

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

12-0289R

RESOLUTION APPROVING THE DEVELOPMENT AGREEMENT BETWEEN THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY AND BLUESTONE COMMONS, LLC, RELATING TO THE DEVELOPMENT OF THE BLUESTONE COMMONS PROJECT IN THE AREA OF THE FORMER WOODLAND MIDDLE SCHOOL.

CITY PROPOSAL:

RESOLVED, that the city council of the city of Duluth does hereby approve the development agreement on file in the office of the city clerk as Public Document No. _____, between the Duluth economic development authority (DEDA) and BlueStone Commons, LLC, related to the development of the BlueStone Commons project in the area of the former Woodland Middle School.

Approved:



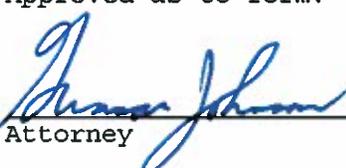
Department Director

Approved for presentation to council:



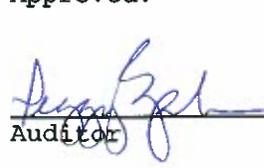
Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

DEDA/ATTY JMC:dma 06/14/2012

STATEMENT OF PURPOSE: The purpose of this resolution is to obtain the City Council's approval of the Development Agreement between DEDA and BlueStone Commons, LLC ("Developer") for the development of the BlueStone Commons Project at the location of the former Woodland Middle School and surrounding parcels as is required pursuant to Paragraph 19 of the amended DEDA Enabling Legislation, Resolution 09-0324. DEDA approved the Agreement at its May 23, 2012 meeting.

The project will be located in an area identified as Tax Increment District No. 25, a 25-year redevelopment district. The agreement provides for the construction by Developer of student housing and commercial buildings. The project will be market driven and will be built out in approximately 6 to 8

phases. DEDA will provide 90% of the TIF generated by the increased value of the project, to pay for tax increment eligible costs on a pay-as-you-go basis. The maximum amount of costs eligible for reimbursement are \$9,896,864 plus interest. Completion of construction of the first phase of the project triggers the right to receive tax increment.

The first phase consists of construction of not less than 90 units and 280 bedrooms of multifamily student housing of approximately 180,000 square feet as well as all site improvements including building demolition, site clearance, utility relocation, sanitary sewer, water mains and stubs, storm sewer and storm water system elements, streets, curb and gutters, landscaping and retaining walls.

The public purpose of the tax increment assistance to be provided pursuant to this Agreement is to stimulate the redevelopment of underutilized, blighted or obsolete land uses including rehabilitation or demolition of substandard structures, to encourage the development of commercial areas in the city that result in higher quality development or redevelopment and private investment, to achieve development on sites which would not be developed without assistance, and to enhance and diversify the City of Duluth's tax base.

Tax base impact statement: Currently much of the property is tax exempt. After the property is sold to the Developer, the original tax capacity is estimated to be \$82,310. DEDA has approved a 25-year Redevelopment TIF district and during the life of the 25-year district, the incremental taxes that are generated will be used for facilitating the proposed redevelopment. After improvements are completed in 2026, it is estimated that the property will generate over \$2.5 million in annual taxes based on today's current tax rate. That amount of tax would be available for distribution to the taxing jurisdictions. Using the current city tax rate, Duluth's share of the tax would be approximately \$620,000.

**DEVELOPMENT AGREEMENT
DULUTH ECONOMIC DEVELOPMENT AUTHORITY
BLUESTONE COMMONS, LLC
BLUESTONE COMMONS PROJECT**

THIS AGREEMENT entered into this _____ day of June, 2012, 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 BLUESTONE COMMONS, LLC., a Minnesota limited liability company, whose address is 122 South Water Street, Stillwater, MN 55082 (hereinafter referred to as "Developer").

WHEREAS, Developer is acquiring the Woodland Middle School building located at 201 Clover Street and adjacent property in the City of Duluth and has proposed the project described herein which includes development/ redevelopment of the site into residential, commercial, and educational buildings. The project will be market driven and constructed in phases, and therefore, the number of housing units and commercial buildings and parking spaces and total amount of gross square feet to be constructed may change; and

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

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

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

- a. a "gap" exists between the cost to Developer of constructing the project and the funds presently available to or known to Developer and DEDA to finance those costs at rates that would be economically feasible as hereafter described. Based on the best estimates currently available to the parties, the amount of said "gap" equals \$13,021,678. In order to reduce this "gap", DEDA has committed to provide tax increment proceeds from the project. DEDA has calculated that the present value of the anticipated and available tax increment cash flows is \$9,896,864; said amount is calculated assuming payment over a 26 year term at a discount rate of 6% based upon financial projections which assume certain tax capacity;
- b. without the tax increment assistance to be provided pursuant to this Agreement, the available resources would be inadequate and not economically feasible to construct said project and that therefore, but for the tax increment assistance to be provided for hereunder, the project could not reasonably be expected to be constructed in the foreseeable future; and
- c. the increased market value of the property that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from the proposed development after subtracting the present value of the projected tax increment for the maximum duration of the district permitted by the Tax Increment Financing Plan for Tax Increment Financing District No. 25.

WHEREAS, the public purpose of the tax increment assistance to be provided pursuant to this Agreement is to stimulate the redevelopment of underutilized, blighted or obsolete land uses including rehabilitation or demolition of substandard structures, to encourage the development of commercial areas in the city that result in higher quality development or redevelopment and private investment, to achieve development on sites which would not be developed without assistance, and to enhance and diversify the City

of Duluth's tax base; and

WHEREAS, the property is located in a redevelopment district within the meaning of Minnesota Statutes §469.174 et. seq. (Tax Increment Financing District No. 25).

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

ARTICLE I

Definitions

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

- A. Building shall mean one of the residential or commercial buildings to be constructed in phases on the Property by Developer under this Agreement as shown on Exhibit A. Except for the Minimum Improvements, the amount of gross square feet of each Building to be constructed may change.
- B. Captured Tax Increment shall mean all real estate taxes resulting solely from the payment of real estate taxes based upon the Captured Net Tax Capacity of the Project resulting solely from the Project, including Captured Tax Increment attributable to any increases in Captured Net Tax Capacity resulting from the revaluation of the Project or increases resulting from changes in the extension rates applicable to the Project as permitted by law and as determined pursuant to Minnesota Statutes §469.174 et. seq. or their successor statutes, to the extent remitted to DEDA by the St. Louis County Auditor.
- C. City shall mean the City of Duluth.
- D. DEDA shall mean the Duluth Economic Development Authority.

- E. Developer shall mean BlueStone Commons, LLC a Minnesota limited liability company, and its permitted successors or assigns.
- F. Eligible Project Costs shall mean those costs as referenced in the Tax Increment Financing Plan for Tax Increment District No. 25 which may be legally funded with tax increment proceeds under Minnesota Statutes §469.174 et. seq. and case law. The current estimate of Eligible Project Costs is approximately \$13,254,000. As required by statute, eligible Project Costs must be incurred, paid, or otherwise contracted for by the Developer within 5 years of the date of certification by the St. Louis County Auditor of Tax Increment Financing District No. 25.
- G. Eligible Tax Increment shall mean, for each full year of the payment of tax increment proceeds pursuant to Paragraph A of Article VI, 90% of the payments of Captured Tax Increment for said year. The total amount of Eligible Tax Increment that may be used to assist the Project shall not exceed \$9,896,864 plus compound interest at the rate of 6% per annum on said amount from the date of payment by Developer of Eligible Project Costs for a period of 26 years from the date of receipt by DEDA from St. Louis County Auditor's Office of the first payment of tax increment until paid in full, or 90% of the Captured Tax Increment over the term of the Agreement, whichever is less. Any interest not paid shall be accrued and payments shall first be applied to accrued interest. Additionally, as required by statute, the amount of Eligible Tax Increment shall not exceed the amount of Eligible Project Costs incurred, paid, or otherwise contracted for by the Developer within 5 years of the date of certification by the St. Louis County Auditor of Tax Increment Financing District No. 25.
- H. Executive Director shall be the Executive Director of DEDA or such person or persons designated in writing by said Executive Director.
- I. Minimum Improvements shall mean the construction of Phase 1-R of the

Phasing Plan shown on Exhibit A. Notwithstanding the quantities shown on Exhibit A, the Minimum Improvements shall include not less than 90 units and 280 bedrooms of multifamily student housing of approximately 170,000 square feet as well as all site improvements including building demolition, site clearance, utility relocation, sanitary sewer, water mains and stubs, storm sewer and storm water system elements, private streets (with an easement in favor of the public over Summit Street), curb and gutters, landscaping and retaining walls all in accordance with plans approved pursuant to Article IV at a cost of approximately \$10,731,300.

- J. Project shall mean the development/redevelopment of the Property into student housing, multifamily apartments, commercial, and educational buildings in 6 to 9 phases including parking spaces, and a possible parking deck, together with related utilities, landscaping and other amenities at a cost of approximately \$60,000,000, all according to the plans as now approved by the City, and from time to time amended by the Developer, and otherwise pursuant to City approvals and to Article IV. The project will be market driven and, except for the Minimum Improvements, the number of housing units, commercial and educational buildings and parking spaces and total amount of gross square feet to be constructed may change. Note that Phase 2R is outside of Tax Increment Financing District No. 25 and is not included in the definition of Project.
- K. Property shall mean that Property located in St. Louis County, Minnesota, described on Exhibit B attached hereto and made a part hereof.

ARTICLE II

Developer Deposit

In consideration of the financial assistance provided by DEDA to Developer pursuant to the terms of this Agreement, Developer has paid to DEDA a non-refundable application fee of Three Thousand and No/100 Dollars (\$3,000.00).

ARTICLE III

Preconditions to Project Construction

Developer is authorized to construct the Project in phases (Phase 1R, 3R, 1C, 2C, 3C, 4C, 5C, Potential Parking Deck Phase, and the Woodland School Redevelopment Phase, each of which phases shall consist of the construction of one or more Buildings as provided in the Phasing Plan, attached hereto as Exhibit A (hereafter "Phase" or "Phase of the Project"). Developer shall assure that, prior to completion of the Minimum Improvements, each Phase of the Project shall have a separate legal description and shall be a separate tax parcel. Prior to the commencement of construction of any Phase 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 related to that Phase of the Project in fee simple absolute.

B. Construction Costs

Developer's certified estimate of the total cost of construction of that Phase of the Project.

C. Construction Contracts

A copy of executed contracts between Developer and a general contractor necessary to complete the construction of that Phase of the Project in accordance with plans, specifications and elevations, reviewed pursuant to Article IV and certified by Developer to be a true and correct copy thereof. All such construction contracts shall provide that payments for the work thereunder are the sole obligation of Development.

D. Construction Financing

Copies of loan commitments and other financing commitments obtained by Developer for that Phase of the Project, the total of said commitments and any equity contribution to be in an amount not less than the total contract price between Developer and its general contractor as described

in Paragraph C above.

E. Survey

A survey of the Property related to that Phase of the Project performed by a Registered Land Surveyor under the laws of the State of Minnesota.

ARTICLE IV

Project Plans

A. Plans, Specifications and Elevations

No less than 10 days prior to the commencement of construction of each Phase of the Project, or such lesser time as approved by the Executive Director, Developer shall submit "draft" working drawings, specifications and elevations for that Phase of the Project together with "draft" site grading, utility and landscaping plans and elevations to the Executive Director for review. All such plans, specifications and elevations shall be in conformity with this Agreement, with the Schematic Design (as may be modified by Developer and the City of Duluth from time to time) which shall consist of drawings and other documents illustrating scale and relationship of various Project components, and with all applicable laws, ordinances, rules, regulations and requirements of DEDA, the City, the State of Minnesota and the United States of America. The Executive Director shall review such plans, specifications and elevations within 10 days of submission of same by Developer. If the Executive Director objects to such plans, specifications and elevations in whole or in part as not being substantially in compliance with the foregoing requirements, and upon notification to Developer of said objection together with the reason or reasons therefor, Developer shall submit new, updated, or corrected plans, specifications and elevations meeting said objections within 20 days of said notice. The provisions of this Paragraph relating to review and resubmission of corrected plans hereinafter provided for with respect

to the originally submitted plans, specifications and elevations shall continue to apply until said plans, specifications and elevations have been approved by the Executive Director. The Executive Director's review of Developer's plans, specifications and elevations shall not constitute a waiver of building code or zoning ordinance or other applicable codes or ordinances imposed in the future upon Developer by law. Developer expressly agrees to be solely responsible for all costs, including architectural fees connected with said plans, specifications and elevations and any revisions thereto.

B. Changes After Initial Approval

Any changes made to plans by Developer after initial review of the Executive Director, as set for in Paragraph A above, costing in excess of \$500,000.00 shall be submitted to the Executive Director for review in the same manner provided for in Paragraph A above.

ARTICLE V

Construction

A. Construction

On or before September 1, 2013, Developer shall commence construction of the Minimum Improvements in conformance with the plans approved pursuant to Article IV. Said construction work shall be completed not later than September 30, 2014.

B. Developer to Bear All Costs

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

C. Progress Reports

Until construction of the entire Project 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 Developer with respect to the Project.

D. Project Costs/Certificate of Completion

Promptly upon completion by Developer of the construction of each Phase of the Project, Developer shall submit to the Executive Director written evidence in a form satisfactory to the Executive Director of Eligible Project Costs incurred and paid. Such evidence shall include, at a minimum, paid invoices or comparable evidence of payment. Upon furnishing by Developer of said written evidence relating to Eligible Project Costs and upon completion by Developer of the construction of that Phase of the Project in accordance with this Agreement, DEDA shall promptly furnish to Developer an appropriate certificate certifying completion of construction (Certificate of Completion). No such certification shall be issued until all elements of that Phase of the Project have been substantially completed. Such certification by DEDA shall constitute a conclusive determination of satisfaction of construction obligations of Developer undertaken pursuant to this Agreement.

If the Executive Director shall refuse or fail to provide any certificate in accordance with the provisions of this Section, the Executive Director shall, within ten (10) days after written request by the Developer, provide the Developer with a written statement indicating in adequate detail in what respects the Developer has failed to complete the Phase in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of Executive Director, for the Developer to take or perform in order to obtain such certification.

ARTICLE VI

Payment Obligations

A. DEDA Payment

1. Payment Obligation

From and after the issuance of a Certificate of Completion for the first Phase of the Project constructed on the Property as set forth in Paragraph D of Article V, and thereafter as each Phase of the Project is completed as evidenced by the issuance of a Certificate of Completion until the maximum amount of Eligible Tax Increment has been paid as set forth in Paragraph G of Article I, DEDA shall pay to Developer, or to an escrow agent as directed by Developer, all Eligible Tax Increment which has been received by DEDA since the last such payment to Developer. Such payment shall be made on or before August 1 or February 1 of each year, or such later date as DEDA receives Captured Tax Increment from the St. Louis County Auditor's Office.

2. Limitations on Payment Obligation

DEDA's obligation to make payments under this Agreement is agreed by the parties hereto to be strictly revenue based and shall be payable only from the proceeds of Captured Tax Increment actually received by DEDA from the St. Louis County Auditor's Office. In the event that DEDA fails to receive any Captured Tax Increment payment, whether in whole or in part, for any reason whatsoever, including but not limited to changes in state statutes, the amount of payments otherwise due to Developer under Paragraph A(1) above shall be deemed upon termination of this Agreement to have been paid in full and DEDA shall have no further obligations for payments of said amounts.

ARTICLE VII

Operating Covenants

Developer agrees that in its operations and use of the Building and the Property, in accordance with industry standards, it will:

A. Maintenance

At all times cause the Buildings, Property and Project to be operated, and maintained in a neat, orderly condition, to maintain and preserve and keep in good repair, working order and condition said Buildings and Property and to perform all needed and proper repairs, renewals and replacements necessary to be made thereto. The maintenance of the Buildings and the Property shall include but not be limited to maintenance of all foundations, external walls, doors, windows, utility openings and all roofing systems as well as maintenance of the Property outside of the Buildings, including snow removal, grass cutting and landscape maintenance, parking lot cleaning, repair and striping and all other exterior maintenance to said Property.

B. Utilities

Unless disputed, Developer shall pay or cause to be paid any and all charges for utilities furnished to the Buildings and the Property including but not limited to hook-up charges and assessments related to all utilities, including but not limited to steam, water, sewer, gas, telephone, cable or satellite TV, and electrical power.

C. Licenses and Permits

Preserve the existence and all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs relating to the Project and to be qualified to do business in the State of Minnesota; 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 with respect to the Project in such a manner as to comply with any and all applicable laws of the United States and the State of Minnesota including all laws related to unlawful discrimination and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Project; 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 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 Property, subject to the right to contest in good faith in accordance with Minnesota law.

F. Assessment Fees and Charges

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

G. Obligations and Claims

Promptly to pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against the Project 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

Pay both current and new employees of BlueStone Commons, LLC., compensation, including benefits not mandated by law, that on an annualized basis is, at minimum, equal to at least 110 percent of the federal poverty level for a family of four or the living wage as set forth in Section 2-137 of the Duluth City Code, 1959, as amended, whichever is greater.

I. Prevailing Wage

Cause the laborers, mechanics or apprentice-trainees employed in the construction of the Project, as reviewed in Article IV(A), to be paid the wage rates as set forth in Section 2-25 of the Duluth City Code, 1959, as amended or as provided in the federal Davis Bacon Act, as amended.

ARTICLE VIII

Provision Against Liens, Assignments and Transfers

A. Provision Against Liens

Developer shall not permit or allow, and shall promptly notify the Executive Director of any mechanics' or materialmen's liens to be filed or established or to remain against the Buildings, the Property or any part thereof provided that Developer may, in good faith, contest any such mechanic's or other liens filed or established. For each Phase of the Project, the requirements of this Paragraph A shall terminate upon issuance of a Certificate of Completion referred to in Paragraph D of Article V for that Phase.

B. Transfers prior to Issuance of a Certificate of Completion

The parties hereto acknowledge that DEDA is relying upon the qualifications and identity of Developer to construct, operate and maintain the Minimum Improvements the Building and the Property. Therefore, except as may be approved in writing in advance by the Executive Director and until the issuance of a Certificate of Completion for each

Phase as set forth in Paragraph D of Article III above, or as otherwise approved by this Agreement, 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 principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Buildings, the Property, the Project, Developer, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Developer will not make or create or suffer to be made any such transfer of Developer's rights hereunder. The provisions of this Article shall not apply to any transfer or assignment made by the Developer to any entity controlled by, controlling, or under common control of Developer. Notwithstanding the above, Developer is authorized to lease or mortgage any Phase of the Project or any portion of any Phase.

Additionally, upon the prior written approval of the Executive Director, Developer may sell a Phase or Phases of the Project prior to a Certificate of Completion for that Phase or Phases of the Project being issued. In such event of a sale prior to a Certificate of Completion being issued for that Phase or Phases, Developer may assign to purchaser Developer's rights under this Agreement with respect to the Phase or Phases of the Project being sold, but only if such purchaser assumes all Developer's outstanding obligations under this Agreement with respect to that Phase or Phases of the Project being sold. The form of any such assignment must be approved in writing by DEDA's Attorney. The sale will be approved by the Executive Director if he/she determines that purchaser is capable of performing Developer's obligations under this Agreement,

which consent shall not be unreasonably withheld. Developer shall pay all costs incurred by DEDA or City staff by reason of said assignments. Upon compliance by Developer and purchaser with the sale requirements set forth above, and in the event purchaser assumes Developer's outstanding obligations under this Agreement with respect to the Phase or Phases being sold, Developer shall be immediately released from its obligations under this Agreement, but only with respect to that Phase of the Project that was sold.

C. Transfers after Issuance of a Certificate of Completion

Provided a Certificate of Completion has been issued pursuant to Paragraph D of Article III for a Phase or Phases of the Project, Developer may sell, assign, convey or otherwise transfer its interest in that Phase or Phases provided the following has been satisfied:

1. Thirty days prior written notice of the transfer is provided to the Executive Director.
 2. The transferee shall agree by affidavit to comply with all the terms and conditions of this Agreement not otherwise extinguished by the completion and certification of construction of that Phase or Phases transferred hereunder. The affidavit shall comply with the terms of this Paragraph 2 and shall be provided to the Executive Director.
 3. Notwithstanding the above transfer, the payment of the tax increment pursuant to Paragraph A of Article VI shall be as provided therein.
 4. Failure to comply with the requirement of subsection 1 and 2 above shall be an event of default under Paragraph A1(a) of Article XI
- Notwithstanding the above, Developer is authorized to lease or mortgage any Phase of the Project or any portion of any Phase.

ARTICLE IX

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 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 Buildings or Property, or growing out of or in connection with the use or non-use, condition or occupancy of the Buildings or Property or any part thereof and also, without limitation, the construction or installation of the Project or any portion of the Buildings 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 Buildings, 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, demands and judgments arising out of any condition existing in the Buildings 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 Buildings.

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 X

Insurance

While each Phase is under construction and until the Certificate of Completion for that Phase or Phases, Developer shall provide for purchase and maintenance of such insurance as will protect Developer and DEDA against risk of loss or damage to the Phase or Phases. Such coverages shall include but shall not necessarily be limited to the following:

A. Insurance During Construction

Developer, prior to entering on the Property for construction work, shall procure or cause to be procured and maintain or require all contractors to procure and maintain the following insurance at not less than the limits of coverage or liability indicated during the period of construction as follows:

1. Property Insurance

Developer shall provide "All Risk" builder's risk insurance under a completed value form on all work on the Project, including foundations, permanent fixtures and attachments, machinery and equipment included in or installed under the construction contract, debris removal, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the Project, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Fifty

Thousand and No/100 Dollars (\$50,000.00) per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Project and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force. Such insurance shall be written in the names of Developer, DEDA, to the extent it has an insurable interest in the Property, 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 XCU exclusion removed, in limits of not less than \$2,000,000 aggregate per occurrence for personal injury, bodily injury and death, and limits of \$2,000,000 for property damage liability. If per person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. Contractor shall also require such liability coverage of his subcontractors unless they be insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

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

- f. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement.

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 Property, carried in the name of Developer, any subtenant and DEDA, to the extent it has an insurable interest as their respective interests may appear, as follows:

1. Property Insurance

Prior to expiration of the buildings' risk coverage specified above, the Buildings 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 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, 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 \$2,000,000 aggregate per occurrence for personal bodily injury and death, and limits of \$2,000,000 for property damage liability. If person limits are specified, they shall be for not less than \$2,000,000 per person and be for the same coverages. If so requested annually by the Executive Director, 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;
- 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.

C. Modification of Insurance Requirements

It is agreed between the parties that DEDA shall have the right to modify

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

All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in Minnesota.

E. Certifications

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

F. Reconstruction Obligation and Uninsured Loss

In the event the Project or any portion thereof is destroyed by fire or other casualty, Developer shall forthwith repair, reconstruct, and restore the improvements to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction, and to the extent necessary to accomplish such repair, reconstruction, 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 XI

Developer Defaults and Remedies Therefore

A. Defaults and Remedies

1. Events of Default

The following shall be deemed to be events of default by Developer under the terms and conditions of this Agreement to which the remedies set forth in 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 45 calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to Developer of such default or, in the event that such default shall be incapable of cure with reasonable diligence during said 45 day period, shall have failed to commence to cure said default within 45 days of the date of said notice and to diligently pursue the same to completion.
- b. Developer shall permit valid liens, not cured or contested within thirty 30 days, to be placed on the Buildings or Property or Developer loses title to the Buildings or 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 or any trustee, receiver or liquidator of any material part of Developer's properties.

2. Remedies

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

- a.
 - i. Cease any payment due from DEDA and withhold the performance of any obligation owed by DEDA under this Agreement, and/or
 - ii. Terminate this Agreement.
- b. With respect to a default of any Phase of the Project, seek and be entitled to repayment from Developer thereof of all sums paid by DEDA for that Phase pursuant to Article VI, which repayment obligation shall, from the date of default, bear interest at the rate of 6.0% per annum.

- c. 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.
 - d. 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 must be in writing by DEDA.
- C. Remedies Cumulative

The remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.
- D. Attorneys' Fees

In the event that Developer is in default of any of the terms and conditions of this Agreement and DEDA shall successfully take legal action to enforce said rights herein, in addition to the foregoing, DEDA shall be entitled to reimbursement for its reasonable attorneys' fees and costs and disbursements occasioned in enforcing its rights hereunder.

ARTICLE XII

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 not actions, suits or proceedings pending, or to the knowledge of DEDA, threatened against DEDA or any property of DEDA in any court or before any Federal, State, municipal or governmental agency which, if decided adversely to DEDA, would have a material adverse effect upon DEDA or any business or property of DEDA and DEDA is not in default with respect to any order of any court or government agency.
- C. DEDA 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 XIII

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 corporation 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 is fully competent to acquire the Property and 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, including Davis-Bacon and local versions thereof or similar 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 effect upon Developer or the Buildings, Property 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 Buildings, the Property 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 DEDA or any third party under this Agreement to be true, correct and complete in all material and respects.
- F. 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 economically prohibitive and that, therefore, without DEDA assistance, the Project would not be economically feasible for Developer; and Developer would not have developed the Project and operated the same in the reasonably foreseeable future.

ARTICLE XIV

Term

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

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

ARTICLE XV

Agreement Personal to Parties

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

ARTICLE XVI

Notices

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

In the case of DEDA:

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

In the case of Developer:

BLUESTONE COMMONS, LLC
c/o Summit Management, LLC.
122 South Water Street
Stillwater, MN 55082
Attn: Mark Lambert

ARTICLE XVII

Applicable Law

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

ARTICLE XVIII

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 XIX

Severability

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

ARTICLE XX

Entire Agreement

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

ARTICLE XXI

Counterparts

This Agreement may be executed, acknowledged and delivered in any number of

counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

ARTICLE XXII

Unavoidable Delays

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

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

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

BLUESTONE COMMONS, LLC., A
MINNESOTA LIMITED LIABILITY
COMPANY

By _____
Its President

By _____
Its President

By _____
Its Secretary

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____ and _____, 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 _____, 2012, by Mark W. Lambert, the President of BlueStone Commons, LLC., a Minnesota limited liability company, for and on behalf of the company.

Notary Public

This instrument was drafted by:

Joan M. Christensen
Attorney for the Duluth Economic
Development Authority
410 City Hall
Duluth, MN 55802
(218) 730-5273

EXHIBIT A

PHASING PLAN

Described below are the Phases or Phasing. All are part of the Project with the exception of 2-R. Phase 1-R is the Minimum Improvements. The Phases are illustrated on page A-3.

Phase 1-R will involve the construction of a four story building containing approximately 99 units, for a total of 333 beds of residential housing. As part of Phase 1-R, BlueStone Commons, LLC will also construct 163 stalls of parking: 95 stalls beneath the apartment building to serve as resident parking; and 68 stalls of street parking along the exterior of the building to serve as resident and retail parking. The development plan currently calls for the construction of 146,300 square feet of housing, and 35,288 square feet of parking. Total square feet to be constructed during Phase 1-R will equal 181,588 square feet.

Phase 2-R, which is outside of the TIF District but within the Project Area, will involve the construction of a four story building containing approximately 57 units, for a total of 160 beds of residential housing. It is possible that the unit and bed count might be reduced prior to construction. As part of Phase 2-R, BlueStone Commons, LLC will also construct 66 stalls of parking: 47 stalls beneath the apartment building to serve as resident parking; and 19 stalls of street parking along the exterior of the building to serve as resident and visitor parking. The development plan currently calls for the construction of 75,600 square feet of housing, and 20,500 square feet of parking. Total square feet to be constructed during Phase 2-R will equal 96,100 square feet.

Phase 3-R will involve the construction of a five story building containing approximately 83 units, for a total of 307 beds of residential housing. It is possible that the unit and bed count might be reduced prior to construction. As part of Phase 3-R, BlueStone Commons, LLC will also construct 170 stalls of parking: 72 stalls beneath the apartment building to serve as resident parking; and 98 stalls of street parking along the exterior of the building to serve as resident and visitor parking. The development plan currently calls for the construction of 128,000 square feet of housing, and 25,600 square feet of parking. Total square feet to be constructed during Phase 3-R will equal 153,600 square feet.

Phase 1-C will involve the construction of a single story retail building along Woodland Avenue. Phase 1-C will involve the construction of approximately 8,200 square feet of retail space. This location will likely attract a restaurant or general retailer.

Phase 2-C will involve the construction of a single story retail building along Woodland Avenue. Phase 2-C will involve the construction of approximately 6,000 square feet of retail space. This location will likely attract a general retailer.

Phase 3-C will involve the construction of a single story retail building along Woodland Avenue. Phase 3-C will involve the construction of approximately 6,600 square feet of retail space. This location will likely attract a general retailer.

Phase 4-C will involve the construction of a single story retail building along Woodland Avenue. Phase 4-C will involve the construction of approximately 5,500 square feet of retail space. This location will likely attract a general retailer.

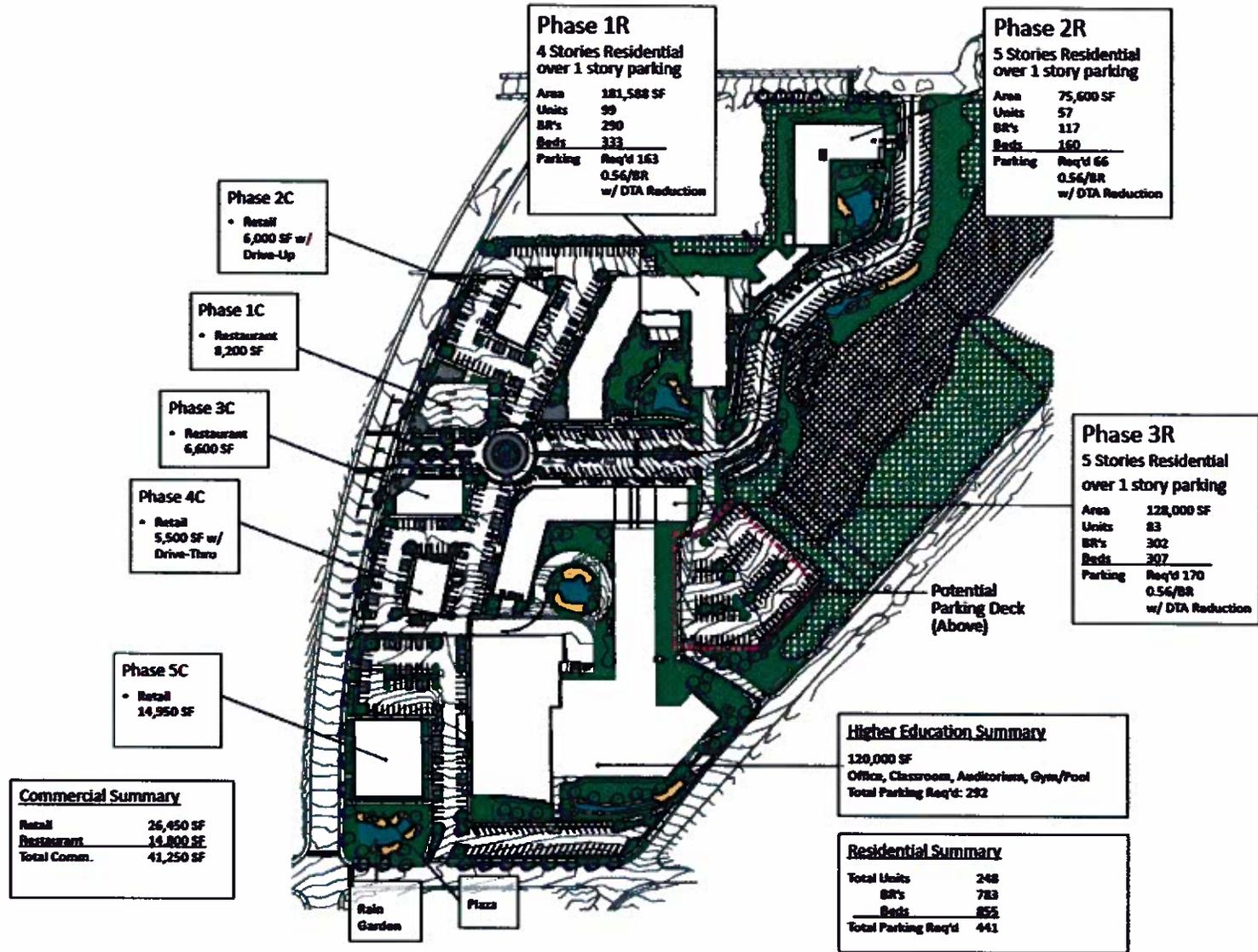
Phase 5-C will involve the construction of a single story retail building along Woodland Avenue. Phase 5-C will involve the construction of approximately 14,950 square feet of retail space. This location will likely attract several general retailers, a grocery store or a pharmacy.

Woodland School Redevelopment Phase will likely involve the redevelopment and repurposing of the Woodland Middle School into higher education, institutional, and perhaps some retail space. One concept has up to one third of the Woodland Middle School being improved with the intent of leasing the space to a health club. The remaining area of the Woodland Middle School will be improved with the intent of leasing the space as higher educational/ institutional to the College of St. Scholastica and University of Minnesota, Duluth.

Potential Parking Deck Phase: The Developer is proposing a surface parking lot to the east of the existing school to serve future tenants, but it may be developed as a three story parking deck.

With the exception of Phase 1-R (the Minimum Improvements) the size, square footage and uses are approximations and actual development will be driven by future market forces. Also note that if no users are found for the Woodland School building in the next year or two, it is likely that the building would be torn down and additional development proposed for the vacant property.

Eligible Project Costs for the Project regardless of the Phase(s) in which they are located shall be submitted in accordance with Article V D.



APRIL 27, 2012



EXHIBIT B
LEGAL DESCRIPTION OF BLUESTONE COMMONS