

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

13-0516R

RESOLUTION APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY AND RAMSEY III, LLC RELATING TO THE RAMSEY NEIGHBORHOOD TOWNHOME DEVELOPMENT.

CITY PROPOSAL:

RESOLVED, that the city council of the city of Duluth does hereby approve an amendment to the development agreement on file in the office of the city clerk as Public Document No. _____, between the Duluth economic development authority (DEDA) and Ramsey III, LLC ("Developer"), related to the Ramsey Neighborhood Townhome Development providing an additional \$60,000 to Developer, for a total of \$540,000.

Approved:



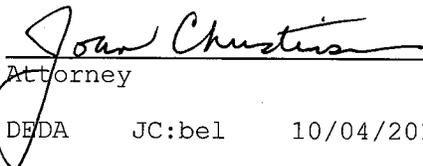
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney
DEDA JC:bel 10/04/2013

Approved:



Auditor

STATEMENT OF PURPOSE: The purpose of this resolution is to obtain the City Council's approval of an amendment to the Development Agreement between DEDA and Developer as is required pursuant to Paragraph 19 of the amended DEDA Enabling Legislation, Resolution 09-0324. This amendment provides for an additional \$60,000 to Developer, and was approved at DEDA's September 25, 2013 meeting.

The Developer will be constructing twelve townhome units in the Ramsey neighborhood in West Duluth. DEDA will be providing an amount not to exceed

\$540,000, \$460,000 of which was previously approved at the March 11, 2013 City Council meeting, payable from TIF District 3 funds. The site is at the intersection of Ramsey Street and N 54th Avenue West and is now occupied by a funeral home. The developer has secured an option to purchase the funeral home site and is proposing to demolish it in order to redevelop the site to provide new workforce housing. The extension is necessitated by the discovery of environmental contamination.

TAX BASE IMPACT STATEMENT: The redevelopment of this site into twelve townhome units will result in an annual net increase in taxes to the City of \$3,000.

DEVELOPMENT AGREEMENT
RAMSEY TOWNHOUSES III, LLC
SECOND AMENDMENT

THIS SECOND AMENDMENT entered into this _____ day of _____, 2013, 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 RAMSEY TOWNHOUSES III, LLC, a Minnesota limited liability company, whose address is c/o Thies & Talle Enterprises, Inc., 470 W. 78th Street, Suite 260, Chanhassen, MN 55317 (hereinafter referred to as "Developer").

WHEREAS, the parties entered into an agreement dated March 12, 2013 as amended by a first amendment dated July 10, 2013 (the "Agreement"), pursuant to which DEDA agreed to provide assistance to Developer's project which involves the acquisition and demolition of a funeral home at 5405 Ramsey Street and the construction of eight townhomes units on the site to provide workforce housing (the "Project"); and

WHEREAS, due to environmental issues, Developer has requested an increase in assistance and an extension of time within which to commence and complete construction of the Project; and

WHEREAS, DEDA desires to assist Developer with its Project by allowing such increase in assistance and time extension.

NOW, THEREFORE, the parties agrees as follows:

1. Clause a. of the Whereas clauses is hereby amended as follows:

a "gap" exists between the cost to Developer of acquiring and demolishing the funeral home and constructing the townhome units and the funds presently available to or known to Developer and DEDA 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 \$540,000 ~~\$480,000~~. In order to reduce this "gap", DEDA has committed to provide tax increment proceeds from Tax Increment Financing (TIF) District No. 3.

2. Paragraph D of ARTICLE I, Definitions, is hereby amended as follows:

Project shall mean the acquisition and demolition of the funeral home and any outbuildings located at 5405 Ramsey Street and construction of twelve (12) townhome units of approximately 1,200 square feet average living area for a total of nearly 19,000 square feet, including garages, at a total Project cost of approximately \$2,340,000million.

3. Paragraph A of ARTICLE V, Construction, is hereby amended as follows:

On or before June 1, 2014 ~~September 30, 2013~~, Developer shall cause the commencement of construction of the Project in conformance with the plans approved pursuant to this Agreement. Said construction work shall be completed not later than July 1, 2015~~September 30, 2014~~. Notwithstanding the above, the start and completion dates may be extended upon the prior written approval of the Executive Director.

4. ARTICLE VI, Reimbursement to Developer, is hereby amended as follows:

DEDA agrees to reimburse Developer for Eligible Project Costs incurred by it in accordance with this Agreement in an amount not to exceed Five Hundred Forty Four Hundred Eighty Thousand and no/100ths (\$540,000 \$480,000) payable from Fund 865 Agency 860 Org 8603. Requests for reimbursement shall be made no more frequently than monthly and shall be accompanied by such documentation DEDA shall request including paid invoices or comparable evidence of payment. DEDA will not reimburse Developer for costs incurred more than ninety (90) days prior to the date of Developers request.

5. The first paragraph of ARTICLE VII, Mortgage Lien, is hereby amended as follows:

Mortgage Lien

Developer agrees that there is hereby created and imposed on the Property a mortgage lien (the "Mortgage Lien"). The amount of the Mortgage Lien shall be the amount of Five Hundred Forty Four Hundred Eighty Thousand and no/100ths (\$540,000 \$480,000) Dollars. The Mortgage Lien shall be exercisable by DEDA upon a General Event of Default by the Developer as defined herein. It is agreed between the parties that this Agreement and the Mortgage Lien imposed herein shall be deemed to run with the land and all of its provisions shall be enforceable by the parties' respective heirs and assigns. The Mortgage Lien shall be in force and effect during the term of this Agreement as set forth herein. Said Mortgage Lien shall be first in priority. DEDA may, in its sole discretion and through the written consent of the Executive Director, decide to subordinate the Mortgage Lien to liens of other parties, provided that such mortgage(s) does not exceed 75% of the value of the Project and that the sum of such mortgage(s) and the \$540,000 \$480,000 provided herein is less than 100% of the certified Project cost and that

same is supported by an appraisal satisfactory to a mortgage lender, with a copy of same to be provided to DEDA.

6. ARTICLE VIII, Term, is hereby amended as follows:

The term of this Agreement shall commence on March 12, 2013 and shall continue for a period of five years after the issuance of the Certificate of Completion as set forth in Article V until September 30, 2014, unless this Agreement is terminated earlier or extended as provided for herein.

7. A new ARTICLE XXIII, Look Back Provision, is hereby added as follows:

A. Upon Issuance of a Certificate of Completion

Upon the issuance of a Certificate of Completion as set forth in Article V, Developer shall provide an accounting of actual project costs in a form acceptable to the Executive Director. In the event actual project costs are less than \$2,340,000, Developer shall immediately repay or, in the event only a portion of the funds have been disbursed, DEDA shall retain, or a combination of both as the case may be, 50% of the difference between \$2,340,000 and the actual project costs.

B. Upon Sale within Five Years

In the event of a sale, conveyance, assignment, transfer or change of identity as that term is defined in Paragraph B of Article XI, other than one necessitated by the death or disability of Developer's Chief Manager and CEO, Mr. Ken Talle, Developer shall immediately pay to DEDA an amount which shall be calculated by multiplying the net sale proceeds in excess of \$2,340,000 by 23.1%. For example, if the net sale proceeds are \$3,000,000, the amount to be paid to DEDA is calculated as follows: $\$3,000,000 - \$2,340,000 = \$666,000 \times 23.1\% = \$152,460$.

C. Look Back Cap

In no event shall Developer be required to pay back more than \$540,000 under the provisions of Paragraph A and B above.

8. Notwithstanding any provision to the contrary in the Agreement, upon execution of this Second Amendment and acquisition of the Property, Developer shall record the Agreement and the Second Amendment in the office of the St. Louis County Recorder and shall pay all costs associated therewith. Upon recording, Developer shall immediately submit to DEDA executed originals of the Agreement and the First and Second Amendments showing the date and document numbers of record, or duly certified copies of the filed originals.
9. Except as provided for in this Second Amendment, the terms and conditions of the Agreement shall remain in force and effect.

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

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

RAMSEY TOWNHOUSES III, LLC

By _____
Its President

By _____
Its Chief Manager and CEO

By _____
Its Secretary

