

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

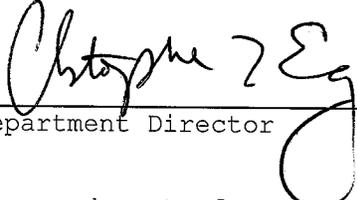
13-0499R

RESOLUTION APPROVING A LAND SALE AGREEMENT BETWEEN THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY AND NORTHERN HEALTH CARE PROPERTIES, LLC RELATING TO THE ACQUISITION AND SALE OF MNDOT PROPERTY IN THE DULUTH HEIGHTS NEIGHBORHOOD.

CITY PROPOSAL:

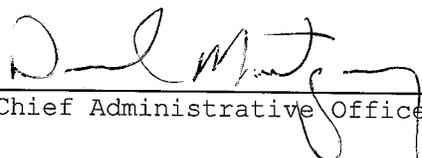
RESOLVED, that the city council of the city of Duluth does hereby approve the land sale agreement on file in the office of the city clerk as Public Document No. _____, between the Duluth economic development authority (DEDA) and Northern Health Care Properties, LLC (developer), related to the acquisition and sale of MnDOT property in the Duluth Heights neighborhood for purposes of the construction of a senior assisted living facility, all amounts to be paid by DEDA for acquisition (anticipated to be approximately \$127,000) to be reimbursed by developer.

Approved:



Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

DEDA JC:bel 10/01/2013

STATEMENT OF PURPOSE: The purpose of this resolution is to obtain the City Council's approval of the Land Sale Agreement between DEDA and Developer as is required pursuant to Paragraph 19 of the amended DEDA Enabling Legislation, Resolution 09-0324. DEDA approved the Agreement at its September 25, 2013 meeting.

Developer desires to acquire property located on Trinity Road for its development of an assisted living facility. Northern Health Care is an operator of a Bee Hive Homes franchise, a franchise with a 23 year history. Northern Health Care has requested DEDA's assistance in obtaining the property. This resolution authorizes the purchase of the property from the State and further authorizes the sale of the property to Northern Health Care at DEDA's cost therefor including fees and any additional associated costs.

TAX BASE IMPACT STATEMENT: Upon conveyance of the property to Northern Health Care, this property will be returned to the property tax rolls. There will be minimal tax impact until such time as this property is improved. The development will include an 8,500 square foot, 16 bed facility with plans for a second building in the future. The estimated market value on the first phase is approximately \$600,000 and will generate an estimated \$10,000 in new taxes.

LAND SALE AGREEMENT

THIS AGREEMENT entered into by and between THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority under Minnesota Statutes Chapter 469, (“DEDA”), and Northern Health Care Properties LLC (“Developer”).

WHEREAS, Developer desires to build an assisted living facility pursuant to Developer’s franchise agreement with Bee Hive homes (the “Project”); and

WHEREAS, Developer desires to acquire three (3) parcels of property (collectively the “Property”) owned by the State of Minnesota Department of Transportation (the “State”) located on Trinity Road for the purpose of the Project; and

WHEREAS, DEDA, by virtue of its status as a governmental authority, has the authorization to purchase the Property directly from the State at its appraised value; and

WHEREAS, DEDA is desirous of assisting and cooperating with Developer in fostering its Project and finds that the conveyance of the Property to Developer is in the best interests of the City and its people and that the transaction furthers DEDA's general plan for development in the area.

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

1. Sale of the Property.

Subject to DEDA’s acquisition from the State, the proper DEDA officials are hereby authorized to sell to Developer at DEDA’s cost of acquiring the property from the State including all associated fees and costs, all in an amount of \$127,000.00, and Developer shall accept, that property in St. Louis County Minnesota being more particularly described as:

Lots 3, 4 and 5, AUDITOR’S PLAT OF TRINITY ROAD ACRES, subject to survey.

In the event the amount of \$127,000.00 is insufficient to cover the payment of costs of acquisition from the State, Developer agrees to the payment of all costs in excess of

\$127,000.00. Upon receipt of payment, DEDA agrees to make payment to the State in the amount of \$127,000.00 or such greater amount if \$127,000 is not sufficient to cover the costs of acquisition, payable from Fund 860.

2. Use of the Property.

Developer hereby agrees that its use of the Property shall be limited to the Project.

3. Conveyance of Property; Plans and Specifications.

Prior to the conveyance of the Property to Developer, Developer shall have presented to DEDA plans and specifications showing the proposed use of the Property and the Project. Such plans shall be subject to DEDA's approval in the form of approval of the Executive Director in writing, which approval shall not be unreasonably withheld. In the event of any proposed change in the use of the Property and the Project after the initial approval by the Executive Director, plans and specifications for said proposed change in use shall be likewise subject to the approval of DEDA's Executive Director.

4. One Year Deadline.

Within one year of the date of conveyance from DEDA to Developer, Developer shall have completed the Project or shall have begun work on the improvements to the Property and the Project to devote it to that use. If Developer fails to do so, DEDA may cancel the sale and title to the Property shall revert to DEDA. Developer shall not transfer title to the Property within one year of the date of purchase without consent of DEDA.

5. Covenant Running With the Land.

The deed conveying the Property from DEDA to Developer shall contain, as a covenant running with the land, the conditions of Minnesota Statutes, 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.

6. Recordation

Immediately upon execution, Developer agrees to record this Land Sale Agreement and the deed conveying the Property in the office of the St. Louis County Recorder and to pay all costs associated therewith. Upon recordation, Developer shall immediately submit to DEDA an executed original of this agreement and the deed showing the date and document numbers of record, or duly certified copies of the filed originals.

7. Environmental Indemnification.

Developer hereby agrees that for itself, its successors and assigns, 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 attorney's fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition existing on the Property, whether pre-existing or after created, which constitutes a violation of any federal, state or local environmental laws, rules or regulations with regard to pollutants or hazardous or dangerous substances or arising out of the presence on the Property of any element, compound, pollutant, contaminant or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to person(s) or damage to property. Indemnification granted hereby shall include all the costs of clean up; remediation; costs incurred in proceedings before a court of law or an administrative agency including attorney's fees, expenses, and the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses; the cost 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 conditions existing on the Property. Provided, however, that the indemnity provided by Developer to DEDA pursuant to this paragraph is intended to run only to the benefit of DEDA and is not intended to, nor shall it, inure to the benefit of any third party.

8. Notices.

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

In the Case of DEDA:

Duluth Economic Development Authority
Room 402, City Hall
Duluth, Minnesota 55802
Attn: Executive Director

In the Case of Developer:

Northern Health Care Properties LLC
Jon Kalkbrenner
6145 N. Sunset Ridge Road
Duluth, Minnesota 55803

9. Applicable Law.

This Agreement, together with all of its paragraphs, terms and conditions, is made in the state of Minnesota and shall be construed and interpreted in accordance

