

AMENDED AND RESTATED  
PEDESTRIAN PASSAGEWAY AGREEMENT  
PERTAINING TO THE FUR STORAGE  
BUILDING PROPERTY

THIS AGREEMENT, dated this \_\_\_\_ day of \_\_\_\_\_, 2016, 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 RENDFIELD LAND COMPANY, a corporation under the laws of the State of Minnesota, hereinafter referred to as "Owner".

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 subject of this Agreement in said skywalk system. Said pedestrian passageway would be contained within a building constructed on the property of Owner, hereinafter referred to as "Owner's Property" and legally described on Exhibit B attached hereto and made a part hereof, which building is hereinafter referred to as "Building." Said Building will include the hereinafter-described easement which is located on that portion of Owner's Property and legally described on Exhibit C attached hereto and made a part hereof.

(3) City and Owner agree to enter into this Amended and Restated Pedestrian Passageway Agreement Pertaining to the Fur Storage Building Property to replace the agreement pertaining to the same subject matter that was originally executed by the parties in 2009 (the "2009 Agreement"). The 2009 Agreement was not recorded in St. Louis County property records and the parties desire to amend and restate the 2009 Agreement such that it will be accepted for recording.

CITY RESPONSIBILITIES

(4) By this Agreement, City fulfills the goals noted in Section 2 by the construction and furnishing of the Building and the construction within the Building of a pedestrian passageway. The pedestrian passageway was constructed within the perpetual easement (the "Easement") described in Section 6 below and as shown in yellow and legally described on

Exhibit C, entering Building at the second-floor level through a pedestrian passageway from the Lake Superior Place Building to the west of Building and Owner's Property, and connecting by a pedestrian passageway and by an elevator and stairway to the third-floor level of a skywalk structure on the property to the East of Owner's Property which will connect to the Tech Village Building across Lake Avenue. Said passageway will be in conformity with the attached Exhibit D.

(5) City agrees that the Building is owned by Owner and that City shall execute, at City's expense, any documents necessary to memorialize such ownership, such as a bill of sale. The parties acknowledge and agree that construction of the Building is complete.

#### OWNER'S RESPONSIBILITIES:

##### Perpetual Easement

(6) Owner does hereby grant to City, without cost, a perpetual easement over the Easement Area as shown in yellow on Exhibit C. Such Easement Area is between the elevations of 648.16 Feet NAVD 88 and 671.33 Feet NAVD 88, located on the Owner's Property, having the primary purpose of facilitating pedestrian travel entering the second floor of Building at the entry to the pedestrian passageway connecting to the Lake Superior Place Building, and connecting by a pedestrian passageway and by an elevator and a stairway to the third-floor level of a skywalk structure on the property to the East of Owner's Property. 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 of control and regulation thereof including control and regulation of concurrent uses, activities, traffic, signs, furnishings and decor within said Easement Area and all powers necessary to carry out the elements of this Agreement. The parties agree that no furnishings, décor or signage, except skywalk system directional signage approved by the City, will be modified without both parties' written approval in accordance with Section 8 below

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 at least 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 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. 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.

Operation, Repair, Maintenance and Security

(7) Owner agrees to operate, maintain and repair and secure the Building and the pedestrian passageways described in this Agreement, 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 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 the Building as it exists as of the completion of construction thereof and any other building without the approval of City.

As part of its obligations under this Section 7, Owner agrees to provide and retain adequate fire and property insurance to restore the Easement Area within Owner's Property to the specifications of this Agreement taking into account normal wear and tear.

In the event of damage to or destruction of any portion of the skywalk system located in the Easement Area, Owner agrees that, within ninety (90) days of the date thereof, it will present to 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 8 of this Agreement, provided that delays occasioned by failure of the City 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 located in the Easement Area and collect from Owner, by assessment or any other legal means, all of the costs occasioned thereby, including the costs of collection.

Owner further agrees to carry liability insurance in an amount sufficient to indemnify City from any liability occurring within those areas of the skywalk system located in the Easement Area 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 system located in the Easement Area where said responsibility is assumed by Owner solely or jointly under the terms of this Agreement except to the extent that such liability relates to or arises out of City's negligence. 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.

Changes in Design Elements

(8) In the event that either party (hereinafter, the "Requesting Party") wishes to change any elements of design, equipment, decoration lighting, signing or other such elements which change would not involve modification of the Easement granted hereunder the following procedures in this Section 8 shall apply. For purposes of this Section 8, the "Requesting Party" and "Receiving Party" on behalf of the City is the Project Administrator.

(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 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. The Requesting Party will have prepared and submit to the other party (hereinafter, the "Receiving Party") for approval Design Development Plans with respect to the improvements to be constructed by the Requesting Party, 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 Receiving Party 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 the Requesting Party or approval by the Receiving Party thereof shall be required except with respect to any material change. If the Receiving Party rejects said plans in whole or in part as not being in conformity with this Agreement, the Receiving Party shall specifically identify the reason for the rejection in written notice to the Requesting Party. Within fifteen (15) days of receipt of such notice, the Requesting Party shall submit new or corrected Design Development Plans which are in conformity with this Agreement. No construction of improvements indicated in this Agreement shall commence prior to the approval of said plans by the Receiving Party. All work with respect to the improvements to be constructed or provided by the Requesting Party shall be in conformity with the Design Development Plans as approved by the Receiving Party.

(b) Changes in Design Development Plans. If the Requesting Party desires to make any change in the Design Development Plans after their approval by the Receiving Party, the Requesting Party shall submit the proposed change to the Receiving Party for its approval. If the plans, as modified by the proposed change, conform to the intent and content of the previously approved construction plans, the Receiving Party may approve the proposed change and notify the Requesting Party in writing of its approval. In the event of disapproval, the Receiving Party shall notify the Requesting Party 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, the Requesting Party shall make reports in such detail and at such times as may be reasonably requested by the Receiving Party, as to the actual progress of the Requesting Party with respect to such construction.

(d) Bond During Construction. Prior to construction, the Requesting Party will secure a performance bond large enough to insure completion of the improvements or provide such other security as may be approved in writing by the Receiving Party.

(e) Insurance During Construction. Prior to construction, the Requesting Party shall name the Receiving Party as an additional insured on the Receiving Party's or its contractor's insurance policies that are of a type and nature (i.e., Fire and extended Insurance or Builder's Risk Insurance) sufficient to restore all improvements made pursuant to this Agreement and liability insurance such as Comprehensive Liability insurance adequate to protect the parties from liability arising from the work. Such policies of insurance shall be written by insurance companies authorized to do business in the State of Minnesota. The Requesting Party shall provide the Receiving Party with a certificate of insurance evidencing the Receiving Party's additional insured status prior to the start of construction.

(f) Certificate of Completion. Promptly after completion by the Requesting Party in

conformance with this Agreement, of construction of the improvements required of them by this Agreement, the Receiving Party will furnish the Requesting Party with an appropriate instrument so certifying. No such certification shall be issued until all elements of such construction are totally completed. Such certification by the Receiving Party shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction of construction obligations only of the Requesting Party and its successors and assigns. The issuance of such certificate shall not unreasonably be withheld or delayed.

(g) Cost for Construction. All costs for construction of improvements contemplated in this Section shall be the responsibility of the Requesting Party.

Hours

(9) Owner agrees to maintain the Easement Area open to pedestrian traffic from 6:00 A.M. to 12:00 Midnight, seven (7) days a week, unless otherwise agreed to by City and Owner and except as otherwise provided herein. In emergency or exigent circumstances, Owner may close the Easement Area and shall provide notice of such closure to the City as soon as practicable. Owner shall cooperate with the City in re-opening the Easement Area.

Notice

(10) 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:                   Project Administrator  
  Development District #2  
  c/o City Clerk  
  Room 102, City Hall  
  Duluth, MN 55802

In the case of Owner:               RendField Land Company  
  30 West Superior Street  
  Duluth, MN 55802

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

(11) Under the terms of this Agreement, neither City nor Owner shall be considered in default or in breach of any of its terms in the event of enforced delay in the performance of such obligations 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 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

(12) 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 Owner's Property or both or otherwise assign or transfer its interest therein, any such purchaser, transferor or assignee shall be liable for the performance of the obligations assumed by Owner hereunder. In the event that the City has reasonable grounds for insecurity regarding whether purchaser, transferor or assignee is able to financially perform its obligations under this Agreement, the City may request reasonable adequate assurance from the Owner, purchaser, transferor or assignee prior to the sale or transfer. 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 Section 6 above, and as the same may have been modified, shall survive and continue in perpetuity.

CONSTRUCTION OF SKYWALK-REIMBURSEMENT

(13) Pursuant to this Agreement, City has constructed the Building and the skywalk in conformance with attached Exhibit D. City further acknowledges that Owner has executed the Third Amendment to the Pedestrian Passageway Agreement Pertaining to the MacDonald Building, and that Owner has paid the City the sum of Two Hundred Fifty Thousand Dollars (\$250,000), which together with the obligations contained in this Agreement, are deemed to be consideration for all of the City's obligations hereunder, including construction of the Building.

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

CITY OF DULUTH, a Minnesota  
Municipal Corporation

RendField Land Company, a Minnesota  
Corporation

\_\_\_\_\_  
Emily Larson  
Its Mayor

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

\_\_\_\_\_  
Its City Clerk

Approved:

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

\_\_\_\_\_  
Auditor

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by \_\_\_\_\_, the \_\_\_\_\_ of RendField Land Company a corporation under the laws of the State of Minnesota, on behalf of the Company.

\_\_\_\_\_  
Notary Public

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Emily Larson and Jeffrey J. Cox, the Mayor and City Clerk of the City of Duluth, a municipal corporation, on behalf of the City.

\_\_\_\_\_  
Notary Public

This instrument was drafted by:

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