

EXHIBIT 1

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this “**Easement Agreement**”) is made and entered into as of this ____ day of _____, 2023, by and between Saturday Zenith, LLC, a Minnesota limited liability company (“**Grantor**”) and the City of Duluth, a municipal corporation and political subdivision under the laws of the State of Minnesota (“**Grantee**”).

WHEREAS, Grantor is the owner of the real property located at 215 North First Avenue in the City of Duluth, St. Louis County, Minnesota (the “**Premises**”), commonly known as Historic Old Central High School, which Premises is legally described on Exhibit A attached hereto and incorporated herein; and

WHEREAS, Grantor desires to receive hot water service (the “**Hot Water Service**”) from Grantee’s district heating system (the “**District Energy System**”) for heating and other purposes at the building located on the Premises (the “**Building**”); and

WHEREAS, in order for Grantee to provide the Hot Water Service to the Premises, certain piping, equipment and other appurtenances thereto owned by Grantee (collectively, the “**District Energy System Equipment**”) must be installed and/or constructed by Grantee or its agents at the Premises to enable the Building’s heating system (the “**Premises Heating System**”) owned by Grantor and located at the Premises to be connected to the District Energy System; and

WHEREAS, in order to facilitate the installation and construction of the District Energy System Equipment required to provide the Hot Water Service and the delivery of the Hot Water Service, Grantor and Grantee have entered into that certain Hot Water Service Agreement dated _____, 2023 (the “**Service Agreement**”), pursuant to which Grantee agreed to provide the Hot Water Service to the Premises in consideration of Grantor agreeing to certain obligations which include, among other things, granting an easement to Grantee for the District Energy System Equipment; and

WHEREAS, the parties recognize that an easement through a portion of the Premises for the construction, installation, inspection, maintenance, repair, replacement, reconstruction, and improvement of the District Energy System Equipment is necessary for Grantee to deliver the Hot Water Service in accordance with the Service Agreement.

NOW, THEREFORE, in consideration of the foregoing and the representations, covenants, and agreements of the parties set forth herein and other good and valuable consideration, the receipt and sufficiency of which each party acknowledges, Grantor and Grantee hereby represent, covenant, and agree as follows:

1. Grant of Easement. Grantor does hereby grant and convey to Grantee, its successors and assigns, the following easement (the “**Easement**”):

A permanent nonexclusive easement in, under and through the portion of the Premises depicted and legally described in Exhibit B attached hereto and incorporated herein (the “**Easement Property**”) for the construction, installation, inspection (including reading of

meters), operation, maintenance, repair, replacement, reconstruction, or improvement of the District Energy System Equipment to be located subsurface and/or within the basement of the building or buildings located at the Premises, including the right to enter onto the Premises for the foregoing purposes and further including the right of access to the Easement Property through the structures or improvements now or hereafter located on all or a part of the Premises. The Easement expressly includes the right of Grantee to extend its pipes through and outside of the Premises in order to connect to and serve other buildings on the District Energy System.

2. Maintenance. Grantor is responsible at its sole expense for maintaining of all Premises Heating System equipment unless otherwise assigned to Grantee in the Service Agreement. Grantee is responsible at its sole expense for maintaining any District Energy System Equipment located within the Premises.

3. Repair and Restoration; Compliance with Laws. Grantee shall repair or restore that part of the Premises disturbed by Grantee in the course of its activities under this Easement Agreement to its existing condition prior to Grantee's disturbance, reasonable and normal wear and tear excepted. Grantee agrees that all activities performed on its behalf on the Premises shall be performed in compliance with all laws, rules, regulations, orders and ordinances of the governmental authorities having jurisdiction.

4. Indemnification and Insurance. To the extent permitted by law, Grantee agrees to indemnify, defend and hold harmless Grantor from and against any and all costs, liabilities, claims, liens, encumbrances or causes of action (including reasonable attorneys' fees) arising out of the use of the Premises by Grantee or its tenants, employees, invitees, contractors, or agents. Grantor agrees to indemnify, defend and hold harmless Grantee from and against all costs, liabilities, claims, liens, encumbrances of causes of action (including reasonable attorneys' fees) to the extent caused by: (a) any failure by Grantor to provide Grantee access to the Premises as required under this Easement Agreement, or (b) acts or omissions of Grantor or its tenants, employees, invitees, contractors or agents relating to use or maintenance of the Premises, including those that are passive, derivative or vicarious of the negligent or intentional acts or omissions of Grantor or its tenants, employees, invitees, contractors or agents.

Notwithstanding the foregoing, if the United States Department of Housing and Urban Development ("HUD") is ever deemed the "Owner" of all or part of the property described on Exhibit A (or the "Grantor" hereunder), HUD shall not be subject to the indemnification provisions contained in this Section 4. HUD prohibits and does not authorize any expenditure which would violate 31 USC 1341 (the "Anti-Deficiency Act"). Any provision of this Easement Agreement which violate(s)(d) the Anti-Deficiency Act, in the past, present or future, will not be enforced against HUD. Notwithstanding any other provision of this Agreement, HUD whether in the capacity of subsidy provider, loan insurer, lender, owner, lessee or mortgagee in possession, shall have no obligation of reimbursement, indemnity, or holding harmless, of any nature whatsoever, to any governmental entity, private entity, person or party, either now or in the future. Any and all indemnity obligations, however, shall apply to any subsequent purchaser from HUD. Additionally, any indemnification obligation of "Owner" or "Grantor" shall be limited to available

liability insurance proceeds, Surplus Cash and/or non-Project Assets, as each such term is defined in the Regulatory Agreement for Multifamily Projects by and between Owner and HUD.

Further, notwithstanding anything contained herein, should the Easement be assigned by Grantee to a non-public entity for which the Minnesota Municipal Liability Tort Act is no longer applicable, Grantee shall insure its obligations hereunder through an insurance policy from a reputable carrier acceptable to Grantor, with liability limits of no less than \$5,000,000 per incident and \$10,000,000 in aggregate. Grantor shall be entitled to Acord certificates regarding the coverages to be furnished annually by Grantee. Such certificates and underlying policy shall provide that no termination or non-renewal of the insurance shall be effective without ten (10) days' notice to Grantor.

5. Governing Law. This Agreement is made under and shall be interpreted, governed by, and enforced pursuant to the laws of the State of Minnesota.

6. Inurement. This Agreement and each and every covenant, agreement, and other provision hereof shall inure to the benefit of and be binding upon the each of parties hereto and their respective successors and assigns.

7. Title to Easement Area. Grantor warrants that it is the owner in fee simple of the Premises and has good right to convey the Easement to Grantee.

8. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

9. Notices. All notices, demands and requests (collectively “**Notice**”) required or permitted to be given under this Easement Agreement must be in writing and delivered to the below address via U.S. certified mail, postage prepaid, return receipt requested, or by nationally-recognized overnight delivery service, delivery charges prepaid, and Notice will be deemed to have been given on the date shown on the return receipt if delivered via certified mail, or on the date shown on the confirmation form if delivered by nationally-recognized overnight delivery service.

If Notice to Grantor: Saturday Zenith, LLC
c/o Saturday Properties LLC
3546 Dakota Ave S, Suite D
St. Louis Park, MN 55416

If Notice to Grantee: City of Duluth
411 W. First St.
Duluth, MN 55802
Attn: City Attorney

With a Copy to: Duluth Energy Systems
c/o Ever-Green Energy, Inc.
305 St. Peter Street
St. Paul, MN 55102
Attn: General Counsel

Rejection or refusal to accept or the inability to deliver because of a changed address of which no Notice was given will be deemed to be receipt of Notice as of the date of rejection, refusal or inability to deliver. Either party may change its Notice address by giving Notice to the other party to any other address by giving Notice of address change in the manner for giving Notice set forth in this Section. If applicable, Notice will be given to successors and assigns of the parties to the current record owner at the address stated for receipt of tax records as maintained by the St. Louis County Assessor's Office.

[Reminder of page intentionally left blank; signature pages follow.]

GRANTEE

CITY OF DULUTH

By: _____
Mayor

By: _____
City Clerk

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

The foregoing was acknowledged before me this ____ day of _____, 2023, by Emily Larson, the Mayor of the City of Duluth, a municipal corporation and political subdivision under the laws of Minnesota.

Notary Public

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

The foregoing was acknowledged before me this ____ day of _____, 2023, by Ian Johnson, the City Clerk of the City of Duluth, a municipal corporation and political subdivision under the laws of Minnesota.

Notary Public

This instrument was drafted by:
City of Duluth
411 W. First St.
Duluth, MN 55802

EXHIBIT A
LEGAL DESCRIPTION OF PREMISES

Real property in the City of Duluth, County of St. Louis, State of Minnesota, described as follows:

Parcel 1:

Lots 2, 4, 6, 8, 10, 12, 14, 16, 18, and 20, East Third Street, Duluth Proper, First Division, together with that portion of the vacated alley accruing thereto.

(Abstract Property)

AND

Lot 22, East Third Street, Duluth Proper First Division.

(Torrens Property-Certificate of Title 34559.0)

Parcel 2:

Lots 2 and 4, West Third Street, Duluth Proper, First Division, EXCEPT that portion of said Lots 2 and 4, that lies within 45 feet of the Southerly line of West Third Street.

(Abstract Property)

AND

All that part of Lots 2 and 4 on West Third Street, Duluth Proper, First Division, that lies within 45 feet of the Southerly line of West Third Street.

(Torrens Property-Certificate of Title 49301.0)

AND

Lot 6, West Third Street, Duluth Proper, First Division.

(Abstract Property)

Parcel 3:

Lots 1, 3, 5, 7, 9, 11, 13, and 15, East Second Street, Duluth Proper, First Division, together with that portion of the vacated alley accruing thereto.

(Abstract Property)

Parcel 4:

The Northwesterly 50 feet of Lots 17 and 19, East Second Street, Duluth Proper, First Division, more specifically described as follows:

All that part of Lots 17 and 19, East Second Street, Duluth Proper, First Division lying between the following lines: (a) The center line of the alley northwesterly of and abutting said Lots; (b) a line parallel to said center line of said alley 60 feet southeasterly thereof.

(Abstract Property)

EXHIBIT B

DESCRIPTION:

A Twelve (12) foot wide easement over, under and across those parts of Lots Four (4) and Six (6), EAST THIRD STREET, DULUTH PROPER FIRST DIVISION, City of Duluth, St. Louis County, Minnesota centered on the following described line:

Commencing at the most westerly corner of said Lot Six (6), EAST THIRD STREET, DULUTH PROPER FIRST DIVISION; thence North 41 degrees 37 minutes 45 seconds East along the northwesterly line of said Lot Six (6), EAST THIRD STREET, DULUTH PROPER FIRST DIVISION, a distance of 29.19 feet, bearings referenced to the St. Louis County Transverse Mercator 1996 coordinate system, to the POINT OF BEGINNING of the line to be described; thence South 48 degrees 10 minutes 33 seconds East, a distance of 11.80 feet; thence South 42 degrees 00 minutes 00 seconds West, a distance of 32.04 feet; thence South 47 degrees 58 minutes 43 seconds East, a distance of 56.94 feet and said line there terminating.

The sidelines of said easement are prolonged or shortened to terminate on the northwesterly line of said line of said Lots Four (4) and Six (6), EAST THIRD STREET, DULUTH PROPER FIRST DIVISION.

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Paul A. Vogel

Signed _____

Date 06/29/2023 License No. 44075

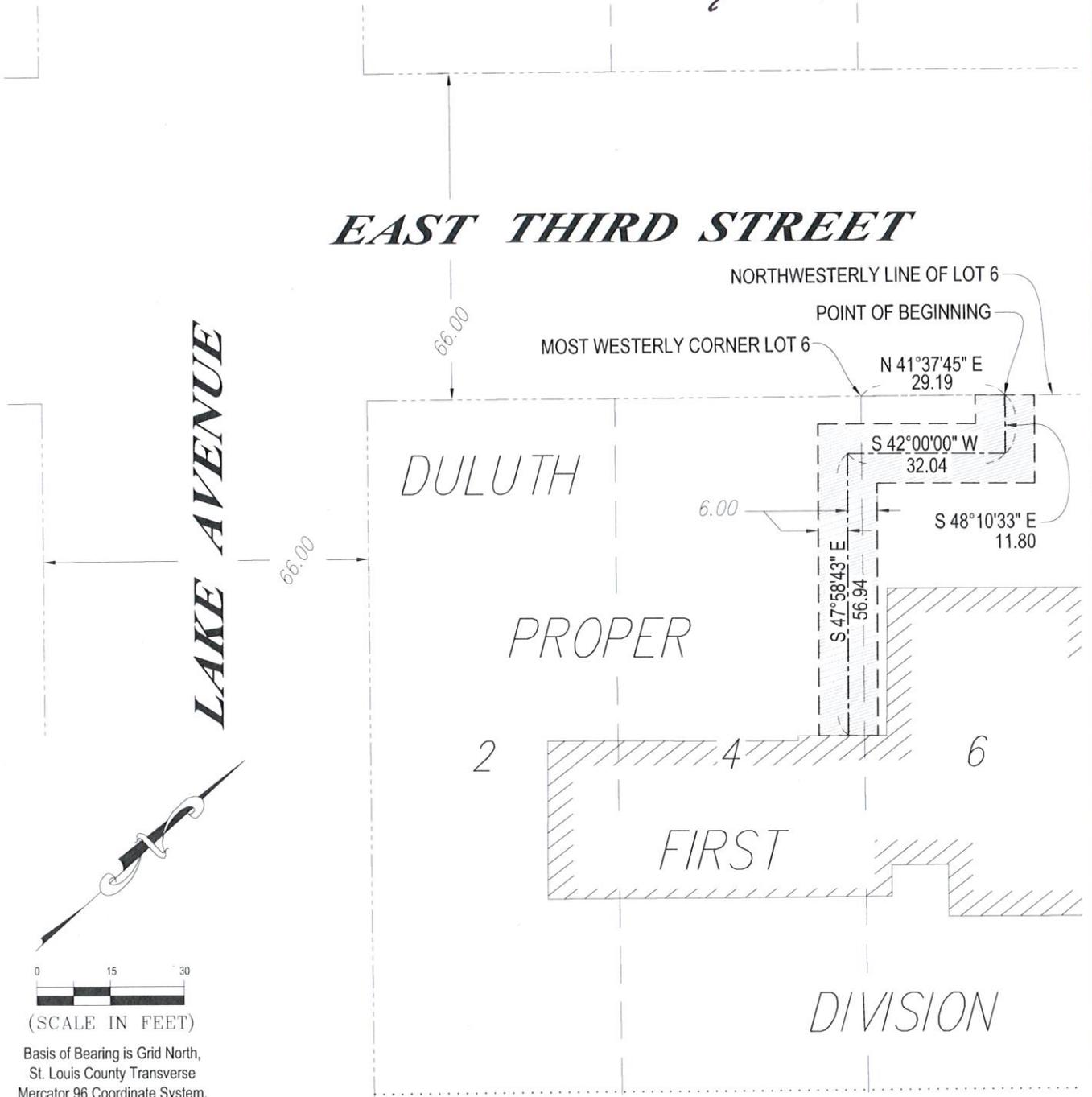
EXHIBIT B

 = EASEMENT AREA

APPROVED BY:

[Signature] 7-30-23
CITY ENGINEER

EAST THIRD STREET



(SCALE IN FEET)

Basis of Bearing is Grid North,
St. Louis County Transverse
Mercator 96 Coordinate System.

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Print Name: Paul A. Vogel

License # 44075

Signature: *[Signature]*

Date: 06/29/2023

DATE PREPARED: 06/29/23

PROJ NO: 210341

FILE: 230441vExhib

SHEET 1 of 1 SHEETS



21 W. Superior St., Ste. 500 | Duluth, MN 55802 | 218.727.8446