 25, Endion Division of Duluth, according to the recorded plat thereof on file and of record in the office of the County Recorder in and for St. Louis County, Minnesota, lying northeasterly of a line run parallel with and distant 30 feet northeasterly of the southwesterly line thereof;

Subject to the following restriction:

No access shall be permitted to Trunk Highway No. 35 from the lands herein conveyed.

Legal Description of a portion of Turnback Property

A portion of the Turnback Property is legally described as follows:

LEGAL DESCRIPTION FOR PART OF SOUTH ST CONVEYANCE

That part of the Northwesterly 33.00 feet of South Street as dedicated on ENDION DIVISION, according to the recorded plat thereof, St. Louis County, Minnesota, lying Northeasterly of the Southeasterly extension of the Northeasterly line of Lot 15, Block 25, said ENDION DIVISION and lying Southwesterly of the Southeasterly extension of the Northeasterly line of Block 25, said ENDION DIVISION.

Said parcel contains 9920.3 sq. ft. or 0.23 acres more or less.

Legal Description of the remainder of Turnback Property

The remainder of the Turnback Property is legally described as follows:

LEGAL DESCRIPTION FOR PART OF SOUTH ST CONVEYANCE

That part of the Northwesterly 33.00 feet of South Street as dedicated on ENDION DIVISION, according to the recorded plat thereof, St. Louis County, Minnesota, lying Northeasterly of the Southeasterly extension of the Northeasterly line of the Southwesterly 30.00 feet of Lot 16, Block 25, said ENDION DIVISION and lying Southwesterly of the Southeasterly extension of the Northeasterly line of Lot 15, Block 25, said ENDION DIVISION.

Said parcel contains 2320.3 sq. ft. or 0.05 acres more or less.

