

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

14-0236R

RESOLUTION AUTHORIZING FIRST AMENDMENT TO PEDESTRIAN  
PASSAGEWAY AGREEMENT PERTAINING TO THE CHINESE LANTERN  
BUILDING WITH A & L PARTNERSHIP LLP RELATED TO THE  
MAURICES OFFICE TOWER PROJECT.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a first amendment to pedestrian passageway agreement pertaining to the Chinese Lantern Building with A & L Partnership LLP, a Minnesota limited liability partnership, substantially in the form of that on file in the office of the city clerk as Public Document No. \_\_\_\_\_, approving modifications to the skywalks in the building in conjunction with the Maurices office tower project.

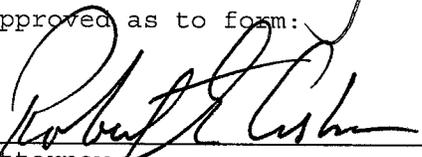
Approved:

  
\_\_\_\_\_  
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 a First Amendment to the Skywalk Agreement for the building now commonly referred to as the Duluth Athletic Club Building. The amendment authorizes modifications to the skywalk including the elimination of the current bridge over First Alley running to the Palladio Building which will be demolished as part of the Maurices office tower project. All costs will be absorbed by the project.

## **FIRST AMENDMENT TO PEDESTRIAN PASSAGEWAY AGREEMENT**

This First Amendment to Pedestrian Passageway Agreement (the "Amendment") is entered into as of \_\_\_\_\_, 2014, between the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota (the "City"), and A&L Partnership, LLP, a Minnesota limited liability partnership ("Owner").

### **RECITALS**

A. The City and Owner are parties to that certain Pedestrian Passageway Agreement Pertaining to the Chinese Lantern Building, dated January 18, 1996 and recorded \_\_\_\_\_ in the Office of the \_\_\_\_\_ of St. Louis County as Document No. 17569 (the "Agreement"), for the extension of the City's skywalk system through that certain building owned by Owner referred to as the Chinese Lantern Building (hereinafter, the "Building"), located on the following described real property in St. Louis County, Minnesota (the "Property"):

Lot 66 and the east one-half of Lot 68, West First Street, Duluth Proper First Division, according to the recorded plat thereof, subject to easements, restrictions and conditions of record.

B. The City intends to modify a portion of its downtown skywalk system in the vicinity of the Building by removing the skywalk bridge over the First Street Alley that currently connects the Building to the Palladio Building (the "Existing Skywalk Bridge").

C. The City needs the consent, approval and agreement of the Owner to amend or modify the Agreement.

D. In connection with such modification, the City and Owner desire to amend the Agreement as more fully described herein.

## AGREEMENT

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

1. Modified Easement Area. The description of the pedestrian passageway in Section 3 of the Agreement and the perpetual easement in Section 4 of the Agreement are hereby modified to reflect that the Existing Skywalk Bridge will be removed and that the access point from the Building to the Existing Skywalk Bridge will be closed and restored as near as practicable to the condition existing prior to the construction of the Existing Skywalk Bridge. Such pedestrian passageway and perpetual easement shall otherwise remain as described in Section 3 and Section 4, respectively, of the Agreement. The modification and replacement shall be at the sole cost of the City or third persons on whom the City has imposed the obligation. Work plans, specifications and other information relative to this modified easement shall be presented to Owner by City or third parties and are subject to the consent of Owner, not to be unreasonably withheld.

2. Grant of Easement. Owner does hereby grant to the City and its employees, agents and contractors a temporary easement for the purpose of (a) removing the Existing Skywalk Bridge; (b) after the removal of the skywalk bridge, restoring the former access point in the Building as near as practicable to the condition existing prior to the construction of the skywalk bridge, subject to the approval of Owner, not to be unreasonably withheld; (c) relocating or replacing the fire door at the access point between the Building and the Warehouse Building to ensure that such fire door is a three-hour rated fire door as required by the City Building Inspection Department in a manner, fashion and with materials consented to by Owner, Owner's consent not to be unreasonably withheld (and Owner acknowledges that it will consent to the use of any materials that are as good as or better than those that currently exist at said access point); and (d) entering the Building to perform all necessary inspection, engineering and construction work in connection with the foregoing, providing reasonably appropriate and acceptable insurance certificates and indemnity to Owner in advance of such entry, as required by the Agreement. The Owner shall, at its expense, maintain the fire door (as relocated or replaced, if applicable, with the consent of Owner, per above) in accordance with requirements of the City Building Inspection Department and other applicable law. Modifications in sprinkler and other code requirements performed as part of the City's work hereunder shall be at the sole cost of the City or third parties with whom it contracts.

3. Construction. The City shall remove, or cause to be removed, the Existing Skywalk Bridge and restore the former access point in the Building as near as practicable to the condition existing prior to the construction of the skywalk bridge, in a finished and completed condition. It is agreed that all such removal and construction work, including the relocation or replacement of three-hour fire doors, shall be performed by the City in a good and workmanlike manner, using new materials. All design and construction work relating to the foregoing shall be the responsibility of, and be performed at the cost of, the City. All of the plans, design and construction shall be with the consent and approval of Owner, not to be unreasonably withheld.

4. Payment. The City and Owner hereby agree that the payment referenced in Section 16 of the Agreement was paid by the City to Owner in connection with the original pedestrian passageway contemplated by the Agreement, and that no further payment shall be payable by the City to Owner as a result of this Amendment.

5. Continuing Effect. Except as specifically modified by the terms of this Amendment, the Agreement remains unchanged and in full force and effect.

6. Conflict. In the event of a conflict between the Agreement and this Amendment, this Amendment shall control.

7. Counterparts; Defined Terms. This Amendment may be executed and delivered in counterparts, each of which will be deemed an original and which together will constitute one and the same instrument. Unless the context clearly indicates the contrary, capitalized terms used but not defined in this Amendment shall have the meanings assigned to them in the Agreement.

*[Signature Pages Follow]*

US.53796633.06

**SIGNATURE PAGE  
TO  
FIRST AMENDMENT TO PEDESTRIAN PASSAGEWAY AGREEMENT**

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment as of the date set forth above.

**CITY:**

City of Duluth,  
a Minnesota municipal corporation

By: \_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_  
Its City Clerk

Approved:

Countersigned:

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
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

