

EXHIBIT A

REAL ESTATE LEASE

This Lease Agreement (this "Lease") is effective as of the date of attestation thereto by the City Clerk, by and between PIER B HOLDING, LLC, A Minnesota limited liability company ("Lessor"), and City of Duluth, a Minnesota municipal corporation ("City").

WHEREAS, Lessor is the owner of certain property in BAY FRONT DIVISION which includes Blocks 8 and 9 of said Division upon which property Lessor has constructed certain improvements including driveways and parking lots, and which includes certain rights to use, occupy and control the adjacent platted Slip No. 3 as set forth in the Plat of BAY FRONT DIVISION; and

WHEREAS, City has acquired an All-Hazard Quick Response Vessel (the "Vessel") to facilitate its expeditious response to a variety of different water-related emergencies in the Duluth-Superior Harbor, the St. Louis River and proximate portions of Lake Superior and is in need of a location to dock the Vessel that will facilitate a fast and convenient response by City emergency personnel to such emergencies; and

WHEREAS, Lessor's afore-said property and Slip No. 3 would afford such dockage for the Vessel and Lessor is willing to allow such dockage and access under the terms and conditions of this Lease.

Now, therefore, in consideration of the mutual covenants and conditions hereinafter contained, the parties agree as follows:

1. **PREMISES.** Lessor, in consideration of the lease payments provided in this Lease, leases to City the right to use and occupy a 40' X 12' portion of the property in St. Louis County, Minnesota legally described as Slip 3, BAY FRONT DIVISION for the purpose of docking the Vessel and for locating a boat lift for raising and lowering the Vessel from the waters of said Slip and further grants to City the right to use Lessor's adjacent property for the purpose of parking motor vehicles used by City to transport City personnel to and from the Vessel, and gaining access from adjacent Railroad Street to and from the Vessel; said Premises, including the location thereof is more particular shown on Exhibit A attached hereto and made a part hereof.
2. **SUBSTITUTE PREMISES** The parties hereto agree that, with the mutual, written consent of Lessor and the City's Fire Chief, that the parties may agree to substitute other premise for the Premises above described. In the event that such Substituted Premises shall be agreed to, the Lessor and said Fire Chief shall set forth the location of the Substituted Premises and the date upon which the substitution shall be effective in writing.
3. **TERM.** The initial lease term will commence as of the effective date of this Lease , and will terminate on November 30, 2023 unless sooner terminated as hereinafter provided for. Notwithstanding the foregoing, City shall have the option to extend this Lease for an addition term of Five (5) Years from November 30, 2023 by giving Lessor notice in writing not less than One Hundred Eighty (180) days prior to November 30, 2023.

4. **LEASE PAYMENTS.** Upon the signing of this Lease, City shall pay to Lessor the sum of One Dollar (\$1.00) per year, receipt for the entire term of which is hereby acknowledged.
5. **POSSESSION.** City shall be entitled to possession on the first day of the term of this Lease, and shall yield possession to Lessor on the last day of the term of this Lease, unless otherwise agreed by both parties in writing. At the expiration of the term, City shall remove its goods and effects and peaceably yield up the Premises to Lessor in as good a condition as when delivered to City, ordinary wear and tear excepted.
6. **USE OF PREMISES.** City may use the Premises only for water docking of the Vessel, for location of the afore-mentioned boat lift, for access from parking areas and roadways to the Vessel docking facilities and for temporary parking at all times reasonably necessary to gain access to and use of the Vessel. In addition City shall be entitled to use the Premises and other necessary parts of Lessor's property for the purpose of launching and retrieving the Vessel and for placing and retrieving the aforesaid boat lift.
7. **PROPERTY DAMAGE.** City shall be generally responsible to keep the Premises in a neat, clean and orderly condition and not allow the accumulation of any garbage or trash thereon. In addition City shall be responsible to promptly repair any portion of the Premises of Slip No. 3 which are damaged or destroyed by the negligent or intentional acts or omissions of City or of City's employees. In the event of any such damage or destruction is not promptly repaired or replaced, Lessor may give written notice to City as hereinafter provided for demanding the repair or replacement thereof, and within ten (10) days of receipt of such demand, City shall commence the repair or replacement thereof, subject to procedures required to be followed by City in undertaking such repair.
8. **LIABILITY.** City represents that it is self-insured for liability and property in accordance with the requirements of the state of Minnesota.
9. **MAINTENANCE.** Lessor shall have the responsibility to maintain the Premises in good repair at all times.
10. **TAXES.** Lessor shall pay any taxes of any kind arising out of the ownership, occupancy or use of the Premises.
11. **DEFAULTS.** Either party shall be in default of this Lease if such party fails to fulfill any lease obligation or term by which such party is bound. Subject to any governing provisions of law to the contrary, if City fails to cure any default within thirty days after written notice of such default is provided by Lessor to City, or, in the event that cure cannot be accomplished with said thirty day period, shall have failed to commence cure within said thirty day period and to complete said cure as expeditiously as reasonably possible, Lessor may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing Lessor's rights to damages. In the alternative, Lessor may elect to cure any default and the cost of such action shall be added to City's financial

obligations under this Lease. Either party shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by the non-defaulting party by reason of the defaulting party's defaults. The rights provided by this paragraph are cumulative in nature and are in addition to any other rights afforded by law.

12. **ACCESS BY LESSOR TO PREMISES.** Subject to City's consent (which shall not be unreasonably withheld), Lessor shall have the right to enter the Premises to make inspections or provide necessary services. However, Lessor does not assume any liability for the care or supervision of the Premises. As provided by law, in the case of an emergency, Lessor may enter the Premises without City's consent.
13. **INDEMNITY REGARDING USE OF PREMISES.** To the extent provided for in Minnesota Statutes Chapter 466, City agrees to indemnify, hold harmless, and defend Lessor from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which Lessor may suffer to incur in by reason of the negligent or intentional acts or omission of City and its employees. Lessor agrees to indemnify, hold harmless, and defend City from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which City may suffer to incur in by reason of the negligent or intentional acts or omission of Lessor.
14. **COMPLIANCE WITH REGULATIONS.** City shall promptly comply with all laws, ordinances, requirements and regulations of the federal, state, county, municipal and other authorities, and the fire insurance underwriters arising out of its use or occupancy of the Premises or of the building in which the Premises are located and to make any alterations to the Premises required by such use or occupancy.
15. **MECHANICS LIENS.** Neither the City nor anyone claiming through the City shall have the right to file mechanics liens or any other kind of lien on the Premises and the filing of this Lease constitutes notice that such liens are invalid. Further, City agrees to (1) give actual advance notice to any contractors, subcontractors or suppliers of goods, labor, or services that such liens will not be valid, and (2) take whatever additional steps that are necessary in order to keep the premises free of all liens resulting from construction done by or for the City.
16. **SUBORDINATION OF LEASE.** This Lease is subordinate to any mortgage that now exists, or may be given later by Lessor, with respect to the Premises.
17. **ASSIGNABILITY/SUBLETTING.** City may not assign or sublease any interest in the Premises, nor effect a change in the majority ownership of the City (from the ownership

existing at the inception of this lease), nor assign, mortgage or pledge this Lease, without the prior written consent of Lessor, which shall not be unreasonably withheld.

18. **NOTICE.** Notice under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

LESSOR:

Pier B Holding, LLC
310 West First Street
Suite 715
Duluth, MN 55802

CITY:

City of Duluth
Office of the Fire Chief
610 West First Street
Duluth, MN 55802

Such addresses may be changed from time to time by either party by providing notice as set forth above. Notices mailed in accordance with the above provisions shall be deemed received on the day after posting.

19. **GOVERNING LAW.** This Lease shall be construed in accordance with the laws of the State of Minnesota.
20. **ENTIRE AGREEMENT/AMENDMENT.** This Lease Agreement contains the entire agreement of the parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Lease. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.
21. **SEVERABILITY.** If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

- 22. **WAIVER.** The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.
- 23. **BINDING EFFECT.** The provisions of this Lease shall be binding upon and inure to the benefit of both parties and their respective legal representatives, successors and assigns.

CITY OF DULUTH, a Minnesota
Municipal Corporation

PIER B HOLDING, LLC., a Minnesota
limited liability company

By _____
Its Mayor

By: *Stephen C. Hoff*
Its: *Chief Member*

Attest:

By _____

Its City Clerk

Date

Approved:

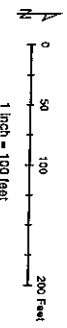
Countersigned:

Assistant City Attorney

City Auditor



SITE MAP
Building Safety



Printed: 7/12/2018

Exhibit A

Map Case# 19-25012. The information contained in this map is for informational purposes only. It is not intended to be used as a legal document. The information is provided as a service to the public and is not intended to be used as a legal document. The information is provided as a service to the public and is not intended to be used as a legal document. The information is provided as a service to the public and is not intended to be used as a legal document.