

**MEETING OF THE  
DULUTH ECONOMIC DEVELOPMENT AUTHORITY  
WEDNESDAY, April 24, 2019 - 5:15 P.M.  
COUNCIL CHAMBERS, THIRD FLOOR, CITY HALL  
AGENDA**

**CALL TO ORDER**

**PUBLIC TO ADDRESS THE COMMISSION**

**PUBLIC HEARINGS**

1. **RESOLUTION 19D-12: RESOLUTION AUTHORIZING AN AGREEMENT FOR THE SALE AND REDEVELOPMENT OF THE TEMPLE OPERA BUILDING AT 201-205 EAST SUPERIOR STREET WITH TITANIUM PARTNERS LLC.**

**APPROVAL OF MINUTES:        March 27, 2019 Meeting Minutes**

**APPROVAL OF CASH TRANSACTIONS – March 1, 2019 – March 31, 2019**

**NEW BUSINESS**

**RESOLUTIONS FOR APPROVAL**

1. **RESOLUTION 19D-12: RESOLUTION AUTHORIZING AN AGREEMENT FOR THE SALE AND REDEVELOPMENT OF THE TEMPLE OPERA BUILDING AT 201-205 EAST SUPERIOR STREET WITH TITANIUM PARTNERS LLC.**
2. **RESOLUTION 19D-13: RESOLUTION AUTHORIZING AN AGREEMENT WITH JAMAR COMPANY FOR REPAIR OF THE MRO BUILDING IN THE AMOUNT OF \$229,695.00.**
3. **RESOLUTION 19D-14: RESOLUTION AUTHORIZING A THIRD AMENDMENT TO THE FORGIVABLE LOAN AGREEMENT WITH PALADIN PROPERTIES, LLC RELATED TO THE WEST THEATER CENTER FOR THE ARTS**
4. **RESOLUTION 19D-15: RESOLUTION AUTHORIZING A SECOND AMENDMENT TO THE BRIDGE LOAN PROMISSORY NOTE, C.I.F. BRIDGE LOAN AGREEMENT, AND MORTGAGE LOAN RIDER EXTENDING THE MATURITY DATE OF THE LOAN RELATED TO THE ARTSPACE PROJECT**
5. **RESOLUTION 19D-16: RESOLUTION AUTHORIZING THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY TO ENTER INTO A THIRD AMENDED AND RESTATED MASTER SUBORDINATION AGREEMENT REGARDING THE WASHINGTON SCHOOL PROJECT**

6. **RESOLUTION 19D-17: RESOLUTION AMENDING AND APPROVING THE DEDA  
2019 BUDGETS**

**DISCUSSION**

1. **DIRECTOR'S REPORT**

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# Duluth Economic Development Authority

March, 2019 Cash Activity - all DEDA Funds

ACCUMULATED TRANSACTION LISTING, G/L Date Range 03/01/19 - 03/31/19 (as of 04/16/2019)

G/L Date	Journal Number	Sub Ledg	Name	Net Amount	Description
<b>FUND 860 - OPERATING FUND</b>					
03/01/19	2019-00000529	GL	Cost Allocation - DEDA	<b>2,467,889.39</b>	
03/04/19	2019-00001747	AP	Arrowhead Manufacturers & Fabricators Assn	(33,333.33)	
03/04/19	2019-00001747	AP	Charter Communications	(295.00)	full page ad MMA membership directory
03/04/19	2019-00001747	AP	Bruce L Duncan	(79.97)	201 E Superior St (Temple)
03/04/19	2019-00001747	AP	Ehlers and Associates Inc	(750.00)	bdg services 1/16-2/15/19 (Temple)
03/04/19	2019-00001747	AP	Ehlers and Associates Inc	(7,500.00)	second half flat fee TIF creation Voyageur Lakewalk Inn
03/04/19	2019-00001747	AP	Ehlers and Associates Inc	(367.50)	Wildamere Assisted Living
03/04/19	2019-00001747	AP	Ehlers and Associates Inc	(367.50)	THOR Living
03/04/19	2019-00001747	AP	Ehlers and Associates Inc	(600.00)	General TIF consulting
03/04/19	2019-00001747	AP	Ehlers and Associates Inc	(893.75)	Voyageur Lakewalk Inn Redev
03/04/19	2019-00001747	AP	Elissa Hansen	(35.00)	replacement for check 170465 - lost
03/04/19	2019-00001747	AP	LHB Engineers & Architects	(3,049.00)	Kemps TIF analysis 1/1-1/25
03/04/19	2019-00001747	AP	Telephone Associates Inc	(87.12)	Temple Bldg expenses
03/04/19	2019-00001747	AP	Minnesota Power	(27.98)	209 E Superior St (Temple)
03/04/19	2019-00001747	AP	Minnesota Power	(322.73)	8 N 2nd Av E (Temple)
03/04/19	2019-00001747	AP	Minnesota Power	(111.45)	201-203 E Superior St (Temple)
03/04/19	2019-00001747	AP	Minnesota Power	(13.93)	8 N 2nd Av E (Temple)
03/04/19	2019-00001823	RA	Pay Group O Reilly LLC	424.36	DEDA Lease Payment
03/14/19	2019-00002174	RA	Cruikshank, Patrick	3,416.50	invoice #2019-000000059
03/18/19	2019-00002167	AP	Duluth Public Utilities - Comfort Systems	(829.35)	335 W Superior St (Temple)
03/18/19	2019-00002167	AP	Orion Management Consulting LLC	(1,080.71)	19-860-891 - Medical District Legislative Lobbying Assistance
03/18/19	2019-00002167	AP	ATK Enterprises, Inc	(1,309.00)	snow removal-Temple Bldg-Feb
03/18/19	2019-00002167	AP	Housing & Redevelopment Authority	(3,750.00)	4530-00480-W Dul 7th Div BI 169 L24 & 28
03/18/19	2019-00002167	AP	Housing & Redevelopment Authority	(1,500.00)	4530-00460 W Dul 7th Div BI169 L22 & 23
03/18/19	2019-00002167	AP	Duluth Public Utilities - Comfort Systems	(1,136.90)	201 E Superior St/8 N 2nd Av E (Temple)
03/18/19	2019-00002167	AP	Wenck Associates, Inc	(1,345.80)	C18-860-883-Building demolition consulting-Pastoret Terrace/Kozy
03/18/19	2019-00002167	AP	Keith Hamre	(856.91)	reimb-travel expense for trial-Respect Starts Here with Pastoret
03/18/19	2019-00002228	RA	Landmark/Hammes Company	-	invoice #2019-000000060
03/18/19	2019-00002228	RA	Interstate	(18,562.29)	Jan parking
03/18/19	2019-00002228	RA	Interstate	8,220.00	Waterfront
03/19/19	2019-00002235	RA	MN Economic Development	2,000.00	Shovel Ready PROJ: DEDA-ATLAS
03/19/19	2019-00002235	RA	Homegrown Music Festival	500.00	Temple Opera Building
03/20/19	2019-00002279	AP	29.18, Inc	1,000.00	Temple Opera relocation benefits - replacement for lost check
03/21/19	2019-00002358	GL	reimburse Parks for 1/2 of WSB work on PO 2018-688	(3,000.00)	
03/27/19	2019-00002496	RA	Dubin Does Duluth	3,000.00	DEDA fee
03/27/19	2019-00002496	RA	Dubin Does Duluth	1,000.00	Tif Study fee
03/31/19	2019-00002622	GL	transfer 2017/2018 cost allocation charged to TIF District	222,166.00	
03/31/19	2019-00002672	GL	Investment Earnings for March	4,451.00	
<b>FUND 860 - OPERATING FUND</b>				<b>Ending Balance - 03-31-2019</b>	<b>2,632,862.03</b>
<b>FUND 861 - DEBT SERVICE</b>					
03/31/19	2019-00002672	GL	Investment Earnings for March	<b>730,929.18</b>	
<b>FUND 861 - DEBT SERVICE</b>				<b>Beginning Balance</b>	<b>1,332.00</b>
<b>FUND 861 - DEBT SERVICE</b>				<b>Ending Balance - 03-31-2019</b>	<b>732,261.18</b>

## Duluth Economic Development Authority

March, 2019 Cash Activity - all DEDA Funds

ACCUMULATED TRANSACTION LISTING, G/L Date Range 03/01/19 - 03/31/19 (as of 04/16/2019)

G/L Date	Journal Number	Sub Ledg	Name	Net Amount	Description
<b>FUND 865 - CAPITAL PROJECTS</b>					
			<b>Beginning Balance</b>	<b>2,029,751.69</b>	
03/31/19	2019-00002622	GL	transfer 2017/2018 cost allocation charged to TIF District	(222,166.00)	
03/31/19	2019-00002672	GL	Investment Earnings for March	3,660.00	
<b>Ending Balance - 03-31-2019</b>				<b>1,811,245.69</b>	
<b>FUND 866 - MRO FACILITY</b>					
			<b>Beginning Balance</b>	<b>781,600.18</b>	
03/04/19	2019-00001747	AP	Viking Automatic Sprinkler Co	(4,320.00)	AAR test valves material
03/18/19	2019-00002167	AP	TKDA	(5,796.67)	C19-860-894-Architectural services AAR wall repair and reconstru
03/26/19	2019-00002460	RA	AAR Aircraft Services, Inc	36,510.78	2019-000000062
03/31/19	2019-00002672	GL	Investment Earnings for March	1,425.00	
<b>Ending Balance - 03-31-2019</b>				<b>809,419.29</b>	
<b>FUND 867 - STOREFRONT LOANS</b>					
			<b>Beginning Balance</b>	<b>104,439.87</b>	
03/01/19	2019-00001792	RA	DEDA & Duluth 1200 Fund	655.86	01/2019 - loan pmts from Bank
03/20/19	2019-00002301	RA	Alerus Financial	1,037.10	Old City Hall
03/21/19	2019-00002367	RA	DEDA & Duluth 1200 Fund	656.09	02/2019 - loan pmts from Bank
03/25/19	2019-00002419	RA	PSB for Building for Women	215.13	DEDA
03/31/19	2019-00002672	GL	Investment Earnings for March	193.00	
<b>Ending Balance - 03-31-2019</b>				<b>107,197.05</b>	

RESOLUTION 19D-12

RESOLUTION AUTHORIZING AN AGREEMENT FOR THE SALE AND REDEVELOPMENT OF THE TEMPLE OPERA BUILDING AT 201-205 EAST SUPERIOR STREET WITH TITANIUM PARTNERS LLC.

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into a Development Agreement, substantially in the form of that attached hereto (DEDA Agreement No. 19-0865-\_\_\_), with Titanium Partners LLC ("Developer") related to the sale and development of DEDA property at 201-205 East Superior Street in the amount of \$426,000 \$450,000, payable to DEDA Fund 865.

Approved by the Duluth Economic Development Authority this 24<sup>th</sup> day of April, 2019.

ATTEST:

  
\_\_\_\_\_  
Executive Director

**APPROVED AS TO FORM**  
*REA*  
\_\_\_\_\_  
DEDA Attorney  
**APPROVED FOR PRESENTATION**  
*AF for KH*  
\_\_\_\_\_  
Executive Director

STATEMENT OF PURPOSE: The purpose of this resolution is to approve a Development Agreement between DEDA and local developer Titanium Partners for the conveyance and redevelopment of the Temple Opera building, located at 201-205 East Superior Street and connected to the NorShor Theater. DEDA acquired the subject property in 2010 along with the NorShor Theater to help facilitate the redevelopment and revitalization of the HART District. After the completion of the renovation of the NorShor Theatre, DEDA listed the Temple Opera property for sale on the open market.

As part of the sale, the Developer is committing to invest no less than \$400,000 into the redevelopment of the building including uses of the first floor commercial space along Superior St. in a manner that will ensure a publicly interactive use that promotes the

to redeveloping the upper stories in a manner that will respect and enhance the historic nature of the structure of the building. Finally, the Developer will grant the City of Duluth an easement for the extension of the public skywalk system through the third floor of the building, connecting the NorShor Theatre to the future skywalk bridge across 2<sup>nd</sup> Avenue East and will construct the Skywalk through the building. As a condition of the sale, DEDA is agreeing to reimburse the Developer up to \$70,000 from the sale proceeds for the costs of installing a vapor mitigation system in the basement of the building.

The Developer will submit plans to the DEDA Executive Director for approval of the design and construction and of the intended uses of the first floor commercial space along Superior St. to ensure the requirements of the agreement are fulfilled.

**DEVELOPMENT AGREEMENT  
DULUTH ECONOMIC DEVELOPMENT AUTHORITY  
TITANIUM PARTNERS, LLC  
THE TEMPLE OPERA BUILDING PROJECT**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 (the "Effective Date"), by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "DEDA", and TITANIUM PARTNERS, LLC, a limited liability company under the laws of the State of Minnesota, hereinafter referred to as "Developer".

WHEREAS, DEDA has agreed to sell to Developer and Developer has agreed to buy the following property (collectively, the "Property"):

1. Real Property. The Land, the Building, and Improvements located on the Land or in or on the Building, together with all easements and rights benefitting or appurtenant to the land (collectively, the "Real Property").
2. Permits and Warranties. DEDA's assignable interests in all permits, licenses, and governmental registrations, filings, authorizations, or approvals regarding the Real Property and all interests in all warranties and

guarantees given to, assigned to, or benefitting the Real Property regarding the acquisition, construction, design, use, operation, management, or maintenance of the Real Property (collectively "Permits and Warranties").

3. Plans. All of DEDA's assignable interest in as-built blueprints, plans, surveys, and specifications regarding the Real Property, if any ("Plans").

4. Records. All of DEDA's assignable interest in the following records: current leases, tenant files, and reports or studies regarding environmental condition, physical condition, title to the property, surveys of the Real Property, capital improvements, and services ("Records").

5. Tangible Personal Property. All of DEDA's assignable interest, if any, in the tangible personal property (collectively, the "Tangible Personal Property") situated in or about the Real Property. Tangible Personal Property does not include any property of DEDA's tenants or their customers, or any third party providing services.

6. Contracts. DEDA's assignable interest, if any, in all service and maintenance contracts, utility contracts and deposit agreements, equipment leases, and other contracts regarding the Real Property ("Contracts").

WHEREAS, the Building included in the Real Property is commonly referred to as the "Temple Opera Building", and is located at the northeast corner of 2<sup>nd</sup> Avenue East and East Superior Street in Downtown Duluth.

WHEREAS, DEDA desires to have the Real Property redeveloped to support reinvestment in Duluth's HART District, the creation of jobs, the extension of Duluth's Downtown Skywalk System in the HART District, and



general economic growth in the region; and

WHEREAS, Developer wishes to acquire the Property from DEDA with the intention of developing it for commercial and professional office activities along with providing for a Skywalk connection from the NorShor Theatre Building to the east to the Skywalk Bridge to be constructed without expense to Developer by DEDA or the City across 2<sup>nd</sup> Avenue East to the Fond-du-Luth Casino to the West (the hereinafter-described "Project"); and

WHEREAS, DEDA is willing to sell the Property to the Developer under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, 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. Approved by the Executive Director: shall mean the written approval of the Executive Director, or such person or persons to whom the Executive Director may delegate such approval authority in writing, in the exercise of the Executive Director's discretion, provided that such approval shall not be unreasonably withheld, conditioned or delayed.
- B. Building: shall mean the structure located on the Property.
- C. City: shall mean the City of Duluth, Minnesota.
- D. Contingency Date: shall mean the date at the end of the Due Diligence Period
- E. DEDA: shall mean the Duluth Economic Development Authority ("DEDA")

or any other public body constituting a successor to DEDA.

- F. Due Diligence Period: shall mean a period of Sixty (60) days from the Effective Date to be available to Developer to perform its due diligence as provided for in Article IV below.
- G. Executive Director: shall mean DEDA's Executive Director or the person designated to act on behalf of the Executive Director with regard to this Agreement or any portion of this Agreement.
- H. HART District: shall mean that portion of Downtown fronting on Superior Street between Lake Avenue and 4<sup>th</sup> Avenue East.
- I. Land: shall mean the land in St. Louis County, Minnesota legally described as Tract A, Registered Land Survey No. 132.
- J. Phase I Project: shall mean the construction in and on the Building of the following elements of the Project, all in accordance with the Plans approved pursuant to Article VII below:
  - 1. Improvements to the Superior Street level of the Building to make the Superior Street level ready for build out by or for commercial tenants and uses and of the Building exterior in a manner which respects and enhances the historical character of the structure and which enhances the HART District, which redevelopment must be approved by the Executive Director.
  - 2. Construction of the Skywalk, as defined herein, through the third floor of Building from the location in the NorShor Theatre Building to the east of Building where it exists the NorShor Building to a point of exit over 2<sup>nd</sup> Avenue East.
- K. Phase II Project: Improvements to the second and third floors of the Building to make the second and third floors ready for build out for or by tenants or improvements to the Superior Street level, second floor, or third floor made for tenants, in each case for use as professional office space

or other use that is in conformance with the City of Duluth's Unified Development Chapter which respects and enhances the existing historical character of the space, all in accordance with the Plans approved pursuant to Article VII below

- L. Phase II Report: shall mean that Technical Memorandum from Barr Engineering Co. dated February 28, 2018 entitled "Temple Opera Block Phase II Investigation Report, VIC # 109627" and bearing Barr Project No. 23691987.
- M. Project: shall mean the construction on the Real Property of the Phase I Project (not including the cost of constructing the Skywalk through the Building) and the Phase II Project having a total "hard" construction cost of not less than \$400,000.
- N. Property: shall have the meaning ascribed in the Recitals.
- O. Regulated Materials Report: shall mean that report entitled "Pre-Renovation Asbestos and Regulated Materials Validation Survey Report" prepared by Bay West Engineering, Inc., dated December 12, 2017 and bearing Bay West No. J 170822.
- P. Skywalk: shall mean a pedestrian passageway having a minimum width of Ten (10') Feet across the Third Floor of the Building, running from the east wall of the Building at the point where the Skywalk exits the NorShor Theatre Building to the east of the Building and continuing across and through the Building to the exterior of the Second Avenue East side of the Building, in a manner suitable for the connection of a Skywalk bridge thereto, the design and location must be Approved by the Executive Director.
- Q. Skywalk Easement: shall mean the perpetual easement for the Skywalk over the Property and through the Building
- R. Soil Vapor Mitigation System: a sub-slab depressurization system which

includes installation of suction pits and associated connective piping, piping to convey sub-slab air outdoors via the roof or through an exterior wall, a roof or wall-mounted fan, and a permanent vapor barrier installed over the existing basement floor.

## ARTICLE II

### Purchase, Earnest Money

#### A. Purchase

Subject to the terms, covenants, and conditions of this Agreement, DEDA agrees to sell and agrees to buy the Property for a purchase price of \$450,000 (the "Purchase Price").

#### B. Earnest Money

Developer has deposited \$25,000 (the "Earnest Money") with DEDA as a good faith deposit. The Earnest Money will be applied to the Purchase Price if a Closing occurs. Except as provided in this Agreement, the Earnest Money will not be refunded to Developer.

## ARTICLE III

### Conditions Precedent to Construction of the Project

Prior to the commencement of the construction of the Phase I Project or November 1, 2019, whichever is sooner, Developer shall have presented the following documentation to DEDA with regard to the Project and shall have been Approved by the Executive Director:

#### A. Construction Finance

A "sources and uses" plan for all funding required for the completion of construction of the Project and copies of loan commitments and/or other financial commitments, if any, in forms Approved by the Executive Director obtained by Developer together with evidence of Developer's equity

participation, if any, in the Project, the total of said commitments and said equity participation to be in amount not less than the total anticipated cost of developing the Project.

B. Project Pro Forma

A detailed operating pro forma for the Project for a Five (5) Year period commencing after the entire Project has been completed and all elements of it are fully operational, demonstrating that the entire project will “cash flow” on a continuing basis, which pro forma shall include all operating assumptions

C. Construction Plans

Approved plans, specifications and elevations for the construction of the Phase I Project as described above and in Article VII below.

D. Construction Contract

A copy of an executed contract between Developer and a general contractor for the construction of the Phase I Project, certified by Developer to be a true and correct copy thereof.

E. Construction Bonds

Copies of executed payment and performance bonds provided by the above contractor in connection with the construction of the Phase I Project, which bonds shall be in the penal amount of not less than one hundred (100%) percent of the contract price under the aforesaid construction contract written by a bonding company or bonding companies licensed to do business in the State of Minnesota, certified by Developer to be true and correct copies thereof which name the DEDA as an additional beneficiary thereof or provide such other security or financial assurance as may be approved in writing by the Executive Director which security may be in the form of acceptable personal guaranties.

F. Project Cost

Proof, that upon completion of the Project, it will have "hard" construction costs of not less than Four Hundred Thousand Dollars (\$400,000) not including plus the cost of constructing the Skywalk through the Building.

G. Skywalk Agreement

Developer shall have executed a Skywalk Agreement in favor of the City in the form of that attached hereto as Exhibit A granting the Skywalk Easement to the City and providing for the terms of control and operation of the Skywalk on and through the Real Property.

#### ARTICLE IV

##### Developer's Due Diligence and Contingencies

The obligation of Developer to close on the purchase of the Property is contingent upon the following:

- A. Title shall have been found acceptable; been made acceptable or been accepted, in accordance with the requirements and terms of Article V.
- B. DEDA shall, within five (5) business days after the Effective Date deliver to Developer the documents listed on Exhibit A to this Agreement, to the extent that the same exist and are in the possession or control of DEDA or the City.
- C. Satisfactory completion by Developer of a due diligence inquiry which may include, but is not necessarily limited to, analysis of the structural, physical, environmental and financial condition of and the viability of Developer's development plans for the Real Property. Such investigation shall be at Developer's expense. DEDA shall permit Developer or its agents to physically enter and inspect the Real Property at reasonable times, upon reasonable notice. Developer shall repair and restore any

damage to the Real Property caused by or occurring during Developer's testing and return the Real Property to substantially the same condition as existed prior to such entry. If Developer is for any reason dissatisfied with the results of such inquiry, Developer may, in its sole and absolute discretion, terminate this Agreement by giving written notice to DEDA on or before 5:00 p.m. Central Standard Time on the Contingency Date. If written notice of termination is given as provided in this Subparagraph, the Earnest Money shall be returned to Developer and neither DEDA nor Developer shall have any further obligation to the other under this Agreement except pursuant to any other provision of this Agreement which is intended to survive termination or cancellation. The Contingency Date may be extended by Developer with the prior written approval of the Executive Director for one additional period of sixty (60) days. To extend the Due Diligence Period, Developer must (i) provide written notice to DEDA before the expiration of the initial Due Diligence Period, (ii) increase the Earnest Money deposit by an additional \$25,000 within three (3) business days after providing the notice and (iii.) have received such prior approval.

- D. Delivery by DEDA to Developer of each of DEDA's Closing Documents.
- E. All representations made by DEDA pursuant to this Agreement shall be true in all material respects as of the Closing Date.
- F. DEDA shall have materially performed all of DEDA's obligations and covenants pursuant to this Agreement.
- G. Developer shall have secured for itself such assurances and approvals from the Minnesota Pollution Control Agency ("MPCA") as Developer determines, in Developer's sole discretion, are acceptable.

If a Closing does not occur because of the failure of any condition set forth in Article IV Subparagraphs (i) or (iv)-(vii), the Earnest Money shall be returned to Developer and

neither DEDA nor Developer shall have any further obligation to the other under this Agreement except pursuant to any other provision of this Agreement which is intended to survive termination or cancellation. If this Agreement is terminated without the occurrence of a Closing, Developer shall return to DEDA all documents and all copies of all documents provided by DEDA or its agents to Developer. The conditions set forth in this Article IV are for Developer's benefit and may be waived by Developer.

## ARTICLE V

### Quality of Title

- A. DEDA agrees that it will convey "insurable title" to the Real Property and will provide a title commitment (the "Title Commitment") for an ALTA owner's policy of title insurance ("Title Policy"), insuring title to the Real Property, in the amount of the Purchase Price, issued by First American Title Insurance Company (Consolidated Title and Abstract Company) ("Title") within fifteen (15) days after the execution of this Agreement.
- B. Developer's Objections to Title.

Within twenty (20) days after receiving the Title Commitment, Developer shall make any written objections (the "Objections") to the content of the Title Commitment. Any matter disclosed by the Title Commitment and not objected to by Developer shall be a "Permitted Exception." DEDA shall use its best efforts to attempt to cure the Objections within thirty (30) days after receipt of the Objections, during which period the Closing will be postponed as necessary. If DEDA fails to cure the Objections within such thirty (30) day period, Developer will have the option to (a) terminate this Agreement (without either party being deemed at fault) or (b) waive the Objections and proceed to Closing (and all uncured Objections shall be deemed Permitted Exceptions). Developer may exercise its option to terminate under this Article by delivering written notice to DEDA before Closing. If Developer fails to deliver notice of termination and closes, Developer shall be deemed to have waived the Objections. Developer agrees that DEDA need not remove liens, mortgages, deeds of trust, trust



deeds, security interests or contract interests affecting the Property constituting Objections prior to Closing, provided that (i) Title shall, at Closing, be directed to disburse funds constituting the Purchase Price to liquidate the indebtedness secured or evidenced by such liens, mortgages, deeds of trust, security interests or contract interests; and (ii) the Title Policy shall insure over all liens, mortgages, deeds of trust, security interests and contract interests.

## ARTICLE VI

### Closing.

#### A. Closing Date.

The closing on the purchase and sale contemplated by this Agreement (the "Closing") shall occur on the latest to occur of (i) thirty (30) days after the Contingency Date (as it may have been extended) or (ii) on an earlier date agreed to by Developer and DEDA (the "Closing Date"). The Closing will take place at the offices of Title which shall act as closing agent, at such time as the parties shall mutually agree. It is anticipated that a physical closing may not occur and that documents or counterparts of documents may be delivered to and collected by Title. The parties shall deliver to Title an executed copy of this Agreement, which shall constitute instructions. If required by Title, the parties shall execute any printed form escrow instructions used by Title; provided, however, that any provisions of such instructions which conflict with this Agreement shall be governed by this Agreement. DEDA shall deliver possession of the Real Property immediately after Closing vacant and unoccupied and with all tenants permanently removed.

#### B. DEDA's Closing Documents.

On the Closing Date, DEDA shall execute and/or deliver to Developer the following (collectively, "DEDA's Closing Documents"):

1. Assignment of Contracts, Permits and Warranties. An Assignment of Contracts, Permits and Warranties (“Assignment of Contracts”), in substantially the form attached hereto as Exhibit B.
2. DEDA's Affidavit. An owner's affidavit reasonably required by Title as to liens, debts and possession.
3. Original Documents. Original copies of the Contracts, the Permits and Warranties, the Plans, and the Records, in the possession of DEDA or the City, if any.
4. Quitclaim Deed. A Quitclaim Deed in substantially the form of the Minnesota Uniform Conveyancing Blank, subject to the Permitted Encumbrances and including the Deed Conditions described below.
5. Bill of Sale. A bill of sale in substantially the form attached hereto as Exhibit C conveying the Tangible Personal Property.
6. Resolution. A certified resolution approving this Agreement and authorizing the execution of DEDA's Closing Documents.
7. Other Documents. All other documents reasonably determined by Title on or before the Closing Date to be necessary to transfer the Real Property to Developer on the terms stated herein.

C. Developer's Closing Documents.

On the Closing Date, Developer shall execute and/or deliver to DEDA the following (collectively, “Developer's Closing Documents”):

1. Purchase Price. The Purchase Price.
2. Assignment of Contracts. The Assignment of Contracts.

3. Title Documents. Such affidavits of purchaser or other documents as may be reasonably required by Title in order to record the DEDA's Closing Documents and issue the title insurance policy required by this Agreement.

D. Prorations.

DEDA and Developer agree to the following prorations and allocations of costs regarding this Agreement:

1. Title and Closing Fees. DEDA shall pay all costs of the Title Commitment and all expenses to correct any Objections DEDA agrees to address. Developer shall pay all premiums required for the issuance of the Title Policy. DEDA and Developer shall each pay one-half of any reasonable and customary closing fee or charge imposed by Title as the closing agent, if any.
2. Taxes. General real estate taxes and installments of special assessments due and payable in all years prior to the year of Closing shall be paid by DEDA. General real estate taxes due and payable in all years subsequent to the year of Closing shall be paid by Developer. General real estate taxes and installments of special assessments due and payable in the year of Closing shall be prorated as of the Closing Date, with DEDA to pay that portion attributable to those days in the year having elapsed prior to the Closing Date. All deed taxes, and all ad valorem taxes due on the sale of the Real Property, or sales taxes, or similar taxes (including interest and penalties) owing with respect to activities occurring before Closing in connection with the Real Property or becoming due and payable prior to, simultaneously with, or as a result of execution, delivery, or recordation of the Quitclaim Deed, shall be paid by DEDA. Developer will pay all mortgage registry and similar taxes.

3. Recording Costs. DEDA shall pay the cost of recording all documents necessary to address any Objections. Developer shall pay the cost of recording all other documents.
4. Attorneys' Fees. Until a closing occurs, each of the parties shall pay its own attorneys' fees relating to this Agreement and the purchase and sale of the Real Property, except that a party defaulting under this Agreement shall pay the reasonable attorneys' fees and court costs incurred by the non-defaulting party, including such fees and costs incurred to enforce its rights regarding such default.

E. Deed Conditional

The deed conveying the Real Property shall be subject to this Agreement and shall incorporate, as a covenant running with the Land, the conditions of Minnesota Statutes Sections 469.090 to 469.108 relating to the use of the Land. The deed shall further provide that if Developer does not begin improvements on the Real Property to carry out its construction obligations with respect to the Phase I Project on or before November 1, 2019, DEDA may declare a breach of the covenant and seek a judicial decree from the District Court declaring a forfeiture and a cancellation of the deed. The deed will include a provision that provides that the Executive Director will, for good cause shown, extend the period to begin said improvements on the Real Property for up to six (6) months. In addition to the foregoing provisions, the conveyance of title shall be subject to covenants, conditions, restrictions, declarations, easements and encumbrances of record; unpaid real estate taxes and assessments; and any law, ordinance, or governing regulations including but not limited to building and zoning ordinances restricting, regulating or prohibiting the occupancy, use, enjoyment, improvement or subdivision of the property.

F. Subsequent Conveyance

Because DEDA has determined that the redeveloped Building is an important contributor to the tax capacity of the HART District and because DEDA and the other properties in the HART District are depending on the real property taxes generated by the Property to contribute to the continued redevelopment and growth of the HART District, Developer agrees that the Real Property, nor any part thereof, shall not be sold, conveyed, transferred, assigned, mortgaged or otherwise alienated in any manner whatsoever, directly or indirectly, to any person or entity which is not required to pay real property taxes under the as provided for under the laws of the state of Minnesota.

G. Special Conditions

Developer for itself and its successors in interest hereby acknowledges that it has been fully informed of existence of environmental contaminants in and under the basement floor of the Building as described in the Phase II Report and the existence of asbestos contamination in the Building as described in the Regulated Materials Report. Developer acknowledges that the existence of said contaminants and, except as provided for in Paragraph H below, any costs that it may incur to mitigate and remove as necessary such contaminants, over and above any costs incurred by DEDA as described in Subparagraph H below, has been fully considered in its determination of the purchase price for the Property set forth above and Developer expressly waives any claims of any kind against DEDA arising directly or indirectly out of the existence of said contaminants and any need to mitigate, remove or otherwise deal with such contaminants and Developer further agrees to defend and indemnify DEDA and its officers, agents, servants and employees from any liability of any kind whatsoever arising in any way out the existence of such contaminants in the Building or on the Property or any need to mitigate, remove or otherwise deal with said contaminants.

H. Mitigation Reimbursements

Notwithstanding anything in this Article to the contrary, DEDA hereby agrees to reimburse Developer for the costs incurred by Developer of installing a Soil Vapor Mitigation System in the Building as provided for below, subject to the following conditions. All costs subject to reimbursement shall be supported by bills, receipts, cancelled checks and such other documentation as is requested by the Executive Director in the exercise of the Executive Director's reasonable discretion. DEDA will reimburse Developer in an amount of not to exceed Seventy Thousand Dollars (\$70,000) for the cost of constructing and installing a Soil Vapor Mitigation System in the Building, provided that the plans and specifications for said System has been approved by the Minnesota Pollution Control Agency and the Executive Director prior to the installation thereof and that said System is installed in conformance with the approved plans and specifications therefor.

I. Boiler Removal

During the construction by the City of the Superior Street Reconstruction Project adjacent to the Building but not later than November 1, 2019, DEDA shall remove the old boiler located in the sidewalk vault adjacent to 2<sup>nd</sup> Avenue East. Developer hereby grants to DEDA and its contractors the right of access to the sidewalk vault necessary to perform such work during that time. DEDA will cause its contractor performing such work to notify Developer in advance of the exercise of this right.

J. Recording

Developer shall promptly file the deed conveying the Real Property in the Office of the St. Louis County Registrar of Titles and shall pay all costs associated with recording said deed. Upon recordation of said deed, Developer shall immediately submit to DEDA a copy of the executed deed showing the date and document numbers of record, or a fully-conformed

copy of the filed original showing the date and document numbers of record.

## ARTICLE VII

### Project Plans

#### A. Plans, Specifications and Elevations

No less than thirty (30) days prior to the commencement of construction of the Phase I Project or the Phase II Project or any portion thereof, or such lesser time as Approved by the Executive Director, Developer shall submit working drawings, specifications and elevations for the phase of the Project to be constructed together with detailed utility and Skywalk plans and elevations, if appropriate, as the Executive Director reasonably deems necessary, to the Executive Director for approval except as hereinafter provided for. All such plans, specifications and elevations shall be in conformity with this Agreement, with the Schematic Design and with all applicable laws, ordinances, rules, regulations and requirements of the City, State of Minnesota and United States of America Authorities; said plans and specifications shall also conform substantially with any environmental assessment worksheet or environmental impact Statement for the Project required by law therefor. In addition, such plans shall provide for all heating energy for the Building to be supplied to the Building by the City of Duluth's district heating system. If the Executive Director rejects such plans, specifications and elevation 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 thirty (30) days of said notice. The provisions of this Subparagraph relating to approval, rejection and resubmission of corrected plans hereinabove 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 by the Executive Director. The Executive Director's acceptance of Developer's plans, specifications and elevations shall not constitute a waiver of building code or ordinance or other developmental duties 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, specification and elevations and any revisions thereto.

B. Changes After Initial Approval

Any changes made to plans by Developer after initial approval of the Executive Director deemed to be material or substantial shall be submitted to the Executive Director for acceptance in the same manner provided for in Paragraph A above.

ARTICLE VIII

Construction

A. Construction of the Project

Developer shall commence construction of the Phase I Project in conformance with the plans developed pursuant to Article VII above no later than November 1, 2019. Construction of the Project shall be completed no later than May 1, 2021. Provided, however, construction of the Project shall be deemed to have been completed when Phase I has been completed and Developer has incurred hard construction costs of not less than \$400,000 in the aggregate for the Phase I Project and the Phase II Project (not including the cost of constructing the Skywalk through the Building) and provided further that the Executive Director will have the discretion, for good cause shown, to extend the period for commencement or completion or both of the improvements on the Real Property to carry out its construction obligations with respect to the Project for up to six months, which extension shall be in writing.

B. Developer to Bear All Costs of Project

Subject to the terms and conditions of this Agreement, Developer shall bear all costs related to the development, completion and operation of the



Project and any modifications thereto.

C. Progress Reports

Until construction of the Project has been completed, Developer shall make reports in such detail and at such times as may reasonably be requested by DEDA as to the actual progress of construction with respect to each such Project.

D. Certificate of Completion

Promptly upon completion by Developer, in accordance with this Agreement, of the construction of the Project, DEDA shall furnish to Developer an appropriate certificate so certifying. No such certification shall be issued until all elements of the Project have been completed. Such certification by DEDA shall constitute a conclusive determination of satisfaction of construction obligations of Developer undertaken pursuant to this Agreement.

## ARTICLE IX

### Developer's Operating Covenant Prior to the Issuance of a Certificate of Compliance

Developer further covenants and agrees that, prior to the issuance of a Certificate of Compliance, in its operations and use of the Real Property, it will:

A. Maintenance

At all times cause 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 Real Property and, except for items to be addressed as part of the Project, to perform all needful and proper repairs, renewals and replacements necessary to be made thereto. The obligation to maintain the Real Property shall include but not be limited to maintenance of all foundations, external walls, doors, windows, utility openings and all roofing systems. Developer shall also be responsible for maintenance of the Property outside the Building, including snow removal and landscape maintenance and all other exterior maintenance.

B. Utilities

Pay any and all charges for utilities furnished to the Real Property including, but not limited to, hook-up charges and assessments related to all utilities, including but not limited to hot water, steam, water, sewer, gas, telephone, cable TV and electrical power.

C. Licenses and Permits

Preserve Developer's existence and all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs and to be qualified to do business in each jurisdiction where its ownership of property or the conduct of its business requires such qualifications; provided, however, that nothing herein contained shall be construed to obligate it to retain or preserve any of its licenses, permits or consents which are no longer useable.

D. Obey All Laws

Conduct its affairs and carry on its business and operations in such a manner as to comply with any and all laws applicable to Developer and to the conduct of its business and the ownership of the Real 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 by Developer in good faith through proper legal action provided that such protest shall in no way affect Developer's title to the Real 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 the Real Property.

F. Assessment Fees and Charges

To pay or cause to be paid when due or payable all special assessments levied upon or with respect to the Real Property, or any part thereof and to pay all fees, charges and rentals for utilities, service or extensions for the Real 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 as and when the same becomes due and payable other than any thereof whose validity, amount or collectability is being contested in good faith by appropriate proceedings.

ARTICLE X

Provision Against Liens, Assignments and Transfers

A. Provision Against Liens

Except for encumbrances permitted pursuant to Paragraph B below, prior to the end of the Term hereof as set forth in Article XVII below, the Developer shall not create or permit any mortgage, encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Project or the Real Property or any part thereof which would materially or adversely affect DEDA's interest in 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 contest.

B. Provision Against Assignments, Transfers or Change in Identity of Developer Prior to the Issuance of the Certificate of Compliance

The parties hereto acknowledge that DEDA is relying upon the qualifications and identify of Developer to develop and construct the Project. Therefore, except for the purposes of obtaining financing as hereinafter described and otherwise approved by the Executive Director, Developer represents and agrees for itself, its successors and assigns that it has not made or created, and will not, during the Term hereof as set forth in Article XVII below, , make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease with a

term greater than 5 years, trust, lien or power of attorney, and has not or will not, prior to said Term, otherwise transfer in any other way all or any portion of the Project, the Real Property, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder and except for mortgaging Approved by the Executive Director, Developer will not, prior to the issuance of a Certificate of Completion, make or create or suffer to be made any such transfer of Developer's rights hereunder unless Approved by the Executive Director. Notwithstanding the foregoing, Developer may (i) grant a mortgage to a lender to secure one or more loans, the proceeds of which are used entirely to finance the acquisition of the Property and the construction and development of the Project or the payment of closing and similar costs, (ii) before the Closing, assign the rights, benefits, and obligations of Developer under this Agreement to an entity that is controlled by Developer or by Brian Forcier, and (iii) after the Closing, convey, subject to this Agreement, the Real Property to an entity that is controlled by Developer or by Brian Forcier. Any conveyance of the Real Property after the Closing to an entity that is controlled by Developer or by Brian Forcier must be Approved by the Executive Director but such approval shall be granted upon reasonable proof that the entity is controlled by Developer or by Brian Forcier.

C. First Floor Tenancy/Lease

It being deemed to be important to DEDA and to the City of Duluth that the first floor or Superior Street level of the Building be occupied by a tenant or tenants whose primary focus is "interactive retail and/or commercial uses", that is uses that primarily serve and are of interest to users and customers of the HART District, the identity of the initial tenant or tenants of first floor of the Building and the duration and strength of their tenancy is an important element of the sale of the Building to Developer. Therefore, the identity of the initial tenant or tenants to occupy the first floor or Superior Street level of the Building and the duration and strength

of their tenancy must be Approved by the Executive Director.

## ARTICLE XI

### Indemnification by Developer

#### A. Generally

Developer will, to the fullest extent permitted by law, protect, indemnify and save DEDA and the City and their officers, agents, servants, employees and any person who controls DEDA within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims, demands, and judgements 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 Real Property occurring after the Closing Date or growing out of or in connection with the use or non-use, condition or occupancy of the Project or the Real Property or any part thereof after the Closing Date and the construction or installation 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 the Developer, its customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.
2. Any violation by Developer of any provision of this Agreement.
3. Any violation of any Contract or assumed by Developer or any violation of any restriction related to the Project which shall have existed at the commencement of the term of this Agreement or shall have been approved by the Developer; provided, however, that DEDA will remain solely responsible for relocation costs.
4. Any violation by Developer of any law, ordinance, court order or regulation affecting the Project or the Real Property, or the

ownership, occupancy or use thereof.

B. Environmental Indemnification

In addition to the generality of the foregoing above, Developer hereby agrees that for itself, its successors and assigns that it will indemnify and save the DEDA and the City of Duluth and their officers, agents, servants and employees and any person who controls the DEDA or the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition created in the Real Property after the date of the signing of this Agreement which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Real Property of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property and that indemnification granted hereby shall include all costs of clean-up, remediation, together with the costs incurred in proceedings before court of law or administrative agency including attorney's fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing in the Real Property.

C. Certain Pre-existing Conditions

In addition to the generality of the foregoing above, Developer hereby agrees that for itself, its successors and assigns that it will indemnify and

save the DEDA and the City of Duluth and their officers, agents, servants and employees and any person who controls the DEDA or the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of those conditions identified as existing on the Real Property in the Phase II Report and in the Regulated Materials Report 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 Real Property of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property and that indemnification granted hereby shall include all costs of clean-up, remediation, together with the costs incurred in proceedings before court of law or administrative agency including attorney's fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing on the Real Property.

D. Indemnification Procedures

Promptly after receipt by DEDA or the City of notice of the commencement of any action with respect to which the Developer is required to indemnify the party receiving such notice under this Article, such indemnitee shall notify the Developer in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, the Developer shall assume the defense of such action, including the employment of counsel satisfactory to the indemnitee and the payment of expenses. In so far as such action

shall relate to any alleged liability of the indemnitee with respect to which indemnity may be sought against the Developer, the indemnitee shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of the indemnitor.

## ARTICLE 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 Real 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 Real Property for construction work, shall procure or cause to be procured and maintain or require its 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" builders' 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, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Fifty



Thousand and 00/100ths (\$50,000.00) Dollars 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. Such insurance shall be written in the names of any holder of a mortgage permitted by Article X, Developer, DEDA, any subtenant, and contractor, as their interest may appear. Contractor, all subcontractors and suppliers, and Developer shall waive all rights against DEDA for damages caused by fire or insured perils, except such rights as are set forth hereunder to the proceeds of such insurance payable in the event of such loss.

2. Public Liability Insurance

Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with no XCU exclusion, in limits of not less than Five Million and 00/100ths (\$5,000,000.00) Dollars aggregate per occurrence for personal injury, bodily injury and death, and limits of Five Hundred Thousand and 00/100ths (\$500,000.00) Dollars for property damage liability. If per person limits are specified, they shall be for not less than One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars per person and be for the same coverages. Contractor shall also require such liability coverage of its subcontractors unless they are insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

- a. Contractors' public liability--premises and operations;
- b. Independent contractors' protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnify provisions; and

f. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employers' liability coverage shall be maintained in limits of One Hundred Thousand and 00/100ths (\$100,000.00) Dollars per employee.

3. Alternative Insurance

In the alternative Developer may secure or cause to be secured an Owner-Controlled Insurance Policy or a Contractor-Controlled Insurance Policy providing at least the same or better protection to the City, subject to the approval thereof by the Executive Director.

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 Real Property, carried in the names of the Developer, any subtenant and DEDA as their respective interests may appear, as follows:

1. Property Insurance

From and after the date of acceptance of the project and prior to expiration of the buildings' risk coverage specified above, the Project and the Real 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 Fifty Thousand and 00/100ths (\$50,000.00) Dollars 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. In time of war in which the United States of America is a

belligerent, the Developer will procure and maintain continuously in effect such insurance as may be available from the United States of America to the extent of the full replacement value of the project and insuring against loss thereof or damage thereto from the risks and hazards of war, provided that the cost of such insurance is economically reasonable.

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, the Developer shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than Five Million and 00/100ths (\$5,000,000.00) Dollars aggregate per occurrence for personal bodily injury and death, and limits of Five Million and 00/100ths (\$5,000,000.00) Dollars for property damage liability. If person limits are specified, they shall be for not less than One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars per person and be for the same coverages. DEDA shall be named as an additional insured 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; and
- f. Products--completed operations.

3. Workers' Compensation

Worker's Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under

Minnesota Law. Employee's liability insurance shall be carried in limits of One Hundred Thousand and 00/100ths (\$100,000.00) Dollars 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 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 without increasing the cost of insurance by more than 10%. 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. In the event that Developer believes said modifications to be unjustified under the standards set forth in this Paragraph, Developer shall promptly so notify DEDA and the parties hereto agree to meet as soon as practical thereafter and to negotiate in good faith the character and amounts of any said modifications meeting the standards hereinbefore set forth.

D. Modification of Insurance Requirements at Developer's Request

Developer may request a modification of the insurance requirements provided for in Paragraph A provided such alternative insurance is Approved by the Executive Director. The Executive Director shall have the discretion to determine whether the modification of insurance requirements requested by Developer provides coverage for DEDA that covers substantially the same losses, damages, and risks covered by the forms of insurance to be provided pursuant to Paragraph A.

E. Requirements for All Insurance

All insurance required in this Article XII 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.

F. Certifications

The Developer shall be required to supply to DEDA written certifications of insurance as required by DEDA requiring the insurer to give DEDA thirty (30) days written notice prior to cancellation or modification of said insurance.

G. Reconstruction Obligation and Uninsured Loss

In the event the Project or any portion thereof is destroyed by fire or other casualty, the Developer shall forthwith repair, reconstruct, and restore the in a form conforming to the requirements of the City's Uniform Development Code for buildings in the subject zone and such repair, reconstruction or restoration shall be in a form with fits in with the general design of properties in the HART District. . To the extent necessary to accomplish such repair, reconstruction, and restoration, the Developer shall apply the proceeds of any insurance received by the Developer to the payment or reimbursement of the costs thereof. The Developer shall, however, complete the repair, reconstruction and restoration of the improvements whether or not the proceeds of any insurance received by the Developer are sufficient to pay for such repair, restoration, and reconstruction.

## ARTICLE XIII

### Defaults and Remedies Therefor

A. Developer Defaults and Remedies

1. General Events of Default

The following shall be deemed to be general events of default by Developer under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be

applicable except as otherwise set forth in this Agreement.

- a. Developer shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by Developer pursuant to this Agreement and such failure shall continue for a period of sixty (60) calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to Developer of such default or, in the event that such default shall be incapable of cure during said sixty (60) day period, shall have failed to commence to cure said default within sixty (60) days of the date of said notice and to diligently pursue the same to completion.
- b. Prior to the issuance of the Certificate of Compliance, Developer shall permit valid liens, not cured or contested within sixty (60) days, to be placed on the Real Property or Developer loses title to the Real Property or both (with the exception of liens, transfers or assignments permitted or approved pursuant to the terms of this Agreement).
- c. Prior to the issuance of the Certificate of Compliance, 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 similarly 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 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.

- d. Developer fails to commence or complete construction of the Project in conformance with the plans developed pursuant to Article VII within the timeframes provided for in said Article VIII A. unless extended pursuant to said Article VIII, A.

2. General Remedies

Except as otherwise set forth in this Agreement, DEDA shall have the following remedies in the event of a default by Developer:

- a. If the default occurs after the Closing, seek and be entitled to monetary damages from Developer for any actual damages incurred by DEDA as a result of Developer's default.
- b. If the default occurs after the Closing, seek and be entitled to injunctive or declaratory relief as is necessary to prevent Developer's violation of the terms and conditions of this Agreement or to compel Developer's performance of its obligations hereunder.
- c. If the default occurs before the Closing, as its sole and exclusive remedy, DEDA may cancel this Agreement and, if the cancellation occurs after the expiration of the Due Diligence Period, retain the Earnest Money.
- d. If the default occurs after the Closing, seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.

B. DEDA Defaults and Remedies

1. General Events of Default

The following shall be deemed to be general events of default by DEDA under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable except as otherwise set forth in this Agreement.

a. DEDA shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after Developer has, pursuant to the provisions of this Agreement, given written notice to DEDA of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.

2. General Remedies

Except as otherwise set forth in this Agreement, Developer shall have the following remedies in the event of a default by DEDA:

- a. Seek and be entitled to monetary damages from DEDA for any actual damages incurred by Developer as a result of DEDA's default.
- b. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent DEDA's violation of the terms and conditions of this Agreement or to compel DEDA's performance of its obligations hereunder.
- c. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to Developer.



C. Non-Waiver

The waiver by either party of any default on the part of the other party or the failure of said party to declare default on the part of the other party of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of the defaulting party of the same or of any other obligation of the defaulting party hereunder. And, to be effective, any waiver of any default by the defaulting party hereunder shall be in writing by the non-defaulting party.

D. Remedies Cumulative

Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

E. Attorneys' Fees

In the event that either party is in Default of any of the terms and conditions of this Agreement and the non-defaulting party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, such non-defaulting party shall be entitled to reimbursement for its reasonable attorney's fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

#### ARTICLE XIV

Force Majeure

Under the terms of this Agreement, neither the DEDA nor Developer shall be considered in default or in breach of any of the terms with respect to the performance to their respective obligations under this Agreement in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of a public enemy, acts of the federal government, acts of another party, fire, floods, epidemics,

strikes or embargoes, or for delays of subcontractors due to such causes. In the event of any such delay, any time for completion or delivery under this Agreement shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

## ARTICLE XV

### Representations by DEDA

DEDA represents and warrants that as of the date of this Agreement:

- A. It is a lawfully constituted economic development authority under the laws of the State of Minnesota, it is not a material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- B. There are not actions, suits or proceedings pending, or to the knowledge of DEDA, threatened against DEDA or any property of DEDA in any court or before any Federal, State, municipal or governmental agency which, if decided adversely to DEDA, would have a material adverse effect upon DEDA or any business or property of DEDA or the DEDA Portion and DEDA is not in default with respect to any order of any court or government agency.
- C. DEDA has investigated and has no knowledge that the DEDA Executive Director or other member, official, or employee of DEDA is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.
- D. DEDA shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement or otherwise delivered to any third parties under this Agreement to be true, correct and complete in all material respects.

## ARTICLE XVI

### Developer's Representations and Warranties

Developer represents and warrants that as of the date of this Agreement:

- A. It is a lawfully constituted limited liability company under the laws of the State of Minnesota, is not in material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and to perform its obligations hereunder.
- B. It is fully competent to acquire the Property and to construct and equip the Project thereon under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction and that it agrees to comply with all applicable State, Federal acquisition and wages and hours laws, at its own expense.
- C. There are no actions, suits or proceedings 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 which, if decided adversely to Developer could have a material adverse effect upon Developer, the Property or the Project, and that Developer is not in default of any order of any court or governmental agency.
- D. It is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been occurred.
- E. That Developer has investigated and has no knowledge that any officer, director, agent or employee of DEDA is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.

#### ARTICLE XVII

##### Term

The term of this Agreement shall run from the date first above shown until Two (2) Years after the date of the completion of construction of the reconstruction of Superior Street by the City of Duluth unless sooner terminated as herein provided for.

#### ARTICLE XVIII

Runs with the Land

This Agreement shall be deemed to run with the land and shall inure to the benefit of the parties hereto and to their successors and assigns.

ARTICLE XIX

Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of DEDA:

Duluth Economic Development Authority  
Room 402 City Hall  
411 West First Street  
Duluth, MN 55802

In the case of Developer:

Titanium Partners, LLC  
1330 E. Superior Street.  
Suite 202  
Duluth, MN 55805  
Attn: Brian Forcier

ARTICLE XX

Applicable Law

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

ARTICLE XXI

Relocation Benefits

DEDA shall provide for and pay for all relocation assistance required by law to current and prior occupants of the Real Property and will protect, indemnify and save Developer and its officers, members, managers, governors, agents, servants, employees, and any person who controls Developer within the meaning of Securities Act 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





EXHIBIT A

DUE DILIGENCE DELIVERIES

Copies of all Permits and Warranties, Plans, Records, and Contracts.

EXHIBIT B

ASSIGNMENT AND ASSUMPTION OF  
CONTRACTS, PERMITS AND WARRANTIES

This Assignment and Assumption of Contracts, Permits and Warranties ("Assignment") is effective as of \_\_\_\_\_, 2019, by and between DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 ("DEDA") and is as of the same date accepted by TITANIUM PARTNERS, LLC, a Minnesota limited liability company ("Developer").

For One Dollar and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by DEDA, and in accordance with the Development Agreement ("Agreement") between DEDA and Developer dated \_\_\_\_\_, 2019, DEDA does hereby convey and quitclaim to Developer all of DEDA's assignable interest in the "Contracts" and "Permits and Warranties" (as those terms are defined in the Purchase Agreement), without representations or warranties of any kind.

Further, in accordance with the Agreement, Developer does hereby assume the benefits and obligations of and under the Contracts and the Permits and Warranties and agrees to indemnify, defend and to hold DEDA harmless from and against any liability, damage or cost, including reasonable attorney's fees, arising out of or relating to the Contracts or the Permits and Warranties.

This Assignment may be executed in any number of counterparts, which taken together will form one original.

DEDA:

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY, an economic development authority  
under Minn.  
Stat. (1989) Chapter 459

By: \_\_\_\_\_  
Tim McShane  
Its President

By: \_\_\_\_\_  
Zach Filipovich  
Its Secretary



DEVELOPER:

TITANIUM PARTNERS, LLC, a Minnesota limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT C

BILL OF SALE

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 ("DEDA") hereby conveys and quitclaims to TITANIUM PARTNERS, LLC, a Minnesota limited liability company ("Developer"), DEDA's assignable interest in the property designated as "Tangible Personal Property" in the Development Agreement ("Agreement") between DEDA and Developer dated \_\_\_\_\_, 2018.

IN WITNESS WHEREOF, DEDA has executed this Bill of Sale as of \_\_\_\_\_, 2019.

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY, an economic development authority  
under Minn. Stat. Chapter (1989) 469

By: \_\_\_\_\_  
Tim McShane  
Its President

By: \_\_\_\_\_  
Zach Filipovich  
Its Secretary

PEDESTRIAN PASSAGEWAY AGREEMENT  
PERTAINING TO THE TEMPLE-OPERA BUILDING

BY THIS AGREEMENT ("Agreement") dated \_\_\_\_\_, 2019, the CITY OF DULUTH, hereinafter referred to as "City," and TITANIUM PARTNERS, LLC, a Minnesota limited liability company, hereinafter referred to as "Owner," agree to the following terms and conditions of agreement:

INTRODUCTION:

(1) City has constructed or will construct a downtown skywalk system providing enclosed pedestrian passageways connecting numerous buildings within the area. The location and nature of said improvements are illustrated in the attached Exhibit A.

(2) City wishes to include the pedestrian passageway subject of this Agreement in said skywalk system. Said pedestrian passageway would be contained within the building of Owner, hereinafter referred to as "Building," located on the property in St. Louis County, Minnesota legally described as follows:

Tract A, REGISTERED LAND SURVEY NO. 132, St. Louis County, Minnesota.

(3) By this Agreement, City will fulfill the goals noted in Paragraph 2 by the construction and furnishing of a pedestrian passageway entering Building at the third floor level through a skywalk bridge over 2nd Avenue East from the building occupied by the Fond du Luth Casino, hereinafter referred to as the "Casino" (to be constructed without expense to Owner) and, connecting by the pedestrian passageway in the Building to the building to the east of Building, hereinafter referred to as the "Norshor", located on Tract B, REGISTERED LAND SURVEY NO. 132, St. Louis County, Minnesota, Said passageway will be in conformity with and the location of the passageway (the "Easement Area") is depicted in the attached Exhibit B.

OWNER'S RESPONSIBILITIES:

Perpetual Easement

(4) Owner does hereby grant to City, without cost, a perpetual pedestrian easement

(the "Easement") having the primary purpose of facilitating pedestrian travel entering the Building at the third floor level through a skywalk bridge over 2<sup>nd</sup> Avenue East from the Casino and, connecting by the pedestrian passageway in the Building to the Norshor located on Tract B, REGISTERED LAND SURVEY NO. 132, St. Louis County, Minnesota. Said passageway will be in conformity with the attached Exhibit B. Owner acknowledges that it has been informed of its rights under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and hereby knowingly and specifically waives all rights and benefits thereunder. This Agreement does not and is not intended to create a public forum within the Easement Area or any other portion of the Building.

The Easement shall include the grant to City of the right of control and regulation thereof including control and regulation of concurrent uses, activities, traffic, signs, furnishings and decor within said the Easement Area and all powers necessary to carry out the elements of this Agreement. The Easement Area is further described and illustrated by shading in the attached documents, Exhibit B.

Owner may modify the location of the above Easement Area at any time subject to approval by City, which approval shall not unreasonably be withheld or delayed. Such modified Easement Area shall be located and structured so as to facilitate pedestrian traffic through the whole Skywalk System and shall be of at least similar area and dimensions as the original Easement Area. Along with its request for approval of an Easement Area modification, Owner shall submit to City complete plans and specifications for said modification showing that the modification will be of at least comparable character, quality and functionality as the old Easement Area, including but not limited to factors of size, configuration, materials, signing and furnishings and shall also submit proof of ability and methodology for payment therefor. The process for approval of the aforesaid plans and specifications shall be that set forth in Paragraph 6 below. All costs involved in modifying said Easement Area of any kind whatsoever, including the costs of removing skywalk indicia from the old Easement Area shall be borne by Owner exclusively.

If City approves said modification, the parties shall join in the execution and delivery of an amendment to this Agreement in recordable form designating the modified Easement Area

and terminating the old Easement Area upon completion of construction approved by City within the modified Easement Area. City shall have the responsibility for the recording of this Agreement and shall be responsible for all related fees. Owner will make all necessary title instruments available for such proceedings.

#### Construction

(5) Owner will construct or caused to be constructed the pedestrian passageway improvements within the Easement Area and Building as part of the Phase I Project as described in Articles VII and VIII of that certain Development Agreement between Owner and the Duluth Economic Development Authority pertaining to the Temple Opera Building Project of even date herewith, hereinafter referred to as the "Development Agreement". The plans for the construction of such improvements shall be those approved pursuant to Article VII of the Development Agreement and the terms and conditions governing the construction thereof shall be those set forth in the Development Agreement.

(6) In the event that Owner wishes to modify the design or location of the Easement Area within the Building after completion of the construction thereof in conformance with Exhibit C the following process shall apply:

(a) Design Development. The term, "Design Development Plans," as hereinafter used shall mean all plans, drawings, specifications and related documents necessary for the construction of the pedestrian passageway improvements by Owner hereunder, together with any and all changes made as provided for herein. All design development plans shall be in conformity with this Agreement and with all applicable State and local laws and regulations. In the event that Owner wishes to make any such changes, Owner will have prepared and submit to the City's Mayor or his or her designee (the "Skywalk Administrator"), for approval as agent for City, design development plans with respect to the improvements to be constructed by Owner within the Easement Area, in sufficient completeness and detail to show that such improvements and the construction thereof will be in accordance with the provisions of this Agreement. The Skywalk Administrator shall approve or disapprove in writing such design development plans and approval of such plans shall not unreasonably be withheld or delayed. If said plans are approved, no further filing by Owner or approval by the Skywalk Administrator thereof shall be

required except with respect to any material change. If the Skywalk Administrator rejects said plans in whole or in part as not being in conformity with this Agreement, Owner shall submit new or corrected design development plans which are in conformity with this Agreement, within fifteen (15) days thereof, after written notification to Owner of the rejection. The provisions of this Section relating to approval, rejection, and resubmission of corrected design development plans hereinabove provided with respect to the originally submitted plans shall continue to apply until the plans have been approved by the Skywalk Administrator. No construction of improvements indicated in this Agreement shall commence prior to the approval of said plans by the Skywalk Administrator. All work with respect to the improvements to be constructed or provided by Owner on the property shall be in conformity with the design development plans as approved by the Skywalk Administrator. The term "improvements," as used in this Agreement, shall be deemed to have reference to the improvements as provided and specified in the construction plans as so approved.

(b) Changes in Design Development Plans. If Owner desires to make any change in the design development plans after their approval by the Skywalk Administrator, Owner shall submit the proposed change to the Skywalk Administrator for his approval. If the plans, as modified by the proposed change, conform to the intent and content of the previously approved construction plans, the Skywalk Administrator may approve the proposed change and notify Owner in writing of its approval. In the event of disapproval, the Skywalk Administrator shall notify Owner in writing thereof and the reasons therefor. Such approval shall not unreasonably be withheld or delayed.

(c) Progress Reports. Until construction of the improvements has been completed, Owner shall make reports in such detail and at such times as may be reasonably requested by City, as to the actual progress of Owner with respect to such construction.

(d) Bond and Insurance During Construction. Prior to construction, Owner will secure a payment and performance bonds large enough to insure completion of the public improvements or provide such other security or financial assurance as may be approved in writing by the Skywalk Administrator which security may be in the form of acceptable personal guaranties. Prior to construction, Owner shall have City named as an additional insured for the

purposes of this Agreement on both Owner's Comprehensive General Liability Policy, which shall be kept in full force in the amount of \$1,500,000 during the entire course of construction, and its Broad Form Perils Insurance Policy, or have City so named on a Builder's Risk Insurance Policy, which shall be kept in full force during the entire course of construction in an amount sufficient to restore all public and private improvements made pursuant to this Agreement on Owner's property. Such policies of insurance shall be written by insurance companies authorized to do business in the State of Minnesota. Prior to commencement of construction, Owner shall file with the Skywalk Administrator a Certificate of Insurance setting forth that all coverages required herein are in full force and effect and providing that City will be given ten (10) days' written notice prior to the termination or cancellation of such coverages.

(e) Certificate of Completion. Promptly after completion by Owner in conformance with this Agreement, of construction of the improvements required of them by this Agreement, City will furnish Owner with an appropriate instrument so certifying. No such certification shall be issued until all elements of such construction are totally completed and until the provisions of the third and fifth paragraphs of Paragraph 3 hereof have been complied with. Such certification by City shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction and termination of the agreements and covenants in the agreements and in the deed with respect to the construction obligations only of Owner and its successors and assigns. The issuance of such certificate shall not unreasonably be withheld or delayed.

(f) Cost for Construction. All costs for construction of improvements contemplated in this Paragraph shall be the responsibility of Owner.

Operation, Repair, Maintenance and Security

(7) Owner agrees to operate, maintain and repair and secure the pedestrian passageways described in this Agreement and Owner's property hereinbefore described including joint responsibility with the owner of the Casino for the pedestrian bridge linking Building and the Casino including but not limited to the provision of adequate heat, lighting and air conditioning to said passageway and the provision of any security deemed desirable by Owner; provided that nothing contained herein is intended to or shall in any way create any obligations of any kind on the part of the parties hereto to any third parties or confer any benefits or

protections of any kind on such third parties not otherwise existing at law or in equity. Owner shall be jointly responsible with the respective owner of the Casino for entering into an agreement with said owner for the maintenance of the Buildings and for providing current a copy of said agreement to City.

Owner covenants and agrees that it will not make or allow to be made in any way, directly or indirectly, any internal or covered connection between Building as it now exists and any other building without the approval of City.

As part of its obligations under this Section, Owner agrees to provide and retain adequate fire and property insurance to restore the pedestrian concourse within Owner's property to the specifications of this Agreement taking into account normal wear and tear.

In the event of damage to or destruction of any portion of the skywalk system within Owner's property, Owner agrees that, within sixty (60) days of the date thereof, it will present to City complete construction plans for the restoration of said portion of the skywalk system together with a signed contract with a reputable contractor or reputable contractors for the construction of said restoration and a bond in a form and with a surety approved by City insuring performance of said contracts. Construction plans shall be subject to approval as provided in Section 6 of this Agreement, provided that delays occasioned by failure of the Skywalk Administrator to approve plans shall not be included in the computation of time in this Section. Should Owner fail to perform its obligations under this Section, City may, at its option, restore said portion of the skywalk system and collect from Owner, by assessment or any other legal means, all of the costs occasioned thereby, including the costs of collection. Owner's reconstruction obligations under this paragraph shall be subject to the terms of the aforesaid Ground Lease during the term thereof.

Owner further agrees to carry liability insurance in an amount sufficient to indemnify City from any liability occurring within those areas of the pedestrian concourse system wherein Owner has, through this Agreement, assumed the sole or joint responsibility for operation, repair, and maintenance. Further, Owner agrees to indemnify and hold harmless City from all possible liability arising from the operation, repair or maintenance of those areas of the pedestrian concourse system where said responsibility is assumed by Owner solely or jointly under the



terms of this Agreement. Owner will provide to City annual certificates of insurance to evidence said insurance coverage.

It is agreed between the parties that the rights and obligations of Owner shall inure to and be binding on Owner's successors and assigns, if any

Changes in Design Elements

(8) In the event that Owner wishes to change any elements of design, equipment, decoration lighting, signing or other such elements which change would not involve modification of the Easement granted hereunder the procedure set forth in Paragraph 6 above shall apply:

Hours

(9) Owner agrees to maintain the Easement Area open to pedestrian traffic from 6:00 A.M. to 1:00 A.M., seven (7) days a week, unless otherwise agreed to by City and Owner.

Notice

(10) A notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally and delivered to:

In the case of City: Skywalk Administrator  
Development District #2  
c/o City Clerk  
Room 102, City Hall  
Duluth, MN 55802

In the case of Owner: Titanium Partners, LLC  
1330 East Superior Street  
Suite 202  
Duluth, MN 55802

Attn: Brian Forcier

The address of either party may be changed upon notice to the other party, and notices shall be sent to the last address designated.

Delay Beyond Control

(11) Under the terms of this Agreement, neither City nor Owner shall be considered in

default or in breach of any of its terms with respect to the timing of the commencing or completion of construction, or the availability of the premises for construction in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not restricted to, acts of God, acts of the public enemy, acts of the Federal Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes or other similar causes beyond control of a party or delays of subcontractors due to such causes. In the event of such delays, any time for completion or delivery under this Agreement will be extended for the period of delay upon written notice of the party seeking extension.

#### CONTINUING OBLIGATIONS

(12) All parties to this Agreement further agree that this Agreement, together with all of the terms, covenants and conditions herein contained, shall be deemed to run with the land and to be binding on the respective parties successors and assigns, if any, and that in the event that Owner shall at any time sell the Building or the hereinbefore described Property of both or otherwise assign or transfer its interest therein, any such purchaser, transferor or assignee shall be liable for the performance of the obligations assumed by Owner hereunder, and that Owner shall, in addition, continue to be responsible for such obligations. Further, it is the intent of the parties that the Easement granted hereunder and as the same may be modified from time to time as herein provided for, shall be permanent and perpetual and shall survive any event of damage to or destruction of the Building, whether such damage or destruction is caused by man-made causes, accidental causes or any other causes. To that end, it is agreed that in the event of any damage to Building or any destruction or demolition thereof, for any reason or cause whatsoever or by any person or entity whatsoever, the City's Easement as described in Paragraph 4 above, and as the same may have been modified, shall survive and continue in perpetuity.

#### CONSTRUCTION OF PEDESTRIAN PASSAGEWAY

(13) Pursuant to the Development Agreement and this Agreement, Owner has agreed to construct the pedestrian passageway through the Building in conformance with attached Exhibit C. The obligations of the parties with regard thereto shall be those set forth in the hereinbefore-referenced Development Agreement.

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

CITY OF DULUTH

TITANIUM PARTNERS, LLC, a Minnesota  
Limited Liability Company

\_\_\_\_\_  
Mayor

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

Its

Attest:

\_\_\_\_\_  
City Clerk

Approved:

\_\_\_\_\_

Assistant City Attorney

City Auditor

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_ the \_\_\_\_\_ of Titanium Partners, LLC, a Minnesota Limited Liability Company, on behalf of the company.

\_\_\_\_\_  
Notary Public

This instrument drafted by:

Robert E. Asleson  
Assistant City Attorney  
City of Duluth, Minnesota  
411 West First Street  
Room 410 City Hall  
Duluth, Minnesota 55802  
(218) 730-5490

**RESOLUTION 19D-13**

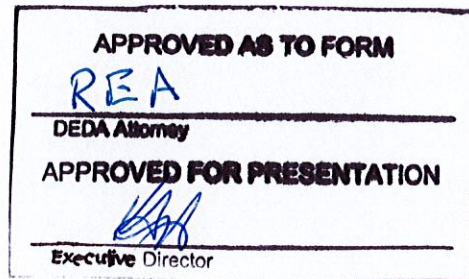
**RESOLUTION AUTHORIZING AN AGREEMENT WITH JAMAR COMPANY FOR REPAIR OF THE MRO BUILDING IN THE AMOUNT OF \$229,695.00.**

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into a contract (DEDA Contract No. 19-0860-XXXX) with Jamar Company to repair portions of various exterior walls of the MRO building at the Duluth International Airport in the amount of \$229,695.00, payable from Fund 0866.

Approved by the Duluth Economic Development Authority this 24th day of April, 2019.

ATTEST:

\_\_\_\_\_  
Executive Director



**STATEMENT OF PURPOSE:**

The purpose of this resolution is to authorize the award of a contract to Jamar Company to repair portions of various exterior walls of DEDA's MRO Building at the Duluth International Airport being leased to AAR for the performance of C and D checks on Airbus aircraft.

The MRO Building was originally constructed for Northwest Airlines (NWA) in the late 1990's, in part with development assistance from DEDA. AAR has occupied the building for more than 6 years, and has provided DEDA with a letter of intent to enter into an amendment of the lease and continue occupancy.

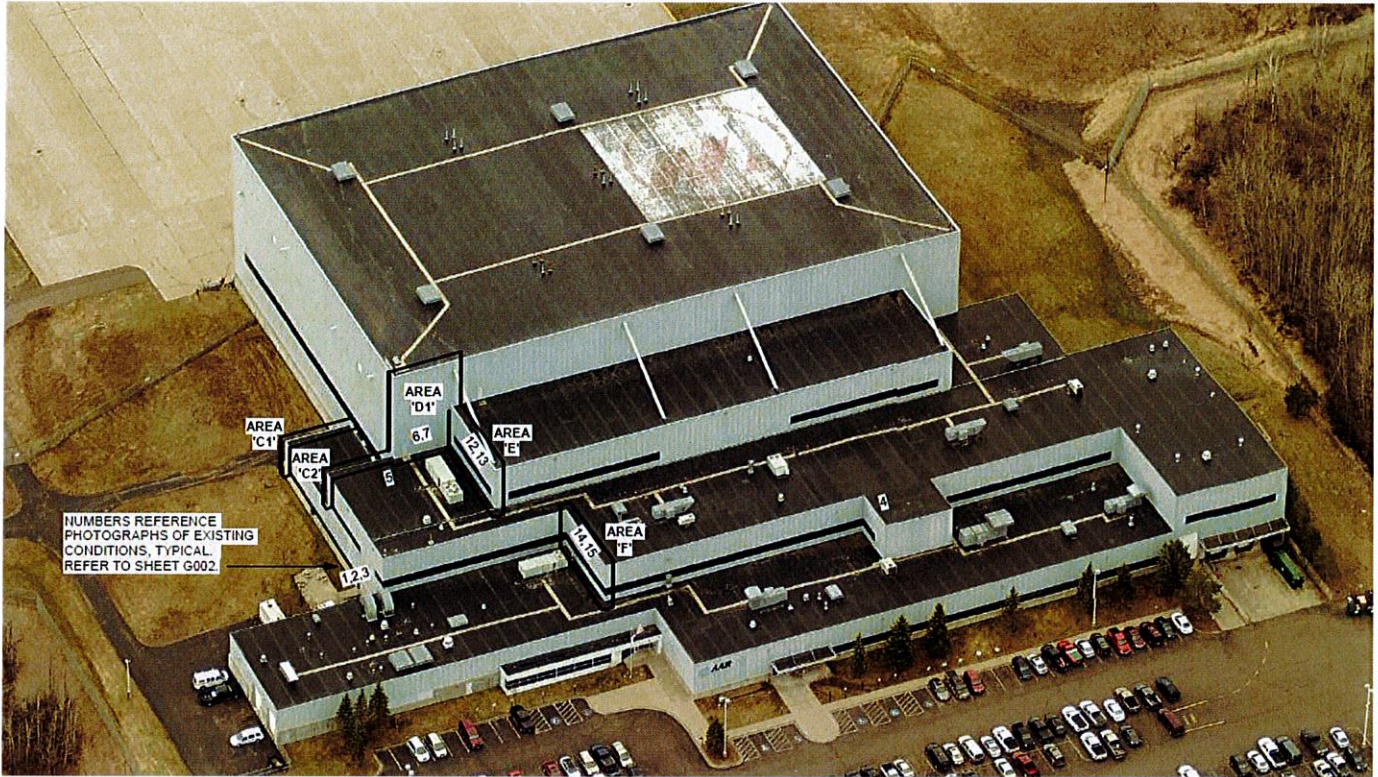
Under the terms of the existing Lease with AAR, the maintenance and repair of the exterior walls of the building is DEDA's responsibility. This is Phase II of the repair project which started in 2017 and successfully addressed the leakage of rainwater into four areas on the east side of the building. Phase II includes the exterior walls of the mechanical shop areas generally depicted as Areas C1 and C2, a portion of the hangar wall area depicted as Area D2, upper mezzanine area depicted as Area E, and a break room area depicted as Area F. Area C1 is approximately 500 square feet in size, Area C2 is approximately 800 square feet in size, Area D2 is approximately 1,750 square feet in size, Area E is approximately 1,550 square feet in size, and Area F is approximately 1,050 square feet in size.

In 2017, DEDA hired the design firm of TKDA to examine the problem and provide a recommendation for repair. They recommended sheet-applied weather barrier followed by furring channels covered with a sheet metal panel product with re-glazing of the exterior windows. The Phase I Project demonstrated that this system was effective in dealing with the problem. Phase II is a continuation of that "fix" for additional areas.

The City of Duluth Purchasing Division issued an invitation for bids on February 20, 2019 and received two bids as listed below. Jamar was the lowest responsible bidder.

<u>Company</u>	<u>Bids</u>
Jamar	\$229,695.00
AW Kuettel	\$235,213.00.

A depiction of the areas to be repaired and copy of the bid tabulation are attached.



**Bid Form - Prices below include all costs, including labor, supplies, materials, overhead and profit**

\$229,695.00

---

<b>Description</b>	<b>Units</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Extension</b>
Bid Area C1	LUMP SUM	1	\$21,249.00	\$21,249.00
Bid Area C2	LUMP SUM	1	\$52,724.00	\$52,724.00
Bid Area D1	LUMP SUM	1	\$43,722.00	\$43,722.00
Bid Area E	LUMP SUM	1	\$63,519.00	\$63,519.00
Bid Area F	LUMP SUM	1	\$48,481.00	\$48,481.00
				<b>Total: \$229,695.00</b>



# CONSTRUCTION CONTRACT

## THE JAMAR COMPANY & DULUTH ECONOMIC DEVELOPMENT AUTHORITY

THIS AGREEMENT, made and entered this 14th day of May, 2019 is by and between the **DULUTH ECONOMIC DEVELOPMENT AUTHORITY**, a municipal corporation, hereinafter referred to as “**DEDA**” party of the first part, and **THE JAMAR COMPANY**, 4701 Mike Colalillo Drive, Duluth, MN 55807, hereinafter referred to as the “**Contractor**,” party of the second part;

WITNESSETH: That the Contractor and DEDA agree as follows:

1. The following shall be deemed to be part of this contract:
  - a. The annexed resolution and legal advertisement of DEDA.
  - b. The bid request and specifications, including all required forms, as modified by irreconcilable language in this written contract.
  - c. The bid by Contractor, as modified by irreconcilable language in this written contract.
  - d. The performance bond and payment bond certification.
  - e. All provisions of law applicable to a contract of this nature.
2. The Contractor agrees to furnish and deliver to DEDA all labor, supervision, material, equipment, supplies, insurance, performance bond, payment bond and everything else necessary for general construction of MRO Facility East Wall Repair – Phase 1, all in strict accordance with plans and specifications prepared by TKDA, and your bid of \$229,695.00. Contractor shall not commence any work under this contract until Contractor receives written authorization from the duly authorized DEDA Representative.
3. DEDA agrees to make progress payments and final payments to the Contractor as stated in the contract specifications. The total amount payable under this contract shall not exceed Two Hundred Twenty-Nine Thousand, Six Hundred Ninety-Five and 00/100 Dollars (\$229,695.00) unless the contract is modified by formal amendment or change order. Payments under this Agreement shall be made from the following funding: 866-860-5400. Due to the dollar amount of this contract, a Project Labor is not included as part of this contract (City Code Section 2-29).
4. The Contractor shall furnish and maintain in full force and effect, until this contract is completely performed by the Contractor, a performance bond and payment bond if and when required by law, or if and when required by DEDA.

5. Inasmuch as this contract concerns work, materials and equipment needed for the public benefit, the provisions of this contract relating to the time of performance and completion of work and delivery of materials or equipment are of the essence of this contract.

6. Indemnity

a. The Contractor will defend, indemnify and save the City of Duluth and DEDA harmless from all costs, charges, damages, and loss of any kind that may grow out of the matter covered by this contract. Said obligation does not include indemnification of the City of Duluth and DEDA for claims of liability arising out of the sole negligent or intentional acts or omissions of the City of Duluth and DEDA but shall include but not be limited to the obligation to defend, indemnify and save harmless the City and DEDA in all cases where claims of liability against the City of Duluth and DEDA arise out of acts or omissions of the City of Duluth and DEDA which are derivative of the negligence or intentional acts or omissions of Contractor such as, and including but not limited to, the failure to supervise, the failure to warn, the failure to prevent such act or omission by Contractor and any other such source of liability.

b. The Contractor shall hold and save the City and DEDA, its officers, employees, representatives and agents, and the Architect, harmless from liability of any nature or kind, including costs and expenses, for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the City or DEDA, unless otherwise specifically stipulated in the Technical Specifications.

7. Insurance

a. Contractor shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota, which insurance shall indemnify Contractor and City of Duluth and DEDA from all liability described in Paragraph 6 above, subject to provisions below.

(1) Workers' compensation insurance in accordance with the laws of the State of Minnesota.

(2) Public Liability and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by DEDA; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability.

- (3) The City of Duluth and DEDA shall be named as **Additional Insureds** under the Public Liability, Excess/Umbrella Liability\* and Automobile Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming itself and the City of Duluth and DEDA. Contractor shall also provide evidence of Statutory Minnesota Workers Compensation Insurance. Contractor to provide Certificate of Insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. DEDA does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor's interests and liabilities.

*\*An umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the City of Duluth and DEDA as additional insureds.*

- (4) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City of Duluth and DEDA without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to the City of Duluth and DEDA will render any such change or changes in said policy or coverages ineffective as against the City of Duluth and DEDA.
- b. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Contractor, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Contractor, its employees, agents and representatives in the negligent performance of work covered by this Agreement.
- c. Certificates showing that Contractor is carrying the above described insurance in the specified amounts shall be furnished to the City of Duluth and DEDA prior to the execution of this Contract and a certificate showing continued maintenance of such insurance shall be on file with the City of Duluth and DEDA during the term of this Contract. In the event any work contemplated by the Contract is sublet, the Contractor shall have the duty to assure that the Subcontractors provide insurance in accord with the minimum requirements herein imposed on the Contractor prior to commencement of any work on a subcontract.
- d. Contractor shall be required to provide insurance meeting the requirements of this Paragraph 7 unless Contractor successfully demonstrates to the satisfaction of the

City Attorney, in the exercise of his or her discretion, that such insurance is not reasonably available in the market. If Contractor demonstrates to the satisfaction of the City Attorney that such insurance is not reasonably available, the City Attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the City of Duluth and DEDA which is reasonably available.

8. No claim whatsoever shall be made by the Contractor against any officer, agent or employee of DEDA for, or on account of, anything done, or omitted to be done, in connection with this contract. If this contract is not made in conformity with mandatory provisions of any statute, or of the ordinances and charter of the City of Duluth, the Contractor agrees to raise no defense and make no claim against DEDA or the City of Duluth on the basis of ratification, laches, estoppel, or implied contract.
9. The Contractor shall not assign, transfer, convey or otherwise dispose of this contract, or its right to execute it, or its rights, duties, benefits, obligations, liabilities, or title or interest in or to it, or any part thereof, without the written consent of DEDA, evidenced by a resolution duly adopted by the DEDA. The prohibition contained in this paragraph shall not be deemed to prevent the Contractor from subcontracting or making assignments to banks, trust companies, or other financial institutions. Contractor shall remain primarily responsible for all work performed by any Subcontractor.
10. The Contractor agrees that in the hiring of common or skilled labor for the performance of any work under this contract, Contractor will not, by reason of race, creed or color, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in local commissions, disability or age, discriminate against any person or persons who are citizens of the United States who are qualified and available to perform the work to which such employment relates.
11. The Contractor agrees that Contractor shall not in any manner discriminate against or intimidate or prevent the employment of any person or persons, or on being hired, prevent or conspire to prevent any person or persons from the performance or work under this contract on account of race, creed or color, religion, national origin, sex, marital status, status with regard to public assistance, disability or age.
12. The contractor agrees that, as provided in Minnesota Statutes 16C.05, Subd. 5, contractor's books, records, documents, and accounting procedures and practices are subject to examination by DEDA or the state auditor for six years from the date of final payment under this contract.

13. In accordance with the requirements of Minnesota Statutes §471.425 Subd. 4a, or its successor, the Contractor shall pay any Subcontractor within ten days of the Contractor's receipt of payment from the City or DEDA for undisputed services provided by the Subcontractor. The Contractor shall pay interest of 1-1/2 percent per month or any part of a month to the Subcontractor on any undisputed amount not paid on time to the Subcontractor. The minimum monthly interest penalty payment for any unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Contractor shall pay the actual penalty due to the Subcontractor. A Subcontractor who prevails in a civil action to collect interest penalties from a Contractor must be awarded its costs and disbursement, including attorney's fees, incurred in bringing the action.
14. Contractor shall comply with all local, state and federal laws, rules and regulations applicable to this contract and to the work to be done and things to be supplied hereunder.
15. This contract may be cancelled or terminated by DEDA, and all moneys due or to become due hereunder may be forfeited for any failure to perform any terms or conditions of this contract including but not limited to any violation of the terms or conditions of Section 10 or 11 of this contract.
16. Any waiver by any party of any provision of this contract shall not imply a subsequent waiver of that or any other provision.
17. This contract is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis, County, Minnesota, and the parties to this Agreement waive objection to the jurisdiction of this court, whether based on convenience or otherwise.
18. This Agreement constitutes the entire agreement between DEDA and the Contractor on the subject matter hereof. It may not be changed, modified, discharged or extended except by written instrument duly executed on behalf of DEDA and the Contractor. The Contractor agrees that no representations or warranties made by DEDA shall be binding upon DEDA unless expressed in writing herein.
19. This Agreement shall not be in force and effect, or in any way binding upon DEDA until the same shall have been approved by DEDA, and signed by its President and Secretary.
20. The Contractor unconditionally guarantees to perform all work pursuant to this contract in a good and workmanlike manner, in strict compliance with the specifications and instructions hereto attached, and to the satisfaction of DEDA.

21. This Agreement may be executed in counterparts, each of which shall be deemed to be original and all of which together shall constitute the binding and enforceable agreement of the parties hereto. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

**AUTHORIZATIONS:**

**DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY**

**CONTRACTOR  
THE JAMAR COMPANY**

\_\_\_\_\_  
Its President

By: \_\_\_\_\_  
Contractor's Representative

\_\_\_\_\_  
President's Printed Name

\_\_\_\_\_  
Representative's Printed Name/Title

\_\_\_\_\_  
Its Secretary

Date: \_\_\_\_\_

\_\_\_\_\_  
Secretary's Printed Name

Date: \_\_\_\_\_

RESOLUTION 19D-14

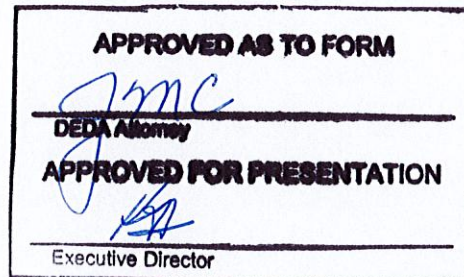
RESOLUTION AUTHORIZING A THIRD AMENDMENT TO THE FORGIVABLE LOAN AGREEMENT WITH PALADIN PROPERTIES, LLC RELATED TO THE WEST THEATER CENTER FOR THE ARTS

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into a Third Amendment to Forgivable Loan Agreement, substantially in the form of that attached hereto (DEDA Contract No. 18 860 873<sup>3</sup>), with Paladin Properties, LLC ("Developer") related to the West Theater Center for the Arts, extending the time for completion of the renovation work until December 31, 2019.

Approved by the Duluth Economic Development Authority this 24<sup>th</sup> day of April, 2019.

ATTEST:

\_\_\_\_\_  
Executive Director



STATEMENT OF PURPOSE: The purpose of this resolution is to approve an amendment to the Forgivable Loan Agreement with Developer to extend the time within which Developer must complete renovation of the historic West Theater located at 317-319 North Central Avenue in West Duluth. Despite the extension granted by DEDA's Second Amendment to the Agreement, labor and general construction costs proved higher than anticipated, rendering the project significantly over-budget in 2018. Over late 2018 and early 2019, the project lenders worked with Paladin Properties and reached an agreement to restructure the loan; final approval is expected by the end of April. Said approval will result in increased loan amounts sufficient to make the project whole and see it to completion. The project is now managed by Kraus Anderson Construction and project completion is anticipated to be no later than August, pending construction re-engaging in May.

**FORGIVABLE LOAN AGREEMENT  
PALADIN PROPERTIES, LLC  
THIRD AMENDMENT**

THIS THIRD AMENDMENT TO FORGIVABLE LOAN 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 Paladin Properties, LLC, a Minnesota limited liability company, whose address is 317-319 North Central Avenue, Duluth, MN 55807 (hereinafter referred to as "Developer").

WHEREAS, on June 6, 2018, DEDA and Developer entered into a Forgivable Loan Agreement pursuant to which DEDA agreed to assist Developer in the renovation of the historic West Theater which is located at 317-319 North Central Avenue in West Duluth and legally described as Lots 7 and 8, Block 11, West Duluth First Division, St. Louis County, Minnesota; and

WHEREAS, on July 11, 2018, the parties entered into a First Amendment and on September 4, 2018, the parties entered into a Second Amendment to extend the time within which Developer must complete the renovation work (the Forgivable Loan Agreement, First and Second Amendments hereinafter referred to as the "Agreement"); and

WHEREAS, the parties desire to further amend the Agreement to extend the time within which Developer must complete the renovation work.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

1. Article V.A., Renovation, is hereby amended to state that the renovation work shall be completed not later than September 30, 2019. Notwithstanding the above, upon the prior written approval of the Executive Director, the completion date may be extended for a period up to 60 days.



2. Article X.A., Financial Assistance Goal, is hereby amended to state that achievement of the Financial Assistance Goal shall be measured as follows: Developer agrees that on or before September 30, 2019, (or such later date as approved by the Executive Director pursuant to Article V.A.), it shall have renovated the Building on the Property in accordance with this Agreement (the "Assistance Goal").
3. Article X.C., Special Event of Default if Financial Assistance Goals Not Met, is hereby amended to state that Developer agrees that if the Assistance Goal of Project renovation is not met, as determined in the sole discretion of the Executive Director, by September 30, 2019, (or such later date as approved by the Executive Director pursuant to Article V.A.), Developer will repay all sums paid to Developer plus Interest.
4. Notwithstanding the date of execution of this Second Amendment, this Second Amendment is deemed effective on September 30, 2018.
5. Upon execution of this Second Amendment by the parties, Developer shall record the Second Amendment in the office of the St. Louis County Recorder and shall pay all costs associated therewith. Upon recording, Developer shall immediately submit to DEDA an executed original of the Second Amendment showing the date and document number of record, or a duly certified copy of the filed original.
6. Except as provided in this Second Amendment, the terms and conditions contained in the Agreement shall remain in force and effect.

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

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY

PALADIN PROPERTIES, LLC

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

By \_\_\_\_\_  
Its Chief Manager

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Tim McShane and Zack Filipovich, the President and Secretary, respectively, of the Duluth Economic Development Authority of Duluth, an economic development authority created and existing under Minnesota Statutes, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Bob Boone, the Chief Manager, of Paladin Properties, LLC, a limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public

This instrument was drafted by:

Joan M. Christensen  
Attorney for DEDA  
410 City Hall  
Duluth, MN 55802  
(218) 730-5490

## RESOLUTION 19D-15

### RESOLUTION AUTHORIZING A SECOND AMENDMENT TO THE BRIDGE LOAN PROMISSORY NOTE, C.I.F. BRIDGE LOAN AGREEMENT, AND MORTGAGE LOAN RIDER EXTENDING THE MATURITY DATE OF THE LOAN RELATED TO THE ARTSPACE PROJECT

WHEREAS, the Duluth Housing Trust Fund, Inc. ("DHTF") loaned to the Washington Studios Limited Partnership (the "Borrower") the original principal amount of Eighty Thousand and No/100 Dollars (\$80,000.00) as evidenced by a Bridge Loan Promissory Note dated July 9, 1996 in such amount (the "Note"), as modified by that certain Mortgage Loan Rider dated August 5, 1996 (the "Mortgage Rider"); and

WHEREAS, the proceeds of the Note were used by the Borrower in the construction of a 39-unit affordable housing development providing live/work artist housing located at 315 North Lake Avenue, Duluth, Minnesota (the "Project"); and

WHEREAS, the Note is secured by a mortgage lien on the Project, which mortgage lien is evidenced by that certain C.I.F. Bridge Loan Agreement dated July 9, 1996, by the Borrower in favor of DHTF and recorded with the St. Louis County Recorder as Document No. 665186 (the "Mortgage"), as modified by the Mortgage Rider; and

WHEREAS, DHTF's interest in the Note, the Mortgage, and the Mortgage Rider, was assigned to and assumed by the Duluth Economic Development Authority ("DEDA") pursuant to an Assignment and Assumption Agreement (Washington School Project) dated June 19, 1996, recorded with the St. Louis County Recorder as Document No. 665187 (the "DEDA Assignment"); and

WHEREAS, DEDA, Borrower and Artspace Projects, Inc. entered into that certain Amendment to Bridge Loan Promissory Note, C.I.F. Bridge Loan Agreement and Mortgage Loan Rider dated April 23, 2014, recorded with the St. Louis County Recorder as Document No. 1236939 (the "Amendment" and, together with the Note, the Mortgage, the Mortgage Rider, and any other documents creating, evidencing, or securing the debt described in the Note, the "Loan Documents," with the loan evidenced by the Loan Documents referred to as the "Loan"), which, among other things, extended the maturity date and Term of the Loan and deleted the amortization schedule of the Loan; and

WHEREAS, the Note, as amended by the Amendment, became due and payable in full on January 1, 2019; and

WHEREAS, the Borrower has requested that the Authority extend the maturity date of the Loan to January 1, 2024, with payments continuing to be made by the Borrower from and to the extent of the Borrower's Surplus Cash (the "Maturity Date Extension"); and

WHEREAS, the Authority wishes to continue its support of the Project; and

WHEREAS, the Authority desires to authorize the requested Maturity Date Extension; and

WHEREAS, the Authority must enter into one or more documents for the Maturity Date Extension to occur including a Second Amendment to Bridge Loan Promissory Note, C.I.F. Bridge Loan Agreement, and Mortgage Loan Rider that is substantially in the form that is attached hereto ("Maturity Date Extension Documents");

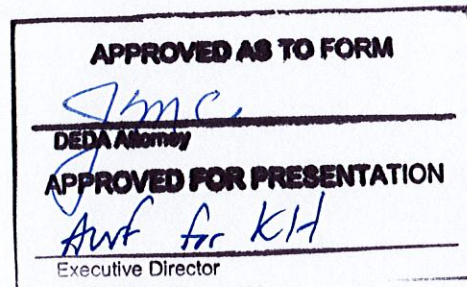
NOW, THEREFORE, BE IT RESOLVED, that the DEDA Board of Commissioners authorizes and approves the Maturity Date Extension.

RESOLVED FURTHER, that the proper DEDA officials are hereby authorized to execute the Maturity Date Extension Documents, including, but not limited to, a Second Amendment to Bridge Loan Promissory Note, C.I.F. Bridge Loan Agreement, and Mortgage Loan Rider that is substantially in the form that is attached (Contract No. \_\_\_\_\_) and any additional documents that reasonably may be required with respect to the Maturity Date Extension.

Approved by the Duluth Economic Development Authority this 24th day of April, 2019.

ATTEST:

\_\_\_\_\_  
Executive Director



STATEMENT OF PURPOSE: The purpose of this resolution is to extend the terms of the promissory note, CIF Bridge Loan Agreement and mortgage for the Artspace project located in the former Washington School (315 Lake Avenue North, Duluth).

**THIS DOCUMENT IS EXEMPT FROM MORTGAGE REGISTRATION TAX  
PURSUANT TO MINNESOTA STATUTES, SECTION 287.04(h).**

**SECOND AMENDMENT TO BRIDGE LOAN PROMISSORY NOTE, C.I.F. BRIDGE  
LOAN AGREEMENT, AND MORTGAGE LOAN RIDER  
(Washington Studios)**

**THIS SECOND AMENDMENT TO BRIDGE LOAN PROMISSORY NOTE, C.I.F. BRIDGE LOAN AGREEMENT, AND MORTGAGE LOAN RIDER** (this “Second Amendment”) is made and entered into this \_\_\_ day of April, 2019, but effective as of January 1, 2019 (the “Effective Date”), by and among the **Duluth Economic Development Authority**, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, with its principal office located at 411 West First Street, Room 402, Duluth, Minnesota 55802 (the “Lender”), **Washington Studios Limited Partnership**, a Minnesota limited partnership, with its principal office located at 250 Third Avenue North, Suite 400, Minneapolis, Minnesota 55401 (the “Partnership”), and **Artspace Projects, Inc.**, a Minnesota nonprofit corporation and the general partner of the Partnership, with its principal office located at 250 Third Avenue North, Suite 400, Minneapolis, Minnesota 55401 (“Artspace” and, together with the Partnership, the “Borrower”).

**RECITALS:**

A. The Duluth Housing Trust Fund, Inc. (“DHTF”) loaned to the Borrower the original principal amount of Eighty Thousand and No/100 Dollars (\$80,000.00) as evidenced by a Bridge Loan Promissory Note dated July 9, 1996 in such amount (the “Note”), as modified by that certain Mortgage Loan Rider dated August 5, 1996 (the “Mortgage Rider”).

B. The Note is secured by a mortgage lien on the property legally described in the attached **Exhibit A** (the “Property”), which mortgage lien is evidenced by that certain C.I.F. Bridge Loan Agreement dated July 9, 1996, by the Borrower in favor of DHTF and recorded with the St. Louis County Recorder as Document No. 665186 (the “Mortgage”), as modified by the Mortgage Rider.

C. DHTF’s interest in the Note, the Mortgage, and the Mortgage Rider was assigned to and assumed by the Lender pursuant to an Assignment and Assumption Agreement (Washington

School Project) dated June 19, 1996, recorded with the St. Louis County Recorder as Document No. 665187 (the “DEDA Assignment”); and

D. DEDA and Borrower entered into that certain Amendment to Bridge Loan Promissory Note, C.I.F. Bridge Loan Agreement and Mortgage Loan Rider dated April 23, 2014, recorded with the St. Louis County Recorder as Document No. 1236939 (the “Amendment” and, together with the Note, the Mortgage, the Mortgage Rider, and any other documents creating, evidencing, or securing the debt described in the Note, the “Loan Documents,” with the loan evidenced by the Loan Documents referred to as the “Loan”), which, among other things, extended the maturity date and Term of the Loan and deleted the amortization schedule of the Loan.

E. The Note, as amended by the Amendment, became due and payable in full on January 1, 2019.

F. The Borrower has requested that the Lender extend the Maturity Date and Term of the Loan and the Lender is willing to extend the Maturity Date and Term of the Loan all on the terms and conditions set forth in this Second Amendment.

G. Capitalized terms used in this Second Amendment and not otherwise defined shall have the meanings assigned to them in the Loan Documents.

**NOW, THEREFORE**, in consideration of the foregoing Recitals and the mutual covenants and promises set forth in this Second Amendment and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Maturity Date. The Maturity Date of the Loan shall be January 1, 2024.
2. Term. The reference to January 1, 2019 in the third paragraph of the Note, as amended by the Amendment, and in Section 7 of the Mortgage, as amended by the Amendment, is deleted and replaced with January 1, 2024.
3. Repayment. Principal and interest shall continue to be payable on March 1 of each year only from and to the extent of one hundred percent (100%) of the Borrower’s Surplus Cash as calculated for the Borrowers immediately preceding calendar year, with any and all accrued but unpaid principal and interest due and payable on the Maturity Date.
4. Outstanding Loan Balance. The outstanding balance of the Loan, including principal and accrued and unpaid interest, as of January 1, 2019, was One Hundred Sixty-Nine Thousand Nine Hundred Seventeen and 81/100 Dollars (\$169,917.81).
5. Effect of Amendment. Except as modified by this Second Amendment, all other terms and conditions set forth in the Loan Documents shall remain in full force and effect.
6. Entire Agreement; Modification. This Second Amendment embodies and constitutes the entire understanding among the parties with respect to the transactions contemplated herein and all prior or contemporaneous agreements, understandings,

representations and statements, oral or written are merged into this Second Amendment. Neither this Second Amendment nor any provision hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing and signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought.

7. Recording of this Second Amendment. The Borrower shall cause a fully-executed original of this Second Amendment to be recorded with the St. Louis County Recorder and, within a reasonable time after such recording, shall return either the recorded original or a conformed, file-stamped copy of this Second Amendment to the Lender.

8. Miscellaneous.

(a) This Second Amendment shall be construed according to and governed by the laws of the State of Minnesota.

(b) The captions contained in this Second Amendment are for convenience of reference only and in no event define, describe or limit the scope or intent of this Second Amendment or any of the provisions or terms hereof.

(c) This Second Amendment shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns.

(d) This Second Amendment may be executed in counterparts, each of which will be an original and all of which together will be one agreement.

**[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY. SIGNATURES BEGIN ON THE FOLLOWING PAGE.]**

**IN WITNESS WHEREOF**, the parties have executed this Second Amendment effective as of the Effective Date.

**BORROWER:**

**WASHINGTON STUDIOS LIMITED PARTNERSHIP**, a Minnesota limited partnership

By: Artspace Projects, Inc., a Minnesota nonprofit corporation  
Its: General Partner

By: \_\_\_\_\_  
Gregory P. Handberg  
Authorized Signatory

**ARTSPACE PROJECTS, INC.**, a Minnesota nonprofit corporation

By: \_\_\_\_\_  
Gregory P. Handberg  
Authorized Signatory

State of Minnesota            )  
  ) ss.  
County of Hennepin         )

This instrument was acknowledged before me on April \_\_\_\_\_, 2019 by Gregory P. Handberg an Authorized Signatory of Artspace Projects, Inc., a Minnesota nonprofit corporation, by and on behalf of such nonprofit corporation in its own capacity and as the general partner of Washington Studios Limited Partnership, a Minnesota limited partnership, on behalf of such limited partnership.

Notary Public \_\_\_\_\_



**LENDER:**

**DULUTH ECONOMIC  
DEVELOPMENT AUTHORITY**

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

and

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

State of Minnesota            )  
  ) ss.  
County of St. Louis         )

This instrument was acknowledged before me this \_\_\_\_ day of April, 2019, by \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and the \_\_\_\_\_, respectively, of the Duluth Economic Development Authority, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, on behalf of such authority.

\_\_\_\_\_  
Notary Public

This instrument was drafted by:  
Cannon, Heyman & Weiss LLP  
726 Exchange Street, Suite 500  
Buffalo, New York 14210

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

The following real property that is located in St. Louis County, Minnesota:

Lots 1, 3, 5, 7, 9, 11, 13 and 15, West Third Street and Lots 2, 4, 6, 8, 10, 12, 14 and 16, West Fourth Street, and the vacated alley lying between West Third Street, West Fourth Street, 1st Avenue West and Lake Avenue, all of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota.

EXCEPT THE FOLLOWING:

1. That part of Lots 1, 3, 5, 7, 9 and 11, West Third Street and that part of Lots 2, 4, 6, 8 and 10, West Fourth Street, and that part of the vacated alley between West Third Street and West Fourth Street of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, lying between elevations 754.39 feet and 768.28 feet National Geodetic Vertical Datum (NGVD) 1929 and described jointly as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 a distance of 13.65 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 15.67 feet to the point of beginning; thence South 47 degrees 02 minutes 34 seconds West a distance of 25.96 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 1.67 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 16.00 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 1.67 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 194.95 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 139.77 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 26.71 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 16.00 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 14.25 feet; thence North 02 degrees 02 minutes 34 seconds East a distance of 5.66 feet; thence South 87 degrees 57 minutes 26 seconds East a distance of 5.66 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 14.49 feet; thence North 02 degrees 02 minutes 34 seconds East a distance of 5.66 feet; thence South 87 degrees 57 minutes 26 seconds East a distance of 5.66 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 79.47 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 27.51 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 10.21 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 27.51 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 30.13 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 70.96 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 45.63 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 4.69 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 0.92 feet; thence South 42 degrees 57

minutes 26 seconds East a distance of 21.02 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 0.92 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 201.01 feet to the point of beginning.

EXCEPTED FROM THIS PARCEL: That part of Lot 1, West Third Street of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, described as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 a distance of 13.65 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 15.67 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 25.96 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 102.19 feet to the point of beginning; thence South 47 degrees 02 minutes 34 seconds West a distance of 4.25 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 9.76 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 11.75 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 9.76 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 7.50 feet to the point of beginning.

2. That part of Lots 3, 5 and 7, West Third Street of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, lying between elevations 768.28 feet and 773.70 feet NGVD 1929 and described as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 a distance of 13.65 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 171.43 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 31.93 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 114.97 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 13.70 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 30.04 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 42.69 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 13.97 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 2.34 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 70.96 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 10.21 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 42.26 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 6.22 feet to the point of beginning; thence South 42 degrees 57 minutes 26 seconds East a distance of 68.98 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 46.48 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 3.82 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 36.28 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 72.80 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 82.76 feet to the point of beginning.

3. That part of Lots 7, 9 and 11, West Third Street and the vacated alley between West Third Street and West Fourth Street, all of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, lying between elevations 768.28 feet and 786.00 feet NGVD 1929 and described as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 a distance of 13.65 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 171.43 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 31.93 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 114.97 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 13.70 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 30.04 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 42.69 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 13.97 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 2.34 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 70.96 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 10.21 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 42.26 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 6.22 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 68.98 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 46.48 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 3.82 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 36.28 feet to the point of beginning; thence South 47 degrees 02 minutes 34 seconds West a distance of 72.17 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 99.06 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 26.71 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 2.90 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 45.46 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 101.96 feet to the point of beginning.

4. That part of Lots 1, 3, 5, 7, 9 and 11, West Third Street and that part of Lot 2, 4, 6, 8 and 10, West Fourth Street, and that part of the vacated alley between West Third Street and West Fourth Street all of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, lying between elevations 737.84 feet and 754.39 feet NGVD 1929 and described as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 a distance of 13.65 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 140.93 feet to the point of beginning; thence South 47 degrees 52 minutes 18 seconds West a distance of 40.59 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 81.32 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 87.88 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 3.82 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 108.45 feet; thence North 42 degrees 57

minutes 26 seconds West a distance of 99.06 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 26.71 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 16.00 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 14.25 feet; thence North 02 degrees 02 minutes 34 seconds East a distance of 5.66 feet; thence South 87 degrees 57 minutes 26 seconds East a distance of 5.66 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 14.49 feet; thence North 02 degrees 02 minutes 34 seconds East a distance of 5.66 feet; thence South 87 degrees 57 minutes 26 seconds East a distance of 5.66 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 165.44 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 30.51 feet to the point of beginning.

Subject to a 8-foot easement over and across that part of Lot 11, West Third Street and Lot 12, West Fourth Street and the vacated alley between said lots, all in Duluth Proper First Division, Saint Louis County, Minnesota, the northeasterly line is described as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 and Lots 3, 5, 7, 9 and 11 a distance of 251.40 feet to the point of beginning; thence North 42 degrees 57 minutes 26 seconds West a distance of 299.96 feet to the northwesterly line of said Lot 12 and there terminating.

RESOLUTION 19D-16

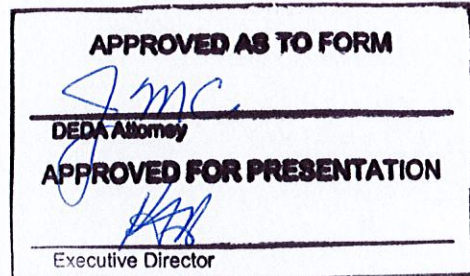
RESOLUTION AUTHORIZING THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY TO ENTER INTO A THIRD AMENDED AND RESTATED MASTER SUBORDINATION AGREEMENT REGARDING THE WASHINGTON SCHOOL PROJECT

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into a Third Amended and Restated Master Subordination Agreement (DEDA Contract No. \_\_\_\_\_), substantially in the form of that attached hereto, with Washington Studios Limited Partnership ("Washington Partnership"), Artspace Projects, Inc., TCF Bank Minnesota ("TCF"), City of Duluth ("City") and Housing and Redevelopment Authority of Duluth, Minnesota ("HRA"), regarding the Washington School Project.

Approved by the Duluth Economic Development Authority this 24<sup>th</sup> day of April, 2019.

ATTEST:

\_\_\_\_\_  
Executive Director



STATEMENT OF PURPOSE: The purpose of this resolution is to authorize execution of a Third Amended and Restated Master Subordination Agreement setting forth the priority of liens with respect to the Washington School Project loans as follows:

TCF Loan	\$ 338,000
DEDA Loan	419,324
DEDA II Loan	419,324
City Abatement Loan	312,636
City Loan	100,000
HRA Loan	285,000
City HOME Loan	100,000
DEDA Assigned Loan	80,000

Washington Partnership has been working with its first mortgage lender, TCF, to extend their financing time line of the Washington School Project. The partnership continues to work on maintenance analysis for the purpose of resyndicating housing tax credits for this property. The order of priority of all liens subordinate to TCF remains unchanged.

**THIRD AMENDED AND RESTATED  
MASTER SUBORDINATION AGREEMENT**

THIS THIRD AMENDED AND RESTATED MASTER SUBORDINATION AGREEMENT (the "Agreement") is made this \_\_\_\_ day of April, 2019, by and between TCF National Bank, a national banking association, formerly known as TCF Bank Minnesota, fsb, a federally chartered stock savings bank ("TCF"), the Duluth Economic Development Authority, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469 ("DEDA"), the City of Duluth, a Minnesota municipal corporation (the "City"), the Housing and Redevelopment Authority of Duluth, Minnesota, a public body corporate and politic (the "HRA"), Artspace Projects, Inc., a Minnesota non-profit corporation (the "Developer"), and Washington Studios Limited Partnership, a Minnesota limited partnership (the "Partnership").

**RECITALS:**

**A.** Partnership is the fee owner of certain real property located in the City of Duluth, County of St. Louis, State of Minnesota (the "**Property**") and legally described on Exhibit A attached hereto and be reference made a part hereof.

**B.** Partnership is indebted to TCF pursuant to a promissory note in the original principal amount of Three Hundred Twenty-Five Thousand and no/100 Dollars (\$325,000.00) dated April 21, 1995, as amended by an Amendment to Note, Mortgage, Construction and Term Loan Agreement and Assignment of Rents dated July 24, 1996 (the "**First Amendment**"), which First Amendment increased the maximum principal amount of the note to \$339,200.00 as amended by that Amended and Restated Note dated December 19, 2006, which said Note was further amended pursuant to an Amended and Restated Note dated December 19, 2006, and further amended by that First Amendment to Promissory Note dated effective January 1, 2019 (which only extended the maturity date) (as so amended, collectively the "**TCF Note**"), and which is secured, in part, by a Mortgage on the Property executed by Partnership in favor of TCF dated April 21, 1995 and recorded in the office of the County Recorder on May 3, 1995 as Document No. 629061, as amended by the First Amendment as further amended by that Mortgage Amendment Agreement dated December 19, 2006, recorded with the St. Louis County, Minnesota County Recorder on May 4, 2007 as Document Number 050177, and as further amended by that Third Amendment to Mortgage, Security Agreement and Financing Statement and Assignment of Rents and Leases and Second Amendment to Construction and Term Loan Agreement dated effective January 1, 2019 recorded on \_\_\_\_\_, 2019 with the St. Louis County, Minnesota Recorder as Document Number \_\_\_\_\_ (as so amended, collectively the "**TCF Mortgage**"), and an Assignment of Rents and Leases executed by the Partnership in favor of TCF and recorded in the office of the County Recorder on May 3, 1995 as Document No. 629062, as amended by that that Amendment to Note, Mortgage, Construction and Term Loan Agreement and Assignment of Rents dated as July 24, 1996, recorded with the St. Louis County, Minnesota County Recorder as Document Number 0666111, and as further amended by that Third Amendment to Mortgage, Security Agreement and Financing Statement and Assignment of Rents and Leases and Second Amendment to Construction and Term Loan Agreement dated as of January 1, 2019 recorded on \_\_\_\_\_, 2019 with the St. Louis County, Minnesota Recorder as Document Number \_\_\_\_\_, (as so amended, collectively the "**TCF Assignment**").

C. Partnership has requested that TCF make an additional advance under the TCF Note, to be secured by the TCF Mortgage and TCF Assignment, in an amount sufficient to increase the current outstanding balance of the TCF Note to \$338,000.00 (among other changes), and TCF has agreed to make such additional advance pursuant to the terms of that certain Second Amendment to Amended and Restated Note dated effective April 1, 2019 and that certain Fourth Amendment to Mortgage, Security Agreement and Financing Statement and Assignment of Rents and Leases and Third Amendment to Construction and Term Loan Agreement dated effective April 1, 2019 filed \_\_\_\_\_, 2019 as Document No. \_\_\_\_\_ with the St. Louis County, Minnesota recorder, executed by Partnership and TCF (the "**TCF Amendments**") (the TCF Note, the TCF Mortgage, the TCF Assignment, the TCF Amendments and any other documents creating, evidencing or securing the debt described in the TCF Note and the TCF Amendment, including, without limitation, any financing statements filed with the Minnesota Secretary of State, shall collectively be referred to herein as the "**TCF Loan Documents**").

D. DEDA loaned the Partnership the original principal amount of Four Hundred Nineteen Thousand Three Hundred Twenty-Four and no/100 Dollars (\$419,324.00) which amount is evidenced by a promissory note of an equal amount (the "**DEDA Note**"), which is secured by a mortgage on the Property executed by Partnership in favor of DEDA dated April 21, 1996 and recorded with the St. Louis County Recorder as Document No. 629065 (the "**DEDA Mortgage**") and an assignment of rents and leases dated April 21, 1996 and recorded with the St. Louis County Recorder as Document No. 629067 (the "**DEDA Assignment**") (the DEDA Note, the DEDA Mortgage, the DEDA Assignment and any other documents creating, evidencing or securing the debt described in the DEDA Note, including without limitation, the Amended and Restated Development Agreement (Document No. 629063) and the Assessment Agreement (Document No. 629072) shall be collectively referred to herein as the "**DEDA Loan Documents**").

E. DEDA loaned the Partnership the original principal amount of Four Hundred Nineteen Thousand Three Hundred Twenty-Four and no/100 Dollars (\$419,324.00) which amount is evidenced by a promissory note of an equal amount (the "**DEDA II Note**"), which is secured by a mortgage on the Property executed by Partnership in favor of DEDA dated April 21, 1996 and recorded with the St. Louis County Recorder as Document No. 629066 (the "**DEDA II Mortgage**") (the DEDA II Note, the DEDA II Mortgage, and any other documents creating, evidencing or securing the debt described in the DEDA II Note shall be collectively referred to herein as the "**DEDA II Loan Documents**").

F. The City loaned the Partnership the original principal amount of Three Hundred Twelve Thousand Six Hundred Thirty-Six and no/100 Dollars (\$312,636.00) which amount is evidenced by a promissory note of an equal amount (the "**Abatement Note**"), which is secured by a mortgage on the Property executed by Partnership in favor of the City dated April 21, 1996 and recorded with the St. Louis County Recorder as Document No. 629068 (the "**Abatement Mortgage**") (the Abatement Note, the Abatement Mortgage and any other documents creating, evidencing or securing the debt described in the Abatement Note shall be collectively referred to herein as the "**Abatement Loan Documents**").

G. The City loaned the Partnership the original principal amount of One Hundred Thousand and no/100 Dollars (\$100,000.00) which amount is evidenced by a promissory note of an equal amount (the "**City Note**"), which is secured by a mortgage on the Property executed by Partnership in favor of the City dated April 21, 1996 and recorded with the St. Louis County Recorder as



Document No. 629069 (the "**City Mortgage**") (the City Note, the City Mortgage and any other documents creating, evidencing or securing the debt described in the City Note, including without limitation, the Amended and Restated Development Agreement, as amended (Document Nos. 629653, 629654 and 629064) shall be collectively referred to herein as the "**City Loan Documents**").

**H.** The HRA loaned the Partnership the original principal amount of Two Hundred Eighty Five Thousand and no/100 Dollars (\$285,000.00) which amount is evidenced by a promissory note of an equal amount (the "**HRA Note**"), which is secured by a mortgage on the Property executed by Partnership in favor of the HRA dated April 21, 1996 and recorded with the St. Louis County Recorder as Document No. 629070 (the "**HRA Mortgage**") (the HRA Note, the HRA Mortgage and any other documents creating, evidencing or securing the debt described in the HRA Note shall be collectively referred to herein as the "**HRA Loan Documents**").

**I.** The City loaned the Partnership the original principal amount of One Hundred Thousand and no/100 Dollars (\$100,000.00) which amount is evidenced by a promissory note of equal amount (the "**HOME Note**"), which is secured by a mortgage on the Property (the "**HOME Mortgage**") executed by Partnership in favor of the City dated April 21, 1996 and recorded with the St. Louis County Recorder as Document No. 629071 (the HOME Note, the HOME Mortgage and any other documents creating, evidencing or securing the debt described in the HOME Note, including, without limitation, the HOME Program Loan Agreement, as amended (Document Nos. 629655, 657200 and 657201) shall be collectively referred to herein as the "**HOME Loan Documents**").

**J.** The Partnership agreed to pay to the Developer, as and for a deferred developer's fee, the original principal amount of Thirty-Eight Thousand Two Hundred Twenty and no/100 Dollars (\$38,220.00) which amount is evidenced by a promissory note of equal amount (the "**Deferred Fees Note**"), which is secured by a mortgage on the Property (the "**Junior Mortgage**") executed by Partnership in favor of Developer recorded with the St. Louis County Recorder as Document No. 647017. The Partnership intends to pay off the Deferred Fees Note with the proceeds of the additional advance described in Recital C above made by TCF pursuant to the TCF Amendments.

**K.** The Duluth Housing Trust Fund, Inc. ("**DHTF**") loaned to the Partnership the original principal amount of Eighty Thousand and no/100 Dollars (\$80,000.00) which amount is evidenced by a promissory note dated July 6, 1996 of equal amount (the "**DEDA Assigned Note**"), which is secured by a mortgage on the Property ( the "**DEDA Assigned Mortgage**") executed by the Partnership in favor of DHTF recorded with the St. Louis County Recorder as Document No. 665186 (the DEDA Assigned Note, the DEDA Assigned Mortgage, and any other documents creating, evidencing or securing the debt described in the DEDA Assigned Note shall be collectively referred to herein as the "**DEDA Assigned Loan Documents**"). DHTF's interest in the DEDA Assigned Loan Documents was subsequently assigned to DEDA pursuant to an Assignment and Assumption Agreement dated June 19, 1996, and recorded with the St. Louis County Recorder as Document No. 665187.

#### **AGREEMENTS:**

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good, fair and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. DEDA acknowledges the validity of and consents to the TCF Loan Documents as amended by the TCF Amendments. DEDA acknowledges and agrees that the liens of the TCF Loan Documents, as amended by the TCF Amendments, are senior, superior and prior in all respects to the liens of the DEDA Loan Documents and the DEDA II Loan Documents. DEDA declares, covenants, consents and agrees that, irrespective of the respective recording dates and document numbers, the liens of the DEDA Loan Documents and the DEDA II Loan Documents are and shall remain, in all respects, junior, inferior and subordinate to the lien of the TCF Loan Documents, as amended by the TCF Amendments, and to any and all renewals, modifications, amendments, consolidations, replacements and extensions thereof, but only to the extent of the outstanding principal amounts thereof, after the additional advance contemplated by the TCF Amendments.

2. The City acknowledges the validity of and consents to the TCF Loan Documents as amended by the TCF Amendments, the DEDA Loan Documents and the DEDA II Loan Documents. The City acknowledges and agrees that the liens of the TCF Loan Documents as amended by the TCF Amendments, the DEDA Loan Documents and the DEDA II Loan Documents are senior, superior and prior in all respects to the liens of the Abatement Loan Documents. The City declares, covenants, consents and agrees that, irrespective of the respective recording dates and document numbers, the liens of the Abatement Loan Documents are and shall remain, in all respects, junior, inferior and subordinate to the lien of the TCF Loan Documents as amended by the TCF Amendments, the DEDA Loan Documents and the DEDA II Loan Documents, and to any and all renewals, modifications, amendments, consolidations, replacements and extensions thereof, but only to the extent of the outstanding principal amounts thereof after the additional advance contemplated by the TCF Amendments.

3. The City acknowledges the validity of and consents to the TCF Loan Documents as amended by the TCF Amendments, the DEDA Loan Documents, the DEDA II Loan Documents, and the Abatement Loan Documents. The City acknowledges and agrees that the liens of the TCF Loan Documents as amended by the TCF Amendments, the DEDA Loan Documents, the DEDA II Loan Documents and the Abatement Loan Documents are senior, superior and prior in all respects to the liens of the City Loan Documents. The City declares, covenants, consents and agrees that, irrespective of the respective recording dates and document numbers, the liens of the City Loan Documents are and shall remain, in all respects, junior, inferior and subordinate to the lien of the TCF Loan Documents as amended by the TCF Amendments, the DEDA Loan Documents, the DEDA II Loan Documents and the Abatement Loan Documents, and to any and all renewals, modifications, amendments, consolidations, replacements and extensions thereof, but only to the extent of the outstanding principal amounts thereof after the additional advance contemplated by the TCF Amendments.

4. The HRA acknowledges the validity of and consents to the TCF Loan Documents as amended by the TCF Amendments, the DEDA Loan Documents, the DEDA II Loan Documents, the Abatement Loan Documents and the City Loan Documents. The HRA acknowledges and agrees that the liens of the TCF Loan Documents as amended by the TCF Amendments, the DEDA Loan Documents, the DEDA II Loan Documents, the Abatement Loan Documents and the City Loan Documents are senior, superior and prior in all respects to the liens of the HRA Loan

Documents. The HRA declares, covenants, consents and agrees that, irrespective of the respective recording dates and document numbers, the liens of the HRA Loan Documents are and shall remain, in all respects, junior, inferior and subordinate to the lien of the TCF Loan Documents as amended by the TCF Amendments, the DEDA Loan Documents, the DEDA II Loan Documents, the Abatement Loan Documents and the City Loan Documents, and to any and all renewals, modifications, amendments, consolidations, replacements and extensions thereof, but only to the extent of the outstanding principal amounts thereof after the additional advance contemplated by the TCF Amendments.

5. The City acknowledges the validity of and consents to the TCF Loan Documents as amended by the TCF Amendments, the DEDA Loan Documents, the DEDA II Loan Documents, the Abatement Loan Documents, the City Loan Documents and the HRA Loan Documents. The City acknowledges and agrees that the liens of the TCF Loan Documents as amended by the TCF Amendments, the DEDA Loan Documents, the DEDA II Loan Documents, the Abatement Loan Documents, the City Loan Documents and the HRA Loan Documents are senior, superior and prior in all respects to the liens of the HOME Loan Documents. The City declares, covenants, consents and agrees that, irrespective of the respective recording dates and document numbers, the liens of the HOME Loan Documents are and shall remain, in all respects, junior, inferior and subordinate to the lien of the TCF Loan Documents as amended by the TCF Amendments, the DEDA Loan Documents, the DEDA II Loan Documents, the Abatement Loan Documents, the City Loan Documents and the HRA Loan Documents, and to any and all renewals, modifications, amendments, consolidations, replacements and extensions thereof, but only to the extent of the outstanding principal amounts thereof after the additional advance contemplated by the TCF Amendments.

6. DEDA acknowledges the validity of and consents to the TCF Loan Documents as amended by the TCF Amendments, the DEDA Loan Documents, the DEDA II Loan Documents, the Abatement Loan Documents, the City Loan Documents, the HRA Loan Documents and the HOME Loan Documents. DEDA acknowledges and agrees that the liens of the TCF Loan Documents as amended by the TCF Amendments, the DEDA Loan Documents, the DEDA II Loan Documents, the Abatement Loan Documents, the City Loan Documents, the HRA Loan Documents and the HOME Loan Documents are senior, superior and prior in all respects to the liens of the DEDA Assigned Loan Documents. DEDA declares, covenants, consents and agrees that, irrespective of the respective recording dates and document numbers, the liens of the DEDA Assigned Loan Documents are and shall remain in all respects junior, inferior and subordinate to the lien of the TCF Loan Documents as amended by the TCF Amendments, the DEDA Loan Documents, the DEDA II Loan Documents, the Abatement Loan Documents, the City Loan Documents, the HRA Loan Documents and the HOME Loan Documents, into any and all renewals, modifications, amendments, consolidations, replacements and extensions thereof, but only to the extent of the outstanding principal amounts thereof after the additional advance contemplated by the TCF Amendments.

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

8. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

9. This Agreement shall be governed by the laws of the State of Minnesota. This Agreement contains the entire agreement of the parties hereto with respect to the matters contained herein. No other agreement, statement or promise made by any party hereto or by any employee, officer or agent of any party hereto that is not in writing and signed by all the parties to this Agreement shall be binding.

[NEXT PAGES ARE THE SIGNATURE PAGES]

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

**Washington Studios Limited Partnership**

By: Artspace Projects, Inc., its general partner

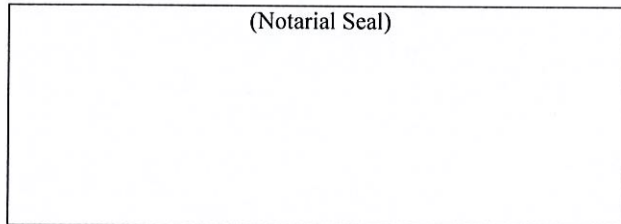
By: \_\_\_\_\_

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

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me this \_\_\_\_ day of April, 2019, by Gregory P. Handberg, the \_\_\_\_\_ of Artspace Projects, Inc., a Minnesota nonprofit corporation, the general partner of Washington Studios Limited Partnership, a Minnesota limited partnership, on behalf of the partnership.

(Notarial Seal)



\_\_\_\_\_  
Notary Public

[Signature Page to Washington Studios Amended and Restated Master Subordination Agreement]

**Artspace Projects, Inc.**

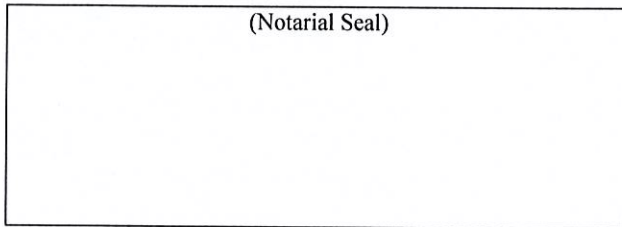
By: \_\_\_\_\_

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

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me this \_\_\_\_ day of April, 2019, by Gregory P. Handberg, the \_\_\_\_\_ of Artspace Projects, Inc., a Minnesota nonprofit corporation, on behalf of the corporation.

(Notarial Seal)



\_\_\_\_\_  
Notary Public

[Signature Page to Washington Studios Amended and Restated Master Subordination Agreement]

**TCF National Bank**

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

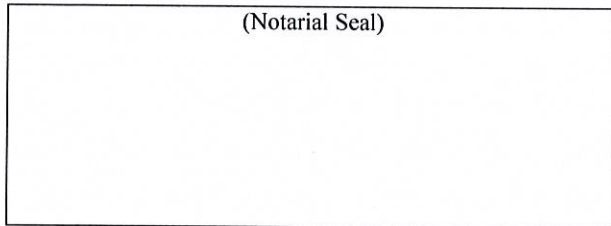
Its: \_\_\_\_\_

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

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

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me this \_\_\_\_ day of April, 2019, by Molly Rutzick, the Vice President of TCF National Bank, a national banking association, on behalf of the bank.



\_\_\_\_\_  
Notary Public

**Duluth Economic Development Authority**

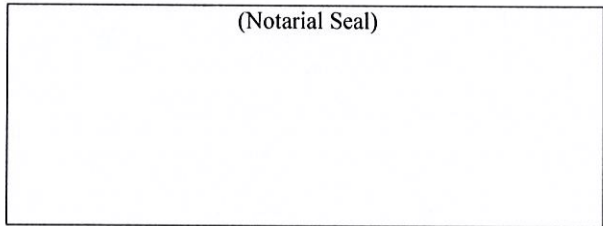
By: \_\_\_\_\_  
Its: President

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

STATE OF MINNESOTA    )  
                                  ) ss.  
COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me this \_\_\_\_ day of April, 2019, by \_\_\_\_\_ and \_\_\_\_\_, the President and Secretary, respectively of the Duluth Economic Development Authority, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, on behalf of the authority.

(Notarial Seal)



\_\_\_\_\_  
Notary Public





**Housing and Redevelopment Authority of  
Duluth**

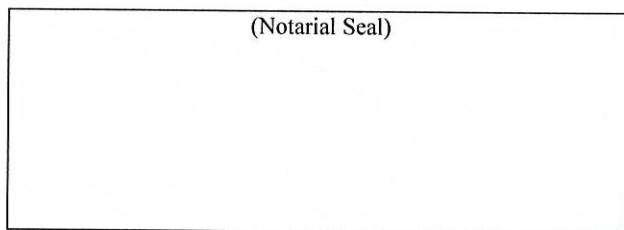
By: \_\_\_\_\_

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

STATE OF MINNESOTA    )  
                                  ) ss.  
COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me this \_\_\_\_ day of April, 2019, by \_\_\_\_\_, the \_\_\_\_\_ of the Housing and Redevelopment Authority of Duluth, a public body corporate and politic, on behalf of the authority.

(Notarial Seal)



\_\_\_\_\_  
Notary Public

This instrument was drafted by:

Paul E. Kaminski  
Best & Flanagan LLP  
60 South Sixth Street, Suite 2700  
Minneapolis, MN 55402

[Signature Page to Washington Studios Amended and Restated Master Subordination Agreement]

007630/319001/5664609\_2

**EXHIBIT A**  
**Legal Description**

**DESCRIPTION:**

Lots 1, 3, 5, 7, 9, 11, 13 and 15, West Third Street and Lots 2, 4, 6, 8, 10, 12, 14 and 16, West Fourth Street, and the vacated alley lying between West Third Street, West Fourth Street, 1st Avenue West and Lake Avenue, all of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota.

**EXCEPT THE FOLLOWING:**

1. That part of Lots 1, 3, 5, 7, 9 and 11, West Third Street and that part of Lots 2, 4, 6, 8 and 10, West Fourth Street, and that part of the vacated alley between West Third Street and West Fourth Street of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, lying between elevations 754.39 feet and 768.28 feet National Geodetic Vertical Datum (NGVD) 1929 and described jointly as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 a distance of 13.65 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 15.67 feet to the point of beginning; thence South 47 degrees 02 minutes 34 seconds West a distance of 25.96 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 1.67 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 16.00 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 1.67 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 194.95 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 139.77 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 26.71 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 16.00 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 14.25 feet; thence North 02 degrees 02 minutes 34 seconds East a distance of 5.66 feet; thence South 87 degrees 57 minutes 26 seconds East a distance of 5.66 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 14.49 feet; thence North 02 degrees 02 minutes 34 seconds East a distance of 5.66 feet; thence South 87 degrees 57 minutes 26 seconds East a distance of 5.66 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 79.47 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 27.51 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 10.21 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 27.51 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 30.13 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 70.96 feet; thence North 47 degrees 02

minutes 34 seconds East a distance of 45.63 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 4.69 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 0.92 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 21.02 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 0.92 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 201.01 feet to the point of beginning.  
**EXCEPTED FROM THIS PARCEL:** That part of Lot 1, West Third Street of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, described as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 a distance of 13.65 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 15.67 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 25.96 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 102.19 feet to the point of beginning; thence South 47 degrees 02 minutes 34 seconds West a distance of 4.25 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 9.76 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 11.75 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 9.76 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 7.50 feet to the point of beginning.

2. That part of Lots 3, 5 and 7, West Third Street of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, lying between elevations 768.28 feet and 773.70 feet NGVD 1929 and described as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 a distance of 13.65 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 171.43 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 31.93 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 114.97 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 13.70 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 30.04 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 42.69 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 13.97 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 2.34 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 70.96 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 10.21 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 42.26 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 6.22 feet to the point of beginning; thence South 42 degrees 57 minutes 26 seconds East a distance of 68.98 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 46.48 feet; thence South 42 degrees 57

minutes 26 seconds East a distance of 3.82 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 36.28 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 72.80 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 82.76 feet to the point of beginning.

3. That part of Lots 7, 9 and 11, West Third Street and the vacated alley between West Third Street and West Fourth Street, all of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, lying between elevations 768.28 feet and 786.00 feet NGVD 1929 and described as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 a distance of 13.65 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 171.43 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 31.93 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 114.97 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 13.70 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 30.04 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 42.69 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 13.97 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 2.34 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 70.96 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 10.21 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 42.26 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 6.22 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 68.98 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 46.48 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 3.82 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 36.28 feet to the point of beginning; thence South 47 degrees 02 minutes 34 seconds West a distance of 72.17 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 99.06 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 26.71 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 2.90 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 45.46 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 101.96 feet to the point of beginning.

4. That part of Lots 1, 3, 5, 7, 9 and 11, West Third Street and that part of Lot 2, 4, 6, 8 and 10, West Fourth Street, and that part of the vacated alley between West Third Street and West Fourth Street all of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, lying between elevations 737.84 feet and 754.39 feet NGVD 1929 and described as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence

South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 a distance of 13.65 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 140.93 feet to the point of beginning; thence South 47 degrees 52 minutes 18 seconds West a distance of 40.59 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 81.32 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 87.88 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 3.82 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 108.45 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 99.06 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 26.71 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 16.00 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 14.25 feet; thence North 02 degrees 02 minutes 34 seconds East a distance of 5.66 feet; thence South 87 degrees 57 minutes 26 seconds East a distance of 5.66 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 14.49 feet; thence North 02 degrees 02 minutes 34 seconds East a distance of 5.66 feet; thence South 87 degrees 57 minutes 26 seconds East a distance of 5.66 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 165.44 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 30.51 feet to the point of beginning.

Subject to a 8-foot easement over and across that part of Lot 11, West Third Street and Lot 12, West Fourth Street and the vacated alley between said lots, all in Duluth Proper First Division, Saint Louis County, Minnesota, the northeasterly line is described as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 and Lots 3, 5, 7, 9 and 11 a distance of 251.40 feet to the point of beginning; thence North 42 degrees 57 minutes 26 seconds West a distance of 299.96 feet to the northwesterly line of said Lot 12 and there terminating.

**RESOLUTION 19D-17**

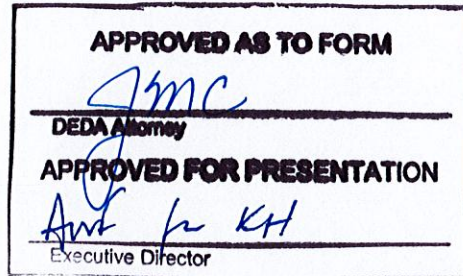
**RESOLUTION AMENDING AND APPROVING THE  
DEDA 2019 BUDGETS**

BE IT RESOLVED, by the Duluth Economic Development Authority (DEDA) that the attached DEDA Operating Fund, Debt Service Fund, Capital Projects Fund, and MRO Maintenance Fund budgets for the year 2019 are hereby amended and approved.

Approved by the Duluth Economic Development Authority this 24th day of April, 2019.

ATTEST:

\_\_\_\_\_  
Executive Director



STATEMENT OF PURPOSE: The purpose of this resolution is to approve the revision of the above mentioned 2019 DEDA budgets for agreements passed subsequent to the last approved budget, for new estimates, and the approval of carry-forward amounts for projects in various stages of completion at the end of 2018 that were included in last year's budget.



# Duluth Economic Development Authority

## 2019 Revised Budgets (04/24/2019):

Operating Fund 860

Debt Service Fund 861

Capital Projects Fund 865

MRO Maintenance Fund 866



**Duluth Economic Development Authority**

**Executive Summary - DEDA Budgets**  
 2019 Revised Budgets  
 4/24/2019

	Operating Fund #860	Debt Service Fund #861	Capital Projects Fund #865	MRO Maint Facility Fund #866
<b>Operating Fund #860</b>				
<b>Revenues</b>				
Parking Program Revenues	600,000			
TIF Admin Recovery	100,860			
Sale of Property	402,500			
Other	428,921			
<b>Proposed 2019 Fund 860 Revenue</b>	<b>1,532,281</b>			
<b>Expenses</b>				
Parking Program Expenses	(325,000)			
Atlas Cement Plant Expenses	(10,000)			
Cost Allocation Expenses (paid to City)	(400,000)			
Land Acquisitions	(1,500,000)			
Other	(755,284)			
<b>Proposed 2019 Fund 860 Expenses</b>	<b>(2,990,284)</b>			
<b>Debt Service Fund #861</b>				
<b>Revenues</b>				
Tax Increment received from the County		3,166,864		
<b>Proposed 2019 Fund 861 Revenues</b>		<b>3,166,864</b>		
<b>Expenses</b>				
PAYG Note Payments		(1,954,737)		
Transfer to City Debt Service (Medical District Ramp)		(422,175)		
Other Expenses		(22,664)		
Transfer of excess increment to Capital Projects		(767,998)		
<b>Proposed 2019 Fund 861 Expenses</b>		<b>(3,167,574)</b>		
<b>Capital Projects Fund #865</b>				
<b>Revenues</b>				
Transfer of excess increment from Debt Service			767,999	
Other			25,000	
<b>Proposed 2019 Fund 865 Revenues</b>			<b>792,999</b>	
<b>Expenses</b>				
Bridges & Skywalks			(2,682,986)	
Allocation of Admin Costs Charged to TIF Districts			(100,860)	
Other			(16,310)	
<b>Proposed 2019 Fund 865 Expenses</b>			<b>(2,800,156)</b>	
<b>MRO Maintenance Facility Fund #866</b>				
<b>Proposed 2019 Fund 866 Revenues</b>				453,540
<b>Proposed 2019 Fund 866 Expenses</b>				(582,600)
<b>Net Revenues / Expenditures</b>	(1,458,003)	(710)	(2,007,157)	(129,060)
<b>Beginning Fund Balances</b>	2,267,942	7,480	2,528,271	708,376
<b>Ending Fund Balances</b>	809,939	6,770	521,114	579,316

# Duluth Economic Development Authority

Highlighted Changes for the 2019 Revised Budget (04-24-2019)

## Operating Fund 860

The Operating Fund is a 'non-TIF' fund, meaning it does not have the statutory spending restrictions that are imposed on tax increment funding. Consequently, we have more discretion for spending this funding—examples include: administrative costs, projects located outside an existing TIF district, non-TIF eligible costs, and more. This fund has the potential to require revision several times a year as we accept and spend down 'conduit-style' developer grants that are run through the fund.

Investment Earnings – Investment earnings is already over \$13,000 for the first three months of 2019; consequently I'm increasing my annual estimate.

Other Professional Services -- Increased professional services by another \$12,000 for carryforward amounts for SAS Associates and Wenck Associates—contracts not completed that had remaining balances @ 12-31-2018.

Sale of Atlas Property – There's a 'potential' sale being worked on—nothing carved in stone yet. But we're being optimistic that with a reduction in our asking price some of the parcels may sell later this year.

Sale of the Temple Opera Building – DEDA has a potential buyer for the building—in fact it is on tonight's agenda. We are hoping to close later in the summer.

Pastoret Terrace Demolition - On the original 2019 budget I included the reimbursement that we will receive from St. Louis County when the Pastoret is demolished, but I omitted the expense. We are still hoping to demo the building and receive the reimbursement this year.

Temple Opera Carrying Costs & Boiler Replacement – At the time the original budget was passed back in September, we expected a sale of the building to have already taken place. In this budget I've added approximately a half year of carrying costs, plus a cost for the replacement of the boilers.

Conduit Grants – IPS Cranes has a remaining balance to be drawn from the DEED cleanup grant they were awarded. The balance of the grant remaining @ 12-31-2018 has been added to the 2019 budget.

Moline sanitary line replacement – This project was approved last month.

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Funds 861 and 865 are tax increment funds ... meaning they have strict statutory limitations on how, what, when, and why tax increment can be used.

## Debt Service Fund 861

Tax Increment – We now have a better idea of what we can expect in regard to tax increment that will be collected by the County. Collection (or lack thereof) on delinquent accounts will still minimally affect

the amount of increment we receive. The new district (Voyageur Hotel) isn't expected to generate increment for another couple years. The increment that we receive has a trickle-down effect on the budget spreadsheet. The more increment we receive, the more is paid to the developer on their note, and lastly, the more increment that may be available to transfer to the Capital Projects Fund.

### **Capital Projects Fund 865**

The majority of the funding for this fund comes from the debt service fund transfer – the surplus increment remaining after current debt obligations have been fulfilled. In addition to the amounts of current (2019) money that we budgeted for skywalks on the original 2019 budget, note that I've added back in designated, but unspent, funding from 2018 for the skywalk in District 19 and 22 (also see the paragraph below that was included in the original budget). In addition there is a small balance in the DEDA/City demolition contract that remained unspent at the end of 2018.

There will be continued discussion regarding bridges and skywalks connecting the Downtown to the Medical District. As will become apparent, it will take more than DEDA funding to complete some of this construction. The \$650,000 we are budgeting (setting aside) for 2019 out of District 19 will be added to the \$1.9 million that we budgeted and did not spend in 2018. These monies will be used to construct the bridge next to the Tech Village over 1st Avenue East.

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### **MRO Maintenance Facility Fund 866**

The primary purpose of this fund is to accumulate rent revenues for funding future repairs (the roof in particular) which is expected to need replacement at the end of its useful life. A moderate increase in rent was shown on the original proposed budget. For this budget we've added \$90,000 for preventative roof maintenance and a rather significant \$400,000 capital expenditure for wall repair.

**Duluth Economic Development Authority**

**DEDA Operating Fund 860**

**2019 Revised Budget (04-24-2019)**

	2018	2019	2019	2019			
	FINAL	Proposed Budget 9/26/2018	Revised Budget 4/24/2019	Parking Programs	Various Land Sales/ Acquisitions	Atlas Cement Plant	Other Operating
<b>Revenues</b>							
IDB Fees 403	1,668,715	2,442	2,442 #				2,442
Investment Earnings 401	22,807	10,000	40,000 #				40,000
Investment Earnings - Change in Fair Value Investments 420	(20,007)	-	-				
<b>Augusta TIF Recapture 404</b>	<b>3,835</b>	<b>3,835</b>	<b>3,835 #</b>				<b>3,835</b>
DEDA's Parking Program 402	583,459	600,000	600,000 #	600,000			
SLC Pastoret/Grand Ave demo contribution 415	-	325,000	325,000				325,000
Project Development Fees / Services 407	8,601	6,000	15,000 #				15,000
<b>TIF Admin Recovery 498</b>	<b>108,806</b>	<b>100,860</b>	<b>100,860</b>				<b>100,860</b>
Sale of Soo Line bridge to State of MN 497	-	-	-				-
DEED Redevelopment Grant - NorShor (Playhouse sub-grant) 497	1,640,813	-	-				-
Tax Forfeited Land Purchase/Re-Sale 409	113,837	-	10,404				10,404
Other Revenues 499	7,786	5,000	5,000 #				5,000
Land Sale - AET Property	210,000	-	- #				-
<b>Potential Land Sale - Atlas Site 411</b>	<b>-</b>	<b>-</b>	<b>52,500</b>			52,500	<b>-</b>
DEDA's 2011 EPA Atlas Cleanup Grant 412	-	-	-				-
Sale of Temple Opera Bldg 421	421	-	350,000				350,000
Temple Opera Building Rent 410	51,393	-	- #				-
Conduit Grants - Harbor Bay / Grand Avenue Estates / IPS Cranes 450	105,577	-	27,240				27,240
Cirrus Abatement - County & City / Expansion TIF 413	9,982	-	-				-
Other 998	-	-	-				-
<b>TOTAL REVENUES</b>	<b>4,516,025</b>	<b>1,053,137</b>	<b>1,532,281</b>	<b>600,000</b>	<b>-</b>	<b>52,500</b>	<b>879,781</b>
<b>EXPENDITURES</b>							
Auditing Services 501	4,048	4,000	4,500 #				4,500
Administrative Fees 598	365,000	400,000	400,000 #				400,000
<b>APEX - Marketing Program 503</b>	<b>11,218</b>	<b>10,000</b>	<b>10,000 #</b>				<b>10,000</b>
Northland Connection (Northspan) 504	15,000	15,000	15,000 #				15,000
Northforce (Northspan) 525	30,338	25,500	25,500 #				25,500
Other Professional Services 505	88,487	60,000	72,000 #				72,000
<b>DEDA's Parking Program 502</b>	<b>302,895</b>	<b>325,000</b>	<b>325,000 #</b>	<b>325,000</b>			
Meeting Expenses 507	2,913	3,500	3,500 #				3,500
Dues & memberships 518	1,420	2,000	2,000 #				2,000
Marketing 522	4,790	10,000	10,000 #				10,000
Website Development / Maintenance 511	8,523	-	- #				-
<b>Travel &amp; Training 520</b>	<b>9,207</b>	<b>10,000</b>	<b>10,000 #</b>				<b>10,000</b>
Advertising/Promotion/Printing/Copying/Postage 513	7,422	1,000	1,000 #				1,000
Other Services & Charges 514	10,754	5,000	5,000 #				5,000
Self-Insurance 515	8,196	7,850	7,350 #				7,350
Pastoret Terrace/5907 Grand Ave demo / Carrying Costs 516	23,298	5,000	330,000				330,000
<b>Stormwater/Street Lights &amp; Maintenance Assessments 517</b>	<b>10,017</b>	<b>10,500</b>	<b>10,500 #</b>				<b>10,500</b>
Tax Forfeited Land Purchase/Re-Sale 509	113,837	-	10,000				10,000
Property Taxes/Street Assessments on Land Held for Resale 519	31,341	3,094	3,094 #				3,094
Atlas Cement Plant Cleanup / Carrying Expenses 512	38,910	10,000	10,000			10,000	-
<b>Moline sanitary line replacement</b>	<b>-</b>	<b>-</b>	<b>125,000</b>				<b>125,000</b>
Professional Services - Bayfront - Lot D Cleanup / Carrying Costs 594	688	-	-				-
Temple-Opera Carrying Costs / boiler replacement 510	105,478	-	70,600 #				70,600
DEED Redevelopment Grant - NorShor (Playhouse sub-grant) 597	1,640,813	-	-				-
Temple Opera R.E. Taxes 523	11,571	-	13,000 #				13,000
Temple Opera relocation benefits 592	19,000	-	-				-
Conduit Grants - Harbor Bay / Grand Avenue Estates / IPS Cranes 550	105,577	-	27,240				27,240
Land Acquisitions 999	-	1,500,000	1,500,000		1,500,000		
<b>TOTAL EXPENDITURES</b>	<b>2,970,741</b>	<b>2,407,444</b>	<b>2,990,284</b>	<b>325,000</b>	<b>1,500,000</b>	<b>10,000</b>	<b>1,155,284</b>
<b>Net Revenue/Expenses</b>	<b>1,545,283</b>	<b>(1,354,307)</b>	<b>(1,458,003)</b>	<b>275,000</b>	<b>(1,500,000)</b>	<b>42,500</b>	<b>(275,503)</b>
<b>BEGINNING FUND BALANCE</b>	<b>722,659</b>	<b>2,346,464</b>	<b>2,267,942</b>				
<b>ENDING FUND BALANCE</b>	<b>2,267,942</b>	<b>992,157</b>	<b>809,939</b>				

**Duluth Economic Development Authority**

DEDA DEBT SERVICE FUND 861

2019 Revised Budget (04/24/2019)

	2018	2019	2019	Washington												
	FINAL	Proposed Budget (09-26-2018)	Revised Budget (04-24-2019)	Augusta dist 13	Center dist 16	Tech Village dist 19	Garfield dist 21	Medical Dist Expansion dist 22	5th Street Village Place dist 23	Duluth Renaissance dist 24	Bluestone dist 25	Pier B dist 27	Endi dist 28	Kenwood Village dist 29	Voyageur Hotel dist 31	
Beginning Fund Balance	8,621	6,770	7,480	537	710	594	552	1,355	736	620	715	563	541	557	-	
<b>Revenues</b>																
Investment Earnings	9,246	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Tax Increment</b>	<b>2,770,948</b>	<b>2,791,900</b>	<b>3,166,864</b>	<b>78,861</b>	<b>46,480</b>	<b>504,369</b>	<b>54,553</b>	<b>964,673</b>	<b>29,130</b>	<b>199,166</b>	<b>403,951</b>	<b>419,868</b>	<b>288,165</b>	<b>177,649</b>	-	
Other Revenue	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Total Revenues</b>	<b>2,780,194</b>	<b>2,791,900</b>	<b>3,166,864</b>	<b>78,861</b>	<b>46,480</b>	<b>504,369</b>	<b>54,553</b>	<b>964,673</b>	<b>29,130</b>	<b>199,166</b>	<b>403,951</b>	<b>419,868</b>	<b>288,165</b>	<b>177,649</b>	-	
<b>Total Available</b>	<b>2,788,815</b>	<b>2,798,670</b>	<b>3,174,344</b>	<b>79,398</b>	<b>47,190</b>	<b>504,963</b>	<b>55,105</b>	<b>966,028</b>	<b>29,866</b>	<b>199,786</b>	<b>404,666</b>	<b>420,431</b>	<b>288,706</b>	<b>178,206</b>	-	
<b>Expenditures</b>																
<u>DEVELOPER PAYMENTS (PAYG)</u>																
Glen Place Apts (Augusta)	55,872	56,055	75,053	75,053												
Garfield Business Park	21,627	25,444	25,444				25,444									
Village Place Apartments	16,348	16,347	16,347						16,347							
NorShor Theatre	201,326	201,753	288,365					288,365								
<b>Sheraton Hotel &amp; Condominiums</b>	<b>151,837</b>	<b>152,084</b>	<b>210,648</b>					<b>210,648</b>								
Duluth Renaissance Project	165,835	179,352	178,692							178,692						
Bluestone Commons	320,567	316,800	363,555								363,555					
<b>Pier B</b>	<b>377,376</b>	<b>379,170</b>	<b>377,881</b>									<b>377,881</b>				
Harbor Bay	177,567	178,252	258,861										258,861			
Kenwood Village	126,598	127,530	159,891											159,891		
<u>OTHER</u>																
Transfer to City's Debt Service Fund	406,214	412,842	422,175	-	-	-	-	422,175	-	-	-	-	-	-	-	
Transfer to Other Districts/Funds	17,515	15,373	15,384	3,835	-	-	-	-	11,549	-	-	-	-	-	-	
Excess TIF returned to County	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
County Administrative Fee/other admin expenses	7,264	7,280	7,280	510	710	600	560	1,355	555	620	715	563	542	550	-	
<b>Total Expenditures</b>	<b>2,045,946</b>	<b>2,068,282</b>	<b>2,399,576</b>	<b>79,398</b>	<b>710</b>	<b>600</b>	<b>26,004</b>	<b>922,543</b>	<b>28,451</b>	<b>179,312</b>	<b>364,270</b>	<b>378,444</b>	<b>259,403</b>	<b>160,441</b>	-	
<b>Fund Balance before transfer</b>	<b>742,869</b>	<b>730,388</b>	<b>774,768</b>	-	<b>46,480</b>	<b>504,363</b>	<b>29,101</b>	<b>43,485</b>	<b>1,415</b>	<b>20,474</b>	<b>40,396</b>	<b>41,987</b>	<b>29,303</b>	<b>17,765</b>	-	
<b>Less: Transfer @ Y/e to Capital Projects</b>	<b>735,389</b>	<b>723,618</b>	<b>767,998</b>	-	<b>45,770</b>	<b>503,763</b>	<b>28,541</b>	<b>42,130</b>	<b>860</b>	<b>19,854</b>	<b>39,681</b>	<b>41,424</b>	<b>28,761</b>	<b>17,215</b>	-	
<b>Ending Fund Balance</b>	<b>7,480</b>	<b>6,770</b>	<b>6,770</b>	-	<b>710</b>	<b>600</b>	<b>560</b>	<b>1,355</b>	<b>555</b>	<b>620</b>	<b>715</b>	<b>563</b>	<b>542</b>	<b>550</b>	-	
Anticipated Decertification Dates				2020	2021	2026	2027	2030	2031	2034	2040	2042	2043	2043	25 yrs AFRI	

**Duluth Economic Development Authority**

**Capital Projects Fund 865  
2019 Revised Budget (04-24-2019)**

**ADD IN CARRY-FORWARDS / ADJUST INTERDISTRICT LOANS**

		2018	2019	2019	West Duluth	Washington	Tech Village	Garfield	Medical Dist	Village Place	Renaissance	Bluestone	Pier B	Endi	Kenwood	Voyageur
		FINAL	Proposed Budget	Revised Budget	Housing	dist 16	dist 19	dist 21	dist 22	dist 23	dist 24	dist 25	dist 27	dist 28	Village	Hotel
			09-26-2018	04-24-2019	dist 7	dist 16	dist 19	dist 21	dist 22	dist 23	dist 24	dist 25	dist 27	dist 28	dist 29	dist 31
<b>BEGINNING FUND BALANCE</b>		1,946,351	473,001	2,528,271	16,310	188,311	1,991,122	164,694	205,472	7	33,517	5,870	(36,744)	(17,215)	(17,658)	(5,415)
<b>Revenues</b>																
	Investment Earnings 41	32,787	12,000	25,000	-	2,000	18,300	2,000	2,000	-	700	-	-	-	-	-
	Transfer from Debt Service 43	735,389	723,618	767,999	-	45,770	503,763	28,541	42,130	860	19,854	39,681	41,424	28,761	17,215	-
	Other Revenues 42	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>TOTAL REVENUES/TRANSFER</b>		768,176	735,618	792,999	-	47,770	522,063	30,541	44,130	860	20,554	39,681	41,424	28,761	17,215	-
<b>TOTAL AVAILABLE</b>		2,714,527	1,208,619	3,321,270	16,310	236,081	2,513,185	195,235	249,602	867	54,071	45,551	4,680	11,546	(443)	(5,415)
<b>Expenditures</b>																
	District 19 Bridge / District 22 Skywalk 60	-	650,000	2,682,986	-	-	2,473,211 <sup>(1)</sup>	-	209,775 <sup>(2)</sup>	-	-	-	-	-	-	-
	Housing Rehab - City 56	26,819	-	16,310	16,310 <sup>(3)</sup>	-	-	-	-	-	-	-	-	-	-	-
	TIF Admin Cost Allocation 59	108,806	100,860	100,860	-	5,000	5,000	-	25,000	860	5,000	20,000	20,000	10,000	10,000	-
	West Duluth Theatre 55	50,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	Other 99	631	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>TOTAL EXPENDITURES</b>		186,256	750,860	2,800,156	16,310	5,000	2,478,211	-	234,775	860	5,000	20,000	20,000	10,000	10,000	-
<b>ENDING FUND BALANCE</b>		2,528,271	457,760	521,114	-	231,081	34,974	195,235	14,827	7	49,071	25,551	(15,320)	1,546	(10,443)	(5,415)

Anticipated Decertification Dates

2015	2021	2026	2027	2030	2031	2034	2040	2042	2043	2043	25 yrs AFRTI
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The Skywalk/Bridge budget for District 19 includes \$700,000 in new money and a carryforward from 2018 of \$1,773,211.  
The Skywalk/Bridge budget for District 22 includes \$75,000 in new money and a carryforward from 2018 of \$134,775  
Balance of the City Demo contract remaining unused as of 12-31-2018.

**Inter-District Loan Balances (CASH)**

	Washington dist 16	Tech Village dist 19	Garfield dist 21	Medical Dist dist 22	Village Place dist 23	Renaissance dist 24	Bluestone dist 25	Pier B dist 27	21st Ave E dist 28	Kenwood Village dist 29	Voyageur Hotel dist 31
Actual 2015	(704)						704				
Actual 2016	(65,039)						29,388	30,281	5,370	10,597	
Actual 2017			(90,382)				(12,062)	15,563	10,541	10,597	
Actual 2018			24,334				(18,030)	(7,403)	542	557	
Actual 2018			65,787				-	(38,441)	(16,453)	(11,154)	261
Anticipated 2019			(5,500)				-	-	-	-	5,500
Anticipated Inter-District Loan Balances @ 12-31-2019	-		(5,761)				-	-	-	-	5,761

# Duluth Economic Development Authority

## DEDA MRO Maintenance Facility Fund 866

### 2019 Revised Budget - 04-24-2019

	2018	2019	2019
	<b><u>FINAL</u></b>	<b><u>Proposed Budget 9/26/2018</u></b>	<b><u>Revised Budget 4/24/2019</u></b>
<b>BEGINNING FUND BALANCE</b>	345,161	688,793	708,376
Investment Earnings	9,704	12,000	12,000
Building Rent	428,786	441,540	441,540
<b>TOTAL REVENUES</b>	438,490	453,540	453,540
<b>TOTAL AVAILABLE</b>	783,651	1,142,333	1,161,916
<b><u>EXPENDITURES</u></b>			
Repairs/Maintenance (roof repair)	58,896	75,000	165,800
Long-Term MRO Maintenance Planning	-	-	-
Capital Replacement (wall repair)	-	-	400,000
Property Insurance	16,379	16,800	16,800
<b>TOTAL EXPENDITURES</b>	75,275	91,800	582,600
<b>ENDING FUND BALANCE</b>	708,376	1,050,533	579,316

ACCUMULATED TRANSACTION LISTING (as of 6/5/2018)										
Account Number	G/L Date	Journal Number	nl Typub Lec	Name	Invoice or Batch # v / Pmt Da	Proj #	Net Amount	Check or Rcpt #	Description	Project Number
				<b>Revenues</b>						
				IDB Fees	(1,668,714.97)				501 Auditing Services	4,047.50
				Investment Earnings	(2,800.02)				598 Administrative Fees	365,000.00
				Investment Earnings - Change in Fair Value Investments	-				503 APEX - Marketing Program	11,218.33
				Augusta TIF Recapture	(3,835.00)				504 Northland Connection (Northspan)	15,000.00
				Sale of Phoenix Parking Ramp (contract for deed-final year)	-				525 Northforce (Northspan)	30,338.04
				DEDA's Parking Program	(583,459.38)				505 Other Professional Services	88,487.02
				Construction Assessments - Chadco	-				502 DEDA's Parking Program	302,895.48
				Gifts / Donations	-				507 Canal Park Business Assn Grant	-
				Project Development Fees / Services	(8,601.00)				Meeting Expenses	2,912.92
				TIF Admin Recovery	(108,806.00)				508 Telephone	-
				Sale of Soo Line bridge to State of MN	-				508 Dues & memberships	1,420.00
				DEED Redevelopment Grant - NorShor (Playhouse sub-grant)	-				518 Marketing	4,789.70
				Tax Forfeited Land Purchase/Re-Sale	(1,640,812.56)				511 Website Development / Maintenance	8,523.27
				Other Revenues	(113,837.33)				520 Travel & Training	9,207.10
				Sale of AET (Praxair) property	(7,785.65)				513 Advertising/Promotion/Printing/Copying/Postage	7,422.42
				Projected Land Sales - Atlas Site	(210,000.00)				514 Other Services & Charges	10,754.20
				DEDA's 2011 EPA Atlas Cleanup Grant	-				515 Self-Insurance	8,195.68
				Atlas-Storefront Bridge Loan - repayment by Land Sales	-				516 Pastoret Terrace / 5907 Grand Ave	23,298.17
				Atlas-Storefront Bridge Loan - future repayment by DSPA	-				517 Stormwater/Street Lights & Maintenance Assessments	10,017.29
				Temple Opera Building Rent	(51,393.00)				509 Tax Forfeited Land Purchase/Re-Sale	113,837.33
				Bayfront EPA Cleanup Grant - Lot D	-				519 Property Taxes/Street Assessments on Land Held for Resale	31,341.04
				Bayfront (Pier B) Cleanup Grant - Lot D	-				512 Atlas Cement Plant Cleanup	38,909.80
				Bayfront (Pier B) Cleanup Grant	-				0 Atlas Infrastructure	-
				Bayfront (Pier B) Redevelopment Grant - Infrastructure	(105,576.73)				521 Atlas R.E. Taxes	-
				Conduit Grants - Lincoln School / HDPE / Harbor Bay	-				524 Atlas Stormwater & Erosion Control Improvements	-
				Pier B redevelopment grant	-				594 Professional Services - Bayfront - Lot D Cleanup	687.50
				Cirrus Abatement - County & City / Expansion TIF	(9,981.90)				596 Bayfront (Pier B) Cleanup Grant	-
				unassigned	-				595 Bayfront (Pier B) Redevelopment Grant - Infrastructure	-
					-				593 Pier B redevelopment grant	-
					(4,515,603.54)				510 Temple-Opera Operating Expenses	105,478.21
					-				597 DEED Redevelopment Grant - NorShor (Playhouse sub-grant)	1,640,812.56
					-				523 Temple Opera R.E. Taxes	11,571.00
					-				550 Conduit Grants - Lincoln School / HDPE / Harbor Bay	105,576.73
					-				592 Temple Opera relocation benefits	19,000.00
					-				999 unassigned	-
					\$ (4,515,603.54)					\$ 2,970,741.29
					\$ -					\$ -
					\$ (4,515,603.54)					\$ 2,970,741.29