PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

14-0235R

RESOLUTION AUTHORIZING VARIOUS AGREEMENTS WITH DULUTH REAL ESTATE LLC RELATED TO THE MAURICES OFFICE TOWER PROJECT.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into the agreements with Duluth Real Estate LLC, a Minnesota limited liability company, substantially in the form of those on file in the office of the city clerk bearing the public documents numbers set forth below, related to the Maurices office tower project:

DOCUMENT

Public Document No.

Development Agreement

Ground Lease

Disbursing Agreement

Operating and Easement Agreement

Pedestrian Passageway Agreement
pertaining to the Maurices office
tower property

Approved:

Department Director

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

Auditor

BD/ATTY REA:de 05/02/2014

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize the above agreements with Duluth Real Estate LLC, a wholly owned subsidiary of Maurices, for the development of the Maurices office tower project.

FaegreBD Draft 5/2/2014

DEVELOPMENT AGREEMENT

between

CITY OF DULUTH

and

DULUTH REAL ESTATE LLC

maurices Headquarters Project

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Exhibits:

Exhibit A: Development Parcel
Exhibit B: Disbursing Agreement
Exhibit C: DNT Parcel
Exhibit D: Ground Lease
Exhibit E: DNT Easement Agreement
Exhibit F: Parking Facility Parcel
Exhibit G: Project Labor Agreement
Exhibit H: Schematic Design Plans (Public Improvements)
Exhibit I: [Intentionally Omitted]
Exhibit J: Maurices Guaranty

_____, 2014
DEVELOPMENT AGREEMENT
between
CITY OF DULUTH
and
DULUTH REAL ESTATE LLC

maurices Headquarters Project

THIS AGREEMENT, effective as of the date of attestation thereto by the City Clerk (the "Effective Date"), by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, hereinafter referred to as "City", and DULUTH REAL ESTATE LLC, a limited liability company under the laws of the State of Delaware, hereinafter referred to as "Developer".

WHEREAS, Developer is an affiliate of Maurices Incorporated ("Maurices"), a major employer in the Downtown Duluth business district, having nearly four hundred employees located in several separate downtown office properties; and

WHEREAS, in order to increase the efficiency of its business operations in Duluth, Maurices wishes to consolidate its employees into one integrated facility; and

WHEREAS, there is no single, existing downtown facility available to house such a consolidated operation; and

WHEREAS, Developer has considered potential development sites outside of the Downtown district and has considered potential development sites within the Downtown district; and

WHEREAS, Developer has found that the costs of demolition, other redevelopment activities, and construction of parking improvements on the required scale makes it uneconomic to proceed with development of a site in the Downtown district without assistance; and

WHEREAS, Developer proposed that it acquire the hereinafter-described Development Parcel, and has proposed the hereinafter-described Development which includes the demolition of underutilized and blighted structures and the construction of the Private Improvements, Parking Facility, Alley Bridge, Parking Facility Extension, Skywalks, and Existing Skywalk Improvements, as described in more detail below; and

WHEREAS, Developer proposed that it acquire the DNT Easement Rights over the DNT Easement Parcel, as described in more detail below; and

WHEREAS, Developer proposed that it lease the Parking Improvement Premises to the City pursuant to the Ground Lease, grant the Skywalk Easements to the City pursuant to the Skywalk Agreements, and construct for the City the Public Improvements, all as described in more detail below; and

WHEREAS, Developer has requested the assistance of City to construct and operate the hereinafter-described Parking Improvements in conjunction with the Development; and

WHEREAS, after careful analysis of the projected costs of the entire Development, and the extra costs (as compared to sites outside of the Downtown District) of demolition and other redevelopment activities (including the extra costs associated with the construction of parking improvements), City has determined that:

(i) exclusive of the tax increment and other assistance to be provided pursuant to this Agreement, the Development would not occur, and that, but for the tax increment assistance to be provided for hereunder, the Development could not reasonably be expected to be constructed as planned in the foreseeable future; and

(ii) the increased market value of the Development Parcel that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from the proposed Development after subtracting the present value of the projected tax increment for the maximum duration of the district permitted by the Minnesota Statutes Section 469.176.

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

ARTICLE I

Definitions

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

Additional Public Improvements: shall mean the Alley Bridge, the Parking Facility Extension, the Skywalks and the Existing Skywalk Improvements.

Agreement: shall mean this Development Agreement, as the same may be amended from time to time.

Alley Bridge: shall mean the improvements to be constructed through and within the Alley Parcel, connecting the Parking Facility with the Parking Facility Extension.

Alley Parcel: shall mean 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 described in the Ground Lease and as such description may be amended upon substantial completion of the Parking Improvements and Skywalks pursuant to the Ground Lease.

Bond: shall mean the Bond issued by the City pursuant to the Bond Resolution.

Bond Resolution: shall mean 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 Therefor; and Awarding the Sale Thereof."

Certificate of Completion: shall mean a certificate issued by the City pursuant to Section VII.C.

City: shall mean the City of Duluth, Minnesota.

City Representative: shall mean Christopher T. Eng, or such other person as may be designated from time to time by the City's Chief Administrative Officer in writing to the Developer.

Closing: shall mean _____.

Commencement of Construction: shall mean the pouring of footings and foundations for the Development.

Common Elements Work: shall mean improvements that are common to both the Public Improvements and Private Improvements, such as concrete and building exteriors.

"Construction Manager at Risk" Contract: shall mean a contract for the management of the construction of the Public Improvements by a construction manager at risk as permitted by Minnesota Statute Section 116J.433, which conforms to the provisions of Minnesota Statutes Section 16C.34, to the extent applicable.

Development: shall mean (i) the demolition of all structures on the Development Parcel, (ii) the construction of the Private Improvements on the Development Parcel, (iii) the construction of the Parking Improvements on the Parking Improvement Premises, and (iv) the construction of the Skywalks and the Existing Skywalk Improvements.

Development Parcel: shall mean that property located in St. Louis County, Minnesota legally described on Exhibit A attached hereto and made a part hereof.

Disbursing Agreement: means that certain Disbursing Agreement to be entered into by the Developer, the City, the Department of Employment and Economic Development for the State of Minnesota, and Title, substantially in the form of Exhibit B attached hereto and made a part hereof.

DNT Easement Agreement: shall mean that certain Easement Agreement to be entered into by and between the Developer and Forum Communications Company, pursuant to which the Developer acquired the DNT Easement Rights substantially in the form attached hereto as Exhibit E.

DNT Easement Parcel: shall mean that portion of the DNT Parcel subject to the DNT Easement Rights pursuant to the DNT Easement Agreement.

DNT Easement Rights: shall mean all of the rights granted to the "Parking Facility Owner" pursuant to the DNT Easement Agreement.

DNT Parcel: shall mean that property located in St. Louis County, Minnesota legally described on Exhibit C attached hereto and made a part hereof.

Effective Date: has the meaning specified in the introductory paragraph of this Agreement.

Existing Skywalk Agreement: shall mean an agreement between the City and property owner relating to any one or more of the Existing Skywalks.

Existing Skywalk Improvements: shall mean modifications and improvements to the Existing Skywalks to be constructed by Developer pursuant to the Public Improvement Plans.

Existing Skywalks: shall mean the existing elevated and subterranean walkways that are a part of the Duluth Skywalk System connecting the Development Parcel to (i) the building known as the "Phoenix Building" across 4th Avenue West, (ii) the building known as the "Phase II Building" across Superior Street, (iii) the building known as the "Water and Gas Building" across the alley abutting the northwest boundary of the Development Parcel, (iv) the building known as the "Athletic Club Building" across said alley, and (v) the existing hotel across 5th Avenue West.

Grant: shall mean the $8,500,000 grant made to the City pursuant to the Grant Agreement.

Grant Agreement: shall mean 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 the Department of Employment and Economic Development for the State of Minnesota.

Ground Lease: shall mean that certain Ground Lease pursuant to which Developer leases the Parking Improvement Premises to the City, the form of which is attached hereto as Exhibit D.

Living Wage Ordinance: shall mean Article XXVI of Chapter 2 of the Duluth City Code, 1959, as amended as of the Effective Date.

Maurices Guaranty: shall mean the guaranty delivered by Maurices described in Subsection V.A.

Maximum City Investment: shall mean the sum of the Grant plus the proceeds received by the City upon issuance of the Bond.

Office/Retail Parcel: shall mean that portion of the Development Parcel not included within the Parking Facility Parcel.

Parking Facility: shall mean the multi-level parking structure with approximately 485 parking spaces to be constructed on the Parking Facility Parcel, along with any and all other structures, driveways, and other improvements that are constructed, placed or located on or within the Parking Facility Parcel, as the same may from time to time exist, and the appurtenances of all of the foregoing.

Parking Facility Extension: shall mean the improvements constructed on the DNT Easement Parcel pursuant to the DNT Easement Agreement.

Parking Facility Parcel: shall mean that portion of the Development Parcel on which the Parking Facility is to be constructed, legally described on Exhibit F attached hereto and made a part hereof, as the same may be amended from time to time pursuant to the Ground Lease.

Parking Improvement Premises: shall mean, collectively, the Parking Facility Parcel, the Alley Parcel, and the DNT Easement Parcel.

Parking Improvements: shall mean, collectively, the Parking Facility, the Alley Bridge and the Parking Facility Extension, and all alterations thereto and replacements thereof, as the same may exist from time to time.

Private Improvements: shall mean an approximately one hundred eighty-five thousand (185,000) square foot office building together with necessary vertical transportation and connection facilities, storage and building service facilities, and approximately fifteen thousand (15,000) square feet of retail space, to be constructed on and within the Office/Retail Parcel.

Project Architect: shall mean RSP Architects, Ltd., and any other architectural firm designated in writing by the City and Developer from time to time to serve as the Project Architect under this Agreement.

Public Improvements: shall mean the Parking Facility, and the Additional Public Improvements.

Qualified City Costs: shall have the meaning set forth in the Bond Resolution.

Qualified Grant Costs: shall have the meaning set forth in the Bond Resolution.

Revenue Bond Funds: shall mean the proceeds of the Bond received by the City.

Schematic Design Plans (Public Improvements): shall mean the plans prepared by the Project Architect described on Exhibit H.

Site Preparation Work: shall mean all work associated with the demolition of existing structures on the Development Parcel and DNT Parcel, any required environmental remediation on the Development Parcel and the DNT Parcel (including any costs incurred by Developer pursuant to Subsection B of Article XIV of this Agreement), and all other work required to ready the Development Parcel and DNT Parcel for construction of the Development.

Skywalk Agreement: shall mean an agreement (in a form to be established by Developer and City pursuant to Article IX.E and Article X.E) between Developer and City granting to City the Skywalk Easements and providing for the construction, operation and maintenance of the Skywalks.

Skywalk Amendments: shall mean the amendments to the Existing Skywalk Agreements required for the Development.

Skywalk Easements: shall mean easements through the Development granted in favor of the City pursuant to the Skywalk Agreement.

Skywalks: shall mean the above and below grade walkways and associated stairways and elevators, to be constructed pursuant to the Skywalk Agreement, passing through the Private Improvements and establishing connections with the Existing Skywalks.

TIF Plan: shall mean the Tax Increment Financing Plan for Duluth Tax Increment Financing District No. 26 authorized in accordance with Minnesota Statutes Chapter 469.

Title: shall mean First American Title Insurance Company, a California corporation.

ARTICLE II

Property Agreements

Contemporaneously with the execution and delivery of this Agreement, Developer and the City hereby agree to execute and deliver, or cause to be executed and delivered, as applicable, the following agreements and other documents:

A. The Ground Lease.

B. The Operation and Easement Agreement (as defined in the Ground Lease).

C. The DNT Easement Agreement.

D. A Title Policy, or suitably marked up commitment for title insurance, issued by Title, in compliance with this Agreement as set forth in Article III below.

E. The Bond Resolution.

F. The Maurices Guaranty.

G. The Grant Agreement.

H. The Disbursing Agreement.

ARTICLE III

Title Matters

A. Title Evidence

Developer has furnished to the City a commitment for a policy of title insurance issued by Title.

B. Title Policy

At or prior to Closing, Developer will cause Title to issue to the City a policy of title insurance (the "Title Policy"), or a suitably marked up title insurance commitment: (i) insuring the Developer to be the fee owner of the Development Parcel and the holder of valid DNT Easement Rights with respect to the DNT Easement Parcel; (ii) insuring the City's leasehold estate under the Ground Lease, (iii) deleting standard exceptions and

including affirmative insurance regarding zoning, contiguity, appurtenant easements and such other matters as may be reasonably requested by the City; and (iv) in the amount of the Grant.

ARTICLE IV

Demolition

Within Ninety (90) days of the Effective Date, Developer agrees that it will commence the Site Preparation Work on the Development Parcel at Developer's cost, subject to reimbursement for the City's share of such costs pursuant to the Disbursing Agreement. The City will have no obligation to reimburse the Developer for such costs unless and until each of the conditions set forth in Article V below has been satisfied. The Site Preparation Work will be performed by Developer in compliance with all applicable ordinances of the City as well as all applicable laws, rules and regulations of the State of Minnesota. The Site Preparation Work will result in the Development Parcel being ready and suitable for the construction of the Development thereon.

ARTICLE V

Conditions Precedent to Construction of the Development

Prior to the Commencement of Construction of the Development, Developer shall have presented the following documentation to City with regard to the Development and shall have received the City Representative's prior approval thereof in writing as hereinafter required:

A. Bond; Financial Assurances

Evidence satisfactory to the City Representative that (i) Maurices has purchased the Bond, (ii) Maurices has delivered to the City a guaranty (the "Maurices Guaranty") in the form of Exhibit J attached hereto pursuant to which Maurices agrees that, to the extent that Qualified City Costs submitted for payment or reimbursement under the Disbursing Agreement exceed the Maximum City Investment, Maurices will advance funds to or on behalf of Developer (and will deposit such funds in accordance with the Disbursing Agreement, to the extent required)

sufficient to pay such excess Qualified City Costs; any amounts so advanced by Maurices shall be treated as funds advanced by Developer and not reimbursed under the Development Agreement, as described in Section 13.5 of the Ground Lease, and (iii) Maurices has the financial ability to perform its obligations under the Maurices Guaranty (it being understood that the City Representative's approval of materials submitted by Developer to demonstrate the ability of Maurices to perform as described in this clause (iii) may be conditioned upon approval of such materials by the Department of Employment and Economic Development for the State of Minnesota under the Grant Agreement).

B. Design Agreement (Public Improvements)

A copy of an executed contract (the "Design Agreement (Public Improvements)") between Developer and the Project Architect, by which the Project Architect agrees to prepare plans and specifications for Public Improvements in accordance with the requirements of this Agreement. The Design Agreement (Public Improvements) shall (i) be certified by Developer to be a true and correct copy thereof, and (ii) require that any design services that are common to both the Public Improvements and Private Improvements be allocated equitably between the Design Agreement (Public Improvements) and the contract between Developer and the Project Architect for the design of the Private Improvements.

C. Construction Plans

Any changes to the plans, specifications and elevations for the construction of the Public Improvements and that portion of the Development structurally supporting the Parking Facility and the Skywalks, all as described above, to the extent that approval thereof is required pursuant to Article VI below.

D. Construction Contract (Public Improvements)

A copy of an executed contract (the "Construction Contract (Public Improvements)") between Developer and McGough Construction (the "Contractor"), by which the Contractor agrees to construct the Public

Improvements in accordance with the requirements of this Agreement. The Construction Contract (Public Improvements) shall (i) be certified by Developer to be a true and correct copy thereof; (ii) be on a "Construction Manager at Risk" Contract form, approved by the City Representative; (iii) require that the award subcontracts for labor and materials for the Public Improvements comply with applicable State of Minnesota and City procurement requirements, which may include using the best value contracting process set forth in Minnesota Statutes Section 16C,28, subdivision 1, paragraph (a), clause (2), utilizing weighting and scoring sheets approved by the City Representative; (iv) require that the Contractor include, among the criteria in selecting subcontractors, the ability of the subcontractor to fulfill the City's requirements and objectives under this Agreement, and the ability of the subcontractor to supply labor and materials for both the Public Improvements and Private Improvements, so as to allow for a unified and cohesive Development that minimizes cost overruns, schedule impacts, and safety concerns; (v) require the Contractor to enter into one or more project labor agreements in substantially the form attached hereto as Exhibit G (or such other form as may be approved by the Duluth Building and Construction Trade Council) covering the provision of all labor and materials for the demolition of structures on and under the Development Parcel and the construction of the Public Improvements; and (vi) separately track and allocate costs that relate to the Parking Facility, the Alley Bridge, the Parking Facility Extension, the Skywalks and Existing Skywalk Improvements, as applicable, to the extent required under the Grant Agreement.

E. Construction Bonds

Copies of an executed payment bond and performance bond provided by the Contractor in the penal amount of not less than one hundred (100%) percent of the aggregate of the contract price for construction of the Public Improvements, written by a bonding company or

bonding companies licensed to do business in the State of Minnesota, certified by Developer to be true and correct copies thereof which name the City as an additional beneficiary thereof.

F. Private Improvements

A written certificate for the Developer that the Developer has entered into a construction contract for the construction of the Private Improvements (the "Construction Contract (Private Improvements)"). It is important to the City that the Public Improvements and Private Improvements be contracted on a coordinated and integrated basis, resulting in a unified Development, and the City therefore requires that the Developer engage McGough Construction as the contractor under the Construction Contract (Private Improvements).

G. Common Elements Work

Evidence satisfactory to the City Representative that the Project Architect will help to insure that the design and construction of the Common Elements Work will be coordinated, by preparing and issuing single bid packages for Common Elements Work.

H. Skywalk Amendments

Evidence satisfactory to the City Representative that each Skywalk Amendment has been executed or approved by the owner of the property to which such Skywalk Amendment relates.

I. Skywalk Agreement

The City and Developer shall have agreed on the form of the Skywalk Agreement pursuant to Article IX.E and Article X.E, and shall have agreed to execute such Skywalk Agreement.

ARTICLE VI

Development Plans

A. Plans, Specifications and Elevations

1. Public Improvements – Schematic Design

Developer has previously submitted to the City plans setting forth the schematic designs for the Public Improvements described on Exhibit H (the "Schematic Design Plans (Public Improvements)"). The City hereby confirms that it has approved the Schematic Design Plans (Public Improvements).

2. Public Improvements – Plans

No less than twenty (20) days prior to the Commencement of Construction of the Development, or such lesser time as is approved by the City Representative, Developer shall submit design development drawings, specifications and elevations for the Public Improvements, to the City Representative for approval, except as provided in Subsection VI.A.4, below. All such plans, specifications and elevations shall be in conformity with this Agreement, with the Schematic Design Plans (Public Improvements), and with all applicable laws, ordinances, rules and regulations. The City Representative shall approve or reject such plans, specifications and elevations within twenty (20) days of receipt thereof. If the City Representative fails to approve, reject, or request additional information with respect to any submittal within twenty (20) days of receipt thereof, the plans, specifications and elevations included in such submitted shall be deemed approved. If the City Representative rejects such plans, specifications and elevation in whole or in part, the City Representative shall provide a written notice explaining such rejection, and, Developer shall submit new or corrected plans, specifications and elevations meeting said objections within thirty (30) days of said notice. The provisions of this Subparagraph relating to approval, rejection and

resubmission of corrected plans shall continue to apply until said plans, specifications and elevations have been approved by the City Representative. The plans, specifications and elevations approved by the City Representative in accordance with this Subsection VI.A.2 (and as the same may be modified or amended in accordance with Subsection VI.A.4 hereof) are referred to herein as the "Public Improvement Plans".

3. No Waiver by City

The City Representative's approval of the Public Improvement Plans shall not constitute a waiver of building code or ordinance or other developmental duties imposed in the future upon Developer by law.

4. Changes to Public Improvement Plans

In the event Developer wishes to make (i) any material or substantial changes to the Public Improvement Plans (including, without limitations, any changes that would materially reduce the number of parking spaces in the Parking Facility, or that would have a material effect on traffic patterns), or (ii) any change to the plans for the Parking Support Facilities (as defined in the Ground Lease), Developer shall submit the proposed change to the City Representative for approval in accordance with the procedures described in Subsection VI.A.2, above, which approval will not be unreasonably withheld.

B. Plans for Private Improvements

Developer shall cause the Project Architect to prepare plans and specifications for the Private Improvements that are (i) in compliance with all laws and ordinances, including laws relating to structures in historic districts, to the extent applicable to the Development Parcel, and (ii) compatible with the Public Improvement Plans. The plans and specifications for the Private Improvements, as the same may be amended from time to time, are referred to herein as the "Private

Improvement Plans". Developer shall submit to the City Representative the Private Improvement Plans showing the exterior elevations of the Private Improvements, including a description of the relevant construction materials to be incorporated into such exteriors. The submittal of such plans to the City shall be for review and comment (and not approval), it being understood and agreed that the City Representative's review of (and any comments on) such plans shall not constitute a waiver of building code or ordinance or other developmental duties imposed in the future upon Developer by law.

ARTICLE VII
Construction

A. Construction of Development

Upon the fulfillment of the Conditions Precedent to Construction provided for in Article V above and subject to the provisions of Article VI above, but in no event later than July 1, 2014, Developer shall cause the Contractor to commence construction of the Public Improvements in conformance with the Public Improvement Plans and the Private Improvements in accordance with the Private Improvement Plans. Construction of the Development as herein defined shall be completed no later than December 31, 2016, subject to Article XVII. Provided, that the City Representative may, in the exercise of his or her discretion, extend the time for completion of the Development for up to six (6) months, which extension shall be in writing.

B. Developer to Bear All Costs of Development

Subject to the terms and conditions of this Agreement, Developer specifically guarantees and agrees to bear all costs related to the acquisition of the Development Parcel and the DNT Easement Rights, site preparation expenses, and all costs relating to design and construction of the Development and any modifications thereto, subject to reimbursement

by the City for all Qualified City Costs, in an amount not to exceed the Maximum City Investment.

C. Certificate of Completion

Promptly upon completion by Developer, in accordance with this Agreement, of the construction of the Development, City shall furnish to Developer an appropriate certificate (a "Certificate of Completion") so certifying. No Certificate of Completion shall be issued until all elements of the Development have been completed. Issuance of a Certificate of Completion by the City shall constitute a conclusive determination of satisfaction of construction obligations of Developer undertaken pursuant to this Agreement.

ARTICLE VIII

City Payments and Reimbursements

A. Reimbursement

Subject to the terms of the Disbursing Agreement, City hereby agrees to pay (or reimburse Developer for) Qualified City Costs and Qualified Grant Costs in an amount not to exceed the Maximum City Investment.

B. Land Acquisition Costs

To the extent that Developer seeks reimbursement of the City's share of acquisition and site preparation expenses as described in subpart e) of the definition of Qualified Grant Costs and/or subpart e) of the definition of Qualified City Costs, such reimbursement may be treated as a reimbursement of Developer's cost to acquire the Development Parcel, and as a non-shareholder contribution to capital. To the extent Developer does not seek reimbursement of the City's share of such acquisition or site preparation expenses (or any other Qualified City Costs), such unreimbursed expenses (and any other unreimbursed Qualified City Costs) shall be treated as amounts paid for the initial acquisition of the Parking Improvement Premises and initial construction of the Parking

Improvements and not reimbursed to Developer, as described in Section 13.5 of the Ground Lease.

C. Source of Payments

City agrees to pay or reimburse Developer for (i) Qualified Grant Costs only from the proceeds of the Grant and/or from Revenue Bond Funds, and (ii) Qualified City Costs (that do not constitute Qualified Grant Costs) only from Revenue Bond Funds, in each case on and subject to the terms of the Disbursing Agreement.

D. Revenue Obligation Only

City's obligation to make payments under this Agreement is agreed by the parties hereto to be strictly revenue based and shall be payable only from the Grant and from Revenue Bond Funds. In the event that City fails to receive the Grant or the Revenue Bond Funds, City shall be relieved of the obligation to make payments otherwise due under Paragraph A of this Article until such time as City receives any such payments.

ARTICLE IX
Developer's Covenants

A. Progress Reports

Until construction of the Development has been completed, Developer shall make reports in such detail and at such times as may reasonably be requested by City as to the actual progress of construction with respect to the Development.

B. Former Tenants

The Developer has heretofore arranged to terminate all leases and to remove all tenants from the Development Parcel and the DNT Parcel. The Developer shall be responsible for all claims, of any kind or nature, asserted by existing or former tenants of the Development Parcel or DNT Parcel, and will defend, protect and hold the City harmless from any such claims.

C. Real Estate Taxes

Until construction of the Parking Improvements has been completed, Developer (and not the City) shall be responsible for paying all real estate taxes relating to the Parking Facility Premises, any provision of the Ground Lease to the contrary notwithstanding.

D. Business Subsidy Agreement

The City and Developer acknowledge and confirm that the amount Developer's investment in the Development Parcel and site preparation is (and will be, after any reimbursement of such expenses hereunder) 70% or more of the assessor's current year's estimated market value for the Development Parcel, and that, accordingly, no subsidy (as defined in Minn. Stat. § 116J.993) is being provided to Developer in connection with the Development.

E. Skywalk Agreement

The Developer agrees to work cooperatively and in good faith with the City to agree upon the final form of the Skywalk Agreement so as not to delay construction of the Development under Article V. If, in reaching agreement on the form of the Skywalk Agreement, the City and Developer agree to make any changes to Section 2.6 and 2.7 of Operation and Easement Agreement (referred to in Article II hereof), Developer agrees to enter into an amendment to (or an amendment and restatement of) the Operation and Easement Agreement, implementing such changes, as promptly as reasonably possible.

ARTICLE X

City's Covenants

A. Issuance of Bond.

The City will take all actions reasonably necessary to issue the Bond pursuant to the Bond Resolution.

B. Notice of Claims; Cooperation.

If the City shall have notice of or shall receive any claim, demand or pleading with respect to any claim it is the responsibility of Developer to defend pursuant to Subsection IX.B. of this Agreement, the City shall promptly give Developer notice thereof, permit Developer to defend such claim using counsel approved by the City Representative (which approval will not be unreasonably withheld), and cooperate with the Developer in the defense of such claim.

C. Skywalks.

The City agrees that it will cooperate in allowing the Developer to obtain amendments to the Existing Skywalk Agreements, as necessary, in order to ensure that the Existing Skywalks can be integrated into the Development. The City hereby consents to the alteration by Developer of the Existing Skywalks in order to conform to the Development (including without limitation in appearance and structure), provided that any such proposed alterations by Developer shall be part of the plans and specifications required pursuant to Article VI, above.

D. Alley.

The City acknowledges and agrees that the Development will include the widening and improvement of the public alley on the west side of the Development Parcel, provided that any such widening and improvement shall be part of the plans and specifications required pursuant to Article VI, above.

E. Skywalk Agreement

The City agrees to work cooperatively and in good faith with the Developer to agree upon the final form of the Skywalk Agreement so as not to delay construction of the Development under Article V. If, in reaching agreement on the form of the Skywalk Agreement, the City and Developer agree to make any changes to Section 2.6 and 2.7 of Operation and Easement Agreement (referred to in Article II hereof), City agrees to enter into an amendment to (or an amendment and restatement of) the

Operation and Easement Agreement, implementing such changes, as promptly as reasonably possible.

ARTICLE XI

Provision Against Liens, Assignments and Transfers

A. Provision Against Liens

Except for encumbrances permitted pursuant to Paragraph B below, the Developer shall not permit or allow any mechanic's or materialmen's liens to be filed or established or to remain against the Public Improvements or any part thereof which would materially or adversely affect the City's interest in this Agreement during the term of this Agreement, provided that if Developer shall first notify City of its intention to do so and post such security as City reasonably deems necessary, Developer may, in good faith, contest any such mechanic's or other liens filed or established as long as the City's interest is not at imminent risk of forfeiture during the pendency of such contest.

B. Assignments, Transfers or Change in Identity of Developer; Permitted Liens and Encumbrances

Developer shall have the right to sell or assign all or any portion of its interest in the Development to (1) any related entity, parent, subsidiary, affiliate, or any entity which directly controls, is controlled by or under common control of Developer, or (2) any other corporation or entity; *provided, however,* that (a) Developer shall provide written notice to the City prior to any such sale or assignment, and (b) prior to substantial completion of construction of the Development, Developer shall not sell or assign its interest in the Development pursuant to clause (2) of this Subsection XI.B. without the prior written consent of the City, which consent will not be unreasonably withheld, but may be conditioned upon the City's receipt of written confirmation that the Maurices Guaranty will remain in full force and effect notwithstanding such sale or assignment. Developer shall also have the right to mortgage, pledge as security, or

otherwise encumber all of any portion of its interest in the Development, subject, however, to the provisions of the Ground Lease.

ARTICLE XII
Reporting Under Grant Agreement

Developer will provide (or cause to be provided) to the City the information required to be supplied by the City to the Department of Employment and Economic Development pursuant to Section 7.31.R and Attachment V of the Grant Agreement.

ARTICLE XIII
Living Wage Covenant

Developer specifically agrees that, for a period of three (3) years following substantial completion of the Development, it will cause Maurices, in its operations conducted from the Private Improvements, (1) to abide by the requirements of the Living Wage Ordinance as in existence and effect as of the date of this Agreement, and (2) to pay its full-time employees based at the Private Improvements in conformance therewith. Developer further commits to City that the covenant contained in this Article XIII shall be an obligation running with the land for the period specified in this Article XIII. The City agrees that Maurices, in filing annual reports with the City, need only provide information with respect to its employees based at the Private Improvements, and will not be required to submit any data or information that is proprietary or confidential.

ARTICLE XIV
Indemnification By Developer

A. Generally

Developer will to the fullest extent permitted by law, protect, indemnify and save City and its officers, agents, servants, and employees, harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Private Improvements to the extent caused by the negligence or willful misconduct of Developer and relating to the use, condition or occupancy of the Private Improvements or any part thereof. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the Developer, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.
2. Any injury to or death of any person or damage to property in or upon the Public Improvements to the extent arising prior to the issuance of a Certificate of Completion, and to the extent caused by the negligence or willful misconduct of Developer and relating to the use, condition or occupancy of the Public Improvements or any part thereof. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the Developer, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.
3. Any violation by Developer of any provision of this Agreement.
4. Any violation by Developer of any law, ordinance, court order or regulation affecting the Private Improvements (or, prior to issuance of a Certificate of Completion, the Public Improvements), or the ownership, occupancy or use thereof.

B. Environmental Indemnification

Without limiting the generality of the foregoing above, Developer hereby agrees that for itself, its successors and assigns that it will indemnify and save the City and its officers, agents, servants and employees harmless from and against all liabilities, losses, damages,

costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims, demands and judgments arising out of any condition created in the Development Parcel by Developer which constitutes a violation of any Environmental Laws. As used herein, "Environmental Laws" means laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota, including duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency. The indemnification granted hereby shall include all costs of clean-up, remediation, together with the costs incurred in proceedings before court of law or administrative agency, including reasonable attorney's fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems, including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing in the Development Parcel.

C. Indemnification Procedures

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

ARTICLE XV

Insurance

Developer shall provide for purchase and maintenance of such insurance as will protect Developer and City against risk of loss or damage to the Development Parcel or Development and any other property permanently located or exclusively used at the Development Parcel and against claims which may arise or result from the maintenance and use of the Development, including operations conducted in connection with construction of improvements thereupon. Provided, however that the obligations of this Article shall not apply to all or any portion of the Public Improvements during such times as the City may be solely in possession of and solely responsible for the operation and maintenance thereof. Such coverages shall include but shall not necessarily be limited to the following.

A. Insurance During Construction

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

1. Property Insurance

Developer shall provide (or cause McGough Construction to provide) "All Risk" builders' risk insurance under a completed value form on all work on the Development, including foundations, permanent fixtures and attachments, machinery and equipment included in or installed under the construction contract, debris removal, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the Development, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Fifty Thousand and 00/100ths ($50,000.00) Dollars per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Development and shall be maintained in effect until

permanent property coverage as provided for hereinafter is in force. Such insurance shall be written in the names of Developer, City, any subtenant and contractor, as their interest may appear. Contractor, all subcontractors, and suppliers and Developer shall waive all rights against City for damages caused by fire or insured perils, except such rights as are set forth hereunder to the proceeds of such insurance payable in the event of such loss.

2. Public Liability Insurance

Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with XCU exclusion removed, in limits of not less than Five Million and 00/100ths ($5,000,000.00) Dollars aggregate per occurrence for personal injury, bodily injury and death, and property damage and Five Million and 00/100ths ($5,000,000.00) general aggregate including products and completed operations liability. If per person limits are specified, they shall be for not less than One Million and 00/100ths ($1,000,000.00) Dollars per person and be for the same coverages. Contractor shall also require such liability coverage of its subcontractors unless they be insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

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

b. Independent contractors' protective contingent liability;

c. Personal injury;

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

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

f. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employers liability coverage shall be maintained in

limits of One Hundred Thousand and 00/100ths ($100,000.00) Dollars per employee.

3. Alternative Insurance

In the alternative Developer may secure or cause to be secured an Owner-Controlled Insurance Policy or a Contractor-Controlled Insurance Policy providing at least the same or better protection to the City, subject to the approval thereof by the City's Attorney.

B. Permanent Insurance

Upon substantial completion of the Development, City and Developer shall each procure and continuously maintain insurance as required under the terms of the Ground Lease.

C. Requirements for All Insurance

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

D. Certifications

The Developer shall be required to supply to the City written certifications of insurance as required by the City and to give the City thirty (30) days' written notice prior to cancellation or modification of said insurance.

E. Reconstruction Obligation

In the event the Public Improvements or any portion thereof is destroyed by fire or other casualty, the Developer shall have the right to repair, reconstruct and restore the portion of the Public Improvements so damaged or destroyed to the extent provided in, and on and subject to the provisions of, the Ground Lease.

ARTICLE XVI

Defaults and Remedies Therefor

A. Developer Defaults and Remedies

1. General Events of Default

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

a. Developer shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it or any successor or assigns of Developer pursuant to this Agreement and such failure shall continue for a period of sixty (60) calendar days after City has, pursuant to the provisions of this Agreement, given written notice to Developer of such default or, in the event that such default shall be incapable of cure during said sixty (60) day period, shall have failed to commence to cure said default within sixty (60) days of the date of said notice and to diligently pursue the same to completion.

b. Developer shall permit valid liens, not cured or contested within sixty (60) days, to be placed on the Public Improvements or Developer loses title to the Development or both with the exception of liens and assignments allowed pursuant to Article XI.A., above.

c. Developer makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency is made as to Developer or its business; or Developer files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or

rearrangement, composition, readjustment or similarly under any present or future bankruptcy or insolvency, statute, law or regulation; or Developer files an answer admitting to or not contesting to the material allegations of a petition filed against it in such proceeding or fails to have dismissed or vacated within ninety (90) days after the filing of such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of Developer's properties or fails to have dismissed or vacated within ninety (90) days after the appointment without the consent or acquiescence of Developer of any trustee, receiver or liquidator of any material part of Developer's properties.

2. General Remedies

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

a. Seek and be entitled to monetary damages from Developer for any damages (excluding consequential damages) incurred by City as a result of Developer's default.

b. Cease making payments to Developer pursuant to the Bond Resolution, but only to the extent that Developer has failed to pay any judgment obtained by the City against Developer for the breach of this Agreement.

c. Cease making advances of the Grant or of Revenue Bond Funds under the Disbursing Agreement, to the extent the City is permitted to do so under the terms of the Disbursing Agreement.

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

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

B. City Defaults and Remedies

1. General Events of Default

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

a. City shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after Developer has, pursuant to the provisions of this Agreement, given written notice to City of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.

b. The failure of City to abide by any of the terms and conditions of the Ground Lease which, when taken together pursuant to those documents, constitute obligations of City.

2. General Remedies

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

a. Seek and be entitled to monetary damages from City for any damages (excluding consequential damages) incurred by Developer as a result of City's default.

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

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

C. Non-Waiver

The waiver by either party of any default on the part of the other party or the failure of said party to declare default on the part of the other party of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of the defaulting party of the same or of any other obligation of the defaulting party hereunder. To be effective, any waiver of any default by the defaulting party hereunder must be in writing, signed by the non-defaulting party.

D. Remedies Cumulative

Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

E. Attorneys' Fees

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

ARTICLE XVII
Force Majeure

Under the terms of this Agreement, neither the City nor Developer shall be considered in default or in breach of any of the terms of this Agreement in the event of delay in the performance of its obligations due to causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of a public enemy,

acts of the federal government, acts of another party, fire, floods, epidemics, strikes or embargoes, or for delays of contractors or subcontractors due to such causes, or for any matter constituting an excused delay under the Construction Contract (Public Improvements). In the event of any such delay, any time for completion or delivery under this Agreement shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

ARTICLE XVIII

Representations by City

City represents and warrants that as of the date hereof:

A. It is a lawfully constituted municipal corporation under the laws of the State of Minnesota, it is not in material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and perform its obligations hereunder.

B. There are no actions, suits or proceedings pending, or to the knowledge of City, threatened against City or any property of City in any court or before any Federal, State, municipal or governmental agency which, if decided adversely to City, would have a material adverse effect upon City or any business or property of City or the Development and City is not in default with respect to any order of any court or government agency.

C. City has investigated and has no knowledge that the City or other member, official, or employee of City is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.

D. City shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement or otherwise delivered to any third party under this Agreement to be true, correct and complete in all material respects.

ARTICLE XIX

Developer's Representations and Warranties

Developer represents and warrants that as of the date hereof:

A. It is a lawfully constituted limited liability company under the laws of the State of Delaware, is not in material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and to perform its obligations hereunder.

B. It is fully competent to acquire the Development Parcel and the DNT Easement Rights and to construct and equip the Development thereon under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction and Developer will comply with all applicable State and Federal laws in performing its obligations under this Development Agreement.

C. There are no actions, suits or proceedings pending or, to the knowledge of Developer, threatened against Developer or any property of Developer in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Developer would have a material adverse effect upon Developer or the Development, and that Developer is not in default of any order of any court or governmental agency.

D. It is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been occurred.

E. That Developer has investigated and has no knowledge that any officer, City Representative, agent or employee of Developer is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.

F. Developer shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement or otherwise delivered to any third party under this Agreement to be true, correct and complete in all material respects.

G. Without the provision of the amount of Tax Increment Financing provided by City pursuant to the TIF Plan, Bond Resolution and this Agreement, Developer could not have developed the Development and operated the same in the reasonably foreseeable future.

ARTICLE XX

Term

The term of this Agreement shall run from the Effective Date until three (3) years after substantial completion of the Development, unless this Agreement is otherwise terminated as herein before provided for.

ARTICLE XXI

Runs With the Land; Successors

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

B. Each party acquiring the interest of the Developer in all or substantially all of the Development that assumes the obligations of the Developer hereunder shall be and become the Developer for all purposes of this Agreement, and the entity that was the Developer hereunder prior to such assumption shall have no liability hereunder for obligations under this Agreement arising after the date of such assumption.

C. Upon request of either City or Developer, City and Developer shall execute a Memorandum of Development Agreement for recordation in the real estate records of St. Louis County, provided that such Memorandum of Development Agreement is in form reasonably acceptable to City and Developer.

D. To the extent any legal description contained in this Agreement is amended or modified pursuant to the Ground Lease, such legal description shall likewise be amended or modified for purposes of this Agreement. Each party agrees upon request to execute an amendment to

this Agreement (or the memorandum hereof) confirming such amended or modified legal description.

ARTICLE XXII

Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of City:	City of Duluth Room 402 City Hall 411 West First Street Duluth, MN 55802
In the case of Developer:	Duluth Real Estate LLC c/o Maurices Incorporated 105 West Superior Street Duluth, MN 55802 Attention: Senior Vice President and Chief Financial Officer
With a copy to:	Duluth Real Estate LLC 105 West Superior Street Duluth, MN 55802 Attention: Legal Department
With a copy to:	Ascena Retail Group, Inc. 933 MacArthur Boulevard Mahwah, NJ 07430 Attn: Gene Wexler, SVP, General Counsel

ARTICLE XXIII

Applicable Law

This Agreement together with all of its Articles, paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

[*Signature and Acknowledgment Pages Follow*]

Signature Page
to
Development Agreement

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

CITY OF DULUTH, a Minnesota Municipal Corporation

_____
Its Mayor

_____
Its City Clerk

Approved:

_____
Assistant City Attorney

Countersigned:

_____
City Auditor

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Don Ness and Jeffrey J. Cox, the Mayor and City Clerk of the City of Duluth, on behalf of the City.

_____
Notary Public

Signature Page
to
Development Agreement

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

DULUTH REAL ESTATE LLC,
a Delaware limited liability company

_____
Its: _____

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____, the _____ of Duluth Real Estate LLC, a Delaware limited liability company, on behalf of the limited liability company.

_____
Notary Public

This instrument was drafted by:
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
(612) 766-7000

EXHIBIT A

(Development Parcel)

Parcel 1: Lot 65, Duluth Proper, First Division, St. Louis County, Minnesota. ABSTRACT PROPERTY

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, 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 of said Street and a depth of 140 feet of Fifth Avenue West, Duluth, EXCEPT that portion of said lots and said Government Lot 5 lying within 29 feet of the East line of Fifth Avenue West as originally platted. TORRENS PROPERTY

EXHIBIT B

(Disbursing Agreement)

[See attached]

FaegreBD draft 5/2/2014

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 mortgagees. 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: _____

[Signature Page to Disbursing Agreement]

CITY OF DULUTH, a Minnesota Municipal Corporation

_____
Its Mayor

_____
Its City Clerk

Approved:

_____
Assistant City Attorney

Countersigned:

_____
City Auditor

[Signature Page to Disbursing Agreement]

DEPARTMENT OF EMPLOYMENT AND
ECONOMIC DEVELOPMENT

By: _____
Name: _____
Its: _____

[Signature Page to Disbursing Agreement]

FIRST AMERICAN TITLE
INSURANCE COMPANY

By: _____
Name: _____
Its: _____

[Signature Page to Disbursing Agreement]

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 B

STATE DISBURSEMENT REQUEST

REIMBURSEMENT PAYMENT REQUEST

POSITIVELY Minnesota
Department of Employment and Economic Development

DEED-Bonding (E-mail signed Payment Request Form and Support Documents to DEED Program Contact)

SECTION 1:

* VENDOR ID + REMIT TO LOCATION CODE (SWIFT)	* GRANT NAME Duluth - 425 Parking Facility	
* VENDOR/GRANTEE NAME City of Duluth	* GRANT NUMBER CPGP-12-0068-H-FY13	SWIFT CONTRACT ID
REMIT TO ADDRESS 411 West First Street Duluth, MN 55802	GRANT PERIOD FROM 5/12/2012	GRANT PERIOD TO 5/12/2016
	REIMBURSEMENT PERIOD FROM	REIMBURSEMENT PERIOD TO

FORM PREPARED BY:	PHONE	GRANT NUMBER	REIMBURSEMENT PYMT REQ #	FINAL
		CPGP-12-0068-H-FY13		YES [ ] NO [ ]

EMAIL (EMAIL)	DEED PROGRAM CONTACT NAME Emily Johnson	DEED PROGRAM CONTACT EMAIL emily.a.johnson@state.mn.us

SECTION 2: * DEED PROGRAM USE ONLY

SWIFT PO ID	PO LINE / DISTRIBUTION	AMOUNT	FUND	FIN DEPT ID	APPROP ID	ACCOUNT	AGENCY COST	PROJECT ID
		$8,500,000	3605	B2241000	B221507	580	55350	B22BDCapProj12
TOTAL		8,500,000	NOTES:					

SECTION 3: REIMBURSEMENT REQUEST

BONDING ACTIVITY (PER APPROVED BUDGET)	A APPROVED BUDGET	B CURRENT BALANCE	C REIMB. REQUESTED THIS PERIOD	D (B - C = D) AVAILABLE BALANCE
Parking Structure Costs	8,500,000			0
				0
				0
				0
TOTAL SWIFT ACTIVITY	8,500,000	0	0	0

SECTION 4: MATCH

MATCH ACTIVITY (PER APPROVED BUDGET)	A APPROVED MATCH BUDGET	B CURRENT MATCH BALANCE	C MATCH EXPENDITUES THIS PERIOD	D (B - C = D) UNSPENT MATCH
Parking Structure Costs (City Revenue Bonds)	8,500,000			0
				0
				0
				0
TOTAL NON-SWIFT		0	0	0

SECTION 5: COMMENTS

SECTION 6: AGREEMENT & AUTHORIZED APPROVAL

By submitting this form I certify that the request is in accordance with DEED cash management requirements and appropriate contract terms. The data reported is correct and the amount of the request is not in excess of immediate disbursement needs.

If submitting this form via email without signature affixed below, place the statement above in the body of your email. By doing so, the sender of the email designates they are hereby authorized to provide approval of this request. Without a signature and/or statement included in the body of the email the form will be rejected.

Grantee Authorized Signature Date

DEED Staff Authorized Signature Date

Grantee Typed Name and Title

Office of Business Finance Director Date

FORM # MN-DEED-AFS-02 | 3.1.13

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	Abatemant	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 Subscribed and sworn to before me this ____ day of _____ _____ 20___

_____
Notary Public

My Commission expires _____

EXHIBIT C

(DNT Parcel)

West Half of Lot 68 and all of Lot 70, DULUTH PROPER, FIRST DIVISION, WEST FIRST STREET. ABSTRACT PROPERTY

EXHIBIT D

(Ground Lease)

[See attached]

GROUND LEASE

by and between

Duluth Real Estate LLC, as Ground Lessor

and

City of Duluth, as Ground Lessee

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Exhibit A – Legal Description of Land
Exhibit B – Legal Description of Parking Facility Parcel
Exhibit C – Legal Description of Alley Parcel
Exhibit D – Legal Description of DNT Parcel
Exhibit E – Permitted Encumbrances

GROUND LEASE

This Ground Lease is made and entered into by and between Duluth Real Estate LLC, a Delaware LLC (hereinafter referred to as "Ground Lessor"), and the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota (hereinafter referred to as the "Ground Lessee"), and shall be effective as of _____, 2014.

RECITALS

I. Ground Lessor is the fee owner of certain parcels of real property situated in Duluth, Minnesota.

II. Ground Lessee requested funds from the Minnesota legislature for the construction of a public parking facility and related improvements on a portion of the real property owned by Ground Lessor and a parcel of real property over which Ground Lessor holds certain easement rights.

III. The Minnesota legislature has, by way of Minn. Stat. § 116J.433, granted to the Commissioner of the Department of Employment and Economic Development the power and authority to make competitive grants to local governmental units for eligible projects and public infrastructure required to support eligible projects, pursuant to which the Commissioner has made, a grant to the Ground Lessee in the amount of $8,500,000 (as more fully defined herein, the "Grant") to be used to construct the Parking Facility (as herein defined) in Duluth, Minnesota.

IV. The Grant will be funded with the proceeds of State of Minnesota General Obligation bonds, and under the provisions contained in Art. XI, §5(a) of the Minnesota Constitution may only be used for the acquisition and betterment of publicly owned property.

V. Ground Lessee intends to use the Grant to pay a portion of the costs of construction of the Parking Facility, and Ground Lessee intends to use certain additional funds to pay costs relating to the design and construction of the Parking Facility and to pay costs associated with certain additional public improvements in the vicinity of the Parking Facility.

VI. In order for the Ground Lessee to use the Grant to pay for any portion of the Parking Facility, Ground Lessee must have a qualifying interest in such Parking Facility and the land upon which it will be constructed.

VII. Ground Lessor is willing to and will provide Ground Lessee with the necessary qualifying interest by leasing certain real estate interests to Ground Lessee by way of this long-term ground lease, which has a term equal to at least 125% of the useful life of the Parking Improvements.

VIII. Ground Lessee has agreed with Ground Lessor pursuant to the Development Agreement (herein defined) that (a) Ground Lessor will construct the Parking Improvements and certain related public improvements, and (b) Ground Lessee will use the Grant and other funds available to Ground Lessee to pay costs of construction relating to such improvements, on and subject to the terms of the Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Ground Lessor and Ground Lessee hereby agree as follows:

1. **Definitions**. As used in this Ground Lease, the following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the context specifically indicates otherwise:

"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 described on Exhibit C attached hereto, as such description may be amended upon substantial completion of the Public Improvements pursuant to Section 8.6.

"Ancillary Documents" means, collectively, the Operation and Easement Agreement, DNT Easement Agreement, and that certain Pedestrian Passageway Agreement Pertaining to the Maurices Office Tower Property of even date herewith between Ground Lessor and Ground Lessee.

"Bond" means the Bond issued by the City of Duluth pursuant to the Bond Resolution.

"Bond Resolution" – means the Resolution Providing for the Issuance, Sale and Delivery of $11,500,000 Taxable Tax Increment and Parking Facility Revenue Bond, Series 2014A, Resolution Number 14-___R, adopted by the City Council of the City of Duluth, Minnesota on _____, 2014.

"Building Support Facilities" – has the meaning given to such term in Section 3.4.2.

"Building Utility Facilities" – has the meaning given to such term in Section 3.4.4.

"Certificate of Completion" – means a certificate issued by the City of Duluth pursuant to Section VII.C. of the Development Agreement.

"Commissioner of MMB" – means the Commissioner of the Minnesota Department of Management and Budget.

"Declaration" – means that certain declaration that the Grant Agreement requires the Ground Lessee, as recipient of the Grant, to execute and record.

"Default Interest Rate" – means the annual interest rate applicable to state court judgments, verdicts and arbitration awards in the State of Minnesota, as promulgated by the State of Minnesota State Court Administrator from time to time.

"Development Agreement" – means that certain Development Agreement of even date herewith by and between the Ground Lessor and Ground Lessee, as the same may be amended from time to time.

"DNT Easement Agreement" – means that certain Easement Agreement of even date herewith between Ground Lessor and Forum Communications Company pursuant to which Ground Lessor has been granted the DNT Easement Rights as the same may be amended from time to time.

"DNT Easement Parcel" – means that portion of the DNT Parcel over which Ground Lessor holds the DNT Easement Rights pursuant to the DNT Easement Agreement.

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

"DNT Parcel" – means that certain parcel of real property located in the City of Duluth, County of St. Louis, State of Minnesota that is legally described on Exhibit D attached hereto.

"Environmental Laws" – means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., the Hazardous Materials Transportation Act, §1802 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., the Clean Air Act, 33 U.S.C. §1321 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., the Minnesota Environmental Response and Liability Act, Minn. Stat. Ch. 115B, the Minnesota Petroleum Tank Release Cleanup Act, Minn. Stat. Ch. 115C, and any other federal, state, county, municipal, local or other statute or law relating to Hazardous Substances.

"Event of Default" – means one or more of those events delineated in Section 22 herein.

"G.O. Compliance Legislation" – means Minn. Stat. §16A.695 as such may subsequently be amended, modified or replaced from time to time, and that certain "Fourth Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" executed by the Commissioner of MMB and dated July 30, 2012.

"Governmental Program" – means the operation of the Parking Facility as a public parking facility in compliance with the requirements of the Grant Agreement.

"Grant" – means a grant of proceeds of State of Minnesota general obligation bonds in an amount of $8,500,000 from the Minnesota Department of Employment and Economic Development to the Ground Lessee to be used to construct, furnish, and equip the Parking Facility, as more fully described in the Grant Agreement.

"Grant Agreement" – means that certain General Obligation Bond Proceeds Grant Agreement - Construction Grant for the 425 Parking Facility Project, of substantially even date herewith, under which the State of Minnesota by and through its Commissioner of the Department of Employment and Economic Development, has agreed to provide and fund the Grant.

"Ground Lease" – means this Ground Lease by and between Duluth Real Estate LLC, as Ground Lessor, and the City of Duluth, as Ground Lessee, as the same may be amended from time to time.

"Ground Lease Term" – means the period of time starting on the effective date of this Ground Lease and ending on the date that is fifty (50) years thereafter.

"Ground Lessee" – means the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota.

"Ground Lessor" – means Duluth Real Estate LLC, a Delaware limited liability company.

"Hazardous Substances" – means asbestos, ureaformaldehyde, polychlorinated biphenyls ("PCBs"), nuclear fuel or material, chemical waste, radioactive material, explosives, known carcinogens, petroleum products and by-products, and other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any of the Environmental Laws.

"Independent Insurance Consultant" – means any person who is not an employee or officer of Ground Lessee that: (i) is qualified to survey risks and to recommend insurance coverage for organizations engaged in like operations to those of Ground Lessee, (ii) has a favorable reputation for skill and experience in such surveys and such recommendations, and (iii) is reasonably acceptable to the Ground Lessor. Such person

may be a broker or agent with whom Ground Lessee transacts business, or has transacted business in the past.

"Land" – means that certain real property located in the City of Duluth, County of St. Louis, State of Minnesota, described on Exhibit A attached hereto.

"Operation and Easement Agreement" – means that certain Operation and Easement Agreement between the Ground Lessor and Ground Lessee dated on or about the date hereof.

"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 Ground Lessee in accordance with the provisions contained in this 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 Ground Lease Term, 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) Ground Lessee on the DNT Easement Parcel in accordance with the provisions contained in this Ground Lease, the Development Agreement, and the DNT Easement Agreement, which improvements will provide additional parking capacity and 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 Ground Lease Term, as the same may from time to time exist, and the appurtenances to all of the foregoing.

"Parking Facility Parcel" – means that portion of the Land that is described on Exhibit B attached hereto, as such description may be amended upon substantial completion of the Parking Improvements pursuant to Section 8.6.

"Parking Improvement Premises" – means, collectively, the Parking Facility Parcel, the Alley Parcel, and the DNT Easement Parcel.

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

"Permitted Encumbrances" – means the liens and encumbrances delineated on Exhibit E attached hereto.

"Public Improvement Plans" – means the Public Improvement Plans, as defined in, and approved by Ground Lessee under, the Development Agreement.

"Parking Support Facilities" – has the meaning given to such term in Section 3.4.1.

"Parking Utility Facilities" – has the meaning given to such term in Section 3.4.3.

"State" – means the State of Minnesota by and through its Department of Employment and Economic Development.

"Taxes" – means and includes all ad valorem taxes and special assessments or other governmentally imposed charges with respect to the Parking Improvement Premises and Parking Improvements.

"Title Company" – means First American Title Insurance Company.

2. **Creation of Public Ownership; Bond Financed Property**. The proceeds of State of Minnesota general obligation bonds issued under the provisions contained in Article XI, §5(a) of the Minnesota Constitution may only be used to acquire or better property of a capital nature in which a public entity possesses a qualifying ownership interest. The State of Minnesota has determined that a ground lease to a public entity as lessee thereunder with a term equal to or greater than one hundred and twenty five percent (125%) of the useful life of the Parking Improvements that are the subject of such ground lease creates a sufficient ownership interest in the public entity to qualify as public ownership. The Parking Facility Parcel is being bettered, and the Parking Facility is being acquired or bettered, with the proceeds of general obligation bonds issued under the provisions contained in Article XI, §5(a) of the Minnesota Constitution.

In order to create the necessary public ownership interest in the Parking Facility Parcel and Parking Facility, Ground Lessor is leasing the Parking Improvement Premises to the Ground Lessee by way of this Ground Lease for a period of fifty (50) years, which is a period of time equal to one hundred and twenty five percent (125%) of the useful life of the Parking Improvements. Ground Lessor and Ground Lessee acknowledge and agree that the useful life of the Parking Improvements is forty (40) years.

The expiration of this Ground Lease at the end of the Ground Lease Term does not require that the State be repaid the proceeds of Grant or that the Parking Improvement Premises or Parking Improvements be sold. Upon the expiration of the Ground Lease Term the Ground Lessee's interest in the Parking Improvement Premises created by this Ground Lease (and Ground Lessee's interest in the Parking Improvements) will terminate. At such time Ground Lessee shall, upon request of Ground Lessor, pursuant to the authority provided in the Grant Agreement, promptly request the State to execute whatever document may be needed to reflect that the Parking Improvement Premises and Parking Improvements are no longer subject to the Grant Agreement and the Declaration.

3. **Demise; Term; Easements; Conditions Precedent**. In consideration of the mutual promises and covenants contained herein, the parties hereto agree to the following provisions.

3.1 **Demise**. Ground Lessor hereby demises and leases the Parking Improvement Premises to the Ground Lessee, and Ground Lessee hereby leases the Parking Improvement Premises from the Ground Lessor, all for the consideration and upon the terms and conditions set forth herein. Ground Lessor and Ground Lessee acknowledge that the Parking Facility Parcel and the Ground Lessee's interest in the Parking Facility Parcel under this Ground Lease, and the Ground Lessee's interest in the Parking Facility, will be subject to the Grant Agreement and Declaration.

3.2 **Term**. Ground Lessee shall have and hold the Parking Improvement Premises for the Ground Lease Term. Ground Lessor and Ground Lessee hereby agree, for the benefit of the State, that this Ground Lease shall not be sooner terminated, modified or amended, except with the prior written consent of the State and the Commissioner of MMB.

3.3 **Covenant of Quiet Possession**. Ground Lessor represents, warrants and covenants that Ground Lessee shall have and enjoy quiet and undisturbed possession of the Parking Improvement Premises during and for the full Ground Lease Term.

3.4 **Parking Support Facilities**.

3.4.1 **Parking Support Facilities**. Ground Lessor hereby grants to Ground Lessee a non-exclusive easement during the Ground Lease Term for support over those portions of the Land necessary to the structural support of the Parking Facility, as shown on plans and specifications approved by Ground Lessee pursuant to the Development Agreement (the "Parking Support Facilities"). Ground Lessee shall not, without the consent of Ground Lessor, alter any Parking Support Facilities or impose weight on the Parking Support Facilities that would require enlarging, modifying or strengthening the Parking Support Facilities or adding new Parking Support Facilities on the Land. Ground Lessor shall maintain, or caused to be maintained, the Parking Support Facilities in a condition consistent with their intended purpose under this Section 3.4.1. Notwithstanding the foregoing, Ground Lessor may relocate any existing Parking Support Facilities if such relocation (i) does not materially interfere with or diminish Ground Lessee's use and enjoyment of the Parking Facility during any construction, and (ii) is completed using materials and design standards which equal or exceed those originally used.

3.4.2 **Building Support Facilities**. Ground Lessee hereby grants to Ground Lessor a non-exclusive easement during the Ground Lease Term for

support over those portions of the Parking Facility Parcel necessary to the structural support of the improvements constructed by Ground Lessor around and above the Parking Facility, as shown on the Public Improvement Plans (the "Building Support Facilities"). Ground Lessee shall maintain, or cause to be maintained, the Building Support Facilities in a condition consistent with their intended purpose under this Section 3.4.2. Ground Lessor shall not, without the consent of Ground Lessee, alter any Building Support Facilities or impose weight on the Building Support Facilities that would require enlarging, modifying or strengthening the Building Support Facilities or adding new Building Support Facilities on the Parking Facility Parcel.

3.4.3 **Parking Utility Facilities**. Ground Lessor hereby grants to Ground Lessee non-exclusive easements during the Ground Lease Term over, under and through the Land as reasonably necessary for the installation, maintenance, repair and replacement of electrical power lines, fiber optic lines, and water pipelines and conduits, and other utilities, as reasonably necessary to serve the Parking Facility, as shown on plans and specifications approved by Ground Lessee pursuant to the Development Agreement (the "Parking Utility Facilities"). Ground Lessee shall maintain, or cause to be maintained, the Parking Utility Facilities in a condition consistent with their intended purpose under this Section 3.4.3. The Ground Lessee may hereafter from time to time at its expense install beneath the Land to which this easement extends any other or further conduits, devices or other apparatus to serve the Parking Facility if: (a) such apparatus does not endanger the Land or increase insurance costs thereon; (b) the installation does not materially interfere with the then or reasonably anticipated future use and operation of the Land or improvements thereon; and (c) is approved by Ground Lessor, in its sole but reasonable discretion, and the designer of the particular utility service, if any. In the event of such a change, alteration or relocation, Ground Lessee will repair any damage to the Land or improvements thereon caused thereby. The easements granted in this section may be relocated by Ground Lessor, provided the relocation (w) does not unreasonably interfere with the utility service to the Parking Facility, (x) does not reduce or unreasonably impair the usefulness of the Parking Facility, and (y) is completed using materials and design standards that equal or exceed those originally used.

3.4.4 **Building Utility Facilities**. Ground Lessee hereby grants to Ground Lessor non-exclusive easements during the Ground Lease Term over, under and through the Parking Facility Parcel as reasonably necessary for the installation, maintenance, repair and replacement of electrical power lines, fiber optic lines, and water pipelines and conduits, and other utilities, as reasonably necessary to serve the Land and all improvements constructed on and above the Land from time to time, as shown on the Public Improvement Plans (the "Building Utility Facilities"). Ground Lessor shall maintain, or cause to be maintained, the Building Utility Facilities in a condition consistent

with their intended purpose under this Section 3.4.4. The Ground Lessor may hereafter from time to time at its expense install within the Parking Facility Parcel to which this easement extends any other or further conduits, devices or other apparatus if: (a) such apparatus does not endanger the Parking Facility Parcel or increase insurance costs thereon; (b) the installation does not materially interfere with the then or reasonably anticipated future use and operation of the Parking Facility Parcel; and (c) is approved by Ground Lessee, in its sole but reasonable discretion, and the designer of the particular utility service, if any. In the event of such a change, alteration or relocation of any Building Utility Facilities by Ground Lessor, Ground Lessor will repair any damage to the Parking Facility Parcel caused thereby.

3.5 **Conditions Precedent.** This Ground Lease shall not be valid or of any force or effect until the occurrence of each and every one of the following conditions precedent:

3.5.1 **Grant Agreement.** The mutual execution and delivery of the Grant Agreement by the State and Ground Lessee.

3.5.2 **Commissioner's Consent.** The Commissioner of MMB has consented, in writing, to this Ground Lease.

3.5.3 **Title Insurance.** The Title Company's issuance of a Lessee's Policy of Title Insurance to Ground Lessee, as of the time of entry into this Ground Lease, which such policy insures, subject only to the Permitted Encumbrances, the Ground Lessee's interest under this Ground Lease, or Ground Lessee's waiver, in writing, of such requirement.

4. **Rent.** In consideration of the execution and delivery of this Ground Lease and the demise of the Parking Improvement Premises to Ground Lessee pursuant to this Ground Lease, Ground Lessee has paid to Ground Lessor the sum of $10.00 (ten dollars) as prepaid rent for the entire Ground Lease Term. No other rent is required to be paid by Ground Lessee to Ground Lessor during the Ground Lease Term.

5. **Taxes and Other Charges.** Ground Lessee shall be responsible for the payment of all Taxes with respect to the Parking Improvement Premises and Parking Improvements, or for causing such Taxes to be paid, during the Ground Lease Term. The provisions in this Section 5 shall survive the termination of this Ground Lease or the running of the Ground Lease Term as to any such Taxes attributable to the Ground Lease Term that remain unpaid upon termination of this Ground Lease or the running of the Ground Lease Term.

6. **Payment of Utilities.** Ground Lessee shall be responsible for and shall fully and promptly pay for all water, gas, heat, light, power, telecommunications and all other utilities of every kind furnished to the Parking Improvement Premises and Parking

Improvements throughout the Ground Lease Term (collectively, the "Utility Costs"), and Ground Lessor shall have no responsibility of any kind for any thereof. The provisions contained in this Section 6 shall survive the termination of this Ground Lease or the running of the Ground Lease Term as to any Utility Costs attributable to the Ground Lease Term that remain unpaid upon termination of the Ground Lease or the running of the Ground Lease Term.

7. Operations; Compliance with Other Agreements; Use Restriction.

7.1 **Operations Generally**. Ground Lessee shall operate the Parking Facility Parcel and the Parking Facility as a public parking facility, and shall operate the balance of the Parking Improvement Premises and the balance of the Parking Improvements as a parking facility, in each case subject to Section 7.4 below, and subject to the terms and conditions of the Operation and Easement Agreement (and, in the case of the Parking Facility Extension, subject to the terms and conditions of the DNT Easement Agreement). Under no circumstance may Ground Lessee, or any entity to whom Ground Lessee sells, assigns, or transfers its interest in this Ground Lease: (i) modify the structural characteristics of the Parking Improvements or build any additional structures on the Parking Improvement Premises, without the specific written consent of Ground Lessor, (ii) operate the Parking Improvement Premises or Parking Improvements in any way that will increase the cost of or cause a cancellation of any insurance policy covering any part of the Parking Improvement Premises or Parking Improvements, or (iii) allow any commercial advertising on or within the Parking Improvements beyond customary parking and directional signage necessary in connection with the operation of the Parking Improvements as a public parking facility and customary directional signage relating to the public skywalk system, without the specific written consent of Ground Lessor. The Ground Lessee shall, at its sole cost, comply with all requirements pertaining to the Parking Improvement Premises and Parking Improvements that are required or imposed by any insurance organization or company as a condition to the receipt and maintenance of any insurance required under this Ground Lease and the Grant Agreement.

7.2 Compliance with and Performance under Other Agreements.

7.2.1 **Compliance**. Ground Lessee shall at all times after issuance of the Certificate of Completion, and thereafter during the term of this Ground Lease, operate the Parking Improvements in compliance with the Grant Agreement, the DNT Easement Agreement, the Operation and Easement Agreement, and the Bond Resolution.

7.2.2 **Performance**. Without limiting the generality of Section 7.2.1 above, by entering into this Ground Lease, Ground Lessee agrees and confirms that (i) after the issuance of the Certificate of Completion and thereafter during the term of this Ground Lease, Ground Lessee shall perform all obligations of the "Parking Facility Owner" under the DNT Easement Agreement, and (ii) it

has accepted and agreed to the provisions of Section 5 and Section 10(k) of the DNT Easement Agreement. If Ground Lessee fails to pay or perform any obligation of the "Parking Facility Owner" under the DNT Easement Agreement, Ground Lessor shall have the right to pay or perform the same (including the right to enter upon the Parking Improvement Premises for such purpose), and Ground Lessee shall promptly reimburse Ground Lessor for all costs incurred by Ground Lessor in connection therewith, subject to Section 48 of this Ground Lease. Ground Lessee acknowledges and agrees that Easement Parcel Owner (as that term is defined in the DNT Easement Agreement) is expressly made a third party beneficiary of this Section 7.2.2 and is entitled to rely upon and enforce this Section 7.2.2, subject to Section 48 of this Ground Lease.

7.2.3 **No Consents**. Ground Lessee will not grant any consent, approval or waiver under the DNT Easement Agreement or under the Operation and Easement Agreement without the prior written consent of Ground Lessor.

7.3 **Use Restriction.** Subject to Section 7.4, no use of the Parking Facility other than as a City of Duluth public parking facility shall be permitted. This Section 7.3 shall constitute a "use restriction" within the meaning of the Grant Agreement, and shall not apply to any successor lessee who purchases the Ground Lessee's interest in this Ground Lease. The provisions of Sections 7.1 and 7.2 set forth certain general operating and compliance covenants; said Sections are not intended as "use restrictions" within the meaning of the Grant Agreement, and shall continue to apply to any successor lessee.

7.4 **Coordination with Skywalk System**. Ground Lessee may permit use of areas within the Parking Improvements designated by Ground Lessee (and approved by Ground Lessor) from time to time for pedestrian ingress to and egress from the Parking Improvements, and to and from the City of Duluth's skywalk system.

8. Parking Improvements.

8.1 **Permits and Approvals**. Ground Lessee shall obtain or cause to be obtained all necessary governmental permits and approvals for the construction of the Parking Improvements, and shall pursue obtaining such permits and approvals in good faith with due diligence immediately upon the execution of this Ground Lease. Ground Lessor agrees to cooperate with and assist Ground Lessee to all reasonable extents in Ground Lessee's pursuit of and application for all necessary governmental permits and approvals, including, without limitation, joining in the execution of any applications necessary with respect thereto.

8.2 **Construction of Parking Improvements**. Upon the execution of this Ground Lease, but subject to the provisions of Section 8.3, Ground Lessor shall, pursuant to the Development Agreement, proceed with commercially reasonable diligence to prepare the Parking Improvement Premises (including the demolition of any structures thereon, as required pursuant to the Public Improvement Plans) and construct the Parking Improvements in accordance with the Public Improvement Plans and the requirements of the Development Agreement. The Parking Improvements and any alterations, additions or repairs thereto shall be made in a good and workmanlike manner and in compliance with all applicable governmental laws, regulations and ordinances. Ground Lessor and Ground Lessee shall cooperate in good faith regarding the coordination of the construction of the Parking Improvements and the construction of any improvements by Ground Lessor on the Land.

8.3 **Plans and Specifications**. Ground Lessor and Ground Lessee will work to develop the Public Improvement Plans in accordance with the Development Agreement. The Public Improvement Plans shall not be modified or amended without the prior written consent of Ground Lessor and Ground Lessee, in each case to the extent required under the Development Agreement.

8.4 **Ownership of Parking Improvements**. Subject to Ground Lessor's rights under this Ground Lease regarding the application of insurance proceeds and condemnation awards, title to the Parking Improvements shall be owned by the Ground Lessee, regardless of who constructed the Parking Improvements, together with any and all fixtures related thereto and located on the Parking Improvement Premises. Ground Lessor shall, upon the expiration of the Ground Lease Term or earlier termination of this Ground Lease pursuant to the terms hereof, become the absolute owner of any and all Parking Improvements and any fixtures related thereto and located on the Parking Improvement Premises, and Ground Lessee does hereby grant and convey all of Ground Lessee's right, title and interest in and to the Parking Improvements to Ground Lessor and such grant and conveyance shall be automatic pursuant to this Ground Lease, without the need for any further instrument or action by either Ground Lessor or Ground Lessee. The provisions in this Section 8 shall survive the termination of this Ground Lease or the running of the Ground Lease Term as to any insurance proceeds and condemnation awards arising or attributable to the Ground Lease Term that remain unapplied pursuant to Ground Lessor's rights under this Ground Lease upon termination of this Ground Lease or the running of the Ground Lease Term.

8.5 **Alley Parcel Vacation/Concurrent Use Permit**. The Alley Bridge will be located within the Alley Parcel. The Ground Lessee hereby agrees to take all necessary action as soon as reasonably practicable to vacate the Alley Parcel or grant a concurrent use permit therefor, whereupon this Ground Lease shall automatically be extended to include a demise of such vacated Alley Parcel or any rights granted pursuant to a concurrent use permit (including a demise of DNT Easement Rights

with respect to any portion of the Alley Parcel that becomes subject to the DNT Easement upon such vacation), on and subject to all of the terms of this Ground Lease. Notwithstanding the foregoing, Ground Lessee shall vacate the Alley Parcel as aforesaid unless Ground Lessor agrees in writing that a concurrent use permit is satisfactory, in Ground Lessor's sole discretion. If the Alley Bridge is destroyed by casualty and it is determined not to rebuild or replace the Alley Bridge, then Ground Lessee will re-dedicate, or cause to be re-dedicated, the Alley Parcel as public alleyway.

8.6 **Legal Description; Amendment**. The descriptions of the Parking Facility Parcel on Exhibit B and Alley Parcel in Exhibit C were prepared based upon the Public Improvement Plans using the following protocols (the "Measurement Standards"): (a) vertical boundaries of the Parking Facility Parcel were measured from the bottom of the lowest floor to the bottom of the highest floor as shown on the Public Improvement Plans, and horizontal boundaries of the Parking Facility Parcel were measured from the interior surfaces of the outermost walls as shown on the Public Improvement Plans; and (b) vertical boundaries of the Alley Parcel were measured from the exterior surfaces on the bottom and top of the improvements to be constructed within the Alley Parcel as shown on the Public Improvements Plans, and horizontal boundaries of the Alley Parcel were measured from the exterior surfaces on each side of the improvements to be constructed within the Alley Parcel as shown on the Public Improvement Plans. Upon substantial completion of the structural elements of the Parking Improvements, Ground Lessor and Ground Lessee agree to (i) cause the Parking Facility and Alley Bridge to be surveyed and a revised legal description of the Parking Facility Parcel and Alley Parcel to be prepared, which revised legal description shall be prepared in accordance with the Measurement Standards and shall conform to the Parking Facility and Alley Bridge, as actually constructed, and (ii) to execute an amendment to this Ground Lease and execute and record an amendment to any memorandum or short-form of this Ground Lease, setting forth the legal description of the Parking Facility Parcel and Alley Parcel as so revised.

9. Maintenance of Parking Improvements.

9.1 **Maintenance; Restoration**. Ground Lessee shall, at Ground Lessee's sole cost and without any expense to Ground Lessor, keep and maintain (or cause to be kept and maintained) the Parking Improvement Premises, Parking Improvements, Building Support Facilities, and all appurtenances thereto, in good, sanitary, lawful, and neat order, condition, and repair, and shall pursuant to the terms herein, restore and rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty, or any other cause whatsoever, including any modification required due to any partial condemnation. Ground Lessor shall not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Parking Improvement Premises or Parking Improvements; *provided, however,* that nothing herein is intended to relieve Ground Lessor from its obligations to preserve and maintain the Parking Support Facilities, as described in Section 3.4.1.

9.2 **Alterations.** Except as otherwise permitted herein, and except as permitted or required pursuant to the Operation and Easement Agreement, Ground Lessee shall not make any alterations, improvements, or changes to any portion of the Parking Improvement Premises or Parking Improvements, the cost of which is reasonably expected to exceed $10,000 or which affects the Building Support Facilities, Building Utility Facilities, any other structural element or building system, or the exterior of the Parking Improvements, without the prior written consent of Ground Lessor.

9.3 **Survival.** The provisions contained in this Section 9 shall survive the termination of this Ground Lease pursuant to the terms hereof or the running of the Ground Lease Term as to any obligation arising or attributable to the Ground Lease Term under this Section 9 that remains unsatisfied upon the termination of the Ground Lease or the running of the Ground Lease Term.

10. **Mechanics' Liens.** Ground Lessee hereby covenants and agrees that it will not permit or allow any mechanics' or materialmen's liens to be placed against the Parking Improvement Premises or Parking Improvements or Ground Lessor's interests in the Parking Improvement Premises or Parking Improvements during the Ground Lease Term. Notwithstanding the previous sentence, (a) in the event any such lien shall be so filed against Ground Lessor's interest, then Ground Lessee shall take all steps necessary to remove it within sixty (60) days of its being filed; *provided, however,* that Ground Lessee may contest any such lien provided Ground Lessee first posts a surety bond, letter of credit, or cash with the applicable court sufficient to release the Parking Improvement Premises and Parking Improvements from such lien, or otherwise protects Ground Lessor from foreclosure thereof, and (b) Ground Lessee shall have no obligation to remove or discharge any mechanics' or materialmen's liens relating to the initial construction of the Parking Improvements, except to the extent expressly provided in the Development Agreement.

11. **Ground Lessor's Right to Encumber.** Except for the Permitted Encumbrances, Ground Lessor may not, without the prior written consent of the State and the Commissioner of MMB, create or allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Parking Improvement Premises, the Parking Improvements, or the Ground Lessor's interest in this Ground Lease. For purposes of this Section 11, a lien or encumbrance will not be considered to be a lien or encumbrance against the Parking Improvement Premises, the Parking Improvements, or the Ground Lessor's interest in this Ground Lease, provided the enforcement of such lien or encumbrance would not affect or disturb (a) the Ground Lessee's interest in the Parking Improvement Premises or the Parking Improvements, or (b) the Ground Lessee's rights under this Ground Lease. For the avoidance of doubt, Ground Lessor may, without the prior written consent of the State and the Commissioner of MMB, create or allow any voluntary lien or encumbrance or involuntary lien or encumbrance so long as such lien or encumbrance (i) encumbers Ground Lessor's fee interest in the Land (or any part thereof), and is subordinate to (or does not

encumber or affect) the Ground Lessee's interest in the Parking Improvement Premises, the Parking Improvements, or this Ground Lease, and (ii) is subordinate to the Declaration.

12. **Ground Lessee's Right to Encumber**. Except for the Permitted Encumbrances, Ground Lessee may not, without the prior written consent of the State, the Commissioner of MMB, and the Ground Lessor, allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested to be created or exist against the Parking Improvements or Parking Improvement Premises or Ground Lessee's interest in the Parking Improvements or Parking Improvement Premises.

13. **Sale of Ground Lessee's Interest**. Ground Lessee may, upon receiving consent pursuant to Section 14 of this Lease, and subject to the following provisions, sell its interest in this Ground Lease and the Parking Improvements.

13.1 **Determination**. Ground Lessee's City Council must make a determination at a duly called and held public meeting that the Parking Improvement Premises and Parking Improvements are no longer needed or usable to operate the Governmental Program, and that it intends to sell Ground Lessee's interest in this Ground Lease. Such determination must be submitted to and approved by the Commissioner of MMB. Nothing in this Ground Lease, or any other agreement, shall be construed as requiring the Ground Lessee to sell its interest in this Ground Lease, which decisions shall be solely made by Ground Lessee and its City Council.

13.2 **Offer to Purchase**. Ground Lessee shall promptly notify Ground Lessor, in writing, of its City Council's determination to sell Ground Lessee's interest in this Ground Lease and the Parking Improvements, and must offer to sell such interest to Ground Lessor for fair market value before offering to sell such interest to any other party. Ground Lessor shall notify Ground Lessee within sixty (60) days of receipt of Ground Lessee's notification and offer to sell whether or not it is interested in purchasing such interest. If Ground Lessor notifies Ground Lessee that it is interested in purchasing Ground Lessee's interest in this Ground Lease and the Parking Improvements, then appraisals of such interest shall be performed in accordance with the provisions contained in Section 13.3 herein to establish the purchase price. After the completion of such appraisals Ground Lessor shall have an additional sixty (60) days to decide whether or not it wants to purchase Ground Lessee's interest in this Ground Lease and the Parking Improvements, and if Ground Lessor elects to purchase such interest the closing shall occur within whatever time period Ground Lessor and Ground Lessee agree, and Ground Lessor and Ground Lessee shall each pay one-half of all costs associated with such purchase and closing.

13.3 **Appraisal**. For the purpose of determining the fair market value price that Ground Lessee will offer to sell its interest in this Ground Lease and the Parking Improvements to Ground Lessor, Ground Lessee shall select an MAI or comparable certified appraiser, and such appraiser shall promptly perform and complete an

appraisal of Ground Lessee's interest in this Ground Lease and the Parking Improvements, assuming that any and all mortgage liens or encumbrances on the property being sold that negatively affect the value thereof will be satisfied or released, and the price at which Ground Lessee shall offer to sell its interest in this Ground Lease and the Parking Improvements to Ground Lessor shall be appraised value. Ground Lessor and Ground Lessee shall each pay one-half of the cost of such appraisal. Notwithstanding the foregoing, the Ground Lessee and Ground Lessor may agree to an alternative appraisal process at the time of sale, subject to the Commissioner of MMB's approval.

13.4 **Sale.** In the event that Ground Lessor elects to not purchase Ground Lessee's interest in this Ground Lease and the Parking Improvements under Section 13.2 herein, then Ground Lessee may sell such interest as provided in Minn. Stat. §16A.695.

13.5 **Proceeds of Sale.**

13.5.1 All proceeds of a sale of Ground Lessee's interest in this Ground Lease and the Parking Improvements under the provisions of this Section 13 (independent of whether such sale is to Ground Lessor under the provisions in Sections 13.2 or by way of a public sale under the provisions contained in Section13.4) shall be disbursed in accordance with the provisions in the Grant Agreement regarding the sale of "state bond financed property".

13.5.2 Subject to the provisions of the Grant Agreement, after the distribution has been made to the Commissioner of MMB of all amounts to be paid to the Commissioner of MMB pursuant to the Grant Agreement (including without limitation Section 4.02.A thereof) as described in Subsection 13.5.1 above, all remaining proceeds of sale shall be paid and distributed (i) first, to the Ground Lessee, to the extent of (and for application against) the unpaid balance of the Bond (which unpaid balance Ground Lessor and Ground Lessee agree constitutes "Approved Debt" for purposes of the Grant Agreement), (ii) second, to Ground Lessor, to the extent of any amounts paid by Ground Lessor (over and above amounts paid by Ground Lessor for the Bond) for the initial acquisition of the Parking Improvement Premises and initial construction of the Parking Improvements, pursuant to, and not reimbursed under, the Development Agreement (which amounts Ground Lessor and Ground Lessee agree constitute Initial Acquisition and Betterment Costs for purposes of the Grant Agreement), and (iii) third, to the extent there are any excess proceeds of sale remaining after payment of the foregoing amounts, such excess proceeds of sale shall be paid in accordance with the provisions of Minn. Stat. §16A.695, Subd. 3(2).

13.5.3 Upon completion of the initial construction of the Parking Improvements, Ground Lessor and Ground Lessee will in writing confirm the amounts described in clause (ii) of Subsection 13.5.2.

13.6 **Effect of Sale**. Upon the sale by the Ground Lessee of its interest in this Ground Lease, the Ground Lease shall remain in full force and effect and the entity that purchases such interest shall become the Ground Lessee hereunder as if they were the original Ground Lessee hereunder.

13.7 **Condition of Sale**. Any sale hereunder must be in full accordance with all applicable federal, state, and local statutes, regulations and ordinances.

13.8 **Conflict with Grant Agreement**. Whenever there shall exist a conflict between the provisions contained in this Section 13 and any provision in the Grant Agreement relating to a sale of Ground Lessee's interest in this Ground Lease, the provisions of the Grant Agreement shall prevail.

14. **Transfer, Assignment, Subletting**.

14.1 **Transfer, Assignment, Subletting by Ground Lessee**. Ground Lessee may not transfer, assign, or sublease (collectively, a "Transfer"), all or any part of the Parking Improvement Premises or Parking Improvements without Ground Lessor's written consent, which consent may be granted or withheld in Ground Lessor's sole discretion; *provided, however*, that if (a) the party to which the Transfer is proposed to be made (the "Proposed Transferee") is a public authority controlled by the City of Duluth; (b) the Transfer to the Proposed Transferee will not result in any material change in the operation of (or the economic decisions to be made by Ground Lessee with respect to) the Parking Improvements; (c) the Proposed Transferee in writing assumes and agrees to perform all obligations of the Ground Lessee under this Ground Lease (including, without limitation, the Ground Lessee's indemnification obligations under Section 21.2) and under all other documents and instruments executed by the Ground Lessee in connection with this Ground Lease; (d) Ground Lessor shall be satisfied that the Proposed Transferee (i) will be able to pay and perform all obligations of Ground Lease under this Ground Lease, the Operation and Easement Agreement, and all other documents and instruments executed by Ground Lessee in connection with this Ground Lease, and (ii) has, and can reasonably be expected to maintain over the Ground Lease Term, adequate solvency and liquidity to perform all such obligations; (e) Ground Lessee shall have delivered written notice to the State and the Commissioner of MMB of any proposed Transfer and the State and the Commissioner of MMB shall have provided consent to the same in writing; and (f) all other parties whose consent is required for any Transfer have provided such consent in writing; and (f) the holder of the Bond (as defined in the Bond Resolution) has consented to such Transfer, then, if each of the foregoing conditions is satisfied, the Ground Lessor shall not unreasonably withhold its consent to a Transfer to the

Proposed Transferee, and such Proposed Transferee shall thereupon become a "Permitted Transferee" under this Ground Lease.

14.2 **Sale by Ground Lessor**. If Ground Lessor sells its underlying fee interest in the Parking Facility Parcel as permitted by Section 2.06.A.11 of the Grant Agreement, Ground Lessor agrees to cause notice of such sale to be promptly supplied to the Commissioner of MMB and Ground Lessee, together with copies of transfer documents with respect thereto, as may reasonably be requested by the Commissioner of MMB, all as set forth in said Section 2.06.A.11.

15. **Surrender**. Upon the expiration of the Ground Lease Term or earlier termination of this Ground Lease pursuant to the terms hereof, Ground Lessee shall surrender to the Ground Lessor (a) the Parking Improvement Premises and Parking Improvements to Ground Lessor and leave the Parking Improvements (to the extent then existing) in the condition required by this Lease, and (b) any amounts then held or credited to the Capital Account (as defined in the Bond Resolution). The Parking Improvements, amounts in said Capital Account, and any equipment, trade fixtures, and personal property remaining upon the Parking Improvement Premises after surrender thereof, to the extent not already the property of Ground Lessor, shall automatically become the property of Ground Lessor from and after such expiration or earlier termination. The voluntary or other surrender of this Ground Lease by Ground Lessee, or a mutual cancellation hereof, shall not work a merger with respect to any or all existing subleases or license agreements that Ground Lessee entered into and that were consented to, in writing by Ground Lessor, and shall operate as an assignment to Ground Lessor of any or all such subleases, subtenancies or license agreements. The provisions contained in this Section 15 shall survive the termination of this Ground Lease or the running of the Ground Lease Term.

16. **Inspection by Ground Lessor**. Upon reasonable request by Ground Lessor and without interfering with Ground Lessee's normal use of the Parking Improvement Premises and Parking Improvements, Ground Lessee shall allow Ground Lessor to inspect the Parking Improvement Premises and Parking Improvements from time to time.

17. **Ground Lessor's Representations, Covenants, and. Warranties**. Ground Lessor represents, covenants, and warrants to Ground Lessee as follows:

17.1 **Authority**. Ground Lessor has full right and authority to enter into this Ground Lease and perform Ground Lessor's obligations under this Ground Lease as of the effective date hereof and, except for the Permitted Encumbrances, has (i) good, marketable and insurable title to the Parking Facility Parcel in fee simple, free and clear of all restrictions, leases, liens, encumbrances, tenancies, and easements that would materially affect or impact Ground Lessee's interest in this Ground Lease or use of the Parking Facility Parcel and the portion of the Parking Improvements to be constructed thereon; and (ii) good, marketable and insurable title to the DNT Easement Rights, free and clear of all restrictions, leases, liens, encumbrances, tenancies, and easements that would materially affect or impact Ground Lessee's

interest in this Ground Lease or use of the DNT Easement Rights and the portion of the Parking Improvements to be constructed thereon.

17.2 **Subdivision.** Ground Lessor shall at all times comply with all applicable laws, ordinances, rules, and regulations governing the division or platting of real property for purposes of lease, sale, or financing, so that this Ground Lease shall constitute a lawful conveyance to Ground Lessee of a leasehold estate in the Parking Improvement Premises.

17.3 **Condemnation; Dedication.** Ground Lessor has not received notice of any action, nor is it aware of any pending action, to take by condemnation all or any portion of the Parking Improvement Premises or Parking Improvements, nor has Ground Lessor agreed or committed to dedicate any part of the Parking Improvement Premises or Parking Improvements.

17.4 **Violations.** To the best of Ground Lessor's knowledge: (i) the Parking Improvement Premises are not in material violation of any local governmental rule, ordinance, regulation, or building code, and (ii) there is not a pending or threatened investigation regarding a possible violation of any of the foregoing, except for violations that will be remedied as part of the construction of the Parking Improvements.

17.5 **Breach of Other Agreements.** Ground Lessor's execution and delivery of this Ground Lease will not cause or constitute a violation of any provisions of its organizational documents or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or, to the actual knowledge of the undersigned officers of Ground Lessor, threatened before or by any judicial body or governmental authority against or affecting it relating to the Parking Improvement Premises or Parking Improvements, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority that would impair its ability to enter into this Ground Lease or to perform any of the terms, covenants, and conditions to be performed by Ground Lessor under this Ground Lease.

17.6 **Compliance with Ground Lease.** Ground Lessor will fully and completely comply with all of the terms, provisions, and conditions contained in this Ground Lease to which it is subject.

17.7 **Indemnification by Ground Lessor.** Ground Lessor will to the fullest extent permitted by law, protect, indemnify and save Ground Lessee and its officers, agents, servants and employees, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising from:

(i) Any injury to or death of any person or damage to property in or upon the Parking Improvements (i) arising prior to the issuance of a Certificate of Completion, or (ii) arising from the exercise of any right of Ground Lessor hereunder (including, without limitation, any exercise by Ground Lessor of its rights under Section 7.2.2 hereof). The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the Ground Lessor, its customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts; and

(ii) Any violation by Ground Lessor of any provision of this Ground Lease.

Promptly after receipt by Ground Lessee of notice of the commencement of any action with respect to which Ground Lessor is required to indemnify Ground Lessee, Ground Lessee shall notify Ground Lessor in writing of the commencement thereof, and, subject to the provisions of this Section 17.7, Ground Lessor shall assume the defense of such action, including the employment of counsel satisfactory to Ground Lessee and the payment of expenses. In so far as such action shall relate to any alleged liability of Ground Lessee with respect to which indemnity may be sought against Ground Lessor, Ground Lessee shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Ground Lessor.

18. **Ground Lessee's Representations, Covenants, and Warranties**. Ground Lessee represents, covenants, and warrants to Ground Lessor as follows:

18.1 **Authority**. Ground Lessee has full right and authority to enter into this Ground Lease and perform Ground Lessee's obligations under this Ground Lease as of the effective date hereof.

18.2 **Actions of Ground Lessee's City Council**. The City Council of Ground Lessee has taken all actions and adopted all resolutions needed to authorize Ground Lessee to enter into and execute this Ground Lease, and be bound by the provisions contained herein.

18.3 **Breach of Other Agreements**. Ground Lessee's execution and delivery of this Ground Lease will not cause or constitute a violation of any laws of the State of Minnesota, and there are no actions, suits, or proceedings pending before or by any judicial body or governmental authority against or affecting it relating to the Parking Improvement Premises or Parking Improvements, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority that would impair its ability to enter into this Ground Lease or

to perform any of the terms, covenants and conditions to be performed by Ground Lessee under this Ground Lease.

18.4 **Compliance with Ground Lease.** Ground Lessee will fully and completely comply with all of the terms, provisions, and conditions contained in this Ground Lease to which it is subject.

18.5 **Indemnification by Ground Lessee.** Ground Lessee will to the fullest extent permitted by law, but subject to Sections 19.6 and 48 of this Ground Lease, protect, indemnify and save Ground Lessor and its officers, agents, servants and employees, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising from:

(i) Any injury to or death of any person or damage to property in or upon the Parking Improvements or growing out of or in connection with the use or non-use, condition or occupancy of the Parking Improvements or any part thereof and arising on or after the issuance of a Certificate of Completion. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the Ground Lessee, its customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts;

(ii) Any violation by Ground Lessee of any provision of this Ground Lease; and

(iii) Any violation of any law, ordinance, court order or regulation affecting the Parking Improvements, or the ownership, occupancy or use thereof.

Promptly after receipt by Ground Lessor of notice of the commencement of any action with respect to which Ground Lessee is required to indemnify Ground Lessor, Ground Lessor shall notify Ground Lessee in writing of the commencement thereof, and, subject to the provisions of this Section 18.5, Ground Lessee shall assume the defense of such action, including the employment of counsel satisfactory to Ground Lessor and the payment of expenses. In so far as such action shall relate to any alleged liability of Ground Lessor with respect to which indemnity may be sought against Ground Lessee, Ground Lessor shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Ground Lessee.

19. **Insurance**. Ground Lessee shall carry and maintain the following insurance and comply with the following provisions regarding the providing of such insurance (or be self-insured to the same extent):

19.1 **Insurance Coverage of Parking Improvement Premises and Parking Improvements**. Ground Lessee shall, at its own expense, at all times during the Ground Lease Term keep the Parking Improvement Premises and Parking Improvements (including all equipment) insured against "all risks" of physical loss or damage, for the full insurable value of the Parking Improvements. Ground Lessee shall also carry annual rent insurance. Such insurance shall include a waiver of subrogation, including any deductibles/retentions Ground Lessee carries, in favor of Ground Lessor. Ground Lessee waives rights against Ground Lessor for any insurance required to be carried in this Ground Lease, whether carried or not. During the initial construction of the Parking Improvements, the Ground Lessor will maintain "builder's risk" insurance coverage in accordance with the requirements of the Development Agreement, with a deductible not to exceed One Hundred Thousand and No/100 Dollars ($100,000), and with loss payable to the Ground Lessor, Ground Lessee, the State, and any mortgagee as their respective interests may appear. Any loss adjustment shall be made in accordance with the requirements for the use and distribution of insurance proceeds in the event of damage as otherwise provided herein, but shall require the prior written consent of Ground Lessor, Ground Lessee, the State, and any mortgagee, and shall survive the termination of this Ground Lease or the running of the Ground Lease Term. Ground Lessee shall be responsible for any insurance deductible.

19.2 **Commercial General Liability Insurance**. Ground Lessee shall, at its own expense, maintain in effect throughout the Ground Lease Term commercial general liability insurance or a program of self-insurance covering the Parking Improvement Premises and Parking Improvements and its appurtenances, with a total combined limit between the primary general liability and excess liability in the amount of at least One Million Five Hundred Thousand Dollars per occurrence and One Million Five Hundred Thousand Dollars general aggregate including completed operations. Such insurance shall; (i) be primary with respect to Ground Lessor's insurance or self-insurance, (ii) not exclude explosion, collapse and underground property damage, (iii) be written on an "Occurrence" form policy basis, (iv) include coverage for owned, hired and non-owned automobile liability, (v) name Ground Lessor and the State as additional named insureds thereunder, and (vi) require 30 days notice of cancellation to Ground Lessor for premium non-payment on non-renewal for any other lessor, which notice requirement shall be endorsed to the policy. Additionally, Ground Lessor and the State shall be named as additional named insureds on any contractor's general liability insurance maintained by the general contractor or construction manager responsible for the construction of the Parking Improvements or any other structures that will be built and become part of the Parking Improvements.

19.3 **Workers' Compensation Insurance**. Ground Lessee shall, at its own expense, maintain Workers' Compensation Insurance with not less than statutory minimum limits and Employers' Liability Insurance with minimum limits of at least One Hundred Thousand and No/100 Dollars ($100,000) per accident and with an all states endorsement with a waiver of subrogation in favor of Ground Lessor.

19.4 **Insurance Certificates.** Ground Lessee shall supply to Ground Lessor, concurrently with its execution of this Ground Lease and thereafter on an annual basis, current insurance certificates for policies required in this Section 19, including copies of endorsements confirming evidence of primary insurance, additional insured status, waiver of subrogation, and notice of cancellation. Ground Lessee shall promptly furnish to Ground Lessor all endorsements and other written notices that modify or change any insurance coverage with respect to the Parking Improvement Premises, the Parking Improvements, or Ground Lessee's operation of the Parking Improvement Premises and Parking Improvements, and all paid premium receipts by Ground Lessee regarding such required insurance.

19.5 **Additional Required Insurance**. The limits cited under each of the above insurance requirements establish minimums, and it is the sole responsibility of the Ground Lessee, at its own expense, to purchase and maintain additional insurance that the Ground Lessee may determine to be necessary in relation to this Ground Lease or its operation of the Premises and Improvements.

19.6 **Non-Waiver of Statutory Limits**. Nothing in this Ground Lease shall constitute a waiver by Ground Lessor or Ground Lessee of any statutory limits or exceptions on liability.

19.7 **Placement of Insurance**. Ground Lessee shall place the insurance required by this Section 19 with responsible insurance companies authorized and licensed to do business in the State of Minnesota with a financial rating by A.M. Best & Company of no less than A-VIII or its equivalent, and approved, in writing by the Ground Lessor, and shall deliver certificates in the form required above evidencing such coverage to Ground Lessor concurrent with Ground Lessee's execution of this Ground Lease and from time to time thereafter as reasonably required by Ground Lessor. The policies required in this Section 19 shall be endorsed to indicate that the insurer cannot cancel or change the insurance without first giving Ground Lessor and the State thirty (30) days' written notice. Notwithstanding the foregoing, Ground Lessee may elect to use a self-insurance program as to the commercial general liability insurance required by Section 19.2.

19.8 **Ground Lessor's Right to Pay Premiums**. Ground Lessee shall promptly pay all of the premiums for the insurance required in this Section 19 and deliver copies of such policies when requested, and certificates thereof, to Ground Lessor. In the event that Ground Lessee fails; (i) to carry and maintain such insurance in the amounts called for, (ii) to pay the premiums therefor, or (iii) to deliver copies of

such policies or certificates thereof to the Ground Lessor, then Ground Lessor shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefor. Any premiums paid by Ground Lessor, together with interest thereon at the Default Interest Rate accruing from the date of payment by Ground Lessor, shall be repayable to Ground Lessor within thirty (30) days after written notice of the payment of such insurance, and failure to repay such amounts shall be an Event of Default hereunder. All rebates on account of any such premiums paid by Ground Lessor shall belong to the Ground Lessor, provided Ground Lessee has not reimbursed Ground Lessor for such premiums, and Ground Lessee shall have no obligation to reimburse Ground Lessor to the extent of such rebates received and retained by Ground Lessor. The requirements regarding Ground Lessor's payment of any premiums and receipt of any rebates shall survive the termination of this Ground Lease or the running of the Ground Lease Term as to any such premiums paid by Ground Lessor during or for any period applicable to the Ground Lease Term for which Ground Lessor has not received reimbursement from Ground Lessee (less any rebates received by Ground Lessor on account of any such premiums paid by Ground Lessor) pursuant to this Section 19.8.

19.9 **Notice.** Ground Lessee shall require each insurer through which it carries any insurance required under this Section 19 to include in the policy of insurance, by endorsement thereto, or by an independent instrument furnished to Ground Lessor and in form acceptable to the Ground Lessor, that such insurer will give Ground Lessor and the State thirty (30) days' written notice before the policy or policies in question may be altered or cancelled.

19.10 **Increase in Coverage**. The insurance and the size of any applicable deductible required to be maintained pursuant to this Ground Lease shall be subject to review as to its adequacy by an Independent Insurance Consultant once every three (3) years beginning in 2019. Ground Lessee, at its expense, shall cause such review to be conducted and shall cause such consultant to prepare a written report regarding such review containing such consultant's recommendations, if any, for changes in such insurance. Ground Lessee shall cause copies of such report to be delivered promptly to Ground Lessor and agrees to follow the recommendations of such Independent Insurance Consultant to the extent practicable.

19.11 **Blanket Insurance Policies**. Notwithstanding anything to the contrary contained in this Section 19, Ground Lessee's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Ground Lessee; provided, however, that the coverage afforded the Ground Lessor shall not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of this Section 19 by reason of the use of such blanket policy of insurance.

19.12 **Use of Insurance Proceeds**. If damages which are covered by such required insurance occur, then the Ground Lessee shall have the right to elect, within 180 days of the date such damage occurred, to repair and restore the Parking Improvements to the condition the Parking Improvements were in immediately prior to such damage. If Ground Lessee does not within such 180-day period elect to so restore the Parking Improvements, then Ground Lessor, at the Ground Lessor's sole option and discretion, shall have the right to use or cause the insurance proceeds to be used to fully or partially repair such damage (and Ground Lessee shall assign to Ground Lessor any interest Ground Lessee has in such insurance proceeds) and to provide or cause to be provided whatever additional funds that may be needed to fully or partially repair such damage. If the Ground Lessor does not elect to restore such damage, and if the amount of damage is so extensive that it would not be economically feasible to repair the Parking Improvements, then Ground Lessee shall have the right to make the determination under Subsection 13.1 herein that the Parking Improvements are no longer needed or useful for the operation of the Governmental Program and sell its interest in this Ground Lease in accordance with the provisions contained in Section 13 herein; *provided, however,* if Ground Lessor pays to Ground Lessee the sums required to be paid to the Commissioner of MMB pursuant to the terms of the Grant Agreement or such lesser amount permitted under Minnesota law, then the insurance proceeds shall be paid to Ground Lessor and this Ground Lease shall automatically terminate.

19.13 **Survival**. The provisions contained in Subsection 19.12 shall survive the termination of this Ground Lease or the running of the Ground Lease Term as to any insurance proceeds that have not been applied pursuant to Subsection 19.12 as of the termination of this Ground Lease or the running of the Ground Lease Term.

19.14 **Alternative Agreement Regarding Property Insurance**. If Ground Lessor and Ground Lessee agree, Ground Lessor may elect to carry the insurance required in Section 19.1 under Ground Lessor's own property insurance policy, in which case Ground Lessee shall pay the allocable portion of the premium on such policy that relates to the Parking Improvements, pursuant to the Operation and Easement Agreement.

20. **Condemnation**. The following provisions shall apply to the condemnation of any portion of the Parking Improvement Premises and Parking Improvements.

20.1 **Total Taking**. In the event that the entire Parking Improvement Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, then this Ground Lease shall terminate as of the date of such taking. The proceeds of such taking shall be split between Ground Lessor and Ground Lessee in proportion to the value of Ground Lessor's interest in the Parking Improvement Premises, taking into consideration that such interest is subject to this Ground Lease, and Ground Lessee's interest in this Ground Lease, by way of an appraisal performed in accordance with the provisions contained in Subsection 13.3

herein. The proceeds attributable to Ground Lessee shall be used and distributed in accordance with the provisions contained in Section 13 herein as if a sale of Ground Lessee's interest had occurred; provided, however, if Ground Lessor pays to Ground Lessee the sums required to be paid to the Commissioner of MMB pursuant to the terms of the Grant Agreement or such lesser amount permitted under Minnesota law, then the proceeds shall be paid to Ground Lessor.

20.2 **Partial Taking Treated as Total Taking**. If the portion of the Parking Improvement Premises and Parking Improvements appropriated or taken is to an extent that Ground Lessee determines that the remaining portion of the Parking Improvement Premises and Parking Improvements can no longer be used for the operation of the Governmental Program, then Ground Lessee shall give Ground Lessor written notice of such determination within one hundred twenty (120) days after such portion of the Parking Improvement Premises and Parking Improvements have been so appropriated or taken. Upon receipt of such notice Ground Lessor may treat such partial condemnation as a total taking, and thereupon this Ground Lease shall be terminated and the proceeds attributable to Ground Lessee shall be used and distributed in accordance with the provisions contained in Section 13 herein as if a sale of Ground Lessee's interest had occurred; provided, however, if Ground Lessor pays to Ground Lessee the sums required to be paid to the Commissioner of MMB pursuant to the terms of the Grant Agreement or such lesser amount permitted under Minnesota law, then the proceeds shall be paid to Ground Lessor.

20.3 **Partial Taking Not Treated as Total Taking**. In the event of a partial taking and Ground Lessee elects to continue to operate the Governmental Program in the remaining portion of the Parking Improvement Premises and Parking Improvements, then this Ground Lease shall continue in full force as to the part not taken and the condemnation award shall be applied first to restore the remaining portion of the Parking Improvement Premises and Parking Improvements to a configuration and condition so that such Parking Improvement Premises and Parking Improvements can be used for the operation of the Governmental Program (with the condemnation proceeds to be held by a mutually agreeable escrow agent in escrow for such restoration to be disbursed in accordance with standard commercial construction conditions customarily required by institutional lenders), the proceeds attributable to Ground Lessee shall be used and distributed in accordance with the provisions contained in Section 13 herein as if a sale of Ground Lessee's interest had occurred; *provided, however,* if Ground Lessor pays to Ground Lessee the sums required to be paid to the Commissioner of MMB pursuant to the terms of the Grant Agreement or such lesser amount permitted under Minnesota law, then the proceeds shall be paid to Ground Lessor.

20.4 **Conflict with Grant Agreement**. Whenever there shall exist a conflict between the provisions contained in this Section 20 and any provision in the Grant Agreement, the provisions of the Grant Agreement shall prevail.

The provisions in this Section 20 relating to the allocation and use of a condemnation award shall survive the termination of this Ground Lease or the running of the Ground Lease Term.

21. **Hazardous Waste Pollution and Contaminants**. The following provisions apply as to the use and storage of Hazardous Substances on the Parking Improvement Premises or in the Parking Improvements, and compliance with Environmental Laws.

21.1 **Compliance with Environmental Laws**. Ground Lessee agrees to comply with all Environmental Laws applicable to the Parking Improvement Premises and Parking Improvements for the full Ground Lease Term, and Ground Lessee shall bear all costs associated with and arising from such compliance. If Ground Lessee fails to comply with any Environmental Laws, then Ground Lessor shall have the right, but not the obligation, to undertake such compliance and charge Ground Lessee the costs of compliance plus interest at the Default Interest Rate accruing from the date of disbursement and along with reasonable attorney fees incurred in such compliance.

21.2 **Indemnification of Ground Lessor**. To the extent authorized by law, Ground Lessee agrees to defend, indemnify and hold harmless the Ground Lessor, its owners, affiliates, and their respective officers, employees and agents, from and against and shall reimburse each such party for any and all loss, claim, liability, damage, judgment, penalty, injunctive relief, injury to person, property or natural resources, cost, expense, action or cause of action arising in connection with or as the result of the existence, use, handling, storage, transportation, manufacture, release or disposal of any Hazardous Substance in, on or under the Parking Improvement Premises, whether foreseeable or unforeseeable, to the extent any such Hazardous Substance was brought upon the Parking Improvements or Parking Improvement Premises (or the discharge thereof was caused, permitted or suffered) by Ground Lessee, any of its agents or contractors, or the employees of any of them. The foregoing indemnification against such losses includes, without limitation, indemnification against all costs in law or in equity of removal, response, investigation, or remediation of any kind, and disposal of such Hazardous Substances, all costs of determining whether the Parking Improvement Premises and Parking Improvements are in compliance with, and of causing the Parking Improvement Premises and Parking Improvements to be in compliance with, all applicable Environmental Laws, all costs associated with claims for damages to persons, property, or natural resources, and such indemnified party's reasonable consultants' fees, court costs and expenses incurred in connection with any thereof. The provisions contained in this Subsection 21.2 shall only apply during those time periods that Ground Lessee actually directly operates the Governmental Program on and in the Parking Improvement Premises and Parking Improvements, and shall not apply (i) during the period of the original construction of the Parking Improvements until the date of substantial completion, and (ii) if Ground Lessee sells its interest in this Ground Lease as long as the purchaser of such interest specifically agrees, in

writing, to comply with such provisions and allows Ground Lessor to enforce such provisions as a third party beneficiary.

21.3 **Survival.** Any monetary obligations that this Section 21 imposes on Ground Lessee, and the obligations of Ground Lessee to indemnify the Ground Lessor, its owners, affiliates, and their respective officers, employees and agents, shall survive the termination of this Ground Lease or the running of the Ground Lease Term. The rights of such indemnified parties hereunder shall be in addition to any other rights or remedies that such indemnified parties may have against Ground Lessee under this Ground Lease, or any other document, or at law or in equity.

22. **Events of Default.** The following events shall, unless waived in writing, constitute an Event of Default under this Ground Lease upon: (i) written notice of the event that causes such default being given to the party that caused such event to occur, and (ii) failure by the party that caused such event to occur to cure such default within thirty (30) days of receipt of such written notice for those events that can be cured within such time period or within whatever time period is needed to cure those events that cannot be cured within thirty (30) days as long as the defaulting party is using commercially reasonable efforts to cure and is making reasonable progress in curing such event; provided, however, in no case shall the time period to cure any event exceed three (3) months unless otherwise consented to, in writing, by the non-defaulting party:

22.1 **Compliance with Ground Lease.** Failure by either party hereto to fully comply with any of the provisions contained in this Ground Lease that apply to such party.

22.2 **Performance of Acts.** Failure by either party hereto to promptly perform any acts required of such party under this Ground Lease, or the performance of any act by either party hereto that this Ground Lease prohibits such party from performing.

22.3 **Payment of Amounts Due.** Failure by either party hereto to promptly pay any amounts that such party is responsible for the payment of and is required to pay under this Ground Lease.

22.4 **Reimbursement of Amounts.** Failure by either party hereto to promptly reimburse the other party hereto for those amounts that the defaulting party is required to reimburse to the other party under this Ground Lease.

22.5 **Warranties, Representations, and Covenants.** If any warranty, representation, or covenant made by either party hereto proves to be false or misleading in any material respect, or if any party hereto performs an act that causes any warranty, representation, or covenant to become false or misleading in any material respect at any time in the future.

Notwithstanding the foregoing notice provisions, any of the above delineated events that cannot be cured shall, unless waived in writing by the non-defaulting party, constitute an Event of Default immediately upon the defaulting party being given written notice of such event.

23. **Remedies**. Upon the occurrence of an Event of Default and the defaulting parties failure to correct or remedy such default within the allowable cure period, the following shall apply:

23.1 **Ground Lessor's Remedies**. Upon Ground Lessee causing an Event of Default to occur, Ground Lessor's remedy shall, subject to the qualification contained in this Subsection 23.1, be limited to the institution of an action in equity to compel specific performance by Ground Lessee. If the Event of Default involves Ground Lessee's failure to reimburse Ground Lessor for any amounts that Ground Lessor advanced hereunder to cure an Event of Default caused by Ground Lessee or Ground Lessees failure to comply with an order for specific performance, then Ground Lessor's remedies shall also include a right to initiate an action in law and equity to recover such amounts and any damages (not including consequential or punitive damages) that Ground Lessee's failure to comply with an order for specific performance caused to Ground Lessor. An Event of Default by Ground Lessee shall not be grounds for termination or modification of this Ground Lease, or an action for monetary damages other than an action to recover any amounts that Ground Lessor advanced hereunder to cure an Event of Default caused by Ground Lessee or damages caused by Ground Lessee's failure to comply with an order for specific performance.

23.2 **Ground Lessee's Remedies**. Upon Ground Lessor causing an Event of Default to occur Ground Lessee may; (i) commence an action in equity to compel specific performance by Ground Lessor, or (ii) take such other actions and seek such other remedies as may be available to it in law or equity. Provided, however, that Ground Lessee's damages, if any, shall be limited to actual damages incurred by Ground Lessee and shall not include any consequential or punitive damages, and further provided that such Ground Lessee's enforcement of any judgment against Ground Lessor shall be limited to Ground Lessor's interest in the Parking Improvement Premises and Parking Improvements.

23.3 **Ground Lessor's Cure Rights**. In addition to all other rights and remedies contained herein, Ground Lessor may (but shall not be obligated to) cure an uncured Event of Default caused by Ground Lessee. In the event of such a cure, Ground Lessor shall promptly furnish Ground Lessee an itemized statement of the costs and expenses incurred to affect such cure, and Ground Lessee shall promptly pay such amount to Ground Lessor together with interest on such amounts at the Default Interest Rate.

23.4 **No Remedy Exclusive**. No remedy herein conferred upon or reserved to either party hereto is intended to be exclusive of any other available remedy or

remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Ground Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

23.5 **Survival.** Any monetary obligations that this Section 23 imposes on Ground Lessee or Ground Lessor shall survive the termination of this Ground Lease or the running of the Ground Lease Term.

23.6 **Attorney's Fees.** If any party shall bring an action against the other to enforce the terms of this Lease, the non-prevailing party in such action shall pay to the prevailing party an amount equal to the prevailing party's costs and expenses (including reasonable attorney's fees) incurred in enforcing the terms of this Lease.

24. **Notices.** All notices, demands and requests required or permitted to be given under this Ground Lease must be in writing, and shall be deemed to have been properly given or served either on the date of hand delivery or two (2) days after the date such notice is deposited with the United States Mail, addressed to the party to whom such notice is being given, prepaid and registered or certified mail or delivery charges prepaid, return receipt requested, at the following addresses:

To Ground Lessor:

Duluth Real Estate LLC
105 West Superior Street
Duluth, MN 55802
Attention: Senior Vice President and Chief Financial Officer

With a copy to:

Duluth Real Estate LLC
105 West Superior Street
Duluth, MN 55802
Attention: Legal Department

To Ground Lessee:

City of Duluth
411 West First Street
Room 330 City Hall
Duluth, MN 55802
Attention: City Clerk

Rejection or refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of notice sent to the most recent address of record, or other communication, demand or request. Any party may change its address by giving written notice in accordance with the provisions contained in this Section 24, stating its new address, to any other party, and such newly designated address shall be such party's address for the purposes of all communications, demands, request or notices, permitted or required to be given or served under this Ground Lease.

In addition to any other notice required hereunder, Ground Lessee agrees to promptly notify Ground Lessor of any notices it receives from the Commissioner of MMB or the Minnesota Department of Employment and Economic Development under the Grant Agreement.

25. **Collateral Assurances.** In addition to any other information which may reasonably be requested, either party hereto shall without charge at any time and from time to time hereafter but not more often than once every twelve (12) months, within thirty (30) days after written request certify by written instrument duly executed and acknowledged to any person, firm, or corporation specified in such request; (i) whether this Ground Lease has been supplemented, amended, or modified, and if so, the substance and manner of such supplement, amendment, or modification, (ii) the validity and force and effect of this Ground Lease, in accordance with its tenor as then constituted, (iii) whether the responding party has actual knowledge (without obligation to make inquiry) of any Event of Default, (iv) whether the responding party has actual knowledge (without obligation to make inquiry) of any offsets, counterclaim or defenses to the terms and obligations under this Ground Lease, and (v) the commencement and expiration dates of the Ground Lease Term.

Any such certificate may be relied on by the party who requested it and any other person, firm, or corporation to whom it may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing it.

26. **Amendment; Modification; Waiver.** No amendment, modification, or waiver of any condition, provision, or term of this Ground Lease shall be valid or of any effect unless it is made in writing, specifies with particularity the extent and nature of such amendment, modification, or waiver, is signed by the party or parties to be bound or its duly authorized representative, and (except in the case of any waiver by Ground Lessor) is approved in writing by the State and the Commissioner of MMB. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default.

27. **Grant Agreement Prevails.** If a conflict exists between any of the provisions contained in this Ground Lease and any of the provisions contained in the Grant Agreement, the provisions of the Grant Agreement shall prevail. Ground Lessee shall not amend or otherwise modify the Grant Agreement in a manner that would materially adversely affect the rights of the Ground Lessor hereunder without giving prior written notice to the Ground Lessor, except as may be required by law.

28. **Approval by Commissioner**. This Ground Lease shall not be valid or of any force or effect until it has been approved or consented to, in writing by the Commissioner of MMB.

29. **Binding Effect**. This Ground Lease shall be binding upon and inure to the benefit of the Ground Lessor and Ground Lessee, and their respective successors and assigns.

30. **Captions**. All captions, headings, or titles in the sections or subsections of this Ground Lease are inserted for convenience of reference only, and shall not constitute a part of this Ground Lease or as a limitation of the scope of the particular paragraphs or sections to which they apply.

31. **Relationship of Parties**. Unless specifically agreed to in writing, nothing contained in this Ground Lease is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Ground Lessor and the Ground Lessee, nor shall either party hereto be considered or deemed to be an agent, representative, or employee of any other party hereto in the performance of this Ground Lease or operation of the Parking Improvement Premises and Parking Improvements.

32. **Severable Provisions**. Each provision, section, sentence, clause, phrase, and word of this Ground Lease is intended to be severable. If any provision, sentence, clause, phrase, and word hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Ground Lease.

33. **Entire Agreement**. This Ground Lease and all of the other documents referred to herein contain the entire understanding of the parties hereto with respect to the transactions contemplated hereby, and supersede all prior agreements and understandings, whether oral, implied, written, or otherwise, between the parties with respect to such subject matter. No representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in this Ground Lease or in any of the other documents referred to herein, or unless mutually agreed to in writing between the parties hereto after the date hereof. Ground Lessor and Ground Lessee agree that neither party has relied on any verbal representations, agreements, or understandings not expressly set forth herein.

34. **Choice of Law; Venue**. All matters relating to the validity, construction, performance, or enforcement of this Ground Lease shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Ground Lease shall be initiated, filed and venued in the State of Minnesota District Court located in the City of Duluth, County of St. Louis, State of Minnesota. The provisions contained in this Section 34 shall survive the termination of this Ground Lease or the running of the Ground Lease Term.

35. **Short-Form Recordable Lease**. Upon the request of one of the parties hereto the other party hereto shall promptly execute duplicate originals of an instrument, in recordable form, which will constitute a short form of this Ground Lease that sets forth a description of the Parking Improvement Premises, the term and renewal options of this Ground Lease, and any other portions hereof, excepting the rent provisions, as either party may request.

36. **Brokerage Fees**. Each party hereto warrants that it has not incurred any real estate brokerage fees, finders' fees, loan brokerage fees, or any other fees to any third party in connection with this Ground Lease, and in the event that any third party institutes legal action in an effort to recover such fees, the parties shall jointly defend such action. If a judgment is obtained against the parties jointly, the party responsible for breach of this warranty shall reimburse the other party for the latter's attorneys' fees, court costs, expenses, and share of the judgment.

37. **Waiver of Subrogation**. Ground Lessee, on behalf of itself and its insurer, hereby waives all claims and rights of recovery against Ground Lessor that it would, but for this Section 37, have to the Ground Lessor for losses occurring to the Parking Improvement Premises, Parking Improvements, betterments, trade fixtures, equipment, personal property and other property located therein or thereupon: (i) to the extent actually covered by insurance required to be carried by the party waiving, or (ii) to the extent actually covered by any other insurance being carried by the party waiving at the time of such occurrence. The provisions contained in this Section 37 shall survive the termination of this Ground Lease or the running of the Ground Lease Term.

38. **Waiver of Certain Damages**. In consideration of entering into this Ground Lease, Ground Lessor and Ground Lessee hereby waive and forever give up any right to claim or recover damages for lost income or profits as a result of any breach of this Ground Lease or any documents or agreements referred to herein that arise out of an event occurring prior to the completion and opening of the Parking Improvements and its availability for the operation of the Governmental Program therein, even if such opening is delayed as a result of any such breach. The agreements and waivers set forth in this Section 38 shall survive the termination of this Ground Lease or the running of the Ground Lease Term.

39. **Compliance with Laws**. Each of Ground Lessor and Ground Lessee agrees that it will comply with all present and future laws, ordinances, and regulations, as amended and in effect from time to time, applicable to its use, occupancy, alteration or improvement of the Parking Improvement Premises and Parking Improvements.

40. **Delay; Waiver**. No delay or omission by either party hereto to exercise any right or power accruing upon any noncompliance or default by the other party with respect to any of the terms or provisions of this Ground Lease shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. A waiver by either of the parties hereto of any of the covenants, conditions or agreements herein to be performed by the other shall not be construed to be a waiver of any succeeding

breach thereof, or of any other covenant, condition, or agreement herein. In addition, the exercise of any single or partial right or remedy shall not preclude other or further exercise thereof or the exercise of any other right or remedy.

41. **Time of Essence.** Time is of the essence in this Ground Lease, and of each and every covenant, term, condition, and provision hereof.

42. **Third Party Beneficiary.** Except as expressly set forth herein, no third party beneficiary rights are created by this Ground Lease.

43. **Cost of Performance.** Whenever, in this Ground Lease, anything is to be done or performed by Ground Lessee or Ground Lessor, unless otherwise expressly provided to the contrary, it shall be done or performed at the sole cost and expense of Ground Lessee or Ground Lessor, or their designees, as the case may be. The provisions contained in this Section 43 shall survive the termination of this Ground Lease or the running of the Ground Lease Term.

44. **Delays; Stoppages.** Any prevention, delay or stoppage due to strikes, labor disputes, lock-outs, acts of God, inability to obtain labor or materials, governmental restrictions, governmental controls, enemy or hostile government action, civil commotion, fire or other casualty, and other causes beyond the control of the party obligated to perform shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, except the obligations of either Ground Lessor or Ground Lessee with regard to the payment of monies.

45. **Consents; Approvals.** All approvals required hereunder shall be in writing. Except as otherwise expressly provided herein, any consent or approval required in this Ground Lease may not be unreasonably withheld or delayed. Unless provision is made for a specific time period, consent or approval shall be given or withheld within thirty (30) days, or, if approval is required from Ground Lessee's City Council, within sixty (60) days of the request for such consent or approval.

46. **Record Keeping and Reporting.** Ground Lessee shall maintain or cause to be maintained books, records, documents and other evidence pertaining to the costs or expenses associated with this Ground Lease to comply with the requirements contained in this Ground Lease and the G.O. Compliance Legislation, and upon request shall allow or cause the entity which is maintaining such items to allow the State Entity, auditors for the State Entity, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract, all of such items. Ground Lessee shall use or cause the entity which is maintaining such items to use generally accepted accounting principles in the maintenance of such items, and shall retain or cause to be retained all of such items that relate to the Ground Lease for a period of 6 years from the date that the Ground Lease is terminated.

47. **Data Practices.** With respect to any data that the parties possess regarding the Ground Lease, both parties agree to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

48. **Limitation on Claims Against City**. During all times that the Ground Lessee is the City of Duluth (or a Permitted Transferee, as defined in Section 14):

(a) Ground Lessee's obligation to pay or perform any duty or obligation under this Ground Lease and the Ancillary Documents is a revenue obligation and not a general obligation of Ground Lessee, and Ground Lessee's payment and performance obligations are limited to the following sources of funds: (i) the Revenues of the Parking Improvements (and the payment by Ground Lessee of obligations under this Ground Lease and the Ancillary Documents shall be considered Current Expenses or Funded Depreciation payable from Revenues, as such terms are defined in the Bond Resolution); (ii) insurance proceeds and condemnation awards relating to the Parking Improvements actually received or to be received by Ground Lessee; and (iii) any other amounts actually received or to be received by Ground Lessee by reason of its ownership of the leasehold estate hereunder and/or its ownership and operation of the Parking Improvements.

(b) If Ground Lessee faces a duty or obligation under this Ground Lease or the Ancillary Documents requiring an expenditure of funds which are projected to cause Current Expenses and Funded Depreciation to exceed Revenues and other amounts described in the foregoing clause (a), the City of Duluth's administration shall recommend and the City Council shall consider the options available to the Ground Lessee to perform and/or pay for such duty and obligation under this Ground Lease, including the issuance of revenue bonds payable from Revenues of the Parking Improvements; provided, however, the City's obligations under this subparagraph (b) shall always be limited to Revenues of the Parking Improvements and other amounts described in the foregoing clause (a).

(c) Neither the full faith and credit nor the taxing powers of Ground Lessee are pledged to the payment or performance of the Ground Lessee's duties and obligations under this Ground Lease and the Ancillary Documents.

(Signature pages follow.)

SIGNATURE PAGE
TO
GROUND LEASE

IN WITNESS WHEREOF, Ground Lessor has executed this Ground Lease as of the day first written above.

GROUND LESSOR:

Duluth Real Estate LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

SIGNATURE PAGE
TO
GROUND LEASE

IN WITNESS WHEREOF, Ground Lessee has executed this Ground Lease as of the day first written above.

GROUND LESSEE:

City of Duluth,
a Minnesota municipal corporation

By: _____
Its Mayor

By: _____
Its City Clerk

Approved:

_____
Assistant City Attorney

Countersigned:

_____
City Auditor

This instrument was drafted by:
Faegre Baker Daniels LLP (TLJ)
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901

Exhibit A

LEGAL DESCRIPTION OF LAND

Parcel 1: Lot 65, Duluth Proper, First Division, St. Louis County, Minnesota. ABSTRACT PROPERTY

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, 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 of said Street and a depth of 140 feet of Fifth Avenue West, Duluth, EXCEPT that portion of said lots and said Government Lot 5 lying within 29 feet of the East line of Fifth Avenue West as originally platted. TORRENS PROPERTY

Exhibit B

LEGAL DESCRIPTION OF PARKING FACILITY PARCEL

Tract 1 (Elevators on First Floor of the Development, as defined in the Development Agreement)

That portion of the Land described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 129.31 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 56.92 to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 29.04 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 8.08 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 29.04 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 8.08 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 635.0 feet to elevation 652.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 2 (Elevators on Second Floor of the Development)

That portion of the Land described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 129.31 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 56.92 to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 29.04 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 8.08 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 29.04 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 8.08 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 652.0 feet to elevation 668.67 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 3 (Third Floor of the Development)

That portion of the Land described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 1.47 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of

8.50 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 94.13 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 28.70 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 114.99 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 15.04 feet; thence South 71 degrees 57 minutes 56 seconds East a distance of 31.28 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 31.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 9.48 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 32.83 feet; thence North 71 degrees 51 minutes 56 seconds West a distance of 27.95 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 16.65 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 211.09 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 24.54 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 98.29 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 364.67 feet to the point of beginning.

EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 103.05 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 65.28 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 19.34 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 16.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 19.34 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 16.15 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, and 69, a distance of 137.39 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 10.77 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.77 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69 and 71, a distance of 158.37 feet; thence North 48 degrees 23 minutes 09 seconds

West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 12.22 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 12.22 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71 and 73, a distance of 224.61 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 59.30 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 21.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 3.33 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 21.40 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 3.33 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71, 73, and 75, a distance of 258.40 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning of the easement to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 13.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 13.15 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 668.67 feet to elevation 679.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 4 (Floors Four through Six of the Development)

That portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 1.47 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 8.50 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 94.13 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; North 48 degrees 23 minutes 09 seconds West a distance of 28.70 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 334.19 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 24.54 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet;

thence South 48 degrees 23 minutes 09 seconds East a distance of 98.29 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 364.67 feet to the point of beginning.

EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 103.05 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 65.28 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 19.34 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 16.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 19.34 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 16.15 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, and 69, a distance of 137.39 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 10.77 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.77 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69 and 71, a distance of 158.37 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 12.22 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 12.22 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71 and 73, a distance of 224.61 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 59.30 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 21.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 3.33 feet; thence South 48 degrees 23 minutes 09

seconds East a distance of 21.40 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 3.33 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71, 73, and 75, a distance of 258.40 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning of the easement to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 13.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 13.15 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 679.0 feet to elevation 713.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 5 (Top of Elevator Shaft on Seventh Floor of the Development)

That portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, 67 & 69, a distance of 127.50 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 54.18 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 14.76 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 5.00 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 16.76 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.23 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 31.52 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.23 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 713.0 feet to elevation 730.34 feet, National Geodetic Vertical Datum, 1929 adjustment.

Exhibit C

LEGAL DESCRIPTION OF ALLEY PARCEL

That portion of Lots 65, 67, 69, 71, 73, 75, 77 and that part of Lot 79 lying northeasterly of the southwesterly 34.00 feet thereof, all in DULUTH PROPER FIRST DIVISION, St. Louis County, Minnesota, and that part of the Alley as dedicated in DULUTH PROPER FIRST DIVISION that lies adjacent to said lots, described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 77.81 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 131.33 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 28.67 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 62.00 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 28.67 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 62.00 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 668.67 feet to elevation 679.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Exhibit D

LEGAL DESCRIPTION OF DNT PARCEL

West Half of Lot 68 and all of Lot 70, DULUTH PROPER, FIRST DIVISION, WEST FIRST STREET. ABSTRACT PROPERTY

Exhibit E

PERMITTED ENCUMBRANCES

1. Real estate taxes and installments of special assessments not currently due and payable.

2. Easements, covenants, conditions, restrictions, and limitations, if any, that do not impair the use of the Parking Improvement Premises.

3. Reservation of any minerals or mineral rights reserved to the State of Minnesota.

4. Building and zoning laws, ordinances, and state and federal regulations.

5. The provisions of Minn. Stat. §16A.695 regarding the interests of the State of Minnesota.

6. Any liens or other encumbrances created by the Declaration.

7. Any liens or other encumbrances created by the Grant Agreement.

8. The DNT Easement Agreement

9. The Operation and Easement Agreement

10. Any pedestrian passageway agreements between Ground Lessor and Ground Lessee.

11. Any liens or other encumbrances created by or in accordance with the provisions contained in this Ground Lease, including any Short Form Ground Lease recorded in memorialization of the Ground Lease.

12. Any liens or encumbrances that secure the repayment of any of the Approved Debt as such term is used in the Grant Agreement.

13. Easement for slopes on First Alley purposes, together with any incidental rights, in favor of City of Duluth, Minnesota, as contained in the CONDEMNATION, recorded July 12, 1890 in Book C of Plats, Page 241, and shown by recital on the certificate of title.

14. Easement for public highway purposes, together with any incidental rights, in favor of the City of Duluth, Minnesota, as contained in the EASEMENT, dated February 23, 1966, recorded July 25, 1966 as Document No. 321640.

15. Terms, conditions, obligations and provisions of the AGREEMENT by and between KDAL, Inc., a Minnesota corporation and the City of Duluth, Minnesota, dated May 5, 1967, recorded June 12, 1967 as Document No. 327065.

16. Terms, conditions, covenants, restrictions, obligations, provisions and easement for public street purposes in favor of the City of Duluth, Minnesota, contained in the GRANT OF EASEMENT AND AGREEMENT, dated February 27, 1986, recorded March 12, 1986 as Document No. 474554.

EXHIBIT E

(DNT Easement Agreement)

[See attached]

EASEMENT AGREEMENT

This Easement Agreement (this "Agreement") is entered into as of _____, 2014, by and between Duluth Real Estate LLC, a Delaware limited liability company ("Developer"), and Forum Communications Company, a North Dakota corporation ("Forum"), as successor by merger to Duluth/Superior Newspapers LLC, a Delaware limited liability company.

RECITALS

A. Developer is the owner of the real property located at 401-403 and 425 W. Superior Street, Duluth, Minnesota, as more particularly described on Exhibit A hereto (the "Development Parcel").

B. Developer intends to construct an office tower on a portion of the Development Parcel (the "Office Building"). Developer, as owner of the Development Parcel, and its successors and assigns as owner of the Development Parcel from time to time, are collectively referred to herein as the "Developer".

C. Pursuant to that certain Development Agreement of even date herewith (the "Development Agreement"), between Developer and the City of Duluth, a municipal corporation under the laws of the State of Minnesota (the "City"), Developer and the City have agreed to enter into a ground lease by which Developer will lease to the City a portion of the Development Parcel (any ground lease entered into by the City and Developer pursuant to the Development Agreement, including all amendments, modifications, renewals, extensions and supplements thereto and restatements and replacements thereof, is referred to herein as the "Ground Lease").

D. That portion of the Development Parcel that is from time to time leased to the City pursuant to the Ground Lease is referred to herein as the "Parking Facility Parcel". During the term of (and on and subject to the terms of) the Ground Lease, the City shall have and enjoy all of the rights and benefits, and shall perform and be subject to all obligations and liabilities, of the Parking Facility Owner, to the extent leased, delegated or assigned to the City in accordance with and subject to Section 5 of this Agreement. Developer, as owner of the Parking Facility Parcel, and its successors and assigns as owner of the Parking Facility Parcel from time to time are sometimes collectively referred to herein as the "Parking Facility Owner".

E. Pursuant to the Ground Lease, the City intends to develop and operate a multi-level parking facility (the "Parking Facility") on and within the Parking Facility Parcel and over the alley between the Parking Facility Parcel and the Easement Parcel (as defined herein). The Office Building, Parking Facility and other improvements constructed on the Development Parcel are referred to herein collectively as the "Development".

F. Forum, as successor by merger to Duluth/Superior Newspapers LLC, a Delaware limited liability company, is the owner of the real property located at 408 West 1st Street, Duluth Minnesota, as more particularly described on Exhibit B hereto, including any rights to any portion of the alley adjacent thereto as a result of any future vacation of the public right-of-way by the City (the "Easement Parcel"). Forum, as owner of the Easement Parcel, and its successors and assigns as owner of the Easement Parcel from time to time, are collectively referred to herein as the "Easement Parcel Owner."

G. In connection with the development of the Parking Facility, the Easement Parcel Owner has agreed to grant to the Developer and/or Parking Facility Owner, as applicable, certain access, construction and other easements as more particularly set forth herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

AGREEMENT

1. Grant of Easements

(a) Demolition and Construction. Easement Parcel Owner hereby grants to the Parking Facility Owner and the Parking Facility Owner's architects, engineers, agents, contractors, subcontractors, materialmen and others engaged in directing and performing any construction or demolition work, as an appurtenance to the Parking Facility Parcel, a temporary exclusive easement to enter onto the Easement Parcel for the following purposes, as deemed necessary or desirable by the Parking Facility Owner, in its reasonable discretion:

(i) to demolish all or any portion of the existing improvements located on the Easement Parcel; and

(ii) to construct improvements on the Easement Parcel, whether above any underlying improvements of Easement Parcel Owner, within the footprint of any former improvements demolished by the Parking Facility Owner, or elsewhere within the Easement Parcel, including without limitation, an entrance and exit ramp connecting the Parking Facility to a point of vehicular ingress and egress on West 1st Street on the northwest boundary of the Easement Parcel, together with structural elements, parking facilities, pedestrian walkways, utility facilities and related improvements.

The foregoing construction work shall be performed substantially in accordance with construction plans attached hereto as Exhibit C, and Easement Parcel Owner hereby approves the same; *provided, however*, the construction plans attached hereto as Exhibit C shall not be altered, modified or amended in any way that reduces the total number of parking spaces on the Easement Parcel or restricts access thereto (including the Parking Facility Extension Spaces and Existing Forum Spaces, as such terms are defined below) without the prior written consent of Easement Parcel Owner. In the event Parking Facility Owner commences any demolition or construction work upon the Easement Parcel, but fails to complete construction of the Parking Facility Extension within twenty-four (24) months of commencement of such demolition or construction work, Parking Facility Owner shall be obligated to restore the Easement Parcel to its same condition as existed prior to the demolition and/or construction (including, without limitation, restoration of the number of parking spaces that existed as of the date of this Agreement) within a reasonable time, and failure to so restore shall entitle the Easement Parcel Owner to all remedies available to Easement Parcel Owner under applicable law.

The easement rights granted by this Section 1(a) are collectively referred to as the "Construction Easement," and any improvements constructed by Parking Facility Owner or Developer on and within the Easement Parcel from time to time, including any repairs and replacements thereof from time to time, are collectively referred to as the "Parking Facility Extension." The Construction Easement shall be temporary and shall commence as of the date of this Agreement and shall terminate upon the earliest to occur of the following dates: (i) the date of completion of the Parking Facility Extension, or (ii) the date that is twenty-four (24) months from the date of this Agreement.

The Parking Facility Owner will pay all costs of the construction of the Parking Facility Extension.

(b) Parking Facility Extension; Alteration; Modification. Easement Parcel Owner hereby grants to Parking Facility Owner an exclusive and perpetual easement to keep and maintain the improvements constituting the Parking Facility Extension in the location that the Parking Facility Extension is constructed in accordance with Section 1(a), subject to the terms of this Agreement. Upon completion of construction of the Parking Facility Extension, Easement Parcel Owner and Parking Facility Owner agree to (i) cause the Parking Facility Extension to be surveyed (at the expense of Parking Facility Owner) and a description of the Parking Facility Extension to be prepared, and (ii) to execute an amendment to this Agreement, setting forth such description.

The Parking Facility Owner shall not remove the Parking Facility Extension, but the Parking Facility Owner may alter or modify the Parking Facility Extension so long as such alteration or modification does not reduce the total number of parking spaces on the Easement Parcel or restrict access thereto (including the Parking Facility Extension Spaces and Existing Forum Spaces, as such terms are defined below); *provided, however*, Parking Facility Owner may not build any structure or erect any structure addition, or additional levels of floors, on, upon or above the Parking Facility Extension to be constructed pursuant to Exhibit C. Easement Parcel Owner shall not alter, modify, replace or operate the Parking Facility Extension without the advance written consent of Parking Facility Owner.

Easement Parcel Owner may freely sell, convey, assign, or otherwise transfer, the Easement Parcel together with all improvements located thereon and all fixtures attached thereto, including, without limitation, all right, title and interest of Easement Parcel Owner in and to the Parking Facility Extension (including all parking rights on the Easement Parcel in favor of Easement Parcel Owner set forth in Section 3 of this Agreement), all without obtaining any consent whatsoever of Developer, Parking Facility Owner or City. Any purchaser, successor, assignee or transferee of Easement Parcel Owner pursuant to a conveyance of the Easement Parcel by Easement Parcel Owner will enjoy all benefits of and be subject to all of the Easement Parcel Owner's rights (including all parking rights set forth in Section 3) and obligations under this Agreement and shall take the Easement Parcel subject to all of Parking Facility Owner's rights and obligations under this Agreement.

(c) Access. Easement Parcel Owner hereby grants to the Parking Facility Owner, as an appurtenance to the Parking Facility Parcel, a non-exclusive and perpetual easement to use the Easement Parcel solely (except as otherwise provided in this Agreement) for the purpose of vehicular and pedestrian ingress to and egress from the Parking Facility and Parking Facility Extension, including by and through any public pedestrian passageways located on the

Easement Parcel or the property adjacent thereto that are part of the City's skywalk system.

(d) Facilities. Easement Parcel Owner hereby grants to the Parking Facility Owner, as an appurtenance to the Parking Facility Parcel, a non-exclusive and perpetual easement to construct, install, maintain, repair and replace parking-related equipment and facilities over, under and on the Easement Parcel as deemed necessary or desirable by Parking Facility Owner from time to time, in its reasonable discretion, including by way of example but without limitation, ticket machines, ticket scanners, ticket booths and access gates. The foregoing easement shall be non-exclusive; *provided, however,* to the extent such facilities are constructed and installed on the Parking Facility Extension from time to time, Easement Parcel Owner shall not alter, modify or make use of, or authorize any other party to alter, modify or make use of, any such facilities in a manner so as to materially interfere with the easement rights granted by this Section 1(c) to Parking Facility Owner, and the foregoing easement shall be exclusive to the Parking Facility Owner as to all such facilities constructed and installed on the Parking Facility Extension.

(e) Utilities. Easement Parcel Owner hereby grants to the Parking Facility Owner, as an appurtenance to the Parking Facility Parcel, a non-exclusive and perpetual easement to construct, install, maintain, repair and replace utility facilities serving the Parking Facility Extension or Parking Facility over, under, through and above the Easement Parcel as deemed necessary or desirable by Parking Facility Owner from time to time, in its reasonable discretion, including without limitation, electrical power lines, fiber optic lines and storm water pipelines and conduits.

(f) Structural Support. Easement Parcel Owner hereby grants to the Parking Facility Owner a non-exclusive and perpetual easement for structural support for any portion of the Parking Facility Extension constructed on any underlying improvements of Easement Parcel Owner within the Easement Parcel. The foregoing easement shall be non-exclusive; provided, however, to the extent structural supports are constructed and installed on any underlying improvements of Easement Parcel Owner within the Easement Parcel in accordance with the Construction Easement, the easement rights granted by this Section 1(f) shall be exclusive to the Parking Facility Owner, and Easement Parcel Owner shall not, without the advance written consent of the Parking Facility Owner, demolish, alter, repair or replace, or reduce the load-bearing capacity of, any such underlying improvements on the Easement Parcel.

(g) Signage. Easement Parcel Owner hereby grants to Parking Facility Owner, as an appurtenance to the Parking Facility Parcel, a non-exclusive and perpetual easement for the installation, repair, maintenance and display of signage

within the Easement Parcel, as determined by Parking Facility Owner in its reasonable discretion; provided, however, all such signage must be related to instructional and directional information (e.g., parking, payment and traffic signs, and identifying signage for Development occupants) for the Parking Facility and/or Parking Facility Extension, and the Developer and Parking Facility Owner shall not be authorized to use the Easement Parcel for advertisements, marketing or the like. Easement Parcel Owner covenants that it will not authorize any third-party signage within the Parking Facility Extension without the advance written consent of Parking Facility Owner.

(h) Crane swing. Easement Parcel Owner hereby grants to Parking Facility Owner, as an appurtenance to the Parking Facility Parcel, a temporary non-exclusive easement to, through and over the volume of air which lies above the Easement Parcel, for the purpose of operating a construction crane from time-to-time during construction, maintenance, repair or alteration of the Office Building, Parking Facility, or Parking Facility Extension. Easement Parcel Owner shall not use, or authorize the use of, the volume of air which lies above the Easement Parcel in any manner which would interfere with or interrupt the use and enjoyment of the easement granted pursuant to this Section 1(h) by Parking Facility Owner. The foregoing easement in this Section 1(h) shall be temporary and shall commence as of the date of this Agreement and shall terminate upon the earliest to occur of the following dates: (i) the date of completion of the Parking Facility Extension, or (ii) the date that is twenty-four (24) months from the date of this Agreement.

(i) Easement for Repairs. Easement Parcel Owner hereby grants to the Parking Facility Owner and the Parking Facility Owner's architects, engineers, agents, contractors and subcontractors, as an appurtenance to the Parking Facility Parcel, a non-exclusive easement to enter onto the Easement Parcel in order to maintain, repair, replace and alter from time to time any improvements constructed by Parking Facility Owner on the Easement Parcel, as deemed necessary or desirable by Parking Facility Owner in its reasonable discretion.

Except as expressly provided in this Agreement (including, but not limited to, Easement Parcel Owner's parking rights under Section 3), Easement Parcel Owner shall not alter, modify or make use of, or authorize any other party to alter, modify or make use of, any portion of the Easement Parcel in a manner so as to materially interfere with the rights granted Parking Facility Owner herein without the advance written consent of Parking Facility Owner.

2. Demolition and Construction

(a) Cooperation. The Developer and Parking Facility Owner agree to keep Easement Parcel Owner apprised of its plans and schedule for any work undertaken pursuant to Section 1 of this Agreement. All demolition,

construction or related work by Developer and/or Parking Facility Owner on the Easement Parcel, including without limitation all work done in connection with the Construction Easement or any other easement granted herein, shall be done, performed and promptly paid for at Developer's or Parking Facility Owner's sole cost and expense.

(b) Standard of Work. All construction by the Developer and/or Parking Facility Owner in connection with the Construction Easement shall utilize new materials and shall be performed in a good, safe, workman-like manner.

(c) Construction Insurance. At all times during any demolition and/or construction on the Easement Parcel, or during the making of any improvements or other construction on any portion of the Development Parcel whereby all or any portion of the Easement Parcel, or any of the easements granted in Section 1 of this Agreement, is used or exercised, as the case may be, the Developer or Parking Facility Owner shall have and maintain in full force the following insurance covering the contractor(s) activities: builder's risk insurance (completed value form, if available), general liability (in the same amounts and coverages required of Parking Facility Owner pursuant to Section 6(a) and naming Easement Parcel Owner as an additional insured), automobile liability and Workers Compensation. Prior to the commencement of any such work, Easement Parcel Owner shall be provided with a certificate of such insurance evidencing compliance with this section.

(d) Liens. Developer and Parking Facility Owner shall not permit any mechanics', materialmen's or other liens to attach to the Easement Parcel or any part thereof for work or materials furnished to the Developer or Parking Facility Owner and/or furnished in connection with the Construction Easement or any other easement granted herein, and each of Developer and Parking Facility Owner agrees to indemnify, defend and hold Easement Parcel Owner harmless from and against any of the same caused by it or for which it is responsible. If a mechanics', materialmen's or other lien attaches to the Easement Parcel as a result of work or materials furnished to the Developer or Parking Facility Owner and/or furnished in connection with the Construction Easement or any other easement granted herein, Developer and/or Parking Facility Owner, as applicable, shall bond for or discharge of record such lien within 30 days after notice of the filing thereof. Developer or Parking Facility Owner, as applicable, shall have the right to contest any such lien provided Developer or Parking Facility Owner, as applicable, posts with Easement Parcel Owner reasonable security for such lien during the period of any such contest proceeding.

(e) Legal Compliance. All construction activities performed by the Developer and/or Parking Facility Owner within the Easement Parcel shall be performed in a good, safe, workman-like manner and in compliance with all laws,

statutes, codes (including, without limitation, any building, zoning or land use codes), acts, ordinances, orders, judgments, decrees, injunctions, directions and requirements of all federal, state, county, municipal and local governments having jurisdiction over the Easement Parcel (collectively, the "Legal Requirements").

(f) Indemnity. Each of Developer and Parking Facility Owner agrees to indemnify and hold Easement Parcel Owner harmless from any claims, liens, liabilities, lawsuits, costs, expenses (including reasonable attorneys' fees) and/or damages, including, but not limited to, claims for personal injury, wrongful death, property damage or the like, resulting from, arising out of or related to any act, omission, negligence, gross negligence or willful misconduct of Developer or Parking Facility Owner, as applicable (or any of their respective employees, agents, consultants or contractors), in performing any initial demolition, construction or related work on the Easement Parcel, the Parking Facility Parcel, or the Development Parcel, or in otherwise exercising any easement rights granted under Section 1 of this Agreement. The indemnity obligations of Developer and Parking Facility Owner under this Section 2(f) shall survive any expiration or termination of this Agreement.

(g) Hazardous Substances. Developer and Parking Facility Owner shall not bring, store, generate, handle or treat Hazardous Materials on the Easement Parcel, except for normal quantities of construction and maintenance supplies and materials handled in accordance with Legal Requirements and petroleum and other products typically found in vehicles and equipment used within the Easement Parcel in accordance with Legal Requirements. The term "Hazardous Materials" as used herein shall include, without limitation, whether now or subsequently listed in any governmental listing or publication defining hazardous materials, substances defined as: 'hazardous substances', 'hazardous materials', or 'toxic substances' in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; and any subsequent amendments thereto, or replacement statutes thereof and ordinances, rules and regulations adopted and publications promulgated pursuant to said laws. Neither Developer nor Parking Facility Owner shall take any remedial action in response to the release or presence of Hazardous Materials in, on, under or about the Easement Parcel, nor enter into any settlement agreement, consent decree or other compromise in respect to any Claims relating to Hazardous Materials in any way connected with the Easement Parcel, without first notifying Easement Parcel Owner of its intention to do so and affording Easement Parcel Owner ample opportunity to appear, intervene or otherwise appropriately assert Easement Parcel Owner's interest with respect thereto.

Notwithstanding anything to the contrary contained in this Agreement, each of Developer and Parking Facility Owner agrees to indemnify and hold Easement Parcel Owner harmless from and against any and all claims, demands, losses, liabilities, penalties, damages, costs and expenses, including without limitation, attorneys' fees and costs (collectively "Claims"), arising out of or in any way connected with the use, manufacture, storage, sale, release or disposal of Hazardous Materials or products containing Hazardous Materials by Developer or Parking Facility Owner, as applicable, or any of their respective agents, servants, employees, licensees, contractors or the like in, on, under or about the Easement Parcel including, without limitation: (i) any Claim by a federal, state or local governmental agency or a private citizen arising out of or in any way connected with the use, manufacture, storage, sale, release or disposal of Hazardous Materials or products containing Hazardous Materials by Developer or Parking Facility Owner, as applicable, or any of their respective agents, servants, employees, licensees, contractors or the like in, on, under or about the Easement Parcel; (ii) any Claim by any successor owner, its agents, servants, employees, licensees, contractors or the like arising out of or in any way connected with the use, manufacture, storage, sale, release or disposal of Hazardous Materials or products containing Hazardous Materials by Developer or Parking Facility Owner, as applicable, or any of their respective agents, servants, employees, licensees, contractors or the like in, on, under or about the Easement Parcel; and (iii) the cost of any required or necessary repair, cleanup or detoxification and the preparation of any closure or other required plans in connection therewith. The indemnity obligations of Developer and Parking Facility Owner under this Section 2(g) shall survive any expiration or termination of this Agreement.

3. Easement Parcel Owner Parking Rights

(a) During Construction. Easement Parcel Owner acknowledges and agrees that the demolition or construction activities of the Parking Facility Owner within the Easement Parcel may result in temporary periods in which the available parking spaces within the improvements located on the Easement Parcel as of the date of this Agreement will be reduced in whole or in part, and Parking Facility Owner acknowledges and agrees that the number of available parking spaces on the Easement Parcel as of the date of this Agreement is thirty (30) parking spaces (the "Original Parking Capacity"). During any such temporary periods, Parking Facility Owner, at their expense, will provide Easement Parcel Owner with reasonable replacement parking (i.e., within reasonable proximity to the Easement Parcel) for all parking spots so reduced in order to provide Easement Parcel Owner with available parking spaces in the amount of the Original Parking Capacity until construction of the Parking Facility Extension is completed.

(b) After Construction. The parties shall have the following rights and obligations with respect to parking after construction of the Parking Facility Extension is completed in accordance with this Agreement:

(i) Subject to the provisions of Section 7 relating to casualty and condemnation, and subject to any temporary interruption due to maintenance and repairs conducted pursuant to Section 4, Parking Facility Owner hereby grants to the Easement Parcel Owner (and the Easement Parcel Owner hereby reserves) an exclusive perpetual right and easement to access and use, at no cost to Easement Parcel Owner, all parking spaces on the Easement Parcel, including without limitation (A) all parking spaces located on, about or within the Parking Facility Extension ("Parking Facility Extension Spaces"), and (B) all parking spaces located on, about or within the lower level (including the alley-level and any below-grade levels) of the existing parking structure on the Easement Parcel which remain available for Easement Parcel Owner's use following construction of the Parking Facility Extension (the "Existing Forum Spaces").

(ii) Parking Facility Owner will clean and maintain the Parking Facility Extension Spaces. Easement Parcel Owner will clean and maintain the Existing Forum Spaces. Easement Parcel Owner shall be responsible for the security of, and enforcement of Easement Parcel Owner's right to use (including by the towing of unauthorized vehicles) the Parking Facility Extension Spaces and the Existing Forum Spaces.

(iii) With respect to the Parking Facility Extension Spaces, Easement Parcel Owner shall enter into the standard form of parking agreement, if any, required by Parking Facility Owner from time to time with respect to contract users of the Parking Facility (the "Parking Agreement"); provided, that notwithstanding anything to the contrary contained in any such Parking Agreement, all Parking Facility Extension Spaces shall be provided at no cost to the Easement Parcel Owner (or to any party authorized by Easement Parcel Owner to use the Parking Facility Extension Spaces), and provided further, that in the event of any conflict between any term or condition of this Agreement and the Parking Agreement, the terms of this Agreement shall control.

(iv) The rights granted to Easement Parcel Owner pursuant to this Section 3(b) for use of the Existing Forum Spaces and Parking Facility Extension Spaces shall run with and benefit the Easement Parcel and burden the Parking Facility Parcel, and shall benefit the Forum and its successors and assigns in the Easement Parcel.

4. Maintenance and Repair

(a) Improvements. The Parking Facility Owner, at its sole cost, agrees to keep, manage, maintain and repair the Parking Facility Extension in a first-class manner and condition consistent with the management, operation and maintenance of similar improvements in downtown Duluth, Minnesota, and to keep the same in compliance with all Legal Requirements. In performing maintenance and repair of the Parking Facility Extension under this Section 4, Parking Facility Owner shall minimize, to the extent reasonably possible, any disruption to the parking rights granted to Easement Parcel Owner pursuant to Section 3(b). Easement Parcel Owner, at its sole cost, agrees to keep, manage, maintain and repair any improvements within the Easement Parcel not constructed by the Parking Facility Owner, including without limitation the entire alley-level and any below-grade levels of the Easement Parcel except for any columns or other support structures connected to the Parking Facility Extension, in a first-class manner and condition consistent with the management, operation and maintenance of similar improvements in downtown Duluth, Minnesota, and to keep the same in compliance with all Legal Requirements. The Parking Facility Owner and Easement Parcel Owner may (but shall not be obligated to) agree from time to time that one party or the other shall be responsible for all of the maintenance and repair obligations in this Section 4(a), and shall memorialize any such agreement in writing.

(b) Right to Maintain and Repair. If Easement Parcel Owner fails to keep, manage, maintain and repair any improvements within the Easement Parcel not constructed by the Parking Facility Owner in the manner specified in Section 4(a), Parking Facility Owner shall have the right, but not the obligation, to perform such obligations on behalf of Easement Parcel Owner, and Easement Parcel Owner shall promptly reimburse Parking Facility Owner for any reasonable costs incurred by Parking Facility Owner in connection with Parking Facility Owner's performance of such obligations.

If Parking Facility Owner fails to keep, manage, maintain and repair the Parking Facility Extension in the manner specified in Section 4(a), Easement Parcel Owner shall have the right, but not the obligation, to perform such obligations on behalf of Parking Facility Owner, and Parking Facility Owner shall promptly reimburse Easement Parcel Owner for any reasonable costs incurred by Easement Parcel Owner in connection with Easement Parcel Owner's performance of such obligations.

5. Delegation of Rights

During the term of the Ground Lease, Developer shall have the right to lease, delegate and assign all of its rights and obligations as Parking Facility Owner under this Agreement to the City. Upon any such leasing, delegation or assignment from

Developer to the City, during the term of the Ground Lease, the City shall enjoy all of the rights and benefits, and shall perform and be subject to all obligations and liabilities of the Parking Facility Owner under this Agreement, in each case on and subject to the terms of the Ground Lease (including without limitation Section 48 thereof). By entering into the Ground Lease, the City will be deemed to have accepted and agreed to the provisions of this Section 5; *provided, however*, that Easement Parcel Owner acknowledges and agrees that in no event shall the City have any liability under this Agreement beyond the term of the Ground Lease. Notwithstanding any lease, delegation or assignment of the rights of the Parking Facility Owner under this Agreement to the City, Developer shall remain fully liable to Easement Parcel Owner and shall not be released from liability for the performance of any of the terms, covenants, obligations and conditions to be kept or performed by Developer and/or Parking Facility Owner under this Agreement.

6. Insurance

(a) Parking Facility Owner Insurance. Parking Facility Owner agrees to maintain, or cause to be maintained, adequate (i) commercial general liability insurance with respect to its use and occupancy of the Easement Parcel, specifically including coverage against claims for bodily injury, death and property damage occurring on or about the Easement Parcel, with a single combined limit of not less than $1,500,000, (ii) property insurance covering the full value (without co-insurance) of the Parking Facility Extension (which Parking Facility Owner may carry and maintain as part of its property insurance coverage for the Development), and (iii) workers compensation insurance at statutory limits. Parking Facility Owner shall furnish Easement Parcel Owner with a certificate of insurance evidencing the policies required by this Section 6(a) and naming Easement Parcel Owner as additional insured (providing that such policies shall be primary regardless of any insurance maintained by Easement Parcel Owner, and including a waiver of subrogation in favor of Easement Parcel Owner, and including coverage for owned, hired and non-owned automobile liability, and providing for 30 days' notice of cancellation and/or non-renewal) as soon as reasonably practicable after the date of this Agreement, except as to any policy which by its nature is effective at a later date, in which case a certificate of insurance evidencing such policy shall be furnished as soon as reasonably practicable after the effective date of such policy. Parking Facility Owner may, in its sole discretion, maintain, or cause to be maintained, the insurance coverage amounts required by this Section 6(a) pursuant to an umbrella or blanket insurance policy. During the term of (and on and subject to the terms of) the Ground Lease, the City (but not Parking Facility Owner, nor any other person or entity whatsoever) may maintain a program of self-insurance in lieu of all or a portion of the liability and property insurance (unless maintained by Parking Facility Owner pursuant to Section 6(a)(ii) above) coverage required of the City by this Section 6(a). The foregoing insurance limits are not intended to, and shall not, decrease Parking

Facility Owner's liability pursuant to the terms and conditions of this Agreement.

(b) Easement Parcel Owner's Insurance. Easement Parcel Owner agrees to maintain adequate (i) commercial general liability insurance with respect to its use and occupancy of the Easement Parcel, specifically including coverage against claims for bodily injury, death and property damage occurring on or about the Easement Parcel, with limits of not less than $2,000,000 per occurrence with a $2,000,000 general aggregate including products and completed operations, (ii) property insurance covering the replacement cost (without co-insurance) of any improvements within the Easement Parcel not constructed by the Parking Facility Owner or Developer and which are not demolished by the Parking Facility Owner or Developer pursuant to the Construction Easement, with a maximum deductible of $50,000 payable by Easement Parcel Owner and (iii) to the extent applicable, workers compensation insurance at statutory limits. Easement Parcel Owner shall furnish Parking Facility Owner with a certificate of insurance evidencing the policies required by this Section 6(b) and naming Parking Facility Owner as additional insured, providing that such policies shall be primary regardless of any insurance maintained by Parking Facility Owner, including a waiver of subrogation in favor of Parking Facility Owner, and providing for 30 days' notice of cancellation and/or non-renewal. Easement Parcel Owner shall furnish Parking Facility Owner with such certificate of insurance as soon as reasonably practicable after the date of this Agreement, except as to any policy which by its nature is effective at a later date, in which case a certificate of insurance evidencing such policy shall be furnished as soon as reasonably practicable after the effective date of such policy. Easement Parcel Owner may, in its sole discretion, maintain the insurance coverage amounts required by this Section 6(b) pursuant to an umbrella or blanket insurance policy. The foregoing insurance limits are not intended to, and shall not, decrease Easement Parcel Owner's liability pursuant to the terms and conditions of this Agreement.

(c) Mutual Release and Waiver of Subrogation. Easement Parcel Owner and Parking Facility Owner each agree to cause to be included in its respective policy of insurance the agreement of the issuer thereof that said policy shall not be invalidated by a waiver of claim by the insured against the Easement Parcel Owner or Parking Facility Owner, as the case may be, and each will furnish evidence thereof to the other (and such waiver shall include any deductible that either party retains). Each of Easement Parcel Owner and Parking Facility Owner does hereby remise, release and discharge the other party, and any officer, agent, employee or representative of such party, of and from any liability whatsoever hereafter arising from loss, damage or injury to property caused by fire or other casualty for which insurance (permitting waiver of liability and containing a waiver of subrogation) is required to be

carried pursuant to this Agreement or which is in fact carried by the injured party at the time of such loss, damage or injury, to the extent of any actual recovery by the injured party under such insurance.

7. Casualty and Condemnation

(a) Easement Parcel Owner. If all or any portion of the improvements within the Easement Parcel not constructed by Parking Facility Owner or Developer which are necessary or desirable for the support, use or enjoyment of the Parking Facility or Parking Facility Extension, in Parking Facility Owner's reasonable judgment, are damaged by fire or other casualty, then the Easement Parcel Owner shall be required to promptly repair, restore or replace the damaged improvements, but only if all of the following conditions are satisfied: (i) such damage or destruction is covered by a policy of insurance required to be carried by Easement Parcel Owner pursuant to this Agreement; (ii) the insurance proceeds (plus the amount of the deductible) under said policy of insurance payable by virtue of such damage or destruction are sufficient to cover 100% of the costs of the repair, restoration and/or replacement of the damage, and such proceeds have actually been received by Easement Parcel Owner (or, if such insurance proceeds plus the amount of the deductible are not sufficient to cover 100% of the costs of the repair, restoration, and/or replacement of the damage, Parking Facility Owner shall have agreed in writing to pay the shortfall); and (iii) Parking Facility Owner has already elected and committed to repair, restore and/or replace all damage to the Parking Facility Extension pursuant to Section 7(c). If Easement Parcel Owner is required to repair, restore or replace any damage to improvements pursuant to the foregoing sentence, then Easement Parcel Owner shall do so within a reasonable period of time of receiving any insurance proceeds and diligently prosecute such repair, restoration or replacement to at least as good condition as existed immediately prior to the damage or destruction. Any work conducted by the Easement Parcel Owner pursuant to this Section 7(a) shall be done in a manner so as to minimize (to the extent reasonably possible) the interference with or interruption of the operation of the other improvements within the Easement Parcel. If Easement Parcel Owner does not repair, restore or replace any portion of the improvements within the Easement Parcel not constructed by Parking Facility Owner or Developer, whether required to do so or not under this Section 7(a), Parking Facility Owner shall have the right, but not the obligation, to perform such repair, restoration or replacement; *provided, however,* Easement Parcel Owner shall not be liable or obligated to reimburse Parking Facility Owner (or any other party) for any costs incurred by Parking Facility Owner (or any other party) in connection with repair, restoration or replacement of such improvements, unless the Easement Parcel Owner was required (subject and pursuant to the provisions of this Section 7(a) above, including satisfaction of clauses (i), (ii) and (iii)) to

repair, restore or replace the improvements within the Easement Parcel not constructed by Parking Facility Owner or Developer, and failed to do so.

(b) Condemnation. If all or any part of the improvements on the Easement Parcel not constructed by Parking Facility Owner or Developer are taken by condemnation or other governmental action, Easement Parcel Owner will have no obligation to repair, restore or replace such improvements whatsoever which are so taken, and Parking Facility Owner shall have no claim against the Easement Parcel Owner for any portion of the amount that may be awarded to it as damages as a result of such taking or condemnation. Parking Facility Owner shall retain the right to independently seek recovery for any damages resulting from a taking of all or any part of the Parking Facility Extension, including damages relating to the loss of use or value of the Parking Facility. Following any such taking or governmental action that involves less than all or substantially all of the improvements on the Easement Parcel, Easement Parcel Owner and Parking Facility Owner will work cooperatively, at no cost to Easement Parcel Owner, to restore the remaining improvements (to the extent it is commercially practicable to do so) to substantially the same level of capacity and functionality that such improvements had prior to such taking or governmental action.

(c) Parking Facility Owner. If all or any portion of the Parking Facility Extension is damaged by fire or other casualty or taken by condemnation or other governmental action, the Parking Facility Owner may, in its sole discretion, elect either (i) to repair, restore or replace the damaged improvements, or (ii) raze all of such improvements (or to raze some of the damaged improvements and restore the remainder of the improvements) and take all action required by good construction practices to ensure that such razing be done in a safe manner without damage to or removal of support structures from any other improvements on the Easement Parcel. If the Parking Facility Owner elects to repair, restore or replace the damaged improvements, the Parking Facility Owner shall do so within a reasonable period of time of receiving any insurance proceeds or condemnation award and diligently prosecute such repair, restoration or replacement to at least as good condition as existed immediately prior to the damage or destruction or taking. Any work conducted by the Parking Facility Owner pursuant to this Section 7(c) shall be done in a manner so as to minimize (to the extent reasonably possible) the interference with or interruption of the operation of the other improvements within the Easement Parcel and any disruption to the parking rights granted to Easement Parcel Owner pursuant to Section 3(b).

8. Taxes.

(a) Development Parcel Taxes. Developer and/or Parking Facility Owner, as the case may be, shall be responsible for payment of all Taxes against or with

respect to the Parking Facility Parcel, the Office Building, the Parking Facility, the Development Parcel and all other improvements thereon, and Easement Parcel Owner shall have no liability whatsoever for any such Taxes. As used in this Section 8, the term "Taxes" shall mean all real estate taxes, special assessments, and other governmental impositions (including but not limited to, amounts payable under any improvement district assessment or other assessment agreements).

(b) Easement Parcel Taxes. Easement Parcel Owner shall be responsible for all Taxes on the Easement Parcel associated with the value of the land and the improvements located thereon as such improvements exist as of December 31, 2013; provided, however, pursuant to Section 8(d) below, Parking Facility Owner shall reimburse Easement Parcel Owner for: (i) all real estate taxes on, against or with respect to the Easement Parcel that are associated with, or attributable to, any increased assessment value of the Easement Parcel and the improvements thereon, including the Parking Facility Extension, resulting from the construction of improvements contemplated by this Agreement, including but not limited to, construction of the Parking Facility Extension, and improvements constructed pursuant to the Construction Easement (collectively, the "Real Estate Tax Increase Liability" as calculated pursuant to Section 8(c) below); and (ii) all special assessments, and other governmental impositions (including but not limited to, amounts payable under any improvement district assessment or other assessment agreements) attributable to the Easement Parcel arising, assessed or imposed in calendar year 2014 or any year thereafter that are created pursuant to, or contemplated by, the Development Agreement or any other initiative, petition or act of the Developer and/or Parking Facility Owner, as the case may be, in connection with the development of the Development (collectively, the "Special Assessments Increases").

(c) Calculation of Real Estate Tax Increase Liability. For each calendar year, the Real Estate Tax Increase Liability shall equal the product of the dollar amount of all real estate taxes (including all city, county and state property taxes) assessed or charged against the Easement Parcel for such calendar year, multiplied by the Increment Liability Share (as defined below). The "Increment Liability Share" shall be a fraction, the numerator of which is the tax assessment value for the Easement Parcel in the applicable calendar year, less the tax assessment value for the Easement Parcel as it existed in calendar year 2013, expressed in Constant Dollars (and the parties agree the tax assessment value of the Easement Parcel for the calendar year 2013 was $350,700), and the denominator of which is the tax assessment value for the Easement Parcel in the applicable calendar year. "Constant Dollars" shall mean the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. An adjustment shall occur upon the payment of real estate taxes during each calendar year. Constant Dollars shall be determined by

multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number (as defined below) and the denominator of which is the Base Index Number (as defined below). The "Current Index Number" shall be the level of the Index (as defined below) for the year preceding the adjustment year; the "Base Index Number" shall be the level of the Index for the year this Agreement is executed; and the "Index" shall be the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor of U.S. City Average, All Items (1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the parties shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

(d) Reimbursement to Easement Parcel Owner of Taxes. Parking Facility Owner shall reimburse the Easement Parcel Owner each tax year in the amount of the Real Estate Tax Increase Liability and the Special Assessments Increases, as follows: Within a 90 days after Easement Parcel Owner has remitted payment for all Taxes with respect to the Easement Parcel for the applicable calendar year, Easement Parcel Owner shall submit to Parking Facility Owner a written statement, attaching copies of all tax statements paid for such calendar year with respect to the Easement Parcel, and setting forth: (a) the amount of the Real Estate Tax Increase Liability for such calendar year, and (b) the amount of the Special Assessments Increases for such calendar year. Within thirty (30) days after the delivery of such statement, Parking Facility Owner shall reimburse Easement Parcel Owner for the Real Estate Tax Increase Liability and the Special Assessments Increases for such calendar year.

(e) Real Estate Tax Exemption. If the Parking Facility Extension is exempt from real estate taxes, the provisions in this Section 8 regarding reimbursement of the Real Estate Tax Increase Liability shall not apply for so long as, or for such years in which, the Parking Facility Extension is exempt from real estate taxes.

9. Notice

All notices, demands and requests required or permitted to be given under this Agreement must be in writing and sent certified or registered mail or by nationally-recognized overnight delivery service, postage or delivery charges, as the case may be, prepaid, and shall be deemed to have been given as of the date the notice, demand or request is delivered to, or rejected at, the then current address party intended. The addresses of Easement Parcel Owner and the Parking Facility Owner are as follows:

If to Forum: Forum Communications Company
424 W. 1st Street
Duluth, MN 55802
Attention: Ken Browall

If to Developer: Duluth Real Estate LLC
c/o Maurices Incorporated
105 West Superior Street
Duluth, MN 55802
Attn: Senior Vice President and Chief Financial Officer

Upon at least 10 days' prior written notice, either party shall have the right to change its address to any other address.

10. Miscellaneous

(a) No Public Dedication. This Agreement is not intended to be, and shall not constitute, a gift or dedication of any portion of the Easement Parcel, Parking Facility or Parking Facility Extension, or the right to use any portion of the Easement Parcel, Parking Facility or Parking Facility Extension, to the general public for any public use or purpose whatsoever. Except with the prior consent of Developer in its absolute discretion, no portion of the Parking Facility or Parking Facility Extension may be used for any of the following: civic, public or political activities, including but not limited to (i) exhibiting any placard, sign, or notice; (ii) distribution of any circular, handbill, placard, or booklet; (iii) soliciting memberships or contributions for private, civic, public or charitable purposes; and (iv) parading, picketing or demonstrating.

(b) Severability. If any provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such provision shall not be affected thereby.

(c) Amendment. This Agreement shall not be amended or modified, nor shall any party hereto waive any provision of this Agreement, except by a written instrument executed by all parties hereto; provided, however, that upon the termination of the Ground Lease, the written agreement of the Parking Facility Owner shall no longer be required.

(d) Binding Agreement. This Agreement shall run with and benefit and burden the Development Parcel and the Parking Facility Parcel and run with and benefit and burden the Easement Parcel.

(e) Governing Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Minnesota.

(f) Attorney's Fees. If either party brings an action to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorneys' fees and court costs, in addition to any other relief granted.

(g) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(h) Recording. This Agreement shall be recorded in the Office of the County Recorder and/or the Office of the Registrar of Titles of St. Louis, County, Minnesota.

(i) Enforcement. In the event of any violation, or failure to perform, by any party of any of the terms, covenants and conditions provided herein, the other party shall have, in addition to the right to seek damages (but not including consequential damages) and other remedies at law, the right to enjoin such violation or threatened violation, or seek specific performance of this Agreement, as applicable, in a court of competent jurisdiction.

(j) Remedies. No remedy herein conferred upon or reserved to any party hereto is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing in favor of either party at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

(k) Termination. This Agreement, and all Developer's, Parking Facility Owner's and/or City's rights hereunder, as the case may be, shall terminate and be of no further force or effect, in the event that: (i) the Parking Facility is damaged or destroyed by fire or other casualty (and such damage or destruction materially interferes with the use and operation of the Parking Facility for parking purposes), and repair, restoration and/or replacement thereof is not commenced within twenty-four (24) months of the date of such damage or casualty; (ii) the Parking Facility is abandoned by the City (or its successors or assigns) or Parking Facility Owner, as applicable, for any period of twenty-four (24) months or more; or (iii) if all or any portion of the Parking Facility Extension is damaged or destroyed by fire or other casualty (and such damage or destruction materially interferes with the use and operation of the Parking Facility Extension or the parking rights set forth in Section 3), and thereafter Parking Facility Owner either elects to raze such improvements, or fails to commence repair, restoration and/or replacement thereof as soon as reasonably

practicable (but in any case no later than twenty-four (24) months from the date of such damage or casualty), in either case subject to and in accordance with Section 7(c). In the event of any such termination of this Agreement, Easement Parcel Owner shall automatically become the absolute owner of any and all improvements (including, but not limited to, the Parking Facility Extension and any fixtures) located on the Easement Parcel. Each of Developer and Parking Facility Owner grants and conveys (and City, by entering into the Ground Lease, confirms that the City grants and conveys), in each case effective upon termination of this Agreement pursuant to this Section 10(k), all of its respective right, title and interest, if any, in and to all improvements (including, but not limited to, the Parking Facility Extension and any fixtures) located on the Easement Parcel to Easement Parcel Owner, each such grant and conveyance being automatic upon any such termination of this Agreement, without the need for any further instrument or action by any party.

[***Signature Pages Follow***]

US.52776525.21

SIGNATURE PAGE
TO
EASEMENT AGREEMENT

IN WITNESS WHEREOF, Forum has executed this Agreement as of the date set forth above.

Forum:

FORUM COMMUNICATIONS COMPANY

By:_____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2014, by _____, the _____ of Forum Communications Company, a North Dakota corporation as successor by merger to Duluth/Superior Newspapers LLC, a Delaware limited liability company, on behalf of the North Dakota corporation.

(Seal, if any)

_____
(*signature of notarial officer*)
Title (and Rank): _____
My commission expires: _____

THIS INSTRUMENT WAS DRAFTED BY:

FAEGRE BAKER DANIELS LLP
(Tory L. Jackson)
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

SIGNATURE PAGE
TO
EASEMENT AGREEMENT

IN WITNESS WHEREOF, Developer has executed this Agreement as of the date set forth above.

Developer:

Duluth Real Estate LLC

By:_____
Name: Brian Thun
Title: Treasurer

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

This instrument was acknowledged before me on _____, 2014, by Brian Thun, the Treasurer of Duluth Real Estate LLC, a Delaware limited liability company, on behalf of said company.

(Seal, if any)

_____
(*signature of notarial officer*)
Title (and Rank): _____
My commission expires: _____

Exhibit A

Development Parcel

Parcel 1: Lot 65, Duluth Proper, First Division, St. Louis County, Minnesota. ABSTRACT PROPERTY

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, 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 of said Street and a depth of 140 feet of Fifth Avenue West, Duluth, EXCEPT that portion of said lots and said Government Lot 5 lying within 29 feet of the East line of Fifth Avenue West as originally platted. TORRENS PROPERTY

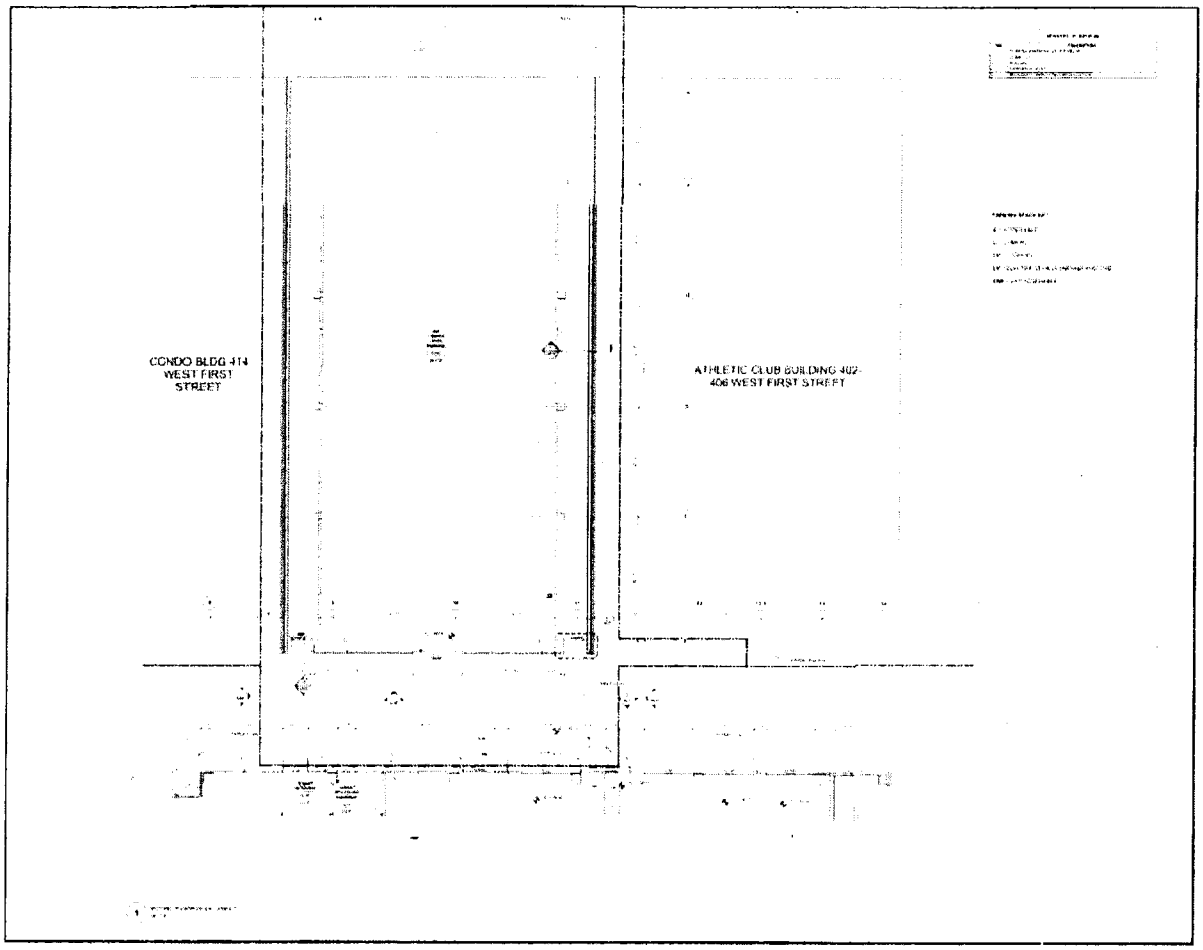
Exhibit B

Easement Parcel

West Half of Lot 68 and all of Lot 70, DULUTH PROPER, FIRST DIVISION, WEST FIRST STREET. ABSTRACT PROPERTY

Exhibit C

Construction Plans



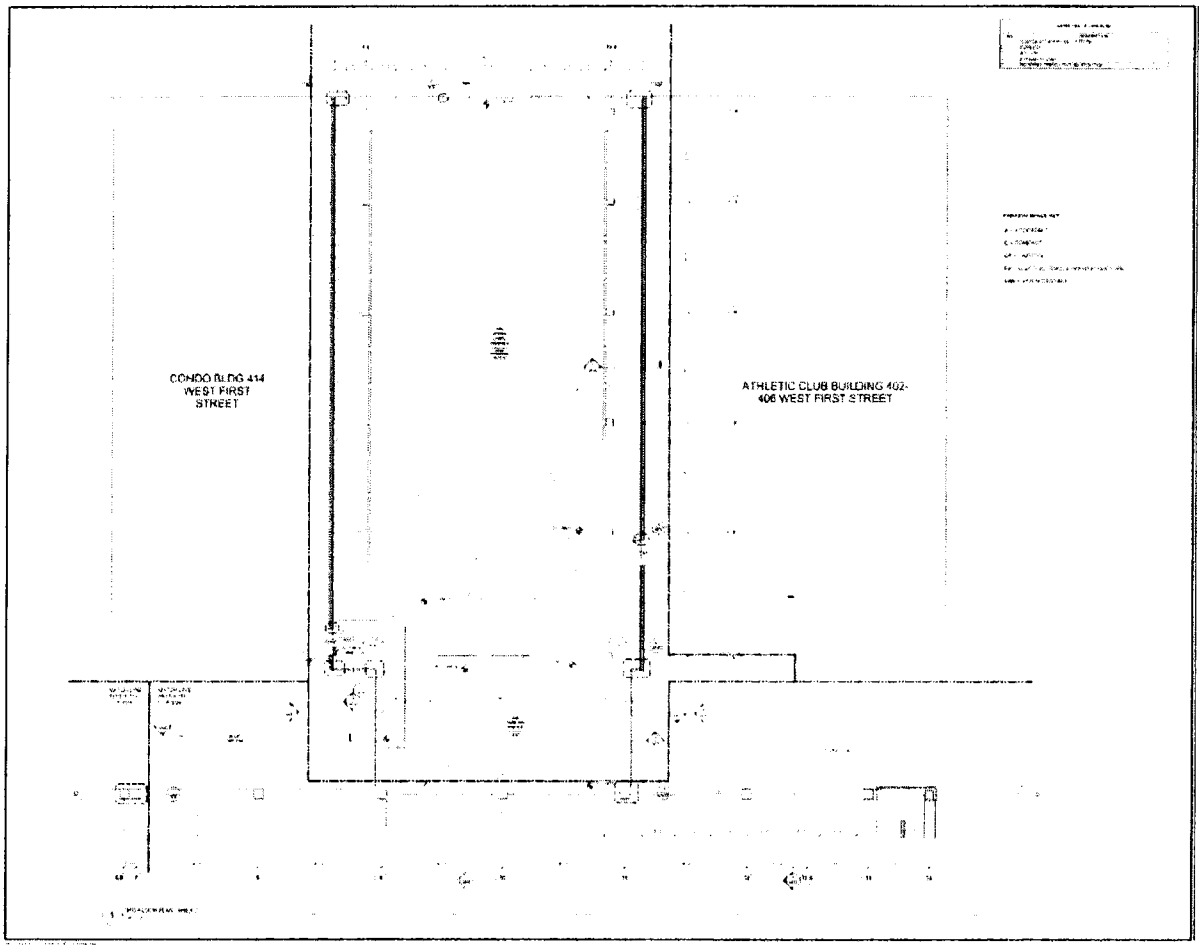

CONDO BLDG 414
WEST FIRST
STREET
ATHLETIC CLUB BUILDING 402-
406 WEST FIRST STREET

EXHIBIT F

(Parking Facility Parcel)

Tract 1 (Elevators on First Floor of the Development)

That portion of Lots 65, 67, 69, 71, 73, 75, 77 and that part of Lot 79 lying northeasterly of the southwesterly 34.00 feet thereof, all in DULUTH PROPER FIRST DIVISION, St. Louis County, Minnesota (the "Development Parcel"), described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 129.31 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 56.92 to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 29.04 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 8.08 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 29.04 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 8.08 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 635.0 feet to elevation 652.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 2 (Elevators on Second Floor of the Development)

That portion of the Development Parcel described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 129.31 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 56.92 to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 29.04 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 8.08 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 29.04 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 8.08 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 652.0 feet to elevation 668.67 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 3 (Third Floor of the Development)

That portion of the Development Parcel described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 1.47 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 8.50 feet to the point of beginning of the parcel to be described; thence continuing North 48

degrees 23 minutes 09 seconds West a distance of 94.13 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 28.70 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 114.99 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 15.04 feet; thence South 71 degrees 57 minutes 56 seconds East a distance of 31.28 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 31.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 9.48 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 32.83 feet; thence North 71 degrees 51 minutes 56 seconds West a distance of 27.95 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 16.65 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 211.09 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 24.54 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 98.29 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 364.67 feet to the point of beginning.

EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 103.05 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 65.28 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 19.34 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 16.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 19.34 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 16.15 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, and 69, a distance of 137.39 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 10.77 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.77 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69 and 71, a distance of 158.37 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 12.22 feet; thence South 48 degrees 23 minutes 09 seconds

East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 12.22 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71 and 73, a distance of 224.61 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 59.30 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 21.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 3.33 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 21.40 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 3.33 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71, 73, and 75, a distance of 258.40 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning of the easement to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 13.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 13.15 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 668.67 feet to elevation 679.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 4 (Floors Four through Six of the Development)

That portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 1.47 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 8.50 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 94.13 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; North 48 degrees 23 minutes 09 seconds West a distance of 28.70 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 334.19 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 24.54 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 98.29 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 364.67 feet to the point of beginning.

EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 103.05 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 65.28 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 19.34 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 16.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 19.34 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 16.15 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, and 69, a distance of 137.39 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 10.77 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.77 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69 and 71, a distance of 158.37 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 12.22 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 12.22 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71 and 73, a distance of 224.61 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 59.30 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 21.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 3.33 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 21.40 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 3.33 feet to the point of beginning.

ALSO EXCEPT, that portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71, 73, and 75, a distance of 258.40 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning of the easement to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 13.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 13.15 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 679.0 feet to elevation 713.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 5 (Top of Elevator Shaft on Seventh Floor of the Development)

That portion of the Development Parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, 67 & 69, a distance of 127.50 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 54.18 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 14.76 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 5.00 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 16.76 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.23 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 31.52 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.23 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 713.0 feet to elevation 730.34 feet, National Geodetic Vertical Datum, 1929 adjustment.

EXHIBIT G

(Project Labor Agreement)

[See attached]

PROJECT LABOR AGREEMENT
[PUBLIC SECTOR]

ARTICLE I

PURPOSE

This Agreement is entered into this 21st day of March, 2014 by and by and between McGough Construction, it successors or assigns (hereinafter "Project Contractor"), Duluth Real Estate LLC, (hereinafter "Owner") and the Duluth Building and Construction Trade Council, on behalf of its affiliated local unions, acting on their own behalf and on behalf of their respective affiliates and members whose names are subscribed hereto and who have, through their duly authorized officers, executed this Agreement, hereinafter collectively called the "Union or Unions", with respect to the construction of the 425 Project Maurice's Headquarters, City of Duluth Parking Ramp, hereinafter "Projects".

The term "Contractor" shall include all construction contractors and subcontractors of whatever tier engaged in construction work within the scope of this Agreement, including the Project Contractor when it performs construction work within the scope of this Agreement. Where specific reference to McGough Construction alone is intended, the term "Project Contractor" is used.

The parties recognize the need for the timely completion of the Project without interruption or delay. This Agreement is intended to establish a framework for labor-management cooperation and stability. The Contractor(s) and the Unions agree that the timely construction of this Project will require substantial numbers of employees from construction and supporting crafts possessing skills and qualifications that are vital to its completion. They will work together to furnish skilled, efficient craft workers for the construction of the Project.

Further, the parties desire to mutually establish and stabilize wages, hours and working conditions for the craft workers on this construction project, to encourage close cooperation between the Contractor(s) and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist between the parties to this Agreement.

Therefore, in recognition of the special needs of this Project and to maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement, the parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise. Further, the Contractor(s) and all contractors of whatever tier, agree not to engage in any lockout, and the Unions agree not to engage in any strike, slow-down, or interruption or other disruption of or interference with the work covered by this Agreement.

ARTICLE II

SCOPE OF AGREEMENT

Section 1. This Project Labor Agreement shall apply and is limited to all construction work included in all bid categories for the Project under the direction of and performed by the Contractor(s), of whatever tier, which may include the Project Contractor, who have contracts awarded for such work on the Project. Such work shall include site preparation work and dedicated off-site work.

The Project is defined as: [list all aspects of the construction work involved.]

Section 2. It is agreed that the Project Contractor shall require all Contractors of whatever tier who have been awarded contracts for work covered by this Agreement to accept and be bound by the terms and conditions of this Project Labor Agreement by executing this Agreement prior to commencing work. This Project Labor Agreement is a material term of the bid specifications for the Project and therefore, regardless of whether a contractor executes this Agreement, by virtue of the owner and/or Project Contractor accepting the bid offer of the Contractor, a Contractor who performs work on this project is bound to this PLA regardless of their execution of this Agreement. The Project Contractor shall assure compliance with this Agreement by the Contractors. It is further agreed that, where there is a conflict, the terms and conditions of this Project shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the NTL Articles of Agreement, The National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Article V, VI and VII of this Project Labor Agreement, which shall apply to such work.

Section 3. Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other operation, work, or function which may occur at the Project site or be associated with the development of the Project.

Section 4. This Agreement shall only be binding on the signatory parties hereto and shall not apply to their parents, affiliates or subsidiaries.

Section 5. The Owner and/or Project Contractor have the absolute right to select any qualified bidder for the award of contracts on this Project without reference to the existence or non-existence of any agreements between such bidder and any party to this Agreement; provided, however, only that such bidder is willing, ready and able to become a party to and comply with this Project Agreement, should it be designated the successful bidder.

Section 6. As areas and systems of the Project are inspected and construction tested by the Project Contractor or Contractors and accepted by the Owner, the Project Labor Agreement will not have further force or effect on such items or areas, except when the Project Contractor or Contractors are directed by the Owner to engage in repairs, modifications, check-out, and warranty functions required by its contract with the Owner during the term of this Agreement.

Section 7. It is understood that the Owner, at its sole option, may terminate, delay and/or suspend any or all portions of the Project at any time.

Section 8. It is understood that the liability of any employer and the liability of the separate unions under this Agreement shall be several and not joint. The unions agree that this Agreement does not have the effect of creating any joint employer status between or among the Owner, Contractor(s) or any employer.

Section 9. The provisions of this Project Labor Agreement shall apply to all craft employees represented by any Union listed in Schedule A hereto attached and shall not apply to other field personnel or managerial or supervisor employees as defined by the National Labor Relations Act. No Contractor party is required to sign any other agreement as a condition of performing work within the scope of this Agreement. However, any Contractor performing work on the Project which is not party to a Local Area Labor Agreement for a craft employed by the Contractor, agrees to install hourly wage rates, hours, fringe benefit contributions, referral procedures and all other terms and conditions of employment as fully set forth in the applicable Local Area Agreement as attached as Schedule A for work on the Project for each craft employed by the Contractor. All employees covered by this Agreement shall be classified in accordance with the work performed.

Section 10. The Contractors agree to pay contributions to the established employee benefit funds in the amounts designated in the Local Area Labor Agreements attached as Schedule A.

Contractors that are not signatory to a collective bargaining agreement beyond the scope of this Agreement ("PLA contractor") may select to participate in the legally established Industry Health Reimbursement Arrangement ("HRA") plan, in lieu of contributing to the respective bona fide benefit funds as designated in Schedule A. The amount of the contribution is based on the difference between the contribution amount of the bona fide Schedule A benefit funds and the cost of the PLA contractors' bona fide non-discretionary plans. Contributions must be made on behalf of named employees. Participating contractors will submit to the Trustees of the HRA trust and plan a copy of their plan, summary plan description, and the premium structure for workers covered under the PLA contractor's bona fide, non-discretionary plans. The value of the PLA contractor's benefit plans are subject to confirmation by the Trustees of the HRA trust and plan. This may include an independent audit according to a policy as established by the Trustees. Contractors are required to submit certified payroll reports to the Trustees or authorized administrator in order to confirm compliance with the terms of the HRA trust and plan.

The Contractors adopt and agree to be bound by the written terms of the legally-established Trust Agreements (or in lieu thereof, the aforementioned HRA plan and trust including any policies)

specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors authorize the parties to such Trust Agreements to appoint trustees and successor trustees to administer the Trust funds and hereby ratify and accept the Trustees so appointed as if made by the Contractors.

Section 11. All workers delivering fill, sand, gravel, crushed rock, transit/concrete mix, ready mix, asphalt or other similar material and all workers removing any materials from the construction site shall receive a total package of wages and benefits at least and not lower than the wages and benefits provided for in the then current Highway, Heavy Construction Agreement between Teamsters Local 346 and the Associated General Contractors of America, or the Highway Heavy Prevailing Wage Schedule, whichever is greater.

ARTICLE III

UNION RECOGNITION AND UNION SECURITY

Section 1. The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this Agreement.

Section 2. All employees covered by this Agreement now in the employ of the Contractor shall remain members in good standing in their respective Unions during the term of the Agreement and all employees hereinafter employed by the Contractor will become members of the respective Unions within seven (7) days after the date of their employment and shall remain members of the Unions in good standing during the term of this Agreement.

Section 3. Authorized representatives of the Union shall have access to the Project, provided they do not interfere with the work of employees and further provided that such representatives comply fully with the posted visitor and security and safety rules of the Project.

ARTICLE IV

REFERRAL OF EMPLOYEES

Applicants for the various classifications covered by this Agreement required by the Employer or Contractors on the Project shall be referred to the Contractors by the Unions. The Unions represent that its local unions administer and control their referrals and it is agreed that these referrals will be made in a non-discriminatory manner and in full compliance with Federal and State laws.

ARTICLE V

MANAGEMENT'S RIGHTS

The Project Contractor and Contractors of whatever tier retain full and exclusive authority for the management of their operations. Except as otherwise limited by the terms of this Agreement or the applicable local area agreements, the Contractors shall direct their working forces at their prerogative, including, but not limited to hiring, promotion, transfer, lay-off or discharge for just cause.

ARTICLE VI

WORK STOPPAGES AND LOCKOUTS

Section 1. During the term of this Agreement there shall be no strikes, picketing, work stoppages, slow downs or other disruptive activity for any reason by the Unions or by any employee, and there shall be no lockout by the Contractor. Failure of any Union or employee to cross any picket line established at the Project site is a violation of this Article.

Section 2. The Unions shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Contractor's project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than thirty (30) days.

Section 3. The Unions shall not be liable for acts of employees for whom it has no responsibility. The International Union General President or Presidents will immediately instruct, order and use the best efforts of his office to cause the Local Union or Unions to cease any violations of this Article. An International Union complying with this obligation shall not be liable for unauthorized acts of its Local Union. The principal officer or officers of a Local Union will immediately instruct, order and use the best efforts of his office to cause the employees the Local Union represents to cease any violations of this Article. A Local Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

Section 4. Any party alleging a breach of this Article shall have the right to petition a court for temporary and permanent injunctive relief. The moving party need not show the existence of irreparable harm, and shall be required to post bond only to secure payment of court costs and attorney fees as may be awarded by the Court.

ARTICLE VII

DISPUTES AND GRIEVANCES

Section 1. This Agreement is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

Section 2. The Contractors, Unions, and the employees, collectively and individually realize the importance to all parties to maintain continuous and uninterrupted performance of the work on the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

Section 3. Any question or dispute arising out of and during the term of this Project Labor Agreement (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures:

Step 1. (a) When an employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her local union business representative or job steward, shall, within ten (10) working days after the occurrence of the violation, or knowledge of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) of the Local Area Agreement and/or this PLA alleged to have been violated. The business representative of the local union or the job steward and the work-site representative of the involved Contractor and the Project Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Project Contractor) at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Local Area Agreement and/or this PLA alleged to have been violated.

(b) Should the Local Union(s) or the Project Contractor or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within seven (7) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The Business Manager or his or her designee of a Local Union and the involved Contractor shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

Step 3. (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven(7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the Federal Mediation and Conciliation Service to provide them with a list of seven (7) neutral arbitrators from which the Arbitrator shall be selected. The parties shall alternatively strike arbitrators from the list until one remains, who shall preside at the hearing. The party striking first shall be determined by the flip of a coin. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

Section 4. The Project Contractor and Owner shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

ARTICLE VIII

JURISDICTIONAL DISPUTES

Section 1. The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

Section 2. All jurisdictional disputes on this Project, between or among Building and Construction Trades Unions and employers, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this Agreement.

Section 3. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

Section 4. Each Contractor will conduct a pre-job conference with the appropriate Building and Construction Trades Council prior to commencing work. The Project Contractor and the Owner will be advised in advance of all such conferences and may participate if they wish.

ARTICLE IX

SUBCONTRACTING

The Project Contractor agrees that neither it nor any of its contractors or subcontractors will subcontract any work to be done on the Project except to a person, firm or corporation who is or agrees to become party to this Agreement. Any contractor or subcontractor working on the Project shall, as a condition to working on said Project, become signatory to and perform all work under the terms of this Agreement.

ARTICLE X

HELMETS TO HARDHATS

Section 1. The Employers and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

Section 2. The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE XI

LABOR HARMONY CLAUSE

The contractor shall furnish labor that can work in harmony with all other elements of labor employed on the Project and shall submit a labor harmony plan to demonstrate how this will be done. "Harmony" shall include the provision of labor that will not, either directly or indirectly, cause or give rise to any work disruptions, slow downs, picketing, stoppages, or any violence or harm to any person or property while performing any work, or activities incidental thereto at the Project. The labor harmony plan should include the company's labor management policies, collective bargaining agreements if any and their expiration dates, past labor relations history, a listing of activities anticipated under this contract that may potentially cause friction with on-site workers, and procedures the company will undertake to eliminate this friction.

The contractor agrees that it shall require every lower-tier subcontractor to provide labor that will work in harmony with all other elements of labor employed in the work, and will include the

provisions contained in the paragraph above, in every lower-tier subcontract let for work under this contract.

The requirement to provide labor that can work in harmony with all other elements of labor employed in the work throughout the contract performance is a material element of this contract. Failure by the contractor or any of its lower-tier subcontractors to comply with this requirement shall be deemed a material breach of the contract which will subject the contractor to all rights and remedies the Owner or Project Contractor may have, including without limitation the right to terminate the contract.

ARTICLE XII

NO DISCRIMINATION

Section 1. The Contractor and Union agree that they will not discriminate against any employee or applicant for employment because of his or her membership or non-membership in a Union or based upon race, color, religion, sex, national origin or age in any manner prohibited by law or regulation.

Section 2. Any complaints regarding application of the provisions of Section 1, should be brought to the immediate attention of the involved Contractor for consideration and resolution.

Section 3. The use of the masculine or feminine gender in this Agreement shall be construed as including both genders.

ARTICLE XIII

SAVINGS AND SEPARABILITY

It is not the intention of the parties to violate any laws governing the subject matter of this Agreement. The parties hereto agree that in the event any provisions of the Agreement are finally held or determined to be illegal or void as being in contravention of any applicable law, the remainder of the Agreement shall remain in full force and effect unless the part or parts so found to be void are wholly inseparable from the remaining portions of this Agreement. Further, the Contractor and Union agree that if and when any and all provisions of this Agreement are finally held or determined to be illegal or void by a Court of competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of an applicable law and the intent of the parties hereto.

ARTICLE XIV

DURATION OF THE AGREEMENT

The Project Labor Agreement shall be effective March 21, 2014 and shall continue in effect for the duration of the Project construction work described in Article II hereof. Construction of any phase, portion, section or segment of the project shall be deemed complete when such phase, portion, section or segment has been turned over to the Owner and has received the final acceptance from the Owner's representative.

Since there are provisions herein for no strikes or lockouts in the event any changes are negotiated and implemented under a Local Area Agreement during the term of this Agreement, the Contractor agrees that, except as specified herein, such changes shall be recognized and shall apply retroactively to the termination date in the particular Local Agreement involved. Each Contractor which has a Local Agreement with a Union at the time that its contract at the project commences shall continue it in effect with each said Union so long as the Contractor remains on the project. In the event any such Local Area Agreement expires, the Contractor shall abide by all of the terms of the expired Local Agreement until agreement is reached on a new Local Agreement, with any changes being subject to the provisions of this Agreement.

The Union agrees that there will be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity affecting the Project by any Union involved in the negotiation of a Local Area Agreement nor shall there be any lockout on this Project affecting the Union during the course of such negotiations.

IN WITNESS WHEREOF, the parties have entered into this Agreement to be effective as of the day and year above written.

DULUTH REAL ESTATE LLC

By: _____
Its: _____

MCGOUGH CONSTRUCTION

By: _____
Its: _____

DULUTH BUILDING & CONSTRUCTION
TRADES COUNCIL

By:_____
Its:_____

SCHEDULE "A"

A-1	Asbestos Workers Local 49
A-2	Boilermakers Local 647
A-3	BAC Local 1 Chapter 3 Duluth & Iron Range
A-4	Carpenters Local 361
A-5	Cements Masons/Plasterers Local 633
A-6	Elevator Constructors Local 9
A-7	IBEW Local 242
A-8	Iron Workers Local 512
A-9	Laborers Local 1091
A-10	Millwrights Local 1348
A-11	Operating Engineers Local 49
A-12	Painters & Allied Trades Local 106
A-13	Plumbers & Fitters Local 11
A-14	Roofers Local 96
A-15	Sheet Metal Workers Local 10
A-16	Sprinkler Fitters Local 669
A-17	Teamsters Local 346

AGREEMENT TO BE BOUND

PROJECT LABOR AGREEMENT

The undersigned EMPLOYER agrees that it has reviewed a copy of the Project Labor Agreement for the 425 Project Maurice's Headquarters, City of Duluth Parking Ramp located in Duluth, Minnesota with the Duluth Building and Construction Trades Council and further agrees to become a party to and bound to the foregoing Agreement.

Attest:

SIGNED FOR THE EMPLOYER: Dated: _____

_____

Company Name

_____

Company Address

_____

Phone No., Job Site and/or Office

_____

Fax No.

_____

By

_____

Title

PROJECT LABOR AGREEMENT
[PRIVATE SECTOR]

ARTICLE I

PURPOSE

This Agreement is entered into this 21st day of March, 2014 by and by and between McGough Construction, it successors or assigns (hereinafter "Project Contractor"), Duluth Real Estate LLC (hereinafter "Owner") and the Duluth Building and Construction Trade Council, on behalf of its affiliated local unions, acting on their own behalf and on behalf of their respective affiliates and members whose names are subscribed hereto and who have, through their duly authorized officers, executed this Agreement, hereinafter collectively called the "Union or Unions", with respect to the construction of the 425 Project Maurice's Headquarters, City of Duluth Parking Ramp, hereinafter "Projects".

The term "Contractor" shall include all construction contractors and subcontractors of whatever tier engaged in construction work within the scope of this Agreement, including the Project Contractor when it performs construction work within the scope of this Agreement. Where specific reference to McGough Construction alone is intended, the term "Project Contractor" is used.

The parties recognize the need for the timely completion of the Project without interruption or delay. This Agreement is intended to establish a framework for labor-management cooperation and stability. The Contractor(s) and the Unions agree that the timely construction of this Project will require substantial numbers of employees from construction and supporting crafts possessing skills and qualifications that are vital to its completion. They will work together to furnish skilled, efficient craft workers for the construction of the Project.

Further, the parties desire to mutually establish and stabilize wages, hours and working conditions for the craft workers on this construction project, to encourage close cooperation between the Contractor(s) and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist between the parties to this Agreement.

Therefore, in recognition of the special needs of this Project and to maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement, the parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise. Further, the Contractor(s) and all contractors of whatever tier, agree not to engage in any lockout, and the Unions agree not to engage in any strike, slow-down, or interruption or other disruption of or interference with the work covered by this Agreement.

ARTICLE II

SCOPE OF AGREEMENT

Section 1. This Project Labor Agreement shall apply and is limited to all construction work included in all bid categories for the Project under the direction of and performed by the Contractor(s), of whatever tier, which may include the Project Contractor, who have contracts awarded for such work on the Project. Such work shall include site preparation work and dedicated off-site work.

The Project is defined as: [list all aspects of the construction work involved.]

Section 2. It is agreed that the Project Contractor shall require all Contractors of whatever tier who have been awarded contracts for work covered by this Agreement to accept and be bound by the terms and conditions of this Project Labor Agreement by executing this Agreement prior to commencing work. This Project Labor Agreement is a material term of the bid specifications for the Project and therefore, regardless of whether a contractor executes this Agreement, by virtue of the owner and/or Project Contractor accepting the bid offer of the Contractor, a Contractor who performs work on this project is bound to this PLA regardless of their execution of this Agreement. The Project Contractor shall assure compliance with this Agreement by the Contractors. All Contractors of whatever tier must also be signatory to the appropriate current Local Area Labor Agreement or Agreements or National Specialty Agreement (listed below) covering the crafts employed by the Contractor on the Project. It is further agreed that, where there is a conflict, the terms and conditions of this Project shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the NTL Articles of Agreement, The National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Article V, VI and VII of this Project Labor Agreement, which shall apply to such work.

Section 3. Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other operation, work, or function which may occur at the Project site or be associated with the development of the Project.

Section 4. This Agreement shall only be binding on the signatory parties hereto and shall not apply to their parents, affiliates or subsidiaries.

Section 5. The Owner and/or Project Contractor have the absolute right to select any qualified bidder for the award of contracts on this Project provided, however, only that such bidder is willing, ready and able to become a party to and comply with this Project Agreement, should it be designated the successful bidder.

Section 6. As areas and systems of the Project are inspected and construction tested by the Project Contractor or Contractors and accepted by the Owner, the Project Labor Agreement will not have further force or effect on such items or areas, except when the Project Contractor or Contractors are directed by the Owner to engage in repairs, modifications, check-out, and warranty functions required by its contract with the Owner during the term of this Agreement.

Section 7. It is understood that the Owner, at its sole option, may terminate, delay and/or suspend any or all portions of the Project at any time.

Section 8. It is understood that the liability of any employer and the liability of the separate unions under this Agreement shall be several and not joint. The unions agree that this Agreement does not have the effect of creating any joint employer status between or among the Owner, Contractor(s) or any employer.

Section 9. The provisions of this Project Labor Agreement shall apply to all craft employees represented by any Union listed in Schedule A hereto attached and shall not apply to other field personnel or managerial or supervisor employees as defined by the National Labor Relations Act.

Section 10. All workers delivering fill, sand, gravel, crushed rock, transit/concrete mix, ready mix, asphalt or other similar material and all workers removing any materials from the construction site shall receive a total package of wages and benefits at least and not lower than the wages and benefits provided for in the then current Highway, Heavy Construction Agreement between Teamsters Local 346 and the Associated General Contractors of America, or the Highway Heavy Prevailing Wage Schedule, whichever is greater.

ARTICLE III

UNION RECOGNITION AND UNION SECURITY

Section 1. The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this Agreement.

Section 2. All employees covered by this Agreement now in the employ of the Contractor shall remain members in good standing in their respective Unions during the term of the Agreement and all employees hereinafter employed by the Contractor will become members of the respective Unions within seven (7) days after the date of their employment and shall remain members of the Unions in good standing during the term of this Agreement.

Section 3. Authorized representatives of the Union shall have access to the Project, provided they do not interfere with the work of employees and further provided that such representatives comply fully with the posted visitor and security and safety rules of the Project.

ARTICLE IV

REFERRAL OF EMPLOYEES

Applicants for the various classifications covered by this Agreement required by the Employer or Contractors on the Project shall be referred to the Contractors by the Unions. The Unions represent that its local unions administer and control their referrals and it is agreed that these referrals will be made in a non-discriminatory manner and in full compliance with Federal and State laws.

ARTICLE V

MANAGEMENT'S RIGHTS

The Project Contractor and Contractors of whatever tier retain full and exclusive authority for the management of their operations. Except as otherwise limited by the terms of this Agreement or the applicable local area agreements, the Contractors shall direct their working forces at their prerogative, including, but not limited to hiring, promotion, transfer, lay-off or discharge for just cause.

ARTICLE VI

WORK STOPPAGES AND LOCKOUTS

Section 1. During the term of this Agreement there shall be no strikes, picketing, work stoppages, slow downs or other disruptive activity for any reason by the Unions or by any employee, and there shall be no lockout by the Contractor. Failure of any Union or employee to cross any picket line established at the Project site is a violation of this Article.

Section 2. The Unions shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Contractor's project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than thirty (30) days.

Section 3. The Unions shall not be liable for acts of employees for whom it has no responsibility. The International Union General President or Presidents will immediately instruct, order and use the best efforts of his office to cause the Local Union or Unions to cease any violations of this Article. An International Union complying with this obligation shall not be liable for unauthorized acts of its Local Union. The principal officer or officers of a Local Union will immediately instruct, order and use the best efforts of his office to cause the employees the

Local Union represents to cease any violations of this Article. A Local Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

Section 4. Any party alleging a breach of this Article shall have the right to petition a court for temporary and permanent injunctive relief. The moving party need not show the existence of irreparable harm, and shall be required to post bond only to secure payment of court costs and attorney fees as may be awarded by the Court.

ARTICLE VII

DISPUTES AND GRIEVANCES

Section 1. This Agreement is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

Section 2. The Contractors, Unions, and the employees, collectively and individually realize the importance to all parties to maintain continuous and uninterrupted performance of the work on the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

Section 3. Any question or dispute arising out of and during the term of this Project Labor Agreement (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures:

Step 1. (a) When an employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her local union business representative or job steward, shall, within ten (10) working days after the occurrence of the violation, or knowledge of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) of the Local Area Agreement and/or this PLA alleged to have been violated. The business representative of the local union or the job steward and the work-site representative of the involved Contractor and the Project Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Project Contractor) at the conclusion of the meeting but not later than twenty-four (24) hours thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Local Area Agreement and/or this PLA alleged to have been violated.

(b) Should the Local Union(s) or the Project Contractor or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within seven (7) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The Business Manager or his or her designee of a Local Union and the involved Contractor shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

Step 3. (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven(7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the Federal Mediation and Conciliation Service to provide them with a list of seven (7) neutral arbitrators from which the Arbitrator shall be selected. The parties shall alternatively strike arbitrators from the list until one remains, who shall preside at the hearing. The party striking first shall be determined by the flip of a coin. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

Section 4. The Project Contractor and Owner shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

ARTICLE VIII

JURISDICTIONAL DISPUTES

Section 1. The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

Section 2. All jurisdictional disputes on this Project, between or among Building and Construction Trades Unions and employers, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the

Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this Agreement.

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Section 4. Each Contractor will conduct a pre-job conference with the appropriate Building and Construction Trades Council prior to commencing work. The Project Contractor and the Owner will be advised in advance of all such conferences and may participate if they wish.

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ARTICLE X

HELMETS TO HARDHATS

Section 1. The Employers and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

Section 2. The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

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The requirement to provide labor that can work in harmony with all other elements of labor employed in the work throughout the contract performance is a material element of this contract. Failure by the contractor or any of its lower-tier subcontractors to comply with this requirement shall be deemed a material breach of the contract which will subject the contractor to all rights and remedies the Owner or Project Contractor may have, including without limitation the right to terminate the contract.

ARTICLE XII
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Section 1. The Contractor and Union agree that they will not discriminate against any employee or applicant for employment because of his or her membership or non-membership in a Union or based upon race, color, religion, sex, national origin or age in any manner prohibited by law or regulation.

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purpose of achieving conformity with the requirements of an applicable law and the intent of the parties hereto.

ARTICLE XIV

DURATION OF THE AGREEMENT

The Project Labor Agreement shall be effective March 21, 2014 and shall continue in effect for the duration of the Project construction work described in Article II hereof. Construction of any phase, portion, section or segment of the project shall be deemed complete when such phase, portion, section or segment has been turned over to the Owner and has received the final acceptance from the Owner's representative.

Since there are provisions herein for no strikes or lockouts in the event any changes are negotiated and implemented under a Local Area Agreement during the term of this Agreement, the Contractor agrees that, except as specified herein, such changes shall be recognized and shall apply retroactively to the termination date in the particular Local Agreement involved. Each Contractor which has a Local Agreement with a Union at the time that its contract at the project commences shall continue it in effect with each said Union so long as the Contractor remains on the project. In the event any such Local Area Agreement expires, the Contractor shall abide by all of the terms of the expired Local Agreement until agreement is reached on a new Local Agreement, with any changes being subject to the provisions of this Agreement.

The Union agrees that there will be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity affecting the Project by any Union involved in the negotiation of a Local Area Agreement nor shall there be any lockout on this Project affecting the Union during the course of such negotiations.

IN WITNESS WHEREOF, the parties have entered into this Agreement to be effective as of the day and year above written.

DULUTH REAL ESTATE LLC

By: _____
Its: _____

MCGOUGH CONSTRUCTION

By: _____
Its: _____

DULUTH BUILDING & CONSTRUCTION
TRADES COUNCIL

By: _____
Its: _____

SCHEDULE "A"

A-1	Asbestos Workers Local 49
A-2	Boilermakers Local 647
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AGREEMENT TO BE BOUND

PROJECT LABOR AGREEMENT

The undersigned EMPLOYER agrees that it has reviewed a copy of the Project Labor Agreement for the 425 Project Maurice's Headquarters, City of Duluth Parking Ramp located in Duluth, Minnesota with the Duluth Building and Construction Trades Council and further agrees to become a party to and bound to the foregoing Agreement.

Attest:

SIGNED FOR THE EMPLOYER: Dated: _____

_____

Company Name

_____

Company Address

_____

Phone No., Job Site and/or Office

_____

Fax No.

_____

By

_____

Title

EXHIBIT H

(Schematic Design Plans (Public Improvements))

[See attached]

McGOUGH

Building for the Next Generation

maurices Headquarters & City of Duluth Parking Ramp
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425 Project
Supplemental Information DD Structural Quantities Narrative
Meyer Borgman Johnson
Dated: March 6, 2014

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425 Project-Duluth Core & Shell
Mechanical Systems Schematic Design Narrative
RSP Design Team
January 24, 2014 noted as Draft Revised

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Electrical Narrative

File Title Dated 2-12-2014

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FP101	1st Floor Plumbing & Fire Protection Plan	03/01/14
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FP104	4th Floor Plumbing & Fire Protection Plan	03/01/14
FP105	5th Floor Plumbing & Fire Protection Plan	03/01/14
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FP107	7th Floor Plumbing & Fire Protection Plan	03/01/14
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FP111	11th Floor Plumbing & Fire Protection Plan	03/01/14
FP112	12th Floor Plumbing & Fire Protection Plan	03/01/14
FP401	Enlarged Fire Protection & Plumbing Plans	03/01/14

425 Project maurices Headquarters & City of Duluth Parking Ramp
Design Development Package
RSP Architects, Ltd. Volume 1 & 2 Drawing Log
Issue Date: 01 March 2014

Sheet Name	Description	Date
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FP403	Enlarged Fire Protection & Plumbing Plans	03/01/14
FP701	Plumbing Schedules	03/01/14
FP901	Storm Drainage Riser Diagrams	03/01/14
FP902	Sanitary Drainage & Vent Riser Diagrams	03/01/14
FP903	Domestic Water Riser Diagrams	03/01/14
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M103	3rd Thru 5th Floor HVAC Plan	03/01/14
M106	6th Floor HVAC Plan	03/01/14
M107	7th Floor HVAC Plan	03/01/14
M108	8th Thru 10th Floor HVAC Plan	03/01/14
M111	11th Floor HVAC Plan	03/01/14
M112	12th Floor Penthouse HVAC Plan	03/01/14
M401	Enlarged HVAC Plans	03/01/14
M402	Enlarged HVAC Plans	03/01/14
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M603	HVAC Details	03/01/14
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M901	Mechanical Riser Diagrams	03/01/14
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E103A	3rd Floor Parking Ramp Lighting Plan - Area A	03/01/14
E103B	3rd Floor Parking Ramp Lighting Plan - Area B	03/01/14
E103C	3rd Floor Parking Ramp Lighting Plan - Area C	03/01/14
E104A	4th Floor Parking Ramp Lighting Plan - Area A	03/01/14
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E106B	6th Floor Parking Ramp Lighting Plan - Area B	03/01/14
E107	7th Floor Office Lighting Plan	03/01/14
E108	8th Floor Office Lighting Plan	03/01/14
E109	9th FLoor Office Lighting Plan	03/01/14
E110	10th Floor Office Lighting Plan	03/01/14
E111	11th Floor Office Lighting Plan	03/01/14

425 Project maurices Headquarters & City of Duluth Parking Ramp
Design Development Package
RSP Architects, Ltd. Volume 1 & 2 Drawing Log
Issue Date: 01 March 2014

Sheet Name	Description	Date
E112	Roof Area Lighting Plan	03/01/14
E201A	1st Floor Power & Systems Plan Area - A	03/01/14
E201B	1st FLoor Power & Systems Plan Area - B	03/01/14
E202A	2nd Floor Power & Systems Plan Area - A	03/01/14
E202B	2nd Floor Power & Systems Plan - Area B	03/01/14
E202C	2nd Floor Power & Systems Plan Area - C	03/01/14
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E405	Enlarged Power & Systems Plans	03/01/14
E406	Enlarged Power & Systems Plan	03/01/14
E407	Enlarged Power & Systems Plan	03/01/14
E408	Enlarged Power & Systems Plans	03/01/14
E601	One Line Diagram	03/01/14

McGOUGH

Building for the Next Generation

maurices 425 Project - Duluth, MN
Fit Plan, Progress Set
Hammel, Green and Abrahamson, Inc. Drawing Log
Issue Date: March 03, 2014

Sheet Name	Description	Date
	Cover	March 3, 2014
A208A	Eighth Floor - Area A	March 3, 2014
A201A	First Floor - Area A	March 3, 2014
A207B	Seventh Floor - Area B	March 3, 2014
A201B	First Floor - Area A	March 3, 2014
A208B	Eighth Floor - Area B	March 3, 2014
A202A	Second Floor - Area A	March 3, 2014
A209A	Ninth Floor - Area A	March 3, 2014
A202B	Second Floor - Area B	March 3, 2014
A207A	Seventh Floor - Area A	March 3, 2014
A211A	Eleventh Floor - Area A	March 3, 2014
A210A	Tenth Floor - Area A	March 3, 2014
A209B	Ninth Floor - Area B	March 3, 2014
A211B	Eleventh Floor - Area B	March 3, 2014
A210B	Tenth Floor - Area B	March 3, 2014

McGOUGH

Building for the Next Generation

maurices
Schematic Design Narrative, Progress Print | Tenant Improvements
Interior Design Narrative
Hammel, Green and Abrahamson, Inc.
Dated: March 03, 2014

McGOUGH

Building for the Next Generation

maurices
Schematic Design Narrative | Tenant Improvements | Electrical Systems Narrative
Schematic Design Narrative | Tenant Improvements | Mechanical Systems Narrative
Hammel, Green and Abrahamson, Inc.
Dated: October 31, 2013

EXHIBIT I

[Intentionally Omitted]

EXHIBIT J

(Maurices Guaranty)

[See attached]

GUARANTY

THIS GUARANTY, dated as of _____, 2014, is made and given by Maurices Incorporated, a Delaware corporation ("Guarantor"), in favor of the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota (the "City").

RECITALS

A. Duluth Real Estate LLC, a wholly-owned affiliate of Guarantor ("DRE"), and the City are parties to that certain Development Agreement of even date herewith (the "Agreement").

B. Pursuant to the Agreement, DRE and the City have agreed on the construction of certain improvements to be located on real property in Duluth, Minnesota owned by DRE, all as more particularly described in the Agreement.

C. It is a condition precedent to the execution of the Agreement by the City that this Guaranty be executed and delivered to the City by Guarantor.

NOW, THEREFORE, in consideration of the recitals, the truth and correctness of which are hereby confirmed, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby covenants and agrees with the City as follows:

1. The Guaranty. Guarantor hereby primarily, absolutely, irrevocably and unconditionally guarantees to the City:

(a) the payment and performance of all obligations of DRE set forth in Article VII of the Agreement in accordance with the terms and conditions thereof; and

(b) that, to the extent that Public Improvement Costs submitted for payment or reimbursement under the Disbursing Agreement exceed the Maximum City Investment (as each of said terms is defined in the Agreement), Guarantor will advance funds to or on behalf of DRE (and will deposit such funds in accordance with the Disbursing Agreement, to the extent required) sufficient to pay such excess Public Improvement Costs,

(collectively referred to herein as the "Obligations").

2. Continuing Guaranty. This Guaranty is an absolute, irrevocable, direct, primary, unconditional, complete and continuing guaranty of performance of the Obligations. No notice of any renewal or extension of the Obligations need be given to Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of (a) notices and demands of any kind and description relating to the Obligations now or hereafter provided for by any agreement, statute, law, rule or regulation; (b) all defenses of DRE pertaining to the Obligations, except for the defense of discharge by performance; and (c) any duty on the part of the City to disclose to Guarantor any facts the City may now or hereafter know about DRE, regardless of whether the

City has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor.

3. Delivery and Effect; Duration. Possession of this Guaranty by the City shall be conclusive evidence of due delivery hereof by Guarantor and acceptance hereof by the City. This Guaranty shall continue in full force and effect until the substantial completion of the Development (as defined in the Agreement).

4. Representations, Warranties and Covenants of Guarantor. Guarantor hereby represents and warrants to, and covenants with, the City that:

(a) Guarantor is familiar with all facts and circumstances which a diligent inquiry would reveal and which would bear upon the risk of nonperformance of the Obligations, and Guarantor has executed and delivered this Guaranty based on Guarantor's own judgment and not in reliance upon any statement or representation of the City.

(b) Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, is qualified to do business in and in good standing under the laws of the State of Minnesota, and has all requisite power and authority to carry on its business as now conducted, to enter into this Guaranty and to perform its obligations hereunder. This Guaranty has been duly authorized by all necessary action and when executed and delivered will be the legal and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

(c) There are no actions, suits or proceedings pending or, to the knowledge of Guarantor, threatened against or affecting Guarantor which, if determined adversely to Guarantor, would have a material adverse effect on the condition of Guarantor or on the ability of Guarantor to perform its obligations under this Guaranty. Guarantor is not in violation of any law, statute, ordinance, code or governmental rule or regulation applicable to Guarantor where such violation could reasonably be expected to impose a material liability on Guarantor, or have a material adverse effect on Guarantor's ability to perform its obligations under this Guaranty.

5. Default and Remedies.

(a) The occurrence of any one or more of the following shall constitute an event of default (each an "Event of Default") under this Guaranty and under the Agreement:

(i) Guarantor's failure to pay or perform its obligations hereunder.

(ii) Any representation or warranty contained in this Guaranty shall not be true and correct in all material respects, and Guarantor fails to cure to the reasonable satisfaction of the City each of the conditions which cause such misrepresentation within thirty (30) days after notice thereof from the City.

(b) This Guaranty is subject to enforcement at law or in equity, including actions for damages or specific performance.

(c) All remedies afforded to the City by this Guaranty are separate and cumulative remedies, and no one of such remedies, whether or not exercised by the City, shall limit any of the other remedies available to the City hereunder, under the Agreement, at law, in equity by statute or otherwise, and shall in no way limit or prejudice any other remedy which the City may have. Mere delay or failure to act shall not preclude the exercise or enforcement of any such rights and remedies available to the City.

6. Costs and Expenses. Guarantor shall pay or reimburse the City on demand for all out-of-pocket expenses (including in each case all fees and expenses of counsel) incurred by the City arising out of or in connection with the enforcement of this Guaranty against Guarantor or arising out of or in connection with any failure of Guarantor to fully and timely perform the obligations of Guarantor hereunder.

7. Waivers and Amendments. This Guaranty can be waived, modified, amended, terminated or discharged only explicitly in a writing signed by the City. A waiver so signed shall be effective only in the specific instance and for the specific purpose given.

8. Notices. All notices, requests, demands and other communications required or permitted to be given hereunder will be sufficiently given if in writing and delivered in person, sent by United States certified mail, return receipt requested, postage prepaid, or sent by overnight mail by a nationally recognized courier service to the party being given such notice at the appropriate address set forth below, or to such other address as any party may give to the others in writing at least 10 days prior to the effective date of said change of address:

If to Guarantor:
Maurices Incorporated
105 West Superior Street
Duluth, MN 55802
Attn: Senior Vice President and Chief Financial Officer

with a copy to:
Ascena Retail Group, Inc.
933 MacArthur Boulevard
Mahwah, NJ 07430
Attn: Gene Wexler, SVP, General Counsel

If to the City:
City of Duluth
411 West First Street
Room 330 City Hall
Duluth, MN 55802
Attn: City Clerk

Notices delivered in person shall be effective upon receipt; notices delivered by mail shall be effective 3 Business Days after being deposited in the United States mail; and notices delivered by overnight mail shall be effective on the Business Day following delivery to the courier.

9. Guarantor Acknowledgments. Guarantor acknowledges that (a) Guarantor will benefit by and from the execution of the Agreement by the City and DRE; (b) Guarantor has received legal and adequate consideration for the execution of this Guaranty and has executed and delivered this Guaranty to the City in good faith in exchange for reasonably equivalent value; (c) the City has agreed to execute the Agreement in reliance upon this Guaranty; (d) Guarantor's legal counsel has advised Guarantor in the negotiation, execution and delivery of this Guaranty; (e) the City has no fiduciary relationship to Guarantor; (f) no joint venture exists between Guarantor and the City; and (g) Guarantor has received a true and correct copy of the Agreement.

10. Successors and Assigns. This Guaranty shall be binding upon Guarantor and the successors and assigns of Guarantor, and inure to the benefit of, and be enforceable by, the City and its successors, transferees and assigns.

11. Governing Law. This Guaranty, the rights of the parties hereunder and the interpretation hereof shall be governed by, and constructed in accordance with, the internal laws of the State of Minnesota.

12. Severability. Whenever possible, each provision of this Guaranty and any other statement, instrument or transaction contemplated hereby or relating hereto, shall be interpreted in such manner as to be effective and valid under applicable law, but, if any provision of this Guaranty or any other statement, instrument or transaction contemplated hereby or relating hereto shall be held to be prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or any other statement, instrument or transaction contemplated hereby or relating hereto.

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

14. General. All representations and warranties contained in this Guaranty, or in any other agreement between Guarantor and the City, shall survive the execution, delivery and performance of this Guaranty and the creation and performance of the Obligations. Captions in this Guaranty are for reference and convenience only and shall not affect the interpretation or meaning of any provision of this Guaranty.

[*Signature Page Follows*]

SIGNATURE PAGE
TO
GUARANTY

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first above written.

Maurices Incorporated

By:_____
Name: _____
Its: _____

GROUND LEASE

by and between

Duluth Real Estate LLC, as Ground Lessor

and

City of Duluth, as Ground Lessee

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Exhibit A – Legal Description of Land
Exhibit B – Legal Description of Parking Facility Parcel
Exhibit C – Legal Description of Alley Parcel
Exhibit D – Legal Description of DNT Parcel
Exhibit E – Permitted Encumbrances

GROUND LEASE

This Ground Lease is made and entered into by and between Duluth Real Estate LLC, a Delaware LLC (hereinafter referred to as "Ground Lessor"), and the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota (hereinafter referred to as the "Ground Lessee"), and shall be effective as of _____, 2014.

RECITALS

I. Ground Lessor is the fee owner of certain parcels of real property situated in Duluth, Minnesota.

II. Ground Lessee requested funds from the Minnesota legislature for the construction of a public parking facility and related improvements on a portion of the real property owned by Ground Lessor and a parcel of real property over which Ground Lessor holds certain easement rights.

III. The Minnesota legislature has, by way of Minn. Stat. § 116J.433, granted to the Commissioner of the Department of Employment and Economic Development the power and authority to make competitive grants to local governmental units for eligible projects and public infrastructure required to support eligible projects, pursuant to which the Commissioner has made, a grant to the Ground Lessee in the amount of $8,500,000 (as more fully defined herein, the "Grant") to be used to construct the Parking Facility (as herein defined) in Duluth, Minnesota.

IV. The Grant will be funded with the proceeds of State of Minnesota General Obligation bonds, and under the provisions contained in Art. XI, §5(a) of the Minnesota Constitution may only be used for the acquisition and betterment of publicly owned property.

V. Ground Lessee intends to use the Grant to pay a portion of the costs of construction of the Parking Facility, and Ground Lessee intends to use certain additional funds to pay costs relating to the design and construction of the Parking Facility and to pay costs associated with certain additional public improvements in the vicinity of the Parking Facility.

VI. In order for the Ground Lessee to use the Grant to pay for any portion of the Parking Facility, Ground Lessee must have a qualifying interest in such Parking Facility and the land upon which it will be constructed.

VII. Ground Lessor is willing to and will provide Ground Lessee with the necessary qualifying interest by leasing certain real estate interests to Ground Lessee by way of this long-term ground lease, which has a term equal to at least 125% of the useful life of the Parking Improvements.

VIII. Ground Lessee has agreed with Ground Lessor pursuant to the Development Agreement (herein defined) that (a) Ground Lessor will construct the Parking Improvements and certain related public improvements, and (b) Ground Lessee will use the Grant and other funds available to Ground Lessee to pay costs of construction relating to such improvements, on and subject to the terms of the Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Ground Lessor and Ground Lessee hereby agree as follows:

1. **Definitions**. As used in this Ground Lease, the following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the context specifically indicates otherwise:

"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 described on Exhibit C attached hereto, as such description may be amended upon substantial completion of the Public Improvements pursuant to Section 8.6.

"Ancillary Documents" means, collectively, the Operation and Easement Agreement, DNT Easement Agreement, and that certain Pedestrian Passageway Agreement Pertaining to the Maurices Office Tower Property of even date herewith between Ground Lessor and Ground Lessee.

"Bond" means the Bond issued by the City of Duluth pursuant to the Bond Resolution.

"Bond Resolution" – means the Resolution Providing for the Issuance, Sale and Delivery of $11,500,000 Taxable Tax Increment and Parking Facility Revenue Bond, Series 2014A, Resolution Number 14-___R, adopted by the City Council of the City of Duluth, Minnesota on _____, 2014.

"Building Support Facilities" – has the meaning given to such term in Section 3.4.2.

"Building Utility Facilities" – has the meaning given to such term in Section 3.4.4.

"Certificate of Completion" – means a certificate issued by the City of Duluth pursuant to Section VII.C. of the Development Agreement.

"Commissioner of MMB" – means the Commissioner of the Minnesota Department of Management and Budget.

"Declaration" – means that certain declaration that the Grant Agreement requires the Ground Lessee, as recipient of the Grant, to execute and record.

"Default Interest Rate" – means the annual interest rate applicable to state court judgments, verdicts and arbitration awards in the State of Minnesota, as promulgated by the State of Minnesota State Court Administrator from time to time.

"Development Agreement" – means that certain Development Agreement of even date herewith by and between the Ground Lessor and Ground Lessee, as the same may be amended from time to time.

"DNT Easement Agreement" – means that certain Easement Agreement of even date herewith between Ground Lessor and Forum Communications Company pursuant to which Ground Lessor has been granted the DNT Easement Rights as the same may be amended from time to time.

"DNT Easement Parcel" – means that portion of the DNT Parcel over which Ground Lessor holds the DNT Easement Rights pursuant to the DNT Easement Agreement.

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

"DNT Parcel" – means that certain parcel of real property located in the City of Duluth, County of St. Louis, State of Minnesota that is legally described on Exhibit D attached hereto.

"Environmental Laws" – means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., the Hazardous Materials Transportation Act, §1802 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., the Clean Air Act, 33 U.S.C. §1321 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., the Minnesota Environmental Response and Liability Act, Minn. Stat. Ch. 115B, the Minnesota Petroleum Tank Release Cleanup Act, Minn. Stat. Ch. 115C, and any other federal, state, county, municipal, local or other statute or law relating to Hazardous Substances.

"Event of Default" – means one or more of those events delineated in Section 22 herein.

"G.O. Compliance Legislation" – means Minn. Stat. §16A.695 as such may subsequently be amended, modified or replaced from time to time, and that certain "Fourth Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" executed by the Commissioner of MMB and dated July 30, 2012.

"Governmental Program" – means the operation of the Parking Facility as a public parking facility in compliance with the requirements of the Grant Agreement.

"Grant" – means a grant of proceeds of State of Minnesota general obligation bonds in an amount of $8,500,000 from the Minnesota Department of Employment and Economic Development to the Ground Lessee to be used to construct, furnish, and equip the Parking Facility, as more fully described in the Grant Agreement.

"Grant Agreement" – means that certain General Obligation Bond Proceeds Grant Agreement - Construction Grant for the 425 Parking Facility Project, of substantially even date herewith, under which the State of Minnesota by and through its Commissioner of the Department of Employment and Economic Development, has agreed to provide and fund the Grant.

"Ground Lease" – means this Ground Lease by and between Duluth Real Estate LLC, as Ground Lessor, and the City of Duluth, as Ground Lessee, as the same may be amended from time to time.

"Ground Lease Term" – means the period of time starting on the effective date of this Ground Lease and ending on the date that is fifty (50) years thereafter.

"Ground Lessee" – means the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota.

"Ground Lessor" – means Duluth Real Estate LLC, a Delaware limited liability company.

"Hazardous Substances" – means asbestos, ureaformaldehyde, polychlorinated biphenyls ("PCBs"), nuclear fuel or material, chemical waste, radioactive material, explosives, known carcinogens, petroleum products and by-products, and other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any of the Environmental Laws.

"Independent Insurance Consultant" – means any person who is not an employee or officer of Ground Lessee that: (i) is qualified to survey risks and to recommend insurance coverage for organizations engaged in like operations to those of Ground Lessee, (ii) has a favorable reputation for skill and experience in such surveys and such recommendations, and (iii) is reasonably acceptable to the Ground Lessor. Such person

may be a broker or agent with whom Ground Lessee transacts business, or has transacted business in the past.

"Land" – means that certain real property located in the City of Duluth, County of St. Louis, State of Minnesota, described on Exhibit A attached hereto.

"Operation and Easement Agreement" – means that certain Operation and Easement Agreement between the Ground Lessor and Ground Lessee dated on or about the date hereof.

"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 Ground Lessee in accordance with the provisions contained in this 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 Ground Lease Term, 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) Ground Lessee on the DNT Easement Parcel in accordance with the provisions contained in this Ground Lease, the Development Agreement, and the DNT Easement Agreement, which improvements will provide additional parking capacity and 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 Ground Lease Term, as the same may from time to time exist, and the appurtenances to all of the foregoing.

"Parking Facility Parcel" – means that portion of the Land that is described on Exhibit B attached hereto, as such description may be amended upon substantial completion of the Parking Improvements pursuant to Section 8.6.

"Parking Improvement Premises" – means, collectively, the Parking Facility Parcel, the Alley Parcel, and the DNT Easement Parcel.

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

"Permitted Encumbrances" – means the liens and encumbrances delineated on Exhibit E attached hereto.

"Public Improvement Plans" – means the Public Improvement Plans, as defined in, and approved by Ground Lessee under, the Development Agreement.

"Parking Support Facilities" – has the meaning given to such term in Section 3.4.1.

"Parking Utility Facilities" – has the meaning given to such term in Section 3.4.3.

"State" – means the State of Minnesota by and through its Department of Employment and Economic Development.

"Taxes" – means and includes all ad valorem taxes and special assessments or other governmentally imposed charges with respect to the Parking Improvement Premises and Parking Improvements.

"Title Company" – means First American Title Insurance Company.

2. **Creation of Public Ownership; Bond Financed Property**. The proceeds of State of Minnesota general obligation bonds issued under the provisions contained in Article XI, §5(a) of the Minnesota Constitution may only be used to acquire or better property of a capital nature in which a public entity possesses a qualifying ownership interest. The State of Minnesota has determined that a ground lease to a public entity as lessee thereunder with a term equal to or greater than one hundred and twenty five percent (125%) of the useful life of the Parking Improvements that are the subject of such ground lease creates a sufficient ownership interest in the public entity to qualify as public ownership. The Parking Facility Parcel is being bettered, and the Parking Facility is being acquired or bettered, with the proceeds of general obligation bonds issued under the provisions contained in Article XI, §5(a) of the Minnesota Constitution.

In order to create the necessary public ownership interest in the Parking Facility Parcel and Parking Facility, Ground Lessor is leasing the Parking Improvement Premises to the Ground Lessee by way of this Ground Lease for a period of fifty (50) years, which is a period of time equal to one hundred and twenty five percent (125%) of the useful life of the Parking Improvements. Ground Lessor and Ground Lessee acknowledge and agree that the useful life of the Parking Improvements is forty (40) years.

The expiration of this Ground Lease at the end of the Ground Lease Term does not require that the State be repaid the proceeds of Grant or that the Parking Improvement Premises or Parking Improvements be sold. Upon the expiration of the Ground Lease Term the Ground Lessee's interest in the Parking Improvement Premises created by this Ground Lease (and Ground Lessee's interest in the Parking Improvements) will terminate. At such time Ground Lessee shall, upon request of Ground Lessor, pursuant to the authority provided in the Grant Agreement, promptly request the State to execute whatever document may be needed to reflect that the Parking Improvement Premises and Parking Improvements are no longer subject to the Grant Agreement and the Declaration.

3. **Demise; Term; Easements; Conditions Precedent.** In consideration of the mutual promises and covenants contained herein, the parties hereto agree to the following provisions.

3.1 **Demise.** Ground Lessor hereby demises and leases the Parking Improvement Premises to the Ground Lessee, and Ground Lessee hereby leases the Parking Improvement Premises from the Ground Lessor, all for the consideration and upon the terms and conditions set forth herein. Ground Lessor and Ground Lessee acknowledge that the Parking Facility Parcel and the Ground Lessee's interest in the Parking Facility Parcel under this Ground Lease, and the Ground Lessee's interest in the Parking Facility, will be subject to the Grant Agreement and Declaration.

3.2 **Term.** Ground Lessee shall have and hold the Parking Improvement Premises for the Ground Lease Term. Ground Lessor and Ground Lessee hereby agree, for the benefit of the State, that this Ground Lease shall not be sooner terminated, modified or amended, except with the prior written consent of the State and the Commissioner of MMB.

3.3 **Covenant of Quiet Possession.** Ground Lessor represents, warrants and covenants that Ground Lessee shall have and enjoy quiet and undisturbed possession of the Parking Improvement Premises during and for the full Ground Lease Term.

3.4 **Parking Support Facilities.**

3.4.1 **Parking Support Facilities.** Ground Lessor hereby grants to Ground Lessee a non-exclusive easement during the Ground Lease Term for support over those portions of the Land necessary to the structural support of the Parking Facility, as shown on plans and specifications approved by Ground Lessee pursuant to the Development Agreement (the "Parking Support Facilities"). Ground Lessee shall not, without the consent of Ground Lessor, alter any Parking Support Facilities or impose weight on the Parking Support Facilities that would require enlarging, modifying or strengthening the Parking Support Facilities or adding new Parking Support Facilities on the Land. Ground Lessor shall maintain, or caused to be maintained, the Parking Support Facilities in a condition consistent with their intended purpose under this Section 3.4.1. Notwithstanding the foregoing, Ground Lessor may relocate any existing Parking Support Facilities if such relocation (i) does not materially interfere with or diminish Ground Lessee's use and enjoyment of the Parking Facility during any construction, and (ii) is completed using materials and design standards which equal or exceed those originally used.

3.4.2 **Building Support Facilities.** Ground Lessee hereby grants to Ground Lessor a non-exclusive easement during the Ground Lease Term for

support over those portions of the Parking Facility Parcel necessary to the structural support of the improvements constructed by Ground Lessor around and above the Parking Facility, as shown on the Public Improvement Plans (the "Building Support Facilities"). Ground Lessee shall maintain, or cause to be maintained, the Building Support Facilities in a condition consistent with their intended purpose under this Section 3.4.2. Ground Lessor shall not, without the consent of Ground Lessee, alter any Building Support Facilities or impose weight on the Building Support Facilities that would require enlarging, modifying or strengthening the Building Support Facilities or adding new Building Support Facilities on the Parking Facility Parcel.

3.4.3 **Parking Utility Facilities**. Ground Lessor hereby grants to Ground Lessee non-exclusive easements during the Ground Lease Term over, under and through the Land as reasonably necessary for the installation, maintenance, repair and replacement of electrical power lines, fiber optic lines, and water pipelines and conduits, and other utilities, as reasonably necessary to serve the Parking Facility, as shown on plans and specifications approved by Ground Lessee pursuant to the Development Agreement (the "Parking Utility Facilities"). Ground Lessee shall maintain, or cause to be maintained, the Parking Utility Facilities in a condition consistent with their intended purpose under this Section 3.4.3. The Ground Lessee may hereafter from time to time at its expense install beneath the Land to which this easement extends any other or further conduits, devices or other apparatus to serve the Parking Facility if: (a) such apparatus does not endanger the Land or increase insurance costs thereon; (b) the installation does not materially interfere with the then or reasonably anticipated future use and operation of the Land or improvements thereon; and (c) is approved by Ground Lessor, in its sole but reasonable discretion, and the designer of the particular utility service, if any. In the event of such a change, alteration or relocation, Ground Lessee will repair any damage to the Land or improvements thereon caused thereby. The easements granted in this section may be relocated by Ground Lessor, provided the relocation (w) does not unreasonably interfere with the utility service to the Parking Facility, (x) does not reduce or unreasonably impair the usefulness of the Parking Facility, and (y) is completed using materials and design standards that equal or exceed those originally used.

3.4.4 **Building Utility Facilities**. Ground Lessee hereby grants to Ground Lessor non-exclusive easements during the Ground Lease Term over, under and through the Parking Facility Parcel as reasonably necessary for the installation, maintenance, repair and replacement of electrical power lines, fiber optic lines, and water pipelines and conduits, and other utilities, as reasonably necessary to serve the Land and all improvements constructed on and above the Land from time to time, as shown on the Public Improvement Plans (the "Building Utility Facilities"). Ground Lessor shall maintain, or cause to be maintained, the Building Utility Facilities in a condition consistent

with their intended purpose under this Section 3.4.4. The Ground Lessor may hereafter from time to time at its expense install within the Parking Facility Parcel to which this easement extends any other or further conduits, devices or other apparatus if: (a) such apparatus does not endanger the Parking Facility Parcel or increase insurance costs thereon; (b) the installation does not materially interfere with the then or reasonably anticipated future use and operation of the Parking Facility Parcel; and (c) is approved by Ground Lessee, in its sole but reasonable discretion, and the designer of the particular utility service, if any. In the event of such a change, alteration or relocation of any Building Utility Facilities by Ground Lessor, Ground Lessor will repair any damage to the Parking Facility Parcel caused thereby.

3.5 **Conditions Precedent**. This Ground Lease shall not be valid or of any force or effect until the occurrence of each and every one of the following conditions precedent:

3.5.1 **Grant Agreement**. The mutual execution and delivery of the Grant Agreement by the State and Ground Lessee.

3.5.2 **Commissioner's Consent**. The Commissioner of MMB has consented, in writing, to this Ground Lease.

3.5.3 **Title Insurance**. The Title Company's issuance of a Lessee's Policy of Title Insurance to Ground Lessee, as of the time of entry into this Ground Lease, which such policy insures, subject only to the Permitted Encumbrances, the Ground Lessee's interest under this Ground Lease, or Ground Lessee's waiver, in writing, of such requirement.

4. **Rent**. In consideration of the execution and delivery of this Ground Lease and the demise of the Parking Improvement Premises to Ground Lessee pursuant to this Ground Lease, Ground Lessee has paid to Ground Lessor the sum of $10.00 (ten dollars) as prepaid rent for the entire Ground Lease Term. No other rent is required to be paid by Ground Lessee to Ground Lessor during the Ground Lease Term.

5. **Taxes and Other Charges**. Ground Lessee shall be responsible for the payment of all Taxes with respect to the Parking Improvement Premises and Parking Improvements, or for causing such Taxes to be paid, during the Ground Lease Term. The provisions in this Section 5 shall survive the termination of this Ground Lease or the running of the Ground Lease Term as to any such Taxes attributable to the Ground Lease Term that remain unpaid upon termination of this Ground Lease or the running of the Ground Lease Term.

6. **Payment of Utilities.** Ground Lessee shall be responsible for and shall fully and promptly pay for all water, gas, heat, light, power, telecommunications and all other utilities of every kind furnished to the Parking Improvement Premises and Parking

Improvements throughout the Ground Lease Term (collectively, the "Utility Costs"), and Ground Lessor shall have no responsibility of any kind for any thereof. The provisions contained in this Section 6 shall survive the termination of this Ground Lease or the running of the Ground Lease Term as to any Utility Costs attributable to the Ground Lease Term that remain unpaid upon termination of the Ground Lease or the running of the Ground Lease Term.

7. Operations; Compliance with Other Agreements; Use Restriction.

7.1 **Operations Generally**. Ground Lessee shall operate the Parking Facility Parcel and the Parking Facility as a public parking facility, and shall operate the balance of the Parking Improvement Premises and the balance of the Parking Improvements as a parking facility, in each case subject to Section 7.4 below, and subject to the terms and conditions of the Operation and Easement Agreement (and, in the case of the Parking Facility Extension, subject to the terms and conditions of the DNT Easement Agreement). Under no circumstance may Ground Lessee, or any entity to whom Ground Lessee sells, assigns, or transfers its interest in this Ground Lease: (i) modify the structural characteristics of the Parking Improvements or build any additional structures on the Parking Improvement Premises, without the specific written consent of Ground Lessor, (ii) operate the Parking Improvement Premises or Parking Improvements in any way that will increase the cost of or cause a cancellation of any insurance policy covering any part of the Parking Improvement Premises or Parking Improvements, or (iii) allow any commercial advertising on or within the Parking Improvements beyond customary parking and directional signage necessary in connection with the operation of the Parking Improvements as a public parking facility and customary directional signage relating to the public skywalk system, without the specific written consent of Ground Lessor. The Ground Lessee shall, at its sole cost, comply with all requirements pertaining to the Parking Improvement Premises and Parking Improvements that are required or imposed by any insurance organization or company as a condition to the receipt and maintenance of any insurance required under this Ground Lease and the Grant Agreement.

7.2 Compliance with and Performance under Other Agreements.

7.2.1 **Compliance**. Ground Lessee shall at all times after issuance of the Certificate of Completion, and thereafter during the term of this Ground Lease, operate the Parking Improvements in compliance with the Grant Agreement, the DNT Easement Agreement, the Operation and Easement Agreement, and the Bond Resolution.

7.2.2 **Performance**. Without limiting the generality of Section 7.2.1 above, by entering into this Ground Lease, Ground Lessee agrees and confirms that (i) after the issuance of the Certificate of Completion and thereafter during the term of this Ground Lease, Ground Lessee shall perform all obligations of the "Parking Facility Owner" under the DNT Easement Agreement, and (ii) it

has accepted and agreed to the provisions of Section 5 and Section 10(k) of the DNT Easement Agreement. If Ground Lessee fails to pay or perform any obligation of the "Parking Facility Owner" under the DNT Easement Agreement, Ground Lessor shall have the right to pay or perform the same (including the right to enter upon the Parking Improvement Premises for such purpose), and Ground Lessee shall promptly reimburse Ground Lessor for all costs incurred by Ground Lessor in connection therewith, subject to Section 48 of this Ground Lease. Ground Lessee acknowledges and agrees that Easement Parcel Owner (as that term is defined in the DNT Easement Agreement) is expressly made a third party beneficiary of this Section 7.2.2 and is entitled to rely upon and enforce this Section 7.2.2, subject to Section 48 of this Ground Lease.

7.2.3 **No Consents**. Ground Lessee will not grant any consent, approval or waiver under the DNT Easement Agreement or under the Operation and Easement Agreement without the prior written consent of Ground Lessor.

7.3 **Use Restriction.** Subject to Section 7.4, no use of the Parking Facility other than as a City of Duluth public parking facility shall be permitted. This Section 7.3 shall constitute a "use restriction" within the meaning of the Grant Agreement, and shall not apply to any successor lessee who purchases the Ground Lessee's interest in this Ground Lease. The provisions of Sections 7.1 and 7.2 set forth certain general operating and compliance covenants; said Sections are not intended as "use restrictions" within the meaning of the Grant Agreement, and shall continue to apply to any successor lessee.

7.4 **Coordination with Skywalk System**. Ground Lessee may permit use of areas within the Parking Improvements designated by Ground Lessee (and approved by Ground Lessor) from time to time for pedestrian ingress to and egress from the Parking Improvements, and to and from the City of Duluth's skywalk system.

8. Parking Improvements.

8.1 **Permits and Approvals**. Ground Lessee shall obtain or cause to be obtained all necessary governmental permits and approvals for the construction of the Parking Improvements, and shall pursue obtaining such permits and approvals in good faith with due diligence immediately upon the execution of this Ground Lease. Ground Lessor agrees to cooperate with and assist Ground Lessee to all reasonable extents in Ground Lessee's pursuit of and application for all necessary governmental permits and approvals, including, without limitation, joining in the execution of any applications necessary with respect thereto.

8.2 **Construction of Parking Improvements**. Upon the execution of this Ground Lease, but subject to the provisions of Section 8.3, Ground Lessor shall, pursuant to the Development Agreement, proceed with commercially reasonable diligence to prepare the Parking Improvement Premises (including the demolition of any structures thereon, as required pursuant to the Public Improvement Plans) and construct the Parking Improvements in accordance with the Public Improvement Plans and the requirements of the Development Agreement. The Parking Improvements and any alterations, additions or repairs thereto shall be made in a good and workmanlike manner and in compliance with all applicable governmental laws, regulations and ordinances. Ground Lessor and Ground Lessee shall cooperate in good faith regarding the coordination of the construction of the Parking Improvements and the construction of any improvements by Ground Lessor on the Land.

8.3 **Plans and Specifications**. Ground Lessor and Ground Lessee will work to develop the Public Improvement Plans in accordance with the Development Agreement. The Public Improvement Plans shall not be modified or amended without the prior written consent of Ground Lessor and Ground Lessee, in each case to the extent required under the Development Agreement.

8.4 **Ownership of Parking Improvements**. Subject to Ground Lessor's rights under this Ground Lease regarding the application of insurance proceeds and condemnation awards, title to the Parking Improvements shall be owned by the Ground Lessee, regardless of who constructed the Parking Improvements, together with any and all fixtures related thereto and located on the Parking Improvement Premises. Ground Lessor shall, upon the expiration of the Ground Lease Term or earlier termination of this Ground Lease pursuant to the terms hereof, become the absolute owner of any and all Parking Improvements and any fixtures related thereto and located on the Parking Improvement Premises, and Ground Lessee does hereby grant and convey all of Ground Lessee's right, title and interest in and to the Parking Improvements to Ground Lessor and such grant and conveyance shall be automatic pursuant to this Ground Lease, without the need for any further instrument or action by either Ground Lessor or Ground Lessee. The provisions in this Section 8 shall survive the termination of this Ground Lease or the running of the Ground Lease Term as to any insurance proceeds and condemnation awards arising or attributable to the Ground Lease Term that remain unapplied pursuant to Ground Lessor's rights under this Ground Lease upon termination of this Ground Lease or the running of the Ground Lease Term.

8.5 **Alley Parcel Vacation/Concurrent Use Permit**. The Alley Bridge will be located within the Alley Parcel. The Ground Lessee hereby agrees to take all necessary action as soon as reasonably practicable to vacate the Alley Parcel or grant a concurrent use permit therefor, whereupon this Ground Lease shall automatically be extended to include a demise of such vacated Alley Parcel or any rights granted pursuant to a concurrent use permit (including a demise of DNT Easement Rights

with respect to any portion of the Alley Parcel that becomes subject to the DNT Easement upon such vacation), on and subject to all of the terms of this Ground Lease. Notwithstanding the foregoing, Ground Lessee shall vacate the Alley Parcel as aforesaid unless Ground Lessor agrees in writing that a concurrent use permit is satisfactory, in Ground Lessor's sole discretion. If the Alley Bridge is destroyed by casualty and it is determined not to rebuild or replace the Alley Bridge, then Ground Lessee will re-dedicate, or cause to be re-dedicated, the Alley Parcel as public alleyway.

8.6 **Legal Description; Amendment**. The descriptions of the Parking Facility Parcel on Exhibit B and Alley Parcel in Exhibit C were prepared based upon the Public Improvement Plans using the following protocols (the "Measurement Standards"): (a) vertical boundaries of the Parking Facility Parcel were measured from the bottom of the lowest floor to the bottom of the highest floor as shown on the Public Improvement Plans, and horizontal boundaries of the Parking Facility Parcel were measured from the interior surfaces of the outermost walls as shown on the Public Improvement Plans; and (b) vertical boundaries of the Alley Parcel were measured from the exterior surfaces on the bottom and top of the improvements to be constructed within the Alley Parcel as shown on the Public Improvements Plans, and horizontal boundaries of the Alley Parcel were measured from the exterior surfaces on each side of the improvements to be constructed within the Alley Parcel as shown on the Public Improvement Plans. Upon substantial completion of the structural elements of the Parking Improvements, Ground Lessor and Ground Lessee agree to (i) cause the Parking Facility and Alley Bridge to be surveyed and a revised legal description of the Parking Facility Parcel and Alley Parcel to be prepared, which revised legal description shall be prepared in accordance with the Measurement Standards and shall conform to the Parking Facility and Alley Bridge, as actually constructed, and (ii) to execute an amendment to this Ground Lease and execute and record an amendment to any memorandum or short-form of this Ground Lease, setting forth the legal description of the Parking Facility Parcel and Alley Parcel as so revised.

9. Maintenance of Parking Improvements.

9.1 **Maintenance; Restoration**. Ground Lessee shall, at Ground Lessee's sole cost and without any expense to Ground Lessor, keep and maintain (or cause to be kept and maintained) the Parking Improvement Premises, Parking Improvements, Building Support Facilities, and all appurtenances thereto, in good, sanitary, lawful, and neat order, condition, and repair, and shall pursuant to the terms herein, restore and rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty, or any other cause whatsoever, including any modification required due to any partial condemnation. Ground Lessor shall not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Parking Improvement Premises or Parking Improvements; *provided, however,* that nothing herein is intended to relieve Ground Lessor from its obligations to preserve and maintain the Parking Support Facilities, as described in Section 3.4.1.

9.2 **Alterations**. Except as otherwise permitted herein, and except as permitted or required pursuant to the Operation and Easement Agreement, Ground Lessee shall not make any alterations, improvements, or changes to any portion of the Parking Improvement Premises or Parking Improvements, the cost of which is reasonably expected to exceed $10,000 or which affects the Building Support Facilities, Building Utility Facilities, any other structural element or building system, or the exterior of the Parking Improvements, without the prior written consent of Ground Lessor.

9.3 **Survival**. The provisions contained in this Section 9 shall survive the termination of this Ground Lease pursuant to the terms hereof or the running of the Ground Lease Term as to any obligation arising or attributable to the Ground Lease Term under this Section 9 that remains unsatisfied upon the termination of the Ground Lease or the running of the Ground Lease Term.

10. **Mechanics' Liens**. Ground Lessee hereby covenants and agrees that it will not permit or allow any mechanics' or materialmen's liens to be placed against the Parking Improvement Premises or Parking Improvements or Ground Lessor's interests in the Parking Improvement Premises or Parking Improvements during the Ground Lease Term. Notwithstanding the previous sentence, (a) in the event any such lien shall be so filed against Ground Lessor's interest, then Ground Lessee shall take all steps necessary to remove it within sixty (60) days of its being filed; *provided, however,* that Ground Lessee may contest any such lien provided Ground Lessee first posts a surety bond, letter of credit, or cash with the applicable court sufficient to release the Parking Improvement Premises and Parking Improvements from such lien, or otherwise protects Ground Lessor from foreclosure thereof, and (b) Ground Lessee shall have no obligation to remove or discharge any mechanics' or materialmen's liens relating to the initial construction of the Parking Improvements, except to the extent expressly provided in the Development Agreement.

11. **Ground Lessor's Right to Encumber**. Except for the Permitted Encumbrances, Ground Lessor may not, without the prior written consent of the State and the Commissioner of MMB, create or allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Parking Improvement Premises, the Parking Improvements, or the Ground Lessor's interest in this Ground Lease. For purposes of this Section 11, a lien or encumbrance will not be considered to be a lien or encumbrance against the Parking Improvement Premises, the Parking Improvements, or the Ground Lessor's interest in this Ground Lease, provided the enforcement of such lien or encumbrance would not affect or disturb (a) the Ground Lessee's interest in the Parking Improvement Premises or the Parking Improvements, or (b) the Ground Lessee's rights under this Ground Lease. For the avoidance of doubt, Ground Lessor may, without the prior written consent of the State and the Commissioner of MMB, create or allow any voluntary lien or encumbrance or involuntary lien or encumbrance so long as such lien or encumbrance (i) encumbers Ground Lessor's fee interest in the Land (or any part thereof), and is subordinate to (or does not

encumber or affect) the Ground Lessee's interest in the Parking Improvement Premises, the Parking Improvements, or this Ground Lease, and (ii) is subordinate to the Declaration.

12. **Ground Lessee's Right to Encumber**. Except for the Permitted Encumbrances, Ground Lessee may not, without the prior written consent of the State, the Commissioner of MMB, and the Ground Lessor, allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested to be created or exist against the Parking Improvements or Parking Improvement Premises or Ground Lessee's interest in the Parking Improvements or Parking Improvement Premises.

13. **Sale of Ground Lessee's Interest**. Ground Lessee may, upon receiving consent pursuant to Section 14 of this Lease, and subject to the following provisions, sell its interest in this Ground Lease and the Parking Improvements.

13.1 **Determination**. Ground Lessee's City Council must make a determination at a duly called and held public meeting that the Parking Improvement Premises and Parking Improvements are no longer needed or usable to operate the Governmental Program, and that it intends to sell Ground Lessee's interest in this Ground Lease. Such determination must be submitted to and approved by the Commissioner of MMB. Nothing in this Ground Lease, or any other agreement, shall be construed as requiring the Ground Lessee to sell its interest in this Ground Lease, which decisions shall be solely made by Ground Lessee and its City Council.

13.2 **Offer to Purchase**. Ground Lessee shall promptly notify Ground Lessor, in writing, of its City Council's determination to sell Ground Lessee's interest in this Ground Lease and the Parking Improvements, and must offer to sell such interest to Ground Lessor for fair market value before offering to sell such interest to any other party. Ground Lessor shall notify Ground Lessee within sixty (60) days of receipt of Ground Lessee's notification and offer to sell whether or not it is interested in purchasing such interest. If Ground Lessor notifies Ground Lessee that it is interested in purchasing Ground Lessee's interest in this Ground Lease and the Parking Improvements, then appraisals of such interest shall be performed in accordance with the provisions contained in Section 13.3 herein to establish the purchase price. After the completion of such appraisals Ground Lessor shall have an additional sixty (60) days to decide whether or not it wants to purchase Ground Lessee's interest in this Ground Lease and the Parking Improvements, and if Ground Lessor elects to purchase such interest the closing shall occur within whatever time period Ground Lessor and Ground Lessee agree, and Ground Lessor and Ground Lessee shall each pay one-half of all costs associated with such purchase and closing.

13.3 **Appraisal**. For the purpose of determining the fair market value price that Ground Lessee will offer to sell its interest in this Ground Lease and the Parking Improvements to Ground Lessor, Ground Lessee shall select an MAI or comparable certified appraiser, and such appraiser shall promptly perform and complete an

appraisal of Ground Lessee's interest in this Ground Lease and the Parking Improvements, assuming that any and all mortgage liens or encumbrances on the property being sold that negatively affect the value thereof will be satisfied or released, and the price at which Ground Lessee shall offer to sell its interest in this Ground Lease and the Parking Improvements to Ground Lessor shall be appraised value. Ground Lessor and Ground Lessee shall each pay one-half of the cost of such appraisal. Notwithstanding the foregoing, the Ground Lessee and Ground Lessor may agree to an alternative appraisal process at the time of sale, subject to the Commissioner of MMB's approval.

13.4 **Sale**. In the event that Ground Lessor elects to not purchase Ground Lessee's interest in this Ground Lease and the Parking Improvements under Section 13.2 herein, then Ground Lessee may sell such interest as provided in Minn. Stat. §16A.695.

13.5 **Proceeds of Sale**.

13.5.1 All proceeds of a sale of Ground Lessee's interest in this Ground Lease and the Parking Improvements under the provisions of this Section 13 (independent of whether such sale is to Ground Lessor under the provisions in Sections 13.2 or by way of a public sale under the provisions contained in Section13.4) shall be disbursed in accordance with the provisions in the Grant Agreement regarding the sale of "state bond financed property".

13.5.2 Subject to the provisions of the Grant Agreement, after the distribution has been made to the Commissioner of MMB of all amounts to be paid to the Commissioner of MMB pursuant to the Grant Agreement (including without limitation Section 4.02.A thereof) as described in Subsection 13.5.1 above, all remaining proceeds of sale shall be paid and distributed (i) first, to the Ground Lessee, to the extent of (and for application against) the unpaid balance of the Bond (which unpaid balance Ground Lessor and Ground Lessee agree constitutes "Approved Debt" for purposes of the Grant Agreement), (ii) second, to Ground Lessor, to the extent of any amounts paid by Ground Lessor (over and above amounts paid by Ground Lessor for the Bond) for the initial acquisition of the Parking Improvement Premises and initial construction of the Parking Improvements, pursuant to, and not reimbursed under, the Development Agreement (which amounts Ground Lessor and Ground Lessee agree constitute Initial Acquisition and Betterment Costs for purposes of the Grant Agreement), and (iii) third, to the extent there are any excess proceeds of sale remaining after payment of the foregoing amounts, such excess proceeds of sale shall be paid in accordance with the provisions of Minn. Stat. §16A.695, Subd. 3(2).

13.5.3 Upon completion of the initial construction of the Parking Improvements, Ground Lessor and Ground Lessee will in writing confirm the amounts described in clause (ii) of Subsection 13.5.2.

13.6 **Effect of Sale.** Upon the sale by the Ground Lessee of its interest in this Ground Lease, the Ground Lease shall remain in full force and effect and the entity that purchases such interest shall become the Ground Lessee hereunder as if they were the original Ground Lessee hereunder.

13.7 **Condition of Sale.** Any sale hereunder must be in full accordance with all applicable federal, state, and local statutes, regulations and ordinances.

13.8 **Conflict with Grant Agreement.** Whenever there shall exist a conflict between the provisions contained in this Section 13 and any provision in the Grant Agreement relating to a sale of Ground Lessee's interest in this Ground Lease, the provisions of the Grant Agreement shall prevail.

14. **Transfer, Assignment, Subletting.**

14.1 **Transfer, Assignment, Subletting by Ground Lessee.** Ground Lessee may not transfer, assign, or sublease (collectively, a "Transfer"), all or any part of the Parking Improvement Premises or Parking Improvements without Ground Lessor's written consent, which consent may be granted or withheld in Ground Lessor's sole discretion; *provided, however*, that if (a) the party to which the Transfer is proposed to be made (the "Proposed Transferee") is a public authority controlled by the City of Duluth; (b) the Transfer to the Proposed Transferee will not result in any material change in the operation of (or the economic decisions to be made by Ground Lessee with respect to) the Parking Improvements; (c) the Proposed Transferee in writing assumes and agrees to perform all obligations of the Ground Lessee under this Ground Lease (including, without limitation, the Ground Lessee's indemnification obligations under Section 21.2) and under all other documents and instruments executed by the Ground Lessee in connection with this Ground Lease; (d) Ground Lessor shall be satisfied that the Proposed Transferee (i) will be able to pay and perform all obligations of Ground Lease under this Ground Lease, the Operation and Easement Agreement, and all other documents and instruments executed by Ground Lessee in connection with this Ground Lease, and (ii) has, and can reasonably be expected to maintain over the Ground Lease Term, adequate solvency and liquidity to perform all such obligations; (e) Ground Lessee shall have delivered written notice to the State and the Commissioner of MMB of any proposed Transfer and the State and the Commissioner of MMB shall have provided consent to the same in writing; and (f) all other parties whose consent is required for any Transfer have provided such consent in writing; and (f) the holder of the Bond (as defined in the Bond Resolution) has consented to such Transfer, then, if each of the foregoing conditions is satisfied, the Ground Lessor shall not unreasonably withhold its consent to a Transfer to the

Proposed Transferee, and such Proposed Transferee shall thereupon become a "Permitted Transferee" under this Ground Lease.

14.2 **Sale by Ground Lessor**. If Ground Lessor sells its underlying fee interest in the Parking Facility Parcel as permitted by Section 2.06.A.11 of the Grant Agreement, Ground Lessor agrees to cause notice of such sale to be promptly supplied to the Commissioner of MMB and Ground Lessee, together with copies of transfer documents with respect thereto, as may reasonably be requested by the Commissioner of MMB, all as set forth in said Section 2.06.A.11.

15. **Surrender**. Upon the expiration of the Ground Lease Term or earlier termination of this Ground Lease pursuant to the terms hereof, Ground Lessee shall surrender to the Ground Lessor (a) the Parking Improvement Premises and Parking Improvements to Ground Lessor and leave the Parking Improvements (to the extent then existing) in the condition required by this Lease, and (b) any amounts then held or credited to the Capital Account (as defined in the Bond Resolution). The Parking Improvements, amounts in said Capital Account, and any equipment, trade fixtures, and personal property remaining upon the Parking Improvement Premises after surrender thereof, to the extent not already the property of Ground Lessor, shall automatically become the property of Ground Lessor from and after such expiration or earlier termination. The voluntary or other surrender of this Ground Lease by Ground Lessee, or a mutual cancellation hereof, shall not work a merger with respect to any or all existing subleases or license agreements that Ground Lessee entered into and that were consented to, in writing by Ground Lessor, and shall operate as an assignment to Ground Lessor of any or all such subleases, subtenancies or license agreements. The provisions contained in this Section 15 shall survive the termination of this Ground Lease or the running of the Ground Lease Term.

16. **Inspection by Ground Lessor**. Upon reasonable request by Ground Lessor and without interfering with Ground Lessee's normal use of the Parking Improvement Premises and Parking Improvements, Ground Lessee shall allow Ground Lessor to inspect the Parking Improvement Premises and Parking Improvements from time to time.

17. **Ground Lessor's Representations, Covenants, and. Warranties**. Ground Lessor represents, covenants, and warrants to Ground Lessee as follows:

17.1 **Authority**. Ground Lessor has full right and authority to enter into this Ground Lease and perform Ground Lessor's obligations under this Ground Lease as of the effective date hereof and, except for the Permitted Encumbrances, has (i) good, marketable and insurable title to the Parking Facility Parcel in fee simple, free and clear of all restrictions, leases, liens, encumbrances, tenancies, and easements that would materially affect or impact Ground Lessee's interest in this Ground Lease or use of the Parking Facility Parcel and the portion of the Parking Improvements to be constructed thereon; and (ii) good, marketable and insurable title to the DNT Easement Rights, free and clear of all restrictions, leases, liens, encumbrances, tenancies, and easements that would materially affect or impact Ground Lessee's

interest in this Ground Lease or use of the DNT Easement Rights and the portion of the Parking Improvements to be constructed thereon.

17.2 **Subdivision**. Ground Lessor shall at all times comply with all applicable laws, ordinances, rules, and regulations governing the division or platting of real property for purposes of lease, sale, or financing, so that this Ground Lease shall constitute a lawful conveyance to Ground Lessee of a leasehold estate in the Parking Improvement Premises.

17.3 **Condemnation; Dedication**. Ground Lessor has not received notice of any action, nor is it aware of any pending action, to take by condemnation all or any portion of the Parking Improvement Premises or Parking Improvements, nor has Ground Lessor agreed or committed to dedicate any part of the Parking Improvement Premises or Parking Improvements.

17.4 **Violations**. To the best of Ground Lessor's knowledge: (i) the Parking Improvement Premises are not in material violation of any local governmental rule, ordinance, regulation, or building code, and (ii) there is not a pending or threatened investigation regarding a possible violation of any of the foregoing, except for violations that will be remedied as part of the construction of the Parking Improvements.

17.5 **Breach of Other Agreements**. Ground Lessor's execution and delivery of this Ground Lease will not cause or constitute a violation of any provisions of its organizational documents or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or, to the actual knowledge of the undersigned officers of Ground Lessor, threatened before or by any judicial body or governmental authority against or affecting it relating to the Parking Improvement Premises or Parking Improvements, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority that would impair its ability to enter into this Ground Lease or to perform any of the terms, covenants, and conditions to be performed by Ground Lessor under this Ground Lease.

17.6 **Compliance with Ground Lease**. Ground Lessor will fully and completely comply with all of the terms, provisions, and conditions contained in this Ground Lease to which it is subject.

17.7 **Indemnification by Ground Lessor**. Ground Lessor will to the fullest extent permitted by law, protect, indemnify and save Ground Lessee and its officers, agents, servants and employees, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising from:

(i) Any injury to or death of any person or damage to property in or upon the Parking Improvements (i) arising prior to the issuance of a Certificate of Completion, or (ii) arising from the exercise of any right of Ground Lessor hereunder (including, without limitation, any exercise by Ground Lessor of its rights under Section 7.2.2 hereof). The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the Ground Lessor, its customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts; and

(ii) Any violation by Ground Lessor of any provision of this Ground Lease.

Promptly after receipt by Ground Lessee of notice of the commencement of any action with respect to which Ground Lessor is required to indemnify Ground Lessee, Ground Lessee shall notify Ground Lessor in writing of the commencement thereof, and, subject to the provisions of this Section 17.7, Ground Lessor shall assume the defense of such action, including the employment of counsel satisfactory to Ground Lessee and the payment of expenses. In so far as such action shall relate to any alleged liability of Ground Lessee with respect to which indemnity may be sought against Ground Lessor, Ground Lessee shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Ground Lessor.

18. **Ground Lessee's Representations, Covenants, and Warranties**. Ground Lessee represents, covenants, and warrants to Ground Lessor as follows:

18.1 **Authority**. Ground Lessee has full right and authority to enter into this Ground Lease and perform Ground Lessee's obligations under this Ground Lease as of the effective date hereof.

18.2 **Actions of Ground Lessee's City Council**. The City Council of Ground Lessee has taken all actions and adopted all resolutions needed to authorize Ground Lessee to enter into and execute this Ground Lease, and be bound by the provisions contained herein.

18.3 **Breach of Other Agreements**. Ground Lessee's execution and delivery of this Ground Lease will not cause or constitute a violation of any laws of the State of Minnesota, and there are no actions, suits, or proceedings pending before or by any judicial body or governmental authority against or affecting it relating to the Parking Improvement Premises or Parking Improvements, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority that would impair its ability to enter into this Ground Lease or

to perform any of the terms, covenants and conditions to be performed by Ground Lessee under this Ground Lease.

18.4 **Compliance with Ground Lease**. Ground Lessee will fully and completely comply with all of the terms, provisions, and conditions contained in this Ground Lease to which it is subject.

18.5 **Indemnification by Ground Lessee**. Ground Lessee will to the fullest extent permitted by law, but subject to Sections 19.6 and 48 of this Ground Lease, protect, indemnify and save Ground Lessor and its officers, agents, servants and employees, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgments of any nature arising from:

(i) Any injury to or death of any person or damage to property in or upon the Parking Improvements or growing out of or in connection with the use or non-use, condition or occupancy of the Parking Improvements or any part thereof and arising on or after the issuance of a Certificate of Completion. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the Ground Lessee, its customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts;

(ii) Any violation by Ground Lessee of any provision of this Ground Lease; and

(iii) Any violation of any law, ordinance, court order or regulation affecting the Parking Improvements, or the ownership, occupancy or use thereof.

Promptly after receipt by Ground Lessor of notice of the commencement of any action with respect to which Ground Lessee is required to indemnify Ground Lessor, Ground Lessor shall notify Ground Lessee in writing of the commencement thereof, and, subject to the provisions of this Section 18.5, Ground Lessee shall assume the defense of such action, including the employment of counsel satisfactory to Ground Lessor and the payment of expenses. In so far as such action shall relate to any alleged liability of Ground Lessor with respect to which indemnity may be sought against Ground Lessee, Ground Lessor shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Ground Lessee.

19. **Insurance**. Ground Lessee shall carry and maintain the following insurance and comply with the following provisions regarding the providing of such insurance (or be self-insured to the same extent):

19.1 **Insurance Coverage of Parking Improvement Premises and Parking Improvements**. Ground Lessee shall, at its own expense, at all times during the Ground Lease Term keep the Parking Improvement Premises and Parking Improvements (including all equipment) insured against "all risks" of physical loss or damage, for the full insurable value of the Parking Improvements. Ground Lessee shall also carry annual rent insurance. Such insurance shall include a waiver of subrogation, including any deductibles/retentions Ground Lessee carries, in favor of Ground Lessor. Ground Lessee waives rights against Ground Lessor for any insurance required to be carried in this Ground Lease, whether carried or not. During the initial construction of the Parking Improvements, the Ground Lessor will maintain "builder's risk" insurance coverage in accordance with the requirements of the Development Agreement, with a deductible not to exceed One Hundred Thousand and No/100 Dollars ($100,000), and with loss payable to the Ground Lessor, Ground Lessee, the State, and any mortgagee as their respective interests may appear. Any loss adjustment shall be made in accordance with the requirements for the use and distribution of insurance proceeds in the event of damage as otherwise provided herein, but shall require the prior written consent of Ground Lessor, Ground Lessee, the State, and any mortgagee, and shall survive the termination of this Ground Lease or the running of the Ground Lease Term. Ground Lessee shall be responsible for any insurance deductible.

19.2 **Commercial General Liability Insurance**. Ground Lessee shall, at its own expense, maintain in effect throughout the Ground Lease Term commercial general liability insurance or a program of self-insurance covering the Parking Improvement Premises and Parking Improvements and its appurtenances, with a total combined limit between the primary general liability and excess liability in the amount of at least One Million Five Hundred Thousand Dollars per occurrence and One Million Five Hundred Thousand Dollars general aggregate including completed operations. Such insurance shall; (i) be primary with respect to Ground Lessor's insurance or self-insurance, (ii) not exclude explosion, collapse and underground property damage, (iii) be written on an "Occurrence" form policy basis, (iv) include coverage for owned, hired and non-owned automobile liability, (v) name Ground Lessor and the State as additional named insureds thereunder, and (vi) require 30 days notice of cancellation to Ground Lessor for premium non-payment on non-renewal for any other lessor, which notice requirement shall be endorsed to the policy. Additionally, Ground Lessor and the State shall be named as additional named insureds on any contractor's general liability insurance maintained by the general contractor or construction manager responsible for the construction of the Parking Improvements or any other structures that will be built and become part of the Parking Improvements.

19.3 **Workers' Compensation Insurance**. Ground Lessee shall, at its own expense, maintain Workers' Compensation Insurance with not less than statutory minimum limits and Employers' Liability Insurance with minimum limits of at least One Hundred Thousand and No/100 Dollars ($100,000) per accident and with an all states endorsement with a waiver of subrogation in favor of Ground Lessor.

19.4 **Insurance Certificates**. Ground Lessee shall supply to Ground Lessor, concurrently with its execution of this Ground Lease and thereafter on an annual basis, current insurance certificates for policies required in this Section 19, including copies of endorsements confirming evidence of primary insurance, additional insured status, waiver of subrogation, and notice of cancellation. Ground Lessee shall promptly furnish to Ground Lessor all endorsements and other written notices that modify or change any insurance coverage with respect to the Parking Improvement Premises, the Parking Improvements, or Ground Lessee's operation of the Parking Improvement Premises and Parking Improvements, and all paid premium receipts by Ground Lessee regarding such required insurance.

19.5 **Additional Required Insurance**. The limits cited under each of the above insurance requirements establish minimums, and it is the sole responsibility of the Ground Lessee, at its own expense, to purchase and maintain additional insurance that the Ground Lessee may determine to be necessary in relation to this Ground Lease or its operation of the Premises and Improvements.

19.6 **Non-Waiver of Statutory Limits**. Nothing in this Ground Lease shall constitute a waiver by Ground Lessor or Ground Lessee of any statutory limits or exceptions on liability.

19.7 **Placement of Insurance**. Ground Lessee shall place the insurance required by this Section 19 with responsible insurance companies authorized and licensed to do business in the State of Minnesota with a financial rating by A.M. Best & Company of no less than A-VIII or its equivalent, and approved, in writing by the Ground Lessor, and shall deliver certificates in the form required above evidencing such coverage to Ground Lessor concurrent with Ground Lessee's execution of this Ground Lease and from time to time thereafter as reasonably required by Ground Lessor. The policies required in this Section 19 shall be endorsed to indicate that the insurer cannot cancel or change the insurance without first giving Ground Lessor and the State thirty (30) days' written notice. Notwithstanding the foregoing, Ground Lessee may elect to use a self-insurance program as to the commercial general liability insurance required by Section 19.2.

19.8 **Ground Lessor's Right to Pay Premiums**. Ground Lessee shall promptly pay all of the premiums for the insurance required in this Section 19 and deliver copies of such policies when requested, and certificates thereof, to Ground Lessor. In the event that Ground Lessee fails; (i) to carry and maintain such insurance in the amounts called for, (ii) to pay the premiums therefor, or (iii) to deliver copies of

such policies or certificates thereof to the Ground Lessor, then Ground Lessor shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefor. Any premiums paid by Ground Lessor, together with interest thereon at the Default Interest Rate accruing from the date of payment by Ground Lessor, shall be repayable to Ground Lessor within thirty (30) days after written notice of the payment of such insurance, and failure to repay such amounts shall be an Event of Default hereunder. All rebates on account of any such premiums paid by Ground Lessor shall belong to the Ground Lessor, provided Ground Lessee has not reimbursed Ground Lessor for such premiums, and Ground Lessee shall have no obligation to reimburse Ground Lessor to the extent of such rebates received and retained by Ground Lessor. The requirements regarding Ground Lessor's payment of any premiums and receipt of any rebates shall survive the termination of this Ground Lease or the running of the Ground Lease Term as to any such premiums paid by Ground Lessor during or for any period applicable to the Ground Lease Term for which Ground Lessor has not received reimbursement from Ground Lessee (less any rebates received by Ground Lessor on account of any such premiums paid by Ground Lessor) pursuant to this Section 19.8.

19.9 **Notice.** Ground Lessee shall require each insurer through which it carries any insurance required under this Section 19 to include in the policy of insurance, by endorsement thereto, or by an independent instrument furnished to Ground Lessor and in form acceptable to the Ground Lessor, that such insurer will give Ground Lessor and the State thirty (30) days' written notice before the policy or policies in question may be altered or cancelled.

19.10 **Increase in Coverage.** The insurance and the size of any applicable deductible required to be maintained pursuant to this Ground Lease shall be subject to review as to its adequacy by an Independent Insurance Consultant once every three (3) years beginning in 2019. Ground Lessee, at its expense, shall cause such review to be conducted and shall cause such consultant to prepare a written report regarding such review containing such consultant's recommendations, if any, for changes in such insurance. Ground Lessee shall cause copies of such report to be delivered promptly to Ground Lessor and agrees to follow the recommendations of such Independent Insurance Consultant to the extent practicable.

19.11 **Blanket Insurance Policies.** Notwithstanding anything to the contrary contained in this Section 19, Ground Lessee's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Ground Lessee; provided, however, that the coverage afforded the Ground Lessor shall not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of this Section 19 by reason of the use of such blanket policy of insurance.

19.12 **Use of Insurance Proceeds**. If damages which are covered by such required insurance occur, then the Ground Lessee shall have the right to elect, within 180 days of the date such damage occurred, to repair and restore the Parking Improvements to the condition the Parking Improvements were in immediately prior to such damage. If Ground Lessee does not within such 180-day period elect to so restore the Parking Improvements, then Ground Lessor, at the Ground Lessor's sole option and discretion, shall have the right to use or cause the insurance proceeds to be used to fully or partially repair such damage (and Ground Lessee shall assign to Ground Lessor any interest Ground Lessee has in such insurance proceeds) and to provide or cause to be provided whatever additional funds that may be needed to fully or partially repair such damage. If the Ground Lessor does not elect to restore such damage, and if the amount of damage is so extensive that it would not be economically feasible to repair the Parking Improvements, then Ground Lessee shall have the right to make the determination under Subsection 13.1 herein that the Parking Improvements are no longer needed or useful for the operation of the Governmental Program and sell its interest in this Ground Lease in accordance with the provisions contained in Section 13 herein; *provided, however,* if Ground Lessor pays to Ground Lessee the sums required to be paid to the Commissioner of MMB pursuant to the terms of the Grant Agreement or such lesser amount permitted under Minnesota law, then the insurance proceeds shall be paid to Ground Lessor and this Ground Lease shall automatically terminate.

19.13 **Survival**. The provisions contained in Subsection 19.12 shall survive the termination of this Ground Lease or the running of the Ground Lease Term as to any insurance proceeds that have not been applied pursuant to Subsection 19.12 as of the termination of this Ground Lease or the running of the Ground Lease Term.

19.14 **Alternative Agreement Regarding Property Insurance**. If Ground Lessor and Ground Lessee agree, Ground Lessor may elect to carry the insurance required in Section 19.1 under Ground Lessor's own property insurance policy, in which case Ground Lessee shall pay the allocable portion of the premium on such policy that relates to the Parking Improvements, pursuant to the Operation and Easement Agreement.

20. **Condemnation**. The following provisions shall apply to the condemnation of any portion of the Parking Improvement Premises and Parking Improvements.

20.1 **Total Taking**. In the event that the entire Parking Improvement Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, then this Ground Lease shall terminate as of the date of such taking. The proceeds of such taking shall be split between Ground Lessor and Ground Lessee in proportion to the value of Ground Lessor's interest in the Parking Improvement Premises, taking into consideration that such interest is subject to this Ground Lease, and Ground Lessee's interest in this Ground Lease, by way of an appraisal performed in accordance with the provisions contained in Subsection 13.3

herein. The proceeds attributable to Ground Lessee shall be used and distributed in accordance with the provisions contained in Section 13 herein as if a sale of Ground Lessee's interest had occurred; provided, however, if Ground Lessor pays to Ground Lessee the sums required to be paid to the Commissioner of MMB pursuant to the terms of the Grant Agreement or such lesser amount permitted under Minnesota law, then the proceeds shall be paid to Ground Lessor.

20.2 **Partial Taking Treated as Total Taking**. If the portion of the Parking Improvement Premises and Parking Improvements appropriated or taken is to an extent that Ground Lessee determines that the remaining portion of the Parking Improvement Premises and Parking Improvements can no longer be used for the operation of the Governmental Program, then Ground Lessee shall give Ground Lessor written notice of such determination within one hundred twenty (120) days after such portion of the Parking Improvement Premises and Parking Improvements have been so appropriated or taken. Upon receipt of such notice Ground Lessor may treat such partial condemnation as a total taking, and thereupon this Ground Lease shall be terminated and the proceeds attributable to Ground Lessee shall be used and distributed in accordance with the provisions contained in Section 13 herein as if a sale of Ground Lessee's interest had occurred; provided, however, if Ground Lessor pays to Ground Lessee the sums required to be paid to the Commissioner of MMB pursuant to the terms of the Grant Agreement or such lesser amount permitted under Minnesota law, then the proceeds shall be paid to Ground Lessor.

20.3 **Partial Taking Not Treated as Total Taking**. In the event of a partial taking and Ground Lessee elects to continue to operate the Governmental Program in the remaining portion of the Parking Improvement Premises and Parking Improvements, then this Ground Lease shall continue in full force as to the part not taken and the condemnation award shall be applied first to restore the remaining portion of the Parking Improvement Premises and Parking Improvements to a configuration and condition so that such Parking Improvement Premises and Parking Improvements can be used for the operation of the Governmental Program (with the condemnation proceeds to be held by a mutually agreeable escrow agent in escrow for such restoration to be disbursed in accordance with standard commercial construction conditions customarily required by institutional lenders), the proceeds attributable to Ground Lessee shall be used and distributed in accordance with the provisions contained in Section 13 herein as if a sale of Ground Lessee's interest had occurred; *provided, however,* if Ground Lessor pays to Ground Lessee the sums required to be paid to the Commissioner of MMB pursuant to the terms of the Grant Agreement or such lesser amount permitted under Minnesota law, then the proceeds shall be paid to Ground Lessor.

20.4 **Conflict with Grant Agreement**. Whenever there shall exist a conflict between the provisions contained in this Section 20 and any provision in the Grant Agreement, the provisions of the Grant Agreement shall prevail.

The provisions in this Section 20 relating to the allocation and use of a condemnation award shall survive the termination of this Ground Lease or the running of the Ground Lease Term.

21. **Hazardous Waste Pollution and Contaminants**. The following provisions apply as to the use and storage of Hazardous Substances on the Parking Improvement Premises or in the Parking Improvements, and compliance with Environmental Laws.

21.1 **Compliance with Environmental Laws**. Ground Lessee agrees to comply with all Environmental Laws applicable to the Parking Improvement Premises and Parking Improvements for the full Ground Lease Term, and Ground Lessee shall bear all costs associated with and arising from such compliance. If Ground Lessee fails to comply with any Environmental Laws, then Ground Lessor shall have the right, but not the obligation, to undertake such compliance and charge Ground Lessee the costs of compliance plus interest at the Default Interest Rate accruing from the date of disbursement and along with reasonable attorney fees incurred in such compliance.

21.2 **Indemnification of Ground Lessor**. To the extent authorized by law, Ground Lessee agrees to defend, indemnify and hold harmless the Ground Lessor, its owners, affiliates, and their respective officers, employees and agents, from and against and shall reimburse each such party for any and all loss, claim, liability, damage, judgment, penalty, injunctive relief, injury to person, property or natural resources, cost, expense, action or cause of action arising in connection with or as the result of the existence, use, handling, storage, transportation, manufacture, release or disposal of any Hazardous Substance in, on or under the Parking Improvement Premises, whether foreseeable or unforeseeable, to the extent any such Hazardous Substance was brought upon the Parking Improvements or Parking Improvement Premises (or the discharge thereof was caused, permitted or suffered) by Ground Lessee, any of its agents or contractors, or the employees of any of them. The foregoing indemnification against such losses includes, without limitation, indemnification against all costs in law or in equity of removal, response, investigation, or remediation of any kind, and disposal of such Hazardous Substances, all costs of determining whether the Parking Improvement Premises and Parking Improvements are in compliance with, and of causing the Parking Improvement Premises and Parking Improvements to be in compliance with, all applicable Environmental Laws, all costs associated with claims for damages to persons, property, or natural resources, and such indemnified party's reasonable consultants' fees, court costs and expenses incurred in connection with any thereof. The provisions contained in this Subsection 21.2 shall only apply during those time periods that Ground Lessee actually directly operates the Governmental Program on and in the Parking Improvement Premises and Parking Improvements, and shall not apply (i) during the period of the original construction of the Parking Improvements until the date of substantial completion, and (ii) if Ground Lessee sells its interest in this Ground Lease as long as the purchaser of such interest specifically agrees, in

writing, to comply with such provisions and allows Ground Lessor to enforce such provisions as a third party beneficiary.

21.3 **Survival.** Any monetary obligations that this Section 21 imposes on Ground Lessee, and the obligations of Ground Lessee to indemnify the Ground Lessor, its owners, affiliates, and their respective officers, employees and agents, shall survive the termination of this Ground Lease or the running of the Ground Lease Term. The rights of such indemnified parties hereunder shall be in addition to any other rights or remedies that such indemnified parties may have against Ground Lessee under this Ground Lease, or any other document, or at law or in equity.

22. **Events of Default.** The following events shall, unless waived in writing, constitute an Event of Default under this Ground Lease upon: (i) written notice of the event that causes such default being given to the party that caused such event to occur, and (ii) failure by the party that caused such event to occur to cure such default within thirty (30) days of receipt of such written notice for those events that can be cured within such time period or within whatever time period is needed to cure those events that cannot be cured within thirty (30) days as long as the defaulting party is using commercially reasonable efforts to cure and is making reasonable progress in curing such event; provided, however, in no case shall the time period to cure any event exceed three (3) months unless otherwise consented to, in writing, by the non-defaulting party:

22.1 **Compliance with Ground Lease.** Failure by either party hereto to fully comply with any of the provisions contained in this Ground Lease that apply to such party.

22.2 **Performance of Acts.** Failure by either party hereto to promptly perform any acts required of such party under this Ground Lease, or the performance of any act by either party hereto that this Ground Lease prohibits such party from performing.

22.3 **Payment of Amounts Due.** Failure by either party hereto to promptly pay any amounts that such party is responsible for the payment of and is required to pay under this Ground Lease.

22.4 **Reimbursement of Amounts.** Failure by either party hereto to promptly reimburse the other party hereto for those amounts that the defaulting party is required to reimburse to the other party under this Ground Lease.

22.5 **Warranties, Representations, and Covenants.** If any warranty, representation, or covenant made by either party hereto proves to be false or misleading in any material respect, or if any party hereto performs an act that causes any warranty, representation, or covenant to become false or misleading in any material respect at any time in the future.

Notwithstanding the foregoing notice provisions, any of the above delineated events that cannot be cured shall, unless waived in writing by the non-defaulting party, constitute an Event of Default immediately upon the defaulting party being given written notice of such event.

23. **Remedies**. Upon the occurrence of an Event of Default and the defaulting parties failure to correct or remedy such default within the allowable cure period, the following shall apply:

23.1 **Ground Lessor's Remedies**. Upon Ground Lessee causing an Event of Default to occur, Ground Lessor's remedy shall, subject to the qualification contained in this Subsection 23.1, be limited to the institution of an action in equity to compel specific performance by Ground Lessee. If the Event of Default involves Ground Lessee's failure to reimburse Ground Lessor for any amounts that Ground Lessor advanced hereunder to cure an Event of Default caused by Ground Lessee or Ground Lessees failure to comply with an order for specific performance, then Ground Lessor's remedies shall also include a right to initiate an action in law and equity to recover such amounts and any damages (not including consequential or punitive damages) that Ground Lessee's failure to comply with an order for specific performance caused to Ground Lessor. An Event of Default by Ground Lessee shall not be grounds for termination or modification of this Ground Lease, or an action for monetary damages other than an action to recover any amounts that Ground Lessor advanced hereunder to cure an Event of Default caused by Ground Lessee or damages caused by Ground Lessee's failure to comply with an order for specific performance.

23.2 **Ground Lessee's Remedies**. Upon Ground Lessor causing an Event of Default to occur Ground Lessee may; (i) commence an action in equity to compel specific performance by Ground Lessor, or (ii) take such other actions and seek such other remedies as may be available to it in law or equity. Provided, however, that Ground Lessee's damages, if any, shall be limited to actual damages incurred by Ground Lessee and shall not include any consequential or punitive damages, and further provided that such Ground Lessee's enforcement of any judgment against Ground Lessor shall be limited to Ground Lessor's interest in the Parking Improvement Premises and Parking Improvements.

23.3 **Ground Lessor's Cure Rights**. In addition to all other rights and remedies contained herein, Ground Lessor may (but shall not be obligated to) cure an uncured Event of Default caused by Ground Lessee. In the event of such a cure, Ground Lessor shall promptly furnish Ground Lessee an itemized statement of the costs and expenses incurred to affect such cure, and Ground Lessee shall promptly pay such amount to Ground Lessor together with interest on such amounts at the Default Interest Rate.

23.4 **No Remedy Exclusive**. No remedy herein conferred upon or reserved to either party hereto is intended to be exclusive of any other available remedy or

remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Ground Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

23.5 **Survival**. Any monetary obligations that this Section 23 imposes on Ground Lessee or Ground Lessor shall survive the termination of this Ground Lease or the running of the Ground Lease Term.

23.6 **Attorney's Fees**. If any party shall bring an action against the other to enforce the terms of this Lease, the non-prevailing party in such action shall pay to the prevailing party an amount equal to the prevailing party's costs and expenses (including reasonable attorney's fees) incurred in enforcing the terms of this Lease.

24. **Notices**. All notices, demands and requests required or permitted to be given under this Ground Lease must be in writing, and shall be deemed to have been properly given or served either on the date of hand delivery or two (2) days after the date such notice is deposited with the United States Mail, addressed to the party to whom such notice is being given, prepaid and registered or certified mail or delivery charges prepaid, return receipt requested, at the following addresses:

To Ground Lessor:

Duluth Real Estate LLC
105 West Superior Street
Duluth, MN 55802
Attention: Senior Vice President and Chief Financial Officer

With a copy to:

Duluth Real Estate LLC
105 West Superior Street
Duluth, MN 55802
Attention: Legal Department

To Ground Lessee:

City of Duluth
411 West First Street
Room 330 City Hall
Duluth, MN 55802
Attention: City Clerk

Rejection or refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of notice sent to the most recent address of record, or other communication, demand or request. Any party may change its address by giving written notice in accordance with the provisions contained in this Section 24, stating its new address, to any other party, and such newly designated address shall be such party's address for the purposes of all communications, demands, request or notices, permitted or required to be given or served under this Ground Lease.

In addition to any other notice required hereunder, Ground Lessee agrees to promptly notify Ground Lessor of any notices it receives from the Commissioner of MMB or the Minnesota Department of Employment and Economic Development under the Grant Agreement.

25. **Collateral Assurances**. In addition to any other information which may reasonably be requested, either party hereto shall without charge at any time and from time to time hereafter but not more often than once every twelve (12) months, within thirty (30) days after written request certify by written instrument duly executed and acknowledged to any person, firm, or corporation specified in such request; (i) whether this Ground Lease has been supplemented, amended, or modified, and if so, the substance and manner of such supplement, amendment, or modification, (ii) the validity and force and effect of this Ground Lease, in accordance with its tenor as then constituted, (iii) whether the responding party has actual knowledge (without obligation to make inquiry) of any Event of Default, (iv) whether the responding party has actual knowledge (without obligation to make inquiry) of any offsets, counterclaim or defenses to the terms and obligations under this Ground Lease, and (v) the commencement and expiration dates of the Ground Lease Term.

Any such certificate may be relied on by the party who requested it and any other person, firm, or corporation to whom it may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing it.

26. **Amendment; Modification; Waiver**. No amendment, modification, or waiver of any condition, provision, or term of this Ground Lease shall be valid or of any effect unless it is made in writing, specifies with particularity the extent and nature of such amendment, modification, or waiver, is signed by the party or parties to be bound or its duly authorized representative, and (except in the case of any waiver by Ground Lessor) is approved in writing by the State and the Commissioner of MMB. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default.

27. **Grant Agreement Prevails**. If a conflict exists between any of the provisions contained in this Ground Lease and any of the provisions contained in the Grant Agreement, the provisions of the Grant Agreement shall prevail. Ground Lessee shall not amend or otherwise modify the Grant Agreement in a manner that would materially adversely affect the rights of the Ground Lessor hereunder without giving prior written notice to the Ground Lessor, except as may be required by law.

28. **Approval by Commissioner**. This Ground Lease shall not be valid or of any force or effect until it has been approved or consented to, in writing by the Commissioner of MMB.

29. **Binding Effect**. This Ground Lease shall be binding upon and inure to the benefit of the Ground Lessor and Ground Lessee, and their respective successors and assigns.

30. **Captions**. All captions, headings, or titles in the sections or subsections of this Ground Lease are inserted for convenience of reference only, and shall not constitute a part of this Ground Lease or as a limitation of the scope of the particular paragraphs or sections to which they apply.

31. **Relationship of Parties**. Unless specifically agreed to in writing, nothing contained in this Ground Lease is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Ground Lessor and the Ground Lessee, nor shall either party hereto be considered or deemed to be an agent, representative, or employee of any other party hereto in the performance of this Ground Lease or operation of the Parking Improvement Premises and Parking Improvements.

32. **Severable Provisions**. Each provision, section, sentence, clause, phrase, and word of this Ground Lease is intended to be severable. If any provision, sentence, clause, phrase, and word hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Ground Lease.

33. **Entire Agreement**. This Ground Lease and all of the other documents referred to herein contain the entire understanding of the parties hereto with respect to the transactions contemplated hereby, and supersede all prior agreements and understandings, whether oral, implied, written, or otherwise, between the parties with respect to such subject matter. No representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in this Ground Lease or in any of the other documents referred to herein, or unless mutually agreed to in writing between the parties hereto after the date hereof. Ground Lessor and Ground Lessee agree that neither party has relied on any verbal representations, agreements, or understandings not expressly set forth herein.

34. **Choice of Law; Venue**. All matters relating to the validity, construction, performance, or enforcement of this Ground Lease shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Ground Lease shall be initiated, filed and venued in the State of Minnesota District Court located in the City of Duluth, County of St. Louis, State of Minnesota. The provisions contained in this Section 34 shall survive the termination of this Ground Lease or the running of the Ground Lease Term.

35. **Short-Form Recordable Lease**. Upon the request of one of the parties hereto the other party hereto shall promptly execute duplicate originals of an instrument, in recordable form, which will constitute a short form of this Ground Lease that sets forth a description of the Parking Improvement Premises, the term and renewal options of this Ground Lease, and any other portions hereof, excepting the rent provisions, as either party may request.

36. **Brokerage Fees**. Each party hereto warrants that it has not incurred any real estate brokerage fees, finders' fees, loan brokerage fees, or any other fees to any third party in connection with this Ground Lease, and in the event that any third party institutes legal action in an effort to recover such fees, the parties shall jointly defend such action. If a judgment is obtained against the parties jointly, the party responsible for breach of this warranty shall reimburse the other party for the latter's attorneys' fees, court costs, expenses, and share of the judgment.

37. **Waiver of Subrogation**. Ground Lessee, on behalf of itself and its insurer, hereby waives all claims and rights of recovery against Ground Lessor that it would, but for this Section 37, have to the Ground Lessor for losses occurring to the Parking Improvement Premises, Parking Improvements, betterments, trade fixtures, equipment, personal property and other property located therein or thereupon: (i) to the extent actually covered by insurance required to be carried by the party waiving, or (ii) to the extent actually covered by any other insurance being carried by the party waiving at the time of such occurrence. The provisions contained in this Section 37 shall survive the termination of this Ground Lease or the running of the Ground Lease Term.

38. **Waiver of Certain Damages**. In consideration of entering into this Ground Lease, Ground Lessor and Ground Lessee hereby waive and forever give up any right to claim or recover damages for lost income or profits as a result of any breach of this Ground Lease or any documents or agreements referred to herein that arise out of an event occurring prior to the completion and opening of the Parking Improvements and its availability for the operation of the Governmental Program therein, even if such opening is delayed as a result of any such breach. The agreements and waivers set forth in this Section 38 shall survive the termination of this Ground Lease or the running of the Ground Lease Term.

39. **Compliance with Laws**. Each of Ground Lessor and Ground Lessee agrees that it will comply with all present and future laws, ordinances, and regulations, as amended and in effect from time to time, applicable to its use, occupancy, alteration or improvement of the Parking Improvement Premises and Parking Improvements.

40. **Delay; Waiver**. No delay or omission by either party hereto to exercise any right or power accruing upon any noncompliance or default by the other party with respect to any of the terms or provisions of this Ground Lease shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. A waiver by either of the parties hereto of any of the covenants, conditions or agreements herein to be performed by the other shall not be construed to be a waiver of any succeeding

breach thereof, or of any other covenant, condition, or agreement herein. In addition, the exercise of any single or partial right or remedy shall not preclude other or further exercise thereof or the exercise of any other right or remedy.

41. **Time of Essence**. Time is of the essence in this Ground Lease, and of each and every covenant, term, condition, and provision hereof.

42. **Third Party Beneficiary**. Except as expressly set forth herein, no third party beneficiary rights are created by this Ground Lease.

43. **Cost of Performance**. Whenever, in this Ground Lease, anything is to be done or performed by Ground Lessee or Ground Lessor, unless otherwise expressly provided to the contrary, it shall be done or performed at the sole cost and expense of Ground Lessee or Ground Lessor, or their designees, as the case may be. The provisions contained in this Section 43 shall survive the termination of this Ground Lease or the running of the Ground Lease Term.

44. **Delays; Stoppages**. Any prevention, delay or stoppage due to strikes, labor disputes, lock-outs, acts of God, inability to obtain labor or materials, governmental restrictions, governmental controls, enemy or hostile government action, civil commotion, fire or other casualty, and other causes beyond the control of the party obligated to perform shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, except the obligations of either Ground Lessor or Ground Lessee with regard to the payment of monies.

45. **Consents; Approvals.** All approvals required hereunder shall be in writing. Except as otherwise expressly provided herein, any consent or approval required in this Ground Lease may not be unreasonably withheld or delayed. Unless provision is made for a specific time period, consent or approval shall be given or withheld within thirty (30) days, or, if approval is required from Ground Lessee's City Council, within sixty (60) days of the request for such consent or approval.

46. **Record Keeping and Reporting.** Ground Lessee shall maintain or cause to be maintained books, records, documents and other evidence pertaining to the costs or expenses associated with this Ground Lease to comply with the requirements contained in this Ground Lease and the G.O. Compliance Legislation, and upon request shall allow or cause the entity which is maintaining such items to allow the State Entity, auditors for the State Entity, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract, all of such items. Ground Lessee shall use or cause the entity which is maintaining such items to use generally accepted accounting principles in the maintenance of such items, and shall retain or cause to be retained all of such items that relate to the Ground Lease for a period of 6 years from the date that the Ground Lease is terminated.

47. **Data Practices.** With respect to any data that the parties possess regarding the Ground Lease, both parties agree to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

48. **Limitation on Claims Against City**. During all times that the Ground Lessee is the City of Duluth (or a Permitted Transferee, as defined in Section 14):

(a) Ground Lessee's obligation to pay or perform any duty or obligation under this Ground Lease and the Ancillary Documents is a revenue obligation and not a general obligation of Ground Lessee, and Ground Lessee's payment and performance obligations are limited to the following sources of funds: (i) the Revenues of the Parking Improvements (and the payment by Ground Lessee of obligations under this Ground Lease and the Ancillary Documents shall be considered Current Expenses or Funded Depreciation payable from Revenues, as such terms are defined in the Bond Resolution); (ii) insurance proceeds and condemnation awards relating to the Parking Improvements actually received or to be received by Ground Lessee; and (iii) any other amounts actually received or to be received by Ground Lessee by reason of its ownership of the leasehold estate hereunder and/or its ownership and operation of the Parking Improvements.

(b) If Ground Lessee faces a duty or obligation under this Ground Lease or the Ancillary Documents requiring an expenditure of funds which are projected to cause Current Expenses and Funded Depreciation to exceed Revenues and other amounts described in the foregoing clause (a), the City of Duluth's administration shall recommend and the City Council shall consider the options available to the Ground Lessee to perform and/or pay for such duty and obligation under this Ground Lease, including the issuance of revenue bonds payable from Revenues of the Parking Improvements; provided, however, the City's obligations under this subparagraph (b) shall always be limited to Revenues of the Parking Improvements and other amounts described in the foregoing clause (a).

(c) Neither the full faith and credit nor the taxing powers of Ground Lessee are pledged to the payment or performance of the Ground Lessee's duties and obligations under this Ground Lease and the Ancillary Documents.

(*Signature pages follow.*)

SIGNATURE PAGE
TO
GROUND LEASE

IN WITNESS WHEREOF, Ground Lessor has executed this Ground Lease as of the day first written above.

GROUND LESSOR:

Duluth Real Estate LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

SIGNATURE PAGE
TO
GROUND LEASE

IN WITNESS WHEREOF, Ground Lessee has executed this Ground Lease as of the day first written above.

GROUND LESSEE:

City of Duluth,
a Minnesota municipal corporation

By: _____
Its Mayor

By: _____
Its City Clerk

Approved:

_____
Assistant City Attorney

Countersigned:

_____
City Auditor

This instrument was drafted by:
Faegre Baker Daniels LLP (TLJ)
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901

Exhibit A

LEGAL DESCRIPTION OF LAND

Parcel 1: Lot 65, Duluth Proper, First Division, St. Louis County, Minnesota. ABSTRACT PROPERTY

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, 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 of said Street and a depth of 140 feet of Fifth Avenue West, Duluth, EXCEPT that portion of said lots and said Government Lot 5 lying within 29 feet of the East line of Fifth Avenue West as originally platted. TORRENS PROPERTY

Exhibit B

LEGAL DESCRIPTION OF PARKING FACILITY PARCEL

Tract 1 (Elevators on First Floor of the Development, as defined in the Development Agreement)

That portion of the Land described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 129.31 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 56.92 to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 29.04 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 8.08 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 29.04 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 8.08 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 635.0 feet to elevation 652.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 2 (Elevators on Second Floor of the Development)

That portion of the Land described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 129.31 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 56.92 to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 29.04 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 8.08 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 29.04 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 8.08 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 652.0 feet to elevation 668.67 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 3 (Third Floor of the Development)

That portion of the Land described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 1.47 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of

8.50 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 94.13 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 28.70 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 114.99 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 15.04 feet; thence South 71 degrees 57 minutes 56 seconds East a distance of 31.28 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 31.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 9.48 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 32.83 feet; thence North 71 degrees 51 minutes 56 seconds West a distance of 27.95 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 16.65 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 211.09 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 24.54 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 98.29 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 364.67 feet to the point of beginning.

EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 103.05 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 65.28 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 19.34 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 16.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 19.34 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 16.15 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, and 69, a distance of 137.39 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 10.77 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.77 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69 and 71, a distance of 158.37 feet; thence North 48 degrees 23 minutes 09 seconds

West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 12.22 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 12.22 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71 and 73, a distance of 224.61 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 59.30 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 21.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 3.33 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 21.40 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 3.33 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71, 73, and 75, a distance of 258.40 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning of the easement to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 13.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 13.15 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 668.67 feet to elevation 679.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 4 (Floors Four through Six of the Development)

That portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 1.47 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 8.50 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 94.13 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; North 48 degrees 23 minutes 09 seconds West a distance of 28.70 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 334.19 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 24.54 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet;

thence South 48 degrees 23 minutes 09 seconds East a distance of 98.29 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 364.67 feet to the point of beginning.

EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 103.05 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 65.28 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 19.34 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 16.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 19.34 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 16.15 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, and 69, a distance of 137.39 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 10.77 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.77 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69 and 71, a distance of 158.37 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 12.22 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 12.22 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71 and 73, a distance of 224.61 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 59.30 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 21.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 3.33 feet; thence South 48 degrees 23 minutes 09

seconds East a distance of 21.40 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 3.33 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71, 73, and 75, a distance of 258.40 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning of the easement to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 13.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 13.15 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 679.0 feet to elevation 713.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 5 (Top of Elevator Shaft on Seventh Floor of the Development)

That portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, 67 & 69, a distance of 127.50 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 54.18 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 14.76 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 5.00 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 16.76 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.23 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 31.52 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.23 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 713.0 feet to elevation 730.34 feet, National Geodetic Vertical Datum, 1929 adjustment.

Exhibit C

LEGAL DESCRIPTION OF ALLEY PARCEL

That portion of Lots 65, 67, 69, 71, 73, 75, 77 and that part of Lot 79 lying northeasterly of the southwesterly 34.00 feet thereof, all in DULUTH PROPER FIRST DIVISION, St. Louis County, Minnesota, and that part of the Alley as dedicated in DULUTH PROPER FIRST DIVISION that lies adjacent to said lots, described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 77.81 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 131.33 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 28.67 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 62.00 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 28.67 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 62.00 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 668.67 feet to elevation 679.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Exhibit D

LEGAL DESCRIPTION OF DNT PARCEL

West Half of Lot 68 and all of Lot 70, DULUTH PROPER, FIRST DIVISION, WEST FIRST STREET. ABSTRACT PROPERTY

Exhibit E

PERMITTED ENCUMBRANCES

1. Real estate taxes and installments of special assessments not currently due and payable.

2. Easements, covenants, conditions, restrictions, and limitations, if any, that do not impair the use of the Parking Improvement Premises.

3. Reservation of any minerals or mineral rights reserved to the State of Minnesota.

4. Building and zoning laws, ordinances, and state and federal regulations.

5. The provisions of Minn. Stat. §16A.695 regarding the interests of the State of Minnesota.

6. Any liens or other encumbrances created by the Declaration.

7. Any liens or other encumbrances created by the Grant Agreement.

8. The DNT Easement Agreement

9. The Operation and Easement Agreement

10. Any pedestrian passageway agreements between Ground Lessor and Ground Lessee.

11. Any liens or other encumbrances created by or in accordance with the provisions contained in this Ground Lease, including any Short Form Ground Lease recorded in memorialization of the Ground Lease.

12. Any liens or encumbrances that secure the repayment of any of the Approved Debt as such term is used in the Grant Agreement.

13. Easement for slopes on First Alley purposes, together with any incidental rights, in favor of City of Duluth, Minnesota, as contained in the CONDEMNATION, recorded July 12, 1890 in Book C of Plats, Page 241, and shown by recital on the certificate of title.

14. Easement for public highway purposes, together with any incidental rights, in favor of the City of Duluth, Minnesota, as contained in the EASEMENT, dated February 23, 1966, recorded July 25, 1966 as Document No. 321640.

15. Terms, conditions, obligations and provisions of the AGREEMENT by and between KDAL, Inc., a Minnesota corporation and the City of Duluth, Minnesota, dated May 5, 1967, recorded June 12, 1967 as Document No. 327065.

16. Terms, conditions, covenants, restrictions, obligations, provisions and easement for public street purposes in favor of the City of Duluth, Minnesota, contained in the GRANT OF EASEMENT AND AGREEMENT, dated February 27, 1986, recorded March 12, 1986 as Document No. 474554.

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 mortgagees. 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: _____

[Signature Page to Disbursing Agreement]

CITY OF DULUTH, a Minnesota Municipal Corporation

_____
Its Mayor

_____
Its City Clerk

Approved:

Countersigned:

_____
Assistant City Attorney

_____
City Auditor

[Signature Page to Disbursing Agreement]

DEPARTMENT OF EMPLOYMENT AND
ECONOMIC DEVELOPMENT

By: _____
Name: _____
Its: _____

FIRST AMERICAN TITLE
INSURANCE COMPANY

By: _____
Name: _____
Its: _____

[Signature Page to Disbursing Agreement]

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 B

STATE DISBURSEMENT REQUEST

REIMBURSEMENT PAYMENT REQUEST

POSITIVELY Minnesota
Department of Employment and Economic Development

DEED-Bonding (E-mail signed Payment Request Form and Support Documents to DEED Program Contact)

SECTION 1:

* VENDOR ID + REMIT TO LOCATION CODE (SWIFT):		* GRANT NAME: Duluth - 425 Parking Facility	
* VENDOR/GRANTEE NAME: City of Duluth		* GRANT NUMBER: CPGP-12-0068-H-FY13	SWIFT CONTRACT ID
REMIT TO ADDRESS: 411 West First Street Duluth, MN 55802		GRANT PERIOD FROM: 5/12/2012	GRANT PERIOD TO: 5/12/2016
		REIMBURSEMENT PERIOD FROM:	REIMBURSEMENT PERIOD TO:
FORM PREPARED BY:	PHONE:	GRANT NUMBER: CPGP-12-0068-H-FY13	REIMBURSEMENT PYMT REQ #: / FINAL: YES [ ] NO [ ]
EMAIL: (EMAIL)		DEED PROGRAM CONTACT NAME: Emily Johnson	DEED PROGRAM CONTACT EMAIL: emily.a.johnson@state.mn.us

SECTION 2: * DEED PROGRAM USE ONLY

SWIFT PO ID	PO LINE / DISTRIBUTION	AMOUNT	FUND	FIN DEPT ID	APPROP ID	ACCOUNT	AGENCY COST	PROJECT ID
		$8,500,000	3605	B2241000	B221567	580	55350	B22BDCapProj12
TOTAL		8,500,000	NOTES:					

SECTION 3: REIMBURSEMENT REQUEST

BONDING ACTIVITY (PER APPROVED BUDGET)	A. APPROVED BUDGET	B. CURRENT BALANCE	C. REIMB. REQUESTED THIS PERIOD	D. (B - C = D) AVAILABLE BALANCE
Parking Structure Costs	8,500,000			0
				0
				0
				0
TOTAL SWIFT ACTIVITY	8,500,000	0	0	0

SECTION 4: MATCH

MATCH ACTIVITY (PER APPROVED BUDGET)	A. APPROVED MATCH BUDGET	B. CURRENT MATCH BALANCE	C. MATCH EXPENDITUES THIS PERIOD	D. (B - C = D) UNSPENT MATCH
Parking Structure Costs (City Revenue Bonds)	8,500,000			0
				0
				0
				0
TOTAL NON-SWIFT		0	0	0

SECTION 5: COMMENTS

SECTION 6: AGREEMENT & AUTHORIZED APPROVAL

By submitting this form, I certify that the request is in accordance with DEED cash management requirements and appropriate contract terms; the data reported is correct and the amount of the request is not in excess of immediate disbursement needs.

If submitting this form via email, without signature affixed below, place the statement above in the body of your email. By doing so, the sender of the email designates they are hereby authorized to provide approval of this request. Without a signature and/or statement included in the body of the email the form will be rejected.

Grantee Authorized Signature — Date

DEED Staff Authorized Signature — Date

Grantee Typed Name and Title

Office of Business Finance Director — Date

FORM # MN-DEED-AFS-02 | 3.1.13

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

_____
Notary Public

My Commission expires _____

OPERATION AND EASEMENT AGREEMENT

_____, 2014

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Exhibit A-2: Legal Description of Office Parcel
Exhibit A-3: Legal Description of Parking Facility Parcel
Exhibit A-4: Legal Description of DNT Parcel
Exhibit A-5: Legal Description of Alley Parcel
Exhibit A-6: Depiction of Lobby
Exhibit B: Allocable Share of Common Costs

OPERATION AND EASEMENT AGREEMENT

This Operation and Easement Agreement (this "Agreement") is made as of this ___ day of _____, 2014, by and between Duluth Real Estate LLC, a Delaware limited liability company ("Developer"), and the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota ("City").

RECITALS

WHEREAS, Developer is the owner of certain tracts of real property situated in St. Louis County, Minnesota, more particularly described in Exhibit A-1 (the "Land");

WHEREAS, the Development will be comprised of (a) the Office Element; (b) the Retail Element; and (c) the Parking Improvements (as all such capitalized terms are defined below);

WHEREAS, the Land and the improvements thereon are physically integrated and together constitute a multi-level, multi-use complex located in downtown Duluth, Minnesota, bounded by West Superior Street, Fourth Avenue West and Fifth Avenue West;

WHEREAS, the Land is presently encumbered by the Skywalk Agreement and the Ground Lease (both as defined below); and

WHEREAS, Developer and the City desire to subject the Development and all future owners of the Development or any portion thereof to various easements, restrictions and covenants, as further set forth herein, for the purpose of providing for the future harmonious use and operation of the Development.

NOW, THEREFORE, in consideration of the premises and the covenants contained in this Agreement, Developer and the City hereby agree that the Development shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the terms and conditions set forth in this Agreement, which shall run with the Land and shall be binding upon the Development and all tenants, subtenants, occupants, licensees, concessionaires, and other parties permitted within the Development. Developer and the City further agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

1.1 "Access Facilities" means all walkways, adjoining sidewalks, entrances to Common Area, passageways, corridors, lobbies, concourses, stairways, and all other portions of the Development that are designed and intended to provide common pedestrian access within the Development, within and among the Elements, and to and from public streets adjacent to the Development, and all alterations thereto and replacements thereof, as such Access Facilities may exist from time to time. Neither the Parking Facility nor the Skywalks shall be considered part of the Access Facilities for any purpose under this Agreement. Office Owner and Parking Facility Owner may agree from time to time to amend this Agreement to confirm the location of Access Facilities by reference to an exhibit.

1.2 "Agreement" means this Agreement, including all Exhibits attached hereto and made part hereof.

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

1.4 "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 described on Exhibit A-6 attached hereto, as such description may be amended upon substantial completion of the Parking Improvements and Skywalks pursuant to the Ground Lease.

1.5 "Alter" or "Alteration" means any construction, reconstruction, replacement, removal, installation, alterations, changes, additions, improvements, and demolitions of or to any part of the Development and improvements and all excavations at any time made or to be made in, on or about the Development, all of which are subject to Article 8 and all other applicable provisions of this Agreement.

1.6 "Bond End Date" means the earlier of (i) the date upon which all principal and interest under the Bond has been paid in full, and (ii) April 1, 2044.

1.7 "Bond Holder" means the Purchaser, as defined in the Bond Resolution.

1.8 "Bond Resolution" means the Resolution Providing for the Issuance, Sale and Delivery of $11,500,000 Taxable Tax Increment and Parking Facility Revenue Bond, Series 2014A, Resolution Number 14-___R, adopted by the City Council of the City of Duluth, Minnesota on _____, 2014.

1.9 "Building" means all improvements located on the Office Parcel and all Alterations thereto and replacements thereof, as the same may exist from time to time.

1.10 "Capital Account" has the meaning given to such term in the Bond Resolution.

1.11 "Certificate of Completion" means a certificate issued by the City of Duluth certifying the completion of construction of the Development pursuant to the Development Agreement dated on or about the date hereof between Developer and the City, including each of the Elements therein.

1.12 "City" means the City of Duluth, Minnesota.

1.13 "Common Areas" means those areas of the Development that are from time to time provided for use in common by two (2) or more Owners and their respective Permittees, whether or not the same are open to the general public, and shall include the Access Facilities, Sidewalks and Public Walkways, and any fixtures, chattels, systems, décor, signs, facilities, and landscaping and open areas contained therein or maintained or used in connection therewith. Neither the Parking Facility nor the Skywalks shall be

considered part of the Common Areas for any purpose under this Agreement. Office Owner and Parking Facility Owner may agree from time to time to amend this Agreement in order to confirm the location of Common Areas by reference to an exhibit.

1.14 "Common Costs" means the amounts payable in connection with the operation, management, maintenance and repair of those portions of the Common Areas, and any other areas maintained by Office Owner for the benefit of the other Owners, in the condition required by this Agreement, including without limitation all commercially reasonable costs, charges and expenses (including a commercially reasonable administrative fee) attributable to the operation, repair, maintenance and improvement of the Common Areas, as determined in accordance with generally accepted accounting principles.

1.15 "Constant Dollars" means the present value of the dollars to which such term refers. An adjustment shall occur on January 1, 2019, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index and the denominator of which is the Base Index. The "Base Index" shall be the level of the Index for April, 2014. The "Current Index" shall be the level of the Index for the month of September of the year preceding the adjustment year. The "Index" shall be the Consumer Price Index for All Urban Consumers, U.S. City Average, All items published by the Bureau of Labor Statistics of the United States Department of Labor (base year 1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then Office Owner may substitute (and give notice of such substitution to the other Owners) for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

1.16 "Current Expenses" has the meaning given to such term in the Bond Resolution.

1.17 "Debt Service Account" has the meaning given to such term in the Bond Resolution.

1.18 "Developer" means Duluth Real Estate LLC, its successors and assigns.

1.19 "Development" means all of the Elements, collectively.

1.20 "DNT Easement Agreement" means that certain Easement Agreement of even date herewith between Office Owner and Forum Communications Company pursuant to which the Office Owner has been granted the DNT Easement Rights as the same may be amended from time to time.

1.21 "DNT Easement Parcel" means that portion of the DNT Parcel over which Office Owner holds the DNT Easement Rights pursuant to the DNT Easement Agreement.

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

1.23 "DNT Parcel" means the land more particularly described in Exhibit A-5.

1.24 "Easement Parcel Owner" has the meaning set forth in the DNT Easement Agreement.

1.25 "Element" means each of the Office Element, Retail Element, and Parking Facility Element, or collectively the "Elements," as the context indicates.

1.26 "Fiscal Year" means a twelve (12) month calendar year, at the termination of which period the Office Owner's books are balanced for auditing or taxation purposes.

1.27 "Floor Area" means the aggregate of the actual number of square feet of space contained on each floor within an Element as measured from the interior faces of the interior walls or store front. During any period of Alteration, rebuilding, repairing, replacement or reconstruction of an Element, the Floor Area attributable to that Element shall be deemed to be the same as existed immediately prior to such period. Upon completion of such Alteration, rebuilding, repairing, replacement or reconstruction, the Owner of such Element shall cause a new determination of Floor Area for such Element to be made in the manner described above, and such determination shall be provided promptly to all Owners.

1.28 "Governmental Authorities" means all federal, state, county, municipal and local governments having jurisdiction over the Development, and all departments, commissions, boards, bureaus and officers thereof.

1.29 "Ground Lease" means that certain Ground Lease of even date herewith between Developer and the City, as the same may be amended from time to time, pursuant to which the City leases from Developer the Parking Improvement Premises.

1.30 "Interest Rate" means the simple per annum interest rate equal to the lesser of (a) the prime rate plus two percent (2%) and (b) the maximum lawful rate of interest. As used herein, the "prime rate" means the rate of interest published from time to time as the "Prime Rate" in the Wall Street Journal under the heading Money Rates; provided, however, that (i) if more than one such rate is published therein, the prime rate shall be the highest such rate, and (ii) if such rate is no longer published in the Wall Street Journal or is otherwise unavailable, the prime rate shall be a substantially comparable index of short-term loan interest rates charged by banks to corporate borrowers selected by Office Owner. Interest shall be due on any amount past due pursuant to Article 13 of this Agreement.

1.31 "Land" has the meaning set forth in the Recitals.

1.32 "Legal Requirements" means all laws, statutes, codes (including, without limitation, any building, zoning or land use codes), acts, ordinances, orders, judgments,

decrees, injunctions, directions and requirements of all Governmental Authorities, foreseen and unforeseen, ordinary or extraordinary, that now or at any time hereafter may be applicable to or required in connection with the Development or any part thereof, or any of the adjoining sidewalks, or any use or condition of the Development or any part thereof, or any construction required or permitted by this Agreement.

1.33 "Lobby" means that portion of the Development as depicted in Exhibit A-6.

1.34 "Normal Business Hours" means the days and hours from time to time established by Office Owner for the Development or any portion thereof, and, unless extended by Officer Owner, the term shall mean 7:00 a.m. to 7:00 p.m., weekends and holidays excluded, or such extended hours as Office Owner may specify from time to time. Normal Business Hours shall not affect access to the Parking Improvements, access to which is governed by Section 3.3(e) of this Agreement, respectively.

1.35 "Occupant" means any person from time to time entitled to the use and occupancy of any Element of the Development under an ownership right or any lease, sublease, license, concession, or similar agreement with the Owner of such Element.

1.36 "Office Element" means the Office Parcel and that portion of the Building located upon and within the Office Parcel, and all alterations thereto and replacements thereof, as the same may exist from time to time, but specifically excluding the Retail Element.

1.37 "Office Owner" means Developer, its successors and assigns as Owner of the Office Parcel from time to time.

1.38 "Office Parcel" means that portion of the Land described on Exhibit A-2.

1.39 "Operating Budget" has the meaning given to such term in Section 3.3(b).

1.40 "Operator" means the management company or other entity, if any, designated from time to time by Office Owner, after consultation with the Parking Facility Owner, to perform any or all of the Common Area maintenance responsibilities or other obligations in the nature of property management of Office Owner under this Agreement.

1.41 "Owner" means the fee owner of an Element or a part thereof, or, in the case of the Parking Improvements, the City (or any Permitted Transferee from the City) from and after the issuance of the Certificate of Completion and thereafter during the term of the Ground Lease. As used in this Agreement, the term "Owner" may refer to any one or more of the Office Owner, the Retail Owner, or Parking Facility Owner, as the context indicates.

1.42 "Parking Commission" means the Parking Commission established by the City to oversee and make recommendations to the Duluth City Council with respect to City parking facilities, including recommendations as to parking rates, and any successor

or replacement body, agency, or commission performing such function for the City that may be established from time to time.

1.43 "Parking Contract" means an agreement or license pursuant to which a person or entity gains the right to park (or to have its employees or other designated persons park) in the Parking Facility or Alley Bridge on a monthly basis.

1.44 "Parking Facility" means the multi-level parking structure with approximately 485 parking spaces to be constructed on the Parking Facility Parcel, along with any and all other structures, driveways, and other improvements that are constructed, placed or located on or within the Parking Facility Parcel, as the same may from time to time exist, and the appurtenances of all of the foregoing.

1.45 "Parking Facility Element" means the Parking Facility Parcel and the Parking Improvements, and all alterations thereto and replacements thereof, as the same may exist from time to time.

1.46 "Parking Facility Extension" means the improvements constructed on the DNT Easement Parcel pursuant to the DNT Easement Agreement.

1.47 "Parking Facility Owner" from and after the issuance of a certificate of completion for the Development issued by the City and thereafter during the term of the Ground Lease, means the City (or any Permitted Transferee from the City); thereafter "Parking Facility Owner" shall mean the Developer, its successors and assigns as Owner of the Parking Facility Parcel from time to time.

1.48 "Parking Facility Parcel" means that portion of the Land described on Exhibit A-3, as such description may be amended upon substantial completion of the Parking Improvements and Skywalks pursuant to the Ground Lease.

1.49 "Parking Improvement Premises" means, collectively, the Parking Facility Parcel, the Alley Parcel, and the DNT Easement Parcel.

1.50 "Parking Improvements" means, collectively, the Parking Facility, the Alley Bridge and the Parking Facility Extension, and all alterations thereto and replacements thereof, as the same may exist from time to time.

1.51 "Parking Manager" means the Parking Manager selected in accordance with Section 3.3(c) hereof.

1.52 "Payment Date" has the meaning given to such term in the Bond Resolution.

1.53 "Permitted Transferee" has the meaning set forth in the Ground Lease.

1.54 "Permittee" means all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors and invitees of Occupants to

the extent their activities relate to the use and occupancy of the Development as limited by this Agreement.

1.55 "Person" means any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or Governmental Authority.

1.56 "Qualified Management Contract" means an agreement (i) between the Parking Facility Owner and Parking Manager; (ii) not exceeding five (5) years in duration; (iii) by which the Parking Manager agrees to manage the Parking Improvements in accordance with requirements of this Agreement; (iv) that requires the Parking Manager to promptly pay over to and deposit with or at the direction of the Parking Facility Owner all Revenues; (v) containing the Parking Manager's acknowledgment that, to the extent Parking Manager receives, holds, or has custody of funds constituting Revenues, the Parking Manager has no interest in or claim to such funds, but instead receives, holds or has custody of such funds only on behalf of, and as custodian for, Parking Owner; and (vi) will, at all times the Ground Lease is in effect, be in compliance with (to the extent applicable) Revenue Procedure 97-13 or other guidance provided by the Internal Revenue Service, and will not meet the private business use test under Internal Revenue Code Section 141(b), and regulations promulgated thereunder, in each case as amended from time to time.

1.57 "Qualified Parking Manager" means a parking management firm that (i) is experienced in the management and operation of multi-level, urban parking facilities with operational characteristics reasonably comparable to the Parking Improvements, and (ii) is not affiliated with or controlled by the Parking Facility Owner; *provided, however*, in the event the City becomes experienced in the management and operation of multi-level, urban parking facilities with operational characteristics reasonably comparable to the Parking Improvements, nothing herein shall prevent the City from itself acting as the Parking Manager.

1.58 "Real Estate Taxes" has the meaning set forth in Article 9.

1.59 "Restore" or "Restoration" means the repair, restoration or rebuilding of any Element or any part thereof following any Taking, damage to or destruction of the same, as nearly possible to its size, type and character immediately prior to such Taking, damage or destruction, in accordance with all Legal Requirements and Insurance Requirements, together with any temporary repairs and property protection pending completion of the work and with any Alterations permitted by (including by consent obtained pursuant to) this Agreement.

1.60 "Retail Element" means the Retail Parcel and the improvements located upon and within the Retail Parcel, and all alterations thereto and replacements thereof, as the same may exist from time to time.

1.61 "Retail Owner" means Developer, its successors and assigns as Owner of the Retail Parcel from time to time.

1.62 "Retail Parcel" means that portion of the Development (exclusive of the Parking Improvements) designated by Office Owner from time to time.

1.63 "Revenue Account" has the meaning given to such term in the Bond Resolution.

1.64 "Revenues" has the meaning given to such term in the Bond Resolution.

1.65 "Shared Services" has the meaning given to such term in Section 3.1(B).

1.66 "Sidewalks and Public Walkways" means the sidewalks and public walkways adjacent to the exterior of the Development.

1.67 "Skywalk Agreement" means that certain Pedestrian Passageway Agreement Pertaining to the Maurices Office Tower Property of even date herewith between Office Owner and the City, providing for the construction and operation of the Skywalks.

1.68 "Skywalks" means the enclosed pedestrian bridges, walkways or skyways, and pedestrian corridors within and through the Development, that from time to time connect the Development to any building across any street or alley from the Development and those portions of the Development that are described as Skywalk Easements in the Skywalk Agreement.

1.69 "Transient Parkers" means a person parking a motor vehicle in the Parking Facility or Alley Bridge on an hourly or daily basis.

1.70 "Unavoidable Delays" means delays in the performance of an obligation under this Agreement due to causes beyond the control of the Owner performing the obligation, including but not limited to acts of God, acts of the public enemy, acts of terrorism, the direct result of strikes, walkouts and lockouts, fire, floods, epidemics, quarantines, restrictions, unavailability of power, unavailability of materials, acts of governmental entities including legislative or administrative actions taken by any entity, unusually severe weather not reasonably foreseeable or delays of contractors and subcontractors due to such causes, other casualty to the Development or a portion thereof, or litigation commenced by third parties that by injunction or other similar judicial action directly results in delays, provided that no such occurrence shall constitute an "Unavoidable Delay" unless such Owner gives written notice of such occurrence to the other Owners within thirty (30) days of the date of its first occurrence, and provided further that for each day of occurrence of such cause beyond the control of the Owner performing an obligation, one day of Unavoidable Delay shall be granted under this Agreement.

2. Easements and Licenses.

2.1 General Provisions. This Article 2 sets forth the easements and licenses granted by Developer. Each easement or license granted with respect to an Element is for the benefit of all other Elements unless specifically limited to benefit a particular

Element. Unless otherwise specifically stated herein, each easement is perpetual and non-exclusive. All easements and licenses and the use thereof shall be applicable only to the extent reasonably necessary to accomplish the purposes for which such easements and licenses are granted. No easements or licenses shall be deemed to have been granted to any Owner by implication. Each Owner shall comply (and cause its respective Occupants and Permittees to comply) with all applicable Legal Requirements in using the easements and licenses granted herein.

2.2 Easement for Use of Common Areas. Developer hereby grants for the benefit of each of the Owners, as an appurtenance to its respective Element, an easement to use and enjoy the Common Areas for their respective intended purposes. The easement with respect to the Common Areas may be exercised during Normal Business Hours and shall be subject to such non-discriminatory security restrictions as Office Owner may reasonably impose pursuant to this Agreement after consultation with the Parking Facility Owner.

2.3 Easement for Access Facilities. Developer hereby grants for the benefit of each of the Owners, as an appurtenance to its respective Element, non-exclusive easements for pedestrian and other appropriate access to and from such Owner's Element over the Access Facilities for their intended purpose. This easement may be exercised (a) over all Access Facilities during Normal Business Hours, and (b) twenty-four (24) hours per day, every day of the year, over those Access Facilities that are designed and intended for emergency egress from any of the Elements; provided that such reasonably direct routes may be subject to such non-discriminatory security restrictions as Office Owner may impose after consultation with the Parking Facility Owner. The easements provided in this Section 2.3 are subject to interruption by other causes beyond the control of the granting Owner.

2.4 No Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Development or the easements created hereby (except as set forth in the Skywalk Agreement) to the general public, and the grantor of any easement or license under this Agreement is entitled to make such temporary closures as may be reasonably necessary to avoid creation of any public rights. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third-party beneficiary rights in any person not specifically benefited by the terms and provisions hereof.

2.5 Security Restrictions. All of the easements granted in this Agreement are subject to reasonable restrictions including access controls through any security system promulgated by Office Owner after consultation with the other Owners, provided that no such restrictions shall unreasonably impair the utility of the easements granted herein.

2.6 Lobby. . Developer and the City acknowledge and agree that a portion of the Skywalks will pass through the Lobby. Notwithstanding anything contained herein to the contrary, such portions of the Skywalks that pass through the Lobby (i) shall only be used for the purpose of a pedestrian passageway through the Development, and (ii) Developer and Parking Facility Owner reserve the right to require removal of any person

or persons that are disruptive within those portions of the Skywalks passing through the Lobby or that otherwise impede or interfere with the normal course of business within the Development.

2.7 Normal Business Hours. Normal Business Hours shall apply to the Skywalks passing through the Development, including the Lobby; *provided, however*, that Office Owner may (but is not obligated to) agree in writing with Parking Facility Owner and the owners of properties connected to the Development by the Skywalks to extend Normal Business Hours for the Skywalks and the Lobby, and may condition any such agreement on the reimbursement to Officer Owner by Parking Facility Owner and any other such owners for the increased costs associated with extending Normal Business Hours for the Skywalks and Lobby, including without limitation the increased costs of utilities, HVAC and security.

3. Maintenance and Operation.

3.1 Owner Responsibilities.

(a) General. Each Owner shall, at its sole cost and expense and without contribution from any other Owners, maintain its Element in a good state of repair and condition, ordinary wear and tear excepted.

(b) Shared Services. The Owners acknowledge that the coordination of certain shared services may be beneficial to all Owners and to the operation of the Development ("Shared Services"). Office Owner may, from time to time, provide Shared Services (but no other Owner shall be obligated to accept or be responsible for the costs of such Shared Services) or discontinue or change the nature of any Shared Services currently provided, so long as any Owner benefitted by such service reasonably consents to the same. The costs to provide the Shared Services by Office Owner shall be included in Common Costs.

3.2 Office Owner's Responsibilities.

(a) Maintenance of Stairways. Office Owner shall maintain all stairways in the Office Building that are publicly accessible and which are designed and intended to provide common pedestrian access within the Development. Developer and the Parking Facility Owner may agree from time to time to amend this Agreement in order to confirm Office Owner's responsibilities with respect to specific stairways by reference to an exhibit.

(b) Sidewalks and Public Walkways. Office Owner shall maintain (including snow removal) all Sidewalks and Public Walkways located adjacent to or within the property line of the Development, and shall at all times keep the same in first-class order and condition, ordinary wear and tear excepted, making all necessary repairs thereto, and keeping the same in compliance with all Insurance Requirements and Legal Requirements, the cost of which shall be included in Common Costs.

(c) Common Area. Office Owner shall maintain any other Common Areas not referenced above, and shall at all times keep the same in first-class order and condition, ordinary wear and tear excepted, making all necessary repairs thereto, and keeping the same in compliance with all Insurance Requirements and Legal Requirements, the cost of which shall be included in Common Costs.

3.3 Parking Facility Owner's Responsibilities.

(a) Maintenance of Stairways. Parking Facility Owner shall maintain all stairways in the Parking Improvements that are publicly accessible and which are designed and intended to provide common pedestrian access within the Development. Developer and the Parking Facility Owner may agree from time to time to amend this Agreement in order to confirm Parking Facility Owner's responsibilities with respect to specific stairways by reference to an exhibit.

(b) Maintenance of Vertical Transportation. Parking Facility Owner shall maintain all elevators in the Parking Improvements that are publicly accessible and which are designed and intended to provide common pedestrian access within the Development.

(c) Parking Manager; Selection.

(i) Parking Facility Owner will engage a Parking Manager to manage the operations of the Parking Improvements pursuant to a Qualified Management Contract. Each Parking Manager selected by the Parking Facility Owner from time to time will be a Qualified Parking Manager or, subject to Section 3.3(c)(iv), the City.

(ii) Parking Facility Owner will in good faith solicit and take into account the recommendations of the Office Owner in selecting the Parking Manager.

(iii) The Qualified Parking Manager selected pursuant to this Section 3.3(c) shall, upon execution of a Qualified Management Contract by such Qualified Parking Manager and the Parking Facility Owner, become the Parking Manager during the term of such Qualified Management Contract.

(iv) Nothing herein shall be deemed to prevent the City from acting as the Parking Manager, provided it meets the qualifications of a Qualified Parking Manager as set forth herein.

(d) Operating Budget.

(i) Not later than August 1 of each calendar year, Parking Facility Owner shall prepare a proposed budget for the operation, maintenance and improvement of the Parking Improvements during the next succeeding calendar year. Each proposed budget shall be consistent with the standards for management, operation, maintenance and repair of the Parking Improvements set forth in Section 3.1(a), and shall include (A) a description of any plans to

improve, repair or renovate the Parking Improvements, or any plans to change any operating policies or procedures relating to the use, management or operation of the Parking Improvements; and (B) a proposed budget setting forth (v) amounts expected to be deposited in the Revenue Account over the course of such year; (w) amounts reasonably proposed to be deposited in the Capital Account over the course of such year; (x) amounts expected to be paid on account of Current Expenses; (y) amounts reasonably proposed to be paid out of the Capital Account for major improvements, repairs or renovations to, or replacements of, the Parking Improvements; and (z) amounts projected to be deposited into the Debt Service Account over the course of such year.

(ii) Parking Facility Owner and Office Owner acknowledge that it is their mutual long-term objective to maintain the Parking Improvements as a first-class parking facility that is compatible and coordinated with the balance of the Development and is competitive with other first-class parking facilities in the vicinity. Accordingly, Parking Facility Owner will provide Office Owner a copy of its proposed budget each year at least thirty (30) days before its adoption by Parking Facility Owner. Office Owner may review and comment on the proposed budget (it being understood, however, that Office Owner will not have input on the parking rates proposed to be charged by the Parking Facility Owner for Parking Contracts). Parking Facility Owner will in good faith take into account the comments of Office Owner with respect to the proposed budget in adopting a budget (which shall be the "Operating Budget") for such year.

(iii) Parking Facility Owner shall operate the Parking Improvements in accordance with the Operating Budget in effect from time to time. Parking Facility Owner will permit the Office Owner to inspect from time to time the books and records relating to the operations of the Parking Improvements, including the books and records relating to the accounts established under the Bond Resolution.

(e) Compliance with Bond Resolution.

(i) At all times to and including the Bond End Date, Parking Facility Owner shall apply all Revenues in accordance with the Bond Resolution. The Bond Holder is an intended third-party beneficiary of the provisions of this Section 3.3(d), and the provisions of this Section 3.3(d) cannot be amended, modified, waived or abridged with the prior written consent of the Bond Holder.

(ii) At all times after the Bond End Date, Parking Facility Owner shall apply all Revenues in accordance with the Bond Resolution just as if the Bond End Date had not occurred, except no further amounts shall be deposited or credited to the Debt Service Account.

(f) Hours of Operation; Parking Contracts.

(i) The Parking Improvements will be open and available for use 24 hours a day, seven days a week, every day of the year, subject to temporary interruption for maintenance, repair or casualty.

(ii) Each person parking a vehicle in the Parking Improvements other than Transient Parkers shall be required to execute a Parking Contract in such form as may be established by Parking Facility Owner from time to time.

4. Allocation of Costs.

4.1 Allocable Share.

(a) Certain costs of operating and maintaining the Common Areas and any other areas or items located on another Element that are the responsibility of Office Owner as set forth in Section 3 or elsewhere in this Agreement will be allocated among the Owners in the manner set forth on Exhibit B.

(b) Each Owner shall pay to Office Owner its applicable share of the Common Costs within thirty (30) days after submission of a statement by Office Owner, together with reasonably acceptable evidence of the actual costs incurred.

(c) Office Owner may re-allocate the share of the Common Costs applicable to the Office Element, Parking Facility Element and Retail Element (including both Common Costs which are allocated to the Office Element, Parking Facility Element and Retail Element on Exhibit B, and those Common Costs which are not so allocated on Exhibit B), among the Office Element, Parking Facility Element and Retail Element in an equitable manner based on usage, floor area, or a combination thereof, as the case may be.

4.2 Cost Composition.

(a) Emergency Costs. In the event that Office Owner deems it necessary, in its sole judgment, to make emergency repairs to any portion of the Development to prevent injury or damage to Persons or property, Office Owner shall have the right to do so, it being understood that Office Owner shall nevertheless consult with each other Owner of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof and shall give reasoned consideration to the reasonable objections of any such Owner as to the need for such emergency repairs or to the proposed method or cost of such repairs or both. If the cost of the emergency action exceeds $25,000 in Constant Dollars, and if such cost is not attributable solely to a particular Element, then Office Owner shall submit a supplemental billing to each other Owner, together with evidence supporting such cost, and each other Owner shall pay its share thereof within thirty (30) days after receipt of such billing. If the cost of the emergency action does not exceed $25,000 in Constant Dollars and such cost is not attributable solely to a particular Element, then such costs shall be included as part of the Common Costs for that year. If the cost of the emergency action is attributable solely to a particular Element, then Office Owner shall submit a supplemental billing to the Owner of such particular Element, together with evidence supporting such cost, and the Owner

of such particular Element shall pay the cost thereof (whether such costs exceeds $25,000 in Constant Dollars or not) within thirty (30) days after receipt of such billing.

(b) Exclusions from Common Costs. The following costs and expenses shall not be included in Common Costs:

(i) interest, late charges, and penalties on any Common Cost, unless such interest, late charges or penalties are caused by any Owner, in which case such Owner shall be responsible for such costs;

(ii) attorneys' fees and costs, other than attorneys' fees and costs incurred in connection with enforcing this Agreement;

(iii) Common Costs that are reimbursed by insurance proceeds or condemnation awards;

(iv) any and all expenses incurred in procuring, retaining, negotiating, amending, extending, administering, or terminating leases with any existing or prospective Occupants, including without limitation advertising, brokerage commissions, architectural and engineering fees, and legal fees;

(v) costs that are reimbursable to Office Owner by another Owner as a result of provisions contained in a separate agreement between the Office Owner and such Owner;

(vi) Amounts paid to persons or entities affiliated with, controlled by, controlling of, or under common control with Office Owner to the extent such amounts are greater than would have been charged by an unaffiliated third party in an arms-length transaction; and

(vii) costs attributable to repairing items that are covered by warranties, to the extent of Office Owner's recovery under such warranties.

4.3 Method of Payment; Audit Rights.

(a) On or before August 1 of each calendar year, Office Owner shall compute and deliver to the other Owners a *bona fide* estimate of Common Costs for the upcoming Fiscal Year determined in accordance with such fair and equitable methodology selected by Office Owner from time to time in its sole but reasonable discretion. The Owners shall pay to Office Owner in monthly installments on the first day of each month of such Fiscal Year, without further notice, one-twelfth (1/12) of each Owner's allocable share of such estimate.

(b) Unless delayed by reasons beyond Office Owner's reasonable control, Office Owner shall deliver to each Owner within one hundred twenty (120) days after the end of each Fiscal Year a written statement setting out in reasonable detail the amount of Common Costs for the preceding Fiscal Year. If the aggregate of monthly installments of Common Costs actually paid by an Owner to Office Owner during such Fiscal Year

differs from the amount of Common Costs allocated to such Owner and payable for such Fiscal Year, such Owner shall pay the shortage, or Office Owner shall refund or credit against next payment the overage (at Office Owner's option in its sole discretion), without interest, within thirty (30) days of delivery of such statement.

(c) No Owner may claim a re-adjustment in respect of any Common Costs, whether paid or payable in installments or otherwise, if based on any error of estimation, allocation, calculation or computation thereof, unless claimed in writing prior to the expiration of six (6) months following such Owner's receipt of the written statement from Office Owner given in accordance with Section 6.3(b). The foregoing six (6) month time period shall not apply to any claims for readjustment arising or resulting from any fraudulent acts or omissions.

(d) Office Owner agrees to keep and maintain a proper and accurate system of books of account and records in accordance with generally accepted accounting principles so as to show as accurately and completely as is commercially reasonable all Common Costs and to preserve the same for at least two (2) years after the close of the year to which they relate. Office Owner further agrees to permit any other Owner, its accountants and authorized representatives, to examine and copy (at their sole cost and expense and after 7 days prior written notice) at reasonable times during regular business hours all books and records of Office Owner pertaining to Common Costs. Such other Owner shall not disclose any information obtained by such examination or copying except to the extent that disclosure is necessary for the conduct of such Owner's audit or is otherwise required by law.

(e) Any Owner shall have the right, from time to time (but not after six (6) months subsequent to the expiration of the pertinent year and not more than once during any twelve (12) month period), to cause an audit of the books and records relating to Common Costs to be made by a nationally or regionally recognized accounting firm selected by such Owner and reasonably approved by Office Owner, to verify the amount of Common Costs reported by Office Owner in any year. Such accounting firm shall not have been engaged by any Owner within the immediately preceding twelve (12) months, may not be retained on a contingency fee basis and shall bill such Owner on a time and disbursement basis only. Unless Office Owner contests such audit, if such audit reveals an understatement of Common Costs for the period in question and a consequent deficiency in the payment of Common Costs, such Owner shall forthwith pay the amount of such deficiency to Office Owner, and if such audit reveals an overpayment of Common Costs, Office Owner shall promptly refund or credit the overpayment, at Office Owner's option and without interest.

5. Alterations to Common Areas.

(a) The Office Owner may perform Alterations on the Common Areas from time to time, provided all such Alterations shall be made with reasonable diligence and dispatch (subject to Unavoidable Delays) in a first-class manner and with materials and workmanship at least as good as existed prior to such Alteration.

(b) Any Alteration to the Common Areas shall be performed so as to minimize any disruption to the use and enjoyment thereof by the affected Owners, and shall not permanently and materially diminish the ingress and egress to any Element.

(c) All Alterations to the Common Areas shall be made and completed in accordance with all Legal Requirements and Insurance Requirements.

6. Real Estate Taxes. Each Owner shall timely pay all Real Estate Taxes payable with respect to its Element. "Real Estate Taxes" means the aggregate of all taxes, rates, charges, levies or assessments now or hereafter imposed by a competent authority upon or in respect of the applicable Element, but shall not include (a) any federal, state or local income, profit or business tax assessed upon the income of an Owner, (b) any estate or inheritance taxes, (c) any franchise, successor or transfer taxes, or (d) any other impost of a personal nature charged or levied against an Owner, except to the extent that any such tax is in lieu of taxes, rates, charges, levies or assessments upon or in respect of the applicable Element. If Real Estate Taxes relate to more than a single Element, the amount shall be equitably allocated to each applicable Element, and the Owner of any of the applicable Elements may pay all of such Real Estate Taxes and recover the allocated share from the Owner(s) of the other applicable Element(s). Office Owner shall have the right, but not the obligation, to cure any failure to pay Real Estate Taxes by any other Owner and shall be entitled to prompt reimbursement therefor within 10 business days after written request.

7. Building Code. The Land on which the Development is located includes multiple lots as platted. The Office Owner hereby confirms that the Development will be constructed in conformance with the applicable provisions of the building code promulgated by the State of Minnesota as if the Development were located on a single lot. No Owner may perform any Alteration or otherwise modify any Element or other portion of the Development in any way that would cause noncompliance with the building code promulgated by the State of Minnesota. Each Owner shall be bound by this Section 7 as if such Owner had originally executed this Agreement.

8. Failure of Performance.

8.1 General.

(a) Event of Default. The occurrence of any one or more of the following events shall constitute an event of default by any non-performing Owner (the "Defaulting Owner"):

(i) The failure to make any payment required to be made hereunder within ten (10) business days of the due date, or

(ii) The failure to observe or perform any of the covenants, conditions or obligations of this Agreement, within thirty (30) days after notice by an Owner (the "Non-Defaulting Owner") specifying the nature of the default claimed.

Upon an event of default, a Non-Defaulting Owner shall be entitled to pursue any proceeding to which it is entitled at law or in equity, in such Non-Defaulting Owner's

sole discretion. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another Owner of any of the terms, covenants, or conditions of this Agreement, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to an Owner under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. Only Owners and the Operator, if any, shall have the right to enforce the provisions of this Agreement pursuant to this Article 8. In no event shall any Owner be liable for any consequential or punitive damages to any other Owner.

(b) Notice and Cure. If any Owner defaults in any obligation hereunder that can be cured by the payment of money and the default is not cured within thirty (30) days after written notice thereof, or if any Owner defaults in any other obligation under this Agreement and the default continues for thirty (30) days after written notice thereof (or such longer period as may be necessary to cure the default provided that the defaulting Owner commences to cure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion, provided that such cure must be completed within one hundred eighty (180) days of written notice), then any Non-Defaulting Owner, after additional notice given to the Defaulting Owner, may exercise any one or more of the remedies set forth herein. The first mortgagee of any Owner in default under this Agreement shall be entitled to receive a concurrent notice of said default in the same manner that other notices are required to be given under this Agreement; provided, however, that the first mortgagee has, prior to the time of the default, delivered written notice of the first mortgagee's mailing address to the Owner(s) giving the notice of default. Any first mortgagee who has given notice hereunder shall have the right to cure a default by the applicable Owner hereunder on the same terms as applicable to the Owner.

(c) Upon the occurrence of an event of default under this Agreement and the expiration of any period to cure without a curing of the default, Office Owner or Operator, if any, and thereafter if Office Owner or Operator declines to pursue such remedies, any Non-Defaulting Owner, shall be entitled to one or more of the following remedies:

(i) cure the default and charge the cost thereof to the Defaulting Owner, and all such costs shall be payable on demand, including any interest thereon at the Interest Rate from the date of such demand until paid; or

(ii) specific enforcement, injunctive relief, damages, or any other remedy available at law or in equity.

In the event of any litigation hereunder, the prevailing Owner shall be entitled to reimbursement of its reasonable costs of litigation, including reasonable attorney's and expert's fees. Any action seeking one or more forms of relief shall not be a bar to an action

at the same or subsequent time seeking other forms of relief. Any delay in realizing, or failure to realize, on any remedy provided herein for a default hereunder shall not be deemed a waiver of that default or any subsequent default of similar or different kind, and no waiver of any right or remedy hereunder shall be effective unless in writing and signed by the person against whom the waiver is claimed.

9. Miscellaneous.

9.1 Relationship of Parties. No provision of this Agreement and no action taken pursuant hereto shall create any relationship between and among the Owners other than as specifically set forth herein. Without limiting the generality of the foregoing, the Owners shall not be deemed partners of, or joint venturers with, or agents for, one another, and nothing contained in this Agreement shall be construed to render any Owner liable for the debts or obligations of another Owner.

9.2 Headings; Interpretation. The language in this Agreement shall be construed simply according to its generally understood meaning, and not strictly for or against Developer or any Owner. Whether or not expressly provided where such term appears in this Agreement, the term "include" (and any variation thereof) is not limiting and instead means "including but not limited to" and shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter. The term "sole" or "absolute" discretion means a party's sole, unqualified and absolute discretion. The headings to the Articles and Sections of this Agreement are incorporated for convenience only and shall have no effect upon the construction or interpretation of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

9.3 Notice. All notices, consents, approvals and other communications which may be or are required to be given by an Owner under this Agreement shall be properly given only if made in writing and sent by (a) hand delivery, (b) U.S. Certified Mail, Return Receipt Requested, (c) electronic transfer device with telephone or other confirmation of receipt on a business day, or (d) a nationally recognized overnight delivery service (such as Federal Express, UPS Next Day Air, or Airborne Express), with all delivery charges paid by the sender and addressed to the applicable Owner, at the addresses set forth below. Such notices shall be deemed received (i) if delivered by hand, certified mail or overnight delivery service, on the date of delivery and (ii) if sent by electronic transfer on a business day during the recipient's normal business hours, on the date of transmission (with confirmation of successful transmission); otherwise the same shall be deemed to have been received on the following business day. The refusal to accept delivery shall constitute acceptance and, in such event, the date of delivery shall be the date on which delivery was refused. Said addresses for notices are to be as follows:

If to Office Owner or Retail Owner:	Duluth Real Estate LLC c/o Maurices Incorporated 105 West Superior Street Duluth, MN 55802 Attn: Senior Vice President and Chief Financial Officer
with a copy to:	Duluth Real Estate LLC c/o Maurices Incorporated 105 West Superior Street Duluth, MN 55802 Attn: Legal Department
If to Parking Facility Owner:	The City of Duluth 411 West First Street Room 330 City Hall Duluth, MN 55802 Attn: City Clerk

or to such other address as the Owner to receive notice may designate in writing to the other Owners by notice given as herein required.

9.4 Time. Time is of the essence of this Agreement and each and all of its provisions.

9.5 Amendment or Modification.

(a) This Agreement and any of the rights, licenses and easements created hereby may be terminated or amended by an instrument duly executed by all of the then-current Owners and consented to in writing by the holder of any first mortgage on the fee title of any Element and the holder of any certificate of sale arising from foreclosure of any such mortgage, if any, and no other party need join in or consent to any such termination or amendment to make the same effective. Any purported amendment or termination not executed or consented to by all of the parties whose execution or consent is required under this Section 9.5 shall be of no force or effect. Any amendment, change, modification or supplement to this Agreement, in order to be effective, shall be by written instrument in recordable form executed by all of the Owners and first mortgagees, if any, and duly recorded in the Office of the Registrar of Titles, St. Louis County, Minnesota, and the Office of the County Recorder, St. Louis County, Minnesota.

(b) Upon any amendment to the legal descriptions contained in the Ground Lease, the legal descriptions attached as exhibits to this Agreement shall also be amended.

9.6 Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, any successor or assign of any Owner. Any Owner shall be liable only for such obligations of such Owner hereunder as accrue during its period of ownership. Developer does hereby declare that the Elements are, and shall be, held, transferred, sold, conveyed and occupied subject to the restrictions and covenants of this Agreement, which restrictions and covenants (a) are for the purpose of protecting the value, desirability and amenities of the Development; (b) shall operate as equitable covenants, restrictions and reservations, which shall run with each Element and which shall be binding on all parties having any right, title or interest in the same, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each of such other parties their heirs, personal representatives, successors and assigns; and (c) are imposed upon each Element, respectively, as a servitude in favor of the other Elements.

9.7 Term. This Agreement shall run with the Land, shall be effective as of the date hereof, and shall terminate on the earlier of (i) 50 years from the date hereof, or (ii) upon the termination of the Ground Lease. Each easement, reservation, covenant, condition and restriction contained in this Agreement shall remain in full force and effect until this Agreement terminates, unless the provisions of the Agreement expressly provide that such easement, covenant, reservation, condition or restriction shall be perpetual, in which event it shall remain in effect until it is released or abandoned by the Owner of the Element benefited by such easement, covenant, reservation, condition or restriction. Upon the termination of this Agreement, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Agreement, except as relates to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this Agreement shall not limit or affect any remedy at law or in equity that an Owner may have against any other Owner with respect to any liability or obligation arising or to be performed under this Agreement prior to the date of such termination.

9.8 Severability. If any term contained in the Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term to Persons or circumstances other than those in respect of which it is invalid or unenforceable), except those terms that are made subject to or conditioned upon such invalid or unenforceable term, shall not be affected thereby, and each such unaffected term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.9 Law Applicable. This Agreement shall be governed by and construed under the laws of the State of Minnesota.

9.10 Agreement Shall Continue Notwithstanding Breach. No breach of this Agreement shall entitle any Owner to cancel, rescind or otherwise terminate this Agreement. However, such limitation shall not affect in any manner any other rights or remedies that any Owner may have hereunder, or at law or in equity, by reason of a breach.

9.11 Attorney's Fees. If any Owner brings an action to enforce or interpret this Agreement, the prevailing Owner in such action shall be entitled to recover reasonable attorney's fees and court costs from the non-prevailing Owner, in addition to any other relief granted.

9.12 Commercially Reasonable. With respect to matters arising under this Agreement, each Owner shall act in a commercially reasonable manner except when another standard is expressly provided. Whenever the consent or approval of an Owner is expressly required hereunder, such consent or approval shall not be unreasonably withheld or delayed, unless a different standard is expressly set forth herein. If any consent or approval is expressly required from more than one Owner, then the consent or approval must be obtained from all such Owners. All consents or approvals under this Agreement must be given in writing.

9.13 Inapplicability of MCIOA; Restrictions on Duration. Developer does hereby declare that (i) no part of the Development may be used for residential purposes, and (ii) it does not intend or elect to have the Development or any part thereof governed by Minnesota Common Interest Ownership Act ("MCIOA"), Minnesota Statutes Chapter 515B. Accordingly, the terms and provisions of MCIOA shall have no applicability to any part of the Development. Developer acknowledges and agrees that this Agreement and the covenants, conditions and restrictions hereof are within the scope of Minnesota Statutes Section 500.20, Subd. 2a(6) and, as such, are not subject to the thirty (30) year limitation of Section 500.20, Subd. 2a, nor, pursuant to Minnesota Statutes Section 541.023, Subd. 2(c), subject to the forty (40) year limitation of Section 541.023, Subd. 1.

9.14 Estoppel Certificates. Each Owner covenants that, within twenty (20) days of any written request of another Owner, it will issue to such requesting Owner, or to any mortgagee or a *bona fide* purchaser under an agreement of sale or similar document, an estoppel certificate stating as of the date of such certificate whether the Owner to whom the request has been directed knows: (a) of any default under the Agreement and if there are known defaults, specifying the nature thereof; (b) whether, to its knowledge, the Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); (c) that, to its knowledge, the Agreement is in full force and effect; and (d) such other things as the requesting party may reasonably request. The issuance of an estoppel certificate shall in no event subject the issuer to any liability for the negligent or inadvertent failure of the issuer to disclose correct or relevant information, nor shall such issuance be construed to waive any rights of the issuer to perform an audit or obtain an adjustment with respect to Common Costs for any year it is entitled to do so; provided, however, such estoppel certificate shall nonetheless act to estop the issuer from asserting a claim or defense against a *bona fide* encumbrancer or purchaser for value to the extent that such claim or defense is contrary to the statements contained in the estoppel certificate, and such *bona fide* purchaser or encumbrancer has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary.

9.15 Merger Not Intended. Common ownership of any Elements or portions thereof shall not cause this Agreement to be extinguished by operation of merger in whole or in part.

9.16 Minimization of Damages. Each Owner agrees to cause the least possible interference with the activities of the other Owners and their Permittees.

9.17 Rights Reserved. Except for rights expressly granted to the Owners herein, each Owner reserves all rights in and to the easement areas on its Element. Each Owner shall continue to enjoy the use of the easement areas on its Element for any and all purposes that do not interfere with the rights granted to the other Owners' use of the easement areas. The rights reserved herein are expressly limited by those actions that might damage the easement areas or prevent easy access thereto.

9.18 No Waiver. The failure of any Owner to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies that Owner may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by any Owner of any default under this Agreement shall be effective or binding on such Owner unless made in writing by such Owner and no such waiver shall be implied from any omission by an Owner to take action with respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default or period of time specified in such express waiver. One (1) or more written waivers of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Agreement. The failure of an Owner to provide a reconciliation or statement for amounts owed within a specified time shall not act as a waiver of such Owner's right to collect such amount upon the later issuance of the required Reconciliation or statement.

9.19 Naming Rights. Office Owner shall have the right to change the name by which the Development is known to the public from time to time in Office Owner's sole discretion.

9.20 Developer's Rights. Notwithstanding anything stated to the contrary in this Agreement, upon the execution and recordation of this Agreement, the Developer shall have no further rights under this Agreement, and the consent and/or approval of the Developer shall not need to be obtained for any purpose under this Agreement, except to the extent that the Developer is the Owner of an Element and then only in its capacity as an Owner of an Element under the terms and provisions of this Agreement.

9.21 Limitation on Claims Against City. During all times that the Parking Facility Owner is the City of Duluth (or a Permitted Transferee, as defined in the Ground Lease):

(a) Parking Facility Owner's obligation to pay or perform any duty or obligation under this Agreement is a revenue obligation and not a general

obligation of Parking Facility Owner, and Parking Facility Owner's payment and performance obligations are limited to the following sources of funds: (i) the Revenues of the Parking Improvements (and the payment by Parking Facility Owner of obligations under this Agreement shall be considered Current Expenses payable from Revenues, each defined in the Bond Resolution); (ii) insurance proceeds and condemnation awards relating to the Parking Improvements actually received or to be received by Parking Facility Owner; and (iii) any other amounts actually received or to be received by Parking Facility Owner by reason of its ownership of the leasehold estate hereunder and/or its ownership and operation of the Parking Improvements.

(b) If Parking Facility Owner faces a duty or obligation under this Agreement requiring an expenditure of funds which are projected to cause Current Expenses to exceed Revenues and other amounts described in the foregoing clause (a), the City of Duluth's administration shall recommend and the City Council shall consider the options available to the Parking Facility Owner to perform and/or pay for such duty and obligation under this Agreement, including the issuance of revenue bonds payable from Revenues of the Parking Improvements.

(c) Neither the full faith and credit nor the taxing powers of Parking Facility Owner are pledged to the payment or performance of the Parking Facility Owner's duties

[*Signature Pages Follow*]

US.53800500.08

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be made as of the day and year first above written.

Duluth Real Estate LLC

By: _____
Name: _____
Its: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, the _____ of Duluth Real Estate LLC, a Delaware limited liability company, on behalf of the company.

_____
Notary Public

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be made as of the day and year first above written.

City of Duluth

By: _____
Mayor

Attest:

_____
City Clerk

Countersigned:

_____
City Auditor

Approved:

_____
Assistant City Attorney

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, the Mayor of the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota, on behalf of the municipal corporation.

_____
Notary Public

EXHIBIT A-1

Legal Description of Land

Parcel 1: Lot 65, Duluth Proper, First Division, St. Louis County, Minnesota. ABSTRACT PROPERTY

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, 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 of said Street and a depth of 140 feet of Fifth Avenue West, Duluth, EXCEPT that portion of said lots and said Government Lot 5 lying within 29 feet of the East line of Fifth Avenue West as originally platted. TORRENS PROPERTY

EXHIBIT A-2

Legal Description of Office Parcel

Parcel 1: Lot 65, Duluth Proper, First Division, St. Louis County, Minnesota. ABSTRACT PROPERTY

and

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, 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 of said Street and a depth of 140 feet of Fifth Avenue West, Duluth, EXCEPT that portion of said lots and said Government Lot 5 lying within 29 feet of the East line of Fifth Avenue West as originally platted. TORRENS PROPERTY

Except the portion thereof which constitutes the Parking Facility Parcel, Alley Parcel and Retail Parcel.

EXHIBIT A-3

Legal Description of Parking Facility Parcel

Tract 1 (Elevators on First Floor of the Development)

That portion of the Land described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 129.31 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 56.92 to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 29.04 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 8.08 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 29.04 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 8.08 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 635.0 feet to elevation 652.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 2 (Elevators on Second Floor of the Development)

That portion of the Land described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 129.31 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 56.92 to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 29.04 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 8.08 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 29.04 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 8.08 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 652.0 feet to elevation 668.67 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 3 (Third Floor of the Development)

That portion of the Land described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 1.47 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 8.50 feet to the point of beginning of the parcel to be described; thence continuing North 48

degrees 23 minutes 09 seconds West a distance of 94.13 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 28.70 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 114.99 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 15.04 feet; thence South 71 degrees 57 minutes 56 seconds East a distance of 31.28 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 31.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 9.48 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 32.83 feet; thence North 71 degrees 51 minutes 56 seconds West a distance of 27.95 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 16.65 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 211.09 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 24.54 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 98.29 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 364.67 feet to the point of beginning.

EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 103.05 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 65.28 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 19.34 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 16.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 19.34 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 16.15 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, and 69, a distance of 137.39 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 10.77 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.77 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69 and 71, a distance of 158.37 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes

51 seconds West a distance of 12.22 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 12.22 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71 and 73, a distance of 224.61 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 59.30 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 21.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 3.33 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 21.40 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 3.33 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71, 73, and 75, a distance of 258.40 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning of the easement to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 13.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 13.15 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 668.67 feet to elevation 679.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 4 (Floors Four through Six of the Development)

That portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 1.47 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 8.50 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 94.13 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; North 48 degrees 23 minutes 09 seconds West a distance of 28.70 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 334.19 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 24.54 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 98.29 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 364.67 feet to the point of beginning.

EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 103.05 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 65.28 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 19.34 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 16.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 19.34 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 16.15 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, and 69, a distance of 137.39 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 10.77 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.77 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69 and 71, a distance of 158.37 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 12.22 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 12.22 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71 and 73, a distance of 224.61 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 59.30 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 21.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 3.33 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 21.40 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 3.33 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71, 73, and 75, a distance of 258.40 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning of the easement to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 13.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 13.15 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 679.0 feet to elevation 713.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 5 (Top of Elevator Shaft on Seventh Floor of the Development)

That portion of the Land described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, 67 & 69, a distance of 127.50 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 54.18 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 14.76 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 5.00 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 16.76 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.23 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 31.52 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.23 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 713.0 feet to elevation 730.34 feet, National Geodetic Vertical Datum, 1929 adjustment.

EXHIBIT A-4

Legal Description of DNT Parcel

West Half of Lot 68 and all of Lot 70, DULUTH PROPER, FIRST DIVISION, WEST FIRST STREET. ABSTRACT PROPERTY

EXHIBIT A-5

Legal Description of Alley Parcel

That portion of Lots 65, 67, 69, 71, 73, 75, 77 and that part of Lot 79 lying northeasterly of the southwesterly 34.00 feet thereof, all in DULUTH PROPER FIRST DIVISION, St. Louis County, Minnesota, and that part of the Alley as dedicated in DULUTH PROPER FIRST DIVISION that lies adjacent to said lots, described as follows:

> Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 77.81 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 131.33 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 28.67 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 62.00 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 28.67 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 62.00 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 668.67 feet to elevation 679.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

EXHIBIT A-6

Depiction of Lobby

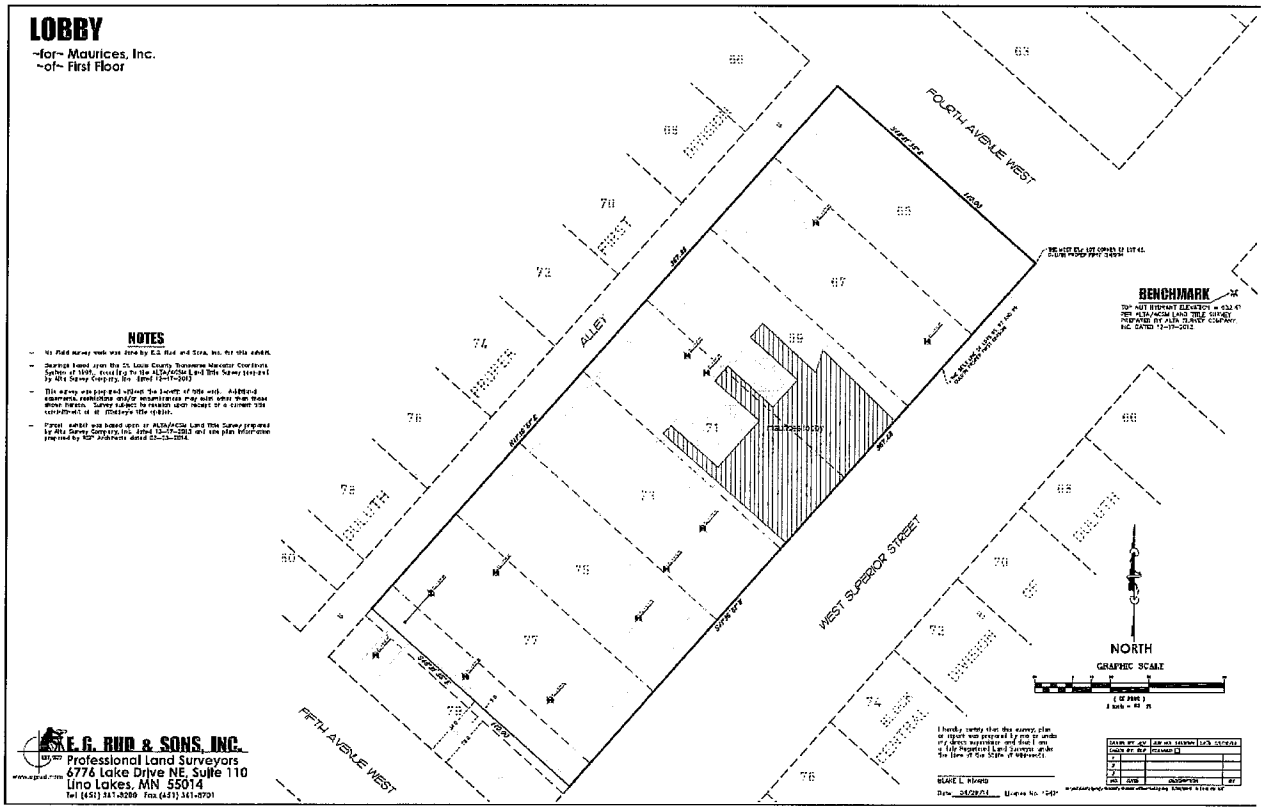


EXHIBIT B

Allocable Share of Common Costs

The Budget and Allocable Shares will be prepared and determined by Office Owner or its appointee (hereinafter collectively "Office Owner"), all subject to the provisions of this Agreement. Subject to the provisions of Section 6 of the Agreement, the following general principles will be applied, in Office Owner's reasonable discretion, for costs not included in the chart below:

1. Expenses related to items, systems and issues that directly benefit a specific Owner will be charged directly to that Owner.

2. Shared items that can be practically allocated based on usage through metering or sub-metering or other method will be allocated based on usage.

3. Those shared items that benefit all of the Owners in either equal measure or in a non-quantifiable manner will be allocated based on Floor Area.

PEDESTRIAN PASSAGEWAY AGREEMENT PERTAINING TO THE MAURICES OFFICE TOWER PROPERTY

BY THIS AGREEMENT dated _____, 2014, the CITY OF DULUTH, hereinafter referred to as "City," and DULUTH REAL ESTATE LLC, a Delaware limited liability company, hereinafter referred to as "Owner," agree to the following terms and conditions of agreement:

INTRODUCTION:

(1) City has constructed or will construct a downtown skywalk system providing enclosed pedestrian passageways connecting numerous buildings within the area. The location and nature of said improvements are illustrated in the attached Exhibit A.

(2) City wishes to include the pedestrian passageway that is the subject of this Agreement in said skywalk system. Said pedestrian passageway will be contained within the building of Owner, hereinafter referred to as "Building," to be constructed on the property in St. Louis County, Minnesota legally described as follows:

> Lots 65, 67, 69, 71, 73, 75, 77 and 79, West Superior Street, all in DULUTH PROPER First Division.

(3) By this Agreement, City will fulfill the goals noted in Paragraph 2 by the construction and furnishing of a pedestrian passageway entering Building at the second floor level through skywalk bridges over 4th Avenue West constructed from the building to the east of Building, hereinafter referred to as the "Phoenix Building" and over Superior Street from the building to the south of Building hereinafter referred to as the "Phase II Building", and connecting by a pedestrian passageway and by elevators and stairway to the Superior Street Level of Building and continuing to west and north through Building, connecting to a underground concourse under 5th Avenue West to the building to the west of Building, hereinafter referred to as the Radisson Hotel Building (collectively, the "Skywalk"). Said Skywalk will also connect by means of the aforesaid elevators and stairway to the third floor of Building and across First Street Alley to the property on First Street to the northwest of Building,

hereinafter referred to as the "Forum Buildings". Said Skywalk will be in conformity with the attached Exhibit B.

OWNER'S RESPONSIBILITIES:

Perpetual Easement

(4) Owner does hereby grant to City, without cost, a perpetual pedestrian easement over and through the Skywalk shown on Exhibit B for the primary purpose of facilitating pedestrian travel through the Skywalk. Owner acknowledges that it has been informed of its rights under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and hereby knowingly and specifically waives all rights and benefits thereunder.

Said grant of easement shall include the grant to City of the right (a) to permit pedestrian travel through the Skywalk in accordance with the provisions of this Agreement; (b) to place directional signage within the Skywalk, the size and location of which shall be subject to the reasonable approval of the Owner, and (c) all powers necessary to carry out the elements of this Agreement.

The City and Owner acknowledge and agree that a portion of the Skywalk will pass through the lobby of the Building, as such lobby is depicted on Exhibit C (the "Lobby"). Notwithstanding anything contained herein to the contrary, such portions of the Skywalk that pass through the Lobby (i) shall only be used for the purpose of a pedestrian passageway through the Building, and (ii) Owner and the City reserve the right to require removal of any person or persons that are disruptive within those portions of the Skywalk passing through the Lobby or that otherwise impede or interfere with the normal course of business within the Building. At the request of either party, the parties hereto agree to meet, confer and negotiate in good faith any modifications to the language in the paragraph or the means and methods of implementation to insure that purpose of providing full and convenient pedestrian passageway through the Building is being reasonably met.

Owner may modify the location of the above easement at any time subject to approval by City, which approval shall not unreasonably be withheld or delayed. Such modified easement shall be located and structured so as to facilitate pedestrian traffic through the whole Skywalk System and shall be of reasonably similar area and dimensions as the original easement. Along with its request for approval of an easement modification, Owner shall submit to City complete

plans and specifications for said modification showing that the modification will be of at least comparable character, quality and functionality as the old easement, including but not limited to factors of size, configuration, materials, signing and furnishings and shall also submit proof of ability and methodology for payment therefor. The process for approval of the aforesaid plans and specifications shall be that set forth in Paragraph 6 below. All costs involved in modifying said easement of any kind whatsoever, including the costs of removing skywalk indicia from the old easement shall be borne by Owner exclusively.

If City approves said modification, the parties shall join in the execution and delivery of an amendment to this Agreement in recordable form designating the modified easement and terminating the old easement upon completion of construction approved by City within the modified easement. City shall have the responsibility for the recording of the easement granted hereunder and shall be responsible for all related fees. Owner will make all necessary title instruments available for such proceedings.

Construction

(5) Owner will construct or cause to be constructed the improvements within the public easement area and Building as are shown the Schematic Design Plans (Public Improvements) defined in the Development Agreement between the Owner and City of even date (the "Development Agreement"). The terms and conditions governing the aforesaid construction shall be those set forth in that certain Development Agreement between the parties of even date herewith governing the development of the Building. If Owner wishes to make any changes to the Skywalk plans (or changes to the materials and finishes to be used in construction), the Owner shall submit such changes to the City for approval, which approval will not be unreasonably withheld or delayed.

(6) In the event that Owner wishes to modify the configuration or location of the Skywalk within the Building after completion of the construction thereof in conformance with the Development Agreement, the following process shall apply:

(a) Design Development. The term, "Design Development Plans," as hereinafter used shall mean all plans, drawings, specifications and related documents necessary for the construction of the modification of the public improvements hereunder, together with any and all changes made as provided for herein. All Design Development Plans shall be in conformity with this Agreement and with all applicable State and local laws and regulations. In the event that

Owner wishes to make any such changes, Owner will have prepared and submit to the City's Mayor or his or her designee (the "Skywalk Administrator"), for approval as agent for City, Design Development Plans with respect to the improvements to be constructed by Owner on the public easement, in sufficient completeness and detail to show that such improvements and the construction thereof will be in accordance with the provisions of this Agreement. The Skywalk Administrator shall approve or disapprove in writing such Design Development Plans and approval of such plans shall not unreasonably be withheld or delayed. If said plans are approved, no further filing by Owner or approval by the Skywalk Administrator thereof shall be required except with respect to any material change. If the Skywalk Administrator rejects said plans in whole or in part as not being in conformity with this Agreement, Owner shall submit new or corrected Design Development Plans which are in conformity with this Agreement, within fifteen (15) days thereof, after written notification to Owner of the rejection. The provisions of this Section relating to approval, rejection, and resubmission of corrected Design Development Plans herein above provided with respect to the originally submitted plans shall continue to apply until the plans have been approved by the Skywalk Administrator. No construction of improvements indicated in this Section 6 shall commence prior to the approval of said plans by the Skywalk Administrator. All work with respect to the improvements to be constructed or provided by Owner on the property shall be in conformity with the Design Development Plans as approved by the Skywalk Administrator. The term "improvements," as used in this Section 6, shall be deemed to have reference to the improvements as provided and specified in the construction plans as so approved.

(b) Changes in Design Development Plans. If Owner desires to make any change in the Design Development Plans after their approval by the Skywalk Administrator, Owner shall submit the proposed change to the Skywalk Administrator for his approval. If the plans, as modified by the proposed change, conform to the intent and content of the previously approved construction plans, the Skywalk Administrator shall approve the proposed change and notify Owner in writing of its approval. In the event of disapproval, the Skywalk Administrator shall notify Owner in writing thereof and the reasons therefor. Such approval shall not unreasonably be withheld or delayed.

(c) Progress Reports. Until construction of the improvements has been completed, Owner shall make reports in such detail and at such times as may be reasonably requested by

City, as to the actual progress of Owner with respect to such construction.

(d) Bond and Insurance During Construction. Prior to construction, Owner will secure a performance bond large enough to insure completion of the public improvements or provide such other security as may be approved in writing by the Skywalk Administrator. Prior to construction, Owner shall have City named as an additional insured, as its interest may appear, for the purposes of this Agreement on both Owner's Comprehensive General Liability Policy, which shall be kept in full force in the amount of $1,500,000 during the entire course of construction, and its Broad Form Perils Insurance Policy, or have City so named on a Builder's Risk Insurance Policy, which shall be kept in full force during the entire course of construction in an amount sufficient to restore all public and private improvements made pursuant to this Agreement on Owner's property. Such policies of insurance shall be written by insurance companies authorized to do business in the State of Minnesota. Prior to commencement of construction, Owner shall file with the Skywalk Administrator a Certificate of Insurance setting forth that all coverages required herein are in full force and effect and providing that City will be given ten (10) days' written notice prior to the termination or cancellation of such coverages.

(e) Certificate of Completion. Promptly after completion by Owner in conformance with this Agreement, of construction of the improvements required of them by this Agreement, City will furnish Owner with an appropriate instrument so certifying. No such certification shall be issued until all elements of such construction are totally completed and until the provisions of the third and fourth paragraphs of Paragraph 4 hereof have been complied with. Such certification by City shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement with respect to the construction obligations only of Owner and its successors and assigns. The issuance of such certificate shall not unreasonably be withheld or delayed.

(f) Cost for Construction. All costs for construction of improvements contemplated in this Paragraph shall be the responsibility of Owner.

Operation, Repair, Maintenance and Security

(7) Owner agrees to operate, maintain and repair and secure the Skywalk including joint responsibility with the owner of the Phoenix Building for the pedestrian bridge linking Building and the Phoenix Building and ,joint responsibility with the owner of the Phase II Building for the pedestrian bridge linking Building and the Phase II Building including but not

limited to the provision of adequate heat, lighting and air conditioning to said passageways and the provision of any security deemed desirable by Owner; provided that nothing contained herein is intended to or shall in any way create any obligations of any kind on the part of the parties hereto to any third parties or confer any benefits or protections of any kind on such third parties not otherwise existing at law or in equity. Owner shall be jointly responsible with the respective owners of the Phoenix Building and the Phase II Building for entering into agreements with said owners for the respective maintenance of the respective Buildings and for providing current copies of said agreements to City.

Owner covenants and agrees that it will not make or allow to be made in any way, directly or indirectly, any internal or covered connection between Building as it now exits and any other building without the approval of City.

As part of its obligations under this Section, Owner agrees to provide and retain adequate fire and property insurance to restore the Skywalk within Owner's property to the specifications of this Agreement taking into account normal wear and tear; provided that Owner's insurance obligations shall be subordinate to any insurance obligations contained within that certain Ground Lease between the parties of even date herewith during the term of said Ground Lease.

Subject to the provisions of said Ground Lease, in the event of damage to or destruction of any portion of the Skywalk, Owner agrees that it will make commercially reasonable efforts to present to City as soon as reasonably practicable after the date thereof (but in no case longer than two hundred and ten (210) days, without the consent of the City), complete construction plans for the restoration of said portion of the skywalk system together with a signed contract with a reputable contractor or reputable contractors for the construction of said restoration and a bond in a form and with a surety approved by City insuring performance of said contracts. Construction plans shall be subject to approval as provided in Section 5 of this Agreement, provided that delays occasioned by failure of the Skywalk Administrator to approve plans shall not be included in the computation of time in this Section. Should Owner fail to perform its obligations under this Section, City may, at its option, restore said portion of the skywalk system and collect from Owner, by assessment or any other legal means, all of the costs occasioned thereby, including the costs of collection. Owner's reconstruction obligations under this paragraph shall be subject to the terms of the aforesaid Ground Lease during the term thereof.

Owner further agrees to carry liability insurance in an amount sufficient to indemnify

City from any liability occurring within those areas of the pedestrian concourse system wherein Owner has, through this Agreement, assumed the sole or joint responsibility for operation, repair, and maintenance. Further, Owner agrees to indemnify and hold harmless City from all possible liability arising from the operation, repair or maintenance of those areas of the Skywalk where said responsibility is assumed by Owner solely or jointly under the terms of this Agreement; provided that Owner's insurance and indemnity obligations shall not apply to any portion of the Skywalk located within the limits of the Parking Facility Parcel as described in that certain Ground Lease between the parties of even date herewith during the term of said Ground Lease. Owner will provide to City annual certificates of insurance to evidence said insurance coverage.

It is agreed between the parties that the rights and obligations of Owner shall inure to and be binding on Owner's successors and assigns, if any. Provided, however, that the obligations of Owner to provide insurance and to indemnify City under this Paragraph shall be subject to the obligations of City to insure and to indemnify as set forth in that certain Ground Lease between City and Owner of even date herewith as it affects the Parking Facility Parcel as defined therein for the term of said Ground Lease.

Hours

(8) Owner agrees to maintain the Skywalk (including the portion thereof that passes through the Lobby) open to pedestrian traffic from 7:00 A.M. to 7:00 P.M., seven (7) days a week. Owner agrees to consent to extended Skywalk hours (to as early as 6:00 A.M. and to as late as 1:00 A.M.) at the request of the owner or owners of any property directly connected to the Building by the Skywalk system, so long as the requesting owner agrees in writing (and thereafter pays) 50% of the reasonable out-of-pocket costs (such as costs of utilities, HVAC and security) incurred by Owner in providing such extended hours.

Notice

(9) A notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally and delivered to:

In the case of City:	Skywalk Administrator Development District #2 c/o City Clerk Room 102, City Hall Duluth, MN 55802
In the case of Owner:	Duluth Real Estate LLC 105 West Superior Street Duluth, MN 55802 Attention: Senior Vice President and Chief Financial Officer
With a copy to:	Duluth Real Estate LLC 105 West Superior Street Duluth, MN 55802 Attention: Legal Department

The address of either party may be changed upon notice to the other party, and notices shall be sent to the last address designated.

Delay Beyond Control

(10) Under the terms of this Agreement, neither City nor Owner shall be considered in default or in breach of any of its terms due to unforeseeable causes beyond its control and without its fault or negligence, including but not restricted to, acts of God, acts of the public enemy, acts of the Federal Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes or other similar causes beyond control of a party or delays of contractors or subcontractors due to such causes. In the event of such delays, any time for completion or delivery under this Agreement will be extended for the period of delay upon written notice of the party seeking extension.

CONTINUING OBLIGATIONS

(11) All parties to this Agreement further agree that this Agreement, together with all of the terms, covenants and conditions herein contained, shall be deemed to run with the land and to be binding on the respective parties successors and assigns, if any, and that in the event that Owner shall at any time sell the Building or the hereinbefore described Property of both or otherwise assign or transfer its interest therein, any such purchaser, transferee or assignee shall

be liable for the performance of the obligations assumed by Owner hereunder, and the assigning or transferring Owner shall have no further liability or obligation hereunder from and after the date of such assignment or transfer if Owner shall have specifically assigned or transferred said liability and obligations to such purchaser, transferee or assignee and such purchaser, transferee or assignee has accepted such liability and obligations and agreed to be bound by this Agreement, and evidence thereof shall have been recorded in the office of the County Recorder for St. Louis County, Minnesota. Further, it is the intent of the parties that the easement granted hereunder and as the same may be modified from time to time as herein provided for, shall be permanent and perpetual and shall survive any event of damage to or destruction of the Building, whether such damage or destruction is caused by man-made causes, accidental causes or any other causes. To that end, it is agreed that in the event of any damage to Building or any destruction or demolition thereof, for any reason or cause whatsoever or by any person or entity whatsoever, the City's easement as described in Paragraph 4 above, shall survive and continue in perpetuity; *provided, however*, that the Owner may modify and/or relocate the easement subject to the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

CONSTRUCTION OF SKYWALK-REIMBURSEMENT

(12) Pursuant to this Agreement, Owner has agreed to construct the skywalk through the Building in conformance with attached Exhibit B. The obligations of the parties with regard thereto shall be those set forth in the hereinbefore-referenced Development Agreement.

PREVIOUS SKYWALK AGREEMENTS

(13) City had previously entered into the various Skywalk Agreements referenced below through buildings currently existing on the property described in Paragraph 2 above which buildings and property have now been acquired by and are owned by Owner. Pursuant to the terms of the above-referenced Development Agreement, Owner will demolish the existing buildings and, in conjunction with the City, construct the development described in said Development Agreement on said property, dedicating within said new development the Skywalk easements described in this Agreement. Therefore it is agreed between the parties that, as of the effective date of this Agreement the existing Agreements referenced below are deemed to be terminated and of no further force and effect, that as of said date the Skywalk Easements therein described are terminated, that the easements herein granted shall be the sole Skywalk Easements

affecting the property described in Paragraph 2 above, subject to the construction of the Building as described in the Development Agreement, and that the operation, maintenance, repair and replacement of the Skywalk through the Building shall be governed by this Agreement, subject to the afore-referenced Ground Lease during its term. The prior agreements hereby terminated and superceded are:

a. the Pedestrian Passageway Agreement Pertaining to the Palladio Building between the City and Michael J. Paulucci dated August 1, 1991.

b. the First Amendment to Agreement, Pedestrian Passageway Agreement Pertaining to the Palladio Building between the City and James A Jauss dated August 16, 1993.

c. the Pedestrian Passageway Agreement Pertaining to the Palladio Building, First Street Connection between the City and James A. Jauss of dated in 1994.

d. the Pedestrian Passageway Agreement Pertaining to the KDLH Building between the City and BENEDEK BROADCASTING CORPORATION d/b/a KDLH-TV dated in 1994.

[*Signature pages follow*]

US.53967535.07

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

DULUTH REAL ESTATE LLC, a Delaware limited liability company

By: _____
Its: _____

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____ the _____ of Duluth Real Estate LLC, a Delaware limited liability company, on behalf of the company.

_____
Notary Public

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

CITY OF DULUTH

_____
Mayor

Attest: _____
City Clerk

Approved:

_____
Assistant City Attorney

Countersigned:

_____
City Auditor

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____ and _____ the Mayor and City Clerk, respectively, of the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota, on behalf of the municipal corporation.

_____
Notary Public

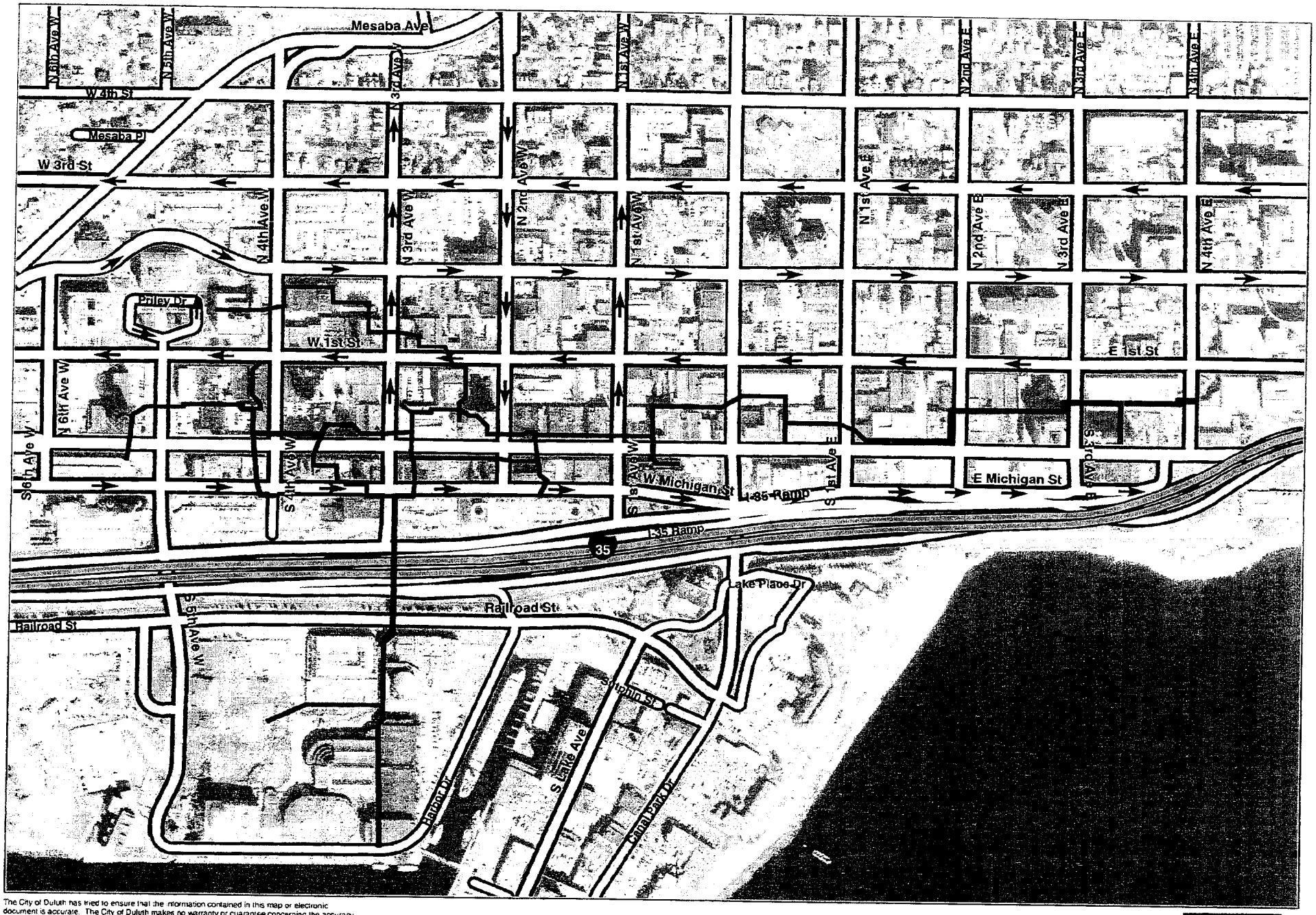
This instrument drafted by:

Robert E. Asleson
Room 410 City Hall
Duluth, Minnesota 55802

Exhibit A

Map of Skywalk System

(See Attached)



The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

Skywalk System

Exhibit A

0 250 500 1,000 Feet

1 inch = 500 feet

DULUTH

skywalk.mxd

Exhibit B

Depiction of Skywalk

(See Attached)

SKYWALKS PARCEL EXHIBIT

~for~ Maurices, Inc.
~of~ First Floor

NOTES

- No Field survey work was done by E.G. Rud and Sons, Inc. for this exhibit.
- Bearings based upon the St. Louis County Transverse Mercator Coordinate System of 1986, according to the ALTA/ACSM Land Title Survey prepared by Alta Survey Company, Inc. dated 12-17-2013.
- This survey was prepared without the benefit of title work. Additional easements, restrictions and/or encumbrances may exist other than those shown hereon. Survey subject to revision upon receipt of a current title commitment or an attorney's title opinion.
- Parcel exhibit was based upon an ALTA/ACSM Land Title Survey prepared by Alta Survey Company, Inc. dated 12-17-2013 and site plan information prepared by RSP Architects dated 03-03-2014.

LEGEND

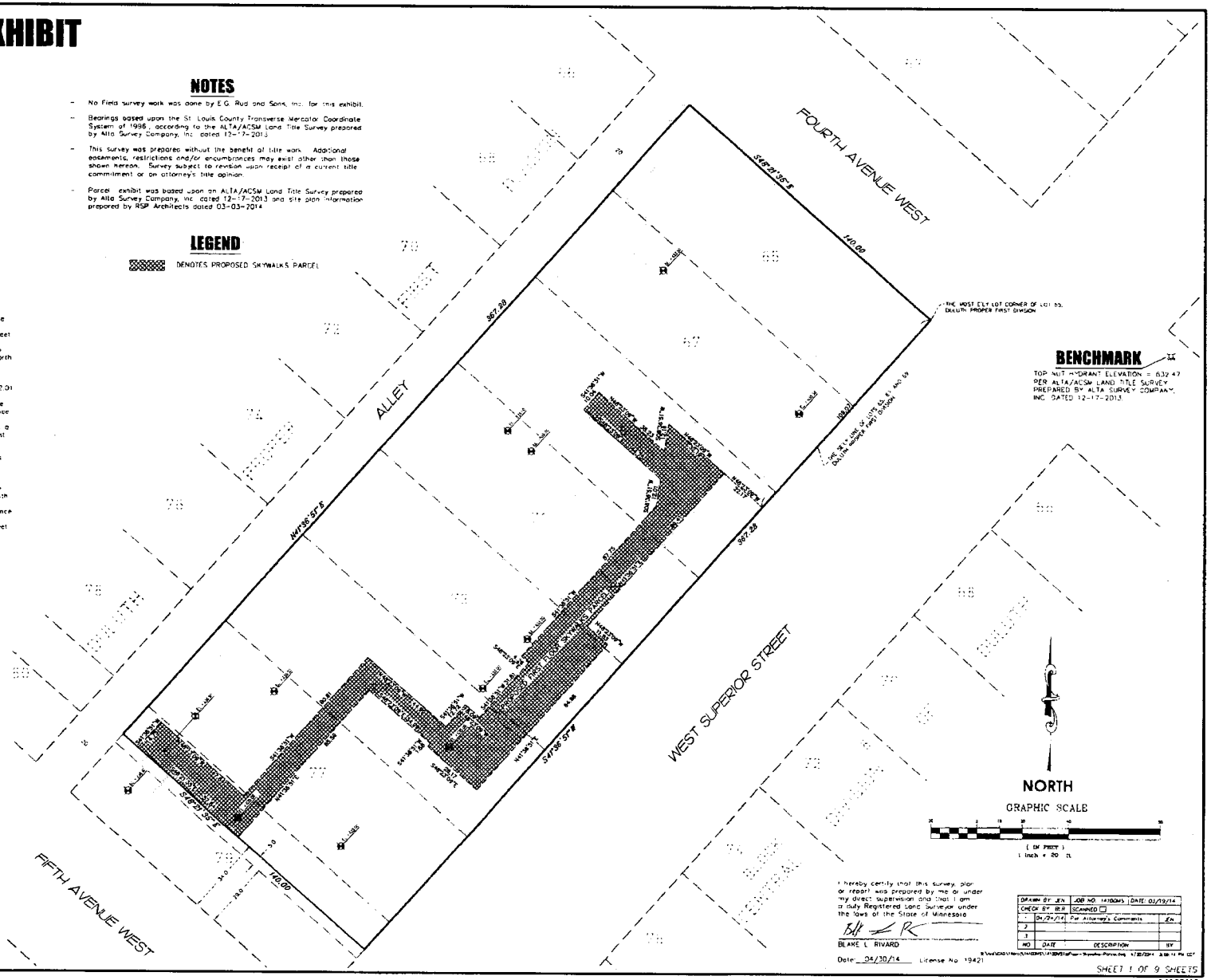
DENOTES PROPOSED SKYWALKS PARCEL

PROPOSED DESCRIPTION OF SKYWALKS PARCEL FOR THE FIRST FLOOR

A Skywalks Parcel over and across all that part of Lots 65, 67, 69, 71, 73, 75, 77 and that part of Lot 79 lying northeasterly of the southwesterly 34.00 feet thereof, all in DULUTH PROPER FIRST DIVISION, St. Louis County, Minnesota, said parcel described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 109.07 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 22.17 feet to the point of beginning of the parcel to be described; thence North 48 degrees 23 minutes 09 seconds West a distance of 32.19 feet; thence South 08 degrees 36 minutes 51 seconds West a distance of 12.16 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 38.23 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 10.04 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 44.75 feet; thence South 08 degrees 36 minutes 51 seconds West a distance of 12.01 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 87.75 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 4.26 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 31.81 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 8.09 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 12.72 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 44.99 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 80.81 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 47.84 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 14.75 feet; thence South 48 degrees 21 minutes 35 seconds East a distance of 57.84 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 85.59 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 34.99 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 1.68 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 28.17 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 84.66 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 11.83 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 89.41 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 635.0 feet to elevation 652.0 feet, National Geodetic Vertical Datum, 1929 adjustment.



BENCHMARK

TOP NUT HYDRANT ELEVATION = 632.47 PER ALTA/ACSM LAND TITLE SURVEY PREPARED BY ALTA SURVEY COMPANY, INC. DATED 12-17-2013.

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

BLAKE L. RIVARD

Date 04/30/14 License No. 19421

DRAWN BY: JEN	JOB NO. 14100MS	DATE: 03/19/14
CHECK BY: BLR	SCANNED ☐	
4	04/29/14	For Attorney's Comments	JEN
3		
2		
1		
NO	DATE	DESCRIPTION	BY

E.G. RUD & SONS, INC.
EST. 1977
Professional Land Surveyors
6776 Lake Drive NE, Suite 110
Lino Lakes, MN 55014
Tel. (651) 361-8200 Fax (651) 361-8701
www.egrud.com

SKYWALKS PARCEL EXHIBIT

~for~ Maurices, Inc.
~of~ Second Floor

PROPOSED DESCRIPTION OF SKYWALKS PARCEL FOR THE SECOND FLOOR

A Skywalks Parcel over and across all that part of Lots 65, 67, 69, 71, 73, 75, 77 and that part of Lot 79 lying northwesterly of the southwesterly 34.00 feet thereof, all in DULUTH PROPER FIRST DIVISION, St. Louis County, Minnesota and that part of West Superior Street as dedicated in said DULUTH PROPER FIRST DIVISION said parcel described as follows:

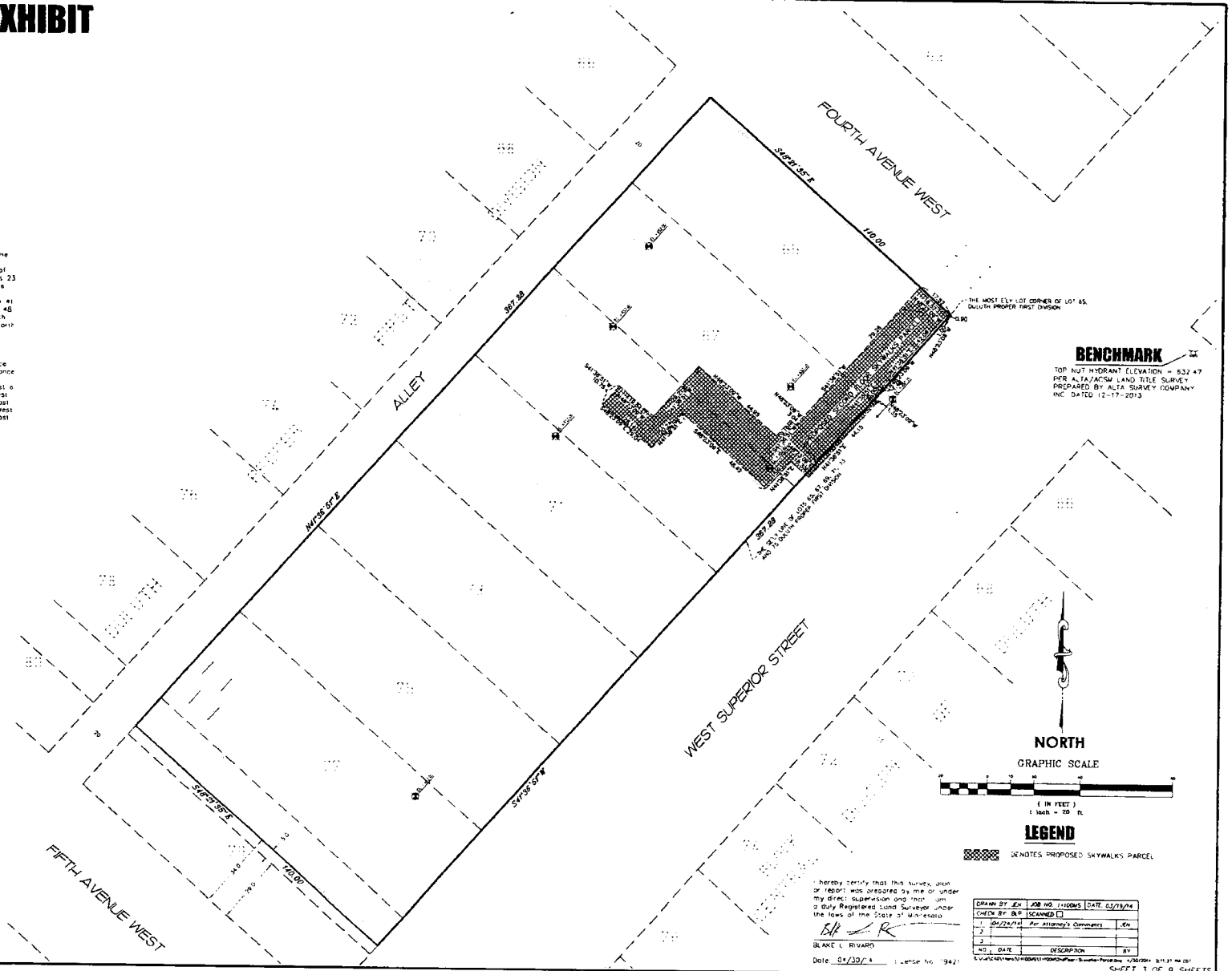
Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65 a distance of 0.90 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 1.00 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 15.52 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 79.26 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 3.04 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 9.19 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 44.95 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 29.21 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 19.54 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 10.75 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 28.14 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 20.24 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 48.42 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 15.93 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 10.33 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 44.15 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 1.35 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 6.00 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 1.48 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 42.09 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 652.0 feet to elevation 668.67 feet, National Geodetic Vertical Datum, 1929 adjustment.

NOTES

- No Field survey work was done by E.G. Rud and Sons, Inc. for this exhibit.
- Bearings based upon the St. Louis County Transverse Mercator Coordinate System of 1996, according to the ALTA/ACSM Land Title Survey prepared by Alta Survey Company, Inc. dated 12-17-2013.
- This survey was prepared without the benefit of title work. Additional easements, restrictions and/or encumbrances may exist other than those shown hereon. Survey subject to revision upon receipt of a current title commitment or an attorney's title opinion.

Parcel exhibit was based upon an ALTA/ACSM Land Title Survey prepared by Alta Survey Company, Inc. dated 12-17-2013 and site plan information prepared by RSP Architects dated 03-03-2014.



I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

BLAKE L. RIVARD

Date 04/30/14 License No. 49427

DRAWN BY EN	JOB NO. 14100MS	DATE 03/19/14	
CHECK BY BLR	SCANNED ☐		
1	04/24/14	For Attorney's Comments	EN
2			
3			
NO.	DATE	DESCRIPTION	BY

SHEET 3 OF 9 SHEETS

14100MS

E.G. RUD & SONS, INC.
EST. 1977
Professional Land Surveyors
6776 Lake Drive NE, Suite 110
Lino Lakes, MN 55014
Tel. (651) 361-8200 Fax (651) 361-8701
www.egrud.com

SKYWALKS PARCEL EXHIBIT

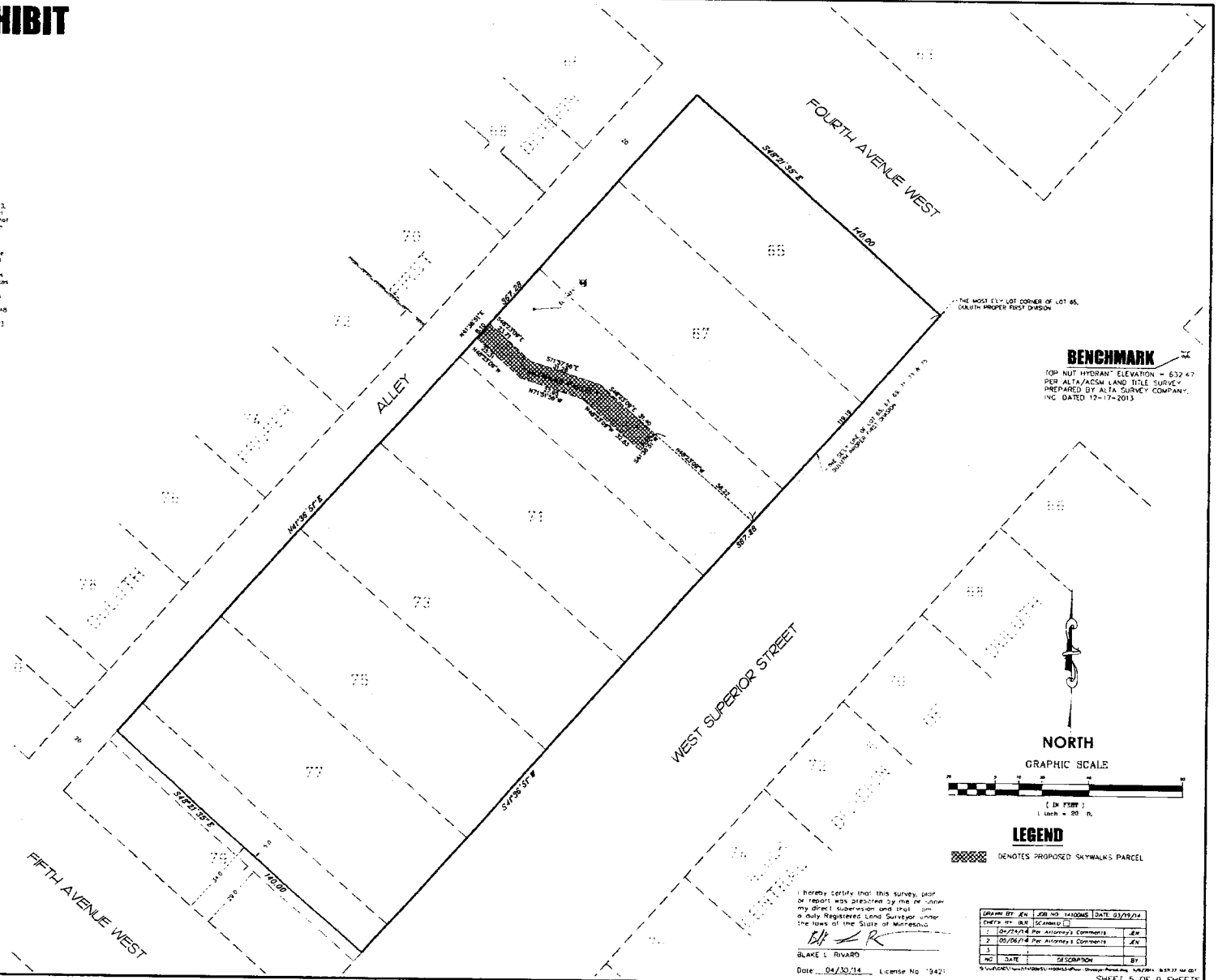
~for~ Maurices, Inc.
~of~ Third Floor

PROPOSED DESCRIPTION OF SKYWALKS PARCEL FOR THE THIRD FLOOR

A Skywalks Parcel over and across all that part of Lots 65, 67, 68, 69, 70, 71, 73, 75, 77 and that part of Lot 79 lying northwesterly of the southwesterly 34.00 feet thereof, all in DULUTH PROPER FIRST DIVISION, St. Louis County, Minnesota, and that part of the Alley as dedicated in DULUTH PROPER FIRST DIVISION that lies between said lots, said parcel is described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 119.19 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 56.22 to the point of beginning of the parcel to be described; thence South 41 degrees 36 minutes 51 seconds West a distance of 9.48 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 32.83 feet; thence North 71 degrees 51 minutes 56 seconds West a distance of 27.95 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 25.31 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 8.10 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 23.7[illegible] feet; thence South 71 degrees 57 minutes a distance of 31.28 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 31.40 feet to the point of beginning.

Said parcel lies between a vertical plane from elevation 688.67 feet to elevation 679.0 feet, National Geodetic Vertical Datum, 1929 adjustment.



NOTES

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- This survey was prepared without the benefit of title work. Additional easements, restrictions and/or encumbrances may exist other than those shown hereon. Survey subject to revision upon receipt of a current title commitment or an attorney's title opinion.

Parcel exhibit was based upon an ALTA/ACSM Land Title Survey prepared by Alta Survey Company, Inc. dated 12-17-2013 and site plan information prepared by RSP Architects dated 03-03-2014.

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

BLAKE L. RIVARD

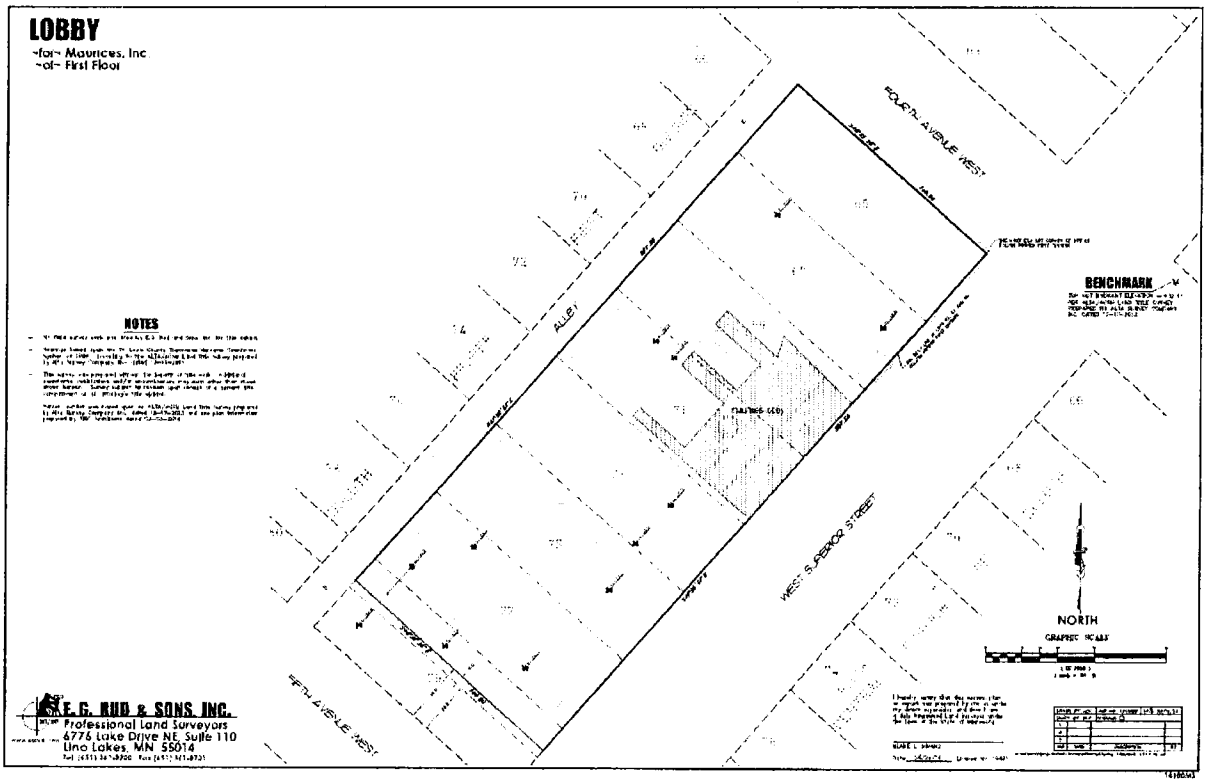
Date: 04/30/14 License No. 19421

DRAWN BY: JEN	JOB NO: 14100MS	DATE: 03/19/14	
CHECK BY: BLR	SCANNED: ☐		
1	04/23/14	Per Attorney's Comments	JEN
2	05/06/14	Per Attorney's Comments	JEN
3			
NO.	DATE	DESCRIPTION	BY

E. G. RUD & SONS, INC.
ESTD. 1911
Professional Land Surveyors
6776 Lake Drive NE, Suite 110
Lino Lakes, MN 55014
Tel. (651) 361-8200 Fax (651) 361-8701
www.egrud.com

Exhibit C

Depiction of Lobby



GUARANTY

THIS GUARANTY, dated as of _____, 2014, is made and given by Maurices Incorporated, a Delaware corporation ("Guarantor"), in favor of the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota (the "City").

RECITALS

A. Duluth Real Estate LLC, a wholly-owned affiliate of Guarantor ("DRE"), and the City are parties to that certain Development Agreement of even date herewith (the "Agreement").

B. Pursuant to the Agreement, DRE and the City have agreed on the construction of certain improvements to be located on real property in Duluth, Minnesota owned by DRE, all as more particularly described in the Agreement.

C. It is a condition precedent to the execution of the Agreement by the City that this Guaranty be executed and delivered to the City by Guarantor.

NOW, THEREFORE, in consideration of the recitals, the truth and correctness of which are hereby confirmed, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby covenants and agrees with the City as follows:

1. The Guaranty. Guarantor hereby primarily, absolutely, irrevocably and unconditionally guarantees to the City:

(a) the payment and performance of all obligations of DRE set forth in Article VII of the Agreement in accordance with the terms and conditions thereof; and

(b) that, to the extent that Public Improvement Costs submitted for payment or reimbursement under the Disbursing Agreement exceed the Maximum City Investment (as each of said terms is defined in the Agreement), Guarantor will advance funds to or on behalf of DRE (and will deposit such funds in accordance with the Disbursing Agreement, to the extent required) sufficient to pay such excess Public Improvement Costs,

(collectively referred to herein as the "Obligations").

2. Continuing Guaranty. This Guaranty is an absolute, irrevocable, direct, primary, unconditional, complete and continuing guaranty of performance of the Obligations. No notice of any renewal or extension of the Obligations need be given to Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of (a) notices and demands of any kind and description relating to the Obligations now or hereafter provided for by any agreement, statute, law, rule or regulation; (b) all defenses of DRE pertaining to the Obligations, except for the defense of discharge by performance; and (c) any duty on the part of the City to disclose to Guarantor any facts the City may now or hereafter know about DRE, regardless of whether the

City has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor.

3. Delivery and Effect; Duration. Possession of this Guaranty by the City shall be conclusive evidence of due delivery hereof by Guarantor and acceptance hereof by the City. This Guaranty shall continue in full force and effect until the substantial completion of the Development (as defined in the Agreement).

4. Representations, Warranties and Covenants of Guarantor. Guarantor hereby represents and warrants to, and covenants with, the City that:

(a) Guarantor is familiar with all facts and circumstances which a diligent inquiry would reveal and which would bear upon the risk of nonperformance of the Obligations, and Guarantor has executed and delivered this Guaranty based on Guarantor's own judgment and not in reliance upon any statement or representation of the City.

(b) Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, is qualified to do business in and in good standing under the laws of the State of Minnesota, and has all requisite power and authority to carry on its business as now conducted, to enter into this Guaranty and to perform its obligations hereunder. This Guaranty has been duly authorized by all necessary action and when executed and delivered will be the legal and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

(c) There are no actions, suits or proceedings pending or, to the knowledge of Guarantor, threatened against or affecting Guarantor which, if determined adversely to Guarantor, would have a material adverse effect on the condition of Guarantor or on the ability of Guarantor to perform its obligations under this Guaranty. Guarantor is not in violation of any law, statute, ordinance, code or governmental rule or regulation applicable to Guarantor where such violation could reasonably be expected to impose a material liability on Guarantor, or have a material adverse effect on Guarantor's ability to perform its obligations under this Guaranty.

5. Default and Remedies.

(a) The occurrence of any one or more of the following shall constitute an event of default (each an "Event of Default") under this Guaranty and under the Agreement:

(i) Guarantor's failure to pay or perform its obligations hereunder.

(ii) Any representation or warranty contained in this Guaranty shall not be true and correct in all material respects, and Guarantor fails to cure to the reasonable satisfaction of the City each of the conditions which cause such misrepresentation within thirty (30) days after notice thereof from the City.

(b) This Guaranty is subject to enforcement at law or in equity, including actions for damages or specific performance.

(c) All remedies afforded to the City by this Guaranty are separate and cumulative remedies, and no one of such remedies, whether or not exercised by the City, shall limit any of the other remedies available to the City hereunder, under the Agreement, at law, in equity by statute or otherwise, and shall in no way limit or prejudice any other remedy which the City may have. Mere delay or failure to act shall not preclude the exercise or enforcement of any such rights and remedies available to the City.

6. Costs and Expenses. Guarantor shall pay or reimburse the City on demand for all out-of-pocket expenses (including in each case all fees and expenses of counsel) incurred by the City arising out of or in connection with the enforcement of this Guaranty against Guarantor or arising out of or in connection with any failure of Guarantor to fully and timely perform the obligations of Guarantor hereunder.

7. Waivers and Amendments. This Guaranty can be waived, modified, amended, terminated or discharged only explicitly in a writing signed by the City. A waiver so signed shall be effective only in the specific instance and for the specific purpose given.

8. Notices. All notices, requests, demands and other communications required or permitted to be given hereunder will be sufficiently given if in writing and delivered in person, sent by United States certified mail, return receipt requested, postage prepaid, or sent by overnight mail by a nationally recognized courier service to the party being given such notice at the appropriate address set forth below, or to such other address as any party may give to the others in writing at least 10 days prior to the effective date of said change of address:

If to Guarantor: Maurices Incorporated
105 West Superior Street
Duluth, MN 55802
Attn: Senior Vice President and Chief Financial Officer

with a copy to: Ascena Retail Group, Inc.
933 MacArthur Boulevard
Mahwah, NJ 07430
Attn: Gene Wexler, SVP, General Counsel

If to the City: City of Duluth
411 West First Street
Room 330 City Hall
Duluth, MN 55802
Attn: City Clerk

Notices delivered in person shall be effective upon receipt; notices delivered by mail shall be effective 3 Business Days after being deposited in the United States mail; and notices delivered by overnight mail shall be effective on the Business Day following delivery to the courier.

9. Guarantor Acknowledgments. Guarantor acknowledges that (a) Guarantor will benefit by and from the execution of the Agreement by the City and DRE; (b) Guarantor has received legal and adequate consideration for the execution of this Guaranty and has executed and delivered this Guaranty to the City in good faith in exchange for reasonably equivalent value; (c) the City has agreed to execute the Agreement in reliance upon this Guaranty; (d) Guarantor's legal counsel has advised Guarantor in the negotiation, execution and delivery of this Guaranty; (e) the City has no fiduciary relationship to Guarantor; (f) no joint venture exists between Guarantor and the City; and (g) Guarantor has received a true and correct copy of the Agreement.

10. Successors and Assigns. This Guaranty shall be binding upon Guarantor and the successors and assigns of Guarantor, and inure to the benefit of, and be enforceable by, the City and its successors, transferees and assigns.

11. Governing Law. This Guaranty, the rights of the parties hereunder and the interpretation hereof shall be governed by, and constructed in accordance with, the internal laws of the State of Minnesota.

12. Severability. Whenever possible, each provision of this Guaranty and any other statement, instrument or transaction contemplated hereby or relating hereto, shall be interpreted in such manner as to be effective and valid under applicable law, but, if any provision of this Guaranty or any other statement, instrument or transaction contemplated hereby or relating hereto shall be held to be prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or any other statement, instrument or transaction contemplated hereby or relating hereto.

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

14. General. All representations and warranties contained in this Guaranty, or in any other agreement between Guarantor and the City, shall survive the execution, delivery and performance of this Guaranty and the creation and performance of the Obligations. Captions in this Guaranty are for reference and convenience only and shall not affect the interpretation or meaning of any provision of this Guaranty.

[*Signature Page Follows*]

US.53967308.05

SIGNATURE PAGE
TO
GUARANTY

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first above written.

Maurices Incorporated

By:_____
Name: _____
Its: _____

EASEMENT AGREEMENT

This Easement Agreement (this "Agreement") is entered into as of _____, 2014, by and between Duluth Real Estate LLC, a Delaware limited liability company ("Developer"), and Forum Communications Company, a North Dakota corporation ("Forum"), as successor by merger to Duluth/Superior Newspapers LLC, a Delaware limited liability company.

RECITALS

A. Developer is the owner of the real property located at 401-403 and 425 W. Superior Street, Duluth, Minnesota, as more particularly described on Exhibit A hereto (the "Development Parcel").

B. Developer intends to construct an office tower on a portion of the Development Parcel (the "Office Building"). Developer, as owner of the Development Parcel, and its successors and assigns as owner of the Development Parcel from time to time, are collectively referred to herein as the "Developer".

C. Pursuant to that certain Development Agreement of even date herewith (the "Development Agreement"), between Developer and the City of Duluth, a municipal corporation under the laws of the State of Minnesota (the "City"), Developer and the City have agreed to enter into a ground lease by which Developer will lease to the City a portion of the Development Parcel (any ground lease entered into by the City and Developer pursuant to the Development Agreement, including all amendments, modifications, renewals, extensions and supplements thereto and restatements and replacements thereof, is referred to herein as the "Ground Lease").

D. That portion of the Development Parcel that is from time to time leased to the City pursuant to the Ground Lease is referred to herein as the "Parking Facility Parcel". During the term of (and on and subject to the terms of) the Ground Lease, the City shall have and enjoy all of the rights and benefits, and shall perform and be subject to all obligations and liabilities, of the Parking Facility Owner, to the extent leased, delegated or assigned to the City in accordance with and subject to Section 5 of this Agreement. Developer, as owner of the Parking Facility Parcel, and its successors and assigns as owner of the Parking Facility Parcel from time to time are sometimes collectively referred to herein as the "Parking Facility Owner".

E. Pursuant to the Ground Lease, the City intends to develop and operate a multi-level parking facility (the "Parking Facility") on and within the Parking Facility Parcel and over the alley between the Parking Facility Parcel and the Easement Parcel (as defined herein). The Office Building, Parking Facility and other improvements constructed on the Development Parcel are referred to herein collectively as the "Development".

F. Forum, as successor by merger to Duluth/Superior Newspapers LLC, a Delaware limited liability company, is the owner of the real property located at 408 West 1st Street, Duluth Minnesota, as more particularly described on Exhibit B hereto, including any rights to any portion of the alley adjacent thereto as a result of any future vacation of the public right-of-way by the City (the "Easement Parcel"). Forum, as owner of the Easement Parcel, and its successors and assigns as owner of the Easement Parcel from time to time, are collectively referred to herein as the "Easement Parcel Owner."

G. In connection with the development of the Parking Facility, the Easement Parcel Owner has agreed to grant to the Developer and/or Parking Facility Owner, as applicable, certain access, construction and other easements as more particularly set forth herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

AGREEMENT

1. Grant of Easements

(a) Demolition and Construction. Easement Parcel Owner hereby grants to the Parking Facility Owner and the Parking Facility Owner's architects, engineers, agents, contractors, subcontractors, materialmen and others engaged in directing and performing any construction or demolition work, as an appurtenance to the Parking Facility Parcel, a temporary exclusive easement to enter onto the Easement Parcel for the following purposes, as deemed necessary or desirable by the Parking Facility Owner, in its reasonable discretion:

(i) to demolish all or any portion of the existing improvements located on the Easement Parcel; and

(ii) to construct improvements on the Easement Parcel, whether above any underlying improvements of Easement Parcel Owner, within the footprint of any former improvements demolished by the Parking Facility Owner, or elsewhere within the Easement Parcel, including without limitation, an entrance and exit ramp connecting the Parking Facility to a point of vehicular ingress and egress on West 1st Street on the northwest boundary of the Easement Parcel, together with structural elements, parking facilities, pedestrian walkways, utility facilities and related improvements.

The foregoing construction work shall be performed substantially in accordance with construction plans attached hereto as Exhibit C, and Easement Parcel Owner hereby approves the same; *provided, however*, the construction plans attached hereto as Exhibit C shall not be altered, modified or amended in any way that reduces the total number of parking spaces on the Easement Parcel or restricts access thereto (including the Parking Facility Extension Spaces and Existing Forum Spaces, as such terms are defined below) without the prior written consent of Easement Parcel Owner. In the event Parking Facility Owner commences any demolition or construction work upon the Easement Parcel, but fails to complete construction of the Parking Facility Extension within twenty-four (24) months of commencement of such demolition or construction work, Parking Facility Owner shall be obligated to restore the Easement Parcel to its same condition as existed prior to the demolition and/or construction (including, without limitation, restoration of the number of parking spaces that existed as of the date of this Agreement) within a reasonable time, and failure to so restore shall entitle the Easement Parcel Owner to all remedies available to Easement Parcel Owner under applicable law.

The easement rights granted by this Section 1(a) are collectively referred to as the "Construction Easement," and any improvements constructed by Parking Facility Owner or Developer on and within the Easement Parcel from time to time, including any repairs and replacements thereof from time to time, are collectively referred to as the "Parking Facility Extension." The Construction Easement shall be temporary and shall commence as of the date of this Agreement and shall terminate upon the earliest to occur of the following dates: (i) the date of completion of the Parking Facility Extension, or (ii) the date that is twenty-four (24) months from the date of this Agreement.

The Parking Facility Owner will pay all costs of the construction of the Parking Facility Extension.

(b) Parking Facility Extension; Alteration; Modification. Easement Parcel Owner hereby grants to Parking Facility Owner an exclusive and perpetual easement to keep and maintain the improvements constituting the Parking Facility Extension in the location that the Parking Facility Extension is constructed in accordance with Section 1(a), subject to the terms of this Agreement. Upon completion of construction of the Parking Facility Extension, Easement Parcel Owner and Parking Facility Owner agree to (i) cause the Parking Facility Extension to be surveyed (at the expense of Parking Facility Owner) and a description of the Parking Facility Extension to be prepared, and (ii) to execute an amendment to this Agreement, setting forth such description.

The Parking Facility Owner shall not remove the Parking Facility Extension, but the Parking Facility Owner may alter or modify the Parking Facility Extension so long as such alteration or modification does not reduce the total number of parking spaces on the Easement Parcel or restrict access thereto (including the Parking Facility Extension Spaces and Existing Forum Spaces, as such terms are defined below); *provided, however*, Parking Facility Owner may not build any structure or erect any structure addition, or additional levels of floors, on, upon or above the Parking Facility Extension to be constructed pursuant to Exhibit C. Easement Parcel Owner shall not alter, modify, replace or operate the Parking Facility Extension without the advance written consent of Parking Facility Owner.

Easement Parcel Owner may freely sell, convey, assign, or otherwise transfer, the Easement Parcel together with all improvements located thereon and all fixtures attached thereto, including, without limitation, all right, title and interest of Easement Parcel Owner in and to the Parking Facility Extension (including all parking rights on the Easement Parcel in favor of Easement Parcel Owner set forth in Section 3 of this Agreement), all without obtaining any consent whatsoever of Developer, Parking Facility Owner or City. Any purchaser, successor, assignee or transferee of Easement Parcel Owner pursuant to a conveyance of the Easement Parcel by Easement Parcel Owner will enjoy all benefits of and be subject to all of the Easement Parcel Owner's rights (including all parking rights set forth in Section 3) and obligations under this Agreement and shall take the Easement Parcel subject to all of Parking Facility Owner's rights and obligations under this Agreement.

(c) Access. Easement Parcel Owner hereby grants to the Parking Facility Owner, as an appurtenance to the Parking Facility Parcel, a non-exclusive and perpetual easement to use the Easement Parcel solely (except as otherwise provided in this Agreement) for the purpose of vehicular and pedestrian ingress to and egress from the Parking Facility and Parking Facility Extension, including by and through any public pedestrian passageways located on the

Easement Parcel or the property adjacent thereto that are part of the City's skywalk system.

(d) Facilities. Easement Parcel Owner hereby grants to the Parking Facility Owner, as an appurtenance to the Parking Facility Parcel, a non-exclusive and perpetual easement to construct, install, maintain, repair and replace parking-related equipment and facilities over, under and on the Easement Parcel as deemed necessary or desirable by Parking Facility Owner from time to time, in its reasonable discretion, including by way of example but without limitation, ticket machines, ticket scanners, ticket booths and access gates. The foregoing easement shall be non-exclusive; *provided, however,* to the extent such facilities are constructed and installed on the Parking Facility Extension from time to time, Easement Parcel Owner shall not alter, modify or make use of, or authorize any other party to alter, modify or make use of, any such facilities in a manner so as to materially interfere with the easement rights granted by this Section 1(c) to Parking Facility Owner, and the foregoing easement shall be exclusive to the Parking Facility Owner as to all such facilities constructed and installed on the Parking Facility Extension.

(e) Utilities. Easement Parcel Owner hereby grants to the Parking Facility Owner, as an appurtenance to the Parking Facility Parcel, a non-exclusive and perpetual easement to construct, install, maintain, repair and replace utility facilities serving the Parking Facility Extension or Parking Facility over, under, through and above the Easement Parcel as deemed necessary or desirable by Parking Facility Owner from time to time, in its reasonable discretion, including without limitation, electrical power lines, fiber optic lines and storm water pipelines and conduits.

(f) Structural Support. Easement Parcel Owner hereby grants to the Parking Facility Owner a non-exclusive and perpetual easement for structural support for any portion of the Parking Facility Extension constructed on any underlying improvements of Easement Parcel Owner within the Easement Parcel. The foregoing easement shall be non-exclusive; provided, however, to the extent structural supports are constructed and installed on any underlying improvements of Easement Parcel Owner within the Easement Parcel in accordance with the Construction Easement, the easement rights granted by this Section 1(f) shall be exclusive to the Parking Facility Owner, and Easement Parcel Owner shall not, without the advance written consent of the Parking Facility Owner, demolish, alter, repair or replace, or reduce the load-bearing capacity of, any such underlying improvements on the Easement Parcel.

(g) Signage. Easement Parcel Owner hereby grants to Parking Facility Owner, as an appurtenance to the Parking Facility Parcel, a non-exclusive and perpetual easement for the installation, repair, maintenance and display of signage

within the Easement Parcel, as determined by Parking Facility Owner in its reasonable discretion; provided, however, all such signage must be related to instructional and directional information (e.g., parking, payment and traffic signs, and identifying signage for Development occupants) for the Parking Facility and/or Parking Facility Extension, and the Developer and Parking Facility Owner shall not be authorized to use the Easement Parcel for advertisements, marketing or the like. Easement Parcel Owner covenants that it will not authorize any third-party signage within the Parking Facility Extension without the advance written consent of Parking Facility Owner.

(h) Crane swing. Easement Parcel Owner hereby grants to Parking Facility Owner, as an appurtenance to the Parking Facility Parcel, a temporary non-exclusive easement to, through and over the volume of air which lies above the Easement Parcel, for the purpose of operating a construction crane from time-to-time during construction, maintenance, repair or alteration of the Office Building, Parking Facility, or Parking Facility Extension. Easement Parcel Owner shall not use, or authorize the use of, the volume of air which lies above the Easement Parcel in any manner which would interfere with or interrupt the use and enjoyment of the easement granted pursuant to this Section 1(h) by Parking Facility Owner. The foregoing easement in this Section 1(h) shall be temporary and shall commence as of the date of this Agreement and shall terminate upon the earliest to occur of the following dates: (i) the date of completion of the Parking Facility Extension, or (ii) the date that is twenty-four (24) months from the date of this Agreement.

(i) Easement for Repairs. Easement Parcel Owner hereby grants to the Parking Facility Owner and the Parking Facility Owner's architects, engineers, agents, contractors and subcontractors, as an appurtenance to the Parking Facility Parcel, a non-exclusive easement to enter onto the Easement Parcel in order to maintain, repair, replace and alter from time to time any improvements constructed by Parking Facility Owner on the Easement Parcel, as deemed necessary or desirable by Parking Facility Owner in its reasonable discretion.

Except as expressly provided in this Agreement (including, but not limited to, Easement Parcel Owner's parking rights under Section 3), Easement Parcel Owner shall not alter, modify or make use of, or authorize any other party to alter, modify or make use of, any portion of the Easement Parcel in a manner so as to materially interfere with the rights granted Parking Facility Owner herein without the advance written consent of Parking Facility Owner.

2. Demolition and Construction

(a) Cooperation. The Developer and Parking Facility Owner agree to keep Easement Parcel Owner apprised of its plans and schedule for any work undertaken pursuant to Section 1 of this Agreement. All demolition,

construction or related work by Developer and/or Parking Facility Owner on the Easement Parcel, including without limitation all work done in connection with the Construction Easement or any other easement granted herein, shall be done, performed and promptly paid for at Developer's or Parking Facility Owner's sole cost and expense.

(b) Standard of Work. All construction by the Developer and/or Parking Facility Owner in connection with the Construction Easement shall utilize new materials and shall be performed in a good, safe, workman-like manner.

(c) Construction Insurance. At all times during any demolition and/or construction on the Easement Parcel, or during the making of any improvements or other construction on any portion of the Development Parcel whereby all or any portion of the Easement Parcel, or any of the easements granted in Section 1 of this Agreement, is used or exercised, as the case may be, the Developer or Parking Facility Owner shall have and maintain in full force the following insurance covering the contractor(s) activities: builder's risk insurance (completed value form, if available), general liability (in the same amounts and coverages required of Parking Facility Owner pursuant to Section 6(a) and naming Easement Parcel Owner as an additional insured), automobile liability and Workers Compensation. Prior to the commencement of any such work, Easement Parcel Owner shall be provided with a certificate of such insurance evidencing compliance with this section.

(d) Liens. Developer and Parking Facility Owner shall not permit any mechanics', materialmen's or other liens to attach to the Easement Parcel or any part thereof for work or materials furnished to the Developer or Parking Facility Owner and/or furnished in connection with the Construction Easement or any other easement granted herein, and each of Developer and Parking Facility Owner agrees to indemnify, defend and hold Easement Parcel Owner harmless from and against any of the same caused by it or for which it is responsible. If a mechanics', materialmen's or other lien attaches to the Easement Parcel as a result of work or materials furnished to the Developer or Parking Facility Owner and/or furnished in connection with the Construction Easement or any other easement granted herein, Developer and/or Parking Facility Owner, as applicable, shall bond for or discharge of record such lien within 30 days after notice of the filing thereof. Developer or Parking Facility Owner, as applicable, shall have the right to contest any such lien provided Developer or Parking Facility Owner, as applicable, posts with Easement Parcel Owner reasonable security for such lien during the period of any such contest proceeding.

(e) Legal Compliance. All construction activities performed by the Developer and/or Parking Facility Owner within the Easement Parcel shall be performed in a good, safe, workman-like manner and in compliance with all laws,

statutes, codes (including, without limitation, any building, zoning or land use codes), acts, ordinances, orders, judgments, decrees, injunctions, directions and requirements of all federal, state, county, municipal and local governments having jurisdiction over the Easement Parcel (collectively, the "Legal Requirements").

(f) Indemnity. Each of Developer and Parking Facility Owner agrees to indemnify and hold Easement Parcel Owner harmless from any claims, liens, liabilities, lawsuits, costs, expenses (including reasonable attorneys' fees) and/or damages, including, but not limited to, claims for personal injury, wrongful death, property damage or the like, resulting from, arising out of or related to any act, omission, negligence, gross negligence or willful misconduct of Developer or Parking Facility Owner, as applicable (or any of their respective employees, agents, consultants or contractors), in performing any initial demolition, construction or related work on the Easement Parcel, the Parking Facility Parcel, or the Development Parcel, or in otherwise exercising any easement rights granted under Section 1 of this Agreement. The indemnity obligations of Developer and Parking Facility Owner under this Section 2(f) shall survive any expiration or termination of this Agreement.

(g) Hazardous Substances. Developer and Parking Facility Owner shall not bring, store, generate, handle or treat Hazardous Materials on the Easement Parcel, except for normal quantities of construction and maintenance supplies and materials handled in accordance with Legal Requirements and petroleum and other products typically found in vehicles and equipment used within the Easement Parcel in accordance with Legal Requirements. The term "Hazardous Materials" as used herein shall include, without limitation, whether now or subsequently listed in any governmental listing or publication defining hazardous materials, substances defined as: 'hazardous substances', 'hazardous materials', or 'toxic substances' in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; and any subsequent amendments thereto, or replacement statutes thereof and ordinances, rules and regulations adopted and publications promulgated pursuant to said laws. Neither Developer nor Parking Facility Owner shall take any remedial action in response to the release or presence of Hazardous Materials in, on, under or about the Easement Parcel, nor enter into any settlement agreement, consent decree or other compromise in respect to any Claims relating to Hazardous Materials in any way connected with the Easement Parcel, without first notifying Easement Parcel Owner of its intention to do so and affording Easement Parcel Owner ample opportunity to appear, intervene or otherwise appropriately assert Easement Parcel Owner's interest with respect thereto.

Notwithstanding anything to the contrary contained in this Agreement, each of Developer and Parking Facility Owner agrees to indemnify and hold Easement Parcel Owner harmless from and against any and all claims, demands, losses, liabilities, penalties, damages, costs and expenses, including without limitation, attorneys' fees and costs (collectively "Claims"), arising out of or in any way connected with the use, manufacture, storage, sale, release or disposal of Hazardous Materials or products containing Hazardous Materials by Developer or Parking Facility Owner, as applicable, or any of their respective agents, servants, employees, licensees, contractors or the like in, on, under or about the Easement Parcel including, without limitation: (i) any Claim by a federal, state or local governmental agency or a private citizen arising out of or in any way connected with the use, manufacture, storage, sale, release or disposal of Hazardous Materials or products containing Hazardous Materials by Developer or Parking Facility Owner, as applicable, or any of their respective agents, servants, employees, licensees, contractors or the like in, on, under or about the Easement Parcel; (ii) any Claim by any successor owner, its agents, servants, employees, licensees, contractors or the like arising out of or in any way connected with the use, manufacture, storage, sale, release or disposal of Hazardous Materials or products containing Hazardous Materials by Developer or Parking Facility Owner, as applicable, or any of their respective agents, servants, employees, licensees, contractors or the like in, on, under or about the Easement Parcel; and (iii) the cost of any required or necessary repair, cleanup or detoxification and the preparation of any closure or other required plans in connection therewith. The indemnity obligations of Developer and Parking Facility Owner under this Section 2(g) shall survive any expiration or termination of this Agreement.

3. Easement Parcel Owner Parking Rights

(a) During Construction. Easement Parcel Owner acknowledges and agrees that the demolition or construction activities of the Parking Facility Owner within the Easement Parcel may result in temporary periods in which the available parking spaces within the improvements located on the Easement Parcel as of the date of this Agreement will be reduced in whole or in part, and Parking Facility Owner acknowledges and agrees that the number of available parking spaces on the Easement Parcel as of the date of this Agreement is thirty (30) parking spaces (the "Original Parking Capacity"). During any such temporary periods, Parking Facility Owner, at their expense, will provide Easement Parcel Owner with reasonable replacement parking (i.e., within reasonable proximity to the Easement Parcel) for all parking spots so reduced in order to provide Easement Parcel Owner with available parking spaces in the amount of the Original Parking Capacity until construction of the Parking Facility Extension is completed.

(b) After Construction. The parties shall have the following rights and obligations with respect to parking after construction of the Parking Facility Extension is completed in accordance with this Agreement:

(i) Subject to the provisions of Section 7 relating to casualty and condemnation, and subject to any temporary interruption due to maintenance and repairs conducted pursuant to Section 4, Parking Facility Owner hereby grants to the Easement Parcel Owner (and the Easement Parcel Owner hereby reserves) an exclusive perpetual right and easement to access and use, at no cost to Easement Parcel Owner, all parking spaces on the Easement Parcel, including without limitation (A) all parking spaces located on, about or within the Parking Facility Extension ("Parking Facility Extension Spaces"), and (B) all parking spaces located on, about or within the lower level (including the alley-level and any below-grade levels) of the existing parking structure on the Easement Parcel which remain available for Easement Parcel Owner's use following construction of the Parking Facility Extension (the "Existing Forum Spaces").

(ii) Parking Facility Owner will clean and maintain the Parking Facility Extension Spaces. Easement Parcel Owner will clean and maintain the Existing Forum Spaces. Easement Parcel Owner shall be responsible for the security of, and enforcement of Easement Parcel Owner's right to use (including by the towing of unauthorized vehicles) the Parking Facility Extension Spaces and the Existing Forum Spaces.

(iii) With respect to the Parking Facility Extension Spaces, Easement Parcel Owner shall enter into the standard form of parking agreement, if any, required by Parking Facility Owner from time to time with respect to contract users of the Parking Facility (the "Parking Agreement"); provided, that notwithstanding anything to the contrary contained in any such Parking Agreement, all Parking Facility Extension Spaces shall be provided at no cost to the Easement Parcel Owner (or to any party authorized by Easement Parcel Owner to use the Parking Facility Extension Spaces), and provided further, that in the event of any conflict between any term or condition of this Agreement and the Parking Agreement, the terms of this Agreement shall control.

(iv) The rights granted to Easement Parcel Owner pursuant to this Section 3(b) for use of the Existing Forum Spaces and Parking Facility Extension Spaces shall run with and benefit the Easement Parcel and burden the Parking Facility Parcel, and shall benefit the Forum and its successors and assigns in the Easement Parcel.

4. Maintenance and Repair

(a) Improvements. The Parking Facility Owner, at its sole cost, agrees to keep, manage, maintain and repair the Parking Facility Extension in a first-class manner and condition consistent with the management, operation and maintenance of similar improvements in downtown Duluth, Minnesota, and to keep the same in compliance with all Legal Requirements. In performing maintenance and repair of the Parking Facility Extension under this Section 4, Parking Facility Owner shall minimize, to the extent reasonably possible, any disruption to the parking rights granted to Easement Parcel Owner pursuant to Section 3(b). Easement Parcel Owner, at its sole cost, agrees to keep, manage, maintain and repair any improvements within the Easement Parcel not constructed by the Parking Facility Owner, including without limitation the entire alley-level and any below-grade levels of the Easement Parcel except for any columns or other support structures connected to the Parking Facility Extension, in a first-class manner and condition consistent with the management, operation and maintenance of similar improvements in downtown Duluth, Minnesota, and to keep the same in compliance with all Legal Requirements. The Parking Facility Owner and Easement Parcel Owner may (but shall not be obligated to) agree from time to time that one party or the other shall be responsible for all of the maintenance and repair obligations in this Section 4(a), and shall memorialize any such agreement in writing.

(b) Right to Maintain and Repair. If Easement Parcel Owner fails to keep, manage, maintain and repair any improvements within the Easement Parcel not constructed by the Parking Facility Owner in the manner specified in Section 4(a), Parking Facility Owner shall have the right, but not the obligation, to perform such obligations on behalf of Easement Parcel Owner, and Easement Parcel Owner shall promptly reimburse Parking Facility Owner for any reasonable costs incurred by Parking Facility Owner in connection with Parking Facility Owner's performance of such obligations.

If Parking Facility Owner fails to keep, manage, maintain and repair the Parking Facility Extension in the manner specified in Section 4(a), Easement Parcel Owner shall have the right, but not the obligation, to perform such obligations on behalf of Parking Facility Owner, and Parking Facility Owner shall promptly reimburse Easement Parcel Owner for any reasonable costs incurred by Easement Parcel Owner in connection with Easement Parcel Owner's performance of such obligations.

5. Delegation of Rights

During the term of the Ground Lease, Developer shall have the right to lease, delegate and assign all of its rights and obligations as Parking Facility Owner under this Agreement to the City. Upon any such leasing, delegation or assignment from

Developer to the City, during the term of the Ground Lease, the City shall enjoy all of the rights and benefits, and shall perform and be subject to all obligations and liabilities of the Parking Facility Owner under this Agreement, in each case on and subject to the terms of the Ground Lease (including without limitation Section 48 thereof); *provided, however*, that prior to the completion of the Parking Facility Extension, the City will have no rights or obligations under this Agreement. By entering into the Ground Lease, the City will be deemed to have accepted and agreed to the provisions of this Section 5; *provided, however*, that Easement Parcel Owner acknowledges and agrees that in no event shall the City have any liability under this Agreement beyond the term of the Ground Lease. Notwithstanding any lease, delegation or assignment of the rights of the Parking Facility Owner under this Agreement to the City, Developer shall remain fully liable to Easement Parcel Owner and shall not be released from liability for the performance of any of the terms, covenants, obligations and conditions to be kept or performed by Developer and/or Parking Facility Owner under this Agreement.

6. Insurance

(a) Parking Facility Owner Insurance. Parking Facility Owner agrees to maintain, or cause to be maintained, adequate (i) commercial general liability insurance with respect to its use and occupancy of the Easement Parcel, specifically including coverage against claims for bodily injury, death and property damage occurring on or about the Easement Parcel, with a single combined limit of not less than $1,500,000, (ii) property insurance covering the full value (without co-insurance) of the Parking Facility Extension (which Parking Facility Owner may carry and maintain as part of its property insurance coverage for the Development), and (iii) workers compensation insurance at statutory limits. Parking Facility Owner shall furnish Easement Parcel Owner with a certificate of insurance evidencing the policies required by this Section 6(a) and naming Easement Parcel Owner as additional insured (providing that such policies shall be primary regardless of any insurance maintained by Easement Parcel Owner, and including a waiver of subrogation in favor of Easement Parcel Owner, and including coverage for owned, hired and non-owned automobile liability, and providing for 30 days' notice of cancellation and/or non-renewal) as soon as reasonably practicable after the date of this Agreement, except as to any policy which by its nature is effective at a later date, in which case a certificate of insurance evidencing such policy shall be furnished as soon as reasonably practicable after the effective date of such policy. Parking Facility Owner may, in its sole discretion, maintain, or cause to be maintained, the insurance coverage amounts required by this Section 6(a) pursuant to an umbrella or blanket insurance policy. During the term of (and on and subject to the terms of) the Ground Lease, the City (but not Parking Facility Owner, nor any other person or entity whatsoever) may maintain a program of self-insurance in lieu of all or a portion of the liability and property insurance (unless maintained by Parking Facility Owner pursuant to Section

6(a)(ii) above) coverage required of the City by this Section 6(a). The foregoing insurance limits are not intended to, and shall not, decrease Parking Facility Owner's liability pursuant to the terms and conditions of this Agreement.

(b) Easement Parcel Owner's Insurance. Easement Parcel Owner agrees to maintain adequate (i) commercial general liability insurance with respect to its use and occupancy of the Easement Parcel, specifically including coverage against claims for bodily injury, death and property damage occurring on or about the Easement Parcel, with limits of not less than $2,000,000 per occurrence with a $2,000,000 general aggregate including products and completed operations, (ii) property insurance covering the replacement cost (without co-insurance) of any improvements within the Easement Parcel not constructed by the Parking Facility Owner or Developer and which are not demolished by the Parking Facility Owner or Developer pursuant to the Construction Easement, with a maximum deductible of $50,000 payable by Easement Parcel Owner and (iii) to the extent applicable, workers compensation insurance at statutory limits. Easement Parcel Owner shall furnish Parking Facility Owner with a certificate of insurance evidencing the policies required by this Section 6(b) and naming Parking Facility Owner as additional insured, providing that such policies shall be primary regardless of any insurance maintained by Parking Facility Owner, including a waiver of subrogation in favor of Parking Facility Owner, and providing for 30 days' notice of cancellation and/or non-renewal. Easement Parcel Owner shall furnish Parking Facility Owner with such certificate of insurance as soon as reasonably practicable after the date of this Agreement, except as to any policy which by its nature is effective at a later date, in which case a certificate of insurance evidencing such policy shall be furnished as soon as reasonably practicable after the effective date of such policy. Easement Parcel Owner may, in its sole discretion, maintain the insurance coverage amounts required by this Section 6(b) pursuant to an umbrella or blanket insurance policy. The foregoing insurance limits are not intended to, and shall not, decrease Easement Parcel Owner's liability pursuant to the terms and conditions of this Agreement.

(c) Mutual Release and Waiver of Subrogation. Easement Parcel Owner and Parking Facility Owner each agree to cause to be included in its respective policy of insurance the agreement of the issuer thereof that said policy shall not be invalidated by a waiver of claim by the insured against the Easement Parcel Owner or Parking Facility Owner, as the case may be, and each will furnish evidence thereof to the other (and such waiver shall include any deductible that either party retains). Each of Easement Parcel Owner and Parking Facility Owner does hereby remise, release and discharge the other party, and any officer, agent, employee or representative of such party, of and from any liability whatsoever hereafter arising from loss, damage or injury to

property caused by fire or other casualty for which insurance (permitting waiver of liability and containing a waiver of subrogation) is required to be carried pursuant to this Agreement or which is in fact carried by the injured party at the time of such loss, damage or injury, to the extent of any actual recovery by the injured party under such insurance.

7. Casualty and Condemnation

(a) Easement Parcel Owner. If all or any portion of the improvements within the Easement Parcel not constructed by Parking Facility Owner or Developer which are necessary or desirable for the support, use or enjoyment of the Parking Facility or Parking Facility Extension, in Parking Facility Owner's reasonable judgment, are damaged by fire or other casualty, then the Easement Parcel Owner shall be required to promptly repair, restore or replace the damaged improvements, but only if all of the following conditions are satisfied: (i) such damage or destruction is covered by a policy of insurance required to be carried by Easement Parcel Owner pursuant to this Agreement; (ii) the insurance proceeds (plus the amount of the deductible) under said policy of insurance payable by virtue of such damage or destruction are sufficient to cover 100% of the costs of the repair, restoration and/or replacement of the damage, and such proceeds have actually been received by Easement Parcel Owner (or, if such insurance proceeds plus the amount of the deductible are not sufficient to cover 100% of the costs of the repair, restoration, and/or replacement of the damage, Parking Facility Owner shall have agreed in writing to pay the shortfall); and (iii) Parking Facility Owner has already elected and committed to repair, restore and/or replace all damage to the Parking Facility Extension pursuant to Section 7(c). If Easement Parcel Owner is required to repair, restore or replace any damage to improvements pursuant to the foregoing sentence, then Easement Parcel Owner shall do so within a reasonable period of time of receiving any insurance proceeds and diligently prosecute such repair, restoration or replacement to at least as good condition as existed immediately prior to the damage or destruction. Any work conducted by the Easement Parcel Owner pursuant to this Section 7(a) shall be done in a manner so as to minimize (to the extent reasonably possible) the interference with or interruption of the operation of the other improvements within the Easement Parcel. If Easement Parcel Owner does not repair, restore or replace any portion of the improvements within the Easement Parcel not constructed by Parking Facility Owner or Developer, whether required to do so or not under this Section 7(a), Parking Facility Owner shall have the right, but not the obligation, to perform such repair, restoration or replacement; *provided, however,* Easement Parcel Owner shall not be liable or obligated to reimburse Parking Facility Owner (or any other party) for any costs incurred by Parking Facility Owner (or any other party) in connection with repair, restoration or replacement of such improvements, unless the Easement Parcel Owner was required (subject and pursuant to the provisions

of this Section 7(a) above, including satisfaction of clauses (i), (ii) and (iii)) to repair, restore or replace the improvements within the Easement Parcel not constructed by Parking Facility Owner or Developer, and failed to do so.

(b) Condemnation. If all or any part of the improvements on the Easement Parcel not constructed by Parking Facility Owner or Developer are taken by condemnation or other governmental action, Easement Parcel Owner will have no obligation to repair, restore or replace such improvements whatsoever which are so taken, and Parking Facility Owner shall have no claim against the Easement Parcel Owner for any portion of the amount that may be awarded to it as damages as a result of such taking or condemnation. Parking Facility Owner shall retain the right to independently seek recovery for any damages resulting from a taking of all or any part of the Parking Facility Extension, including damages relating to the loss of use or value of the Parking Facility. Following any such taking or governmental action that involves less than all or substantially all of the improvements on the Easement Parcel, Easement Parcel Owner and Parking Facility Owner will work cooperatively, at no cost to Easement Parcel Owner, to restore the remaining improvements (to the extent it is commercially practicable to do so) to substantially the same level of capacity and functionality that such improvements had prior to such taking or governmental action.

(c) Parking Facility Owner. If all or any portion of the Parking Facility Extension is damaged by fire or other casualty or taken by condemnation or other governmental action, the Parking Facility Owner may, in its sole discretion, elect either (i) to repair, restore or replace the damaged improvements, or (ii) raze all of such improvements (or to raze some of the damaged improvements and restore the remainder of the improvements) and take all action required by good construction practices to ensure that such razing be done in a safe manner without damage to or removal of support structures from any other improvements on the Easement Parcel. If the Parking Facility Owner elects to repair, restore or replace the damaged improvements, the Parking Facility Owner shall do so within a reasonable period of time of receiving any insurance proceeds or condemnation award and diligently prosecute such repair, restoration or replacement to at least as good condition as existed immediately prior to the damage or destruction or taking. Any work conducted by the Parking Facility Owner pursuant to this Section 7(c) shall be done in a manner so as to minimize (to the extent reasonably possible) the interference with or interruption of the operation of the other improvements within the Easement Parcel and any disruption to the parking rights granted to Easement Parcel Owner pursuant to Section 3(b).

8. Taxes.

(a) Development Parcel Taxes. Developer and/or Parking Facility Owner, as the case may be, shall be responsible for payment of all Taxes against or with respect to the Parking Facility Parcel, the Office Building, the Parking Facility, the Development Parcel and all other improvements thereon, and Easement Parcel Owner shall have no liability whatsoever for any such Taxes. As used in this Section 8, the term "Taxes" shall mean all real estate taxes, special assessments, and other governmental impositions (including but not limited to, amounts payable under any improvement district assessment or other assessment agreements).

(b) Easement Parcel Taxes. Easement Parcel Owner shall be responsible for all Taxes on the Easement Parcel associated with the value of the land and the improvements located thereon as such improvements exist as of December 31, 2013; provided, however, pursuant to Section 8(d) below, Parking Facility Owner shall reimburse Easement Parcel Owner for: (i) all real estate taxes on, against or with respect to the Easement Parcel that are associated with, or attributable to, any increased assessment value of the Easement Parcel and the improvements thereon, including the Parking Facility Extension, resulting from the construction of improvements contemplated by this Agreement, including but not limited to, construction of the Parking Facility Extension, and improvements constructed pursuant to the Construction Easement (collectively, the "Real Estate Tax Increase Liability" as calculated pursuant to Section 8(c) below); and (ii) all special assessments, and other governmental impositions (including but not limited to, amounts payable under any improvement district assessment or other assessment agreements) attributable to the Easement Parcel arising, assessed or imposed in calendar year 2014 or any year thereafter that are created pursuant to, or contemplated by, the Development Agreement or any other initiative, petition or act of the Developer and/or Parking Facility Owner, as the case may be, in connection with the development of the Development (collectively, the "Special Assessments Increases").

(c) Calculation of Real Estate Tax Increase Liability. For each calendar year, the Real Estate Tax Increase Liability shall equal the product of the dollar amount of all real estate taxes (including all city, county and state property taxes) assessed or charged against the Easement Parcel for such calendar year, multiplied by the Increment Liability Share (as defined below). The "Increment Liability Share" shall be a fraction, the numerator of which is the tax assessment value for the Easement Parcel in the applicable calendar year, less the tax assessment value for the Easement Parcel as it existed in calendar year 2013, expressed in Constant Dollars (and the parties agree the tax assessment value of the Easement Parcel for the calendar year 2013 was

$350,700), and the denominator of which is the tax assessment value for the Easement Parcel in the applicable calendar year. "Constant Dollars" shall mean the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. An adjustment shall occur upon the payment of real estate taxes during each calendar year. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number (as defined below) and the denominator of which is the Base Index Number (as defined below). The "Current Index Number" shall be the level of the Index (as defined below) for the year preceding the adjustment year; the "Base Index Number" shall be the level of the Index for the year this Agreement is executed; and the "Index" shall be the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor of U.S. City Average, All Items (1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the parties shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

(d) Reimbursement to Easement Parcel Owner of Taxes. Parking Facility Owner shall reimburse the Easement Parcel Owner each tax year in the amount of the Real Estate Tax Increase Liability and the Special Assessments Increases, as follows: Within a 90 days after Easement Parcel Owner has remitted payment for all Taxes with respect to the Easement Parcel for the applicable calendar year, Easement Parcel Owner shall submit to Parking Facility Owner a written statement, attaching copies of all tax statements paid for such calendar year with respect to the Easement Parcel, and setting forth: (a) the amount of the Real Estate Tax Increase Liability for such calendar year, and (b) the amount of the Special Assessments Increases for such calendar year. Within thirty (30) days after the delivery of such statement, Parking Facility Owner shall reimburse Easement Parcel Owner for the Real Estate Tax Increase Liability and the Special Assessments Increases for such calendar year.

(e) Real Estate Tax Exemption. If the Parking Facility Extension is exempt from real estate taxes, the provisions in this Section 8 regarding reimbursement of the Real Estate Tax Increase Liability shall not apply for so long as, or for such years in which, the Parking Facility Extension is exempt from real estate taxes.

9. Notice

All notices, demands and requests required or permitted to be given under this Agreement must be in writing and sent certified or registered mail or by nationally-

recognized overnight delivery service, postage or delivery charges, as the case may be, prepaid, and shall be deemed to have been given as of the date the notice, demand or request is delivered to, or rejected at, the then current address party intended. The addresses of Easement Parcel Owner and the Parking Facility Owner are as follows:

If to Forum: Forum Communications Company
424 W. 1st Street
Duluth, MN 55802
Attention: Ken Browall

If to Developer: Duluth Real Estate LLC
c/o Maurices Incorporated
105 West Superior Street
Duluth, MN 55802
Attn: Senior Vice President and Chief Financial Officer

Upon at least 10 days' prior written notice, either party shall have the right to change its address to any other address.

10. Miscellaneous

(a) No Public Dedication. This Agreement is not intended to be, and shall not constitute, a gift or dedication of any portion of the Easement Parcel, Parking Facility or Parking Facility Extension, or the right to use any portion of the Easement Parcel, Parking Facility or Parking Facility Extension, to the general public for any public use or purpose whatsoever. Except with the prior consent of Developer in its absolute discretion, no portion of the Parking Facility or Parking Facility Extension may be used for any of the following: civic, public or political activities, including but not limited to (i) exhibiting any placard, sign, or notice; (ii) distribution of any circular, handbill, placard, or booklet; (iii) soliciting memberships or contributions for private, civic, public or charitable purposes; and (iv) parading, picketing or demonstrating.

(b) Severability. If any provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such provision shall not be affected thereby.

(c) Amendment. This Agreement shall not be amended or modified, nor shall any party hereto waive any provision of this Agreement, except by a written instrument executed by all parties hereto; provided, however, that upon the termination of the Ground Lease, the written agreement of the Parking Facility Owner shall no longer be required.

(d) Binding Agreement. This Agreement shall run with and benefit and burden the Development Parcel and the Parking Facility Parcel and run with and benefit and burden the Easement Parcel.

(e) Governing Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Minnesota.

(f) Attorney's Fees. If either party brings an action to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorneys' fees and court costs, in addition to any other relief granted.

(g) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(h) Recording. This Agreement shall be recorded in the Office of the County Recorder and/or the Office of the Registrar of Titles of St. Louis, County, Minnesota.

(i) Enforcement. In the event of any violation, or failure to perform, by any party of any of the terms, covenants and conditions provided herein, the other party shall have, in addition to the right to seek damages (but not including consequential damages) and other remedies at law, the right to enjoin such violation or threatened violation, or seek specific performance of this Agreement, as applicable, in a court of competent jurisdiction.

(j) Remedies. No remedy herein conferred upon or reserved to any party hereto is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing in favor of either party at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

(k) Termination. This Agreement, and all Developer's, Parking Facility Owner's and/or City's rights hereunder, as the case may be, shall terminate and be of no further force or effect, in the event that: (i) the Parking Facility is damaged or destroyed by fire or other casualty (and such damage or destruction materially interferes with the use and operation of the Parking Facility for parking purposes), and repair, restoration and/or replacement thereof is not commenced within twenty-four (24) months of the date of such damage or casualty; (ii) the Parking Facility is abandoned by the City (or its successors or

assigns) or Parking Facility Owner, as applicable, for any period of twenty-four (24) months or more; or (iii) if all or any portion of the Parking Facility Extension is damaged or destroyed by fire or other casualty (and such damage or destruction materially interferes with the use and operation of the Parking Facility Extension or the parking rights set forth in Section 3), and thereafter Parking Facility Owner either elects to raze such improvements, or fails to commence repair, restoration and/or replacement thereof as soon as reasonably practicable (but in any case no later than twenty-four (24) months from the date of such damage or casualty), in either case subject to and in accordance with Section 7(c). In the event of any such termination of this Agreement, Easement Parcel Owner shall automatically become the absolute owner of any and all improvements (including, but not limited to, the Parking Facility Extension and any fixtures) located on the Easement Parcel. Each of Developer and Parking Facility Owner grants and conveys (and City, by entering into the Ground Lease, confirms that the City grants and conveys), in each case effective upon termination of this Agreement pursuant to this Section 10(k), all of its respective right, title and interest, if any, in and to all improvements (including, but not limited to, the Parking Facility Extension and any fixtures) located on the Easement Parcel to Easement Parcel Owner, each such grant and conveyance being automatic upon any such termination of this Agreement, without the need for any further instrument or action by any party.

[*Signature Pages Follow*]

US.52776525.22

SIGNATURE PAGE
TO
EASEMENT AGREEMENT

IN WITNESS WHEREOF, Forum has executed this Agreement as of the date set forth above.

Forum:

FORUM COMMUNICATIONS COMPANY

By:_____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2014, by _____, the _____ of Forum Communications Company, a North Dakota corporation as successor by merger to Duluth/Superior Newspapers LLC, a Delaware limited liability company, on behalf of the North Dakota corporation.

(Seal, if any)

_____
(*signature of notarial officer*)
Title (and Rank): _____
My commission expires: _____

THIS INSTRUMENT WAS DRAFTED BY:

FAEGRE BAKER DANIELS LLP
(Tory L. Jackson)
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

SIGNATURE PAGE
TO
EASEMENT AGREEMENT

IN WITNESS WHEREOF, Developer has executed this Agreement as of the date set forth above.

Developer:

Duluth Real Estate LLC

By:_____
Name: Brian Thun
Title: Treasurer

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

This instrument was acknowledged before me on _____, 2014, by Brian Thun, the Treasurer of Duluth Real Estate LLC, a Delaware limited liability company, on behalf of said company.

(Seal, if any)

_____
(*signature of notarial officer*)
Title (and Rank): _____
My commission expires: _____

Exhibit A

Development Parcel

Parcel 1: Lot 65, Duluth Proper, First Division, St. Louis County, Minnesota.
ABSTRACT PROPERTY

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, 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 of said Street and a depth of 140 feet of Fifth Avenue West, Duluth, EXCEPT that portion of said lots and said Government Lot 5 lying within 29 feet of the East line of Fifth Avenue West as originally platted. TORRENS PROPERTY

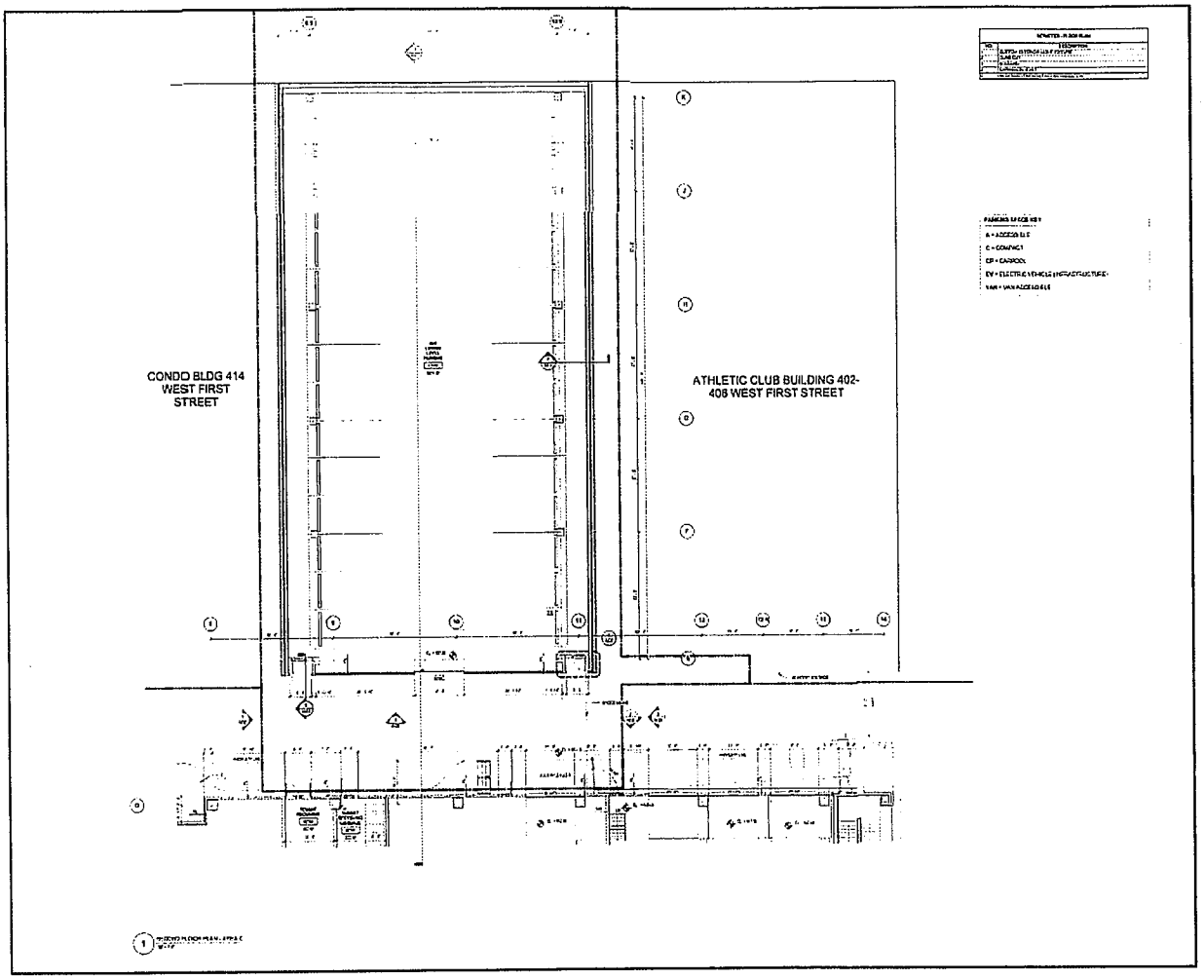
Exhibit B

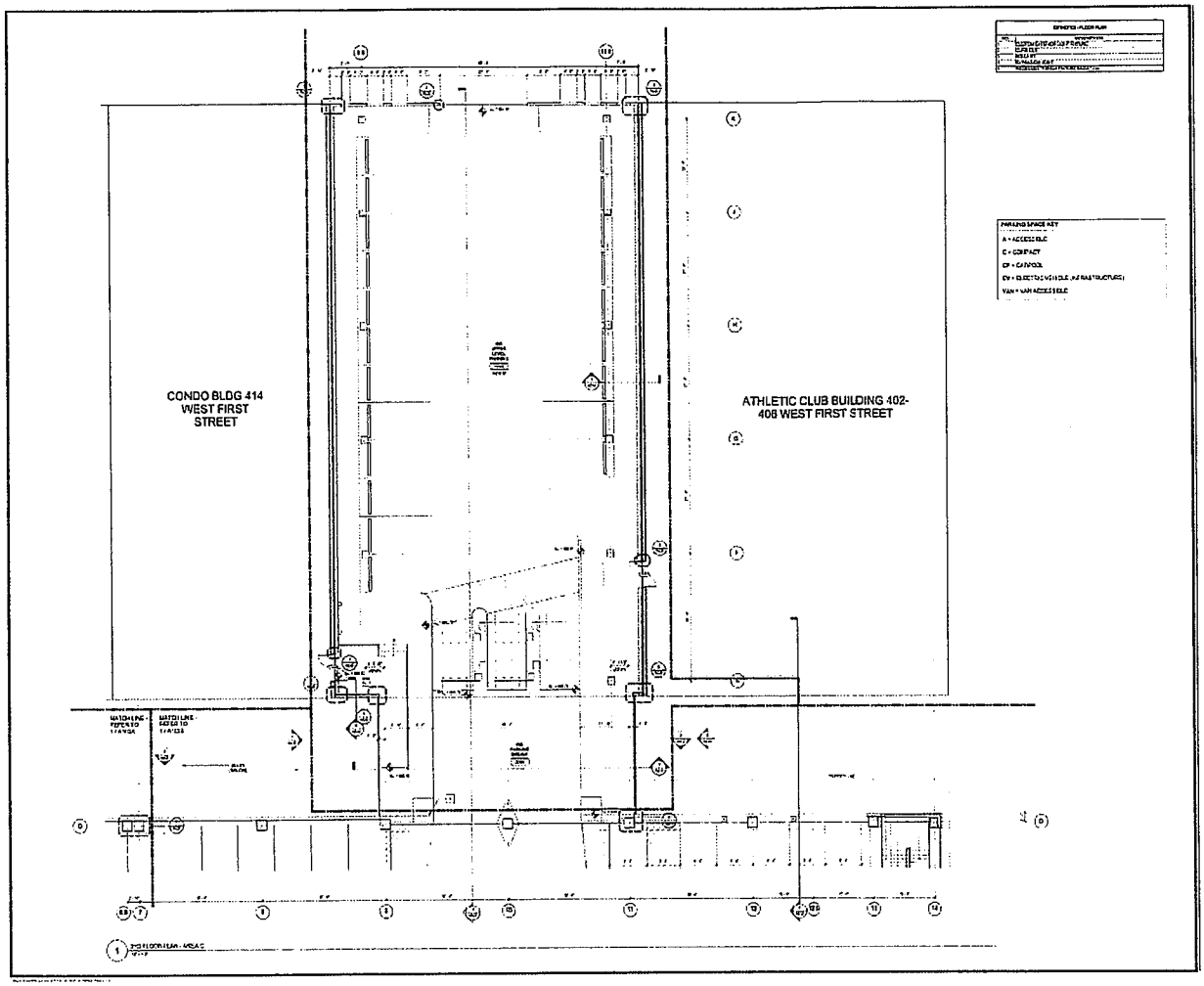
Easement Parcel

West Half of Lot 68 and all of Lot 70, DULUTH PROPER, FIRST DIVISION, WEST FIRST STREET. ABSTRACT PROPERTY

Exhibit C

Construction Plans




CONDO BLDG 414
WEST FIRST
STREET
ATHLETIC CLUB BUILDING 402-
406 WEST FIRST STREET