

EXHIBIT 1

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this “**Easement Agreement**”) is made and entered into as of this _____ day of _____, 2017, by and between Gateway Properties, LLLP, a Minnesota limited liability limited partnership existing under the laws of the State of Minnesota (hereinafter referred to as “**Grantor**”) and the City of Duluth, Minnesota, a municipal corporation existing under the laws of Minnesota (hereinafter referred to as “**Grantee**”).

WHEREAS, Grantor is the owner of the real property (the “**Premises**”) located in the City of Duluth, St. Louis County, Minnesota, commonly known as Gateway Towers Apartments, which Premises is legally described on Exhibit A attached hereto and incorporated herein; and

WHEREAS, Grantor desires to receive Thermal Energy Service (the “**Thermal Energy Service**”) from the district heating system (hereinafter referred to as the **District Energy System**) owned by Grantee for heating and other purposes at the building located on the Premises; and

WHEREAS, in order for Grantee to provide the Thermal Energy Service to the Premises, certain piping, equipment and other appurtenances owned by Grantee thereto (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 Thermal Energy Service, Grantor and Grantee are entering into a certain Thermal Energy Service Agreement (the “**Service Agreement**”), pursuant to which Grantee shall agree to provide the Thermal Energy Service to the Premises in consideration of Grantor agreeing to certain obligations which shall 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 Thermal Energy 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/legally described in Exhibit B attached hereto and incorporated herein (the "**Easement Property**") for the construction, installation, inspection (including reading of meters), 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 Easement Property 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 Easement Property depicted in Exhibit B.

3. Repair and Restoration; Compliance with Laws. Grantee shall repair or restore that part of the Easement Property disturbed by Grantee in the course of its permitted 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 in the Easement Area shall be performed in compliance with all laws, rules, regulations, orders and ordinances of the governmental authorities having jurisdiction.

4. Indemnification. 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 Easement Area 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) arising out of: (a) any failure by Grantor to provide access to the Premises to Grantee as required under this Easement Agreement, or (b) negligence or misconduct by Grantor in its maintenance of the Premises.

Notwithstanding anything contained herein, should this Easement be assigned by the Grantee to a non-public entity, it is agreed that:

- (i) The Minnesota Municipal Liability Tort Act shall no longer be applicable.
- (ii) 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 interest in the Easement Property conveyed 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: Gateway Properties, LLLP
c/o 105 ½ West First Street
Duluth, MN 55802
Attn: Mr. Rick Klun

With Copy to: Mr. William M. Burns
Attorney at Law
130 West Superior Street
1000 U.S. Bank Place
Duluth, MN 55802

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.

[Remainder of this page is intentionally left blank. Signature pages to follow.]

IN WITNESS WHEREOF, the parties have each caused this Easement Agreement to be executed effective as of the date first written above.

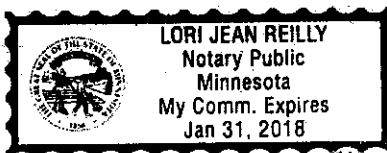
GRANTOR:

Gateway Properties, L.L.P.

By: _____

Name: Rick Klun, as Co-Chief Manager of
Gateway Redeveloper, LLC
Its: Managing General Partner

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



The foregoing instrument was acknowledged before me this 13th day of MARCH, 2017, by Rick Klun, as Co-Chief Manager of Gateway Redeveloper, LLC, a Minnesota limited liability company, the Managing General Partner of Gateway Properties, LLLP, a Minnesota limited liability limited partnership existing under the laws of the State of Minnesota, on behalf of such limited liability limited partnership.

Notary Public

GRANTEE:
CITY OF DULUTH

By: _____
Emily Larson, Its Mayor

Attest:

By: _____
City Clerk

Approved:

By: _____
Assistant City Attorney

Countersigned:

By: _____
City Auditor

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

The foregoing was acknowledged before me this ____ day of _____ 2017, by
_____, the _____ of the City of Duluth, a
municipal corporation existing under the laws of Minnesota.

Notary Public

This instrument was drafted by:

Catherine Baker
Assistant City Attorney
City of Duluth
411 W. First St.
Duluth, MN 55802

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Lots 98, 100, 102 and 104 Block 3, DULUTH PROPER THIRD DIVISION

EXHIBIT B


LEGAL DESCRIPTION FOR STEAM LINE EASEMENT

An easement for steam line purposes lying over, under and across part of Lots 98, 100, 102 and 104, Block 3, DULUTH PROPER THIRD DIVISION, according to the recorded plat thereof, St. Louis County, Minnesota, said steam line easement is herein described:

Beginning at the Southeasterly corner of said Lot 98, Block 3; thence on an assumed bearing of North 48 degrees 18 minutes 32 seconds West, along the Northeasterly line of said Lot 98, Block 3 for a distance of 3.00 feet; thence South 41 degrees 33 minutes 59 seconds West, along a line which is parallel with and distant 3.00 feet Northeasterly of the Southeasterly line of said Block 3 for a distance of 39.03 feet; thence North 58 degrees 55 minutes 34 seconds West 16.36 feet; thence North 84 degrees 51 minutes 04 seconds West 94.76 feet; thence South 43 degrees 54 minutes 02 seconds West 58.98 feet; thence North 48 degrees 18 minutes 32 seconds West, along a line which is parallel with and distant 157.40 feet Southwesterly from the Northeasterly line of said Lot 98, Block 3 for a distance of 25.44 feet to a line which is parallel with and distant 3.00 Northwesterly of the Northwesterly line of said Block 3; thence South 41 degrees 33 minutes 59 seconds West, along said parallel line 11.60 feet; thence South 48 degrees 18 minutes 32 seconds East, along a line which is parallel with and distant 169.00 feet Southwesterly of the Northeasterly line of said Lot 98, Block 3 for a distance of 40.34 feet, more or less, to the face the existing building wall; thence North 41 degrees 33 minutes 59 seconds West, along said face of the existing building wall 11.60 feet; thence North 48 degrees 18 minutes 32 seconds West, along a line which is parallel with and distant 157.40 feet Southwesterly of the Northeasterly line of said Lot 98, Block 3 for a distance of 11.89 feet; thence North 43 degrees 54 minutes 02 seconds East, 57.43 feet; thence South 84 degrees 51 minutes 04 seconds East, 92.63 feet; thence South 58 degrees 55 minutes 34 seconds East, 18.16 feet to the Southeasterly line of said Block 3; thence North 41 degrees 33 minutes 59 seconds East, along said Southeasterly line of Block 3 for a distance of 41.52 feet to the point of beginning and there terminating.

Said steam line easement contains 1096 square feet.

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.

David R. Evanson

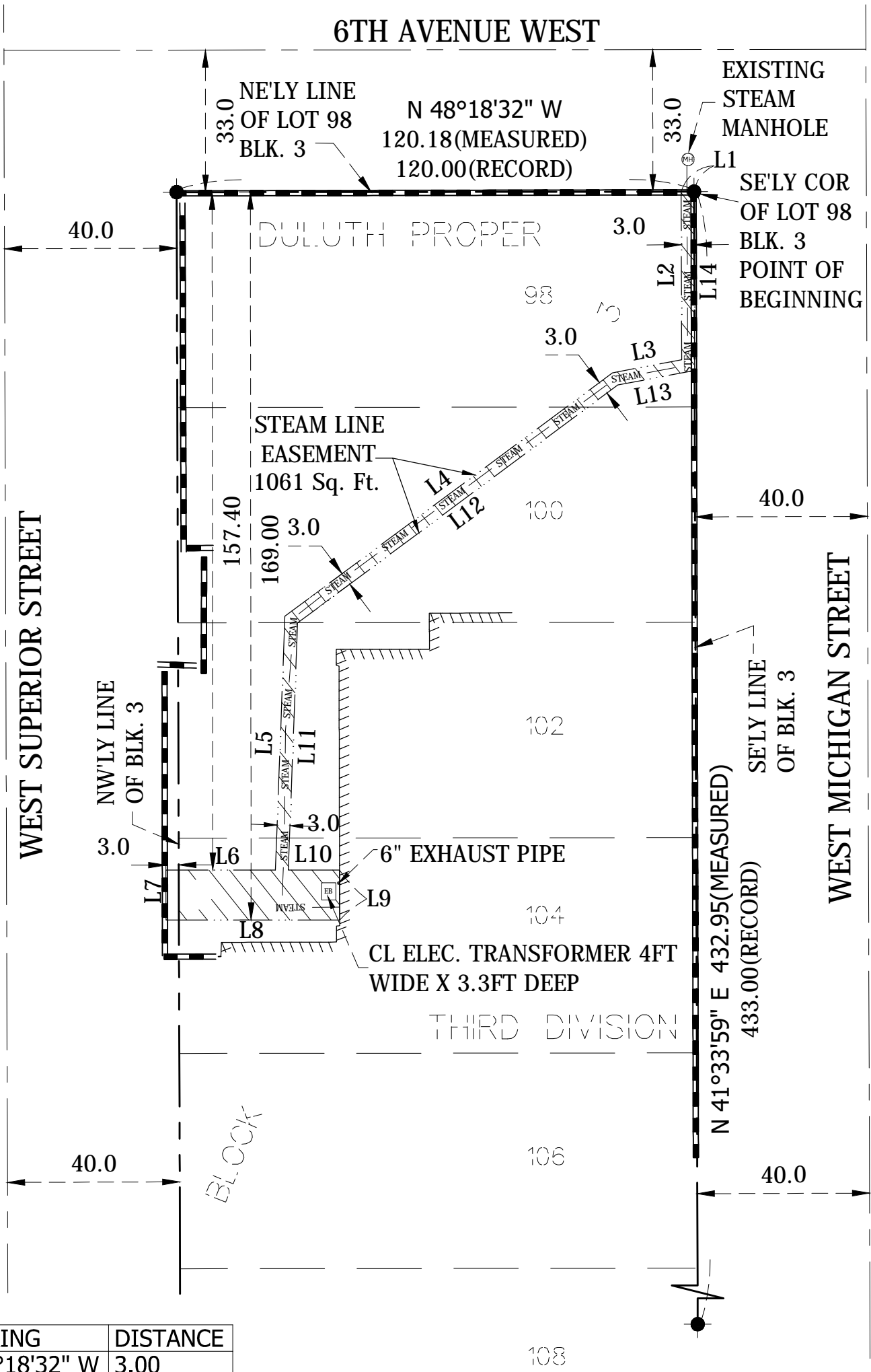
STEAM LINE EASEMENT EXHIBIT	
CLIENT: DULUTH ENERGY	REVISIONS: 3-22-17 ENLARGE LEGAL
DATE: 1-20-2017	DESC TEXT
ADDRESS: 600 WEST SUPERIOR STREET DULUTH, MN	
JOB NUMBER: 17-003	



LAND SURVEY COMPANY

* LAND SURVEYING
* LAND DEVELOPMENT
* PLATTING
* LEGAL DESCRIPTIONS
* CONSTRUCTION STAKING

PHONE: 218-727-5211
LICENSED IN MN & WI
CERTIFIED FEDERAL SURVEYOR
WWW. ALTALANDSURVEYDULUTH.COM



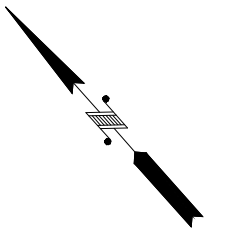
LINE	BEARING	DISTANCE
L1	N 48°18'32" W	3.00
L2	S 41°33'59" W	39.03
L3	N 58°55'34" W	16.36
L4	N 84°51'04" W	94.76
L5	S 43°54'02" W	58.98
L6	N 48°18'32" W	25.44
L7	S 41°33'59" W	11.60
L8	S 48°18'32" E	40.34
L9	N 41°33'59" E	11.60
L10	N 48°18'32" W	11.89
L11	N 43°54'02" E	57.43
L12	S 84°51'04" E	92.63
L13	S 58°55'34" E	18.16
L14	N 41°33'59" E	41.52

SURVEYORS NOTES

- THIS IS NOT A BOUNDARY SURVEY.
- BEARINGS ARE BASED ON THE ST. LOUIS COUNTY TRANSVERSE MERCATOR COORDINATE SYSTEM OF 1996.
- BUILDING DIMENSIONS SHOWN ARE FOR HORIZONTAL & VERTICAL PLACEMENT OF STRUCTURE ONLY.
- THIS SURVEY HAS BEEN PREPARED WITHOUT BENEFIT OF A TITLE COMMITMENT OR TITLE OPINION. A TITLE SEARCH FOR RECORDED OR UNRECORDED EASEMENTS WHICH MAY BENEFIT OR ENCUMBER THIS PROPERTY HAS NOT BEEN COMPLETED BY ALTA LAND SURVEY COMPANY.

LEGEND

- FOUND MAG NAIL WITH DISK RLS. NO. 44075
- STEAM LINE EASEMENT
- EASEMENT LINE
- EXISTING STEAM LINE
- EXISTING BUILDING WALL
- EXISTING RETAINING WALL



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.

David R. Evanson
David R. Evanson

Date: 1-20-2017

MN Lic. No. 49505

STEAM LINE EASEMENT EXHIBIT

CLIENT: DULUTH ENERGY	REVISIONS: 3-22-17 ENLARGE LEGAL DESC TEXT
DATE: 1-20-2017	
ADDRESS: 600 WEST SUPERIOR STREET DULUTH, MN	
JOB NUMBER: 17-003	

ALTA

LAND SURVEY COMPANY

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