

EXHIBIT 4



CITY OF DULUTH
Community Planning Division

411 W 1st St, Rm 110 * Duluth, Minnesota 55802-1197
Phone: 218/730.5580

File Number	PL 19-042		Contact	Kyle Deming, kdeming@duluthmn.gov	
Type	Vacate skywalk, plaza, rededicate plaza		Planning Commission Date	May 14, 2019	
Deadline for Action	Application Date	April 11, 2019	60 Days	June 10, 2019	
	Date Extension Letter Mailed	May 2, 2019	120 Days	August 9, 2019	
Location of Subject	Minnesota Power Building (30 W. Superior St.) and Lake Superior Plaza (both sides of Lake Ave.) on the south side of Superior St.				
Applicant	Minnesota Power		Contact	Patrick Mullen	
Agent	Minnesota Power		Contact	Violet Struss	
Legal Description	See Attached				
Site Visit Date	May 3, 2019		Sign Notice Date	May 1, 2019	
Neighbor Letter Date	May 2, 2019		Number of Letters Sent	60	

Proposal

In order to improve building security at Minnesota Power's headquarters, proposed is:

- Vacation of the skywalk through first and second floors of their building after dedicating a replacement easement and providing for the construction of a stairway from the south end of the skywalk bridge over Superior St.
- Vacation of existing public plaza agreements for Lake Superior Plaza to be replaced with updated agreements that allow public access, but reduce the size of Lake Superior Plaza to provide a security buffer between the Plaza and the Minnesota Power Building.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	Downtown Mix (F-8) / (F-7)	7-story office building/plaza/parking	Central Business Primary/Open Space
North	Downtown Shopping (F-7)	2-6 story office/retail buildings	Central Business Primary
South	MU-C	I-35 and frontage road	Central Business Primary
East	Downtown Shopping (F-7)	2-5 story office/retail/clinic buildings	Central Business Primary
West	Downtown Mix (F-8)	2-story office/retail buildings	Central Business Primary

Summary of Code Requirements

Vacation of public rights of way and/or easements require a Planning Commission public hearing with a recommendation to City Council. City Council action is to approve or deny by resolution. Resolutions approving either a full or partial vacation require a 6/9's vote of the Council.

UDC Section 50-37.6C. The Planning Commission shall review the proposed vacation, and the Council shall approve the proposed vacation, or approve it with modifications, if it determines that the street, highway or easement proposed for vacation:

1. Is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles or pedestrians or the efficient supply of utilities or public services in the city;
2. Where the street terminates at a waterfront or shoreline, the street is not and will not be needed to provide pedestrian or recreational access to the water;
3. Is not otherwise needed to promote the public health, safety or welfare of the citizens of Duluth.

Comprehensive Plan Governing Principle and/or Policies and Current History (if applicable):

Governing Principle #6 – Reinforce the place-specific,
Principle #7 - Create and maintain connectivity,
Principle #8 - Encourage mix of activities, uses and densities,
Principle #9 – Support private actions that contribute to the public realm,
Principle #10 - Take actions that enhance the environment, economic, and social well-being of the community,
Principle #12 - Create efficiencies in delivery of public services,
Principle #13 – Develop a healthy community

Future Land Use – Central Business Primary - Encompasses a broad range of uses and intensities:
Governmental campus, significant retail, entertainment and lodging, opportunities for high-density housing, central plaza, public/open space, public parking facilities, high height and density limits, protection of historic buildings or building groups, Form-based guidelines, pedestrian-oriented design, no off-street parking required, but loading required, avenue lake views are protected

History:

1977 Pedestrian Passageway Easement granted to City from Minnesota Power for skywalks through the building
1977 Deeds to Lake Superior Plaza conveyed from City to Lake Superior Plaza Company
1978 Minnesota Power Building addition constructed (7 stories, 94,304 sq. ft.) to the east of an existing building at the corner of 1st Ave. W. and Superior St.
1989 Deed conveyed from City to Minnesota Power while retaining a “perpetual easement for public pedestrian passageway purposes” inside the Minnesota Power Building

Review and Discussion Items

- 1) Minnesota Power has expressed concern in the vacation petition that having “public pedestrian passageways (the skywalk) inside and immediately adjacent to the Minnesota Power building poses a significant concern for the physical security of our region’s critical energy infrastructure.”
- 2) The applicant is proposing to:
 - Vacate the existing skywalk on the first and second floors within their building after dedicating a replacement easement providing for the construction of a stairway from the south end of the skywalk bridge over Superior St. to Superior St.
 - Vacate existing public plaza agreements for Lake Superior Plaza and replace with updated agreements that allow public access, but reduce the size of Lake Superior Plaza to provide a security buffer between the Plaza and the Minnesota Power Building.
- 3) In 1978 Minnesota Power completed a significant remodel to an existing building at 1st Ave. W. and Superior St. while constructing a large building addition to provide headquarters office space for the region’s public electric utility. The project included retail (Scandinavian Design) and restaurant (Jolly Fisher) space on part of the Superior St. level. Linking the uses in the Minnesota Power building with underground parking and other downtown buildings is a public skywalk on the First Floor (Superior St. level) and 2nd Floor, accessed via elevator from the rest of the skywalk system.
- 4) Agreements between the City and Minnesota Power were established in 1977 and 1989 governing the skywalk and public plazas adjacent to both sides of Lake Avenue that are the subject of this vacation petition.
- 5) The applicant’s proposal is to dedicate replacement “public pedestrian passageway and plaza” easements over the plazas on the east and west sides of Lake Avenue as shown on the attached exhibit. These easements will provide the same level of public access to the plazas as the current agreements. However, to address safety and security concerns near their building, Minnesota Power is proposing to reduce the size of the west plaza by 30-40 feet near the building. In this space they would be able to better control access to their main entrance as well as place bollards and landscaping elements to prevent vehicular access near the building.

- 6) Reducing the plaza by 30-40 feet represents a reduction of about 20% of the total plaza area, with the remaining plaza area being approximately 1/3 acre. The remaining plaza is still large enough to host community events and general plaza functions. With the standard for vacating public easements being “uselessness,” the Planning Commission must provide a recommendation as to whether the area near the building is needed for plaza purposes. Although the public occasionally uses this space, it is not critical to the functioning of the plaza and could be found useless.
- 7) When considering the vacation of the skywalk through the building on the First and Second Floors the Planning Commission must provide a recommendation as to whether or not those passageways are needed for public access to important services and facilities. At the time of construction, the skywalk provided public access to commercial uses in the building as well as public parking below the building and adjacent plaza. However, those commercial uses have ceased with the Jolly Fisher restaurant closing (27 years ago) and other commercial spaces having since been converted to office space for use by Minnesota Power itself. The use of the underground parking by the general public has diminished significantly, as well, with Minnesota Power reporting that the general public rarely uses the 16 parking spaces they hold open at competitive hourly rates. Minnesota Power employees use the remaining approximately 100 spaces. The supply of skywalk-accessible public parking in the area has increased with the construction of the 650-vehicle Technology Village ramp in 2000. Therefore, it may be recommended that the skywalks through the building are not needed for the public access to commercial spaces and parking.
- 8) The Minnesota Power building is an important destination on the skywalk system and it is in the public’s interest to maintain a skywalk connection to it as well as providing a crossing to the south side of Superior St. To accomplish this Minnesota Power will provide a skywalk entrance to their building for employees and guests at the south end of the skywalk bridge. They will also construct a stairway within their building from the skywalk bridge to Superior St. and dedicate a public easement over it.
- 9) None of the skywalk or plaza areas proposed for vacation are needed to provide public recreational access to water.
- 10) The skywalks proposed for vacation will not otherwise be needed to promote the public health, safety, or welfare of the citizens of Duluth because the commercial and parking functions originally established in the Minnesota Power building and under the adjacent plazas have been eliminated or diminished to extremely low usage. A replacement public stairway will provide needed skywalk access and replacement plaza easements will preserve the public’s current level of health, safety, or welfare.
- 11) No new citizen comments have been received on this project.
- 12) Vacation resolutions lapse if not recorded within the timeframe stated in the recommendation below.

Staff Recommendation

Based on the above findings, staff recommends that Planning Commission recommend approval of the proposed Vacation of skywalks and public plazas with the following conditions:

1. The vacation of the public plaza shall not be final until replacement plaza easement agreements in a form approved by the Land Use Supervisor are recorded in the office of the St. Louis County Recorder, such recording to occur immediately following the recording of the vacation.
2. The vacation of the skywalks shall not be final until the completion of construction of a replacement stairway and skywalk access to Superior Street and recording in the office of the St. Louis County Recorder of a replacement Skywalk Easement Agreement in a form approved by the Land Use Supervisor, said recording to occur immediately following recording of the vacation.
3. The plaza vacations must be recorded within 90 days of final approval by City Council or such approval will lapse. The Skywalk vacation must be recorded within 90 days of completion of construction of the replacement Skywalk stairway and Skywalk access to Superior Street or such approval will lapse.

Minnesota Power Petition to Vacate Easement

The Property

Lots 14 and 16, Block 4, Central Division of Duluth.

All of Lots 6, 8, 10 and 12, together with that part of Lot 4 westerly of a line parallel with the boundary line between Lot 4 and Lot 6 and distant in an easterly direction 50 feet therefrom, all in Block 4 of Central Division of Duluth.

Together with certain portions of Lake Avenue vacated by the City of Duluth and described as follows: Commencing at the southeasterly corner of Lot 4, Block 4, Central Division of Duluth, then northerly along the northeast line of said Lot 4 a distance of 17.00 feet to the point of beginning; thence deflect $66^{\circ}46'00''$ to the southeast property line of said Lot a distance of 6.10 feet, thence deflect $90^{\circ}00'00''$ to the left and proceeding northwesterly a distance of 14.20 feet, thence deflect $156^{\circ}46'00''$ to the left and proceeding in a southerly direction along the northeast line of said Lot 4 a distance of 15.45 feet to the point of beginning;

and

Commencing at the southeasterly corner of Lot 4, Block 4, Central Division of Duluth, then northerly along the northeast line of said Lot 4 a distance of 52.00 feet to the point of beginning; thence deflect $66^{\circ}46'00''$ to the right and proceeding northeasterly parallel to the southeast property line of said Lot a distance of 6.10 feet, thence deflect $90^{\circ}00'00''$ to the left and proceeding northwesterly a distance of 14.20 feet, thence deflect $156^{\circ}46'00''$ to the left and proceeding in a southerly direction along the northeast line of said Lot 4 a distance of 15.45 feet to the point of beginning.

Together with the southerly six inches of the right-of-way of Superior Street lying between the westerly property line of Lot 12, Block 4, Central Division of Duluth, and the easterly property line of Lot 4, Block 4, Central Division of Duluth at its intersection with the right-of-way of Superior Street.

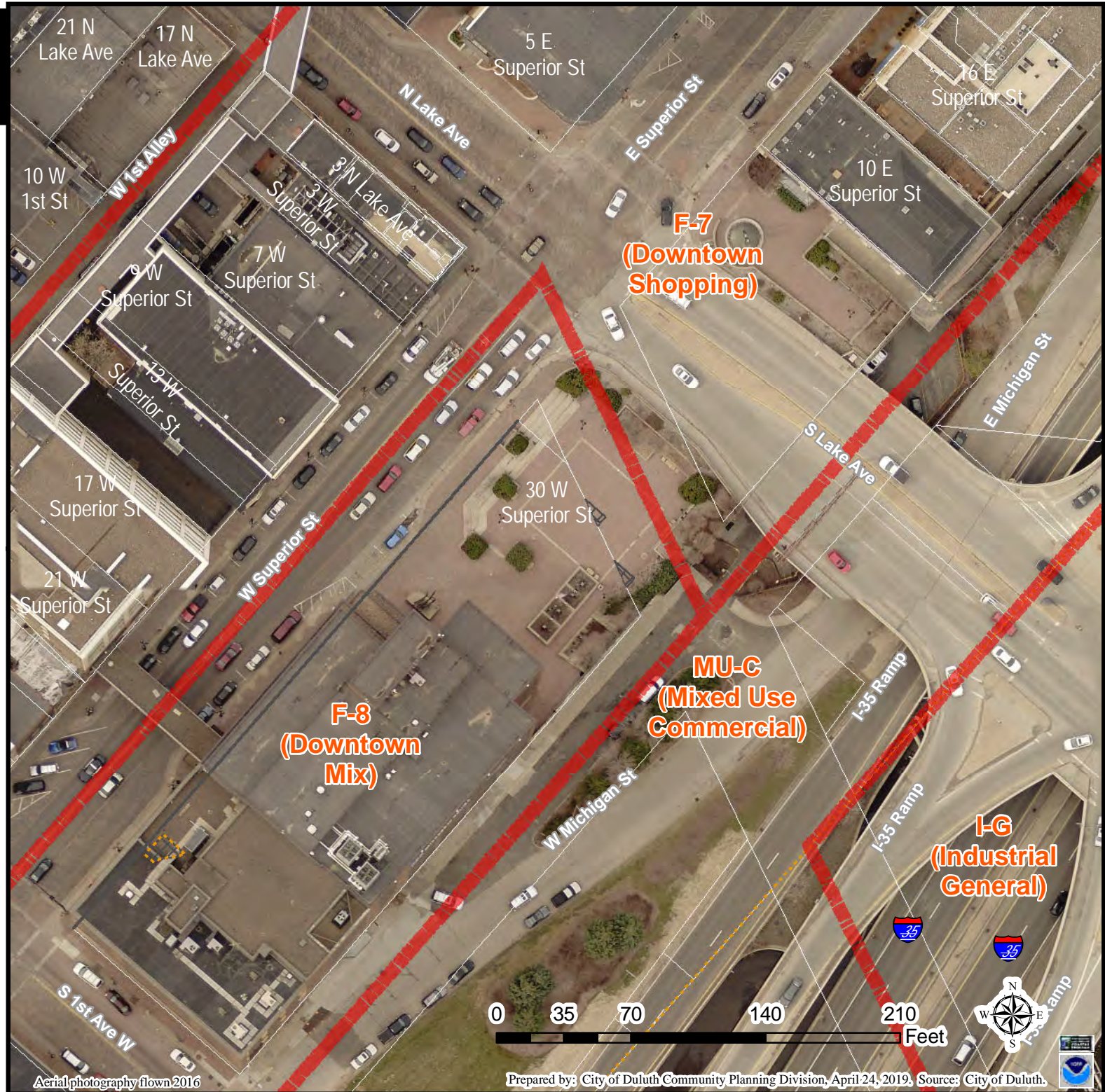
AND

Lot A, Lot 2 and the westerly half of Lot 4, all in Block 3 Central Division of Duluth; and





That part of Lake Avenue and Superior Street in the City of Duluth, described as follows: Beginning at the most northerly corner of the westerly half of Lot 4, Block 3, Central Division of Duluth; thence run northwesterly along the northwesterly extension of the northeasterly line of said westerly half of Lot 4, to its intersection with a line run parallel with and distant 12 feet northwesterly of the southeasterly line of Superior Street; thence run southwest on said 12 foot parallel line to its intersection with the northwesterly extension of the northeasterly line of Lot 4, Block 4, Central Division of Duluth; thence run southeasterly on the northwesterly extension of the northeasterly line of said Lot 4 and on the northeasterly line of said Lot 4 to the most easterly corner of said Lot 4, thence run northeasterly to the most southerly corner of Block 3, Central Division of Duluth; thence run northwesterly, northerly and northeasterly along the southwest, westerly and northwesterly lines of said Block 3 to the point of beginning.



**PL 19-042 Minnesota Power
Vacate Skyway and Plaza
Easements and Dedicate
Replacement Easements**



Legend

-  Vacated ROW
- Easement Type**
-  Utility Easement
-  Other Easement
-  Zoning Boundaries

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.

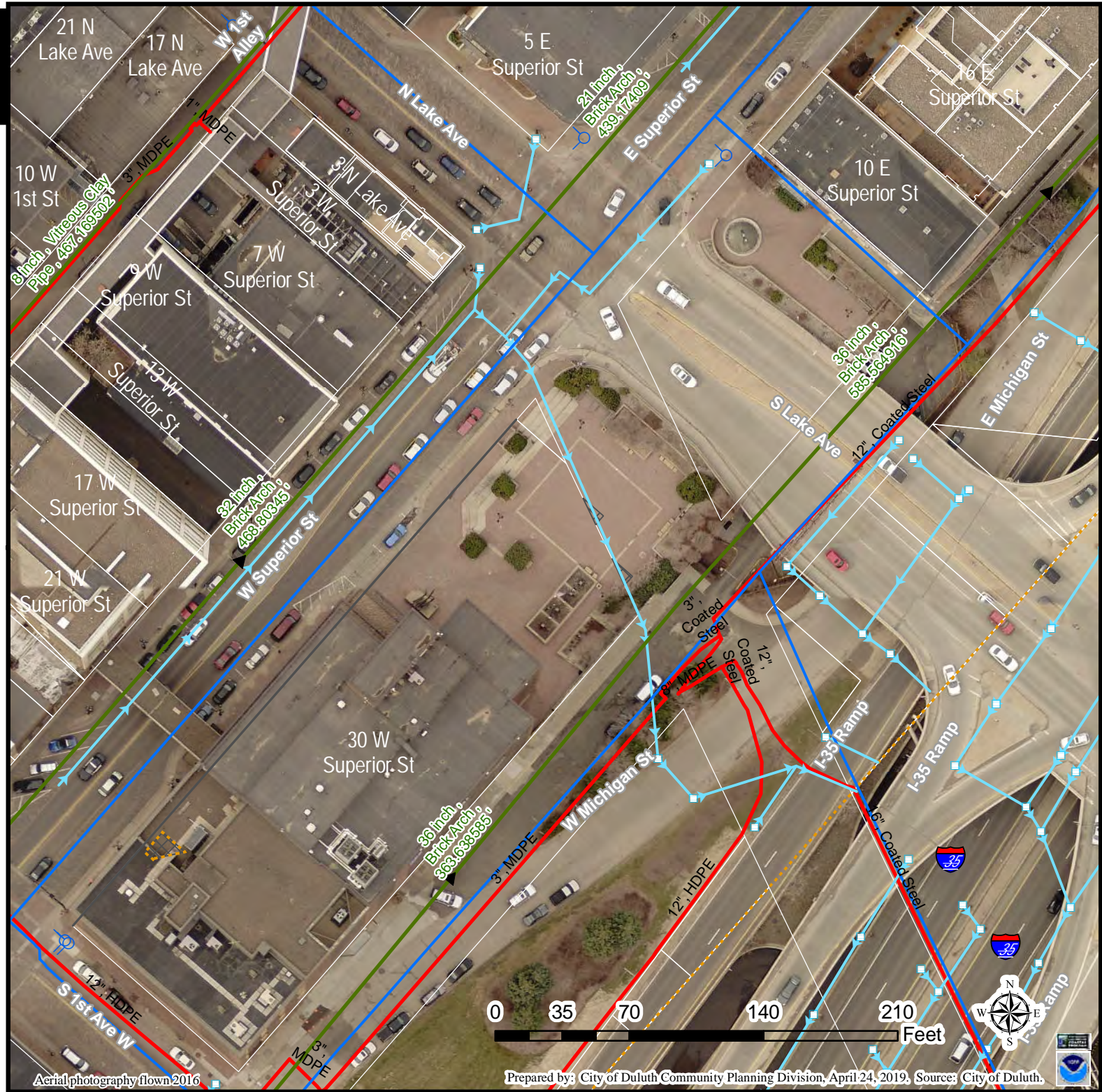




**PL 19-042 Minnesota Power
Vacate Skyway and Plaza
Easements and Dedicate
Replacement Easements**

Legend

- Gas Main
- Water Main
- Hydrant
- Sanitary Sewer Mains**
- CITY OF DULUTH
- WLSSD; PRIVATE
- Sanitary Sewer Forced Main
- Storage Basin
- Pump Station
- Storm Sewer Mains**
- Storm Sewer Pipe
- Storm Sewer Catch Basin
- Vacated ROW
- Easement Type**
- Utility Easement
- Other Easement



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**PL 19-042 Minnesota Power
Vacate Skyway and Plaza
Easements and Dedicate
Replacement Easements**

**Duluth Proper
1st Division**

**Duluth Proper
1st Division**

**CIC
#127**

**Lake Superior Plaza:
Public Plaza to be Vacated
and included in a new
Public Plaza agreement**

**Replacement skywalk
easement granted for
stairway to Superior St.**

**Public Plaza to be Vacated
and control returned to MN Power**

**Skywalk on Floors 1 & 2
to be Vacated**

Legend

- Blocks
- Lots
- Parcels
- Subdivision Boundaries

Boundary Lines

- <all other values>

Subtype, ROW_TYPE

- Lot Line
- Parcel Line
- ROW (Road)
- ROW (Not Road)
- Subdivision Line
- Water Line
- Survey Line

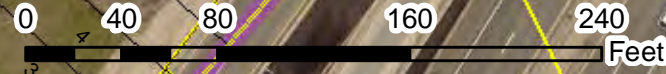
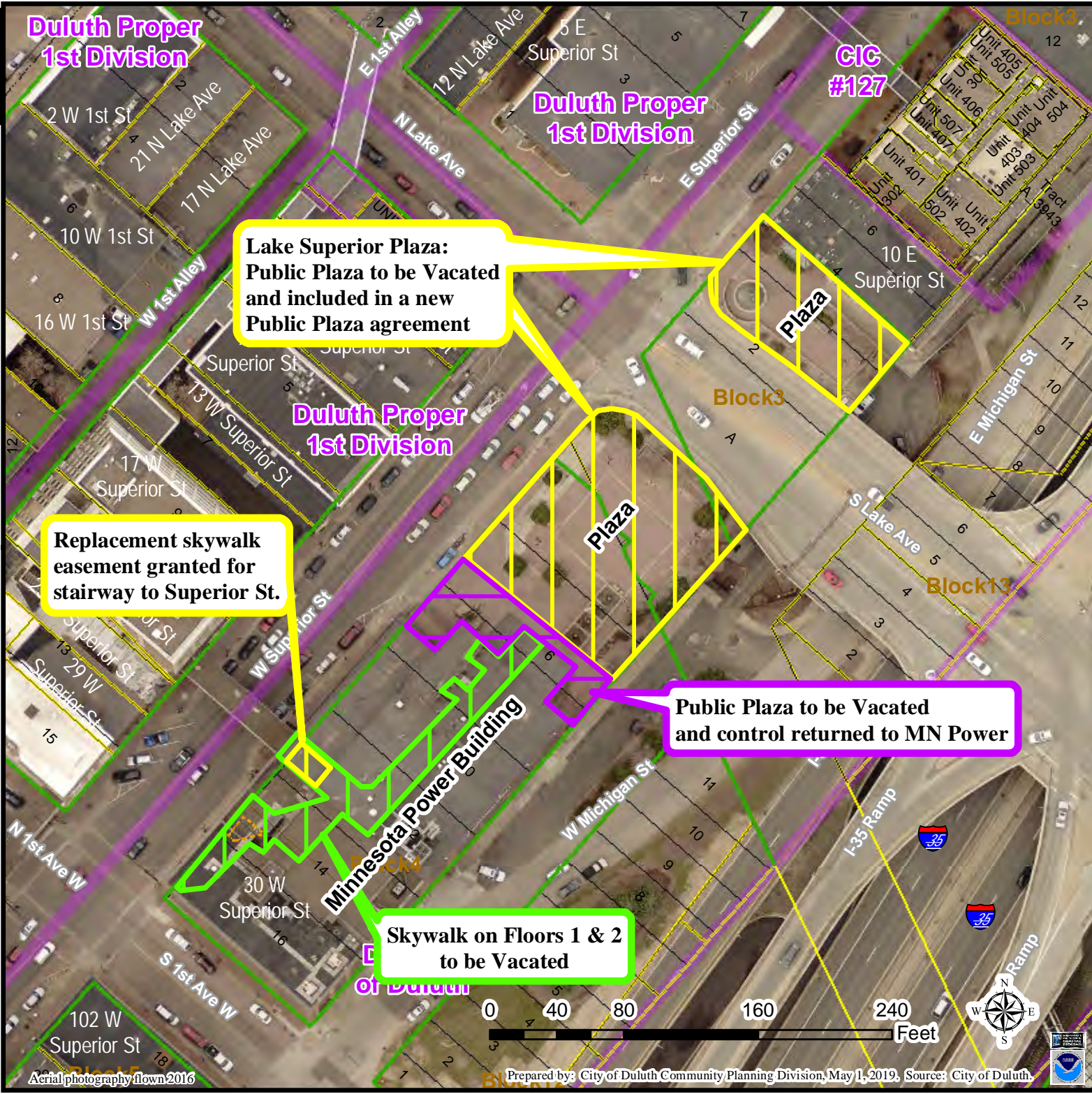
Municipal Boundary

- Vacated ROW

Easement Type

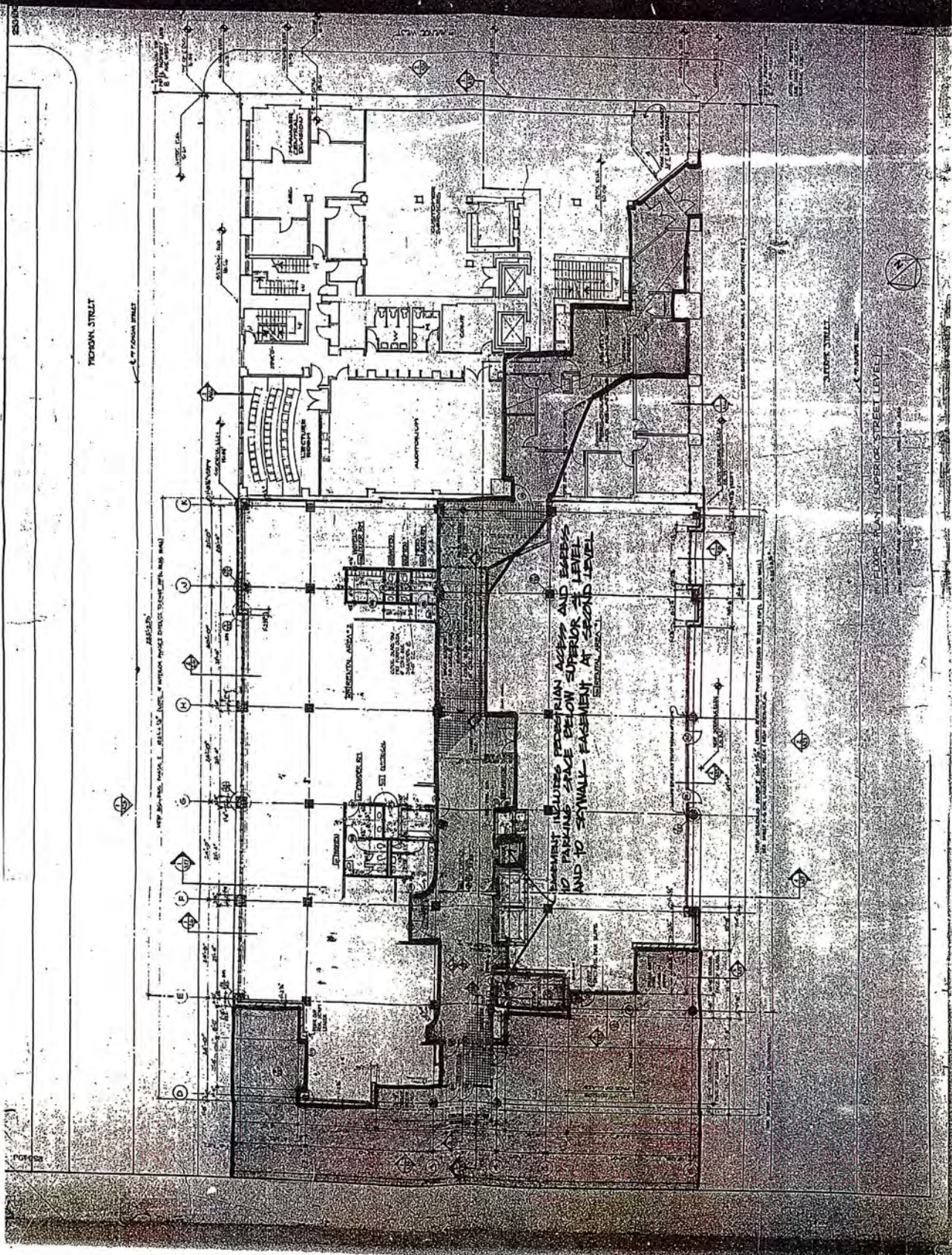
- Utility Easement
- Other Easement

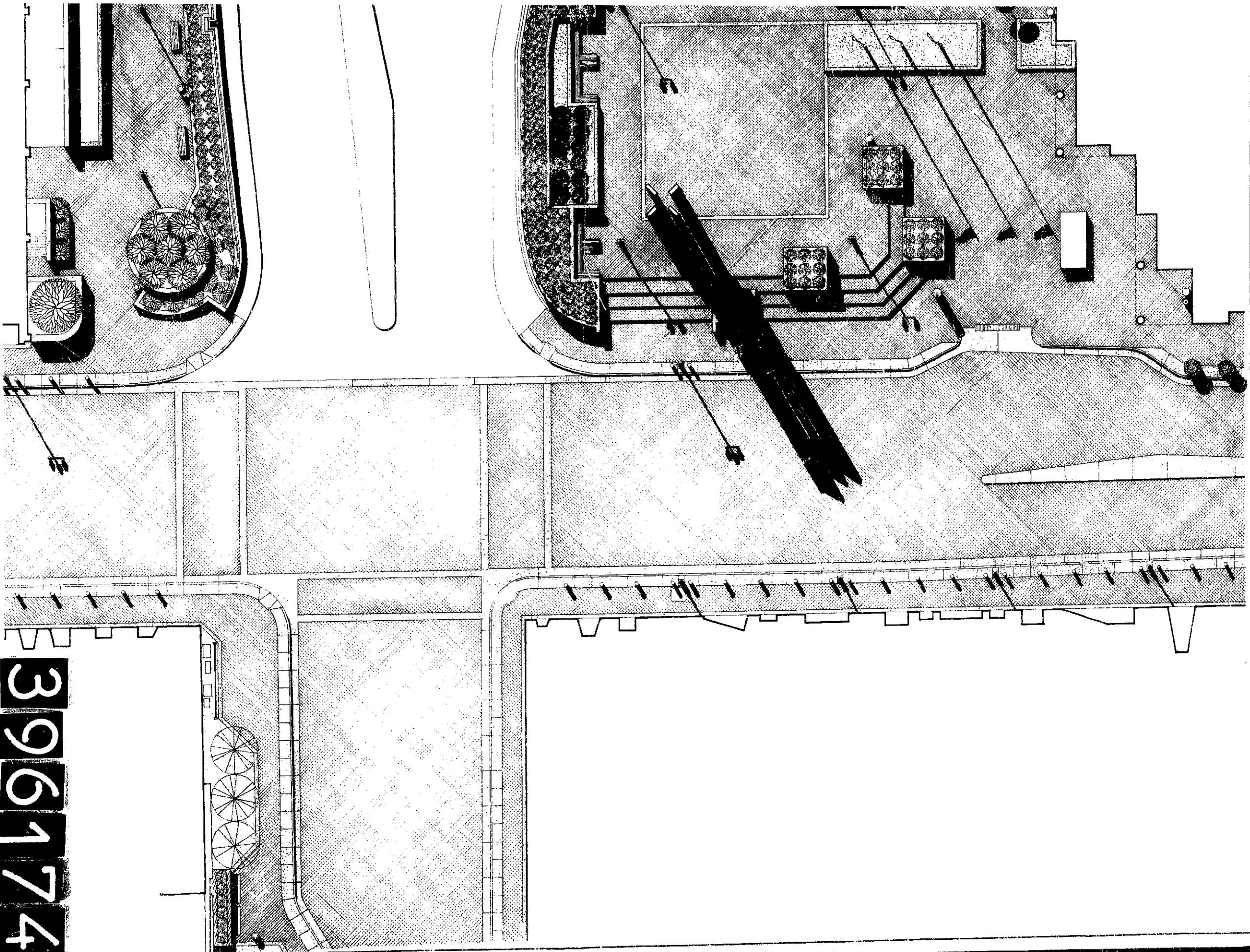
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PARTNERS OF ARCHITECTURAL CONCERN, INC.

5-4541 B.

396174

24X

LAKE SUPERIOR PLAZA

DULUTH, MINNESOTA



EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that Minnesota Power a division of ALLETE, Inc., a Minnesota corporation (“Grantor”), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant to City of Duluth, Minnesota a Minnesota municipal corporation, (“Grantee”) an easement for public pedestrian passageway ingress to and egress from the City of Duluth skywalk system, subject to the terms and conditions contained herein, (the “Easement”) across the following described land situated in St. Louis County, Minnesota:

The easement area conveyed by this document is as described on Exhibit A, attached hereto and made a part hereof.

Subject to the terms of this Easement, Grantor grants to Grantee the right, privilege and easement to the easement area for public pedestrian passageway ingress to and egress from the City of Duluth skywalk system.

It is agreed and understood by the parties hereto that this Easement is not to be construed as being granted to the exclusion of the Grantor, its successors or assigns. In the event that Grantee, its successors or permitted assigns no longer use this Easement solely for public pedestrian passageway ingress to and egress from the City of Duluth skywalk system purposes this Easement shall terminate.

Grantee agrees to assume all risks of, and indemnify and hold harmless, and at the Grantee's expense, defend the Grantor from and against any claim, loss, cost, legal actions, liability or expense (including without limitation, attorneys' fees and costs of appeals) on account of personal injury to or death of any person whomsoever, including but not limited to employees of the Grantor, or damage to or destruction of property to whomsoever belonging, including but not limited to property of the Grantor, that arises out of or results from or is related to, partly or wholly, directly or indirectly, the Grantee's exercise of the rights herein granted. Notwithstanding the foregoing, nothing herein contained is to be construed as an indemnification by Grantee against the sole negligence of the Grantor, its officers, employees or agents.

Grantee also agrees to comply strictly with all applicable federal, state, county and municipal laws, rules, ordinances and regulations relating to all activities contemplated under this Easement. Such strict compliance shall include, but is not limited to, laws, rules, ordinances and regulations governing fire and prevention of fire, stream diversion and pollution, public health, permitting and licensing. Grantee hereby assumes, at its sole cost and expense, all obligations imposed upon Grantor by virtue of Grantee's exercise of its rights under this Easement.

The Easement hereby granted shall extend to and bind the successors and assigns of the parties hereto and shall run with the land. Notwithstanding the foregoing, Grantee shall not assign, in whole or

in part, its rights or obligations under this Easement without the prior written consent of Grantor, which consent shall be within Grantor's sole discretion.

IN TESTIMONY WHEREOF, the parties hereto have executed this Easement as of this _____ day of _____, 2019.

GRANTOR
Minnesota Power
a division of ALLETE, Inc.

By: _____

Its: _____

GRANTEE
CITY OF DULUTH:

By: _____
Its Mayor

Attest: _____
Its City Clerk
Date Attested: _____, 2019

Countersigned:

By: _____
Its Auditor

Approved as to form:

By: _____
Its City Attorney

[Acknowledgement on the following page]

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____ of Minnesota Power, a division of ALLETE, Inc., a Minnesota corporation.

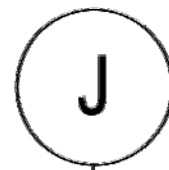
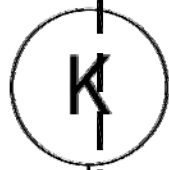
Notarial Stamp or Seal

Notary Public

This instrument was drafted by:
Minnesota Power, a division of ALLETE, Inc.
30 West Superior Street
Duluth, MN 55802

SUPERIOR STREET

EXISTING
DTA BUS
STOP



CU
VESTIBULE
146
146 SF

CU BREAK
149
145 SF

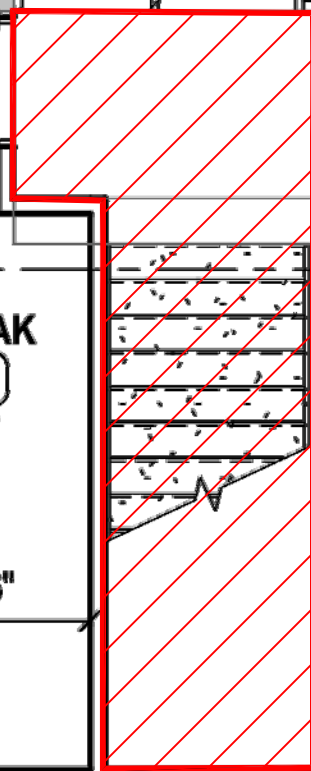
CU COMM
148
81 SF

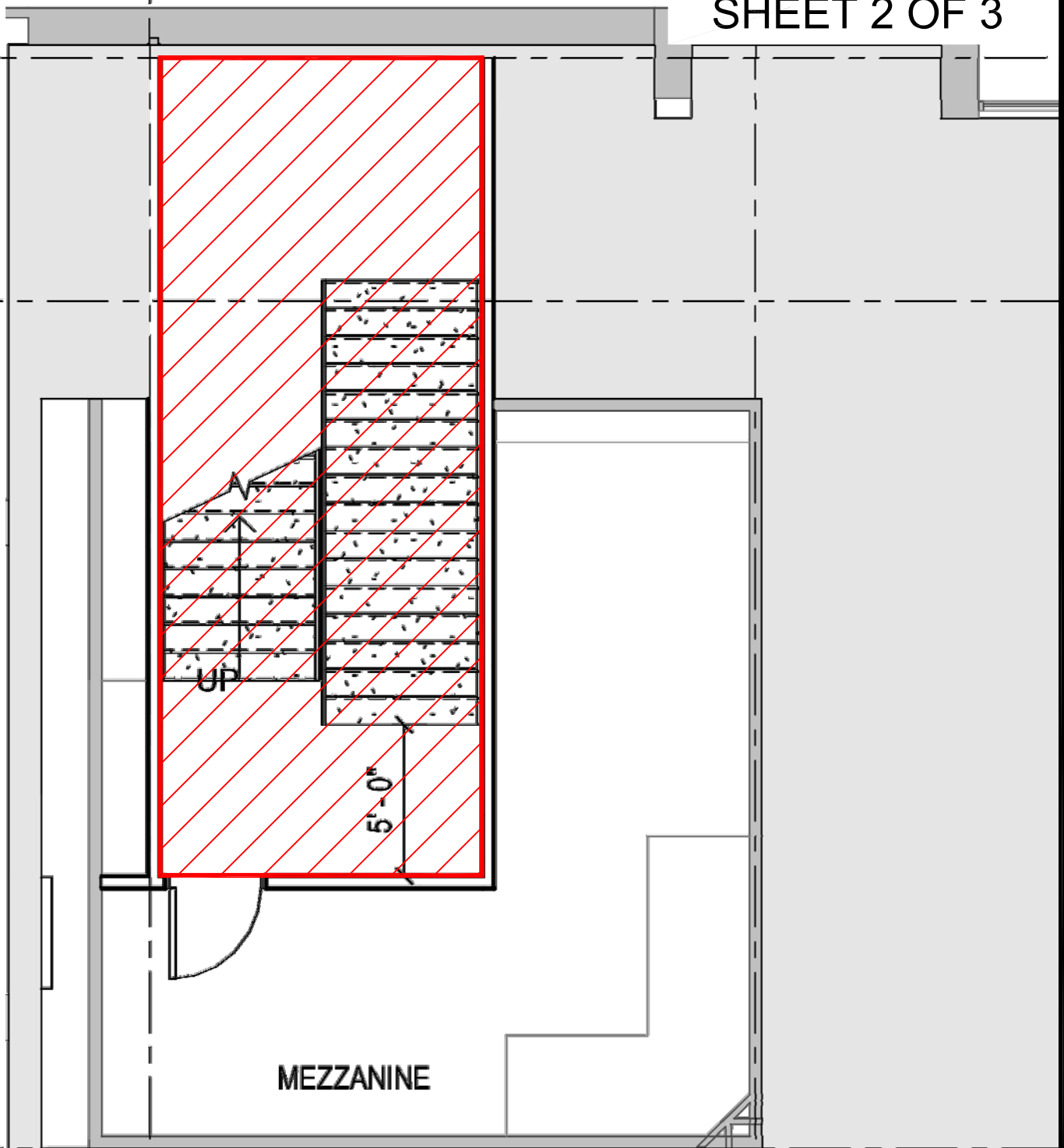
8' - 0 7/16"

PRELIMINARY FIRST FLOOR OF
GENERAL OFFICE BUILDING

CONFERENCE
147
323 SF

13' - 5 1/4"





PRELIMINARY MEZZANINE
LEVEL OF GENERAL OFFICE
BUILDING

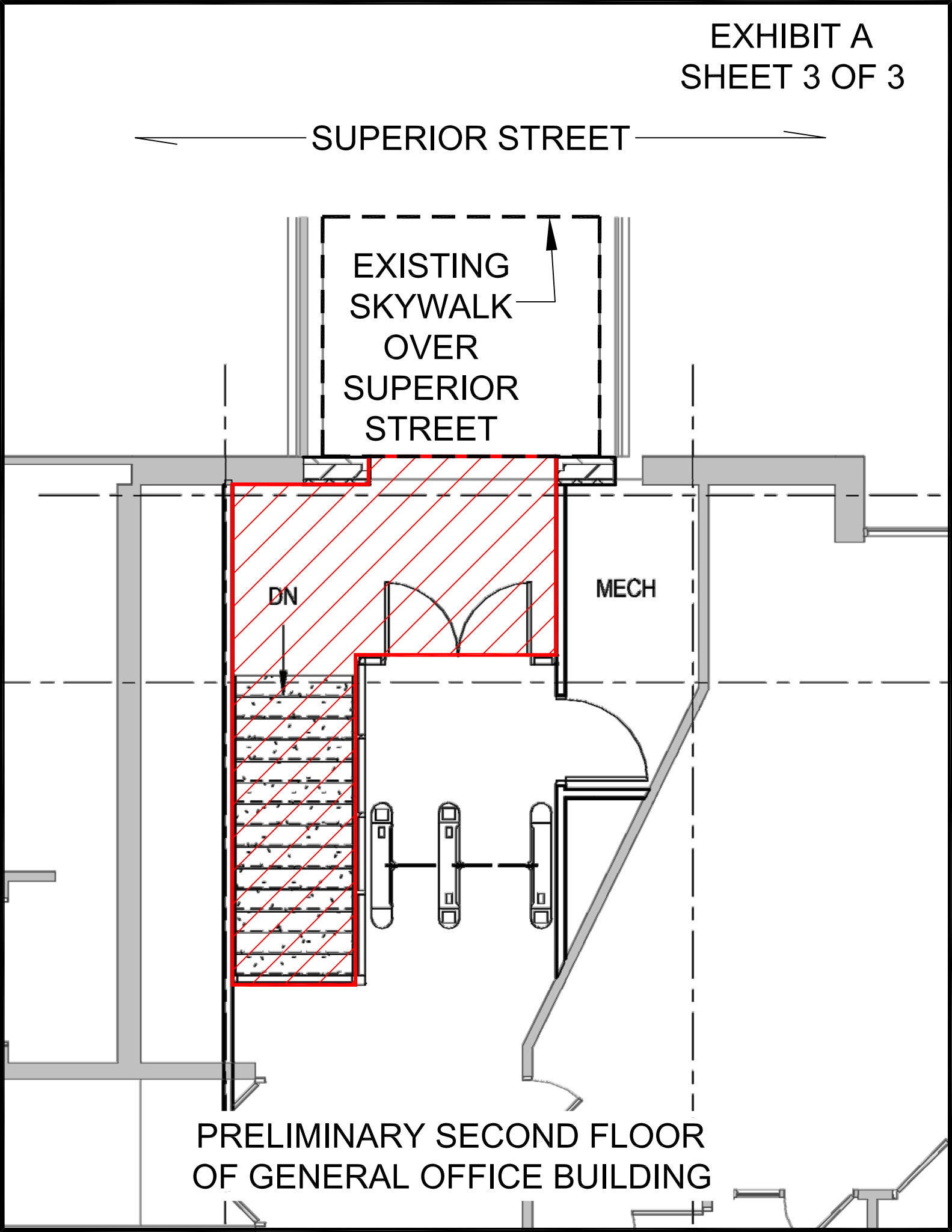
← SUPERIOR STREET →

EXISTING
SKYWALK
OVER
SUPERIOR
STREET

DN

MECH

PRELIMINARY SECOND FLOOR
OF GENERAL OFFICE BUILDING



EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that Minnesota Power a division of ALLETE, Inc., a Minnesota corporation ("Grantor"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant to City of Duluth, Minnesota a Minnesota municipal corporation, ("Grantee") an easement for public pedestrian passageway and plaza purposes,¹ subject to the terms and conditions contained herein, (the "Easement") across the following described land situated in St. Louis County, Minnesota:

The easement area conveyed by this document is at and above the Superior Street elevation on the property as described on Exhibit A, attached hereto and made a part hereof.

Subject to the terms of this Easement, Grantor grants to Grantee the right, privilege and easement to the easement area for public pedestrian passageway and plaza purposes. In furtherance of such purpose, Grantee and Grantor shall such rights and obligations as contained in that certain Amended and Restated Lake Avenue Plaza Development Agreement with an Effective Date of June 1, 2019.

It is agreed and understood by the parties hereto that this Easement is not to be construed as being granted to the exclusion of the Grantor, its successors or assigns. In the event that Grantee, its successors or permitted assigns no longer use this Easement solely for public pedestrian passageway and plaza purposes this Easement shall terminate.

Grantee agrees to assume all risks of, and indemnify and hold harmless, and at the Grantee's expense, defend the Grantor from and against any claim, loss, cost, legal actions, liability or expense (including without limitation, attorneys' fees and costs of appeals) on account of personal injury to or death of any person whomsoever, including but not limited to employees of the Grantor, or damage to or destruction of property to whomsoever belonging, including but not limited to property of the Grantor, that arises out of or results from or is related to, partly or wholly, directly or indirectly, the Grantee's exercise of the rights herein granted. Notwithstanding the foregoing, nothing herein contained is to be construed as an indemnification by Grantee against the sole negligence of the Grantor, its officers, employees or agents.

Grantee also agrees to comply strictly with all applicable federal, state, county and municipal laws, rules, ordinances and regulations relating to all activities contemplated under this Easement. Such strict compliance shall include, but is not limited to, laws, rules, ordinances and regulations governing fire and prevention of fire, stream diversion and pollution, public health, permitting and licensing.

¹ Original description of the Plaza easement (passageway purposes in 1977 deeds; plaza purposes in 1989 deed); would like to clarify.

Grantee hereby assumes, at its sole cost and expense, all obligations imposed upon Grantor by virtue of Grantee's exercise of its rights under this Easement.

The Easement hereby granted shall extend to and bind the successors and assigns of the parties hereto and shall run with the land. Notwithstanding the foregoing, Grantee shall not assign, in whole or in part, its rights or obligations under this Easement without the prior written consent of Grantor, which consent shall be within Grantor's sole discretion.

IN TESTIMONY WHEREOF, the parties hereto have executed this Easement as of this _____ day of _____, 2018.

GRANTOR
Minnesota Power
a division of ALLETE, Inc.

By: _____

Its: _____

GRANTEE
CITY OF DULUTH:

By: _____
Its Mayor

Attest: _____
Its City Clerk
Date Attested: _____, 2019

Countersigned:

By: _____
Its Auditor

Approved as to form:

By: _____
Its City Attorney

[Acknowledgement on the following page]

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____ of Minnesota Power, a division of ALLETE, Inc., a Minnesota corporation.

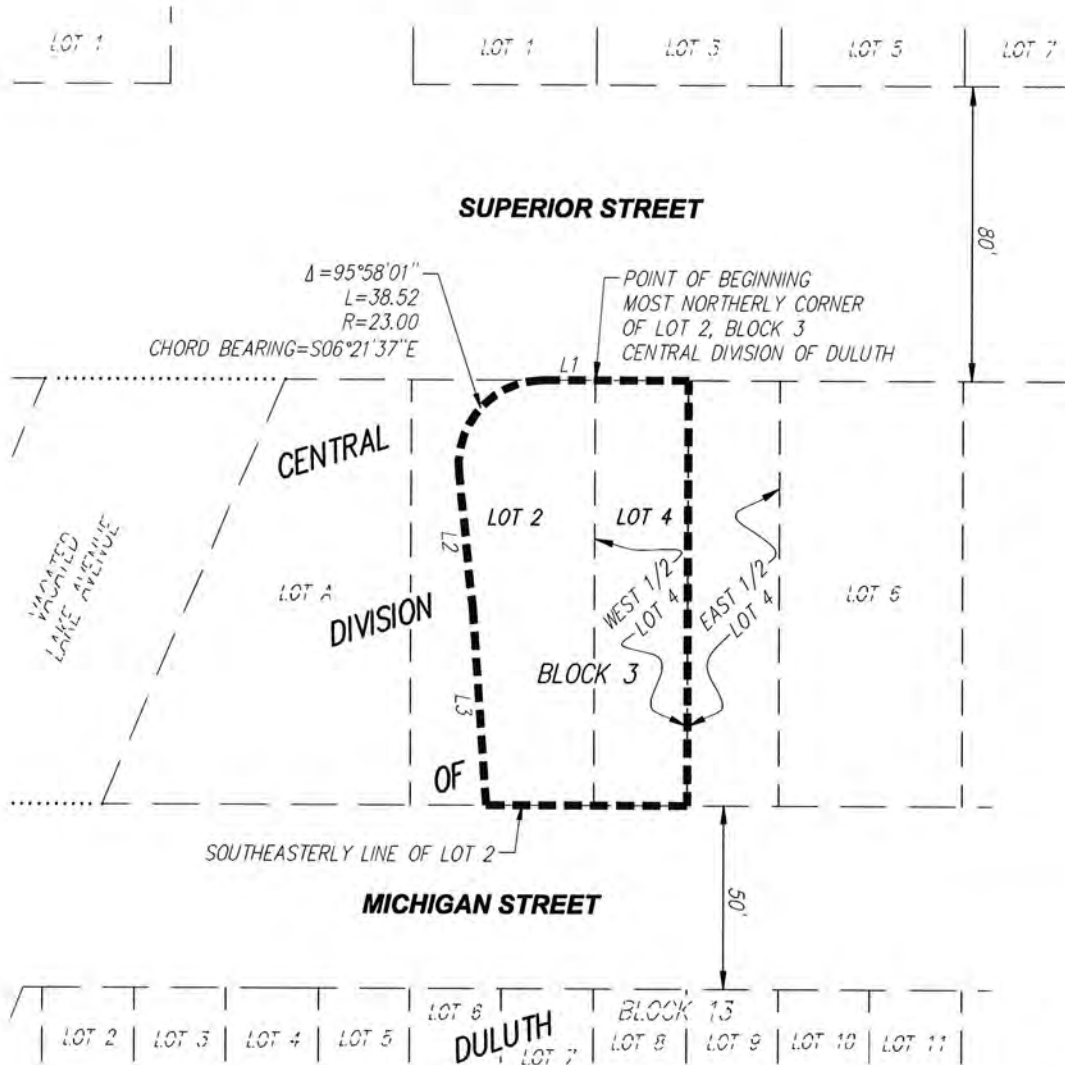
Notarial Stamp or Seal

Notary Public

This instrument was drafted by:
Minnesota Power, a division of ALLETE, Inc.
30 West Superior Street
Duluth, MN 55802

EXHIBIT A

EASEMENT FOR PUBLIC PEDESTRIAN PLAZA PURPOSES



LINE TABLE		
LINE	BEARING	LENGTH
L1	$S41^{\circ}37'41''W$	14.16
L2	$S54^{\circ}20'38''E$	36.41
L3	$S52^{\circ}32'54''E$	53.60



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: *Paul A. Vogel* Date: 04/11/2019

DATE PREPARED: 04/11/19
 PROJ NO: 160479
 FILE: 160479vEXHIB
 SHEET 1 of 2 SHEETS

LHB
**PERFORMANCE
 DRIVEN DESIGN.**
 LHBcorp.com

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

EXHIBIT A

EASEMENT FOR PUBLIC PEDESTRIAN PLAZA PURPOSES

DESCRIPTION:

THE WEST ONE-HALF (W 1/2) OF LOT 4, BLOCK 3, CENTRAL DIVISION OF DULUTH.

TOGETHER WITH

THAT PART OF LOT 2, BLOCK 3, CENTRAL DIVISION OF DULUTH LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 2, BLOCK 3, CENTRAL DIVISION OF DULUTH; THENCE SOUTH 41 DEGREES 37 MINUTES 41 SECONDS WEST, A DISTANCE OF 14.16 FEET; THENCE SOUTHEASTERLY A DISTANCE OF 38.52 FEET ALONG A TANGENTIAL CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 23.00 FEET AND A CENTRAL ANGLE OF 95 DEGREES 58 MINUTES 01 SECONDS; THENCE SOUTH 54 DEGREES 20 MINUTES 38 SECONDS EAST, A DISTANCE OF 36.41 FEET; THENCE SOUTH 52 DEGREES 32 MINUTES 54 SECONDS EAST, A DISTANCE OF 53.60 FEET TO THE SOUTHEASTERLY LINE OF SAID LOT 2 AND SAID LINE THERE TERMINATING.

CONTAINING 6,660 SQUARE FEET, MORE OR LESS.

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: 

Date: 04/11/2019

DATE PREPARED: 04/11/19

PROJ NO: 160479

FILE: 160479vEXHIB

SHEET 2 of 2 SHEETS



PERFORMANCE
DRIVEN DESIGN.
LHBcorp.com

21 W. Superior St., Ste. 500 | Duluth, MN 55802 | 218.727.8448

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that Minnesota Power a division of ALLETE, Inc., a Minnesota corporation ("Grantor"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant to City of Duluth, Minnesota a Minnesota municipal corporation, ("Grantee") an easement for public pedestrian passageway and plaza purposes,¹ subject to the terms and conditions contained herein, (the "Easement") across the following described land situated in St. Louis County, Minnesota:

The easement area conveyed by this document is at and above the Superior Street elevation on the property as described on Exhibit A, attached hereto and made a part hereof.

Subject to the terms of this Easement, Grantor grants to Grantee the right, privilege and easement to the easement area for public pedestrian passageway and plaza purposes. In furtherance of such purpose, Grantee and Grantor shall such rights and obligations as contained in that certain Amended and Restated Lake Avenue Plaza Development Agreement with an Effective Date of June 1, 2019.

It is agreed and understood by the parties hereto that this Easement is not to be construed as being granted to the exclusion of the Grantor, its successors or assigns. In the event that Grantee, its successors or permitted assigns no longer use this Easement solely for public pedestrian passageway and plaza purposes this Easement shall terminate.

Grantee agrees to assume all risks of, and indemnify and hold harmless, and at the Grantee's expense, defend the Grantor from and against any claim, loss, cost, legal actions, liability or expense (including without limitation, attorneys' fees and costs of appeals) on account of personal injury to or death of any person whomsoever, including but not limited to employees of the Grantor, or damage to or destruction of property to whomsoever belonging, including but not limited to property of the Grantor, that arises out of or results from or is related to, partly or wholly, directly or indirectly, the Grantee's exercise of the rights herein granted. Notwithstanding the foregoing, nothing herein contained is to be construed as an indemnification by Grantee against the sole negligence of the Grantor, its officers, employees or agents.

Grantee also agrees to comply strictly with all applicable federal, state, county and municipal laws, rules, ordinances and regulations relating to all activities contemplated under this Easement. Such strict compliance shall include, but is not limited to, laws, rules, ordinances and regulations governing fire and prevention of fire, stream diversion and pollution, public health, permitting and licensing.

¹ Original description of the Plaza easement (passageway purposes in 1977 deeds; plaza purposes in 1989 deed); would like to clarify.

Grantee hereby assumes, at its sole cost and expense, all obligations imposed upon Grantor by virtue of Grantee's exercise of its rights under this Easement.

The Easement hereby granted shall extend to and bind the successors and assigns of the parties hereto and shall run with the land. Notwithstanding the foregoing, Grantee shall not assign, in whole or in part, its rights or obligations under this Easement without the prior written consent of Grantor, which consent shall be within Grantor's sole discretion.

IN TESTIMONY WHEREOF, the parties hereto have executed this Easement as of this _____ day of _____, 2018.

GRANTOR
Minnesota Power
a division of ALLETE, Inc.

By: _____

Its: _____

GRANTEE
CITY OF DULUTH:

By: _____
Its Mayor

Attest: _____
Its City Clerk
Date Attested: _____, 2019

Countersigned:

By: _____
Its Auditor

Approved as to form:

By: _____
Its City Attorney

[Acknowledgement on the following page]

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____ of Minnesota Power, a division of ALLETE, Inc., a Minnesota corporation.

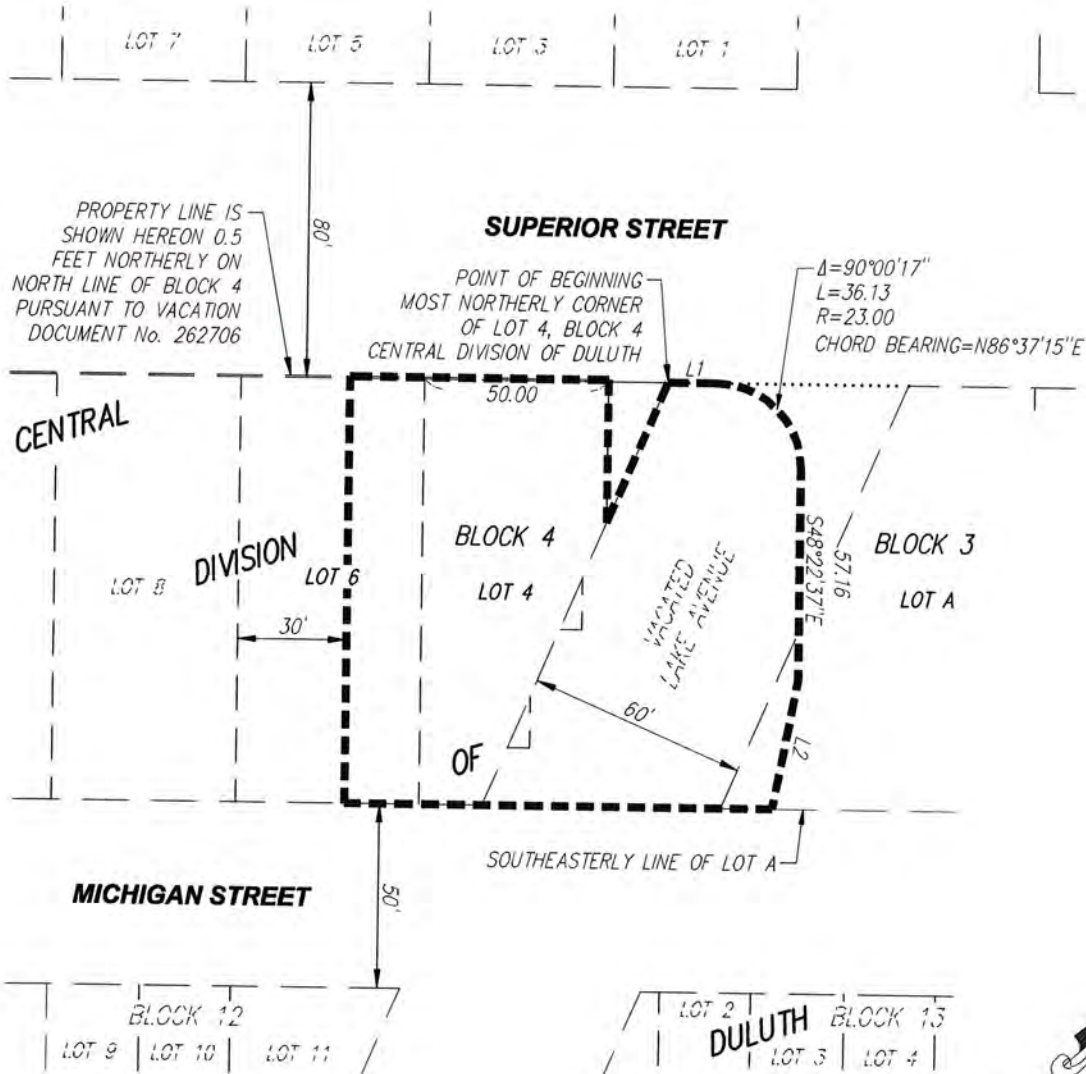
Notarial Stamp or Seal

Notary Public

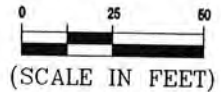
This instrument was drafted by:
Minnesota Power, a division of ALLETE, Inc.
30 West Superior Street
Duluth, MN 55802

EXHIBIT A

EASEMENT FOR PUBLIC PEDESTRIAN PLAZA PURPOSES



LINE TABLE		
LINE	BEARING	LENGTH
L1	S41°37'06\"W	13.53
L2	S37°34'36\"E	35.52



Basis of Bearing is Grid North,
St. Louis County Transverse
Mercator 98 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: *Paul A. Vogel* Date: 04/11/2019

DATE PREPARED: 04/11/19
PROJ NO: 160479
FILE: 160479vEXHIB
SHEET 1 of 2 SHEETS



PERFORMANCE
DRIVEN DESIGN.
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21 W. Superior St., Ste. 500 | Duluth, MN 55802 | 218.727.8448

EXHIBIT A

EASEMENT FOR PUBLIC PEDESTRIAN PLAZA PURPOSES

DESCRIPTION :

LOT 6, BLOCK 4, CENTRAL DIVISION OF DULUTH, EXCEPT THE WESTERLY 30.00 FEET THERE FROM.

TOGETHER WITH

LOT 4, BLOCK 4 OF CENTRAL DIVISION OF DULUTH, LYING WESTERLY OF A LINE DRAWN PARALLEL WITH THE BOUNDARY LINE BETWEEN SAID LOT 4 AND LOT 6 AND DISTANT IN A EASTERLY DIRECTION 50.00 FEET THERE FROM.

TOGETHER WITH

THAT PART OF VACATED LAKE AVENUE AND LOT A, BLOCK 3, CENTRAL DIVISION OF DULUTH LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 4, BLOCK 4, CENTRAL DIVISION OF DULUTH; THENCE SOUTH 41 DEGREES 37 MINUTES 06 SECONDS WEST, A DISTANCE OF 13.53 FEET; THENCE EASTERLY A DISTANCE OF 36.13 FEET ALONG A TANGENTIAL CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 23.00 FEET AND A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 17 SECONDS; THENCE SOUTH 48 DEGREES 22 MINUTES 37 SECONDS EAST, A DISTANCE OF 57.16 FEET; THENCE SOUTH 37 DEGREES 34 MINUTES 36 SECONDS EAST, A DISTANCE OF 35.52 FEET TO THE SOUTHEASTERLY LINE OF SAID LOT A AND SAID LINE THERE TERMINATING.

CONTAINING 13,650 SQUARE FEET, MORE OR LESS.

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: 

Date: 04/11/2019

DATE PREPARED: 04/11/19

PROJ NO: 160479

FILE: 160479vEXHIB

SHEET 2 of 2 SHEETS



PERFORMANCE
DRIVEN DESIGN.
LHBcorp.com

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

From: [Terri Alexander](#)
To: [Kyle Deming](#)
Cc: [Cindy Stafford](#)
Subject: MN Power Vacation Matter PL 19-042
Date: Tuesday, May 14, 2019 12:54:54 PM

President Janet Kennedy and Commissioners:

My husband and I live at 3 1/2 West Superior Street and are in support of the proposed MN Power vacations. We do have concerns, however, about the subsequent new user agreement for the plaza not being available to review at the time the vacations are being considered.

The upper side of West Superior Street on the block in question has at least six residential units which are across the street from MN Power and the plaza, so the use and maintenance of the plaza has a direct affect on the quality of life for adjacent residents. Though the area is zoned F-7, there is no explicit mention that that designation includes residentially zoned living spaces.

Under the existing user agreement, Oneida has done an excellent job of maintaining the plaza. In the past year or so, there has been a marked increase in the number of people who panhandle, loiter, and sleep in the plaza and/or adjacent sidewalks and intersection, and the associated challenges that can come with those activities.

We would like to see the new user agreement include the same or similar level of maintenance and care as the existing agreement. We would also like this to be included as a condition of the vacation approval.

Thank you for your consideration,
Terri Alexander