PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

11-0304R

RESOLUTION APPROVING A BUILDING IN DULUTH 2011 CONDITIONAL GRANT AGREEMENT BETWEEN THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY AND DEWITT-SEITZ MARKETPLACE, LLC RELATING TO THE RENOVATION OF WAREHOUSE SPACE IN THE DEWITT-SEITZ BUILDING FOR LEASE TO GEACOM, INC.

CITY PROPOSAL:

RESOLVED, that the city council of the city of Duluth does hereby approve the conditional grant agreement on file in the office of the city clerk as Public Document No. _____, between the Duluth economic development authority (DEDA) and Dewitt-Seitz Marketplace, LLC, related to the renovation of warehouse space in the Dewitt-Seitz Building for lease to GeaCom, Inc. in an amount not to exceed $200,000.

Approved:

Department Director

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

Auditor

DEDA/ATTY JC:bel 06/03/2011

STATEMENT OF PURPOSE: The purpose of this resolution is to obtain the City Council's approval of the Duluth 2011 Conditional Grant Agreement between DEDA and Dewitt-Seitz Marketplace, LLC (DSM) as is required pursuant to the business subsidy law, Minnesota Statute Section 116J.994 Subd. 3(d) and Paragraph 19 of the amended DEDA Enabling Legislation, Resolution 09-0324. DEDA approved the Agreement at its May 25, 2011 meeting.

DSM is the developer of the DeWitt-Seitz Marketplace, a multi-tenant mixed use building located in Canal Park. The primary goal of this assistance is the renovation of 7,000 s.f. of space on the 7th floor of

the building to house sales and marketing, media, hardware and software engineering and customer support activities of GeaCom, Inc., which is the developer and manufacturer of the Phrazer handheld, interactive, multi-lingual medical communication system. GeaCom is currently headquartered on the 5th floor of the Marketplace and requires additional space to accommodate growth. In exchange for this assistance, DSM has committed to the creation of 4 FTE construction jobs. It is anticipated that at least 10 individuals will be working on this renovation project. In addition to creating construction jobs and improving additional space in Canal Park, this project will help ensure that GeaCom will have the space it needs to create approximately 20 FTE positions. The estimated annual new property tax revenue to the City from this project is $1,100. This Agreement commits DSM to own and operate the building and lease this space to GeaCom or another suitable tenant for a period of ten years, or be subject to repaying the conditional grant based on a sliding scale. The commitment is backed by a mortgage lien on the property.

Relating to Resolution 11-0304R

Statement of Sources & Uses
GeaCom Project, DeWitt-Seitz Marketplace LLC

Sources:

Equity - DeWitt-Seitz *	$	886,000
BID 2011 Grant		200,000
Total Sources		$1,086,000

Uses:

Professional Fees	$	20,000
Stairs & Sprinklers		450,000
Construction		616,000
Total Uses		$1,086,000

* Per the Conditional Grant Agreement, the Company is permitted to secure a first mortgage on the assets being financed by this grant in an amount not to exceed $650,000. The DEDA mortgage would be subordinate to a first mortgage.

BUILDING IN DULUTH 2011
CONDITIONAL GRANT AGREEMENT
DEWITT-SEITZ MARKETPLACE, LLC

THIS CONDITIONAL GRANT AGREEMENT entered into this _____ day of _____, 2011, 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 DEWITT-SEITZ MARKETPLACE, LLC, a Minnesota limited liability company, whose address is 394 Lake Avenue South, Duluth, MN 55802 (hereinafter referred to as "Developer").

WHEREAS, Developer desires to renovate 7,000 square feet of non-usable warehouse space to convert it into class A office space to lease to GeaCom, Inc., the developer and manufacturer of the Phrazer handheld, interactive, multilingual medical communication system, and, in the process, create construction work for up to 10 people, which equates to four (4) full-time equivalent construction jobs in Minnesota during the construction period, and facilitate and enhance the ability to create approximately twenty (20) full-time equivalent jobs at GeaCom, Inc., the tenant of Developer; and

WHEREAS, Developer has requested assistance from DEDA for costs related to the renovation of its building since, without such assistance, Developer would be unable to commence renovation at this time; and

WHEREAS, Minnesota Statutes §469.176 was amended in 2010 to authorize cash balances in existing tax increment districts, such as Redevelopment TIF District No. 4, to be used to spur new construction or substantial rehabilitation of buildings if

doing so will create or retain jobs in the state, including construction jobs and the construction begins before July 1, 2011;

WHEREAS, Developer meets the criteria set forth in Minnesota Statutes §469.176 as well as the Building in Duluth 2011 Spending Plan for Tax Increment Financing Districts on file in the office of DEDA; and

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

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

a. A "gap" exists between the cost to Developer of constructing the Project and the funds presently available to or known to Developer to finance those costs at rates that would be economically feasible. Based on the best estimates currently available to the parties, the amount of said "gap" equals $200,000. In order to reduce this "gap", DEDA has committed to provide tax increment proceeds from TIF District No. 4;

b. Without the assistance to be provided by DEDA hereunder, the cost of constructing the Project would cause the rent factor to be charged to GeaCom, Inc. to be in excess of the amount which currently could be committed to, and therefore the Project is not currently economically feasible for Developer without DEDA assistance;

c. There are no available and affordable sources of other governmental programs or funds to meet the needs addressed under this Agreement known to Developer to fund the aforesaid "gap;"

d. There is no private market financing known to Developer available at rates which would eliminate said "gap" on terms which make the current economics feasible;

e. Without the tax increment assistance to be provided pursuant to this Agreement, the available resources would be inadequate and not

economically feasible to commence construction of said Project and that therefore, but for the tax increment assistance to be provided for hereunder, the Project would not have been commenced before July 1, 2011; and

WHEREAS, the public purpose of the tax increment assistance to be provided pursuant to this Agreement is the renovation of a building which will: 1) result in the creation of new jobs that pay a living wage and provide health insurance and other benefits; 2) contribute to the economic diversity of the City by supporting the existing industries of manufacturing and technology; 3) enhance the quality of life of City residents by redeveloping non-usable warehouse space; and 4) increase the tax base; and

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. Building shall mean the Dewitt-Seitz Building located at 394 Lake Avenue South, Duluth, MN 55802.

B. City shall mean the City of Duluth.

C. Eligible Project Costs shall mean the costs of renovation of the Leased Premises estimated to be in excess of $1,086,661 and permitted to be reimbursed under Minnesota Statutes §469.176.

D. Executive Director shall be the Executive Director of DEDA or such person or persons designated in writing by said Executive Director.

E. Full-time Equivalent or FTE shall mean employment positions within the State providing 2,080 hours of employment per year unless, prior to job creation, Developer provides documentation showing industry standards vary from 2,080 hours per year.

F. GeaCom shall mean GeaCom, Inc., the developer and manufacturer of the Phrazer handheld, interactive, multilingual medical communication system.

G. Interest shall mean the interest rate set at the implicit price deflator defined under Minnesota Statutes §275.70, subdivision 2.

H. Leased Premises shall mean 7,000 square feet on the 7th floor of the Building as shown on the attached Exhibit A to be leased to GeaCom for office space including sales and marketing, media, hardware and software engineering, and customer support.

I. Project shall mean the renovation of 7,000 square feet of non-usable warehouse space located on the seventh floor of the Dewitt-Seitz Building at 394 Lake Avenue South in Duluth for the purpose of leasing the same to GeaCom, the developer and manufacturer of the Phrazer handheld, interactive, multilingual medical communication system for office space including sales and marketing, media, hardware and software engineering, and customer support, the total Project cost of which is estimated to be $1,086,661.

J. Property shall mean that property located at 394 Lake Avenue South in Duluth, St. Louis County, Minnesota, which Property is legally described as: Cowells Addition Lake Avenue Duluth, Lots 5,7,9 & 1 including part of vacant street and Lot 3; Cowells Addition St Croix Avenue Duluth, Lot 6; Rearr/Blks 7 & 8 Industrial Div Duluth Lake Avenue inc. Lot 11 Lake Ave Cowells Addition; and Rearr/Blks 7 & 8 Industrial Div Duluth Lake Avenue S. 28 Ft.

ARTICLE II

Developer Application Fee

In consideration of the financial assistance provided by DEDA to Developer pursuant to the terms of this Agreement, Developer will cause GeaCom to pay to DEDA an application fee of Three Thousand and No/100 Dollars ($3,000.00).

ARTICLE III

Preconditions to Project Construction

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

A. Title

Proof reasonably satisfactory to DEDA that Developer owns the Property in fee simple absolute.

B. Construction Costs

Approved drawings, specifications, plans and budget for the construction of the Project.

C. Contractor Approval

Developer agrees that the Executive Director shall have approval over the identity of the general contractors, which approval shall not be unreasonably withheld. The Executive Director hereby approves Oneida Realty as the general contractor.

ARTICLE IV

Project Plans

A. Drawings, Specifications and Plans

No less than 15 days prior to the commencement of construction of the Project, or such lesser time as approved by the Executive Director, Developer shall submit working drawings, specifications and utility plans for the Project to the Executive Director for approval, which approval will not be unreasonably withheld. All such drawings, specifications and plans shall be in conformity with this Agreement, with the schematic design which shall consist of drawings and other documents illustrating scale and relationship of various Project components, and with all applicable laws, ordinances, rules, regulations and requirements of DEDA, the City, the State of Minnesota and the United States of America. The Executive Director shall review such drawings, specifications and plans within 10 days of submission of same by Developer. If the Executive Director rejects such drawings, specifications and plans in whole or in part as not being in compliance with the foregoing requirements, and upon notification

to Developer of said rejection together with the reason or reasons therefor, Developer shall submit new or corrected drawings, specifications and plans meeting said objections within 10 days of said notice. The provisions of this Paragraph relating to approval, rejection and resubmission of corrected plans hereinafter provided for with respect to the originally submitted drawings, specifications and plans shall continue to apply until said drawings, specifications and plans have been approved by the Executive Director. The Executive Director's acceptance of Developer's drawings, specifications and plans 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 drawings, specifications and plans and any revisions thereto.

B. Changes After Initial Approval

Any material changes made to plans by Developer after initial approval of the Executive Director shall be submitted to the Executive Director for acceptance in the same manner provided for in Paragraph A above. "Material" is defined herein as changing square footage or cost of the facility more than 5% or any change in design which alters the basic appearance of the facility.

ARTICLE V

Construction

A. Construction

On or before June 30, 2011, Developer shall cause the commencement of construction of the Project in conformance with the plans approved pursuant to this Agreement. Said construction work shall be completed, except for punch list items, not later than December 31, 2011.

B. Developer to Bear All Costs

Except for payments by DEDA provided for herein, Developer specifically guarantees and agrees to bear all costs related to the construction of the Project and any modifications thereto.

C. Certificate of Completion

Promptly upon completion by Developer of construction of the Project, Developer shall submit to the Executive Director written evidence in a form satisfactory to the Executive Director of Project completion in accordance with this Agreement after which DEDA shall promptly furnish to Developer an appropriate certificate certifying completion of the Project ("Certificate of Completion"). No such Certificate shall be issued until all elements of the Project have been completed. Upon receipt, Developer agrees to file the Certificate of Completion in the Office of the St. Louis County Recorder and pay all costs associated therewith. Upon recordation, Developer shall immediately submit to DEDA an executed original of the Certificate of Completion showing the date and document numbers of record, or duly certified copies of the filed originals.

ARTICLE VI

Reimbursement to Developer

Upon submittal to DEDA of the recorded Certificate of Completion as set forth in Paragraph C of Article V, DEDA agrees to reimburse Developer for Eligible Project Costs incurred by it in accordance with this Agreement in an amount not to exceed Two Hundred Thousand and no/100ths ($200,000) payable from Fund 865, TIF District 4. The request for reimbursement shall be accompanied by such documentation as the Executive Director shall request including paid invoices or comparable evidence of payment as well as the payroll records required in Paragraph B of Article X. Notwithstanding the above, no reimbursement shall be made by DEDA to Developer after December 31, 2011.

ARTICLE VII

Mortgage Lien

Developer agrees that there is hereby created and imposed on the Property a mortgage lien (the "Mortgage Lien"). The amount of the Mortgage Lien shall be the amount of Two Hundred Thousand and no/100ths ($200,000) Dollars. The Mortgage Lien shall be exercisable by DEDA upon a General Event of Default by the Developer as defined herein. It is agreed between the parties that this Agreement and the Mortgage Lien imposed herein shall be deemed to run with the land and all of its provisions shall be enforceable by the parties' respective heirs and assigns. The Mortgage Lien shall be in force and effect during the term of this Agreement as set forth herein. DEDA may, in its sole discretion and through the written consent of the Executive Director, decide to subordinate the Mortgage Lien to liens of other parties.

Upon execution of this Agreement by all parties, Developer shall record this Agreement 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 this Agreement showing the date and document numbers of record, or a duly certified copy of the filed original.

ARTICLE VIII

Term

The term of this Agreement shall commence on the date first shown above and shall continue for a period of ten (10) years from the date of filing of the Certificate of Completion in the St. Louis County Recorder's Office as set forth in Paragraph C of Article V, unless this Agreement is otherwise terminated earlier as provided for herein.

ARTICLE IX

Provision Against Liens, Assignments and Transfers

A. Provision Against Liens

Developer shall not permit or allow any mechanics' or materialmen's liens to be filed or established or to remain against the Building, the Property or the Project or any part thereof provided that if Developer shall first notify DEDA of its intention to do so and post such security as the Executive

Director reasonably deems necessary, Developer may, in good faith, contest any such mechanic's or other liens filed or established as long as DEDA does not deem its interest or rights in this Agreement to be subject to foreclosure by reason of such context; provided however, in the event a private lender also requests security with respect to such lien(s), DEDA agrees that it may be jointly protected with said lender by the same security, the amount of which shall be the greater of that security requested by the Lender or the Executive Director. Except for: 1) a primary mortgage relating solely to the financing of this Project given to private lenders, which may be given subsequent to the date of DEDA disbursement but shall not exceed 60% of the $1,086,661 Project costs and to which DEDA would subordinate its lien; or 2) other liens or encumbrances excluding mechanics' liens or materialmen's liens (which are addressed above) allowed in advance writing by the Executive Director, Developer shall not create or permit any mortgage or encumbrance to be filed or established or to remain against the Building, the Property, or the Project or any part thereof.

B. Provision Against Assignments, Transfers or Change in Identity of Developer

The parties hereto acknowledge that DEDA is relying upon the qualifications and identity of Developer to construct, operate and maintain the Project, the Building and the Property. Therefore, except as may be approved in writing in advance by the Executive Director and except for the purposes of obtaining private financing as described in Paragraph A above, Developer represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the managing members or principals of Developer or their respective percentages of ownership or voting rights if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, the

Building, the Project, Developer, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Developer will not make or create or suffer to be made any such transfer of Developer's rights hereunder. If any assignment of Developer's obligations under this Agreement is approved by the Executive Director, any such assignee shall explicitly assume the obligations of Developer under this Agreement and Developer remains principally liable for the performance of Developer's obligations under this Agreement. Notwithstanding the above, Developer is authorized to lease the Leased Premises to GeaCom and the remainder of the Building to other tenants.

C. Notice of Sale, Transfer or Change in Use

Developer agrees for itself and its successors and assigns that it will provide at least ninety (90) days' written notice to DEDA of any total or partial sale, assignment, trust, power of attorney, liens except those for the purposes of obtaining private financing as described in Paragraph A , or conveyances of the Building, the Property or the Project, or of any change in the identity of the managing members or principals of Developer or their respective percentages of ownership or voting rights if such change would result in a change of control of Developer, or of any change in use of the Leased Premises or the Project for GeaCom's business activities.

ARTICLE X

Development Goals/Reporting Obligations

A. Business Subsidy Goal

DEDA finds that the public purpose of tax increment assistance to be provided pursuant to this Agreement is the renovation of a building which will: 1) result in the creation of new jobs that pay a living wage and provide health insurance and other benefits; 2) contribute to the economic diversity of the City by supporting the existing industries of manufacturing and technology; 3) enhance the quality of life of City residents by redeveloping un-usable warehouse space; and 4) increase the tax base.

Achievement of the Business Subsidy Goal in accordance with Minnesota Statutes §116J.994 shall be measured as follows: Developer agrees that on or before December 31, 2011, it shall have renovated the Leased Premises on the Property in accordance with this Agreement and shall have created four (4) FTE construction jobs in the State as verified by Developer's construction contractor (the "Business Subsidy Goal").

B. Reporting Requirement

Developer shall provide to DEDA the information regarding the Business Subsidy Goal as set forth in Minnesota Statute §116J.994 subdivision 7, including but not limited to payroll records of construction workers on the Project, such reports to be provided with the request for reimbursement of Eligible Project Costs. All such reports shall be signed on behalf of Developer by an officer of Developer with authority to bind Developer.

C. Special Event of Default if Business Subsidy Goals Not Met

Developer agrees that if the Business Subsidy Goal of Project construction is not met by December 31, 2011 as determined in the sole discretion of DEDA, Developer will repay all sums paid to Developer plus Interest compounded semiannually. Developer further agrees that if the Business Subsidy Goal of creating four (4) FTE construction jobs in the State is not met or only met in part as determined in the sole discretion of DEDA, Developer agrees to repay all or a portion of the sums paid to Developer plus the Interest compounded semiannually. The amount to be repaid by Developer shall be determined by multiplying the sums paid to Developer by a fraction, the numerator of which is four (4) minus the number of construction jobs created during the construction period, and the denominator of which is four (4).

D. Tenant

The name and address of the tenant of Developer is:

GeaCom, Inc.
394 Lake Avenue South
Suite 510
Duluth, MN 55802

E. Other Financial Assistance

There are no other subsidies or other forms of financial assistance being granted to Developer for the Project at this time.

F. Continued Operations Commitment

Developer agrees to own and operate the Building, the Project and the Property and to cause the continuation of GeaCom's business activities in the Leased Premises, and to not assign, convey, transfer, sell or change its identity in violation of Article IX for at least ten (10) years after the filing of the Certificate of Completion as set forth in Paragraph C of Article V (the "Continued Operations Commitment").

G. Special Event of Default for Failure to Meet Continued Operations Commitment

In the event that Developer fails to meet the Continued Operations Commitment, then Developer shall repay amounts reimbursed to Developer, plus interest at a rate of 6% per annum, on a sliding ten-year scale with 100% repayment for failure to meet the Continued Operations Commitment within 1 year of the filing of Certificate of Completion and with repayment for failure to meet the Continued Operations Commitment decreasing 10% on each anniversary date of the filing of the Certificate of Completion until the tenth anniversary date, at which time the repayment obligation shall cease. Notwithstanding the above, DEDA may consider waiving such default in the event that either of the following events shall occur: tenant chooses to occupy substantial new space in the City of Duluth as part of an expansion of operations; or, any proposed new owner or transferee shall have the qualifications and financial capability, as determined by DEDA, necessary and adequate to fulfill the obligations undertaken in this Agreement by Developer. Any proposed new owner or transferee shall, by an instrument in writing satisfactory to DEDA and in a form recordable in the St. Louis County Recorder's Office, for itself and its successors and assigns, expressly assume all of the obligations of the Developer under the Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject.

ARTICLE XI

Operating Covenants

Developer covenants and agrees that during the term of this Agreement, in its operations and use of the Property and the Project it shall:

A. Maintenance

At all times cause the Building, the Project and the Property to be maintained in a neat, orderly condition, to maintain and preserve and keep in good repair, working order and condition said Building, Project and Property and to perform all needed and proper repairs, renewals and replacements necessary to be made thereto.

B. Utilities

Pay or cause to be paid any and all charges for utilities furnished to the Building, the Property and the Project including but not limited to hook-up charges and assessments related to all utilities, including but not limited to steam, water, sewer, gas, telephone, cable TV, and electrical power.

C. Licenses and Permits

Preserve the existence and all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs relating to the Building, the Project and the Property and to be qualified to do business in the State of Minnesota.

D. Obey All Laws

Conduct its affairs and carry on its business and operations with respect to the Building, the Project and the Property in such a manner as to comply with any and all applicable laws of the United States and the State of Minnesota and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Building, the Project and the Property; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity thereof shall be contested in good faith through proper legal action provided that such protest shall in no way affect Developer's title to the Building, the Project and the Property.

E. Payment of Taxes

Promptly pay or cause to be paid all lawful taxes and governmental charges, including real estate taxes and assessments at any time levied upon or against it or the Building, the Project or the Project, subject to the right to contest in good faith in accordance with Minnesota law.

F. Assessment Fees and Charges

Pay or cause to be paid when due or payable all special assessments levied upon or with respect to the Building, the Project or the Property, or any part thereof, and to pay all fees, charges and rentals for utilities, service or extensions for the Building, the Project or the Property and all other charges lawfully made by any governmental body for public improvements.

G. Obligations and Claims

Promptly to pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against the Building, the Project and the Property as and when the same become due and payable other than any thereof whose validity, amount or collect ability is being contested in good faith by appropriate proceedings.

H. Wage Covenants

Abide by the requirements of Article XXVI of Chapter 2 of the Duluth City Code, 1959, as amended (the "Duluth Living Wage Ordinance") and require those contractors with which it contracts for the Project to pay prevailing wages to the construction workers working on the Project.

ARTICLE XII

Indemnification

A. Generally

Developer shall to the fullest extent permitted by law, protect, indemnify and save DEDA and its 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 including claims for contribution or indemnity, demands and judgments of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Building, the Property or the Project, or growing out of or in connection with the use or non-use, condition or occupancy of the Building, the Property or the Project or any part thereof and also, without limitation, the construction of the Project or any portion of the Building or the Property. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for Developer, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts;
2. Any violation by Developer of any provision of this Agreement;
3. Any violation of any contract, agreement or restriction related to the Project which shall have existed at the commencement of the term of this Agreement or shall have been approved by Developer; or
4. Any violation of any law, ordinance, court order or regulation affecting the Building, the Property or the Project, or the ownership, occupancy or use thereof.

B. Environmental Indemnification

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

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

C. Indemnification Procedures

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

ARTICLE XIII

Insurance

Developer shall provide for purchase and maintenance of such insurance as will protect Developer and DEDA against risk of loss or damage to the Building, the Property and the Project 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 Building, the Property and Project, including operations conducted in connection with the construction of improvements on the Property. Such coverages shall include but shall not necessarily be limited to the following:

A. 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 Building, the Property or the Project carried in the name of Developer, any tenant, and DEDA, as their respective interests may appear, as follows:

1. Property Insurance

The Building and Property, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a deductible amount not to exceed $50,000 per occurrence. For the purposes hereof, "all risk" means insurance equivalent in scope to protect against all risks of direct physical loss ordinarily insured against in the region. Developer hereby waives any and all claims or causes of action against DEDA for damages caused by an insured peril hereunder, except such rights hereinafter set forth to an interest in the insurance proceeds payable in the event of such loss. In time of war in which the United States of America is a belligerent, 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 Building and the Property 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

Developer shall procure and maintain continuously in force Public Liability and Automobile Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with XCU exclusion removed in limits of not less than $2,000,000 per occurrence for personal bodily injury and death, and limits of $2,000,000 for property damage liability. If per person limits are specified, they shall be for not less than $2,000,000 and be for the same coverages. Insurance shall cover:

a. Public liability, including premises and operations coverage;

b. Independent contractors--protective contingent liability;

c. Personal injury;

d. Owned, non-owned and hired vehicles;

e. Contractual liability covering the indemnity obligations set forth herein;

f. Products--completed operations.

3. Workers' Compensation

Workers' Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law, and evidence of such qualification is furnished to DEDA.

B. Modification of Insurance Requirements

It is agreed between the parties that DEDA shall have the right to modify the forms of the insurance provided for in Paragraphs A and B above and the limits set forth with regard thereto provided that any such modification and policy forms or limits shall be of such a character and in such amounts as are reasonably necessary to provide DEDA with the types and amounts of protection provided for in this Agreement. 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.

C. Requirements for All Insurance

All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the United States and licensed to do business in Minnesota. DEDA shall be named as an additional insured under the Public Liability and Automobile Liability Insurance required under Paragraphs A and B above. The use of an "ACORD" form as a certificate of insurance shall be accompanied by two forms: 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002), or equivalent as approved by DEDA's attorney. Developer shall also provide evidence of statutory Minnesota Workers' Compensation Insurance. DEDA does not represent or guarantee that the types of limits or coverages provided above are adequate to protect Developer's interests and liabilities.

D. Certificates

Certificates showing that the above- described insurance is carried in the specified amounts shall be furnished to DEDA prior to the beginning of construction; and a certificate showing continued maintenance of such insurance shall be on file with DEDA during the term of this Agreement. The form of each certificate of insurance shall contain an unconditional requirement that the insurer notify DEDA without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to DEDA will render any such change or changes in said policy or coverages ineffective as against DEDA.

E. Reconstruction Obligation and Uninsured Loss

In the event the Property, the Building, and/or the Project or any portion thereof is destroyed by fire or other casualty, Developer shall forthwith repair, reconstruct, and restore the improvements to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction, and to the extent necessary to accomplish such repair, reconstruction, and restoration, Developer shall apply the proceeds of any insurance received by Developer to the payment or reimbursement of the costs thereof. Developer shall, however, complete the repair, reconstruction and restoration of the improvements whether or not the proceeds of any insurance received by Developer are sufficient to pay for such repair, restoration, and reconstruction.

ARTICLE XIV

Developer Defaults and Remedies Therefor

A. General Defaults and Remedies

1. General Events of Default

In addition to the Special Events of Default set forth in Article X, 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 Paragraph A(2) below shall be applicable.

a. Developer shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it or any successor or assigns of Developer pursuant to this Agreement and such failure shall continue for a period of 30 calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to Developer of such default or, in the event that such default shall be incapable of cure with reasonable diligence during said 30 day period, shall have failed to commence to

cure said default within 30 days of the date of said notice and to diligently pursue the same to completion.

b. Developer shall permit valid liens, not cured or contested within thirty 30 days, to be placed on the Building or the Property, or Developer loses title to the Building or the Property or both.

c. 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 it in such proceeding or fails to have dismissed or vacated within sixty (60) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of Developer's properties or fails to have dismissed or vacated within sixty (60) days after the appointment without the consent or acquiescence of Developer of any trustee, receiver or liquidator of any material part of Developer's properties.

d. Developer fails to repay the sums set forth in Paragraphs C and G of Article X upon the occasion of a Special Event of Default.

2. <u>General Remedies</u>

DEDA shall have the following remedies in the event of a default:

a. Cease any payment due from DEDA and withhold the performance of any obligation owed by DEDA under this Agreement.

b. Terminate this Agreement.

c. Seek and be entitled to repayment from the Developer of all sums paid by DEDA which repayment obligation shall, from the date of default, bear interest at the rate of 6% per annum.

d. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent violation of the terms and conditions of this Agreement or compel Developer's performance of its obligations hereunder.

e. Enforce or foreclosure on the Mortgage Lien described herein.

f. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.

B. Non-Waiver

The waiver by DEDA of any default on the part of Developer or the failure of DEDA to declare default on the part of Developer of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of Developer of the same or of any other obligation of Developer hereunder. To be effective, any waiver of any default by Developer hereunder shall be in writing by DEDA.

C. 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.

ARTICLE XV

Representations by DEDA

DEDA represents and warrants that as of the date hereof:

A. It is a lawfully constituted economic development authority under the laws of the State of Minnesota, it is not in material violation of any provisions of State law and it has full power and authority to enter into this Agreement and perform its obligations hereunder.

B. There are no actions, suits or proceedings pending, or to the knowledge of DEDA, threatened against DEDA or any property of DEDA in any court or before any Federal, State, municipal or governmental agency which, if decided adversely to DEDA, would have a material adverse effect upon DEDA or any business or property of DEDA and DEDA is not in default with respect to any order of any court or government agency.

C. DEDA has investigated and has no knowledge that a DEDA 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 for itself only that as of the date hereof:

A. That Developer 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. That Developer owns the Building and the Property and is fully competent to construct the Project thereon under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction and that it agrees to comply with all applicable State, Federal acquisition and relocation laws, wages and hours laws, at its own expense.

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

D. That Developer is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been incurred.

E. That Developer shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to any third party under this Agreement to be true, correct and complete in all material and respects.

F. That if necessary, Developer agrees to perform any survey work prior to construction and all descriptions and exhibits hereto and definitions herein shall be subject to such revisions as are necessary after completion of any survey.

G. That without the assistance to be provided by DEDA hereunder, Developer's cost of constructing the Project would be more than can be justified to be charged to GeaCom as rent under the lease for use of the Leased Premises and that, therefore, without DEDA assistance, the Project would not be economically feasible for Developer to have commenced construction before July 1, 2011.

ARTICLE XVII

Runs with the Land

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

ARTICLE XVIII

Notices

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

In the case of DEDA:

Duluth Economic Development Authority
Attn: Executive Director
402 City Hall
411 West First Street
Duluth, MN 55802

In the case of Developer:

Oneida Realty Company
Attn: Steve LaFlamme
Suite 1605 Alworth Building
306 West Superior St
Duluth, MN 55803

ARTICLE XIX

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. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota. However, litigation in the federal courts involving the parties shall be in the appropriate federal court within the State of Minnesota, and the parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

ARTICLE XX

Authorization to Execute Agreement

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

ARTICLE XXI

Independent Contractor

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting Developer as an agent, representative or employee of DEDA for any purpose or in any manner whatsoever.

ARTICLE XXII

No Third Party Rights

This Agreement is to be construed and understood solely as an agreement between the parties and shall not be deemed to create any rights in any other person or entity. No person or entity shall have the right to make claim that he, she or it is a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the parties, may be waived at any time by mutual agreement between the parties.

ARTICLE XXIII

Entire Agreement

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

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

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

By_____
Its President

By_____
Its Secretary

DEWITT-SEITZ MARKETPLACE, LLC

_____
Its Managing Member

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by John Heino and Tony Cuneo, 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 _____, 2011, by Bill Rogers, the Managing Member, of Dewitt-Seitz Marketplace, LLC, a Minnesota 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