

EXHIBIT A

MEDIATED SETTLEMENT AGREEMENT

This Mediated Settlement Agreement, effective as of August 4, 2015, is entered into by and between the following parties (collectively the “Parties”): Plaintiff the Duluth Economic Development Authority (“DEDA”) and City of Duluth; Defendants John E. Hovland and Lane R. Hovland (the “Hovlands”); and Defendants Thomas J. Bergum and LaDonna E. Bergum (the “Bergums”).

RECITALS

WHEREAS, the Parties are engaged in litigation venued in St. Louis County District Court, with case caption: The Duluth Economic Development Authority, Plaintiff v. John E. Hovland, Lane R. Hovland, Thomas J. Bergum, LaDonna E. Bergum, Eric W. Rudd, and Jane P. Rudd, Defendants, Court File No. 69DU-CV-14-2789 (the “Litigation”); and

WHEREAS, the City of Duluth is interested in and a party to this mediated settlement agreement; and

WHEREAS, the Litigation involves certain real property located in St. Louis County and legally described as follows:

The Northwest Quarter (1/4) of the Northwest Quarter (NW 1/4)
of Section Nine (9), Township Fifty (50) North, Range Fourteen
(14) West of the Fourth Principal Meridian.

(the “Property”).

WHEREAS, the Parties have engaged in mediation of the claims involved in the Litigation under the terms of the Minnesota Civil Mediation Act, Minn. Stat. § 572.31-40; and

WHEREAS, at the conclusion of the mediation, the Parties have agreed to settle all claims which were made or which could have been made in the litigation under the terms set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the agreements set forth below, the above named Parties hereby agree to settle the Litigation, including all claims that were made or which could have been made therein, as follows:

1. DEDA shall immediately request that the court hold in abeyance its decision on the pending summary judgment motions which were brought by DEDA and the Bergums, and that the pre-trial and trial dates be continued until further Order of the Court.

2. Subject to the contingencies contained herein, DEDA shall release and quit claim the Property, including all right, title and interest together with any asserted covenants restricting use, to the Bergums to its full extent.

3. Subject to the contingencies contained herein and after receiving the executed quit claim deed from DEDA described above, the Bergums agree to convey by quit claim deed to the City of Duluth certain real property within the Property (the "Conveyed Property"). The Conveyed Property shall be the southerly 150 feet of the Property. DEDA shall hire at its cost a surveyor to place iron monuments on the northerly line of the southerly 150 feet of the Property as follows: (a) on the westerly point of the northerly line of the southerly 150 feet of the Property; (b) on the center point of the northerly line of the southerly 150 feet of the Property; and (c) on the easterly point of the northerly line of the southerly 150 feet of the Property. The monuments shall be placed no later than August 31, 2015.

4. The Conveyed Property shall be conveyed to the City of Duluth subject to the following condition of use: The Conveyed Property shall be designated as a public park by the City of Duluth, and DEDA and/or the City of Duluth may use the Conveyed Property solely for construction and public use of hiking and Nordic ski trails, which trails may not be used for motorized-vehicle recreation or travel except as required by the City of Duluth for maintenance and construction (the "Condition of Use"). The quit claim deed from the Bergums to the City of Duluth for the Conveyed Property shall contain the Condition of Use on its face as a covenant running with the land.

5. DEDA shall pay and provide for payment of all closing costs of the transactions set forth in this Mediated Settlement Agreement including any applicable filing fee, deed stamp tax and other fees and costs associated with any split or division of the Bergum Property. DEDA shall not pay for any closing costs exceeding \$2,000. If closing costs exceed \$2,000, the Bergums shall pay and provide for payment of those closing costs, however the Bergums shall not pay more than \$2,000. If closing costs will exceed or have exceeded \$4,000 total, either the Bergums or DEDA can void the entirety of this Mediated Settlement Agreement. Legal fees and survey expenses are not included in closing costs.

6. Upon the closing of the real estate transactions described above, the Parties shall dismiss their claims with prejudice; and DEDA will cause any Lis Pendens it recorded against the Property to be immediately discharged, and DEDA and or the City of Duluth will further cause any permit restrictions related to the Litigation to be immediately removed from the Property. The Parties shall cause to be filed in St. Louis County District Court a Stipulation of Dismissal with Prejudice, without a cost award to any party, and draft Order for Dismissal.

7. Defendants John Hovland and Lane Hovland agree that they owe Thomas Bergum and LaDonna Bergum in relation to alleged breaches of various responsibilities to the Bergums the total sum of forty thousand dollars (\$40,000). Bergums agree however to accept total payment of thirty thousand dollars (\$30,000) provided that John Hovland and Lane Hovland execute and acknowledge before a notary a Confession of Judgment for the full sum with joint and several liability, providing interest at the judgment rate from time to time which provides for payment of installments of two hundred fifty dollars (\$250) per month

commencing on the 1st day of September, 2015, and continuing thereafter for one hundred twenty (120) months through and including August 1, 2025. At such time all remaining balance of principal and interest shall be fully due and payable. There shall be no penalty for prepayment.

In the event of a default in form of a missed payment, the Bergums may cause notice of said default to be made to Hovlands at 5896 Seville Road, Duluth, MN 55811. This address may only be changed by notice given by the Hovlands to Bergums in writing by certified mail, return receipt requested.

The notice of default to Hovlands shall provide 10 days from mailing within which to cure the default. Should the missed payment or payments not be fully made up by the due date for the cure payment, time being of the essence thereof, then and in that event Bergums may cause judgment to be entered forthwith for the forty thousand dollars plus accrued interest but less all payments which were made.

The Confession of Judgment shall be drafted and provided to Hovlands who shall execute same before a notary and delivery the Confession to Bergums' attorney within 5 days of receipt.

8. The completion of the terms of this Mediated Settlement Agreement, with exception of requirements of Paragraph 1, are contingent upon completion of each of the following:

(a) The Bergums shall have the opportunity to review and approve of the location of the iron monuments placed by the surveyor retained by DEDA pursuant to Paragraph 3 of this Agreement. Approval by Bergums of the placement of the iron monuments may not be withheld unless the Bergums produce a certified survey showing some discrepancy between the actual placement of the monuments and the placement of the monuments as contemplated by this Agreement. The Bergums' approval or rejection must be made within 14 days of notice of completion of placement of the irons.

(b) Within 30 days of the effective date of this Mediated Settlement Agreement, that is, on or before Thursday, September 3, 2015, the Bergums may seek and obtain written confirmation by the Northridge Estates Association that the Northridge Estates Association has no interest in the Property and/or the Conveyed Property.

(c) Within 60 days of the effective date of this Mediated Settlement Agreement, that is, on or before Friday, October 2, 2015, DEDA and City of Duluth shall obtain the written approvals of this Mediated Settlement Agreement from DEDA's governing board and the City Council of Duluth.

9. Except for the obligations created by this Mediated Settlement Agreement, the Parties mutually release each other from all other claims, suits, agreements, torts, including but not limited to the claims asserted or which could have been asserted in the Litigation and includes a release of all claims by each party against the other parties, their agents, insurers and attorneys for any award of damages, attorneys' fees, costs, treble damages, exemplary or punitive

damages for any act, event, or omission occurring any time in the past and up to the effective date, to wit, August 4, 2015.

10. The releases herein do not apply to claims regarding enforcement of this Agreement, and the prevailing party in any such claim shall be entitled to recover attorneys' fees and costs incurred to enforce this Agreement.

11. Each Party has read and understood this Mediated Settlement Agreement. Each Party has had the opportunity to consult with or be represented by legal counsel in this Mediated Settlement Agreement; and each Party will receive and retain a signed copy thereof.

12. The parties hereby acknowledge and agree that this is a legally binding Settlement Agreement and shall be binding upon and shall inure to the benefit of the Parties hereto, their respective heirs, executors, administrators, successors, legal representatives, members, agents and assigns.

13. The Parties agree that this document may be signed and returned via facsimile or email, and that a photocopy, facsimile copy, scanned copy, or email copy shall be deemed an original and may be relied upon and enforced by the Parties. This Mediated Settlement Agreement may also be executed in counterparts, each of which shall constitute an original but all of which together shall constitute one and the same instrument.

14. The parties have attempted to create an agreement that is lawful and enforceable in all aspects. In the event that any provision of this Mediated Settlement Agreement is found or deemed to be illegal or otherwise invalid or unenforceable, whether in whole or in part, such invalidity shall not affect the enforceability of the remaining terms hereof. This Mediated Settlement Agreement constitutes the entire agreement between the Parties. No other promises or agreements shall be binding unless signed by all Parties. This Mediated Settlement Agreement supersedes and replaces all prior representations, statements, promises, commitments, and agreements between the Parties, whether oral or written, expressed or implied.

15. Hovlands are advised and warrant they understand they were entitled to have an attorney represent their interest, and that the Mediator Kay Biga, and Alison Lutterman and Thomas B. Olson, do NOT represent them. Hovlands have carefully reviewed this Mediated Settlement Agreement and agree to be bound hereby; and expressly waive all right to have legal counsel.

STATUTORY NOTICES: The Parties are hereby notified and hereby acknowledge that: (a) the mediator(s) have no duty to protect the parties' interests or provide them with information about their legal rights; (b) signing a mediated settlement agreement may adversely affect their legal rights; (c) the parties should consult an attorney before signing a mediated settlement agreement if they are uncertain of their rights; and (d) a written mediated settlement agreement is not binding unless it contains a provision stating that the parties were advised in writing of (a) through (c) above.

The Parties are hereby notified and hereby acknowledge that a mediated settlement agreement between debtor and creditor is not binding until 72 hours after it is signed by the debtor and

creditor, during which time either party may withdraw consent to the binding character of the agreement.

ACCEPTED AND AGREED BY:

**Duluth Economic Development
Authority**

BY: _____

Date: _____

ITS: _____

Approved by Counsel:

M. Alison Lutterman,
Deputy City Attorney for the
City of Duluth

Date: _____

City of Duluth

BY: _____

Date: _____

ITS: _____

Approved by Counsel:

M. Alison Lutterman,
Deputy City Attorney for the
City of Duluth

Date: _____

**Thomas Bergum and LaDonna
Bergum**

Date: _____

Date: _____

Approved by Counsel:

Date: _____

Thomas B. Olson,
Olson, Lucas & Redford

John Hovland and Lane Hovland

Date: _____

Date: _____