

**AMENDED AND RESTATED LAND SALE AGREEMENT  
HAINES PROPERTIES, LLP**

THIS AMENDED AND RESTATED LAND SALE AGREEMENT, hereinafter the “**Agreement**”, is entered into by and between THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority under Minnesota Statutes Chapter 469, hereinafter “**DEDA**”, and HAINES PROPERTIES, LLP, a limited liability partnership created and existing under the laws of the State of Minnesota, hereinafter “**Developer**”.

WHEREAS, DEDA and Developer entered into a land sale agreement dated March 22, 2007 (“**Land Sale Agreement**”) pursuant to which DEDA agreed to assist Developer in acquiring tax-forfeited parcels (the “**Property**”) for the purpose of combining them with land that Developer currently owns (the “**Developer-Owned Site**”) to create a site more marketable for office, commercial and light industrial uses; the combined Property and Developer-Owned Site are hereinafter referred to as the “**Project Site**”; and

WHEREAS, the parties entered into a first amendment to the Land Sale Agreement dated November 26, 2007, pursuant to which the time was extended for obtaining the required rezoning and a timeframe was provided by which the Developer was required to pay DEDA for its costs of acquiring the Property from the State of Minnesota; and

WHEREAS, Developer subsequently paid DEDA its costs of acquiring the Property from the State of Minnesota; and

WHEREAS, the parties entered into a second amendment to the Land Sale

Agreement dated May 19, 2014, pursuant to which the Agreement was amended to change the required use of the Project Site and to delete certain development and restrictive covenant requirements; the Land Sale Agreement, first amendment and second amendment are hereinafter referred to as the “**Original Land Sale Agreement**”; and

WHEREAS, the parties desire to amend and restate the Original Land Sale Agreement in order to accommodate a new development proposed by Developer consisting of a major retail/wholesale store and parking lot on a portion of the Project Site (the “**Project**”), with the understanding that other potential retail or appropriately zoned commercial uses may be constructed in the future on the remainder of the Project Site.

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

1. This Agreement amends and replaces the Original Land Sale Agreement in its entirety.

2. Sale of the Property.

The proper DEDA officials are hereby authorized to sell to Developer by quit claim deed, and Developer shall accept, that property in St. Louis County, Minnesota being more particularly described as:

The West half of the Southeast Quarter (SE 1/4) of the Southwest Quarter (SW 1/4) except the southerly 400 feet of the westerly 400 feet, Section 7, Township 50N, Range 14W (the “**Property**”)

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.

DEDA will not furnish an abstract. DEDA provides no warranties regarding title to the Property. DEDA assumes no obligation to perform any acts or to pay for any

expenses incurred in connection with possible title deficiencies except to deliver a properly executed quit claim deed. The Property is sold AS-IS. DEDA makes no representations or warranties regarding the Property's condition or its use.

3. Use of the Developer-Owned Site and the Property

Developer hereby agrees that the use of the Developer-Owned Site and the Property shall include, and that the Project shall consist of, a major retail/wholesale facility of not less than 100,000 square feet and adjacent parking lot on a portion of the Project Site and may include, on other portions of the Project Site, other uses consistent with the Unified Development Chapter of the City of Duluth.

4. Conveyance of Property; Plans and Specifications, Execution of Development Agreement.

Prior to the conveyance of the Property to Developer, Developer shall have presented to DEDA either (a) evidence that a building permit for the Project has been issued by the Construction Services and Inspection Division of the City of Duluth (the "CSI Division") or (b) evidence in the form of a letter from the CSI Division that issuance of such building permit is subject only to the payment of the applicable building permit fee (either of the foregoing (a) or (b) hereinafter the "Project Approval"). Additionally, prior to any development of the Project Site, the party undertaking such development shall present to DEDA, through the CSI Division, design and development level plans and specifications showing the proposed use of the Project Site. Such plans shall be subject to DEDA's approval in the form of approval of the Executive Director in writing, which approval shall be granted upon evidence that Project Approval (i.e. the aforesaid permit or letter) has been issued. Upon the approval of the plans and specifications by the Executive Director and receipt of evidence of the Project Approval, DEDA shall convey the Property to Developer upon fifteen (15) days' notice from Developer.

5. One Year Deadline.

Within one (1) year of the date of conveyance of the Property from DEDA to Developer, Developer shall begin work on improvements to be constructed on the Project Site or on a portion thereof, in accordance with the approved plans and specifications. The beginning of such work shall be demonstrated by the issuance of a building permit and the filing of an affidavit with the Executive Director, executed by

Developer or its successor, to which are attached pictures of commenced construction. If Developer fails to do so within one (1) year of the date of conveyance, notwithstanding anything in this Agreement to the contrary, DEDA may, as its sole and exclusive remedy for such failure, cancel the sale and title to the Property shall revert to DEDA.

6. 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 relating to the use of the Property, 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 (the only result of which shall be the reversion to DEDA of title to the Property). This covenant will be released upon evidence pursuant to Paragraph 5 of commencement of construction on a portion of the Project Site.

7. Recordation

Simultaneously with the conveyance of the Property to Developer, Developer agrees (a) to record (i) this Agreement against title to the Property and (ii) the deed conveying the Property, and (b) 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. This Agreement will be released from title to the Property upon such time as a certificate of occupancy is issued for the Project.

8. Consent

DEDA acknowledges that the purpose of the conveyance of the Property to Developer is for the development of a major retail facility and adjacent parking on a portion of the Project Site and therefore will involve the subsequent conveyance by Developer of the Property to another entity. DEDA therefore now consents to transfer of title to the Property for purposes of development of the Project on a portion of the Project Site even if such subsequent conveyance by Developer occurs within one year of the date upon which the Property is conveyed by DEDA to Developer.

9. 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.

10. Default and Remedies.

In the event that Developer fails to perform or to comply with any of the terms, covenants and conditions of this Agreement and said failure to so perform or comply shall continue for a term of 30 days after notice from DEDA to Developer of such nonperformance or noncompliance, Developer shall be in default of its obligations hereunder and, except for a failure to comply or perform under Paragraphs 5 or 6 above for which DEDA's sole remedy is expressly set forth in those Paragraphs, DEDA may, at its option, exercise any one or more of the following rights and remedies. The remedies provided for under this Paragraph shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be a waiver of any

other remedy with regard to any occasion of default hereunder. Further, the waiver by DEDA of any default on the part of Developer hereunder or the failure of DEDA to declare default on the part of Developer 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 Developer of the same or any other obligation of Developer hereunder and, to be effective, any waiver of any default by Developer hereunder shall be in writing by DEDA.

- a. DEDA may seek and be entitled to recover its actual monetary damages from Developer resulting from such default.
- b. DEDA may seek and be entitled to injunctive and declaratory relief as is necessary to prevent Developer's violation of the terms and conditions with respect to the Property (but may not obtain any such injunctive or declaratory relief with respect to any of Developer's activities on the Developer-Owned Site).
- c. DEDA may seek such other legal or equitable relief as a court of competent jurisdiction may be determined as available to DEDA that is not prohibited by either Paragraph 10.a or 10.b above.

11. 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
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In the Case of Developer:	Haines Properties, LLP 1131 East Superior Street Duluth, MN 55802
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With a copy to:

William M. Burns  
Hanft Fride, P.A.  
130 W. Superior Street, Suite 1000  
Duluth, MN 55802

12. 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 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.

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

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY

HAINES PROPERTIES, LLP

By \_\_\_\_\_  
President

By \_\_\_\_\_  
Frank Holappa, Partner

By \_\_\_\_\_  
Secretary

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF ST. LOUIS )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Tim McShane and Zack Filipovich, the President and Secretary respectively of Duluth Economic Development Authority, a public body corporate and politic and a political subdivision of the State of Minnesota for the purposes of Laws of Minnesota, 1991, Chapter 350, on behalf of said subdivision.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF ST. LOUIS )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Frank Holappa, partner of Haines Properties, LLP, on behalf of the LLP.

\_\_\_\_\_  
Notary Public

This Instrument Drafted By:  
Joan M. Christensen  
Assistant City Attorney  
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(218) 730-5273