

FINANCE COMMITTEE

14-0204R

RESOLUTION PROVIDING FOR THE ISSUANCE, SALE AND DELIVERY OF \$11,500,000 TAXABLE TAX INCREMENT AND PARKING FACILITY REVENUE BOND, SERIES 2014A; ESTABLISHING THE TERMS AND FORM THEREOF; CREATING FUNDS AND ACCOUNTS THEREFOR; AND AWARDING THE SALE THEREOF.

CITY PROPOSAL:

BE IT RESOLVED by the city council (the "City Council") of the city of Duluth, St. Louis County, Minnesota (the "City"), as follows:

Section 1. Purpose and Authorization.

1.01 The City and Duluth Real Estate LLC, a Delaware limited liability company, entered into a Development Agreement, as hereinafter defined, pursuant to which the Developer, as hereinafter defined, agreed to develop a facility containing approximately 185,000 square feet of office space and approximately 15,000 square feet of retail space, and the City agreed to cause the development of a public parking facility and skywalks, all within or connected with the property located on West Superior Street between Fourth Avenue West and Fifth Avenue West with an extension to and across adjoining properties. The Developer will lease the Private Improvements, as hereinafter defined, to Maurices Incorporated, a Delaware corporation, and Maurices Incorporated, will guaranty the payment and performance of the Developer under the Development Agreement.

1.02 The City has established a Development Program and a Plan for Development District No. 17 pursuant to Minnesota Statutes, Sections 469.124 to 469.134, and has created Tax Increment Financing District No. 26 (a redevelopment district) located in Development District No. 17. Such Development Plan and Tax Increment Financing Plan for Tax Increment Financing District No. 26 provides for the use of tax increment from such tax increment financing district for certain project costs, as hereinafter described.

1.03 The City applied for and received from the State of Minnesota, through the Department of Employment and Economic Development, a grant of \$8,500,000 to assist in the payment of certain Qualified Grant Costs, as hereinafter defined, in connection with the development of such parking facility.

1.04 The City intends to operate such parking facility as a revenue producing convenience, from which revenue is or may be derived as described in Minnesota Statutes, Chapter 475.

1.05 Pursuant to Minnesota Statutes, Chapters 475 and 469 and Section 469.178, Laws of Minnesota 1977, Chapter 257 and the home rule charter of the City, the City is authorized to issue and sell its revenue obligations for the purpose of financing a portion of the public development costs associated with the Public Improvements, as hereinafter defined.

1.06 The City Council hereby determines that it is necessary, expedient and in the best interest of the City that the City issue, sell and deliver its \$11,500,000 Taxable Tax Increment and Parking Facility Revenue Bond, Series 2014A (the "Bond") to finance a portion of the Qualified City Costs, as hereinafter defined.

1.07 Maurices Incorporated, as the purchaser of the Bond, has proposed to purchase the Bond at a cash price of \$11,500,000, upon condition that the Bond matures and bear interest on the terms and annual rate set forth in Section 3. The City, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted.

Section 2. Definitions.

"Affiliate" means, as to any entity, any other entity, that controls, is controlled by, or is under common control with, such entity.

"Alley Bridge" means the improvements to be constructed through and within the Alley Parcel, connecting the Parking Facility with the Parking Facility Extension.

"Alley Parcel" means an above grade portion of the public alley between and adjacent to the DNT Easement Parcel and the Parking Facility Parcel through and within which the Alley Bridge and a skywalk are to be constructed, as more specifically described in the Ground Lease.

"Available Tax Increment" means 90% of the Tax Increment received by the City from the County with respect to the Land and the DNT Parcel and improvements

thereon from the TIF District during the six months preceding any Payment Date.

"Bond" means the City's Taxable Tax Increment and Parking Facility Revenue Bond, Series 2014A, in the original principal amount of \$11,500,000.

"Closing Date" means the date on which the City delivers the Bond to the Purchaser and receives the proceeds of the Bond from the Purchaser.

"Company" means Maurices Incorporated, and (a) any other entity that acquires all or substantially all of the assets of Maurices Incorporated, and (b) any successors by merger to Maurices Incorporated.

"Company Lender" means a financial institution that is a party to a loan agreement or other credit facility with the Company, or an Affiliate to the Company.

"County" means St. Louis County, Minnesota.

"Current Expenses" means the reasonable expenses, paid or accrued, of operation, maintenance and repair of the Parking Improvements, as determined in accordance with generally accepted accounting principles, including but not limited to management fees and expenses, insurance costs, including the allocation of the City's self-insurance costs, common area charges, expenses of the City under the Ground Lease, the DNT Easement and the Operation and Easement Agreement (except for such expenses which are extraordinary expenses which are to be paid out of the Capital Account for Funded Depreciation), all materials, supplies and labor needed for current operations, maintenance and repairs, and charges for the accumulation of appropriate reserves for Current Expenses which do not recur monthly but may reasonably be expected to be incurred; but shall exclude depreciation and interest expense.

"DEED" means the State of Minnesota, through the Department of Employment and Economic Development.

"Developer" means Duluth Real Estate LLC, a Delaware limited liability company.

"Development" means the Private Improvements and the Public Improvements.

"Development Agreement" means the Development Agreement by and between the

Developer and the City, pursuant to which the Private Improvements and the Public Improvements are to be developed, as the same may be amended from time to time.

"Disbursing Agreement" means the Disbursing Agreement among the City, the Developer, Title and DEED, pursuant to which the Revenue Bond Funds are disbursed for Qualified City Costs and the Grant is disbursed for Qualified Grant Costs, as the same may be amended from time to time.

"DNT Easement Agreement" means the Easement Agreement by and between the Developer and Forum Communication Company, pursuant to which the Developer has been granted the DNT Easement Rights, as the same may be amended from time to time.

"DNT Easement Parcel" means the portion of the DNT Parcel on and within which the Parking Facility Extension is to be constructed pursuant to the DNT Easement Agreement.

"DNT Easement Rights" mean all of the rights and obligations of the "Parking Facility Owner" (as that term is defined in the DNT Easement Agreement), under and pursuant to the DNT Easement Agreement.

"DNT Parcel" means the parcel located in the City of Duluth, St. Louis County, Minnesota, legally described as the West Half of Lot 68 and all of Lot 70, Duluth Proper, First Division, West First Street, St. Louis County, Minnesota.

"Existing Skywalk Improvements" means modifications and improvements to the existing skywalks located on, within or adjacent to the DNT Parcel and the Alley Parcel to be constructed by the Developer pursuant to the Development Agreement.

"Fiscal Year" means a calendar year.

"Funded Depreciation" means the amount approved by the City Council (as part of its approval of the annual budget for the Parking Improvements) for major repairs and replacements to the Parking Improvements, including capital costs and extraordinary expenses of the City under the Ground Lease, the DNT Easement and the Operating and Easement Agreement.

"Grant" means the \$8,500,000 grant to the City from DEED to assist in the

development of the Parking Facility, as more fully described in the Grant Agreement.

"Grant Agreement" means the General Obligation Bond Proceeds Grant Agreement - Construction Grant for the 425 Public Parking Ramp Project between the City and DEED regarding the Grant, as the same may be amended from time to time.

"Ground Lease" means the Ground Lease between the Developer and the City pursuant to which the Developer will lease to the City the Ground Lease Premises, as the same may be amended from time to time.

"Ground Lease Premises" means the Parking Facility Parcel, the Alley Parcel and the DNT Easement Parcel, each as defined in the Ground Lease.

"Land" means the real property located in the City of Duluth, St. Louis County, Minnesota, legally described as follows:

Parcel 1: Lot 65, West Superior Street, Duluth Proper, First Division, St. Louis County, Minnesota.

Parcel 2: Lots 67, 69, 71, 73, 75, 77 and 79, EXCEPT the E'ly 5 feet of the W'ly 34 feet thereof, West Superior Street, Duluth Proper, First Division, St. Louis County, Minnesota and all that part of Government Lot 5, Section 27, Township 50 North, Range 14 West of the Fourth Principal Meridian, which is necessary to make said Lot 79 on Superior Street, a full lot, with a frontage of 50 feet on said Street and a depth of 140 feet of Fifth Avenue West, Duluth, EXCEPT that portion of said lots and Government Lot 5 lying within 29 feet of the east line of Fifth Avenue West as originally platted.

"Operation and Easement Agreement" means the Operation and Easement Agreement between the Developer and the City.

"Parking Facility" means the multi-level parking structure with approximately 485 parking spaces to be constructed on the Parking Facility Parcel by or at the direction of the City in accordance with the provisions contained in the Ground Lease and the Development Agreement, along with any and all other structures, driveways, and other improvements that are constructed, placed or located on or within the Parking Facility Parcel during the term of the Ground Lease, as the same may from time to time exist, and the appurtenances to all of the foregoing. For the avoidance of doubt, the parties acknowledge and agree

that the term "Parking Facility" as used herein: (a) has the same meaning as the term "Project" as defined in the Grant Agreement, and (b) does not include the Alley Bridge or the Parking Facility Extension.

"Parking Facility Extension" means the improvements to be constructed by (or at the direction of) the City on the DNT Easement Parcel in accordance with the provisions contained in the Ground Lease, the Development Agreement, and the DNT Easement Agreement, which improvements will provide ingress to and egress from the Alley Bridge and Parking Facility, along with any and all other structures, sidewalks, driveways, and other improvements that are constructed, placed or located on the DNT Easement Parcel during the term of the Ground Lease, as the same may from time to time exist, and the appurtenances to all of the foregoing.

"Parking Facility Fund" means the 425 West Superior Street Parking Facility Fund created by Section 4.01 of this Resolution to account for the Revenue Bond Funds, the Revenues, the Current Expenses, the Funded Depreciation of the Parking Improvements and debt service on the Bond.

"Parking Facility Parcel" means the portion of the Land on and within which the Parking Facility is to be constructed, as described and defined in the Ground Lease, as the same may be amended from time to time pursuant to the Ground Lease.

"Parking Improvements" means the Parking Facility, the Alley Bridge and the Parking Facility Extension.

"Payment Date" means April 1 and October 1 of each year, commencing on October 1, 2016.

"Private Improvements" means a facility containing approximately 185,000 square feet of office space, together with necessary vertical transportation and connection facilities, storage and building services facilities and approximately 15,000 square feet of retail space to be constructed on the Land and owned by the Developer and leased to the Company.

"Public Improvement Premises" means the Parking Facility Parcel, the Alley Parcel, the DNT Easement Parcel and the Skywalk Parcel.

"Public Improvements" means the Parking Facility, the Alley Bridge, the Parking Facility Extension, the Skywalks and the Existing Skywalk Improvements.

"Purchaser" means Maurices Incorporated, a Delaware corporation, and its permitted successors or assigns.

"Qualified City Costs" means all capital costs properly chargeable to the construction, installation and equipping of the Public Improvements, which qualify as reimbursable or payable as TIF Eligible Costs, and which include: (a) all costs under the terms of any contract or contracts for the construction, installation or equipping of the Public Improvements, including reimbursement to the Developer and/or the City for all advances and payments made in connection with the Public Improvements; (b) obligations incurred for labor and materials in connection with the construction, installation or equipping of the Public Improvements; (c) the cost of payment and performance or other bonds and any and all types of insurance that may be necessary or appropriate to be in effect during the course of construction of the Public Improvements; (d) all costs of design, engineering and architectural services, including the costs for test borings, surveys, estimates and preliminary investigations therefor, and for supervising installation, as well as for the performance of all other duties required by or consequent to the proper installation of the Public Improvements; (e) the City's share of acquisition and site preparation expenses for the land underlying the Public Improvement Premises, including remediation and demolition expenses, which share shall not exceed a fraction, the numerator of which shall be the gross floor area of the Public Improvements and the denominator of which shall be the gross floor area of all improvements constituting a part of the Development; and (f) all other costs and expenses incurred by the City, including reimbursement to the Developer, in connection with the financing, construction, consulting, project management, installation and equipping of the Public Improvements.

"Qualified Grant Costs" means all capital costs properly chargeable to the construction, installation and equipping of the Parking Facility, and which are

qualifying as costs reimbursable or payable by the Grant, including (a) all costs under the terms of any contract or contracts for the construction, installation or equipping of the Parking Facility, including reimbursements to the City and/or the Developer for all advances and payments made in connection with the Parking Facility; (b) obligations incurred for labor and materials in connection with the construction, installation or equipping the Parking Facility; (c) the cost of payment and performance or other bonds and any and all types of insurance that may be necessary or appropriate to be in effect during the course of construction of the Parking Facility; (d) all costs of design, engineering and architectural services, including the costs for test borings, surveys, estimates and preliminary investigations therefor, and for supervising installation, as well as for the performance of all other duties required by or consequent to the proper installation of the Parking Facility; (e) the City's share of acquisition and site preparation expenses for the land underlying the Parking Facility Parcel, including remediation and demolition expenses, which share shall not exceed a fraction, the numerator of which shall be gross floor area of the Parking Facility, and the denominator of which shall be the gross floor area of all improvements constituting a part of the Development; and (f) all other costs and expenses incurred by the City, including reimbursement to the Developer, in connection with the financing, construction, consulting, project management, installation and equipping of the Parking Facility.

"Revenue Bond Funds" means the proceeds of the Bond.

"Revenues" means the gross earnings and all income derived from the operation of the Parking Improvements from receipts, rates, fees and charges established by the City Council, including hourly, daily, monthly and event parking, and the net proceeds (i) of the sale of any portion of the Parking Improvements and the City's rights under the Ground Lease, subject to the terms of the Grant Agreement, (ii) from insurance for damages to the Parking Improvements, to the extent not used to repair the damage to the Parking Improvements, all as provided for and subject to the Ground Lease and Grant

Agreement; and (iii) from condemnation awards for taking of all or a part of the Parking Improvements, to the extent not used to restore the Parking Improvements, all as provided for and subject to the Ground Lease and the Grant Agreement.

"Skywalk Parcel" means the parcel(s) within the Land within which the Skywalks are to be constructed and the easements on which the Existing Skywalk Improvements will be constructed.

"Skywalks" mean the above and below grade walkways located on easements within or through the Land to be constructed pursuant to the Development Agreement.

"Tax Increment" means that portion of the real property taxes which are paid with respect to the Land and the DNT Parcel and the improvements thereon, and which are remitted to the City as tax increment of the TIF District pursuant to the TIF Act. The term Tax Increment does not include any amounts retained by or payable to the State Auditor under Section 469.177, Subd. 11 of the TIF Act, or any amounts retained or payable to the County for administrative fees.

"TIF Account" means the Tax Increment Account for Tax Increment District No. 26 described in Section 4.01 hereof.

"TIF Act" means Minnesota Statutes, Section 469.174 through 469.1794, as amended.

"TIF District" means the City's Tax Increment Redevelopment District No. 26 located within the City's Development District No. 17.

"TIF Eligible Costs" means those capital costs permitted by the TIF Act for redevelopment tax increment districts, as otherwise limited by the TIF Plan and by the Development Agreement for the Public Improvements.

"TIF Plan" means the City's Tax Increment Financing Plan for the TIF District adopted pursuant to the TIF Plan.

"Title" means First American Title Insurance Company, a California corporation.

Section 3. Terms of the Bond.

3.01 The Bond shall be a single Bond, dated as of the date of delivery, in fully registered form, in the amount of \$11,500,000, and lettered and numbered R-1. The Bond shall have a final maturity date of April 1, 2044, with semiannual installments of principal and interest on April 1 and October 1 of each year (each a "Payment Date") commencing on October 1, 2016, in the amounts determined, as set forth in Section 4 hereof and in the Bond. The Bond shall bear interest on the unpaid principal, as set out in the Bond, at the rate of 4.0% per annum. Payments shall be applied first to interest due through each Payment Date and thereafter to reduce principal. There shall be no accruing of interest on any unpaid interest after April 1, 2017. The Bond shall terminate on April 1, 2044, or upon payment in full of the principal and interest of the Bond. This Bond may be prepaid, in whole or in part, at the option of the City on any date.

3.02 The City appoints the City Clerk as Registrar. The effect of registration and the rights and duties of the City with respect thereto are as follows:

(a) Register. The Registrar must keep a bond register for the Bond in which the Registrar provides for the registration of ownership of the Bond and the registration of transfers and exchanges of the Bond.

(b) Transfer of Bond. Subject to the provisions of clause (a) of this section, upon surrender for transfer of the Bond duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar will authenticate and deliver, in the name of the designated transferee, one new bond in an aggregate principal amount equal to the then outstanding principal amount of the Bond so surrendered and of like maturity, as requested by the transferor. The Registrar may, however, close the books for registration of any transfer after the 15th day of the month preceding each interest payment date and until such interest Payment Date.

(c) Exchange of Bond. When a Bond is surrendered by the registered owner for exchange the Registrar will authenticate and deliver one new bond in an aggregate principal amount equal to the then outstanding principal amount of the Bond surrendered and of like maturity, as requested in writing by the registered owner or the owner's attorney.

(d) Cancellation. A Bond surrendered upon any transfer or exchange will be promptly canceled by the Registrar and thereafter disposed of as directed by the City.

(e) Improper or Unauthorized Transfer. When a Bond is presented to the Registrar for transfer, the Registrar may refuse to transfer the Bond so presented until the Registrar is satisfied that the endorsement on the Bond or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar will incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(f) Persons Deemed Owners. The City and the Registrar may treat the person in whose name a Bond is registered in the bond register as the absolute owner of the Bond, whether the Bond is overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on the Bond and for all other purposes, and payment so made to a registered owner or upon the owner's order will be valid and effectual to satisfy and discharge the liability upon the Bond to the extent of the sum or sums so paid.

(g) Taxes, Fees and Charges. For a transfer or exchange of a Bond, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to the transfer or exchange.

(h) Mutilated, Lost, Stolen or Destroyed Bond. If a Bond becomes mutilated or is destroyed, stolen or lost, the Registrar will deliver a new Bond of like amount, number, maturity date, redemption privilege and tenor in exchange and in substitution for and upon cancellation of the mutilated Bond or in lieu

of or in substitution for any Bond destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Registrar and City in connection therewith; and, in the case of a Bond destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory to the Registrar that the Bond was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Registrar and City of an appropriate bond or indemnity in form, substance and amount satisfactory to it and as provided by law, in which both the City and the Registrar must be named as obligees. A Bond so surrendered to the Registrar will be canceled by the Registrar. If the mutilated, destroyed, stolen or lost Bond has already matured or been called for redemption in accordance with its terms it is not necessary to issue a new Bond prior to payment.

(i) Limitation on Transfers and Pledges of the Bond. The Bond has been issued without registration under state or federal securities laws, pursuant to an exemption for such issuance; and accordingly the Bond may not be assigned, transferred or pledged in whole or part, nor may a participation interest in a Bond be given pursuant to any participation agreement, except (a) with the written consent of the City, or (b) without the written consent of the City if (1) the sale or transfer of the Bond is made to a purchaser of, and in connection with, the sale and purchase of all or substantially all of the Private Improvements; or (2) the pledge of the Bond is to a Company Lender who has required a pledge of the Bond pursuant to a loan agreement or other credit facility; or (3) to an Affiliate of the Company; and in each case, such transferee or such financial institution shall provide an investment letter substantially in the form of the investment letter provided by the Purchaser on the Closing Date.

3.03 The Bond shall be printed or typewritten in substantially the following form:

No. R-___

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF ST. LOUIS

CITY OF DULUTH

TAXABLE TAX INCREMENT AND PARKING FACILITY REVENUE BOND
SERIES 2014A

Principal Amount	Annual Rate
\$11,500,000	4.0%

THIS BOND HAS NOT BEEN REGISTERED UNDER ANY FEDERAL OR STATE SECURITIES LAWS AND MAY NOT BE SOLD OR OTHERWISE DISPOSED OF OR TRANSFERRED WITHOUT THE WRITTEN CONSENT OF THE CITY OF DULUTH OR IN LIMITED CIRCUMSTANCES, UPON SATISFYING THE CONDITIONS SET FORTH IN THE RESOLUTION.

The CITY OF DULUTH, located in St. Louis County, Minnesota (the "City"), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay the Principal Amount specified above together with interest thereon at the Annual Rate specified above (the "Payment Amounts"), to MAURICES INCORPORATED, a Delaware corporation, or its permitted registered assigns (the "Registered Owner"), but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided.

This Bond is issued by the City pursuant to a resolution adopted on _____, 2014, by the governing body of the City (the "Resolution") and is issued for the purpose of financing public development costs described in a Development Program and a Plan for Development District No. 17, in the Tax Increment Plan for Tax Increment Redevelopment District No. 26 and in the Resolution, which include, but are not limited to, the City's public parking facility and skywalks located on, within or adjacent to the Land and on the DNT Parcel each as described on Exhibit A hereto and on adjoining street and alley rights of way, all of which are referred to as the Public Improvement Premises in the Resolution. This Bond is issued pursuant to Minnesota Statutes, Chapters 469 and 475 and Section 469.178 and Laws of Minnesota 1977, Chapter 257, and the home rule charter of the City.

The Payment Amounts due on this Bond shall be payable solely from, and to the extent that the City shall receive (i) Available Tax Increment, as hereinafter defined, and (ii) Revenues of the Parking Facility pledged to the Debt Service Account, as set forth in the Resolution.

For purposes of this Bond, Available Tax Increment shall mean 90% of the Tax Increment received by the City from St. Louis County with respect to the Land and the DNT Parcel and improvements thereon, located in the City's Tax Increment Redevelopment District No. 26 (the "TIF District") within Development District No. 17 during the six months preceding any Payment Date specified below and which the City is entitled to retain pursuant to the provisions of Minnesota Statutes, Sections 469.174 through 469.1794, as the same may be amended or supplemented from time to time (the "TIF Act")

(after deduction of the state auditor fee and county auditor fee). For purposes of this Bond, the Parking Improvements means the City's Public Parking Facility located on, within and through the Ground Lease Premises as defined in the Resolution (the "Parking Improvements"). In the Resolution, the City has pledged and appropriated the Revenue to be derived from the operation of the Parking Improvements, in excess of Current Expenses and Funded Depreciation, to the Debt Service Account at the times and in the amounts determined pursuant to the Resolution for payment of the principal and interest on the Bond.

This Bond is a limited obligation of the City, payable solely from the Debt Service Account within the 425 West Superior Street Parking Facility Fund to which the City in the Resolution has pledged and appropriated the Available Tax Increment and certain Revenues of the Parking Improvements, as set forth above and more specifically as described in the Resolution, and the Bond is further secured by the covenants and agreements contained in the Resolution.

Interest payable on this Bond shall start to accrue as of the date of execution and delivery hereof. Payments under this Bond shall be applied first to accrued interest and then to the unpaid principal amount hereof. There shall be no accruing of interest on any unpaid interest after April 1, 2017. The payments on this Bond shall be made by the City on a semi-annual basis on April 1 and October 1 commencing October 1, 2016, and continuing through April 1, 2044 (each referred to herein as a "Payment Date"). This Bond shall terminate and be of no further force and effect on the earlier of April 1, 2044, or upon payment in full of the principal and interest on this Bond.

This Bond is prepayable, in whole or in part, on any date at the option of the City.

Reference is hereby made to the provisions of the Resolution for a fuller statement of the definitions of Tax Increment, Available Tax Increment and Revenues of the Parking Improvements and the rights and obligations of the City to pay the Payment Amounts of this Bond, and said provisions are hereby incorporated into this Bond as though set out in full herein. All terms not otherwise defined herein has the meaning as defined in the Resolution.

This Bond is a revenue obligation and not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications stated or referenced herein. Neither the full faith and credit nor the taxing powers of the City are pledged to the payment of the principal of or interest on this Bond and no property or other asset of the City, save and except the above-referenced Available Tax Increment and Revenues of the Parking Improvements pledged to the Debt Service Account, is or shall be a source of payment of the City's obligations hereunder.

This Bond is issued by the City in aid of financing a project pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including the TIF Act, Laws of Minnesota 1977, Chapter 257 and Minnesota Statutes Chapter 475.

This Bond may not be assigned without the written consent of the City except in limited circumstances and upon satisfying the

conditions set forth in the Resolution. Upon such assignment, the assignor shall promptly notify the City at the office of the City Clerk by registered mail, and the assignee shall surrender the same to the City Clerk either in exchange for a new fully registered bond or for transfer of this Bond on the registration records for the Bond maintained by the City. Each permitted assignee shall take this Bond subject to the foregoing conditions and subject to all provisions stated or referenced herein.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this Bond have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this Bond, together with all other indebtedness of the City outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the City to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, the City of Duluth, Minnesota, by its City Council, has caused this Bond to be executed by the manual signatures of its Mayor and attested by its City Clerk, and has caused this Bond to be issued on and dated _____, 2014.

CITY OF DULUTH, MINNESOTA

By _____
Its Mayor

ATTEST:

By _____
Its City Clerk

CERTIFICATE OF REGISTRATION

It is hereby certified that the foregoing Bond, as originally issued on _____, 2014, was on said date registered in the name of Maurices Incorporated and that, at the request of the Registered Owner of this Bond, the undersigned has this day registered the Bond in the name of such Registered Owner, as indicated in the registration blank below, on the books kept by the undersigned for such purposes.

Registered Owner	Date of Registration	Signature of City Clerk
Maurices Incorporated	___/___/2014	
Duluth, MN 558_____ Federal Tax ID No.: _____		_____

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto _____ the within Bond and

all rights thereunder, and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Bond on the books kept for registration of the within Bond, with full power of substitution in the premises.

Dated: _____

Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatsoever.

The City Clerk will not effect transfer of this Bond unless the information concerning the assignee requested below is provided.

Name and Address: _____

Taxpayer Identification Number: _____

THIS BOND HAS NOT BEEN REGISTERED UNDER ANY FEDERAL OR STATE SECURITIES LAWS AND MAY NOT BE SOLD OR OTHERWISE DISPOSED OF OR TRANSFERRED WITHOUT THE WRITTEN CONSENT OF THE CITY OF DULUTH OR IN LIMITED CIRCUMSTANCES, UPON SATISFYING THE CONDITIONS IN THE RESOLUTION.

EXHIBIT A
TO TAXABLE TAX INCREMENT AND PARKING FACILITY REVENUE BOND
Land

PID No.: 010-0920-00540
Parcel 1: Lot 65, West Superior Street, Duluth Proper, First Division, St. Louis County, Minnesota.

PID No.: 010-0920-00550
Parcel 2: Lots 67, 69, 71, 73, 75, 77 and 79, EXCEPT the E'ly 5 feet of the W'ly 34 feet thereof, West Superior Street, Duluth Proper, First Division, St. Louis County, Minnesota and all that part of Government Lot 5, Section 27, Township 50 North, Range 14 West of the Fourth Principal Meridian, which is necessary to make said Lot 79 on Superior Street, a full lot, with a frontage of 50 feet on said Street and a depth of 140 feet of Fifth Avenue West, Duluth, EXCEPT that portion of said lots and Government Lot 5 lying within 29 feet of the east line of Fifth Avenue West as originally platted.

DNT Parcel

PID No.: 010-090-01170
Parcel 3: West Half of Lot 68 and all of Lot 70, Duluth Proper, First Division, West First Street, St. Louis County, Minnesota.

Section 4. Funds and Accounts; Application of Available Tax Increment; Application of Revenues; Application of Proceeds of the Bond.

4.01 The City covenants and agrees to maintain throughout the term of the Bond the Tax Increment Account for Tax Increment District No. 26 (the "TIF

Account") and the 425 West Superior Street Parking Facility Fund (the "Parking Facility Fund").

(a) The TIF Account shall be maintained for the purpose of the application and proper allocation of the Tax Increment from the TIF District. On the business day prior to each Payment Date, the City shall transfer the Available Tax Increment from the TIF Account to the Debt Service Account. The City Treasurer shall pay to the Purchaser on each Payment Date the Available Tax Increment on deposit in the Debt Service Account.

(b) The Parking Facility Fund and the accounts therein shall be maintained for the application and proper allocation of the Revenue Bond Funds and the Revenues of the Parking Improvements and shall be used only for the purposes described below. There is hereby created in the Parking Facility Fund the following accounts:

(i) the "Construction Account" into which the Revenue Bond Funds shall be credited.

(ii) the "Revenue Account," into which shall be deposited as received the entire Revenues of the Parking Improvements, which money shall then be used to pay Current Expenses and then divided between the Capital Account and the Debt Service Account in the amounts and in the manner set forth in Section 4.02 hereof and used for the purposes hereinafter set forth.

(iii) the "Capital Account," which shall be used to pay Funded Depreciation of the Parking Improvements.

(iv) the "Debt Service Account," which shall first be used for the payment of the principal of and interest on the Bond.

4.02 The Revenues of the Parking Improvements shall be credited to the Revenue Account, as received and used or credited periodically, as hereinafter provided, to the accounts hereinabove created, and used and applied only for the following purposes and in the following order of priority:

(a) First, as a first charge on the Revenues of the Parking Improvements, such amount as may be required to pay the reasonable and necessary

Current Expenses of the Parking Improvements which are then due and payable and to retain for Current Expenses which are not then due and which do not recur monthly (such as insurance premiums which may be payable annually or semi-annually) but may reasonably be expected to be incurred. Such amounts spent or retained in the Revenue Account, as set forth in prior sentences, shall be used only to pay claims duly verified and allowed as Current Expenses of the Parking Improvements necessarily incurred in operating the Parking Improvements and maintaining it in proper operating condition, and maintaining an adequate working capital reserve for this purpose. The amount of the Revenues in the Revenue Account, as of June 30 and December 31 of each year, as applicable, retained for Current Expenses which are not then due and which do not recur monthly, but may reasonably be expected to be incurred shall be the "Retained Amount."

(b) Second, on the first day of each month, or as soon thereafter as practicable, there shall be set aside in the Capital Account 1/12 of the amount approved by the City Council in the annual budget for the Parking Improvements as the Funded Depreciation for the applicable Fiscal Year.

(c) Third, (i) on the business day prior to October 1 of each year, there shall be set aside in the Debt Service Account an amount equal to 90% of the difference between the amount on deposit in the Revenue Account derived from Revenues received during the period from the prior January 1 through June 30 and the Retained Amount as of such June 30; and (ii) on the business day prior to April 1 of each year, there shall be set aside in the Debt Service Account the difference between the amount on deposit in the Revenue Account derived from Revenues received during the prior Fiscal Year and the Retained Amount as of the prior December 31. The City Treasurer shall pay to the Purchaser on each Payment Date the Revenues on deposit in the Debt Service Account.

4.03 (a) The City shall keep proper books of records and accounts in which full, true and correct entries shall be made of all dealings or transactions of or in relation to the affairs of the Parking Improvements, in accordance with generally accepted accounting principles consistently applied.

(b) The City will cause an examination and audit of the Parking Improvements as part of the City's annual audit of its financial records. The City shall report to the Purchaser within 180 days of the end of each Fiscal Year the following:

(i) a detailed statement of Revenues and Current Expenses of the Parking Facility Fund; and

(ii) a balance sheet, as of the end of each Fiscal Year, that details the balances in each of the accounts within the Parking Facility Fund.

(c) The City shall provide to the Purchaser copies of the quarterly reports on the operation of the Parking Improvements provided to the City by the manager of the Parking Improvements.

(d) The City shall prepare a budget for the Parking Improvements not less than sixty days prior to the beginning of the next Fiscal Year. Such budget shall include estimated Revenues, Current Expenses, amounts to be deposited in the Capital Account and amounts on deposit in the Capital Account to be expended on Funded Depreciation.

4.04 The City's financial commitment for payment of the Bond under this Resolution is a revenue obligation only and will be paid by the City only out of (i) Available Tax Increment; and (ii) Revenues from the Parking Improvements pledged and deposited in the Debt Service Account as provided for in Section 4.02(c). The City makes no representations or warranties that the Available Tax Increment and the Revenues pledged to the Debt Service Account will be sufficient to pay the principal of or interest on the Bond. The Purchaser shall be required to execute and deliver on or prior to the Closing Date a certificate that the Purchaser (i) acknowledges that Available Tax Increment is subject to calculation by the County and changes in State law and that the Available Tax Increment may be less than forecasted; (ii) acknowledges that the estimates of Available Tax Increment which may have been made by the City or its agents, officers or employees are estimates only, are made for the sole use and benefit of the City and are not intended for the Purchaser's reliance; and (iii) further acknowledges

that the estimates of Revenues pledged to the Debt Service Account which may have been made by the City or its agents, officers or employees are estimates only, are made for the sole use and benefit of the City and are not intended for the Purchaser's reliance.

4.05 Upon receipt of the Revenue Bond Funds from the Purchaser on the Closing Date, such funds shall be credited to the Construction Account. The Revenue Bond Funds shall be applied solely for Qualified City Costs and if there are any Revenue Bond Funds remaining after payment of all Qualified City Costs, the balance in the Construction Account shall be used to prepay the Bond. Disbursement from the Construction Account shall be made pursuant to the terms and conditions set forth in the Disbursing Agreement, substantially in the form set forth as public document No. _____. The proceeds of the Grant shall be disbursed for Qualified Grant Costs pursuant to the Disbursing Agreement and the Grant Agreement.

4.06 Proceeds of the Bond and funds on deposit in the Parking Facility Fund and the TIF Account may, in the discretion of the city treasurer, be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided, that any such investment shall mature at such time and in such amounts as will permit the payment of Qualified City Costs and/or payment of costs of the Parking Improvements, including the principal and interest on the Bond, when due.

4.07 The City hereby covenants and agrees with the Purchaser that it will establish, impose, maintain and revise when necessary charges for use of the Parking Improvements (other than the reserved parking spaces in the Parking Facility Extension) at the times and in the minimum amounts required to pay the Current Expenses, the Funded Depreciation and additional Revenues necessary to pay the principal and interest on the Bond (less the estimated Available Tax Increment for the applicable Fiscal Year) based on the schedule set forth as public document No. _____; provided, however, the Purchaser may, from time to time, provide the City with a written waiver of compliance with this rate covenant.

Section 5. Certificate of Proceedings. The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City relating to the authorization and issuance of the Bond and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Bond as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

Section 6. Resolution a Contract. The provisions of this Resolution shall constitute a contract between the City and the Purchaser, and after issuance of the Bond, no change or alteration of any kind in the provisions of this Resolution may be made, except as agreed in writing by the City and the Purchaser until the Bond has been paid in full as to both principal and interest.

Approved:



Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

FIN WP:le 05/02/2014

STATEMENT OF PURPOSE: This resolution establishes the terms and form of the City's \$11,500,000 Taxable Tax Increment and Parking Facility Revenue Bond, Series 2014A to be issued to Maurices Incorporated. The interest rate on the Bond is 4.0%. The proceeds of the Bond will be used for development costs for the Parking Improvements and Skywalks in connection with the Maurices Headquarters Project.

DISBURSING AGREEMENT

425 PUBLIC PARKING FACILITY PROJECT

This Disbursing Agreement (“**Agreement**”) is entered into as of this ____ day of May, 2014, by and among the City of Duluth, a Minnesota municipal corporation (“**City**”), Duluth Real Estate LLC, a Delaware limited liability company (“**Developer**”), First American Title Insurance Company, a California corporation (“**Title**”), and the Department of Employment and Economic Development for the State of Minnesota (“**State**”).

RECITALS:

WHEREAS, City (as the recipient of the Grant, defined below) and State have agreed to provide certain funds sufficient to pay costs of the construction, installation and equipping of the new public parking facility to be located on the block bounded by West Superior Street, West 1st Street, North 4th Avenue West and North 5th Avenue West in Duluth, Minnesota (as more particularly defined herein, the “**Project**”) in accordance with the Project Plans (as defined below), and as more fully provided hereafter and in the General Obligation Bond Proceeds Grant Agreement - Construction Grant for the 425 Public Parking Facility Project under the Minnesota Business Development Capital Projects Grant Program, dated on or about the date hereof, by and between City and State (the “**Grant Agreement**”);

WHEREAS, specifically, State has agreed, pursuant to the Grant Agreement, that State will make available to City \$8,500,000 (the “**Grant**”) to pay or reimburse Qualified Grant Costs (as defined below) and, pursuant to the terms of the Grant Agreement and the Development Agreement (defined below), City has agreed to advance to the Project the proceeds of the Grant to pay or reimburse such costs. Accordingly, the proceeds of the Grant will be disbursed by State to Title, as the designee of City, on a draw-by-draw basis as the conditions to each disbursement as set forth herein and in the Grant Agreement are satisfied, for deposit into the Construction Fund (defined below) for further disbursement pursuant to this Agreement, the Grant Agreement and the Development Agreement;

WHEREAS, pursuant to the terms of the Development Agreement, City has agreed to provide net proceeds in the amount of \$11,500,000 (the “**Revenue Bond Funds**”) received by City from Developer upon the issuance to Developer of a taxable tax increment and parking facility revenue bond in the same amount to pay or reimburse Qualified City Costs (as defined below). Accordingly, the Revenue Bond Funds will be credited to the Construction Account within the City’s 425 West Superior Street Parking Facility Fund created pursuant to the Bond Resolution (as hereafter defined) and will be disbursed by City to Title on a draw-by-draw basis as the conditions to each disbursement as set forth herein and in the Development Agreement are satisfied, for deposit into the Construction Fund for further disbursement pursuant to this Agreement and the Development Agreement;

WHEREAS, the parties hereto other than Title have determined based on the documentation provided that the sum of all the amounts available for the Project Costs will be sufficient to complete the Project;

WHEREAS, the parties hereto have agreed that all such funds will be disbursed in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

Article I.

Definitions

Section 1.01 As used in this Agreement, the following terms shall have the meanings set out below, provided that any capitalized terms used herein but not defined herein shall have the meaning given such terms in the Grant Agreement.

“Additional Public Improvement Plans” means the plan and specifications for the construction, installation and equipping of the Additional Public Improvements, and any modifications thereof and additions thereto.

“Additional Public Improvements” means the Alley Bridge, the Parking Facility Extension, the Skywalks and the Existing Skywalk Improvements.

“Advance” has the meaning given to it in Section 4.02.

“Advance Date” has the meaning given to it in Section 4.02.

“Advanced Revenue Bond Funds” means the aggregate from time to time of all Revenue Bond Funds advanced by (and not reimbursed to) City for Qualified City Costs.

“Alley Bridge” means the improvements to be constructed through and within the Alley Parcel, connecting the Project to the Parking Facility Extension.

“Alley Parcel” means an above-grade portion of the public alley between and adjacent to the DNT Easement Parcel and Parking Facility Parcel through and within which the Alley Bridge and a Skywalk are to be constructed, as more fully described in the Ground Lease.

“Architect” means RSP Architects, Ltd.

“Available Sources” has the meaning given to it in Section 4.08.

“Bond Resolution” means the Resolution adopted by the City Council on May __, 2014 and titled “Resolution Providing for the Issuance, Sale and Delivery of \$11,500,000 Taxable

Tax Increment and Parking Facility Revenue Bond, Series 2014A; Establishing the Terms and Form Thereof; Creating Funds and Accounts Therefore; and Awarding the Sale Thereof.”

“**Closing**” means the date of the acceptance and execution of the Grant Agreement by the State.

“**Construction Costs**” has the meaning given to it in Section 4.01.

“**Construction Fund**” means the “425 Public Parking Facility Project Fund”, an account held by Title, which may be part of Title’s general operating account, into which all funds to be disbursed by Title under this Agreement shall be deposited. Funds are not expected to remain in the Construction Fund for more than a day; accordingly, there is no requirement for such funds to be invested.

“**Contractor**” means McGough Construction.

“**Development**” means the mixed-use development project to be constructed pursuant to the Development Agreement that includes the Project, the Additional Public Improvements, an approximately 185,000 square foot office building for Maurices Incorporated, and approximately 15,000 square feet of retail space.

“**Developer Representative**” means the Treasurer of Developer or such other representative of Developer as designated by Developer, from time to time, by written notice to the other parties hereto. The notice may designate alternate representatives.

“**Development Agreement**” means that certain Development Agreement between City and Developer dated May _____, 2014, pursuant to which Developer has agreed to cause the completion of construction of the Project.

“**DNT Easement Agreement**” means that certain Easement Agreement by and between Developer and Forum Communications Company pursuant to which Developer acquires the easement rights necessary to construct the Parking Facility Extension.

“**DNT Easement Parcel**” means the parcel on and within which the Parking Facility Extension is to be constructed pursuant to the DNT Easement Agreement.

“**Documents**” has the meaning given to it in Section 4.03.

“**Existing Skywalk Improvements**” means modifications and improvements to the Existing Skywalks to be constructed by Developer pursuant to the Development Agreement.

“**Existing Skywalks**” means the existing elevated and subterranean walkways serving property in the vicinity of the Project, as more fully defined in the Development Agreement.

“**Filed Lien**” has the meaning given to it in Section 4.04.

“**Grant**” has the meaning provided in the Recitals.

“Grant Agreement” has the meaning provided in the Recitals.

“Ground Lease” means that certain Ground Lease pursuant to which Developer leases the Parking Facility Parcel and other rights to City.

“Parking Facility Extension” means the improvements to be constructed on the DNT Easement Parcel, connecting the Alley Bridge and Project to First Street.

“Parking Facility Parcel” means the parcel on and within which the Project is to be constructed pursuant to the Ground Lease, as the same may be amended from time to time pursuant to the Ground Lease.

“Primary Agreements” has the meaning provided in Section 3.01.C.

“Project” means the multi-level parking structure to be constructed on the Parking Facility Parcel by or at the direction of City in accordance with the provisions contained in the Ground Lease and the Development Agreement, along with any and all other structures, driveways, and other improvements that are constructed, placed or located on the Parking Facility Parcel during the term of the Ground Lease, as the same may from time to time exist, and the appurtenances to all of the foregoing. For the avoidance of doubt, the parties acknowledge and agree that the term “Project” as used herein: (a) has the same meaning as the term “Parking Facility” as defined in the Ground Lease, and (b) does not include the Additional Public Improvements.

“Project Costs” means all costs properly chargeable to the construction, installation, and equipping of the Project, including but not limited to the following:

- a) all costs under the terms of any contract or contracts for the construction, installation or equipping of the Project, including reimbursement to Developer and/or City for all advances and payments made in connection with the Project;
- b) obligations incurred for labor and materials in connection with the construction, installation or equipping of the Project;
- c) the cost of payment and performance or other bonds and any and all types of insurance that maybe necessary or appropriate to be in effect during the course of construction of the Project;
- d) all costs of design, engineering and architectural services, including the costs for test borings, surveys, estimates and preliminary investigations therefor, and for supervising installation, as well as for the performance of all other duties required by or consequent to the proper installation of the Project;
- e) the City’s share of acquisition and site preparation expenses for the land underlying the Parking Facility Parcel, including remediation and demolition expenses, which share shall not exceed a fraction, the numerator of which shall be

gross floor area of the Project, and the denominator of which shall be the gross floor area of all improvements constituting a part of the Development; and

- f) all other costs and expenses incurred by the City, including reimbursement to the Developer, in connection with the financing, construction, consulting, project management, installation and equipping of the Project.

“Project Plans” means the plans and specifications for the construction, installation, and equipping of the Project, and any modifications thereof and additions thereto.

“Public Improvement Costs” means all costs properly chargeable to the construction, installation, and equipping of the Public Improvements, including but not limited to the following:

- a) all costs under the terms of any contract or contracts for the construction, installation or equipping of the Public Improvements, including reimbursement to Developer and/or City for all advances and payments made in connection with the Public Improvements;
- b) obligations incurred for labor and materials in connection with the construction, installation or equipping of the Public Improvements;
- c) the cost of payment and performance or other bonds and any and all types of insurance that maybe necessary or appropriate to be in effect during the course of construction of the Public Improvements;
- d) all costs of design, engineering and architectural services, including the costs for test borings, surveys, estimates and preliminary investigations therefor, and for supervising installation, as well as for the performance of all other duties required by or consequent to the proper installation of the Public Improvements;
- e) the City’s share of acquisition and site preparation expenses for the land underlying the Public Improvement Premises, including remediation and demolition expenses, which share shall not exceed a fraction, the numerator of which shall be the gross floor area of the Public Improvements, and the denominator of which shall be the gross floor area of all improvements constituting a part of the Development; and
- f) all other costs and expenses incurred by the City, including reimbursement to the Developer, in connection with the financing, construction, consulting, project management, installation and equipping of the Public Improvements.

“Public Improvement Premises” means, collectively, the Parking Facility Parcel, the Alley Parcel, the DNT Easement Parcel, and the Skywalks Parcels.

“Public Improvements” means, collectively, the Project and the Additional Public Improvements.

“**Qualified City Costs**” means Public Improvement Costs that qualify as reimbursable or payable under the Bond Resolution.

“**Qualified Grant Costs**” means Project Costs that qualify as costs reimbursable or payable by the Grant.

“**Requisition Certificate**” has the meaning given to it in Section 2.01.A.

“**Revenue Bond Funds**” has the meaning provided in the Recitals.

“**Skywalks**” means the above and below grade walkways and associated stairways and elevators, to be constructed pursuant to the Development Agreement.

“**Skywalks Parcel**” means the parcel(s) within which the Skywalks are to be constructed.

“**Subcontractor**” means any contractor or vendor with whom the Contractor has executed a contract for work or materials, supplies or equipment for the Public Improvements.

Article II.

Disbursements of Revenue Bond Funds and Grant Funds

Section 2.01 The following shall apply with respect to the disbursement of funds hereunder:

A. *Revenue Bond Fund Disbursements.* City shall disburse proceeds of the Revenue Bond Funds to Title on a draw-by-draw basis for deposit into the Construction Fund to pay or reimburse for payment of Qualified City Costs upon receipt by City of a Requisition Certificate signed by the Developer Representative in the form attached hereto as Exhibit A (the “**Requisition Certificate**”) and approved by City as the conditions to each draw set forth herein are satisfied. Developer may request disbursements of the Revenue Bond Funds only to pay for Qualified City Costs.

B. *Grant Disbursements.* State shall disburse proceeds of the Grant to Title (as the designee of City) on a draw-by-draw basis for deposit into the Construction Fund to pay or reimburse for payment of Qualified Grant Costs upon receipt by State of a Reimbursement Payment Request in the form attached hereto as Exhibit B (the “**Reimbursement Payment Request**”) and a Requisition Certificate, signed by the Developer Representative and approved by City and State (as to the Requisition Certificate) and signed by the City and State (as to the Reimbursement Payment Request) as the conditions to each draw set forth herein and in the Grant Agreement are satisfied. In no event will State be obligated to disburse proceeds of the Grant to the extent that the aggregate of all prior disbursements and the current disbursement from the Grant would exceed the amount of the Advanced Revenue Bond Funds that have been advanced (and not reimbursed) for Project Costs, computed after giving effect to the current Requisition Certificate.

C. *Reimbursement to City; Effect.* State acknowledges that Grant proceeds may be used to reimburse City for Qualified Grant Costs that were previously paid by Revenue Bond Funds. City acknowledges that the amount of any reimbursement to City for Revenue Bond Funds previously advanced by City for Qualified Grant Costs shall be treated as Revenue Bond Funds, and shall be available for re-advance to pay Qualified City Costs in accordance with this Disbursing Agreement.

Article III.

Conditions Precedent to Disbursements

Section 3.01 Any and all advances of the Grant and Revenue Bond Funds shall be subject to satisfaction of each of the following conditions precedent:

A. Developer shall have submitted to Title, City and State executed copies of the following documents:

(i) a Sworn Construction Cost Statement showing a price for the construction of the Public Improvements not to exceed \$18,087,455;

(ii) a fully executed construction contract with the Contractor, which provides for the construction of the Public Improvements for a guaranteed maximum price equal to the amount listed in A.1 above;

(iii) A Total Public Improvement Cost Statement showing a price to complete the Public Improvements not to exceed \$19,989,091 (in form attached as Schedule 4 to Exhibit A hereto);

(iv) (To Title only) an updated Sworn Construction Statement from the Contractor setting forth the Contractor, Subcontractors and suppliers, the amount of each contract, the amount paid to date, the amount being requested, and the balances due (in the form attached as Exhibit E).

B. All representations and warranties of Developer set forth in the Primary Agreements shall be true and correct as of the date of any disbursement;

C. No event shall have occurred and be continuing which, but for the giving of notice, the expiration of any cure period, or both, would constitute an Event of Default by Developer under any of the Grant Agreement or the Development Agreement (collectively, the “**Primary Agreements**”) unless Developer shall have obtained an express written waiver of such event or this condition from each party to the Primary Agreements pursuant to which such event would, if not cured within any applicable cure period, become an Event of Default thereunder, or each such party shall have otherwise consented in writing to the disbursement;

D. The total amount remaining for disbursement as evidenced on Schedule 3 to the Requisition Certificate submitted by Developer is sufficient to pay all remaining Public Improvements Costs as shown on said Schedule 3.

A signed Requisition Certificate approved by State and City (as to any Requisition Certificate for Grant proceeds) and City (as to any Requisition Certificate for Revenue Bond Funds) shall be sufficient evidence to Title as to satisfaction of the foregoing conditions.

Section 3.02 In addition to the conditions precedent specified in Section 3.01 hereof, State's obligation to disburse any portion of the Grant for deposit with Title is subject to the following conditions precedent:

A. State shall be in receipt of a fully and duly executed original of the Grant Agreement; and

B. State shall be in receipt of the items that are required under Section 6.04 of the Grant Agreement.

A signed letter from State or a Requisition Certificate approved by State shall be sufficient evidence to Title as to satisfaction of the foregoing conditions.

Section 3.03 In addition to the conditions precedent specified in Section 3.01 hereof, City's obligation to disburse any portion of the Revenue Bond Funds for deposit with Title is subject to the following conditions precedent:

A. City shall be in receipt of a fully and duly executed original of the Development Agreement;

B. City shall be in receipt of the items that are required under Article V of the Development Agreement; and

C. City shall have received the Revenue Bond Funds from Developer.

A signed letter from City or a Requisition Certificate approved by City shall be sufficient evidence to Title as to satisfaction of the foregoing conditions.

Article IV.

Submission and Approval of Disbursements

Section 4.01 Developer may obtain advances hereunder only to the extent of the amount currently due for Eligible Grant Costs and/or Eligible City Costs, and Developer agrees that all sums requested hereunder for disbursement shall not exceed the amount currently due for Eligible Grant Costs and/or Eligible City Costs. Neither Title, nor State or City shall be required to make the final advance for the payment of the full amount of each contract between the Contractor and any Subcontractor for work satisfactorily completed, materials actually incorporated into the Public Improvements, materials stored on the Public Improvement

Premises, or materials stored off of the Public Improvement Premises (provided that written notice of such off-site storage has been given to State and State has agreed, in writing, to such offsite storage; *provided further* that State hereby acknowledges that the Public Improvement Premises consists of one or more air rights parcels and hereby agrees in advance that materials may be stored on the land owned by Developer located beneath or adjacent to the Public Improvement Premises) (collectively “**Construction Costs**”) until all of the materials have been supplied and all of the work covered by such contract has been completed in accordance with the Project Plans and/or the Additional Public Improvement Plans as evidenced by the Certificate of Substantial Completion by the Architect substantially in the form of Exhibit D, subject to all other conditions applicable to disbursements contained in this Agreement. Title shall not be required to make the final advance to the Contractor for Construction Costs (not including final advances due to Subcontractors, payment of which are governed by the preceding sentence) until all of the materials have been supplied and all of the work covered by the contract between Developer and Contractor has been completed in accordance with the Project Plans and the Additional Public Improvement Plans as evidenced by:

- a) issuance by the Architect of an unconditional certificate of substantial completion in the form of Exhibit D executed by all parties denoted thereon;
- b) City’s confirmation of its satisfaction that construction of the Public Improvements has been completed, which confirmation may or may not be evidenced by City’s issuance of an unconditional certificate of occupancy;
- c) receipt by City and State of copies of all warranties, if applicable, issued by the Contractor and any Subcontractor relating to the Public Improvements; and
- d) receipt by Title of executed conditional lien waivers and evidence of payment in full of all Subcontractors for all previous advances; and receipt of executed lien waivers by the Contractor;

subject to all other conditions applicable to disbursements contained in this Agreement.

Section 4.02 Whenever Developer desires an advance of the Grant or Revenue Bond Funds (an “**Advance**”), Developer shall submit, no more often than monthly, to City, State and Title, a Requisition Certificate duly executed by the Developer Representative, and the City shall submit to State, a Reimbursement Payment Request, duly executed by the City. Except for the first Requisition Certificate and Reimbursement Payment Request submitted and paid at the Closing, each Requisition Certificate and Reimbursement Payment Request shall be submitted on or between the first and fifteenth day of the month in which any Advance is requested, and shall be submitted at least ten (10) business days before the date the Advance is to be made (the “**Advance Date**”). City and State (if applicable) agree to deliver their approvals or disapprovals of Requisition Certificates to Title by e-mail or facsimile no later than two business days prior to the requested Advance Date. If either of City (if applicable) or State (if applicable) do not approve a Requisition Certificate, the disapproving party shall specify its reasons therefor in writing to Developer. In such event, if necessary, Developer will resubmit a revised Requisition Certificate to each of the parties to this Agreement and City will resubmit a revised

Reimbursement Payment Request to State. Notwithstanding the foregoing or anything to the contrary in this Agreement, if a Requisition Certificate does not include a request for disbursement of Grant funds, no approval of that Requisition Certificate or Reimbursement Payment Request is required by State (provided, however, a copy of all draw requests made in accordance with this Agreement shall be delivered to City and State when submitted to the applicable parties, even where no Grant funds are requested for disbursement).

Section 4.03 Developer shall also simultaneously submit the following (the “Documents”):

A. To City, State and Title, a copy of the executed certificate in substantially the form of Exhibit C signed by the Architect stating that the materials and the work for which the disbursement for Construction Costs is requested have been satisfactorily delivered or completed (as applicable).

B. Subject to the provisions of Sections 4.04 and 4.06 hereof, to Title, a conditional waiver of mechanic’s lien and/or materialmen’s lien, executed by the Contractor, in the amount of the lienable costs of the Public Improvements payable from the requested Advance, together with an unconditional waiver of mechanic’s lien and/or materialmen’s lien, executed by each Subcontractor to which any portion of the preceding Advance was paid, covering liens for all work done and materials supplied for which disbursement was made from the preceding Advance, in a form satisfactory to Title.

C. To City, State and Title, invoices, bills or such other supporting evidence in form acceptable to such parties, as may be necessary to establish the cost or value of the item for which payment is requested or for which no lien waiver is required pursuant to Section 4.03.B hereof.

D. To City, State and Title, to the extent any Requisition Certificate requests payment of any cost that is attributable to both the Public Improvements and other improvements that are not a part of the Public Improvements, a description of the method by which the relevant portion of such cost has been allocated between the Public Improvements and such other improvements, together with back-up materials reasonably supporting such allocation.

E. To City, State and Title, to the extent that any Requisition Certificate seeks payment of any cost that is attributable to both the Project and the Additional Public Improvements, a description of the methodology by which such cost has been allocated between the Project and the Additional Public Improvements, together with back-up materials reasonably supporting such allocation.

F. To City, State and Title, to the extent that any Requisition Certificate seeks payment of the City’s share of acquisition and site preparation expenses as described in subpart e) of the definition of Project Costs and/or subpart e) of the

definition of Public Improvement Costs, reasonable confirmation of the floor areas used in calculation of the City's share of such expenses.

G. To City, State and Title, any applicable change orders along with evidence satisfactory to City and State that such orders have been accounted for in the Public Improvements budget and shall not result in the Project no longer being in-balance.

Not later than five (5) business days following receipt of the Documents, Title will notify Developer, City and State via email as to the sufficiency of the delivered Documents.

Section 4.04 Upon receipt by Title of a Requisition Certificate and the additional documentation required by Section 4.03 hereof from Developer, Title shall conduct its customary search for any mechanics liens that have been filed against any portion of the Public Improvement Premises (a "**Filed Lien**"). Title will immediately notify Developer, City and State of any intervening mechanics' liens or other matters recorded in the land records. If the search discloses an outstanding title issue, including but not limited to, mechanic's liens or judgment liens served or filed of record, Title may require satisfactory resolution thereof, in its sole discretion, prior to the requested Advance. Such resolution may include funds to be held by Title in escrow in excess of the claimed amount of the lien, or such other options as Title may determine.

Section 4.05 On each Advance Date, provided all the terms and conditions of this Agreement have been complied with by Developer (or waived in writing by City and State), and City and State have approved the Requisition Certificate and delivered such approval to Title, then each party shall advance to Title, in a manner satisfactory to Title, its share of the requested Advance (less any required retainage) in accordance with Article II hereof, and Title shall disburse the Advance from the Construction Fund in accordance with Section 4.06.

Section 4.06 Upon receipt of funds from the parties pursuant to Section 4.05, Title shall disburse such amount as follows:

A. If there are Filed Liens, Title shall not make the requested Advance until receiving further instructions from City and State, unless the requirements of 4.06.B are satisfied.

B. All amounts withheld by Title pursuant to Section 4.06.A shall be maintained by Title until Developer has delivered or caused to be delivered to Title unconditional releases and satisfactions of Filed Liens (or an order of the District Court of St. Louis County releasing the Public Improvement Premises from any Filed Lien or bonds in amounts satisfactory to Title); or the appropriate mechanics or materialmen's lien waivers or other supporting evidence required by this Agreement. Subject to Section 4.06.C, upon receipt by Title of such documentation, Title shall disburse the funds related to such documentation in accordance with the applicable Requisition Certificate.

C. If Title is withholding any amounts pursuant to Section 4.06.A, and Title receives written notification from either of State or City that an event has occurred which would, with the giving of notice, the expiration of any cure period, or both, constitute an Event of Default under either of the Primary Agreements, then Title shall promptly remit to the applicable party, or upon written direction from such party hold for the benefit of such party, Grant amounts as to State, and Revenue Bond Funds as to City.

D. All amounts disbursed by Title for lienable costs of the Public Improvements shall be disbursed to the Contractor or Developer based upon the applicable Requisition Certificate, provided, if Developer has previously paid such amounts, it shall provide reasonable written evidence thereof (including the documentation and lien waivers required by Section 4.03) to Title with the applicable Requisition Certificate. All amounts disbursed by Title for non-lienable costs of the Public Improvements shall be disbursed to the Contractor, vendor or Developer based upon the applicable Requisition Certificate, provided, if Developer has previously paid such amounts, it shall provide reasonable written evidence thereof to Title with the applicable Requisition Certificate. Developer shall provide appropriate supporting documentation of such expenditures to City, State and Title with the Requisition Certificate and shall keep copies thereof that such parties shall have the right to inspect and copy at reasonable times and on reasonable notice.

Section 4.07 Subject to Section 4.06, a Requisition Certificate signed by State and City shall be sufficient evidence to Title, as to satisfaction of the foregoing conditions in this Article IV to disbursement of funds by Title and by each of the applicable parties for payment of funds to Title.

Section 4.08. Notwithstanding anything to the contrary in this Agreement, if, at any time during the course of construction of the Public Improvements, the total of the unpaid costs for the Public Improvements as indicated by the column totals on Developer's sworn construction statement exceeds the sum of (i) the undisbursed amounts of the Grant and Revenue Bond Funds available hereunder plus (ii) all other sources available to Developer (and any affiliates of Developer) with respect to the construction of the Public Improvements (the "**Available Sources**"), then if Title, City or State claims existence of a deficiency, such person shall send written notice thereof to the other parties to this Agreement specifying the amount of the deficiency, and no further disbursements shall be made until Developer has deposited into the Construction Fund the sum necessary to make the Available Sources equal to the unpaid costs for completion of the Public Improvements or otherwise provides evidence reasonably acceptable to the parties to this Agreement that sufficient funds are available to complete the Public Improvements. Also, if any party hereto discovers a misstatement in an affidavit furnished by Contractor or Developer, Title shall notify the parties hereto and shall not make any further disbursement until such misstatement has been corrected to the satisfaction of the parties.

Article V.

Miscellaneous

Section 5.01 Title and Developer (or its designee) shall each keep and maintain, at all times, full, true and accurate books and records showing the names of all payees to whom disbursements are made by Title, the date of each disbursement, and the amount of each disbursement, which records may be inspected by any of the parties upon reasonable notice. Developer, City and State (and their respective representatives) may, during normal business hours, examine all books and records pertaining to the disbursements made by City, State or Title hereunder and make extracts therefrom and copies thereof. Title and the other parties hereto agree to act in good faith to reconcile their books and records on a quarterly basis.

Section 5.02 Developer shall be responsible for making inspections of the Public Improvements during the course of construction, and shall determine to its own satisfaction that the work done or material supplied by the Subcontractors to whom disbursements are to be made out of each Advance has been properly done or supplied. Title, State and City shall be allowed to but not required to conduct any inspection of the Public Improvements.

Section 5.03 It is expressly understood and agreed that none of Title, City or State assumes any liability or responsibility for the satisfactory completion of the Public Improvements, for the adequacy of funds advanced or disbursed pursuant hereto to complete the Public Improvements, for inspections during construction, or for any acts on the part of Developer or the Contractor or the Subcontractors to be performed in the construction of the Public Improvements. No decision, approval or consent by the parties shall be deemed to be an approval or acceptance by such parties of any plans, specifications, work or materials done or furnished, or equipment or property purchased, with respect to the Public Improvements, or a representation by the parties, as applicable, as to the fitness of such plans, specifications, work, materials, equipment, or property.

Section 5.04 Any notice required or permitted to be given by any party hereto to any other party hereto under the terms of this Agreement shall be deemed to have been given (i) on the date the same is deposited in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to the party to which the notice is to be given at the address set forth opposite its name below, or to any other address specified in a notice given by such party to the others not less than ten (10) days prior to the effective date of the address change; (ii) upon confirmation of transmission if by facsimile; or (iii) upon confirmation of receipt by the intended recipient if by e-mail:

To Developer: Duluth Real Estate LLC
c/o Maurices Incorporated
105 West Superior Street
Duluth, Minnesota 55802
Attn: Chief Financial Officer
Phone: (218) 720-2160
Fax: (218) 590-2436
E-mail: BThun@maurices.com

To City: City of Duluth
411 West First Street
Room 402 City Hall
Duluth, MN 55802
Attn: Chris Eng,
Director of Business and Economic Development
Phone: (218) 730-5322
Fax: (218) 730-5904
E-mail: ceng@duluthmn.gov

To State: MN Dept. of Employment and Economic Development
332 Minnesota Street, Suite E200
St. Paul, MN 55101
Attn: Emily Johnson
Phone: (651) 259-7450
Fax: (651) 296-5287
E-mail: Emily.A.Johnson@state.mn.us

To Title: First American Title Insurance Company
National Commercial Services
801 Nicollet Mall, Suite 1900
Minneapolis, MN 55402
Attn: Kathryn Caba
Phone: (612) 305-2034
Fax: (612) 305-2029
E-mail: kadouglas@firstam.com

Section 5.05 This Agreement is binding on the successors and assigns of each of the parties hereto; provided, however, that no party shall have the right to assign this Agreement or any rights therein, or delegate any duties created herein, without the prior written consent of the other parties, which consent may be given or withheld in the sole discretion of the parties whose consent has been requested.

Section 5.06 This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 5.07 State and City are parties to the Grant Agreement that authorizes the disbursal of the Grant proceeds to construct the Project. Whenever there shall exist a conflict between the provisions of this Agreement and the Grant Agreement with respect to the Grant funds only, the Grant Agreement shall prevail. A signed letter from State or a signed Requisition Certificate approved by State shall be sufficient evidence to Title as to satisfaction of this condition.

Section 5.08 No liability is assumed by Title to Developer, City or State, or any other party, for protection against mechanic's liens, except as otherwise agreed to with respect to subsequent mortgages. It is expressly understood that no mechanic's lien coverage is being provided by Title in conjunction with this Agreement, and that by entering into this Agreement, Title is in no way agreeing to modify, expand or extend any coverages previously provided.

Section 5.09 Functions and duties assumed by Title with respect to this Agreement include only those described in this Agreement, and Title is not obligated to act except in accordance with the terms and conditions of this Agreement. Title does not insure that the Public Improvements will be completed, nor that any improvements for the Public Improvements will be in accordance with the Project Plans and the Additional Public Improvement Plans, nor that sufficient funds will be available for the completion of the Public Improvements. Title may conclusively rely upon and shall be protected in acting upon any document believed by Title to be genuine and to have been signed or presented by the proper parties, consistent with reasonable due diligence on Title's part.

Section 5.10 The Recitals listed above are incorporated into this Agreement as if fully set forth herein.

US.53668164.10

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above written.

DULUTH REAL ESTATE LLC, a Delaware
limited liability company

By: _____

Name: _____

Its: _____

CITY OF DULUTH, a Minnesota Municipal Corporation

Its Mayor

Its City Clerk

Approved:

Countersigned:

Assistant City Attorney

City Auditor

DEPARTMENT OF EMPLOYMENT AND
ECONOMIC DEVELOPMENT

By: _____
Name: _____
Its: _____

FIRST AMERICAN TITLE
INSURANCE COMPANY

By: _____

Name: _____

Its: _____

EXHIBIT A

REQUISITION CERTIFICATE

First American Title Insurance Company
National Commercial Services
801 Nicollet Mall, Suite 1900
Minneapolis, MN 55402
Attn: Kathryn Caba

City of Duluth
Room 402 City Hall
411 West First Street

Minnesota Department of Employment
and Economic Development
332 Minnesota Street, Suite E200
St. Paul, MN 55101
Attn: Program Manager

Re: Requisition No. _____, 425 Public Parking Facility Project

Ladies and Gentlemen:

This Requisition Certificate is delivered by Duluth Real Estate LLC, a Delaware limited liability company (“**Developer**”) pursuant to the provisions of the Disbursing Agreement dated as of _____, 2014 (the “**Disbursing Agreement**”) among Developer, the City of Duluth, a Minnesota municipal corporation (“**City**”), First American Title Insurance Company, a California corporation (“**Title**”), and the Department of Employment and Economic Development for the State of Minnesota (“**State**”). All capitalized terms not defined herein shall have the meaning ascribed to the terms in the Disbursing Agreement.

The undersigned, the Developer Representative under the Disbursing Agreement, hereby requests a disbursement, in the aggregate amount of \$_____ for Public Improvement Costs, by one or more of State (for Qualified Grant Costs) and City (for Qualified City Costs) in accordance with Article II of the Disbursing Agreement, in the following amounts:

1. \$_____ from the Grant (to be used only for Qualified Grant Costs).
2. \$_____ from the Revenue Bond Funds (to be used only for Qualified City Costs).

The disbursement(s) should be made to Developer or the payee(s) shown on Schedule 1 attached hereto on _____, the Advance Date.

The undersigned hereby certifies:

(1) All costs herein certified to be paid from the Grant constitute Qualified Grant Costs related to the Project; no Grant proceeds shall be used for any other items; and the amount requested for payment from the Grant herein, when aggregated with all prior disbursements from the Grant, does not exceed the sum of (a) Advanced Revenue Bond Funds that have been advanced for Project Costs, plus (b) the amount requested herein for payment of Project Costs from Revenue Bond Funds, minus (c) the amount (if any) requested herein to be paid to City to reimburse City for Qualified Grant Costs that were previously paid by Revenue Bond Funds.

(2) None of the costs herein certified to be paid from the Grant funds are for fund raising or lobbying fees and expenses, or any internal costs or expenses of Developer (except to the extent such costs or expenses are capitalizable or are for the design and construction of exhibits for the Project which are a Qualified Grant Cost and have a useful life of more than one year).

(3) All costs herein certified to be paid from the Revenue Bond Funds constitute Qualified City Costs; and no Revenue Bond Funds shall be used for any other items.

(4) All representations and warranties of Developer set forth in the Primary Agreements are true and correct as of the date hereof.

(5) No event has occurred and is continuing which, but for the giving of notice, the expiration of any cure period, or both, would constitute an Event of Default by Developer under either of the Primary Agreements except those events specifically described on Schedule 2 hereto and, with respect to each event described on Schedule 2, attached hereto is a copy of a written waiver of each such event or the applicable condition in the Disbursing Agreement or the written consent to the disbursement executed by each party to the foregoing Primary Agreement(s) pursuant to which such event(s) would become an Event of Default thereunder if not cured within any applicable cure period.

(6) Each item for which payment or reimbursement is herein requested was necessary in connection with the Public Improvements and has not formed the basis for any prior payment (except for any reimbursement to City pursuant to the Disbursing Agreement of amounts previously advanced by City).

(7) With respect to all costs incurred under the construction contract between the Contractor and Developer, the total amount certified for payment or reimbursement of such costs does not exceed the amount of such costs set forth on the sworn construction statement for the Public Improvements after deducting retention required by the contract.

(8) There are no amounts unpaid for labor, wages, materials or supplies, which, if unpaid, might become the basis of a vendor's lien, or a mechanics', materialmen's, statutory or other similar lien upon the Public Improvements or any part thereof, other than for work or material furnished after the period covered by this

Requisition Certificate, amounts herein certified for payment, or diligently being contested in good faith, and, subject to Sections 4.04 and 4.06 of the Disbursing Agreement, sufficient waivers of liens for all amounts previously certified for payment are on file with Title to support this payment as required by Section 4.03 of the Disbursing Agreement.

(9) With respect to any item relating to the acquisition or installation of materials, equipment or personal property which is certified herein for payment or reimbursement, such materials, equipment or personal property: (i) said item is either located and appropriately secured on or off the Public Improvement Premises, and if to be stored off-site, State has been given written notice of such off-site storage and has agreed thereto in writing, and (ii) attached hereto is a bill of sale (or other appropriate document) transferring title to said item of materials, equipment or personal property to City unless such bill of sale (or document) has already been furnished.

(10) Attached hereto as Schedule 3 and incorporated herein by reference is a statement of the total cost of the Public Improvements (including a detailed break-out of all significant categories of cost—which cost break-out shall be in substantially the form of Schedule 4 hereto) as estimated on the date of this Requisition Certificate, itemized to show separately (a) the total herein and heretofore certified for payment or reimbursement, (b) the amount remaining to be paid under any construction contract or contracts for the Public Improvements (including any contract for purchase of equipment included in the Public Improvements) as affected by any modifications or additions to the Project Plans and/or the Additional Public Improvement Plans since the last certificate and for all other costs of the Public Improvements and (c) the funds available to pay the remaining Public Improvement Costs (including the source of such funds). The total remaining funds for disbursement as shown on Schedule 3 are sufficient to pay all remaining Public Improvement Costs as shown on Schedule 3.

(11) The progress of construction of the Public Improvements is such that they can be completed on or before the Completion Date (as defined in the Grant Agreement), for the cost set forth in the original sworn construction cost statement, including contingency, delivered to the parties hereto, except for the following:

(12) The labor, materials, equipment, work, services and supplies described herein have been performed upon or furnished to the Public Improvements in full accordance with the Project Plans and the Additional Public Improvement Plans, which have not been amended except as expressly permitted by the applicable parties (unless such permission is not required under the applicable Primary Agreement).

(13) At the date hereof, no written order or notice has been made by, or received from, any governmental entity stating that the work of construction is or will be in violation of any applicable law, ordinance, code or regulation affecting the Public Improvements.

(14) All funds disbursed to date have been utilized as specified in the Requisition Certificates pursuant to which the same were disbursed, exclusively to pay costs incurred for or in connection with acquiring, constructing and developing the Public Improvements, and Developer represents that no part of the advances of the Revenue Bond Funds or the Grant have been paid for labor, materials, equipment, work, services or supplies incorporated into or employed in connection with any project other than the Public Improvements.

(15) Attached hereto is the certificate from the Architect in the form required by the Disbursing Agreement certifying that the Public Improvement Costs requested to be paid from this Requisition Certificate have been satisfactorily completed or the materials for which payment is herein requested have been incorporated in the Project or stored on or off site in accordance with the Disbursing Agreement.

This Requisition Certificate may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

The disbursement made pursuant to this Requisition Certificate is acknowledged to be an accommodation to Developer and is not a waiver by any of the parties to the Disbursing Agreement of any defaults or events of default under the Primary Agreements or any other claims of such parties against Developer or the Contractor.

Developer Signature Page

Requisition No. _____, 425 Public Parking Facility Project

Dated this _____ day of _____, 20__

DULUTH REAL ESTATE LLC, a Delaware
limited liability company

By: _____

Name: _____

Title: _____

City Signature Page

Requisition No. _____, 425 Public Parking Facility Project

Dated this _____ day of _____, 20__

Approved by:

CITY OF DULUTH

By: _____

Name: _____

Title: _____

[City signature required only if draw request includes Revenue Bond Funds or Grant funds]

DEED Signature Page
Requisition No. _____, 425 Public Parking Facility Project
Dated this _____ day of _____, 20__

Approved by:

MINNESOTA DEPARTMENT
OF EMPLOYMENT AND
ECONOMIC DEVELOPMENT

By: _____
Name: _____
Title: _____

[State signature required only if draw request includes Grant funds]

SCHEDULE 1

SCHEDULE OF AMOUNTS DUE AND PAYABLE DIRECTLY TO DEVELOPER
PAYEES*:

Name and Address of Payee Payment Requested Scope of Work Done

* Note: If advance of Grant proceeds is being made to the City to reimburse the City for Qualified Grant Costs previously paid with Revenue Bond Funds as described in Section 2.01.C, indicate City as payee, and describe Qualified Grant Costs previously paid with Revenue Bond Funds.

SCHEDULE 2

DESCRIPTION OF EVENTS THAT WOULD BE EVENTS OF DEFAULT UNDER
PRIMARY AGREEMENTS IF NOT CURED WITHIN ANY APPLICABLE CURE PERIOD

SCHEDULE 3

COST OF PROJECT CERTIFICATION

- | | |
|---|----------|
| 1. Total cost of the Public Improvements | \$ _____ |
| a. Total cost of the Project | \$ _____ |
| b. Total cost of the Additional Public Improvements | \$ _____ |
| 2. Total amount previously certified for payment (or reimbursement) | \$ _____ |
| 3. Total amount now certified for payment (or reimbursement) | \$ _____ |
| 4. Total remaining Public Improvement Costs | \$ _____ |
| a. Total remaining Project Costs | \$ _____ |
| b. Total remaining cost of Additional Public Improvements | \$ _____ |
| 5. Amounts remaining for disbursement: | |
| • From the Grant | \$ _____ |
| • From the Revenue Bond Funds | \$ _____ |
| • Other – Specify _____ | \$ _____ |
| • Estimated Earnings on the Accounts belonging to Developer | \$ _____ |
| • Total | \$ _____ |

A detailed break-out of all significant categories of cost, budgeted amounts for those costs, existing commitments for those cost items, and Developer's estimate to complete, is attached hereto as Schedule 4.

Duluth Real Estate LLC hereby certifies that the foregoing amounts are true and correct as of the date of this certification.

Dated: _____

DULUTH REAL ESTATE LLC, a Delaware
limited liability company

By: _____
Name: _____
Title: _____

SCHEDULE 4
COST BREAKOUT

Categories of Cost

Budgeted Cost

Cost Estimate to Complete

EXHIBIT C

STATEMENT OF ARCHITECT

425 PUBLIC PARKING FACILITY PROJECT
MONTHLY DRAWS

RSP Architects, Ltd. (the "**Architect**"), has prepared certain construction documents for the Public Improvements, including plans, drawings, specifications, details, and manuals, dated _____, which are described in the Construction Contract between Duluth Real Estate LLC and McGough Construction, and which may be amended from time to time (collectively the "**Contract Plans**"), and based upon its monthly review of the Public Improvements hereby states to the City of Duluth, the State of Minnesota Department of Employment and Economic Development and First American Title Insurance Company that the work identified in the draw request has been performed in accordance with the Construction Contract and the Contract Plans and therefore, in its professional opinion, the Contractor is entitled to payment in the amount set forth in its Application and Certificate for Payment No. _____ and the Requisition Certificate to which this statement is attached.

RSP ARCHITECTS, LTD.

By _____
Its _____

Subscribed and sworn to before me this
____ day of _____, ____.

Notary Public

Includes:

*APPLICATION AND CERTIFICATE FOR PAYMENT NO.
for work completed through _____
Total current payment is _____

EXHIBIT D

STATEMENT OF ARCHITECT

425 PUBLIC PARKING FACILITY PROJECT
CERTIFICATE OF SUBSTANTIAL COMPLETION

AIA Document G704 – 2000 to be attached, properly filled out for this project

[Note: for final advance to any Subcontractor, form G704 – 2000 to confirm that work performed by applicable Subcontractor has been completed.]

EXHIBIT E

FORM OF SWORN CONSTRUCTION STATEMENT

Project name _____

NAME	SCOPE OF WORK	AMT OF CONTRACT or estimate	Change to contract or estimate	Revised contract or estimate	PREVIOUSLY PD	NET AMT THIS PAYMENT	Pay application or invoice #	BALANCE TO COMPLETE (incl retention)
ABC Survey	Survey	1,950.00		1,950.00	1,950.00	-		-
DEF Survey	Survey	8,087.50		8,087.50	1,000.00	4,500.00		2,587.50
XYZ Architects	Architecture	1,170.00		1,170.00		1,170.00		-
ABC Survey	Civil Engineering	22,136.41		22,136.41		22,136.41		-
ABC Environmental	Survey/Testing	5,000.00		5,000.00		5,000.00		-
XYZ Environmental	Abatement	19,000.00	5,000.00	24,000.00				24,000.00
ABC Construction Company	General Contract	1,000,000.00	156,000.00	1,156,000.00		374.95		1,155,625.05
	Other (direct contract)	2,001.34		2,001.34		2,001.34		-
	Other (direct contract)	165,080.00		165,080.00		165,080.00		-
	Signage	3,009.00		3,009.00				3,009.00
								-
TOTALS		1,227,434.25	161,000.00	1,388,434.25	2,950.00	200,262.70		1,185,221.55

SWORN CONSTRUCTION STATEMENT - OWNER

State of _____)
 County of _____)

The undersigned, being first duly sworn, as owner of the land located at _____, deposes and says that the above are the names of all parties having contracts for any work done, materials supplied or services furnished in connection with acquiring, construction, financing, equipping and/or developing the project commonly described as _____ ("Project"), and the amounts due and to become due to each of said parties; that the items mentioned include all work done, materials supplied or services furnished in connection with acquiring, construction, financing, equipping and/or developing the Project according to plans and specifications; that there are no other contracts outstanding; and that there is nothing due or to become due to any person, corporation or other entity for work done, materials supplied or services furnished in connection with acquiring, construction, financing, equipping and/or developing the Project other than as stated herein.

The undersigned specifically agrees to pay any unpaid bills in connection with any work done, materials supplied or services furnished in connection with acquiring, construction, financing, equipping and/or developing the Project; to remove mechanics' liens should any be filed against the property; and indemnify First American Title Insurance Company ("Company") against any loss should it become necessary for the Company to bring action to remove any liens or to pay any amounts due for work done, materials supplied or services furnished in connection with acquiring, construction, financing, equipping and/or developing the Project.

OWNER

 (Name of firm)

By: _____
 Its: _____

Subscribed and sworn before me this _____ day of _____, 20____

 Notary Public

My Commission expires _____



Assumptions

Start Date (Int. accrues from):	5/15/2014
First Compounding Interest Date:	10/1/2014
First Payment Date:	10/1/2016
Final Payment Date:	4/1/2044
Interest Calculation:	30/360
Par Amount:	11,500,000
Interest Rate:	4.00%

Dated Date	Beg. Balance	Accrued Interest	Principal Payment	Interest Payment	Total Payment	4.00% End Balance	PAYMENT DATE		
							Mth.	Yr.	Yrs.
05/15/14	11,500,000.00	172,500.00	0.00	0.00	0.00	11,672,500.00	10-01	2014	0.5
	11,672,500.00	233,450.00	0.00	0.00	0.00	11,905,950.00	04-01	2015	1.0
	11,905,950.00	238,119.00	0.00	0.00	0.00	12,144,069.00	10-01	2015	1.5
	12,144,069.00	242,881.38	0.00	0.00	0.00	12,386,950.38	04-01	2016	2.0
	12,386,950.38	137,934.23	0.00	109,804.78	109,804.78	12,524,884.61	10-01	2016	2.5
	12,524,884.61	116,291.85	0.00	134,205.84	134,205.84	12,641,176.46	04-01	2017	3.0
	12,641,176.46		125,723.25	252,823.53	378,546.78	12,515,453.21	10-01	2017	3.5
	12,515,453.21		152,638.78	250,309.06	402,947.84	12,362,814.43	04-01	2018	4.0
	12,362,814.43		131,290.49	247,256.29	378,546.78	12,231,523.94	10-01	2018	4.5
	12,231,523.94		158,317.36	244,630.48	402,947.84	12,073,206.58	04-01	2019	5.0
	12,073,206.58		137,082.65	241,464.13	378,546.78	11,936,123.93	10-01	2019	5.5
	11,936,123.93		164,225.36	238,722.48	402,947.84	11,771,898.57	04-01	2020	6.0
	11,771,898.57		143,108.81	235,437.97	378,546.78	11,628,789.76	10-01	2020	6.5
	11,628,789.76		170,372.04	232,575.80	402,947.84	11,458,417.72	04-01	2021	7.0
	11,458,417.72		149,378.43	229,168.35	378,546.78	11,309,039.29	10-01	2021	7.5
	11,309,039.29		176,767.05	226,180.79	402,947.84	11,132,272.24	04-01	2022	8.0
	11,132,272.24		155,901.34	222,645.44	378,546.78	10,976,370.90	10-01	2022	8.5
	10,976,370.90		183,420.42	219,527.42	402,947.84	10,792,950.48	04-01	2023	9.0
	10,792,950.48		162,687.77	215,859.01	378,546.78	10,630,262.71	10-01	2023	9.5
	10,630,262.71		190,342.59	212,605.25	402,947.84	10,439,920.12	04-01	2024	10.0
	10,439,920.12		169,748.38	208,798.40	378,546.78	10,270,171.74	10-01	2024	10.5
	10,270,171.74		197,544.41	205,403.43	402,947.84	10,072,627.33	04-01	2025	11.0
	10,072,627.33		177,094.23	201,452.55	378,546.78	9,895,533.10	10-01	2025	11.5
	9,895,533.10		205,037.18	197,910.66	402,947.84	9,690,495.92	04-01	2026	12.0
	9,690,495.92		184,736.86	193,809.92	378,546.78	9,505,759.06	10-01	2026	12.5
	9,505,759.06		212,832.66	190,115.18	402,947.84	9,292,926.40	04-01	2027	13.0
	9,292,926.40		192,688.25	185,858.53	378,546.78	9,100,238.15	10-01	2027	13.5
	9,100,238.15		220,943.08	182,004.76	402,947.84	8,879,295.07	04-01	2028	14.0
	8,879,295.07		200,960.88	177,585.90	378,546.78	8,678,334.19	10-01	2028	14.5
	8,678,334.19		229,381.16	173,566.68	402,947.84	8,448,953.03	04-01	2029	15.0
	8,448,953.03		209,567.72	168,979.06	378,546.78	8,239,385.31	10-01	2029	15.5
	8,239,385.31		238,160.13	164,787.71	402,947.84	8,001,225.18	04-01	2030	16.0
	8,001,225.18		218,522.28	160,024.50	378,546.78	7,782,702.90	10-01	2030	16.5
	7,782,702.90		247,293.78	155,654.06	402,947.84	7,535,409.12	04-01	2031	17.0
	7,535,409.12		227,838.60	150,708.18	378,546.78	7,307,570.52	10-01	2031	17.5
	7,307,570.52		256,796.43	146,151.41	402,947.84	7,050,774.09	04-01	2032	18.0
	7,050,774.09		237,531.30	141,015.48	378,546.78	6,813,242.79	10-01	2032	18.5
	6,813,242.79		266,682.98	136,264.86	402,947.84	6,546,559.81	04-01	2033	19.0
	6,546,559.81		247,615.58	130,931.20	378,546.78	6,298,944.23	10-01	2033	19.5
	6,298,944.23		276,968.96	125,978.88	402,947.84	6,021,975.27	04-01	2034	20.0
	6,021,975.27		258,107.27	120,439.51	378,546.78	5,763,868.00	10-01	2034	20.5
	5,763,868.00		287,670.48	115,277.36	402,947.84	5,476,197.52	04-01	2035	21.0
	5,476,197.52		269,022.83	109,523.95	378,546.78	5,207,174.69	10-01	2035	21.5
	5,207,174.69		298,804.35	104,143.49	402,947.84	4,908,370.34	04-01	2036	22.0
	4,908,370.34		280,379.37	98,167.41	378,546.78	4,627,990.97	10-01	2036	22.5
	4,627,990.97		310,388.02	92,559.82	402,947.84	4,317,602.95	04-01	2037	23.0
	4,317,602.95		292,194.72	86,352.06	378,546.78	4,025,408.23	10-01	2037	23.5
	4,025,408.23		322,439.68	80,508.16	402,947.84	3,702,968.55	04-01	2038	24.0
	3,702,968.55		304,487.41	74,059.37	378,546.78	3,398,481.14	10-01	2038	24.5
	3,398,481.14		334,978.22	67,969.62	402,947.84	3,063,502.92	04-01	2039	25.0
	3,063,502.92		317,276.72	61,270.06	378,546.78	2,746,226.20	10-01	2039	25.5
	2,746,226.20		348,023.32	54,924.52	402,947.84	2,398,202.88	04-01	2040	26.0
	2,398,202.88		330,582.72	47,964.06	378,546.78	2,067,620.16	10-01	2040	26.5
	2,067,620.16		361,595.44	41,352.40	402,947.84	1,708,024.72	04-01	2041	27.0
	1,708,024.72		344,426.29	34,120.49	378,546.78	1,361,598.43	10-01	2041	27.5
	1,361,598.43		375,715.87	27,231.97	402,947.84	985,882.56	04-01	2042	28.0
	985,882.56		358,829.13	19,717.65	378,546.78	627,053.43	10-01	2042	28.5
	627,053.43		390,406.77	12,541.07	402,947.84	236,646.66	04-01	2043	29.0
	236,646.66		105,071.85	4,732.93	109,804.78	131,574.81	10-01	2043	29.5
	131,574.81		131,574.34	2,631.50	134,205.84	0.47	04-01	2044	30.0
TOTALS		1,141,176.46	12,641,175.99	8,165,705.37	20,806,881.36				