PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

14-0113R

RESOLUTION APPROVING AN AGREEMENT FOR LOAN BETWEEN THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY AND THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH, MINNESOTA IN AN AMOUNT NOT TO EXCEED $230,000.

CITY PROPOSAL:

RESOLVED, that the city council hereby approves an agreement, substantially in the form of that 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) for the acquisition of the Seaway Hotel by the HRA in furtherance of proposed redevelopment in the Lincoln Park Business District, in an amount not to exceed $230,000, payable from Fund 865 (capital projects), Agency 860 (deda), Organization 8616 (art space/washington), Object 5458(payments to developer).

Approved:

Department Director

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

Auditor

DEDA CTE:bel 02/28/2014

STATEMENT OF PURPOSE: This resolution authorizes DEDA to enter into a loan agreement with the HRA to fund the purchase by the HRA of the Seaway Hotel property as a first step in a program to revitalize the Lincoln Park Business District.

The Lincoln Park Business District, then known as "West End", underwent a substantial facelift back in the 1970's but since then has suffered from stagnation. A material element in this stagnation has been the influence of the Seaway Hotel, a residential hotel located on the east end of the district. Not only is the Seaway in a deteriorated condition as it relates to the health and safety of its occupants, but management problems have led to its becoming a problem for the City's police and fire personnel. The influence of the Seaway and its ongoing problems has become a significant factor in the decline of the Lincoln Park neighborhood. In addition, the problems of the building are such that, unless there is drastic intervention, the building will be condemned and torn down, forcing approximately 70 residents, some of whom have lived there for many years, to find other housing in a market that is already short of being able to meet the needs for this kind of tenancy.

The Duluth HRA has secured an option to purchase the property for $230,000 and has secured State funding sources through MHFA and GMHF to fund a program of physical rehabilitation that will result in there being some 70 or so code-compliant units being made available. In addition, the Duluth HRA has committed to hire a professional property manager to make sure that the property is being properly operated and has committed to maintain it as safe, decent and sanitary SRO housing for a period of three to five years. However, they have no source of funds available to purchase the property. This is where DEDA comes in.

The proposal is that DEDA would lend the Duluth HRA the money to purchase the property in exchange for HRA's commitment to renovate the property and to continue to operate it as safe, decent and sanitary SRO housing until the City can complete a Small Area Plan for the Lincoln Park Business District (anticipated to take eighteen months). The Duluth HRA will then cooperate with DEDA and with private sector developers to implement a long-term solution for the Seaway property in conjunction with the redevelopment of the District. The funding for this loan to assist the Duluth HRA acquisition will come from TIF District #16.

HOUSING AND REDEVELOPMENT AUTHORITY

OF DULUTH

SEAWAY HOTEL PROJECT

INTERIM LOAN AGREEMENT

THIS LOAN AGREEMENT, entered into this __ day of February, 2014, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, and economic development authority under the Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "DEDA", and the HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH, MINNESOTA, a housing and redevelopment authority under Minnesota Statues Chapter 469, hereinafter referred to as "HRA".

WHEREAS, that property legally described below in the Lincoln Park Business District, commonly referred to as the Seaway Hotel property and hereinafter referred to as the "Property", is a residential facility serving predominantly very low income individuals and households (with commercial space on the street level) that is in need of very substantial renovation in order to avoid being condemned for occupancy or destruction because of existing health and safety violations in the building and is furthermore in need of professional property management in order to ameliorate management issues that have had a negative effect on the economic health and viability of the District; and

WHEREAS, the City of Duluth Physical Planning Division has committed to DEDA and to HRA to undertake a "Small Area Plan" for the development and redevelopment of the Lincoln Park Business District including the Property which will be used to guide the future development of the District and the Property; and

WHEREAS, in order to facilitate the future redevelopment of the Property and also to make the continued use of the Property for housing in a safe and prudent manner for the near term, HRA has agreed, subject to the terms of this Agreement, to acquire the Property, to operate it as housing in a safe and healthy manner and to secure funding to make this possible during an interim period as provided below;

WHEREAS, HRA does not have currently available to it funds to purchase the Property; and

WHEREAS, DEDA is willing to lend the funds to HRA to purchase the Property under the terms and conditions set forth below in order to facilitate the interim use of the Property as described above and ultimately to facilitate its redevelopment in conformance with the above-referenced Small Area Plan.

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

1. Definitions

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them:

A. Closing: shall mean that date agreed to by the Owner, the Executive Director of HRA and the Executive Director of DEDA but in no event later than June 1, 2014.

B. Owner: shall mean that party currently owning the Property.

C. Property: shall mean that real property located in St. Louis County, Minnesota legally described as follows:

Lots 321 and 323, Block 53, DULUTH PROPER Second Division.

2. Loan

Subject to the terms and conditions hereinafter set forth, at Closing, DEDA hereby agrees to lend to HRA the sum of Two Hundred Thirty Thousand Dollars ($230,000) to fund the purchase by HRA of the Property. The terms and conditions of the loan shall be as follows:

A. Term

The term of the loan shall be for a term of three (3) years from the date of this Agreement unless the term is terminated or extended as hereinafter provided for.

B. Interest Rate

During the Term of this Agreement, the interest rate payable on the loaned funds shall be Zero (0%) percent.

C. Payments during Loan Term

During the Term of this Agreement, if the operation of the Property results in any income net of operating expense (including, without limitation, HRA's cost of providing property management), such net income shall be applied to pay down the Loan.

D. Payment Upon Sale

Upon sale of the Property, HRA shall pay to DEDA the net proceeds of the sale of the Property up to the amount of the loan which has not been previously paid to DEDA. For the purposes of this Subparagraph, the term, "net proceeds" shall mean the gross sale price of the Property less (i) any closing costs paid by HRA, (ii) any other secured debt due with respect to the Property, (iii) the amount of any relocation payments required to be made by applicable law, (iv) any operating shortfall incurred by the HRA-including, subject to the limitation below, the HRA's out of pocket administrative expense, and (v) the amount of any repairs or renovation expenses required for the continued use of the Property.

HRA's recovery of administrative expense from the proceeds of the sale of the Property is limited as follows: for each Dollar HRA recovers from proceeds DEDA must also receive a Dollar. If HRA is required to make a payment pursuant to this Subparagraph 2.D., then except for the payment obligation and the enforcement of the payment obligation, all other covenants of HRA shall cease.

E. Proceeds of Insurance

If the Property is destroyed by fire or other casualty and is not reconstructed, then the insurance proceeds shall be applied as if a sale of the Property had occurred in the manner provided in Subparagraph 2.D., provided, however, that any cost of demolishing or securing the Property shall be netted out of the proceeds and provided, further, that if the Property is later sold, such sale shall be subject to the provisions of Subparagraph 2.D. If HRA is required to make a payment or payments pursuant to this Subparagraph 2.E., then except for the payment obligation or obligations and the enforcement of the payment obligation or obligations, all other covenants of HRA shall cease.

F. Payments Upon Default

If HRA does not meet its obligation under Subparagraph 3.A. or does not use its best efforts to meet its obligations under Subparagraphs 3.B., 3.C., 3.D., 3.E., or 3.F., and does not remedy such failure within 60 days after receiving written notice from DEDA describing the failure and the action(s) required to remedy the failure, then HRA will repay one-half of the remaining balance of the Loan on the date HRA receives the notice. Repayment will be in 5 equal annual payments the first of which will be due 60 days after HRA receives the notice. If HRA is required to make payments pursuant to this Subparagraph 2.F., then except for the payment obligation and the enforcement of the payment obligation, all other covenants of HRA shall cease.

2.A. Purchase of Property

At Closing, HRA agrees that it shall purchase the Property from the Owner. In the event that the cost to purchase the Property, including closing costs, recording fees, taxes or other fees, exceeds the amount of the loan as provided for under this Agreement, HRA shall be solely responsible to fund such additional amounts from sources other than DEDA. Closing shall be conducted by a closing agent acceptable to both DEDA and HRA. At Closing, HRA shall provide:

A. To the Closing Agent a deed in a form acceptable to DEDA conveying title to the Property in fee simple absolute from the current Owner of the Property to HRA.

B. To the Closing Agent for payment to the Owner and to any party having a secured interest in the Property a payment of the full amount of the purchase price for the Property.

C. To the Closing Agent the amount of any other closing costs, recording fees, taxes or other fees not included in the purchase price of the Property paid to the Owner.

D. To DEDA a title opinion of legal counsel addressed to DEDA and upon which DEDA is entitled to rely or title insurance to which DEDA is a named beneficiary, either of which shall be in a form acceptable to DEDA's Executive Director, insuring or guarantying that, upon Closing, HRA will be the owner of the Property in fee simple absolute subject only to permitted objections approved in writing in advance by DEDA's Executive Director.

3. HRA Operating Commitments

Upon acquiring the Property, HRA shall undertake the following:

A. Within ninety (90) days of Closing formally rename the Property to a name other than the "Seaway Hotel" or the "Seaway" and use the newly-established name on all correspondence related to the Property and in all public references to the Property.

B. For no less than Three (3) Years from the Closing and for as long thereafter as HRA shall own the Property, to the extent financially feasible HRA shall provide not less than Seventy (70) units of housing on the Property serving predominantly very low income individuals and households.

C. Provide (itself or through a third party) professional property management to operate the Property. If a third party property manager is used, the property manager shall be subject to the approval of DEDA's Executive Director, which approval shall not be unreasonably withheld.

D. Within Eighteen (18) months of Closing, have secured funding necessary to rehabilitate residential units in the Property so that not less than Seventy (70) residential units are available.

E. Operate the housing units to serve predominantly very low income individuals and households and in compliance with all applicable codes and in conformance with any applicable Minnesota Housing Finance Agency funding plan.

F. Within Eighteen (18) months of closing, develop and present to DEDA a development plan for a replacement housing project to provide housing primarily to persons of low income. The development plan will include a description of the number of units, intended services (if any), location, and physical development concepts, and a prospective statement of sources and uses.

4. HRA's General Operating Covenant

HRA further covenants and agrees that in its operations and use of the Property it will:

A. Maintenance

To the extent financially feasible, at all times cause the Property to be operated, and maintained in a neat, orderly condition, to maintain and preserve and keep in good repair, working order and condition said Property and to perform all needful and proper repairs, renewals and replacements necessary to be made thereto.

B. Utilities

Pay any and all charges for utilities furnished to the Property including but not limited to hook-up charges and assessments related to all utilities, including but not limited to steam, water, sewer, gas, telephone, and electrical power.

C. Licenses and Permits

Preserve HRA's existence and all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs and to be qualified to do business in each jurisdiction where its ownership of property or the conduct of its business requires such qualifications; provided, however, that nothing herein contained shall be construed to obligate it to retain or preserve any of its licenses, permits or consents which are no longer useable.

D. Obey All Laws

Conduct its affairs and carry on its business and operations in such a manner as to comply with any and all applicable laws of the United States and the several states thereof 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 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 by HRA in good faith through proper legal action provided that such protest shall in no way affect HRA's title to the Property.

E. Payment of Taxes

Promptly pay or cause to be paid all lawful taxes and governmental charges, including real estate taxes and assessments at any time levied upon or against it or the Property.

F. Assessment Fees and Charges

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

G. Obligations and Claims

Promptly to pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against the Property as and when the same becomes due and payable other than any thereof whose validity, amount or collectability is being contested in good faith by appropriate proceedings.

5. Provision Against Liens, Assignments and Transfers

A. Provision Against Liens

Except for encumbrances permitted pursuant to Paragraph B below, the HRA shall not create or permit any mortgage, encumbrance or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Property or any part thereof which would materially or adversely affect the DEDA's interest in this Agreement during the term of this Agreement, provided that if HRA shall first notify DEDA of its intention to do so and post such security as DEDA reasonably deems necessary, HRA 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 imminent foreclosure by reason of such context.

B. Provision Against Assignments, or Transfers

The parties hereto acknowledge that DEDA is relying upon the qualifications and identify of HRA to rehabilitate and operate the Project. Therefore, except for the purposes of obtaining financing as hereinafter described and otherwise approved by this Agreement, HRA 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, lease, trust, lien or power of attorney, and has not or will not otherwise transfer in any other way all or any portion of the Property, the HRA, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations during the Term of this Agreement; and except for mortgaging approved in writing by the Executive Director, HRA will not make or create or suffer to be made any such transfer of HRA's rights hereunder without the prior approval of DEDA.

C. Limitation on Subparagraphs 5.A. and 5.B.

Nothing in Subparagraphs 5.A. or 5.B. or in any other provision of this Agreement shall prohibit the HRA from obtaining or requiring DEDA's consent to financing from the Minnesota Housing Finance Agency ("MHFA"), Greater Minnesota Housing Fund ("GMHF") and/or any other source for the rehabilitation or operation of the Property or from securing any such financing with a mortgage or other security instrument or lien or from subjecting the Property to restrictions or other encumbrance which may be imposed as a requirement to obtaining any such financing.

6. Indemnification By HRA

A. Generally

HRA will to the fullest extent permitted by law, protect, indemnify and save DEDA and the City of Duluth and their officers, agents, servants, employees and any person who controls DEDA within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Project or the Property or growing out of or in connection with the use or non-use, condition or occupancy of the Project or the Property or any part thereof and the construction or installation of the Project on any portion of the Project and 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 the HRA, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.

2. Any violation by HRA of any provision of this Agreement.

3. Any violation of any contract, agreement or restriction related to the Property which shall have existed at the commencement of the term of this Agreement or shall have been approved by the HRA.

4. Any violation of any law, ordinance, court order or regulation affecting the Property, or the ownership, occupancy or use thereof.

B. Environmental Indemnification

In addition to the generality of the foregoing above, HRA hereby agrees that for itself, its successors and assigns that it will indemnify and save the DEDA and the City of Duluth and their officers, agents, servants and employees and any person who controls the DEDA or the City within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition created in the Property after the date of the signing of this Agreement 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 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 persons or

damage to property and that indemnification granted hereby shall include all costs of clean-up, remediation, together with the costs incurred in proceedings before court of law or administrative agency including attorney's 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.

C. Indemnification Procedures

Promptly after receipt by DEDA or the City of notice of the commencement of any action with respect to which the other party is required to indemnify the party receiving such notice under this Article, such indemnitee shall notify the indemnitor in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, the indemnitor shall assume the defense of such action, including the employment of counsel satisfactory to the indemnitee and the payment of expenses. In so far as such action shall relate to any alleged liability of the indemnitee with respect to which indemnity may be sought against the indemnitor, the indemnitee 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 the indemnitor.

7. Insurance

HRA shall provide for purchase and maintenance of such insurance as will protect HRA, DEDA and the City against risk of loss or damage to the Property and any other property permanently located or exclusively used on the Property and against claims which may arise or result from the maintenance and use of the Property, including operations conducted in connection with construction of improvements thereupon. Such coverages shall include but shall not necessarily be limited to the following.

A. Insurance During Construction

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

1. Property Insurance

HRA shall provide "All Risk" builders' risk insurance under a completed value form on all work on the Project, including foundations, permanent

fixtures and attachments, machinery and equipment included in or installed under the construction contract, debris removal, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the project, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Ten Thousand and 00/100ths ($10,000.00) Dollars per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Property and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force. Such insurance shall be written in the names of HRA, DEDA, any subtenant and contractor, as their interest may appear. Contractor, all subcontractors, and suppliers and HRA shall waive all rights against DEDA for damages caused by fire or insured perils, except such rights as are set forth hereunder to the proceeds of such insurance payable in the event of such loss.

2. Public Liability Insurance

Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with XCU exclusion removed, in limits of not less than Two Million and 00/100ths ($2,000,000.00) Dollars aggregate per occurrence for personal injury, bodily injury and death, and limits of Five Hundred Thousand and 00/100ths ($500,000.00) Dollars for property damage liability. If per person limits are specified, they shall be for not less than One Million Five Hundred Thousand and 00/100ths ($1,500,000.00) Dollars per person and be for the same coverages. Contractor shall also require such liability coverage of its subcontractors unless they be insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

a. Contractors' public liability--premises and operations;

b. Independent contractors' protective contingent liability;

c. Personal injury;

d. Owned, non-owned, and hired vehicles;

e. Contractual liability covering customary construction contract and subcontract indemnify provisions; and

f. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employers' liability coverage shall be maintained in limits of One Hundred Thousand and 00/100ths ($100,000.00) Dollars per employee.

B. Permanent Insurance

HRA shall procure and continuously maintain, except as otherwise provided below, insurance covering all risks of injury to or death of persons or damage to property arising in any way out of or as a result of HRA's ownership of, occupancy of or use of the Property, carried in the names of the HRA, any subtenant and DEDA as their respective interests may appear, as follows:

1. Property Insurance

From and after the date of acceptance of the project and prior to expiration of the buildings' risk coverage specified above, the 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 Ten Thousand and 00/100ths ($10,000.00) Dollars 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. HRA 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, the HRA will procure and maintain continuously in effect such insurance as may be available from the United States of America to the extent of the full replacement value of the project and insuring against loss thereof or damage thereto from the risks and hazards of war, provided that the cost of such insurance is economically reasonable.

2. Liability Insurance

During the construction period (unless covered under the policies required previously) and permanently thereafter for the balance of the term of this Agreement, the HRA shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than Two Million and 00/100ths ($2,000,000.00) Dollars aggregate per occurrence for personal bodily injury and death, and limits of Two Million and 00/100ths ($2,000,000.00) Dollars for property damage liability. If person limits are specified, they shall be for not less than One Million Five Hundred Thousand and 00/100ths ($1,500,000.00) Dollars per person and be for the same coverages. DEDA shall be named as an additional insured therein. Insurance shall cover:

a. Public liability, including premises and operations coverage;

b. Independent contractors--protective contingent liability;

c. Personal injury;

d. Owned, non-owned and hired vehicles;

e. Contractual liability covering the indemnity obligations set forth herein; and

f. Products--completed operations.

3. Workers' Compensation

Worker's 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 the DEDA. Employees' liability insurance shall be carried in limits of One Hundred Thousand and 00/100ths ($100,000.00) Dollars per employee.

C. Modification of Insurance Requirements

It is agreed between the parties that DEDA shall have the right to modify the forms of the insurance provided for in Paragraphs A and B above and the limits set forth with regard thereto provided that any such modification and policy forms or limits shall be of such a character and in such amounts as are reasonably necessary to provide DEDA with the types and amounts of protection provided for in this Agreement at the time of its execution. In the event that DEDA shall desire to so modify said insurance requirements, DEDA shall notify HRA 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 HRA believes said modifications to be unjustified under the standards set forth in this Paragraph, HRA shall promptly so notify DEDA and the parties hereto agree to meet as soon as practical thereafter and to negotiate in good faith the character and amounts of any said modifications meeting the standards hereinbefore set forth.

D. Requirements for All Insurance

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

E. Certifications

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

F. Authority to Waive

Notwithstanding anything in Subparagraphs 7.A. through 7.E. or in any other provision of this Agreement to the contrary, DEDA acknowledges that the HRA is already subject to significant property and liability insurance requirements imposed by the Department of Housing and Urban Development and that the anticipated loans from MHFA, GMHF and/or others will impose significant, property based property and liability insurance requirements. To avoid unnecessary burden, expense and the application of inconsistent insurance requirements, DEDA's Executive Director shall have the authority to waive any one or more of the requirements of the Subparagraphs 7.A. through 7.E.

8. HRA Defaults and Remedies Therefor

A. General Events of Default

The following shall be deemed to be general events of default by HRA under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable except as otherwise set forth in this Agreement.

1. Failure to pay Ad Valorum Real Estate Taxes as and when due and payable.

2. HRA 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 HRA pursuant to this Agreement and such failure shall continue for a period of sixty (60) calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to HRA of such default or, in the event that such default shall be incapable of cure during said sixty (60) day period, shall have failed to commence to cure said default within sixty (60) days of the date of said notice and to diligently pursue the same to completion.

3. HRA shall permit valid liens, not cured or contested within sixty (60)) days, to be placed on the Property or HRA loses title to the Property or both with the exception of assignments approved pursuant to the terms of this Agreement; provided, however, that this provision does not apply to a mortgage, security instrument or lien or to restrictions or other encumbrance HRA is not prohibited from granting or making as provided in Subparagraph 5.C.

4. HRA 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 as made as to HRA or its business; or HRA 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 HRA files an answer admitting to or not contesting to the material allegations of a petition filed against 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 HRA's properties or fails to have dismissed or vacated within sixty (60) days after the appointment without the consent or acquiescence of HRA of any trustee, receiver or liquidator of any material part of HRA's properties.

B. General Remedies

Except as otherwise set forth in this Agreement, DEDA shall have the following remedies in the event of a default by HRA:

1. Seek and be entitled to monetary damages from HRA for any damages, not including, however, consequential damages, incurred by DEDA as a result of HRA's default.

2. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent HRA's violation of the terms and conditions of this Agreement or to compel HRA's performance of its obligations hereunder.

3. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.

4. Nothing in this Subparagraph permits DEDA to obtain any payment on the loan, except as provided in Subparagraphs 2.A. through 2.F.

C. Non-Waiver

The waiver by either party of any default on the part of the other party or the failure of said party to declare default on the part of the other party 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 the defaulting party of the same or of any other obligation of the defaulting party hereunder. And, to be effective, any waiver of any default by the defaulting party hereunder shall be in writing by the non-defaulting party.

D. 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.

E. Attorneys' Fees

In the event that either party is in Default of any of the terms and conditions of this Agreement and the non-defaulting party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, such non-defaulting party shall be entitled to reimbursement for its reasonable attorney's fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

9. 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
Room 402 City Hall
411 West First Street
Duluth, MN 55802

In the case of HRA:

Housing and Redevelopment Authority of
Duluth, Minnesota
222 East Second Street
P.O. Box 16990
Duluth, MN 55816-0900
Attn: Richard W. Ball

10. 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.

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

DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority under Minn. Stat. (1989)

By: _____
President

By: _____
Secretary

HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH, MINNESOTA, a Minnesota housing Chapter 469 and redevelopment Authority under Minn.Stat. Chapter 469.

By: _____

This instrument was drafted by:

Robert E. Asleson
Attorney for the Duluth Economic Development Authority
Room 410 DEDA Hall
Duluth, MN 55802
(218) 730-5490