

# Legal Documentation

I. West of 23<sup>rd</sup> Ave E.

II. East of 23<sup>rd</sup> Ave E.

West of 23<sup>rd</sup> Ave E.

Edmunds to City - pedestrian easement in 2200 block shoreline for eventual shoreline Lakewalk extension 0627050

This Indenture, Made this 20th day of March, 1995, between The Edmunds Company

partnership (a corporation) under the laws of the State of Minnesota ) party of the first part, and CITY OF DULUTH, a municipal corporation, of the County of Saint Louis and State of Minnesota, party of the second part;

WITNESSETH, That the said party of the first part, in consideration of the sum of One Dollar and other good and valuable consideration (\$1.00) to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does hereby Grant, Bargain, Sell and Convey unto the said party of the second part, its successors and assigns, Forever, an easement for Lakewalk and pedestrian walkway purposes

in, under, over, upon, across and along the following described tract or parcel of land lying and being in the County of St. Louis, State of Minnesota, described as follows, to-wit:

Lots 1 and 2, Block C, Endion Division and the East Twenty-five feet of Lot 8, Block B, Endion Division, and adjacent 22nd Avenue East, all according to the recorded plat thereof, on file in the St. Louis County, Minnesota, County Recorders Office,

said easement being more particularly described as follows, to-wit:

Those parts of Lots 1 and 2, Block C, the Easterly 25 feet of Lot 8, Block B, and adjacent 22nd Avenue East, Endion Division of Duluth, Minnesota, lying southerly of the following described line:

Commencing at the Northerly corner of Lot 8, Block B; thence Southeasterly along the Northeast line of said Lot 8 a distance of 134.55 feet; thence deflecting to the right 90°-00'-00", 25.00 feet to the beginning of the line to be described; thence deflecting to the right 180°-00'-00", 25.00 feet; thence deflecting to the left 30°-59'-49", 26.22 feet; thence deflecting to the right 27°-37'-46", 20.00 feet; thence deflecting to the right 35°-42'-32", 44.30 feet; thence deflecting to the left 20°-32'-49", 75.31 feet; thence deflecting to the left 16°-47'-23", 74.69 feet; thence deflecting to the left 2°-35'-07", 70.36 feet; thence deflecting to the right 11°-51'-06", 18.57 feet to a point on the Northeast line of Lot 5, Block C, Endion Division and there terminating.

(OVER)

That the easement hereby intended to be conveyed is as indicated on the plat hereto attached, marked "Exhibit A" and hereby made a part hereof.

IN TESTIMONY WHEREOF, the said party of the first part has caused these presents to be executed in its corporate name by its President and its and its corporate seal to be hereunto affixed the day and year first above written.

Signed, Sealed and Delivered

In Presence of This document prepared by: Thomas J. Schindler 410 City Hall Duluth, Minnesota 55802

THE EDMUNDS COMPANY

By Michael G. Edmunds, Partner

Its

19.50p4

Edmunds Property Easement

2

STATE OF MINNESOTA  
COUNTY OF ST. LOUIS

} ss.

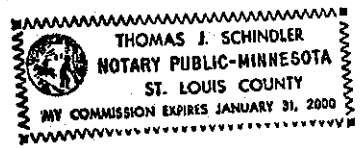
On this 20 day of March A. D. 19 95 , before me, a notary public within and for said County, personally appeared

Michael G. Edmunds and

to me personally known, who, being each by me duly sworn did say that he is respectively the President and the a partner in the Minnesota partnership of The Edmunds Company the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said partnership pursuant to proper authority.

and

acknowledged said instrument to be the deed and also of said corporation



[Handwritten Signature]

Notary Public \_\_\_\_\_ County  
My Commission Expires \_\_\_\_\_

(Legal Description Continued)

Said easement being conditioned as follows:

- a) No structures or objects which will obstruct the lakeview will be placed within said easement upon its improvement.
- b) No motorized vehicles, except for maintenance vehicles, will be allowed to operate within said easement.
- \* c) The flat rocks on the lakefront side of the easement will be preserved and not covered or disturbed in any improvement of the easement. \*

0627050  
EASEMENT FOR

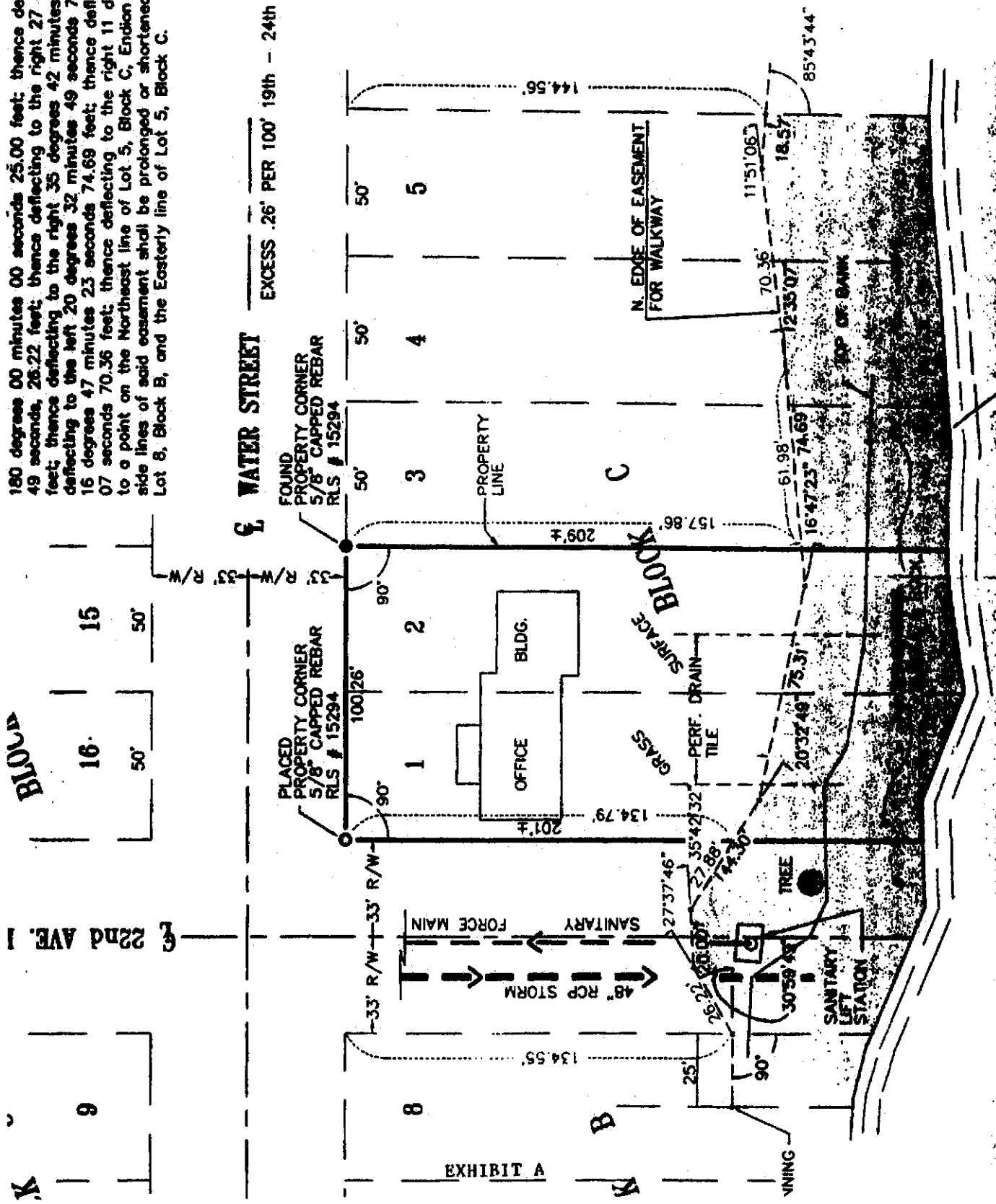
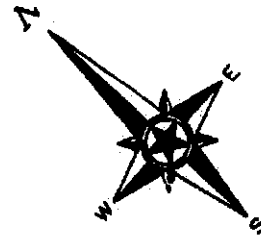
By Corporation  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ST. LOUIS COUNTY RECORDER  
I HEREBY CERTIFY THAT  
THE WITHIN INSTRUMENT  
WAS FILED IN THIS OFFICE  
FOR RECORD AS  
DOCUMENT NO. 00627050  
ON 03/28/1995  
AT 01:26PM  
MARK A. MONACELLI  
COUNTY RECORDER  
BY BETH TALBOT  
DEPUTY

Register of Deeds.  
By \_\_\_\_\_ Deputy.

180 degree 00 minutes 00 seconds 25.00 feet; thence deflecting to the left 30 degrees 49 seconds 26.22 feet; thence deflecting to the right 27 degrees 37 minutes 46 seconds 46 feet; thence deflecting to the right 35 degrees 42 minutes 32 seconds 44.30 feet; thence deflecting to the left 20 degrees 32 minutes 49 seconds 75.31 feet; thence deflecting to the left 02 degrees 07 seconds 47 minutes 23 seconds 74.69 feet; thence deflecting to the left 02 degrees 07 seconds 70.36 feet; thence deflecting to the right 11 degrees 51 minutes 06 seconds to a point on the Northeast line of Lot 5, Block C, Endion Division and there terminating. side lines of said easement shall be prolonged or shortened to terminate on the Easterly line of Lot 8, Block B, and the Easterly line of Lot 5, Block C.

0627050



Block

22nd Ave. 1

Water Street

EXCESS .26' PER 100' 19th - 24th

Block C

EXHIBIT A

Staple all Correspondence

**Application by a Governmental Subdivision for Conveyance of Tax-Forfeited Lands for an Authorized Public Use**  
(Minnesota Statutes, Section 282.01, Subdivisions 1a through 1e)

(Note: If the governmental subdivision has purchased the property, use PT Form 80)

In Saint Louis County

Name of governmental subdivision (applicant): City of Duluth

Mailing address of applicant: 411 West First Street, Room 402

Duluth, Minnesota 55802

Date requested property was forfeited to the State: Range from 12-01-1976 to 12-01-2004  
(month) (date) (year)

Legal description of property (include the name of the city/town in which the property is located):

Endion Division to Duluth, City of Duluth

Lots 1, 2, East 1/2 of Lot 3 and West 1/2 of Lot 3, Block A.

Parcel ID Numbers; 1420-00010; 1420-00020; 1420-00030; and 1420-00040

Describe the intended public use to be made of the property (be specific, including statute or special law references, if relevant):

~~The property will be used for public park, recreation, and trail purposes in the town of Duluth, Lakewalk~~

The combined land area of these parcels is 7,250 square feet

State the need for the property (be specific, e.g., why this property instead of some other property?):

The City of Duluth has recently received easement for the extension of Lakewalk East across the balance of Blocks A and B of Endion Division.

The purpose of this request is connect from the existing Lakewalk East segment at 20<sup>th</sup> Avenue East eastward to existing easements at 22<sup>nd</sup> Avenue East.

①

6/15/06

act of legislature may 2003

Mailed 6/15/06

2

STATE OF MINNESOTA )  
 ) ss.  
County of Saint Louis )

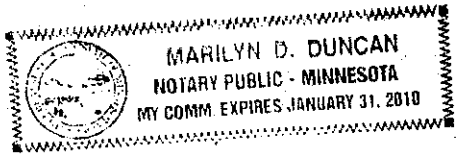
Herb W. Bergson being first duly sworn, deposes and says that he/she is the authorized representative of the applicant named herein, that he/she has read said application and knows the contents thereof, and that the matters stated therein are true and correct.

Herb W. Bergson Mayor  
Name Title

Subscribed and sworn to before me this 6<sup>th</sup>  
day of October, 2005.

Marilyn D. Duncan  
Notary Public, Saint Louis County, Minn.

May commission expires 1-31-2010



RECOMMENDATION OF COUNTY BOARD UPON APPLICATION

The County Board of Saint Louis County, Minnesota, has reviewed the application of City of Duluth dated July 11, 2005, for the conveyance for an authorized public use of certain tax-forfeited land described therein. The county board recommends that this application be: rejected      granted X.

Paul [Signature], Clerk of Cty Bd 4/10/06  
Signature (for the County Board) Date

CERTIFICATION OF COUNTY AUDITOR OR LAND COMMISSIONER

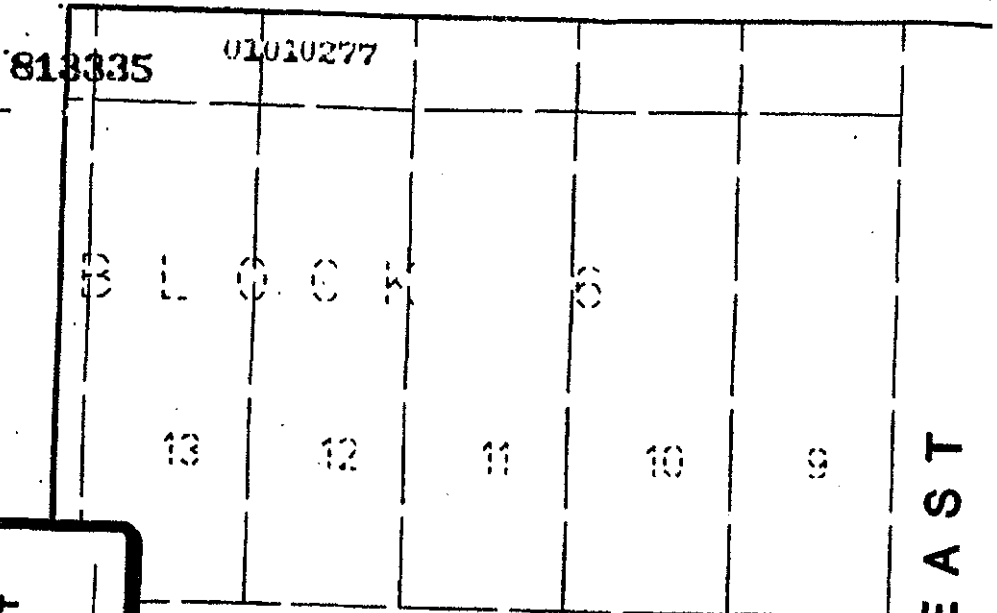
I have taken the necessary steps required by Minnesota Statutes to prepare the herein described tax-forfeited land for conveyance for an authorized public use.

Robert S. Kuper 6/15/06  
Signature of County Auditor or Land Commissioner Date





2

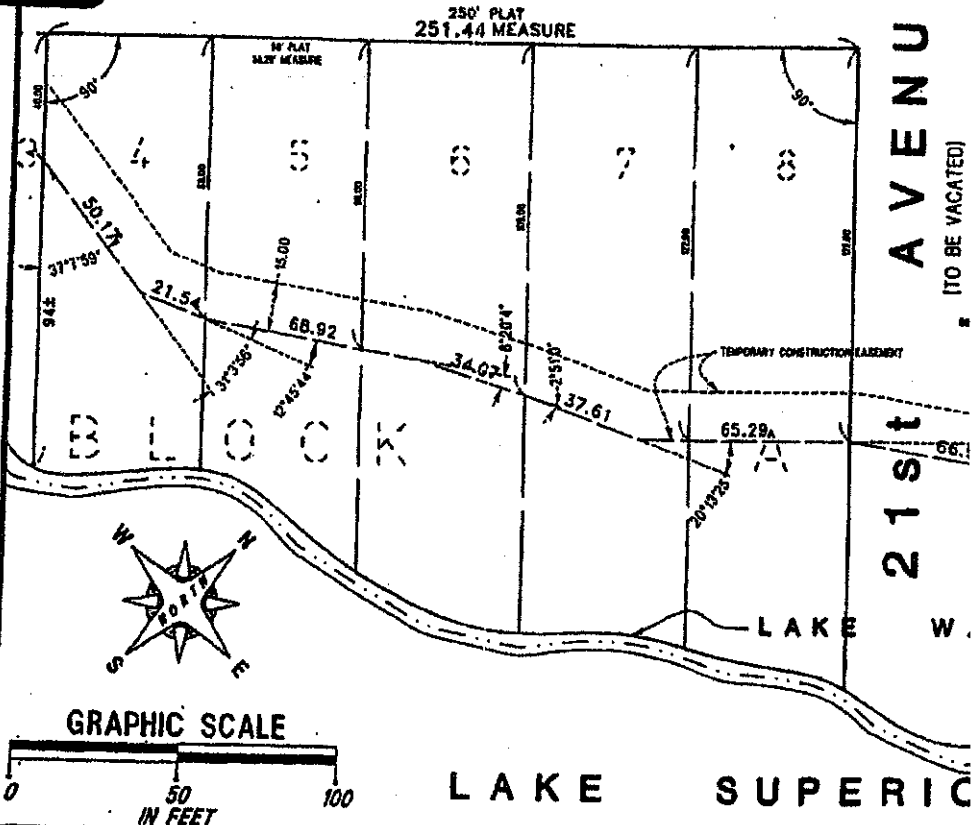


**EXHIBIT**  
**A**

**WATER**

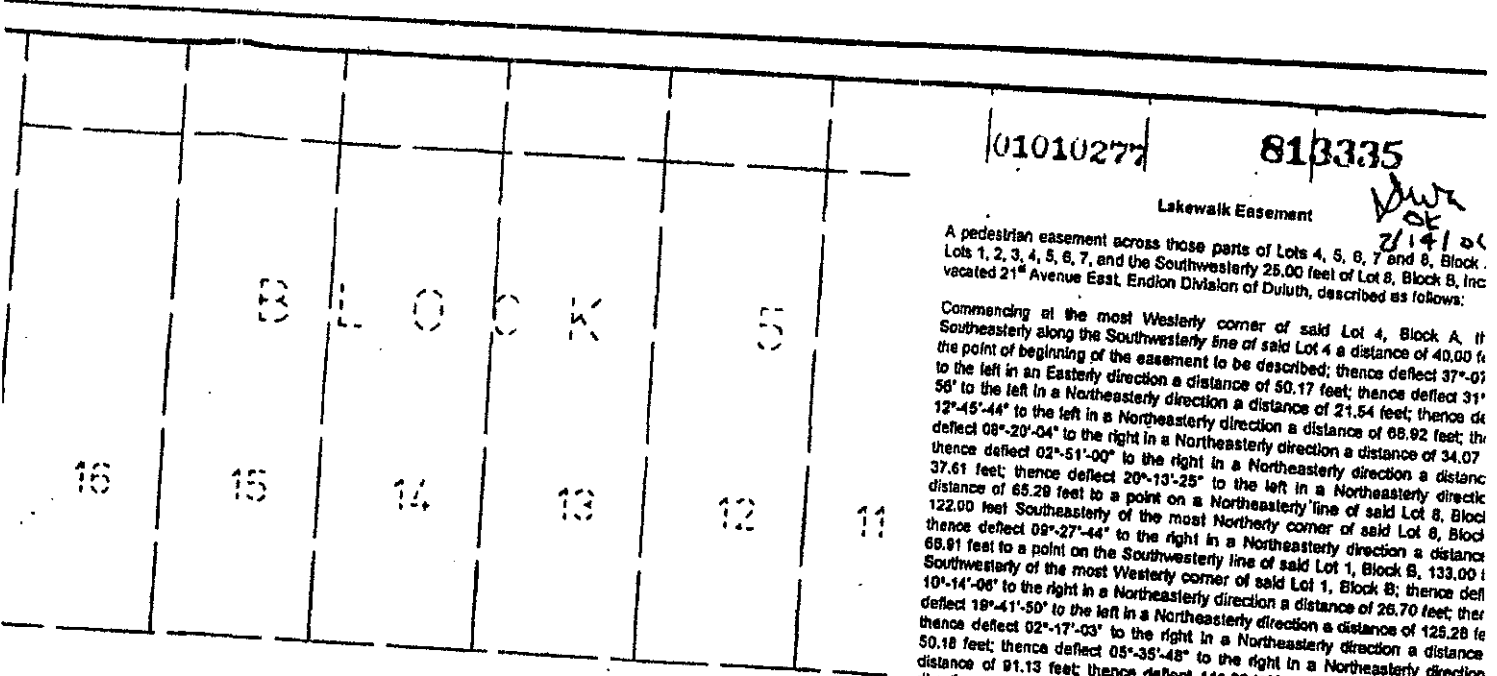
**AVENUE EAST**  
(TO BE VACATED)

C:\j\pub\4203-RED\dwg\4203.dwg, 11 x 17, 12/8/2003 10:50:08 AM, PLOTTED BY JK



	<b>ENGINEERS • SURVEYORS • PLANNERS</b>	I HEREBY CERTIFY THAT THIS SURV SUPERVISION AND THAT I AM A DL OF THE STATE OF MINNESOTA.
	<b>SALO ENGINEERING, INC.</b> 15 East First Street - Duluth, Minnesota 55802 - 218/727-8796	

3



01010277

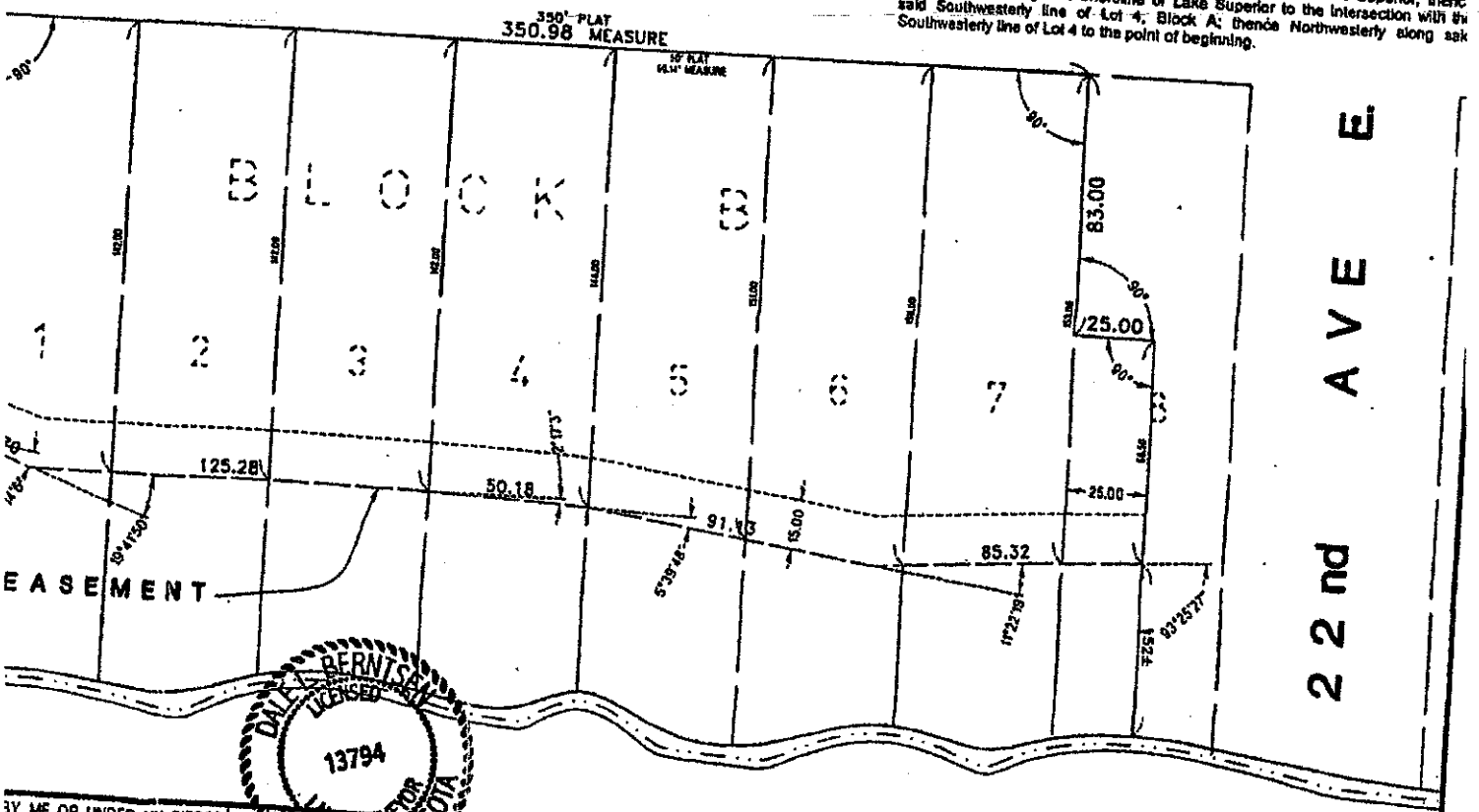
813335

Lakewalk Easement

A pedestrian easement across those parts of Lots 4, 5, 6, 7 and 8, Block, Lots 1, 2, 3, 4, 5, 6, 7, and the Southwesterly 25.00 feet of Lot 8, Block B, Inc vacated 21<sup>st</sup> Avenue East, Endion Division of Duluth, described as follows:

Commencing at the most Westerly corner of said Lot 4, Block A. If Southeastery along the Southwesterly line of said Lot 4 a distance of 40.00 feet to the point of beginning of the easement to be described; thence deflect 37°-01' to the left in an Easterly direction a distance of 50.17 feet; thence deflect 31°-58' to the left in a Northeastery direction a distance of 21.54 feet; thence deflect 13°-45'-44" to the left in a Northeastery direction a distance of 68.92 feet; thence deflect 08°-20'-04" to the right in a Northeastery direction a distance of 34.07 feet; thence deflect 02°-51'-00" to the right in a Northeastery direction a distance of 37.61 feet; thence deflect 20°-13'-25" to the left in a Northeastery direction a distance of 65.29 feet to a point on a Northeastery line of said Lot 8, Block B, 122.00 feet Southeastery of the most Northerly corner of said Lot 8, Block B; thence deflect 09°-27'-44" to the right in a Northeastery direction a distance of 66.81 feet to a point on the Southwesterly line of said Lot 1, Block B, 133.00 feet Southwesterly of the most Westerly corner of said Lot 1, Block B; thence deflect 10°-14'-08" to the right in a Northeastery direction a distance of 26.70 feet; thence deflect 19°-41'-50" to the left in a Northeastery direction a distance of 125.28 feet; thence deflect 02°-17'-03" to the right in a Northeastery direction a distance of 50.18 feet; thence deflect 05°-35'-48" to the right in a Northeastery direction a distance of 91.13 feet; thence deflect 11°-22'-18" to the left in a Northeastery direction a distance of 85.32 feet to the point of intersection of a line 25.00 feet Northeastery of, measured at a right angle to and parallel with the Southwesterly line of said Lot 8, Block B with a line 151.50 feet Southeastery, measured at a right angle to and parallel with the Northwesterly line of said Lot 8, Block B; thence deflect 03°-26'-27" to the right in a Southwestery direction along said line being 25.00 feet Northeastery of, measured at a right angle to and parallel with the Southwesterly line of Lot 8, Block B to the shoreline of Lake Superior; thence said Southwestery along said shoreline of Lake Superior to the intersection with the said Southwestery line of Lot 4, Block A; thence Northwestery along said Southwestery line of Lot 4 to the point of beginning.

STREET



BY ME OR UNDER MY DIRECT SURVEYOR UNDER THE LAWS  
 DATE 12/09/03  
 MN. LIC. NO. 13794

1	NO	DATE	REVISION	BY
2				
3				

LAKEWALK EASEMENT DRAWING FOR WAYNE DAHLBERG  
 JOB NO. L4203A  
 DATE 12/08/03

East of 23<sup>rd</sup> Ave E.



(ledges)

STATE OF  
MINNESOTA  
DEPARTMENT OF NATURAL RESOURCES

Region II Headquarters  
1201 East Highway 2  
Grand Rapids, Minnesota 55744

March 3, 2003

Mark Weber, Resource Management Specialist  
St. Louis County Land Department  
320 West 2<sup>nd</sup> Street, Room 607  
Duluth, MN 55802

Re: Sale of Tax Forfeit Parcels on Lake Superior  
Proposed County Sale to the City of Duluth for a Townhome Development

Dear Mr. Weber:

This letter is a follow-up to our meeting and discussions on the tax forfeit parcels you requested for legislative sale. The Department has completed a review.

1. The Division of Ecological Services has the following resource recommendations, which are provided for your consideration:

If sale of this public lakeshore on Lake Superior is for private development, then an easement should be retained by the City of Duluth to extend the Lakewalk and to protect the vegetation on steep slopes on top of the bluff. The easement should be wide enough so the Lakewalk can be setback from steep slopes to avoid damaging vegetation that provides erosion control and the area from the pedestrian ramp to the east should be maintained and enhanced as public open space. Development should meet Statewide Standards for Management of Shoreland Areas.

These recommendations appear to be consistent with the Endion Waterfront Plan and Development Strategy prepared for the City of Duluth, Planning Division, dated February 1995, which proposes the following:

- (a) Maintain and enhance the natural landscape quality of the shoreline, including the major rock outcropping.
- (b) Provide an extension of the Lakewalk East trail along the water's edge.
- (c) Develop a public open space at the eastern end of the study area.

The scale of the townhome project appears to exceed the ability of the site to accommodate protection of the shore, public access, and the size and number of townhomes as shown on preliminary plans. The shoreline at this site is, for the most part comprised of either bedrock shore or cobble/rubble shore in the unvegetated wave wash zone. Beyond that there are steep slopes or bluffs of gravelly or clayey soil or rock. The vegetation on slopes and on top of the bluff is highly disturbed, but is currently playing an important role in erosion control. The buildings and Lakewalk in the proposed design appear to be too close to the edge of the steep slopes and are likely to have a substantial negative impact on the vegetation currently growing on, and helping to stabilize, the bluffs and steep slopes. If there is to be an argument made for public benefit to this sale, protection of the steep slopes and a vegetated buffer on top of the bluff is essential. It seems that there may be sufficient room on the site to accommodate some development while still providing reasonable

resource protection.

On the northeasterly end of the project area, where the bedrock shore is found, the plant communities are relatively degraded compared to other sites along the North Shore. However, they are still the best examples of these rock shore community types (Lake Superior Dry bedrock shore and Lake Superior Wet rocky shore) in the urban core of Duluth. Additional foot traffic on the bedrock would likely result in further degradation of these plant communities. There may be opportunities to design an extension of the Lakewalk trail that would not result in substantially increased foot traffic on the bedrock communities while still providing access to scenic vistas of the lake or access to cobble beaches. As the plan is drawn, it appears that the Lakewalk extension may result in unnecessary damage to the bedrock shore communities.

If you have any questions about these resource recommendations, please feel free to contact Pat Collins, Ecological Services, 218/834-6612.

2. The following parcel contains water frontage of 150 feet or less. According to Minn. Stat., sec 282.018, subdivision 1, the Commissioner's approval is needed for sale of this parcel. The Commissioner's approval is hereby given for sale of the following parcel:

Lot 7, Block E, Endion Division (10-1440-70).

3. The following parcels contain waterfront of more than 150 feet and according to statute (Minn. Stat., sec. 282.018, subd. 1), legislation is required to proceed with this sale. Please note that DNR approval is not required. The review completed by DNR is provided for your information. The results of the review indicate that the Department has no objection to the sale of these parcels:

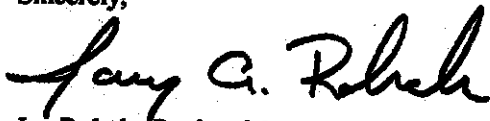
Lots 10-13, Block 1, Endion Division (10-144-180) and Lot 7, Block 1 except part NW'y of NE'y extension of SE'y line of Lot 6, Endion Division (10-1440-150).

Lot 9, Block 1, Endion Division (10-1440-170).

Lots 1-4, Block E, Endion Division (10-1440-10) and that part of the easterly 33 feet of 24<sup>th</sup> Avenue East lying south of Water Street.

Thank you for the opportunity to provide comments on this sale proposal. If I can be of further assistance, please call me at 218/327-4393.

Sincerely,



Joe Rokala, Regional Supervisor  
Division of Lands and Minerals

cc: Gloria Johnson, Division of Lands and Minerals  
Pat Collins, Division of Ecological Services  
John Guenther, Regional Director  
Jim Mohn, City of Duluth Planning Department

(Ledges)

**BOARD LETTER NO. 04 -**

**ENVIRONMENT & NATURAL RESOURCES COMMITTEE  
CONSENT NO.**

**BOARD AGENDA NO.**

**DATE: September 14, 2004**

**RE: Reclassification and Sale of  
State Tax Forfeited Lands to  
Duluth Economic and  
Development Authority  
(D.E.D.A.)**

**FROM: Dana Frey  
County Administrator**

**Dave Epperly  
Land Commissioner**

The Duluth Economic and Development Authority (D.E.D.A.), 402 City Hall, Duluth, Mn 55802, has applied to purchase several State Tax Forfeited lots (including all non-vacated streets, avenues and alleys) in the Endion neighborhood described as:

That part lying Northerly of proposed Lakewalk R.O.W., Endion Division, Block E, Lots 1-4.

Endion Division, Block 2, Lot 11 except NW 25'.

Endion Division, Block 2, Lot 13 except NW 25'.

Langelliers Rearrangement of Block D, Lots 1-3, including part of vacated avenue adjacent.

The property is located on Water Street in the vicinity of 24<sup>th</sup> Avenue East. Land use in the area is currently a combination of manufacturing and residential. Tax Forfeit property in the Endion neighborhood has been requested many times over the years; however, it has remained in conservation status pending a suitable development plan.

D.E.D.A. wishes to purchase the property for the purpose of selling it to a development group having significant land holdings in the area. The Lakewalk Townhomes group is planning a residential development which will include re-routing the Lakewalk along the shores of Lake Superior. The group has worked with local neighborhoods and the City of Duluth to revise its plans to allow for more public open space and a Lakewalk extension to the east and south of the development.

D.E.D.A. has requested to have this property reclassified from conservation to non-conservation. The City of Duluth planning staff support the reclassification and sale of the property for

this purpose. Duluth City Council Resolutions 03-0405 and 03-0789R approving the property's reclassification are included with this letter. This development is not in a TIF district.

The City of Duluth will be requesting a free conveyance of that part of Block E, Lots 1-4 lying southerly of the proposed Lakewalk which borders Lake Superior. Block 2, Lot 11 (including the associated vacated street) was previously free-conveyed to the City of Duluth, and will need to be re-conveyed to St. Louis County prior to the proposed sale to D.E.D.A..

Several of the tax forfeited lots being requested by D.E.D.A. border Lake Superior. Minnesota Statute 282.018, subd.1 requires special legislation to allow for the sale of such property. The sale of this property was approved during the 83<sup>rd</sup> legislative session in 2003. The Department of Natural Resources has approved the sale with the recommendation that an easement be retained by the City of Duluth to extend the Lakewalk and protect the vegetation on steep slopes and bluffs (see attached).

It is the Land Department's opinion that the proposed purpose for this parcel qualifies as an authorized public purpose; and, that the public purpose is authorized by statute, law, or local charter.

The Land Department has reviewed the request for the reclassification and sale of this property, and is presenting the request to the County Board for consideration. If approved, the sale value of the property would include the appraised value of \$393,429.00 plus the following fees: 3% Assurance Fee of \$11,802.87, Deed Fee of \$25.00, Deed Tax of \$1,298.32, and Recording Fee of \$19.50; for a total of \$406,574.69.

**WHEREAS**, The Duluth Economic and Development Authority has requested to purchase the following described State Tax-Forfeited parcels (including all non-vacated streets, avenues and alleys):

That part lying Northerly of proposed Lakewalk R.O.W.,  
Endion Division, Block E, Lots 1-4.

Endion Division, Block 2, Lot 11 except NW 25'.

Endion Division, Block 2, Lot 13 except NW 25'.

Langelliers Rearrangement of Block D, Lots 1-3, including  
part of vacated avenue adjacent.

Parcel code numbers: 10-1440-10, 10-1440-340, 10-1440-360,  
and 10-1430-250.

**WHEREAS**, the appraised value of said parcels is \$393,429.00  
plus fees.

**WHEREAS**, the Duluth Economic and Development Authority  
wishes to purchase said parcels for the purpose of selling the  
property to a private party to develop Lakewalk Townhomes; and

**WHEREAS**, Minnesota Statute 282.01, subd. 1(a) authorizes the  
sale of State Tax Forfeited land to an organized governmental  
subdivision for a public purpose; and

**WHEREAS**, said parcels of land are not withdrawn from sale  
pursuant to Minnesota Statutes Sections 84.012, 92.461, 282.01,  
subdivision 8; and 282.018, and other statutes that require the  
withholding of State Tax-Forfeited lands from sale; and

**WHEREAS**, Block 2 Lot 11 (including the associated vacated  
street) shall be re-conveyed from the City of Duluth to St. Louis  
County prior to sale; and

**WHEREAS**, the Land Department recommends that said parcels  
be reclassified as non-conservation and approved for sale after  
considering, among other things, the present use of adjacent  
land; the productivity of the soil; the character of forest or  
other growth; the accessibility of lands to established roads,



schools, and other public services; and the peculiar suitability or desirability of lands for particular uses.

**NOW, THEREFORE, BE IT RESOLVED,** the St. Louis County Board approves the reclassification and sale of the above described State Tax-Forfeited property to the Duluth Economic and Development Authority for the purpose of selling the property to a private group to develop Lakewalk Townhomes; for the appraised value of \$393,429.00 plus the following fees: 3% Assurance Fee of \$11,802.87, Deed Fee of \$25.00, Deed Tax of \$1,298.32, and Recording Fee of \$19.50; for a total of \$406,574.69.

**BE IT FURTHER RESOLVED,** that the sale of the above described property to D.E.D.A. shall be contingent on the request of the City of Duluth for a free conveyance of that part of Blk. E, Lots 1-4, Endion Division, lying southerly of the proposed lakewalk.

0972748

Office of the County Recorder  
St. Louis County, Minnesota

Recorded on 02/09/2005  
at 9:36 AM

Document No. 00972748

Mark A. Monacelli  
County Recorder

By Beth Talbot, Deputy

AFR 155036



DO NOT REMOVE

Lake walk Town Homes = ledges

PROPERTY ACQUISITION & SALES AGREEMENT  
LAKEWALK TOWN HOMES DEVELOPMENT  
LAKEWALK TOWNHOMES L.L.C.

THIS AGREEMENT entered into this 7 day of December, 2004, by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "City", the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, hereinafter referred to as "DEDA" and LAKEWALK TOWNHOMES, L.L.C., a limited liability company created and existing under the laws of the State of Minnesota, hereinafter referred to as "Developer".

WHEREAS, Developer is the owner of a substantial portion of the property lying between 23<sup>rd</sup> Avenue East and 25<sup>th</sup> Avenue East and between Interstate Highway 35 and the shoreline of Lake Superior, hereinafter defined as the "Developer Property"; and

WHEREAS, City is the owner of a limited fee title in a lot adjacent to the Developer Property, said lot being hereinafter defined as the "City Property"; and

WHEREAS, certain of the other property in the area was forfeited to the State of Minnesota for nonpayment of real estate taxes and can be purchased at its appraised value from the State through St. Louis County by DEDA with the developer's assistance for use as part of the Developer's Project, said property being hereinafter referred to as the "DEDA Property"; and

WHEREAS, Developer is desirous of acquiring fee title to the City Property and the DEDA Property and of constructing thereon a townhome development as is hereinafter described as the Project; and

DEDA  
CONTRACT # 04 865 428

*Handwritten:* Shift  
AFR # 155036  
Cash Chg 41.50  
CW

19730

Southeasterly along the Southwesterly line of said Block 1 a distance of 231.00 feet to the beginning of said line to be described; thence deflect 66°-14'-31" to the left in a Northeasterly direction a distance of 116.25 feet; thence deflect 29°-28'-14" to the left in a Northeasterly direction a distance of 81.76 feet; thence deflect 5°-38'-54" to the right in a Northeasterly direction a distance of 37.37 feet; thence deflect 37°-02'-21" to the left in a Northerly direction a distance of 111.21 feet; thence deflect 31°-20'-34" to the right in a Northeasterly direction a distance of 108.11 feet; thence deflect 28°-12'-09" to the left in a Northerly direction a distance of 54.98 feet to the Southeasterly line of Lot 1, Block E, Endion Division of Duluth; thence deflect 00°-15'-13" to the left in a Northerly direction a distance of 120.94 feet; thence deflect 15°-16'-46" to the right in a Northerly direction a distance of 52.86 feet; thence deflect 11°-08'-27" to the right in a Northeasterly direction a distance of 50.47 feet; thence deflect 10°-39'-58" to the left in a Northerly direction a distance of 52.71 feet; thence deflect 06°-04'-03" to the left in a Northerly direction a distance of 34.00 feet; thence deflect 16°-22'-48" to the left in a Northerly direction a distance of 58.31 feet to the most Northerly corner of Lot 6, Block E, Endion Division of Duluth, and there terminating; and

- D. City Property: shall mean the following-described property in St. Louis County, Minnesota:

Lot 11, Block 2, ENDION DIVISION OF DULUTH, except the Northerly 25' thereof.

- E. County: shall mean St. Louis County, Minnesota.  
 F. DEDA: shall mean the Duluth Economic Development Authority.  
 G. DEDA Property: shall mean that property, currently forfeited to the State for taxes and to be acquired by DEDA from the State through the County, lying within St. Louis County, Minnesota described as follows :

Lots 1, 2 and 3, Block 2, Langellier's Rearrangement of Block D, Endion Division of Duluth, including vacated parts of 23 ½ Avenue East, alley within said Block and Water Street adjacent thereto.

AND

Lots 9, 10, 11, 12, 13 and 14, Block 3, ENDION DIVISION OF DULUTH, including vacated parts of 24<sup>th</sup> Avenue East and Water Street adjacent thereto, EXCEPT the Northwesterly 25.00 feet thereof.

AND

All those parts of Block 1, Langellier's Rearrangement of Block D, ENDION DIVISION OF DULUTH, including vacated parts of 23<sup>rd</sup> ½ Avenue East, alley within said Block and Water Street adjacent thereto; Lots 4 thru 25, inclusive, Block 2, Langellier's Rearrangement of Block D, ENDION DIVISION OF DULUTH, including vacated parts of 23<sup>rd</sup> ½ Avenue East, alley within said Block, 24<sup>th</sup> Avenue East and Water Street adjacent thereto; and Lots 5 and 6, Block E, ENDION DIVISION OF DULUTH, including vacated part of Water Street adjacent thereto which lie Northwesterly of the following described line:

Commencing at most Westerly corner of Block 1, Langellier's Rearrangement of Block D, ENDION DIVISION OF DULUTH, thence Southeasterly along the Southwesterly line of said Block 1 a distance of 231.00 feet to the beginning of said line to be described; thence deflect 66°-14'-31" to the left in a Northeasterly direction a distance of 116.25 feet; thence deflect 29°-28'-14" to the left in a Northeasterly direction a distance of 81.76 feet; thence deflect 5°-38'-54" to the right in a Northeasterly direction a distance of 37.37 feet; thence deflect 37°-02'-21" to the left in a Northerly direction a distance of 111.21 feet; thence deflect 31°-20'-34" to the right in a Northeasterly direction a distance of 108.11 feet; thence deflect 28°-12'-09" to the left in a Northerly direction a distance of 54.98 feet to the Southeasterly line of Lot 1, Block E, ENDION DIVISION OF DULUTH; thence deflect 00°-15'-13" to the left in a Northerly direction a distance of 120.94 feet; thence deflect 15°-16'-46" to the right in a Northerly direction a distance of 52.86 feet; thence deflect 11°-08'-27" to the right in a Northeasterly direction a distance of 50.47 feet; thence deflect 10°-39'-58" to the left in a Northerly direction a distance of 52.71 feet; thence deflect 06°-04'-03" to the left in a Northerly direction a distance of 34.00 feet; thence deflect 16°-22'-48" to the left in a Northerly direction a distance of 58.31 feet to the most Northerly corner of Lot 6, Block E, ENDION DIVISION OF DULUTH, and there terminating.

acquiring the DEDA Property and the City Property exceeds the amount of Four Hundred Six Thousand Five Hundred Seventy-four and 69/100ths (\$406,574.69) Dollars.

- L. Initial Project: shall mean that portion of the Project consisting of nine (9) of the fourteen (14) side-by-side units anticipated to be sold for from Five Hundred Ninety Thousand and 00/100ths (\$590,000) Dollars to Six Hundred Thirty-nine Thousand and 00/100ths (\$639,000) Dollars.
- M. Lakewalk: shall mean a trail intended for hiking, bicycling, cross country skiing and other non-motorized recreational means of transportation running along the shoreline of Lake Superior from the Minnesota Entry through the Property generally to 26<sup>th</sup> Avenue East.
- N. Lakewalk Construction Easement Line: shall mean a line lying fifteen (15') feet to the northwest of the Lakewalk Line.
- O. Lakewalk Line: shall mean a line running through the Property being generally fifteen (15') feet to the northwest of the bluff line above Lake Superior which is the line legally described in Paragraphs C, G, H and I of this Article.
- P. MnDOT Land: shall mean the following-described property in St. Louis County, Minnesota:

Lot 15, Block 3, ENDION DIVISION OF DULUTH.

- Q. Nelson Property: shall mean the following-described property in St. Louis County, Minnesota:

Lot 10, Block 2 and Lot 8, Block E, all in ENDION DIVISION OF DULUTH.

- R. Plans: shall mean the site plans and elevations prepared by Salo Engineering, Inc., certified on October 26, 2004, bearing the designation Lakewalk Townhomes Sheet A 1 and also conforming substantially to the construction drawing prepared by John Ivey Thomas Associates dated March 1, 2003, and designated as sheets A2, A3, A4, A5, A6, A7, A8 and A9.
- S. Project: shall mean the construction of not less than forty-six (46) units of housing on the Property, twenty-one (21) of which will be located in a condominium building on the western portion of the Property and are anticipated to be sold for from Three Hundred Thousand and 00/100ths (\$300,000) Dollars to Four Hundred Thousand and 00/100ths (\$400,000) Dollars per unit, and twenty-five (25) of which will be located in side-by-side configurations on the remainder of the Property and eleven (11) of which are anticipated to be sold for from Three Hundred Thousand and 00/100ths (\$300,000) Dollars to Four

shall not be obligated to acquire the DEDA Property or the City Property or either of them from the State; in such event, this Agreement shall terminate and none of the parties shall, thereafter have any further rights or obligations thereunder. All funds received from Developer and disbursed to the County pursuant to this Paragraph shall be deposited in and paid from DEDA's Fund 0865.

**C. City Lakewalk Property**

St. Louis County on behalf of the State of Minnesota Commissioner of Revenue shall have, by resolution, committed to convey to the City Lakewalk Property by free conveyance to the City for Lakewalk.

**D. Developer May Proceed**

Despite the fact that any or all of the steps provided for in Paragraph A through C above have not been completed or have been only partially completed, Developer may choose to proceed with the Project. Provided that Developer shall secure all necessary permits for such work from the appropriate authorities issuing such permits, including the City, but the issuance of any such permit by any such City authority shall not commit the City to approve any other permit required for the Project or limit the City's rights to require Developer to fully perform all of its obligations under this Agreement. Provided further, that if Developer chooses to do so, it agrees that it does so at its own risk and neither DEDA nor the City shall be liable for any costs, expenses or damages incurred by Developer by reason of Developer making such choice. And provided further that, in the event that the Special Use Permit requires any modifications to portions of the Project constructed by Developer prior to its being issued by the City, Developer shall be required to make such modifications at its sole cost.

**ARTICLE III**

**Sale of DEDA and City Property to Developer**

Immediately upon the completion of the acquisition of the DEDA Property and the City Property by DEDA as provided for in Article II above and in consideration of the deposit of the Purchase Price and the Excess Costs, if such is necessary, with DEDA, DEDA agrees to convey the DEDA Property and the City Property to Developer by quit claim deed for the amount of Purchase Price and, if applicable, the Excess Costs and at no additional cost to Developer, subject to the performance of Developer's obligations under this Agreement. Such conveyance of title shall be subject to:

- A. Reservation to the State of Minnesota in trust for the taxing districts concerned of minerals and mineral rights in those portions of the Property title to which has at any time heretofore been forfeited to the State of Minnesota for nonpayment of general taxes.

the option to purchase the Developer Lakewalk Property at any time within one (1) year of the date of the signing of this agreement, which Property is appraised as having a value in excess of Six Hundred Thousand and 00/100ths (\$600,000) Dollars. The purchase price of the Developer Lakewalk Property shall be Two Hundred Sixty-five Thousand (\$265,000) Dollars.

F. Letter of Credit Guaranty

1. Issuance

On or before January 1, 2007, Developer shall provide to City, and thereafter keep in force for the life of the Bonds, except as hereinafter provided for, a Letter of Credit issued by a financial institution licensed by the government of the United States of America or by the State of Minnesota and authorized by law to issue such Letter of Credit in an amount equal to or greater than the total amount at any time then necessary to retire the Bonds including, if then necessary, the costs of "advance refunding" the Bonds. The form of the Letter of Credit and the identity and qualifications of the issuer thereof shall be subject to the approval of the City's attorney.

2. Exercise of Letter of Credit

Commencing in 2007 and thereafter during the life of the Bonds, in the event that proceeds of real estate taxes paid to the City from the Property, in excess of those which would have been paid to City if the Project had not occurred, are insufficient to pay the principal and interest payments due on the Bonds in that year, City shall be entitled to draw on the Letter of Credit to make such payments. In addition, should Developer fail to replace an expiring Letter of Credit with new or renewed Letter of Credit at least thirty (30) days prior to the expiration of the old Letter of Credit, City shall be entitled to draw on the old Letter of Credit up to an amount sufficient to pay the entire amount of the then-outstanding principal and unpaid interest on the entire Bond issue, including "advance refunding" costs, and apply said amount to the retirement of the Bonds. In the event that City draws on the Letter of Credit to make payments of principal or interest or both due and payable in any one year because of the insufficiency of the net real estate tax proceeds received by City to make such payments required to be paid in that year and that in any subsequent year, net tax proceeds received by the City exceed the amount needed to make principal and interest payments due on the Bonds in that year, any such excess of such tax proceeds, up to the total amounts drawn by City on the Letter of Credit, shall be repaid to

subsequent years but that Developer can demonstrate to the reasonable satisfaction of the Director that the City is receiving other tax proceeds from the Project, directly or indirectly, which are sufficient to pay the principal and interest payments due on the Bonds in that and subsequent years, the provisions of this subparagraph shall not apply for as long as such condition exists.

**G. Construction Easement**

Developer hereby agrees to grant to City an easement for the purpose of facilitating the initial construction of the Lakewalk over and across that portion of the Property lying between the Lakewalk Construction Easement Line and the Lakewalk Line. Said easement shall be effective for a period of ten (10) years from the date of the signing of this Agreement or until construction of the Lakewalk facility has been completed, whichever is less. City agrees that, in the event that it causes or allows any construction work to occur on the Lakewalk Construction Easement which causes any material alteration to the easement area or any damage to any improvements which have been constructed thereon, City, upon completion of such construction, will cause said portion of the Construction Easement Area to be restored to substantially the condition that existed prior to said construction work being undertaken, unless Developer shall have waived said restoration in writing. Any sale of any portion of the Property to any third party which includes any portion of the easement granted pursuant to this Paragraph shall specifically reserve said easement to City.

**H. Lakewalk Improvement Limitations**

City agrees that it will not cause to be constructed nor will it maintain any building or structure on that portion of the Property lying between the Lakewalk Line and Lake Superior except structures necessary to the Lakewalk facility for trail purposes.

**ARTICLE V**

**Construction**

**A. Construction**

Immediately upon completion of performance of the obligations of the parties hereto as set forth in Articles II, III and IV above, but subject to the provisions of Paragraph D of Article II above, Developer shall promptly commence construction of the Project in conformance with the Special Use Permit. Subject to the provisions of Article X below, construction of the Project as herein defined shall be completed in accordance with the following schedule:

1. Construction of the Initial Project shall be completed no later than December 1, 2005.



identity of Developer to construct the Project on the Property. Therefor, except for the purposes of obtaining first mortgage financing to construct the Project or as otherwise approved by this Agreement, Developer 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, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, the Developer, the Project, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and except for mortgaging approved in writing by the Director or an assignment of Developer's interests under this Agreement to an entity totally owned and controlled by Developer, Developer will not make or create or suffer to be made any such transfer of Developer's rights hereunder. If any assignment of Developer's obligations under this Agreement is approved or made as herein provided for, any such assignee shall explicitly assume the obligations of Developer under this Agreement and Developer remains principally liable for the performance of Developer's obligations under this Agreement.

C. Sale of Units

It is understood between the parties that the units to be constructed as part of the Project are intended for sale by the Developer to third parties. Therefore, nothing to the contrary anywhere in this Agreement withstanding, upon the completion of any unit in accordance with the Plans and upon the closing of a sale of such unit to a third party, such unit shall be released from the provisions of this Article and this Article shall be deemed to be inapplicable thereto.

D. Encumbrances--Developer Lakewalk Property

Provided however, nothing to the contrary anywhere in this Agreement withstanding, the Developer shall not create or permit any mortgage, encumbrance of any kind whatsoever or to allow any mechanics' or materialmen's liens to be filed or established or to remain against the Developer Lakewalk Property.

## ARTICLE VIII

### Indemnification

A. By Developer

Developer will to the fullest extent permitted by law, protect, indemnify and save City, DEDA and their officers, agents, servants, employees and any person who controls City or DEDA within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses,

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 City or DEDA of notice of the commencement of any action with respect to which Developer is required to indemnify such person 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.

## ARTICLE IX

### Insurance

Developer shall provide for purchase and maintenance of such insurance as will protect Developer, City and DEDA against risk of loss or damage to the Project and any other property permanently located or exclusively used at the Project site and against claims which may arise or result from the maintenance and use of the Project, 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

Developer, 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

Developer shall provide "All Risk" builder's 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 One Thousand and 00/100ths

thirty (30) days' written notice prior to cancellation or modification of said insurance.

## ARTICLE X

### Defaults and Remedies Therefore

#### A. Developer Defaults and Remedies

##### 1. General Events of Default

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

- a. Developer 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 Developer pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after City has, pursuant to the provisions of this Agreement, given written notice to Developer of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.
- b. Developer shall permit valid liens, not cured or contested within thirty (30) days, to be placed on the Property or any structure thereon or Developer loses title to the Property or any structure thereon or both with the exception of assignments approved pursuant to the terms of this Agreement.
- c. Developer 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 Developer or its business; or Developer 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 Developer 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 thirty (30) 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 Developer's properties or fails to have dismissed or vacated

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.

C. 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.

D. 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 attorneys' fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

## ARTICLE XI

Force Majeure

Under the terms of this Agreement, neither the City nor Developer shall be considered in default or in breach of any of the terms with respect to the performance to their respective obligations under this Agreement in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of a public enemy, acts of the federal government, acts of another party, fire, floods, epidemics, strikes or embargoes, or for delays of subcontractors due to such causes. In the event of any such delay, any time for completion or delivery under this Agreement shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

## ARTICLE XII

Representations by City

City represents and warrants that as of the date hereof:

- A. It is a lawfully constituted municipal corporation under the laws of the State of Minnesota, it is not a material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- B. There are not actions, suits or proceedings pending, or to the knowledge of City, threatened against City or any property of City in any court or before any

- Agreement and to perform its obligations hereunder.
- B. It is fully competent to acquire the Property and to construct and equip the Project thereon under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction.
  - C. There are no actions, suits or proceedings pending or, to the knowledge of Developer, threatened against Developer or any property of Developer in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Developer could have a material adverse affect upon Developer or the Property and Project, and that Developer is not in default of any order of any court or governmental agency.
  - D. It is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been occurred.
  - E. No agent, employee or other representative of Developer is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.
  - F. It shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to any third party under this Agreement to be true, correct and complete in all material and respects. If necessary Developer agrees to perform any survey work prior to construction and all descriptions and exhibits hereto and definitions herein shall be subject to such revisions as are necessary after completion of any survey.

#### ARTICLE XV

##### Term

The term of this Agreement shall run for a term of ten (10) years from the date first above shown unless this Agreement is otherwise terminated as herein before provided for.

#### ARTICLE XVI

##### Runs With the Land

This Agreement shall be deemed to run with the land and shall enure to the benefit of the parties hereto and to their successors and assigns.

#### ARTICLE XVII

##### 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:

Attest:

[Signature]  
City Clerk

DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY, an economic  
development authority under  
Minn.Stat.(1989) Chapter 469

Approved:

[Signature]  
Assistant City Attorney

By: [Signature]  
Its President

Countersigned:

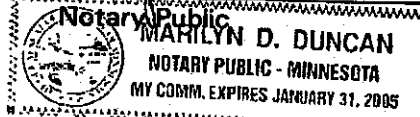
Benevise A. Stark  
City Auditor

By: [Signature]  
Its Secretary

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

The foregoing instrument was acknowledged before me this 7 the day of Dec, 2004 by Herb W. Bergson and Jeffrey J. Cox, the Mayor and City Clerk, respectively, of the City of Duluth, a municipal corporation, a home rule charter city and political subdivision under the laws of the State of Minnesota, on behalf of said corporation.

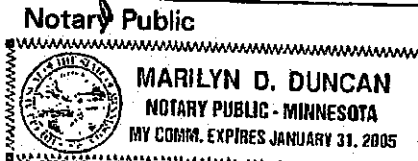
Marilyn D. Duncan



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

The foregoing instrument was acknowledged before me this 6 day of Dec, 2004, by Neill Atkins and R. Stewart, the President and Secretary of the Duluth Economic Development Authority, an authority created and existing under the Minnesota Statutes (1989) Chapter 469, on behalf of the Authority.

Marilyn D. Duncan



**LAKEWALK PROPERTY OPTION AGREEMENT  
LAKEWALK TOWN HOMES DEVELOPMENT  
LAKEWALK TOWNHOMES L.L.C.**

THIS OPTION AGREEMENT entered into this \_\_\_\_ day of \_\_\_\_\_, 2004, by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "City," and LAKEWALK TOWNHOMES, L.L.C., a limited liability company created and existing under the laws of the State of Minnesota, hereinafter referred to as "Developer."

WHEREAS, Developer is the owner of the Developer Property and of the Developer Lakewalk Property as defined in that certain Property Acquisition and Sales Agreement (the "Agreement") between the parties hereto of even date herewith; and

WHEREAS, pursuant to the Agreement, Developer has agreed to enter into an Option Agreement grant the option to the City to purchase the Developer Lakewalk Property for the sum of \$265,000 within one year of the date of the signing of the Agreement.

NOW THEREFORE, in consideration of the terms and conditions of the Agreement and of the terms and conditions of this Option Agreement hereinafter set forth, the parties hereto hereby agree as follows:

1. Grant of Option to Purchase

Developer hereby grants to City the Option to purchase the Developer Lakewalk Property as said property is described in the Agreement for the sum of Two hundred Sixty-five Thousand (\$265,000) Dollars under the terms and conditions hereinafter set forth. This grant of Option is deemed to be a part of the Agreement and the terms and conditions of the Agreement, in so far as

they affect Developer's and City's rights and obligations thereunder and hereunder, shall be deemed to have been incorporated into this Option Agreement.

2. Term of Option

The Option granted pursuant to this Option Agreement shall be deemed to be effective as of the date of signing and shall extend for 365 days from and after the date of said signing. If City fails to exercise said option within said time, City's option granted hereunder shall be terminated and be of no further force and effect and City shall derive no rights against Developer by virtue of such termination. Provided that Developer, at its sole option may agree to extend the term of said Option at its sole discretion upon the request of City.

3. Exercise of Option

At any time during the term of this Option, City shall have the right to give Developer notice of intent to exercise said Option within thirty (30) days of said notice. The parties shall agree upon a closing date within said thirty (30) day period. At closing City shall present a check payable to Developer for the full purchase price as set forth in Paragraph 1 above and Developer shall provide to City a fully executed and notarized warranty deed conveying the developer Lakewalk Property to City. Said deed shall be subject only to the usual customary exceptions except that said deed may limit the use of the property conveyed to use for Lakewalk Purposes as the same is defined in the Agreement and may further provide that Developer shall have the right to remove trees on the Developer Lakewalk Property as is reasonably necessary to preserve reasonable views from the Property as defined in the Agreement.

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

CITY OF DULUTH, a municipal Corporation

LAKEWALK TOWNHOMES, L.L.C., a Minnesota limited liability company

By \_\_\_\_\_  
Mayor

\_\_\_\_\_

"Developer"



0972748

Robert E. Asleson  
Assistant City Attorney  
Room 410 City Hall  
Duluth, Minnesota 55802  
(218)730-5490

LAKEWALK PROPERTY OPTION AGREEMENT  
LAKEWALK TOWN HOMES DEVELOPMENT  
LAKEWALK TOWNHOMES L.L.C.

THIS OPTION AGREEMENT entered into this 21<sup>st</sup> day of November, 2004, by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "City," and LAKEWALK TOWNHOMES, L.L.C., a limited liability company created and existing under the laws of the State of Minnesota, hereinafter referred to as "Developer."

WHEREAS, Developer is the owner of the Developer Property and of the Developer Lakewalk Property as defined in that certain Property Acquisition and Sales Agreement (the "Agreement") between the parties hereto of even date herewith; and

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acquiring the DEDA Property and the City Property exceeds the amount of Four Hundred Six Thousand Five Hundred Seventy-four and 69/100ths (\$406,574.69) Dollars.

- L. Initial Project: shall mean that portion of the Project consisting of nine (9) of the fourteen (14) side-by-side units anticipated to be sold for from Five Hundred Ninety Thousand and 00/100ths (\$590,000) Dollars to Six Hundred Thirty-nine Thousand and 00/100ths (\$639,000) Dollars.
- M. Lakewalk: shall mean a trail intended for hiking, bicycling, cross country skiing and other non-motorized recreational means of transportation running along the shoreline of Lake Superior from the Minnesota Entry through the Property generally to 26<sup>th</sup> Avenue East.
- N. Lakewalk Construction Easement Line: shall mean a line lying fifteen (15') feet to the northwest of the Lakewalk Line.
- O. Lakewalk Line: shall mean a line running through the Property being generally fifteen (15') feet to the northwest of the bluff line above Lake Superior which is the line legally described in Paragraphs C, G, H and I of this Article.
- P. MnDOT Land: shall mean the following-described property in St. Louis County, Minnesota:

Lot 15, Block 3, ENDION DIVISION OF DULUTH.

- Q. Nelson Property: shall mean the following-described property in St. Louis County, Minnesota:

Lot 10, Block 2 and Lot 8, Block E, all in ENDION DIVISION OF DULUTH.

- R. Plans: shall mean the site plans and elevations prepared by Salo Engineering, Inc., certified on October 26, 2004, bearing the designation Lakewalk Townhomes Sheet A 1 and also conforming substantially to the construction drawing prepared by John Ivey Thomas Associates dated March 1, 2003, and designated as sheets A2, A3, A4, A5, A6, A7, A8 and A9.
- S. Project: shall mean the construction of not less than forty-six (46) units of housing on the Property, twenty-one (21) of which will be located in a condominium building on the western portion of the Property and are anticipated to be sold for from Three Hundred Thousand and 00/100ths (\$300,000) Dollars to Four Hundred Thousand and 00/100ths (\$400,000) Dollars per unit, and twenty-five (25) of which will be located in side-by-side configurations on the remainder of the Property and eleven (11) of which are anticipated to be sold for from Three Hundred Thousand and 00/100ths (\$300,000) Dollars to Four

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is between Lakewalk Townhomes, LLC ("LLC") and the City of Duluth ("City").

It is understood that:

A. The parties to this Memorandum enter into it as individuals representative of their organizations and with the understanding that its intention is to apply the Development Agreement of December 7, 2004 to the facts and circumstances that have developed since that date without material modification.

B. If any disagreements arise, the parties will work diligently together to resolve those differences consistent with the Development Agreement and the interpretation and application of same as herein provided.

C. Specifically, the parties agree:

1. The City will work proactively with the LLC to obtain an appropriate easement over Lots 15 from MnDOT or to obtain a conveyance and grant an easement to the LLC. The City acknowledges its obligation under the referenced Development Agreement to do so.

2. The City confirms that the Special Use Permit approved by the City Council on October 25, 2004 grants specific development rights linked to the submitted drawings. Future amendments or a revised zoning would not impose different standards or conditions on the approved SUP or impact the rights of the LLC thereunder. The impervious surface variance previously granted continues valid so long as development is consistent with the referenced Special Use Permit.

3. The City will construct the Lakewalk, as when and if scheduled by the City, south and east of the rock wall which has been placed by the Developer respecting the property lines as established and the wall. Prior to the commencement of construction, final agreement will be reached on the locale consistent with the initial sentence before construction commences. Such

construction will be coordinated, in good faith, with the LLC. Upon completion of the Lakewalk construction, an in-place, as built, survey will be completed. The parties will mutually arrange for and support an ordinance relative to the reconveyance to the LLC of any property deeded to it which is north and west of the actual Lakewalk construction and in consideration of that conveyance, the LLC will convey such property to the City as involves a portion of the LLC property north and west of the existing proposed location of the Lakewalk and north and west of the property described in Exhibit A. It is agreed that this adjustment is a technical adjustment based on in-place conditions and construction. The cost of the survey will be paid for by the City as part of the construction project.

4. As to the Lakewalk property, the following is agreed:

- (a) It will be used as a public trail for walking, running, rollerblading, biking, cross-country skiing and other non-motorized uses.
- (b) The land will not be available to the public until the Lakewalk is constructed.
- (c) The Lakewalk will not be lit.
- (d) There will be no benches, picnic tables, stairs or other physical accommodations to encourage persons to pause or linger along this portion of Lakewalk or on the beach below.
- (e) Grantor reserves the right to trim or remove vegetation which impacts sight or view from the developed property on the landward side of the easement with the approval by the City Forester, such approval not to be unreasonably held with the understanding here that the intent is to preserve views and aesthetics. Notice to the City Forester providing the rationale and basis for such removal shall be given prior to same and such removal will be deemed authorized unless objection is received within 30 days.

5. City agrees that no Letter of Credit is currently required and it will continue to work proactively with Developer to avoid any such requirement. Developer agrees that any shortfalls in bond payments will be Developer's responsibility. All tax collections from the development of the property subject to the Development Agreement of December 7, 2004 will be considered a credit toward any developer responsibility and in determining coverage of the payments on an

assumed \$300,000 bond issue. Any City taxes collected in excess of amounts due in any particular year will be banked and any earnings on same will also be banked and credited to future payments in determining whether any shortfalls ultimately exist.

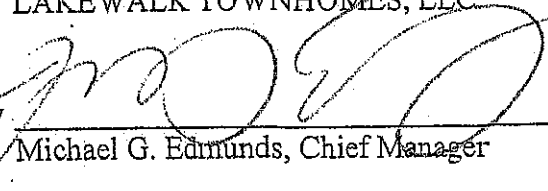
6. Developer agrees to grant a construction easement pursuant to Article IV G. on preparation and presentation of a construction easement from the City, which easement will extend for a period of 10 years from January 1, 2007, not limited by the 10 years in the original Development Agreement which ran from 2004.

7. The deeds to be delivered pursuant to the referenced Development Agreement pursuant to Article IV, Sections D and E, and the herein reinstated option are attached hereto as Exhibits A and B and approved as to form and content.

IN WITNESS WHEREOF, this Memorandum of Understanding is executed at Duluth, Minnesota as of December 21, 2006.

LAKEWALK TOWNHOMES, LLC

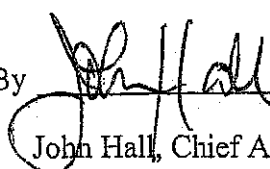
By



Michael G. Edmunds, Chief Manager

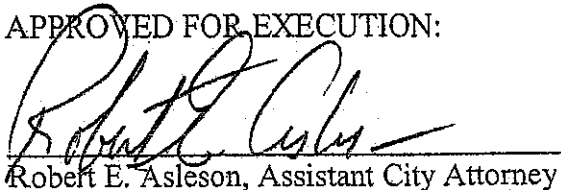
CITY OF DULUTH

By

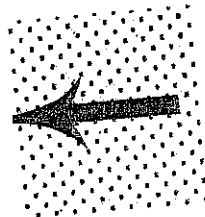


John Hall, Chief Administrative Officer

APPROVED FOR EXECUTION:



Robert E. Asleson, Assistant City Attorney



**SIGN  
HERE**

1039427

829841

Office of the County Recorder  
St. Louis County, Minnesota

Recorded on 12/29/2006  
at 4:30 PM

Document No. 01039427

Mark A. Monacelli  
County Recorder

By Beth Talbot, Deputy

AFR 224684



**DO NOT REMOVE**

Rec#: 00080121	TR#: 0223	Cash Rep#: 144
CAT#: 0040	ID#: BLG	MCH#: 001
LOC: AUD. ST. LOUIS COUNTY, MN		
12/29/2006 3:50PM		
Deed Tax		\$974.50
	PD CK	\$876.15
CHANGE		\$0.00

829841

shall be given prior to same and such removal will be deemed authorized unless objection is received within 30 days.

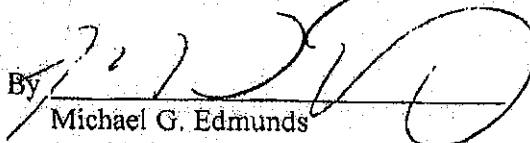
- 2. Grantor, its successors or assigns, retains the right to enforce the terms and limitations on this deed.

together with all hereditaments and appurtenances belonging thereto, subject to the following exceptions:

Subject to easements, reservations, conditions, and restrictions of record.

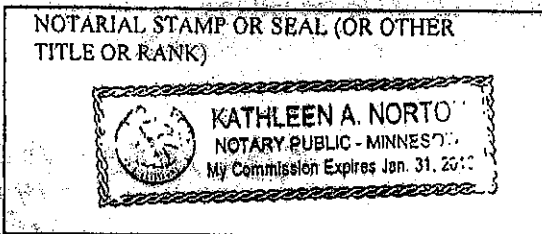
Affix Deed Tax Stamp Here

LAKEWALK TOWNHOMES, LLC

By   
 Michael G. Edmunds  
 Its Chief Manager

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

The foregoing instrument was acknowledged before me this 21st day of December, 2006, by Michael G. Edmunds, the Chief Manager of Lakewalk Townhomes, LLC, a limited liability company under the laws of Minnesota, on behalf of the limited liability company.



Kathleen A. Norton  
 SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

Tax Statements for the real property described in this instrument should be sent to (Include name and address of Grantee):

THIS INSTRUMENT WAS DRAFTED BY:

William M. Burns, Esquire  
 HANFT FRIDE,  
 A Professional Association  
 1000 U.S. Bank Place  
 130 West Superior Street  
 Duluth, Minnesota 55802-2094  
 Tel. (218) 722-4766

City of Duluth  
 c/o City Auditor  
 Room 107 City Hall  
 Duluth, MN 55802



EXHIBIT B

101420

Lots 11, 12, 13, 14, 15 and 16, Block 2, ENDION DIVISION OF DULUTH, including vacated parts of 24<sup>th</sup> Avenue East and Water Street adjacent thereto, EXCEPT the Northwesterly 25.00 feet thereof.

AND

101420

Lots 9, 10, 11, 12, 13, and 14, Block 3, ENDION DIVISION OF DULUTH, including vacated parts of 24<sup>th</sup> Avenue East and Water Street adjacent thereto, EXCEPT the Northwesterly 25.00 feet thereof.

AND

101430

All those parts of Block 1, Langellier's Rearrangement of Block D, ENDION DIVISION OF DULUTH, including vacated parts of 23<sup>rd</sup> 1/2 Avenue East, alley within said Block and Water Street adjacent thereto; Block 2, Langellier's Rearrangement of Block D, ENDION DIVISION OF DULUTH, including vacated parts of 23<sup>rd</sup> 1/2 Avenue East, alley within said Block, 24<sup>th</sup> Avenue East and Water Street adjacent thereto; and Lots 1, 2, 3, 4, 5 and 6, Block E, ENDION DIVISION OF DULUTH, including vacated parts of 24<sup>th</sup> Avenue East and Water Street adjacent thereto which lie Northwesterly of the following described line:

101430

Commencing at most Westerly corner of Block 1, Langellier's Rearrangement of Block D, ENDION DIVISION OF DULUTH, thence Southeasterly along the Southwesterly line of said Block 1 a distance of 231.00 feet to the beginning of said line to be described; thence deflect 66°-14'-31" to the left in a Northeasterly direction a distance of 116.25 feet; thence deflect 29°-28'-14" to the left in a Northeasterly direction a distance of 81.76 feet; thence deflect 5°-38'-54" to the right in a Northeasterly direction a distance of 37.37 feet; thence deflect 37°-02'-21" to the left in a Northerly direction a distance of 111.21 feet; thence deflect 31°-20'-34" to the right in a Northeasterly direction a distance of 108.11 feet; thence deflect 28°-12'-09" to the left in a Northerly direction a distance of 54.98 feet to the Southeasterly line of Lot 1, Block E, ENDION DIVISION OF DULUTH; thence deflect 00°-15'-13" to the left in a Northerly direction a distance of 120.94 feet; thence deflect 15°-16'-46" to the right in a Northerly direction a distance of 52.86 feet; thence deflect 11°-08'-27" to the right in a Northeasterly direction a distance of 50.47 feet; thence deflect 10°-39'-58" to the left in a Northerly direction a distance of 52.71 feet; thence deflect 06°-04'-03" to the left in a Northerly direction a distance of 34.00 feet; thence deflect 16°-22'-48" to the left in a Northerly direction a distance of 58.31 feet to the most Northerly corner of Lot 6, Block E, ENDION DIVISION OF DULUTH, and there terminating.

016-1440-350x

- 2006
- PTT
- 370x "
- 380x "
- 390x "
- 340x "
- 450x "
- 490x "
- 500x "
- 510x "

- 10-1430-210T
- 220-T
- 250T
- 260T
- 270T
- 300T
- 310T
- 320T
- 330T
- 340Div
- 350Div
- 410T
- 420T
- 430T
- 440T
- 450Div
- 460Div
- 470Div

- 010-1430-200-T
- 10-T
- 20-T
- 40-T
- 50-T
- 60-T
- 70-T
- 80-T
- 90-T
- 100-T
- 110-T
- 120-T
- 130Div
- 140Div
- 150Div
- 160Div
- 170T
- 180-T
- 190-T

- 016-1440-15x
- 50Div
- 60Div

MARK A. MGRACIA, COUNTY RECORDER  
P.O. Box 157, St. Louis, MO 63103  
Telephone 434-1600

ABSTRACT FILING

155038

AFR #

Date this form was completed 2-3-05

025392

Name 1222 Crossmon

Address Hanft Fride

Phone ( ) 722-4766

Amount enclosed \_\_\_\_\_ Chgs. \_\_\_\_\_ Dep. Acct. 0810

Return: Mail  Pick-Up \_\_\_\_\_

02082005

Signature Luise E. Palmer

Record Order	Documents	Prioritize	Other services	for Recorder's Use Only	
				DT & MT	Rec & SC
991	Property Acquisition		w/one		
	Sales Agreement		COPY	A	N
				1 chg	
1002	Resolution		w/one RS		
	04-0722		COPY		N
				1 chg	
1013	Resolution		w/one RS		
	040-91		COPY		N
				1 chg	
1024	Option Agreement		w/one OP		
			COPY		N
				1 chg	
5	Note: We understand some of the property is Tokrens				
6	however, we are not requesting filing in that office at this time				
7					

Checks for filing fees should be payable to: \_\_\_\_\_

Checks for deed, mortgage or real estate taxes should be payable to: **COUNTY AUDITOR.**

Note: Documents presented with this form will be fully processed in the office of the **COUNTY RECORDER.**

For RECORDER'S USE ONLY

Status HC Return H-02 Exp. 810 Filed JH Logged JW

R.E. on \_\_\_\_\_ / 5 \_\_\_\_\_ / 5 \_\_\_\_\_

DOCUMENT# From \_\_\_\_\_

**TORRENS FILING REQUEST**      TFR# 194552

Date this form was completed \_\_\_\_\_ Client file \_\_\_\_\_

Name City of Duluth (Robert Asleson - Asst. City Attorney)

Address Room 410 City Hall  
Duluth, MN 55802

Phone (218) 730-5790 Fax (218) 730-5918

Amount enclosed \_\_\_\_\_ Check \_\_\_\_\_ Cash \_\_\_\_\_ Dep. Acct. # \_\_\_\_\_

Return: Mail \_\_\_\_\_ Pick-Up \_\_\_\_\_ Other (specify) \_\_\_\_\_

Signature [Signature] Title Change Pursuant to MS. 508.421? \_\_\_\_\_

1-2-07  
 (6)

Called  
 1-2-07  
 for well  
 (no well  
 indicated)  
 OK'd  
 Bob Asleson  
 7

Order of	Priority Documents - List in priority order	Other services with this document and		y/n	y/n
		CERTIFICATE OF TITLE NO.			
		(REQUIRED)		with Abstract	
1	WD	829841		✓	46
2					
3					
4					
5					
6					
7					

Checks for filing fees should be payable to: **REGISTRAR OF TITLES.**

Checks for deed, mortgage or real estate taxes or division fee should be payable to: **COUNTY AUDITOR.**

Note: Documents presented with this request are not filed until they are fully processed in the office of the Registrar of Titles.

*For Registrar's Use Only. Do Not Write In this Box.*

Status \_\_\_\_\_ Return Code \_\_\_\_\_ Dep/Bill Acct.# \_\_\_\_\_ Coded/Logged by \_\_\_\_\_

Cert. # 309190