

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

12-0635R

RESOLUTION APPROVING A LAND SALE AGREEMENT BETWEEN THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY AND THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH, MINNESOTA RELATING TO THE PARK PLACE DEVELOPMENT PROJECT.

CITY PROPOSAL:

RESOLVED, that the city council of the city of Duluth does hereby approve the land sale agreement on file in the office of the city clerk as Public Document No. _____, between the Duluth economic development authority (DEDA) and the housing and redevelopment authority of Duluth, Minnesota (HRA), conveying certain property to the HRA for the sum of \$1 related to the Park Place Development Project.

Approved:



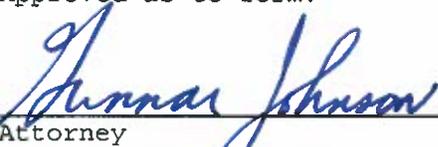
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

BD/ATTY JMC:cjk 12/7/2012

STATEMENT OF PURPOSE: The purpose of this resolution is to obtain the City Council's approval of the Land Sale Agreement between DEDA and the HRA pursuant to Paragraph 19 of the amended DEDA Enabling Legislation, Resolution 09-0324, which requires council approval of DEDA agreements involving the conveyance of property where the subsidized value is greater than \$100,000. DEDA approved the Land Sale Agreement at its November 28, 2012 meeting.

The Land Sale Agreement authorizes conveyance of certain property to the HRA for the purpose of reconveying it to Park Place, LLC (Developer). The Developer will develop senior housing within Duluth's Ramsey neighborhood consistent with the

Ramsey Village Master Plan to revitalize the Ramsey neighborhood. The senior housing will be a cooperative residence of approximately 40 units and will include underground parking as well as in-house amenities including recreation, family rooms, a wellness center and a coffee shop. The site will be enhanced with community gardens, outdoor patios, and direct connections to trails, city parks, shopping, education and public transportation.

Tax base impact summary: There is no tax impact with respect to the conveyance of the property to the HRA. Upon HRA's conveyance of the property to the Developer and completion of construction of the Park Place Project, it is estimated that the value of the property will be \$6,696,100. Assuming half the project will be completed in 2013 for assessment in 2014, the city portion of real estate taxes paid in 2015 is estimated at \$9,000. Upon completion of the project, taxes payable in 2016 are estimated at \$18,000. This estimate is based on the 2012 effective tax rates and the current market value exclusion law. Changes to either could affect these estimates.

**LAND SALE AGREEMENT
THE HOUSING AND REDEVELOPMENT AUTHORITY
OF DULUTH, MINNESOTA**

This Agreement is entered into this ___ day of _____, 2012, by and between the Duluth Economic Development Authority, a public body corporate and politic under the laws of the State of Minnesota, hereinafter referred to as “**DEDA**” and The Housing and Redevelopment Authority of Duluth, Minnesota, a public body, corporate and politic under the laws of the State of Minnesota, hereinafter referred to as “**Authority.**”

RECITALS

A. DEDA owns the parcel of real property legally described as:

Lots 1 through 10, Block 168, and Lots 1 through 10, Block 169, West Duluth Seventh Division; and

All those portions of the northeast quarter of the southwest quarter (NE ¼ SW ¼) and the northwest quarter of the southeast quarter (NW ¼ SE ¼) of Section 7, Township 49 North, Range 14 West, of the Fourth Principal Meridian which lie between two lines parallel with and distant 50 feet northwesterly and 100 feet southeasterly, measured at right angles from the hereinafter described Line A, and between the east line of 54th Avenue West and the north line of said northwest quarter of the southeast quarter (NW ¼ SE ¼) of said Section 7; except that portion of said property lying northeast of the centerline of Elinor Street and except that portion of said property lying southwest of the hereinafter described Line B,

Line A: Commencing at a stone monument in the intersection of Grand Avenue West and 59th Avenue West; thence south along the centerline of said 59th Avenue West on an assumed bearing of South 0° 00' 00" east, a distance of 381.1 feet to the point of beginning of Line A, thence north 45° 05' east a distance of 5,000 feet and there terminating.

Line B: Beginning at the southwest corner of Block 154, West Duluth Fifth Division, thence northeasterly along the southeasterly boundary of said West Fifth Division a distance of 445.71 feet to the point of beginning; thence southeasterly deflecting 90° 00' 00" to the right a distance of 200.00 feet to a point on the northwest boundary of Block 2, West Duluth First Division and there terminating

(the "**DEDA Property**").

B. Authority is a housing and redevelopment agency created pursuant to Minnesota Statutes §§ 469.001 through 469.047, as amended (the “Act”).

C. Authority was created pursuant to the Act, as hereinafter defined, and was authorized to transact business and exercise its powers by a resolution of the City Council of the City of Duluth (the “City”) adopted on January 7, 1948.

D. By Authority Resolution No. 2469-03, Authority adopted Redevelopment Plan/Housing Development Plan for Project Area No. 1 adopting a redevelopment plan and a redevelopment project (“**Redevelopment Plan**”) pursuant to Minn. Stat. § 469.090 - 469.180 and § 469.001 - 469.047.

E. The City Council of the City of Duluth approved the Redevelopment Plan on May 12, 2003 by Resolution No. 03-0317R.

F. As set forth and described in the Plan, there is a need for Authority to take actions designed to encourage, ensure and facilitate development and redevelopment by the private sector for the purpose of removing, preventing and reducing blight, blighting factors and other causes of blight on lands located within the City.

G. There is a need to undertake action that will lead to building improvements, building construction and reconstruction, and building repair, to provide affordable, decent, safe and sanitary housing for persons of moderate and low income families.

H. The City is experiencing and can be expected to continue to experience a serious shortage of housing units within the City’s main residential areas.

I. There exists a shortage of available building sites for housing of all types within the City.

J. Park Place, LLC (“**Developer**”) desires to pursue a redevelopment project (the “**Project**”) within Duluth's Ramsey neighborhood.

K. The Project will be referred to as “**Park Place**” and will be located on parcels located within an area bordered by (i) 52nd Avenue West and Elinor Street (on the east and northeast), (ii) the northwest and southwest lines of the DEDA Property (described above), the northwest line of Block 2, West Duluth First Division and 54th Avenue West (on the northwest and west) and (iii) Wadena Street (on the south) (the “**Development Property**”) and is depicted on **Exhibit A** attached to this Agreement.

L. The concept of Park Place began through the planning process which generated a neighborhood redevelopment effort called Ramsey Village which resulted in the Ramsey Village Master Plan prepared by DSGW dated March 1999. The Ramsey Village Master Plan consisted of a plan for mixed use residential development located within the heart of a West Duluth community surrounded by aging housing and a vibrant commercial area. Developer has taken this planning concept and designed a concept for a portion of the site which again is a mixed used residential model.

M. The first phase of the Project (the “**First Phase**”) will consist of a senior cooperative residence of approximately forty (40) units. The residence will be situated on land once serving railroads which crisscrossed the neighborhood. The site will now provide a senior living environment with underground parking, spacious living suites and in-house amenities ranging from recreation, family rooms, a wellness center and a coffee shop. The site will be enhanced with community gardens, outdoor patios, and direct connections to trails, city parks, shopping, education and public transportation. The First Phase will incorporate sustainable design practices throughout the building and site. The First Phase is depicted on Exhibit A.

N. The First Phase will be located, in part, on the DEDA Property. The DEDA Property is depicted on Exhibit A.

O. The First Phase will also require the acquisition of three existing single family homes and related lots and other vacant land which will create a site large enough for the residence with open space preserved to minimize the commercial influence along Grand Avenue. This open space will be contiguous to the Veterans Memorial Park.

P. The three single family homes and lots and other vacant land (each an **“Additional First Phase Parcel”** and, collectively, the **“Additional First Phase Parcels”**) are on land described as: (Dan, are the properties listed below accurate?)

- Lots 8 and 9, Block 1, West Duluth, First Division (010-4470-00200)(Kaspari)
- Lots 10-13, Block 1, West Duluth, First Division (010-4470-00220)(Kaspari)
- Lots 11 and 12, Block 168, West Duluth, Seventh Division (010-4530-00110)(Tario)
- Lot 13, Block 168, West Duluth, Seventh Division (West Duluth CDC)
- Lots 14 and 15, Block 168, West Duluth, Seventh Division (010-4530-00140)(Shannon)
- Lots 16-18, Block 168, West Duluth, Seventh Division (010-4530-00160)(Shannon)
- Lots 9 and 10, Block 168, West Duluth, Seventh Division (010-4530-00090/010-4530-00100)(DEDA)
- The Easterly 20 feet of Lot 22 and all of Lot 23, Block 168, West Duluth, Seventh Division (010-4530-00250)(City of Duluth)

- Lots 11-17, Block 169, West Duluth, Seventh Division (010-4530-00350 State of Minnesota)
- Lots 18 and 19, Block 169, West Duluth, Seventh Division (010-4530-00420)(Authority)
- Lot 20, Block 169, West Duluth, Seventh Division (010-4530-00350 State of Minnesota)

The DEDA Property and the Additional First Phase Parcels are hereinafter referred to as the “First Phase Properties.”

Q. Because only voluntary acquisitions are anticipated, the scope and design of the Project may need to be revised to work with the available site.

R. Developing the Development Property will eliminate blighted conditions making the land useful and valuable for contribution to the public health, safety and welfare.

S. The purposes of Authority include, among other things, the acquisition and redevelopment of open land for the purpose of contributing to the public health, safety and welfare of the Duluth community, providing a sufficient supply of adequate, safe and sanitary dwellings in order to protect the health, safety, morals and welfare of the citizens of the State of Minnesota, and providing housing for persons of all incomes.

T. The acquisition of all of the Development Property is essential (i) to address problems caused by existing faulty and now obsolete planning reflected in the current subdivision of the Development Property, (ii) to provide an integrated development with coordinated and comprehensive planning which addresses modern planning concepts for lot layout, the creation of open and undeveloped spaces and buffers, (iii) to provide a system of road and utility improvements for the Project that best serve the need to provide an integrated

development with coordinated and comprehensive planning and (iv) to best integrate the development of a mix of market rate, senior, workforce and other housing.

U. Authority and Developer desire to work together to assist with implementation of the Project, and Authority desires to obtain the DEDA Property as a part of assembling the Development Property needed for the First Phase and for the purpose of conveying the DEDA Property to Developer to cause the construction of the First Phase.

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

1. Sale of Property. DEDA agrees to convey the DEDA Property to Authority by quitclaim deed for the sum of \$1.00, subject to the terms and conditions of this Agreement; said sum shall be deposited into Fund 865.

The conveyance shall occur on a date mutually agreed to by DEDA and Authority. The conveyance of title shall be subject to covenants, conditions, restrictions, declarations, easements and encumbrances of record; the reservation of minerals and mineral rights by the State of Minnesota; unpaid real estate taxes and assessments; restrictions related to the use or improvement of the property without effective forfeiture provision; and any law, ordinance, or governing regulations including but not limited to building and zoning ordinances restricting, regulating or prohibiting the occupancy, use, enjoyment, improvement or subdivision of the property. The deed conveying the DEDA Property to Authority shall also contain as a covenant running with the land the conditions of Minnesota Statute Sections 469.090 to 469.108, and shall provide that if said covenant is violated, DEDA may declare a breach of the covenant and seek a judicial decree from the District Court declaring a forfeiture and cancellation of the deed.

DEDA assumes no responsibility regarding the marketability of the title to the DEDA Property, and DEDA shall not be liable to Authority for any defects therein.

Authority shall be responsible for paying all costs of filing and recording the deed including but not limited to filing fees and state deed tax, and shall, forthwith after closing, record said deed in the office of the St. Louis County Recorder. Authority shall immediately submit to DEDA an executed original of the deed showing the date and document number of record, or duly certified copy of the filed original.

Prior to and as a condition of the conveyance of the DEDA Property to Authority: 1) Authority and Developer shall enter into a Contract for Private Development (the “**Development Agreement**”) which shall govern the use and development of the DEDA Property by Developer and its successors and assigns; and 2) Developer shall have demonstrated to Authority that Developer has the financial wherewithal to carry out the First Phase of the Project which shall be demonstrated by Developer meeting the provisions of Paragraph 3 (a) herein.

2. Use of the Property. The DEDA Property is being conveyed to Authority for reconveyance to Developer as a part of assembling the parcels in order to cause the construction of the First Phase by Developer.

3. Development Agreement. The Development Agreement between Authority and Developer shall be subject to DEDA’s approval, in the form of written approval by the City’s Director of Planning and Construction Services (the “Director”), and such approval shall not be unreasonably conditioned, delayed or withheld. Any amendment of the Development Agreement after the initial approval by the Director shall be likewise subject to the written approval of the Director. The Development Agreement shall include, without limitation, provisions that provide for the following:

(a) Prior to and as a condition of any acquisition by Authority and conveyance to Developer of the DEDA Property, Developer shall demonstrate that Developer has the financial wherewithal to carry out the First Phase of the Project. Financial wherewithal may be demonstrated by, among things, bonding, letters of credit, and commitments to provide equity or financing or guaranties or sureties acceptable to Authority in Authority's sole judgment. Specifically, prior to and as a condition of any acquisition by Authority and conveyance to Developer of the DEDA Property, Developer shall have submitted:

(i) Proof reasonably satisfactory to Authority that Developer owns the First Phase Properties in fee simple absolute (other than the DEDA Property and Additional First Phase Parcels to be conveyed by Authority to Developer).

(ii) Developer's certified estimate of the total cost of construction of the First Phase of the Project.

(iii) A copy of executed contracts between Developer and a general contractor necessary to complete the construction of the First Phase of the Project in accordance with approved plans and specifications, certified by Developer to be a true and correct copy thereof. All such construction contracts shall provide that payment for the work thereunder are the sole obligation of Developer.

(iv) Copies of executed payment and performance bonds provided by the general contractor in connection with the construction of the First Phase which bonds shall be in the penal amount of not less than one hundred percent (100%) of the contract price under said construction contract written by a bonding company or bonding companies licensed to do business in the State of Minnesota, certified by Developer to be true and correct copies thereof

which name Authority and DEDA as additional beneficiaries thereof, or other evidence satisfactory to the Director of the ability of the Developer to complete the Project.

(v) Copies of loan commitments and other financing commitments obtained by Developer for the First Phase, 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 3(a)(iii) above.

(b) Developer shall, barring “Unavoidable Delays” commence the First Phase no later than _____, 2013 and complete the First Phase no later than December 31, 2013 (the “**First Phase Completion Date**”). As used herein, “**Unavoidable Delays**” are any delays outside the control of the party claiming its occurrence, which are the direct result of unusually severe or prolonged bad weather, acts of nature, fire or other casualty, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, State, or local government unit (other than Authority) which directly result in delays.

(c) Developer agrees that there shall be no discrimination in the use of the DEDA Property because of race, sex, age, sexual orientation, religious, political or other similar affiliations, familial status or status with regard to the receipt of public assistance.

(d) To the extent that investigation, site monitoring, containment, clean-up, removal, restoration, or other remedial work (the “**Remedial Work**”) of any kind is necessary under any applicable local, State or federal laws or regulations, or is required by any governmental entity or other third person because of or in connection with the presence or suspected presence of hazardous substance(s) on or under any portion of the DEDA Property, Developer shall assume responsibility for all such Remedial Work and all costs and expenses of

such Remedial Work shall be paid by Developer. Without limiting the foregoing, nothing contained in this paragraph shall be construed or interpreted in such a way to adversely affect the ability of Developer to seek reimbursement of the cost of any Remedial Work undertaken by Developer from the federal government, the State of Minnesota or any other third party other than DEDA or the City.

(e) Developer will acknowledge that the DEDA Property is being sold “AS IS” in its current physical condition, without any representations or warranties of any kind. Authority will make no warranty or representation that the DEDA Property is suitable or fit for the purposes of the Project and Developer must acknowledge that it has relied solely upon its own inspections and observations of the DEDA Property in agreeing to develop the First Phase and purchase the DEDA Property.

(f) Developer will acknowledge that Authority assumes no responsibility regarding the marketability of the title to the DEDA Property, and Authority will not be liable to the Developer for any defects therein.

(g) Developer will acknowledge that the conveyance of the DEDA Property to Developer shall constitute Developer's acknowledgment that it has independently inspected and investigated the DEDA Property and has made and entered into the Development Agreement based upon such inspection and investigation and its own examination of the condition of the DEDA Property. Upon conveyance, Developer shall assume the risk that adverse matters, including but not limited to construction defects and adverse physical and environmental conditions and the suitability or unsuitability of the DEDA Property for Developer's intended uses, may not have been revealed by Developer's investigations. Developer, upon conveyance, shall be deemed to have waived, relinquished and released Authority, DEDA and/or the City

from and against, and covenanted not to sue any of the foregoing with regard to, any and all claims, demands, causes of action (including causes of action in tort or under any environmental law), losses, damages, liabilities (whether based on strict liability or otherwise), losses, damages, liabilities, costs and expenses (including attorneys' fees and court costs) of any and every kind or character, known or unknown, which Developer might have asserted or alleged against Authority, DEDA and/or the City at any time (including without limitation to the extent covered by or that would be covered by [as opposed to paid] by insurance) by reason of or arising out of any latent or patent construction defects or physical conditions, violations of any applicable laws (including, without limitation, any environmental laws), the suitability of the DEDA Property for any purposes contemplated by Developer and any and all other acts, omissions, events, circumstances or matters regarding the DEDA Property.

(h) Developer shall acknowledge that Developer and/or Developer's owners and managers are experienced in and knowledgeable about the management and development of real estate, and they have collectively have relied and will rely exclusively on their own consultants, advisors, counsel, employees, agents, principals and/or studies, investigations and/or inspections with respect to the DEDA Property, its condition, value and potential. The terms and conditions contained in the Development Agreement are the result of arm's-length negotiations between sophisticated parties experienced in transactions of this kind, and the terms and conditions contained in the Development Agreement take into account the fact that Developer is not entitled to rely on any information provided by Authority, DEDA and/or the City or any of their agents, or any other person acting for or on behalf of Authority, DEDA and/or the City. All information, whether written or oral, previously, now, or hereafter made available to Developer by Authority, DEDA and/or the City, their agents, or any other person acting for or on behalf of

Authority, DEDA and/or the City, whether in the form of appraisals, market studies, projections, brochures, maps, surveys, soil reports, engineering studies, environmental studies, inspection reports, plans and specifications, and all other information and materials have been or will be furnished by Authority, DEDA and/or the City to Developer solely as an accommodation, and neither Authority, DEDA and/or the City nor their agents has verified the accuracy of such information or the qualifications of the persons preparing such information. Developer agrees that, notwithstanding the fact that it has received certain information from Authority, DEDA and/or the City or their respective agents or consultants, Developer has relied solely upon and will continue to rely solely upon its own analysis and will not rely on any information provided by Authority, DEDA, and/or the City or their agents or consultants.

(i) Developer will construct the First Phase on the First Phase Properties. Prior to construction, Developer will provide plans and specifications, including a site plan, to Authority relating to the development of the First Phase. Developer agrees that the First Phase of the Project will be developed in accordance with the items submitted to Authority. These items are subject to the approval of Authority's Executive Director (the "**Executive Director**") (who will not unreasonably condition, delay or withhold such acceptance). The Developer will provide a schedule to the Executive Director, including anticipated or projected dates of various actions which will occur prior to completion of the First Phase of the Project within 60 days after the DEDA Property is conveyed to the Developer. If the Developer desires to make any material change in the plan after approval by Authority, the Developer shall submit the proposed change to Authority for its approval. Such change in the plan shall be deemed approved by Authority unless rejected in whole or in part by written notice by Authority to the Developer setting forth in detail the reasons therefor. Such rejection shall be made within 20 days after receipt of the

notice of such change. Authority's approval of any change in the plans shall not be unreasonably withheld, conditioned or delayed. Because only voluntary acquisitions are anticipated, the scope and design of the First Phase of the Project may need to be revised to work with the available site.

(j) The Developer releases from and covenants and agrees that Authority, DEDA and the City and their governing body members, officers, agents, including their independent contractors, consultants and legal counsel, servants and employees (hereinafter, collectively the "**Indemnified Parties**") shall not be liable for and agrees to indemnify, and hold harmless the Indemnified Parties against any liability, loss, damage, cost, expense (including reasonable attorneys fees and expenses – including those incurred to enforce this Agreement), causes of action, suits, claims, including claims for contribution or indemnity, demands and judgments arising out of or resulting from (i) any condition existing on the DEDA 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 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 (including without limitation all Remedial Work and all costs and expenses of any type or nature relating to Remedial Work, together with the costs incurred in proceeding 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 cost of preparing and securing approval of any responsive action plans as may be necessary to meet the requirements of the aforesaid agencies) (ii) any other defect to or condition of the DEDA Property or (iii) any claim for relocation or other benefits by any current or prior occupant of the DEDA Property. Promptly after receipt by any Indemnified Party of notice of the commencement of any action with respect to which Developer is required to indemnify the Indemnified Parties under this indemnity, the Indemnified Parties shall notify Developer in writing of the commencement thereof, and Developer shall assume the defense of such action, including employment of legal counsel satisfactory to the Indemnified Parties and the payment of expenses. Insofar as such action shall relate to any alleged liability of an Indemnified Party, the Indemnified Party 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 the expense of Developer. Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, Developer agrees to protect and defend the Indemnified Parties now and forever and further agrees to hold the Indemnified Parties harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the Project, or the transactions contemplated by the Development Agreement or the acquisition, construction, installation, ownership, and operation of the Development Property, or any demolition or any relocation of existing or future tenants or occupants, provided that this indemnification shall not apply to the obligations undertaken by Authority in this Agreement. Authority and the Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer or officers, agents, servants, or employees or any other person who may be about the First Phase due to any act of negligence of any person; provided, that nothing contained herein shall be

interpreted to alter the liability of Authority for any damage or injury to the persons or property of the Developer or officers, agents, servants, or employees or any other person who may be about the First Phase caused by any act of negligence of Authority.

(k) While the First Phase is under construction and until a Certificate of Completion for the First Phase is issued, Developer shall provide for purchase and maintenance of such insurance as will protect Developer, Authority and DEDA against risk of loss or damage to the First Phase. Such coverages shall include but shall not necessarily be limited to "All Risk" builder's risk insurance under a completed value form on all work on the First Phase of 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, and 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.

(l) At least the following remedies when any event of default occurs and remains uncured after not more than 90 days written notice:

(i) Authority may suspend any remaining performance by Authority under the Development Agreement until it receives assurances from Developer, deemed adequate by Authority, that Developer will cure its default and continue its performance under the Development Agreement.

(ii) Authority may cancel and rescind the Development Agreement.

(iii) Authority may withhold any certificate of completion.

(iv) Authority may take whatever action, including legal or administrative action, which may appear necessary or desirable to Authority to collect any payments due under the Development Agreement or to enforce performance and observance of any obligation, agreement or covenant of Developer under the Development Agreement.

(m) DEDA shall be identified as an intended third party beneficiary of the Development Agreement.

4. Enforcement. Authority shall take all commercially reasonable steps to enforce the Development Agreement for its benefit and for the benefit of the DEDA.

5. Condition of Land. Authority acknowledges and understands that the DEDA Property is being sold to Authority "AS IS", in its current physical condition, without any representations or warranties of any kind. DEDA makes no warranty or representation that the DEDA Property is suitable or fit for the purposes of the Project and Authority acknowledges that it has relied solely upon its own inspections and observations of the DEDA Property.

6. Notice of Sale, Transfer or Change in Use. Authority agrees for itself, and its successors and assigns that it will notify DEDA of any sale, transfer or exchange of the DEDA Property or a portion thereof by Authority or any change in use of the DEDA Property at least 30 days prior to any such sale, transfer, exchange or change in use.

7. Notices. Any notice, demand or other communication under this Agreement by either party to the other party shall be deemed to be sufficiently given or delivered if it is dispatched by US Mail, postage prepaid, or personally delivered or sent by overnight courier, or sent by electronic transmission (e.g. facsimile or email) to:

In the case of DEDA:

Director of Planning and Construction Services
City of Duluth
407 City Hall
411 West First Street
Duluth, MN 55802

In the case of Authority:

Executive Director
The Housing and Redevelopment Authority
of Duluth, Minnesota
222 East Second Street
PO Box 16900
Duluth, MN 55816

8. Recordation. Immediately upon execution by the parties, Authority agrees to record this Land Sale Agreement in the office of the St. Louis County Recorder and to pay all costs associated therewith. Upon recordation, Authority shall immediately submit to DEDA an executed original of this Land Sale Agreement or a duly certified copy of the filed original. The Development Agreement and the deed conveying the DEDA Property to Developer shall be recorded in the office of the St. Louis County Recorder by either the Authority or the Developer either of which shall pay all costs associated therewith and an executed original of the Development Agreement and the deed showing the date and document numbers of record, or duly certified copies of the filed originals shall be immediately submitted to DEDA.

9. 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.

10. 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 Authority as an agent, representative or employee of DEDA for any purposes or in any manner whatsoever.

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

12. No Third Party Rights. Except as set forth in Paragraphs 3(g), 3(h) and 3(k) relating to the City, this Agreement is to be construed and understood solely as an agreement between DEDA and Authority and shall not be deemed to create any rights in any other person or entity, including, without limitation, Developer. No person or entity shall have the right to make claims 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.

13. 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.

14. 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 amendments 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 hereunto set their hands the day and date first above shown.

THE HOUSING AND REDEVELOPMENT
AUTHORITY OF DULUTH, MINNESOTA

By _____
Richard W. Ball, Executive Director

STATE OF MINNESOTA

COUNTY OF ST. LOUIS

On the ___ day of _____, 2012, before me, the undersigned officer, personally appeared Richard W. Ball, who acknowledged himself to be the Executive Director of the Housing and Redevelopment Authority of Duluth, Minnesota, a public body corporate and politic organized and existing under the law of the State of Minnesota, and that he as such officer, being authorized to do so, executed the forgoing instrument for the purposes therein contained by signing the name of the Housing and Redevelopment Authority of Duluth, Minnesota by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

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

THE DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

By _____
Don Monaco, President

By _____
Emily Larson, Secretary

STATE OF MINNESOTA

COUNTY OF ST. LOUIS

On the ___ day of _____, 2012, before me, the undersigned officer, personally appeared Don Monaco and Emily Larson, who acknowledged themselves to be the President and Secretary of the Duluth Economic Development Authority, a public body corporate and politic organized and existing under the laws of the State of Minnesota and that they as such officers, being authorized to do so, executed the forgoing instrument for the purposes therein contained by signing the name of the Duluth Economic Development Authority, a public body corporate and politic organized and existing under the laws of the State of Minnesota by himself as such officer.

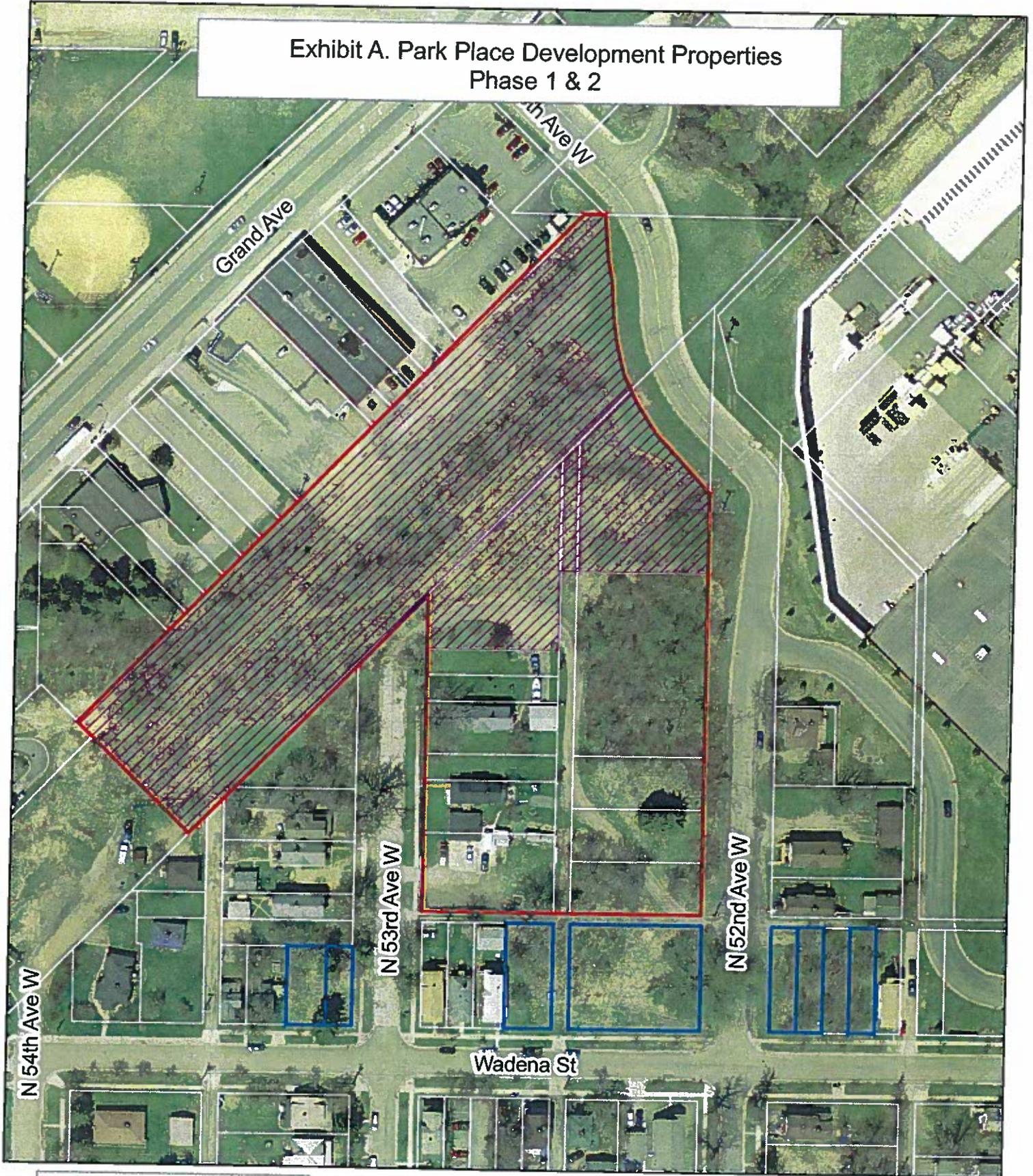
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

EXHIBIT A

DEPICTION OF PARK PLACE PROJECT AREA,
THE FIRST PHASE, AND THE DEDA PROPERTY

Exhibit A. Park Place Development Properties
Phase 1 & 2



-  Property Transferred
-  Phase 1
-  Phase 2

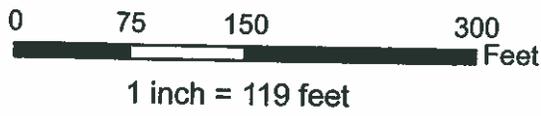


EXHIBIT A