

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

12-0303R

RESOLUTION APPROVING A BUILDING IN DULUTH 2012
CONDITIONAL GRANT AGREEMENT BETWEEN THE DULUTH ECONOMIC
DEVELOPMENT AUTHORITY AND TAJ PROPERTIES OF DULUTH, LLC
(A. W. KUETTEL & SONS) RELATING TO THE CONSTRUCTION OF
A NEW BUILDING IN THE DULUTH AIRPARK

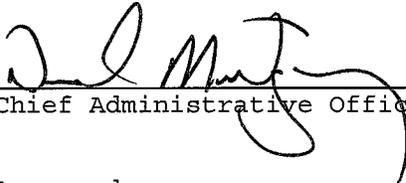
CITY PROPOSAL:

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 TAJ Properties of Duluth, LLC (A. W. Kuettel & Sons), related to the construction of a new building in the Duluth airpark in an amount not to exceed \$350,000.

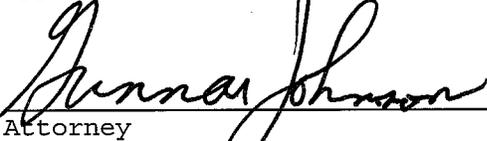
Approved:


Department Director

Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

DEDA/ATTY UC:bel 06/11/2012

STATEMENT OF PURPOSE: The purpose of this resolution is to obtain the City Council's approval of the Duluth 2012 Conditional Grant Agreement between DEDA and TAJ Properties of Duluth, LLC (A. W. Kuettel & Sons) 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 June 12, 2012 meeting.

TAJ is the developer of a new 20,000 sq. ft. facility to house A. W. Kuettel & Sons, Inc. Presently Kuettel is a co-tenant in a Seaway Port Authority building that is located on Port Terminal Drive. The primary goal of this assistance is the construction of a new 20,000 sq. ft. facility that results in the retention of Kuettel in Duluth and makes available their vacated space for the potential expansion of one of the two adjacent co-tenants. The two adjacent companies have indicated they would make significant capital investments in the vacated Kuettel space and the potential for new jobs could reach 85.

In exchange for this assistance, TAJ has committed to the creation of 3 FTE construction jobs. It is anticipated that 12.5 individuals will be working on the construction of this project. This project will also result in the retention of Kuettel's 55 existing FTE's and the addition of 2-3 more. Project construction will begin by July 1 and will be substantially complete by December 31, 2012.

Tax Base Impact Statement: Based on the building value estimated at \$1,800,000, the tax bill would be approximately \$68,500 with the City realizing approximately \$11,600 of that amount.

**BUILDING IN DULUTH 2012
CONDITIONAL GRANT AGREEMENT
TAJ PROPERTIES OF DULUTH, LLC**

THIS CONDITIONAL GRANT AGREEMENT entered into this _____ day of _____, 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 TAJ PROPERTIES OF DULUTH, LLC, a Minnesota limited liability company, whose address is 1225 Port Terminal Drive, Duluth, MN 55802 (hereinafter referred to as "Developer").

WHEREAS, Developer desires to construct a 20,000 square foot building to house the sheet metal fabrication shop and offices of A. W. Kuettel & Sons, Inc. ("AWK") and, in the process, create construction work for up to 12.5 people, which equates to 3 full-time equivalent construction jobs in Minnesota, and facilitate and enhance the ability to create approximately two full-time equivalent jobs and to retain the approximately 55 full-time equivalent jobs at AWK, the tenant of Developer; and

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

WHEREAS, Minnesota Statutes §469.176 was amended in 2010 and 2011 to authorize cash balances in existing tax increment districts, such as TIF District Nos. 3, 10, 16, and 21 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, 2012;

WHEREAS, Developer meets the criteria set forth in Minnesota Statutes §469.176 as well as the Building in Duluth 2012 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 construction 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 \$350,000. In order to reduce this "gap", DEDA has committed to provide tax increment proceeds from TIF District Nos. 3, 10, 16, and 21;
- 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 AWK 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, 2012; and

WHEREAS, the public purpose of the tax increment assistance to be provided pursuant to this Agreement is the construction of a building which will: 1) increase the number and diversity of jobs that offer stable employment and high quality wages and benefits; 2) retain local jobs in Duluth where the loss is imminent and demonstrable; 3) enhance and diversify the City of Duluth's tax base; and 4) encourage development of commercial and industrial areas in the City that result in higher quality development or redevelopment and private investments.

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. AWK shall mean A. W. Kuettel & Sons, Inc.
- B. Building shall mean a 20,000 square foot building to be leased to AWK to house its sheet metal fabrication shop and offices.
- C. City shall mean the City of Duluth.
- D. Eligible Project Costs shall mean the costs of construction of the Building estimated to be \$1,900,000 as shown on Exhibit A and permitted to be reimbursed under Minnesota Statutes §469.176.
- E. Executive Director shall be the Executive Director of DEDA or such person or persons designated in writing by said Executive Director.
- F. 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.
- G. Interest shall mean the interest rate set at the implicit price deflator defined under Minnesota Statutes §275.70, subdivision 2.

- H. Project shall mean the construction of a 20,000 square foot building in Duluth which shall be erected and enclosed pursuant to Article V for the purpose of leasing the same to AWK for its sheet metal fabrication shop and offices, the total Project cost of which is estimated to be \$1,900,000.
- I. Property shall mean that property located on Airpark Boulevard in Duluth, St. Louis County, Minnesota, which Property is legally described as Lot 1, Block 5, Second Rearrangement of Part of Airpark Division.

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 an application fee deposit 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. Plans
Plans sufficient to obtain a site clearing and foundation permit for the Project.
- C. Construction Contracts
A copy of an executed contract between Developer and AWK necessary to commence the construction of the Project. The construction contract with AWK shall contain a provision requiring the contractor to include in all its subcontracts reporting requirements related to payroll documentation evidencing the number of hours worked by construction workers on the Project.

D. 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 AWK as the general contractor for the Project.

E. Construction Financing

Copies of any other loan commitments and other financing commitments in forms reasonably acceptable to DEDA obtained by Developer together with evidence of the extent of Developer's equity participation in the Project, the total of said commitments and said equity participation to be in an amount not less than the Total Project Cost less the DEDA Payment Amount.

ARTICLE IV

Project Plans

A. Plans, Specifications and Elevations

As working drawings, specifications, plans and elevations for the Project together with detailed site grading, utility and landscaping plans and elevations become available to Developer, the same shall be submitted to the Executive Director for review, which approval will not be unreasonably withheld. All such plans, specifications and elevations shall be in conformity with this Agreement, 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 three (3) days of submission of same by Developer. If the Executive Director rejects such plans, specifications and elevations in whole or in part as not being in compliance with the foregoing requirements, and upon notification to Developer of said rejection together with the reason or reasons therefor, Developer shall submit new or corrected plans, specifications and elevations meeting said objections within 10 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 acceptance of Developer's plans, specifications and elevations shall not constitute a waiver of building code or ordinance or other developmental duties imposed in the future upon Developer by law. Developer expressly agrees to be solely responsible for all costs, including architectural fees connected with said plans, specifications and elevations 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 review 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, 2012, Developer shall cause the commencement of construction of the Project in conformance with the plans approved pursuant to this Agreement. The Building shall be erected and enclosed ("Building Construction") not later than December 15, 2012.

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. 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. Certificate of Completion

Promptly upon completion by Developer of the Building Construction, Developer shall submit to the Executive Director written evidence in a form satisfactory to the Executive Director of completion of the Building Construction in accordance with this Agreement after which DEDA shall promptly furnish to Developer an appropriate certificate certifying completion of the Project in the form of that attached hereto as Exhibit B ("Certificate of Completion of Building Construction"). No such Certificate shall be issued until the Building Construction has been completed. Upon receipt, Developer agrees to file the Certificate of Completion of Building Construction 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 of Building Construction 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 Certification of Completion of Building Construction as set forth in Paragraph D 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 Three Hundred Fifty Thousand and 00/100ths Dollars (\$350,000) payable from Fund 865 as follows: \$180,000 payable from TIF District No. 3; \$63,000 payable from TIF District No. 10; \$40,000 payable from TIF District No. 16, and \$67,000 payable from TIF District No. 16 ("DEDA Payment Amount"). The request for reimbursement shall be made on or before December 20, 2012 and shall be accompanied by such documentation as the Executive Director shall request including

paid invoices or comparable evidence of payment. Notwithstanding the above, no reimbursement shall be made by DEDA to Developer after December 31, 2012.

ARTICLE VII

Mortgage Lien

Developer agrees that there is hereby created and imposed on the Property a mortgage lien (the "Mortgage Lien"). The original principal amount of the Mortgage Lien shall be the amount of Three Hundred Fifty Thousand and no/100ths (\$350,000) Dollars. The Mortgage Lien shall secure Developer's repayment obligation under Paragraph G of Article X hereof. 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. Upon payment of the DEDA Payment Amount, DEDA shall subordinate the Mortgage Lien to a First Mortgage, First Assignment of Leases and Rents and First Security Interest in favor of National Bank of Commerce ("NBC") and a Second Mortgage, Second Assignment of Leases and Rents and Second Security Interest in favor of Minnesota Business Finance Corporation ("MBFC") which will be assigned to the U.S. Small Business Administration ("SBA Mortgage") in an amount not to exceed \$579,500.00 and \$625,000.00 respectively. DEDA shall execute and deliver the Subordination Agreement in the form of the one attached hereto as Exhibit C to evidence the subordination to the MBFC/SBA Mortgage. DEDA shall also execute whatever other documents and agreements are reasonably required by NBC and the MBFC and SBA to evidence this subordination.

The subordination is intended to accomplish and provide for the following priority in collateral of the Developer:

- A. First Mortgage, First Assignment of Leases and Rents and First Security Interest in overhead cranes and HD Plasma Table – NBC; and
- B. Second Mortgage, Second Assignment of Leases and Rents and Second Security Interest in overhead cranes and HD Plasma Table – MBFC/SBA.
- C. Third Mortgage – DEDA

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 of Building Construction in the St. Louis County Recorder's Office as set forth in Paragraph D 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

Except as noted below, 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) the mortgages, assignments of leases and rents and security interests described in Article VII in favor of NBC and MBFC/SBA; 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 Article VII and 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 Building to AWK.

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 Article VII and Paragraph A above, 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 Building or the Project for AWK's sheet metal fabrication shop and offices.

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 construction of a building which will: 1) increase the number and diversity of jobs that offer stable employment and high quality wages and benefits; 2) retain local jobs in Duluth where the loss is imminent and demonstrable; 3) enhance and diversify the City of Duluth's tax base; and 4) encourage development of commercial and industrial areas in the City that result in higher quality development or redevelopment and private investments. 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 15, 2012, it shall have completed the Building Construction on the Property in accordance with this Agreement and have created three (3) 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 completion of the Building Construction is not met by December 15, 2012 as determined in the sole discretion of DEDA, Developer shall not receive any of the DEDA Payment Amount. Developer further agrees that if the Business Subsidy Goal of creating three (3) FTE construction jobs in the State is not met on or before December 15, 2012, in part or in whole as determined in the sole discretion of DEDA, Developer shall receive only a portion of the DEDA Payment Amount which amount shall be determined by multiplying \$350,000 by a fraction, the numerator of which is the number of hours worked by construction workers during the construction period, and the denominator of which is 6,240.

D. Tenant

The name and address of the tenant of Developer is:

A. W. Kuettel & Sons, Inc.
1225 Port Terminal Drive
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 AWK's sheet metal fabrication shop and offices in the Building 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 of Building Construction as set forth in Paragraph D 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 the DEDA Payment Amount 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 Covenant within 1 year of the filing of Certificate of Completion and with repayment for failure to meet the Continued Operations Covenant 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 the repayment obligation in the event 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.

H. Upon expiration of the ten-year period following the Certificate of Completion of Building Construction, DEDA shall provide Developer with a Certificate in the form of the one attached hereto as Exhibit D in recordable form.

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 or satellite TV, and electrical power, subject to the right to contest any such charges in good faith and in accordance with applicable law.

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 applicable 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, subject to the right to contest any such assessments or charges in good faith and in accordance with applicable law.

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 collectability is being contested in good faith by appropriate proceedings.

H. Wage Covenants

Pay both current and new employees compensation, including benefits not mandated by law, that on an annualized basis is, at a 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, whichever is greater; and cause the laborers, mechanics or apprentice-trainees employed directly upon the work site to be paid the wage rates as set forth in Section 2-25 of the Duluth City Code, commonly known as "Little Davis-Bacon."

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. Insurance

1. Property Insurance

Immediately upon issuance of the Certificate of Completion, 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

Immediately upon the issuance of the Certificate of Completion, the 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 Paragraph A 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 Paragraph A 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 payment of the DEDA Payment Amount; 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. Notwithstanding the foregoing, Developer shall not be obligated to repair reconstruct or restore the improvements if Developer pays DEDA the amount payable by Developer to DEDA under Article G of Article X hereof as if AWK discontinued its business in the Project as of the date of the casualty giving rise to the need to repair, restore or 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, except those permitted under Article VII or Article IX hereof or under any other provisions of this Agreement, 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. General Remedies

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 the amounts payable by Developer to DEDA under Paragraph G of Article X hereof.
- 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 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.

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 is fully competent to acquire the Building and 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, 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 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 AWK as rent under the lease for use of the Building and that, therefore, without DEDA assistance, the Project would not be economically feasible for Developer to have commenced construction before July 1, 2012.

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:

TAJ Properties of Duluth, LLC
Attn: Tom Kuettel
c/o A. W. Kuettel & Sons, Inc.
1225 Port Terminal Drive
Duluth, MN 55802

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, provided, however, that NBC and MBFC and SBA shall be entitled to rely and DEDA acknowledges that they will be relying on DEDA's Agreement to pay the DEDA Payment Amount to Developer as provided in this Conditional Grant Agreement making loans to Developer.

ARTICLE XXIII

Counterparts

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

ARTICLE XXIV

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

TAJ PROPERTIES OF DULUTH, LLC

By _____
Its President

By _____
Its _____

By _____
Its Secretary

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Don Monaco and Emily Larson, 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 _____, the _____, of TAJ Properties of Duluth, 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

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EXHIBIT A

ELIGIBLE PROJECT COSTS

Uses

	Total Costs
Land Acquisition	\$ 220,000.00
Pre-Development	\$ 5,000.00
Architectural, Engineering	\$ 45,000.00
Permits & Fees	\$ 10,000.00
Appraisal	\$ 2,000.00
Site Development	\$ 150,000.00
Building Construction	\$ 726,000.00
Mechanical	\$ 294,000.00
Roofing	\$ 180,000.00
Overhead Cranes	\$ 200,000.00
Contingency	\$ 40,000.00
Closing Costs	\$ 24,000.00
Loan Fees	\$ 4,000.00
TOTALS	\$1,900,000.00

MORTGAGE SUBORDINATION AGREEMENT

THIS MORTGAGE SUBORDINATION AGREEMENT (the "**Agreement**"), dated the ____ day of ___, 2012, by MINNESOTA BUSINESS FINANCE CORPORATION, a non-profit corporation under the laws of the State of Minnesota, whose address is 616 Roosevelt Road, Suite 200, St. Cloud, MN 56301, whose interest is to be assigned to the United States Small Business Administration, an agency of the United States of America, created under 15 U.S.C. § 631 ("**SBA**"), and LENDER, a _____ under the laws of the State of Minnesota whose address is _____ ("**Third Party Lender**") and BORROWER, a corporation under the laws of the State of Minnesota, whose address is _____ ("**Borrower**").

RECITALS

The parties declare and recite:

A. Minnesota Business Finance Corporation has made SBA Loan No. _____ ("**SBA Loan**") to the Borrower in the original amount of _____ (\$0.00), which indebtedness is evidenced by a Promissory Note dated the ___ day of MONTH, 2012. The SBA Loan is secured by a Mortgage dated the ___ day of MONTH, 2012, recorded the ____ day of _____, 2012 as Document No. _____, in the office of the _____ County Recorder, Minnesota, which was assigned to the SBA by Assignment dated the 19th day of April, 2012, recorded the ____ day of _____, 2012, as Document No. _____, in the office of the _____ County Recorder, Minnesota ("**SBA Mortgage**").

B. The Third Party Lender has made a loan to the Borrower in the original amount of _____ (\$0.00) ("**Third Party Loan**") secured by a Mortgage dated the ___ day of MONTH, 201__, recorded the ___ day of MONTH, 20__, as Document No. _____, ("**Third Party Mortgage**").

D. The Borrower has requested the Third Party Lender to subordinate the priority of the Third Party Lender Mortgage to the SBA Mortgage.

E. The Third Party Lender is willing to subordinate the Third Party Lender Mortgage to the SBA Mortgage upon the terms and conditions contained in this Agreement.

F. The Borrower hereby certifies that it is the fee owner of the property, which is more particularly described on Exhibit "A" attached hereto ("**Property**"), which is subject to the lien of the SBA Mortgage and the Third Party Mortgage.

NOW, THEREFORE, in consideration of the facts set forth in the above recitals which the parties agree are true and correct, which recitals are incorporated herein by this reference and in consideration of the mutual agreements and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to be bound as follows:

1. Subordination. Regardless of any priority otherwise available to the Third Party Lender Mortgage, the lien of the Third Party Lender Mortgage upon the Property is hereby subordinated to the lien of the SBA Mortgage on the Property to the full extent of the declining principal balance on the Third Party Lender Loan, including interest which shall accrue on the principal balance.

2. Acknowledgment of Subordination. Third Party Lender acknowledges that it hereby waives, relinquishes and subordinates the priority and superiority of the lien or charge of the Third Party Lender Mortgage to the lien or charge of the SBA Mortgage.

3. Retained Rights. Except as expressly provided herein, this Agreement shall not operate or be construed to alter the priority of the SBA Mortgage with regard to any legal or equitable interest in the Property. Borrower and Third Party Lender shall hold SBA harmless from any impairment of its lien (with regard to any third party) which is occasioned by this subordination.

4. Notice of Default Under the Third Party Lender Loan. If a default occurs under the Third Party Lender Loan, Third Party Lender Mortgage or any document evidencing the Third Party Lender Loan to the Borrower, then the Third Party Lender shall give Minnesota Business Finance Corporation, 616 Roosevelt Road, Suite 200, St. Cloud, MN 56301 and the SBA, 210C Butler Square, 100 North Sixth Street, Minneapolis, MN 55403, written notice of default. Third Party Lender shall further provide notice to SBA of any default under the terms of the Third Party Lender Loan which remains uncured for sixty (60) days.

5. Enforceability. All understandings, agreements, representations and warranties contained herein are solely for the benefit of Minnesota Business Finance Corporation, the SBA and the Third Party Lender and their respective successors and assign and no other party, including, without limitation, the Borrower.

6. Federal Law. This Agreement will be interpreted and enforced under federal law, including SBA regulations. The parties may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens and other purposes. By using such procedures, the SBA does not waive any federal immunity from state or local control, penalty, tax or liability. The Third Party Lender and Borrower may not claim or assert against the SBA

any local or state law to deny any obligation, defeat any claim of the SBA or preempt federal law. Any arbitration clauses shall not be enforceable against the SBA.

7. Right to Payments. This Agreement shall in no way effect the obligation or right of the Borrower to pay or the right of any of the parties hereto to receive payments.

8. Miscellaneous Provisions.

A. This Agreement shall remain in full force and effect regardless of whether any party in the future seeks to assume, amend, terminate or reform, by litigation or otherwise, their respective agreement with the Borrower.

B. The filling in of any and all blanks contained in this Agreement, after execution, shall not be deemed an alteration hereof, and the Third Party Lender and Borrower hereby authorize the SBA, as their attorney in fact, to fill in such blank spaces and to record this Subordination Agreement.

C. The priority or parity of the rights and claims of the SBA and the Third Party Lender as general creditors of the Borrower shall not be affected or impaired by this Agreement.

D. This Agreement contains the whole agreement between the parties hereto as to the mortgage loans, and the priority thereof, herein described, and there are no agreements, written or oral, outside or separate from this Agreement, and all prior negotiations, if any, are merged into this Agreement.

E. This Agreement shall inure to the benefit and be binding upon the legal representatives, heirs, devisees, successors and assigns of the parties.

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

IN WITNESS WHEREOF, the parties have hereto set their hands effective the day and year first above written.

[signature pages to follow]

SBA

MINNESOTA BUSINESS FINANCE
CORPORATION

EXHIBIT "A"

DESCRIPTION OF PROPERTY

This instrument was drafted by:

Joan M. Christensen
Assistant City Attorney
410 City Hall
411 West First Street
Duluth, MN 55802