

## **LEASE AGREEMENT SECOND LEVEL**

THIS LEASE AGREEMENT ("Lease"), effective as of the date of attestation by the City Clerk, is entered into by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota ("Landlord") and THE LAKEVIEW AT 333 SUPERIOR PARKING, LLC, a Delaware limited liability company ("Tenant").

WHEREAS, Landlord owns the second floor level of the Medical District Parking Ramp located at 302 East First Street in Duluth, Minnesota; and

WHEREAS, the Duluth Economic Development Authority ("DEDA") and Northstar Development Interests, LLC which is a member of Tenant, ("Developer") entered into a Development Agreement, which will be assigned to Tenant, pursuant to which Tenant will construct a project which includes the development/redevelopment of property adjacent to and downhill from the Medical District Parking Ramp into a fifteen story multi-family residential and mixed use development (the "Project") with tax increment financial assistance being provided by DEDA; and

WHEREAS, Tenant desires to lease a portion of the second level of the Medical District Parking Ramp for purposes of providing parking for the Project's residential tenants, and retail and/or commercial tenants and their customers; and

WHEREAS, Landlord desires to cooperate and assist Tenant with such parking and to lease the Premises (defined below) to Tenant;

NOW, THEREFORE, in consideration of the rent and mutual covenants and conditions hereinafter contained, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **1     Premises**

- 1.1 On the Commencement Date defined below, Landlord leases to Tenant sixty-five (65) contiguous parking spaces on the second floor level of the Medical District Parking Ramp generally in the location shown on the attached Exhibit A (the "Premises"). Prior to the Commencement Date defined below, Landlord and Tenant shall agree to the exact location of the Premises which shall be memorialized on Exhibit A-1 to be attached to this Lease Agreement and incorporated herein. Notwithstanding the foregoing, Tenant may adjust the number of parking spaces comprising the Premises (provided that in no event will the Premises be more than 65 or less than 45 parking spaces) on an annual basis upon sixty (60) days' prior written notice to Landlord, and the Base Rent and Additional Rent as provided in Section 3 below shall be adjusted accordingly.
- 1.2 Landlord represents that to the best of its knowledge, the Premises are in good working order and have been maintained consistent with City of Duluth practices for City owned parking facilities.

- 1.3 Prior to the execution this Lease Agreement, Tenant was provided a copy of the 2019 Annual Structural Condition Report for the Medical District Parking Ramp prepared by Palanisami & Associates, Inc. dated January 7, 2019, and based on said report and Tenant's inspection of the Premises, Tenant accepts the Premises as is and where is.

## 2 Term

2.1 Tenant will have and hold the Premises for the initial term of fifteen (15) years commencing on a date selected by Tenant and for which Tenant has provided Landlord sixty (60) days' prior written notice, but in no event sooner than September 1, 2020, or later than January 1, 2022 (the "Commencement Date") and continuing through the date which is fifteen (15) years from the Commencement Date (the "Termination Date"). If said Termination Date does not fall on the last day of a month, the Termination Date shall be the last day of the month that includes the 15<sup>th</sup> anniversary of the Commencement Date. This Lease shall terminate at 11:59 P.M. on the Termination Date. The period beginning on the Commencement Date and ending on the Termination Date shall be the "Initial Term." Notwithstanding anything to the contrary contained herein, if Tenant has not completed construction of the Project and received a certificate of occupancy by September 30, 2021 (the "Completion Deadline"), Tenant shall have the right to terminate this Lease by providing written notice to Landlord on or prior to the Completion Deadline, and this Lease shall be of no further force or effect as of the termination date stated in such notice, except for those provisions which survive termination.

2.2 Provided no Event of Default has occurred and is continuing, the Initial Term of the Lease shall be automatically extended for four (4) additional five-year periods (each five-year period is an "Extension Term") unless Tenant provides written notice to Landlord of its desire to terminate this Lease at least nine (9) months prior to the Termination Date or any termination date of any Extension Term. The Initial Term and the Extension Terms, if any, shall collectively be the "Term". This Lease shall continue during any Extension Term in accordance with the terms and provisions hereof then in effect. At least (9) months prior to the end of the final Extension Term, Tenant shall notify Landlord if Tenant desires to extend the Term of this Lease beyond the Extension Term. In such event and provided no Event of Default has occurred and is continuing, the parties agree to meet in good faith to negotiate an extension to this Lease.

## 3 Rent and Other Fees

3.1 Beginning on the Commencement Date, Tenant shall pay fixed annual rent in advance in the amount of Thirty-five Thousand One Hundred and no/100ths Dollars (\$35,100.00), payable into Fund 505-015-1480-2512-4374-04 (Parking Fund, Public Administration, Off Street Parking, Medical District Ramp, Contract Parking – Long Term Lease (the "Base Rent"). Beginning on the 1st anniversary of the Commencement Date, Base Rent shall increase annually by a percentage equal to the average of the Consumer Price Index (as hereinafter defined) calculated annually on the anniversary month of the Commencement Date for the preceding ten (10) years (the "CPI Adjustment"), Notwithstanding anything to the contrary contained herein, the CPI Adjustment shall not

be greater than 3% or less than 1% annually. For purposes hereof, "Consumer Price Index" shall mean the index number published by the United States Department of Labor, Bureau of Labor Statistics (the "Bureau") for All Urban Consumers for the US City Average in the "Monthly Labor Review" of the Department of Labor. In the event the Bureau ceases publishing the Consumer Price Index, the CPI Adjustment shall be made by resort to comparable statistics on the purchasing power of the consumer dollar in Duluth, or if not available then in the United States, as published. The Tenant shall pay the Base Rent at the address of the Landlord set out below, or at such other place as the Landlord may direct in writing, annually in advance on the anniversary of the Commencement Date each year thereafter until the end of the Term. Payment of the Base Rent shall be made by certified check, money order, or wire. If the final day of the Term occurs prior to a calendar year anniversary of the Commencement Date, then Base Rent and any additional sums due hereunder shall be prorated for the actual number of days from the last calendar year anniversary of the Commencement Date to the final day of the Term.

3.2 In addition to the above, Tenant shall pay any Taxes (as hereinafter defined) levied, assessed, or otherwise imposed regarding the Premises. Taxes billed directly to Tenant by any governmental authority shall be paid in the time and manner set forth by said authority. Tenant shall pay Taxes billed to Landlord at the same time and in the same manner as the Base Rent upon reasonable notice of the amount of such Taxes to Tenant.

3.3 For the purposes of this Lease, "Taxes" means (i) any transaction value, ad valorem or sales taxes required by any governmental authority to be collected or paid (or both collected and paid) by Tenant, and (ii) all real property, school, local improvement, business and all other taxes, rates, charges, duties, assessments and impositions, both general and special, that may be levied, rated, charged or assessed by any governmental authority with respect to the Premises and its use, including all improvements in existence upon the Premises on the Commencement Date.

3.4 For purposes of this Lease, the payments to be made by Tenant pursuant to Sections 3.2, 3.3 and 5.2 shall be "Additional Rent". The Base Rent and the Additional Rent shall collectively be the "Rent".

#### 4 Tenant's Covenants

##### 4.1 Tenant covenants with Landlord:

- (a) to pay the Base Rent in the manner provided in this Lease;
- (b) to pay the Taxes in the manner provided for in this Lease;
- (c) to pay for the cost of repairs as provided for in Section 5.2 of this Lease;
- (d) to use the Premises solely for the purpose of parking for Tenant's residential tenants, and retail and/or commercial tenants and their customers, representatives, contractors, agents or invitees;

- (e) to not alter or damage any structural components or infrastructure of the Medical District Parking Ramp including but not limited to columns, walls, asphalt floor, pipes, electrical or mechanical systems;
- (f) to permit Landlord and its agents to enter upon the Premises at all times to maintain or repair structural components, infrastructure or utilities, to conduct the annual ramp inspection, and to inspect and review the condition of the Premises;
- (g) not to carry on, or allow to be carried on, any business on the Premises that would constitute a nuisance;
- (h) at the expiration or sooner termination of the Term, to deliver the Premises to Landlord in a condition comparable to similar paved parking ramp properties owned by Landlord in the City of Duluth, reasonable wear and tear of the use of the Premises excepted.
- (i) (i) to the extent allowed by law, to defend, indemnify and hold Landlord, its officers, agents and employees, harmless from and against all liabilities, damages, losses, expenses, claims, fines, or judgments, including reasonable attorneys' fees and expenses incidental thereto, by reason of loss of, or damage to, property, or injury or death of any person, or other legal liability under, or by reason of, any breach, violation, or non-performance by Tenant, or its officers, agents, employees, contractors, tenants or invitees, arising out of this Lease, and (ii) to the extent allowed by law, to defend, indemnify and hold Landlord, its officers, agents and employees, harmless from and against all liabilities, damages, losses, expenses, claims, fines, or judgments, including reasonable attorneys' fees and expenses incidental thereto, by reason of loss of, or damage to, property, or injury or death of any person, or other legal liability arising out of or by reason of the negligence or acts or omissions of Tenant related to the occupancy or use of the Premises by Tenant, or its officers, agents, employees, contractors, tenants or invitees. Notwithstanding anything to the contrary contained herein, Tenant's obligation hereunder to defend, indemnify and hold Landlord, its officers, agents and employees, harmless and/or pay liabilities, damages, losses, expenses, claims, fines or judgments, including Landlord's reasonable attorneys' fees and expenses with respect to only negligence claims, and specifically excluding claims arising out of gross negligence or intentional acts or omissions, are limited to the amount of insurance that is recovered from what Tenant is required to provide pursuant to Section 4(k), but only if such insurance complying with the requirements of said section is in force.
- (j) to be responsible in all aspects, including but not limited to any fines assessed, for the use of or generation of any substance classified or considered as "hazardous waste", or "toxic" or controlled by either the Environmental Protection Agency of the Government of the United States or the Minnesota Pollution Control Agency. Tenant shall specifically be responsible for the proper disposition of all such waste or substances and in

compliance with all applicable laws and for the cleanup (including remediation and removal) of any environmental condition deemed by those agencies or either of them to require environmental cleanup activities of any kind which need arises, directly or indirectly, out of the operation or activities of Tenant or its officers, agents, employees, contractors, tenants or invitees or the use or occupation by Tenant or its officers, agents, employees, contractors, tenants or invitees of the Premises; and Tenant specifically agrees that the obligations of Section 4.1 (i) above shall apply specifically to any costs or obligations of Landlord arising out of any such disposition or cleanup;

- (k) to obtain and keep in force during the Term commercial general liability insurance and business automobile liability insurance, providing for liability for premises, operations, completed operations, independent contractors, contractual liability, owned and/or leased automobile liability, non-owned and hired automobile liability, against claims for bodily injury, personal injury, death or property damage arising out of the use of the Premises, its officers, agents, employees, contractors, tenants or invitees in an amount per occurrence of not less than \$5,000,000 and to provide Landlord with certificates evidencing such insurance prior to the Commencement Date of this Lease and upon request thereafter, and to keep such certificates evidencing the existence of insurance complying with the requirements of this Agreement current at all times during the term of this Agreement. The failure to so keep such certificates current shall constitute a material breach of this Agreement by Tenant. Additionally, upon request, Tenant shall provide Landlord copies of insurance policies. Such insurance will be primary and not call into contribution any insurance held by Landlord; will provide 30 days' notice of cancellation, non-renewal or material change; will be taken out and maintained in responsible insurance companies organized under the laws of the United States and licensed to do business in the State of Minnesota; will name Landlord as an additional insured; will contain a cross-liability clause and a waiver of the insurer's right of subrogation against Landlord and its respective officers, employees and agents. Tenant shall also provide workers' compensation insurance in accordance with the laws of the State of Minnesota. Landlord reserves the right to require Tenant to increase the coverages set forth above and to provide evidence of such increased insurance coverage to the extent that the liability limits as provided in Minnesota Statute Section 466.04 are increased. Landlord does not represent or guarantee that these types or limits of coverage are adequate to protect Tenant's interests and liabilities. It is understood that the specified amounts of insurance stated in this paragraph shall in no way limit the liability of Tenant under Sections 4.1(i) and (j); and
- (l) promptly upon execution of this Lease, to record this Lease in the Offices of the St. Louis County Recorder and the Registrar of Titles and to pay all costs associated therewith. Upon recordation, Developer shall promptly submit to DEDA an executed original of this Lease showing the date and document numbers of record, or a certified copy of the filed original.

## 5 Landlord's Covenants

5.1 Landlord covenants with Tenant that, upon Tenant paying the Rent and performing the other obligations of Tenant under this Lease, Landlord will allow Tenant to peaceably and quietly have, hold and enjoy the Premises during the Term.

5.2 Landlord shall be responsible for the maintenance and repair of the Premises and the Medical District Parking Ramp except for those areas of the Premises and the Medical District Parking Ramp for which it is not contractually responsible for the maintenance and repair. In the event repairs are necessary as a result of the negligent or intentional acts of Tenant, its officers, agents, employees, contractors, tenants or invitees, Tenant shall be responsible for the cost of such repairs to be paid by Tenant upon invoice therefor. All maintenance and repairs of Landlord shall be done in a good and workmanlike manner and shall not unreasonably interfere with Tenant's use and enjoyment of the Premises. If such repairs or maintenance require limiting access of Tenant's residential, retail, and/or commercial tenants, or of Tenant's representatives, contractors, agents or invitees, to any portion of the Premises for more than 7 days (an "Extended Closure"), Landlord shall provide Tenant parking spaces equal to the number of those displaced by Landlord for such repairs or maintenance in another portion of the Medical District Parking Ramp or in another location, and Landlord shall use its best efforts to locate said parking in close proximity to the Premises. Landlord shall provide Tenant at least fifteen (15) days' written notice prior to the commencement date of any Extended Closure together with the location and parameters of access for any relocated parking and the anticipated duration of such Extended Closure, to the extent such Extended Closure is not caused by an emergency which, in the reasonable judgment of Landlord, threatens public safety or the structural integrity of the Medical District Parking Ramp requiring an immediate Extended Closure (an "Emergency Extended Closure"). In the event of an Emergency Extended Closure, Landlord will give Tenant notice of the same as soon as practicable. Notwithstanding anything to the contrary contained herein, except for an Emergency Extended Closure, Landlord shall not perform more than two (2) Extended Closures of all or any portion of the Premises in any calendar year.

5.3 To the extent allowed by law, Landlord agrees to defend, indemnify and hold Tenant, its officers, agents and employees, harmless from and against all liabilities, damages, losses, expenses, claims, fines, or judgments, including reasonable attorneys' fees and expenses incidental thereto, by reason of loss of or damage to property, or injury or death of any person, or other legal liability arising out of or by reason of any breach, violation, or nonperformance by Landlord or its officers, agents, employees or contractors of any covenant, condition or obligation under the Lease, or arising out Landlord's ownership of the Premises, or from any activity, work or thing done or authorized by Landlord on or about the Premises.

## 6 Conditions and Rights

6.1 Events of Default. Each of the following shall be an "Event of Default" by Tenant: (i) If Tenant files a petition of bankruptcy, or makes an assignment for the benefit of creditors, or if Tenant is adjudicated bankrupt or insolvent, or (ii) if Tenant files any petition

or institutes any proceeding under any insolvency or bankruptcy legislation seeking to effect a reorganization or a composition, or (iii) if a receiver or trustee of the Premises is appointed by Tenant, or (iv) if the leasehold estate created by this Lease is taken in execution or by any process of law, or (v) if Tenant, without the written consent of Landlord, abandons the Premises, or (vi) if Tenant fails to pay Rent when due and such failure shall continue for five (5) business days after written notice to Tenant (a "Payment Default"), or (vii) if the Premises, without the written consent of Landlord, become and remain vacant for a period of forty-five (45) days, or (viii) if a breach or non-performance of any of the other covenants or obligations contained in this Lease on the part of Tenant has not been rectified within forty-five (45) days of written notice to Tenant (or where such default cannot reasonably be rectified within forty-five (45) days, such additional time as may be reasonably required to remedy such default).

6.2. Landlord's Remedies. Upon an Event of Default, Landlord shall have the right: (i) to bring suit for the collection of such unpaid Rent or for the performance of such other covenant of this Lease on Tenant's part to be performed; and/or (ii) without waiving any non-monetary default, may (but shall not be obligated to) perform any covenant which is capable of being remedied by the performance of affirmative acts for the account and at the reasonable expense of Tenant, in which event, Tenant shall pay to Landlord within thirty (30) days after demand, as Additional Rent, the reasonable cost or amount thereof; and/or (iii) if a Payment Default, and subject to Section 6.3 below, to terminate this Lease, whereupon Landlord shall have and retain full right to sue for and collect all unpaid Rent which shall have accrued up to the date of termination, and Tenant shall surrender and deliver the Premises to Landlord, failing which, Landlord shall have the right to initiate proceedings to recover possession; and/or (iv) if a default under Section 4.1(d) or Section 4.1(k), and subject to Section 6.3 below, to terminate this Lease, whereupon Tenant shall surrender and deliver the Premises to Landlord, failing which, Landlord shall have the right to initiate proceedings to recover possession; and/or (v) all other rights at law or in equity.

6.3. Limited Rights to Terminate. Notwithstanding anything to the contrary contained in this Lease, Landlord shall be permitted to terminate this Lease and Tenant's right of possession hereunder only for a Payment Default, a default under Section 4.1(d) or Section 4.1(k), or any Event of Default for which Tenant has been finally adjudicated in default, and only after Landlord has provided Tenant with an additional thirty (30) days prior written notice to cure such default. In no event shall Landlord have the right to terminate Tenant's right of possession or otherwise take possession of the Premises without also terminating this Lease.

6.4. Access. Tenant shall not prohibit or inhibit Landlord access to any portion of the Premises. Landlord shall be exclusively responsible for the upkeep of all door locking devices and the duplication and distribution of all keys. Landlord shall provide an allotment of key cards to Tenant and will be responsible for activation of the key cards. Tenant shall notify Landlord in writing at least sixty (60) days prior to the Commencement Date of the number of key cards required for the Premises. Tenant is prohibited from duplicating any key to the Premises. Tenant agrees to keep a list of individuals to whom it has distributed keys and to provide the names of those individuals to Landlord upon request. In the event Tenant requires additional cards due to loss, damage, or otherwise,

additional cards shall be provided to Tenant at their actual cost plus a \$4 convenience fee.

6.1 Signage. Tenant may install signage on the Premises to indicate where its tenants and customers, representatives, contractors, agents and invitees may park. The form of the signage and the location shall require the prior written approval of the Landlord's Director of Public Administration or designee (the "Director"), which approval shall not be unreasonably withheld.

6.2 Access to Skywalk. Prior to the Commencement Date, Tenant may access the Premises to conduct, at Tenant's cost, non-intrusive investigation regarding the ability to create an opening in the second floor wall of the Medical District Parking Ramp to allow direct access from the Premises to the public skywalk system. Following such investigation, in the event Tenant desires to pursue such access, Tenant shall, at its cost and expense, have plans and specifications prepared for such access. The plans and specifications shall require the written approval of the Director. If approved, Landlord will cause the access to be constructed and Tenant shall reimburse Landlord immediately upon invoice therefor.

## 7. Tenant's Right to Finance.

7.1 (a) Tenant shall have the right, from time to time, to grant a first-lien leasehold mortgage or deed of trust or other lien, including a collateral assignment of this Lease to a Mortgage Lender as hereinafter defined ("First-Lien Leasehold Mortgage") encumbering its interest in this Lease and/or the leasehold estate in the Premises created hereby (collectively, the "Leasehold Estate") to any Mortgage Lender (as hereinafter defined), provided that the maturity date of the indebtedness secured thereby (the "Mortgage Loan") is not later than the expiration date of the Initial Term, or if the Initial Term has been extended, not later than the Extension Term. Tenant shall give Landlord a written notice (a "Mortgage Notice") of the proposed First-Lien Leasehold Mortgage together with a true copy thereof and the name, notice address, contact person, telephone number, and facsimile transmission number of the Mortgage Lender. The holder of a Leasehold Mortgage that has qualified as a "Mortgage Lender" hereunder shall continue in such capacity for purposes hereof until such time as the holder notifies Landlord, in writing, that it has (i) released its First-Lien Leasehold Mortgage on the Leasehold Estate and (ii) recorded an instrument in the public records evidencing such release, or (iii) assigned the indebtedness held by Mortgage Lender and provides a copy of such assignment to Landlord. Any Mortgage Lender may act through a servicer or agent designated by such Mortgage Lender in writing. All First-Lien Leasehold Mortgages are subject to and subordinate to all rights and interests of Landlord.

(b) Tenant shall have the right, from time to time, and in each case with the prior written consent of the CAO, which consent shall not be unreasonably withheld, to grant a leasehold mortgage or deed of trust or other lien, including a collateral assignment of this Lease encumbering the Leasehold Estate, and which is subordinate to a First-Lien Mortgage, to a Mortgage Lender as hereinafter defined ("Subordinate Leasehold Mortgage") provided that the maturity date of the Mortgage Loan is not later than the expiration date of the Initial Term, or if the Initial Term has been extended, not later than



the Extension Term. Tenant shall give Landlord a written notice (a "Mortgage Notice") of the proposed Subordinate Leasehold Mortgage together with a true copy thereof and the name, notice address, contact person, telephone number, and facsimile transmission number of the Mortgage Lender. Within ten (10) business days after receipt of the Mortgage Notice, the CAO shall respond to the Mortgage Notice either consenting thereto or providing a reason why consent is not given. The holder of a Subordinate Leasehold Mortgage that has qualified as a "Mortgage Lender" hereunder shall continue in such capacity for purposes hereof until such time as the holder notifies Landlord, in writing, that it has (i) released its Subordinate Leasehold Mortgage on the Leasehold Estate and (ii) recorded an instrument in the public records evidencing such release, or (iii) assigned the indebtedness held by Mortgage Lender and provides a copy of such assignment to Landlord. Any Mortgage Lender may act through a servicer or agent designated by such Mortgage Lender in writing. All Leasehold Mortgages are subject to and subordinate to all rights and interests of Landlord.

(c) For purposes of this Section 7, a "Mortgage Lender" is any lender or agent for a syndicate of lenders that may become the owner and holder of the promissory note(s), or other evidence of the indebtedness secured by a First-Lien Leasehold Mortgage or Subordinate Leasehold Mortgage on the Leasehold Estate.

7.2 Notices to Mortgage Lender. Whether or not Landlord is otherwise obligated to notify Tenant, if Landlord intends to exercise any remedies or rights hereunder due to an Event of Default by Tenant, Landlord shall send a written notice of an Event of Default (a "Default Notice") to Mortgage Lender prior to Landlord's exercise of any such remedies or rights under this Lease. No Default Notice shall be effective unless it has been sent to each Mortgage Lender at the address provided by the Tenant.

7.3 Mortgage Lender's Right to Cure. Upon receipt of a Default Notice, a Mortgage Lender shall have the right, but not the obligation, to cure such Event of Default on behalf of Tenant, and Landlord shall not have the right to exercise its remedies due to such Event of Default by Tenant if the Mortgage Lender completes the cure of such Event of Default within sixty (60) days following Mortgage Lender's receipt of the Default Notice; provided, however, that, if Mortgage Lender has commenced the cure of such Event of Default but is unable to complete such cure within such sixty (60) day period, Mortgage Lender shall be permitted such additional time thereafter as is reasonably necessary to cure such Event of Default, not to exceed a period of sixty (60) days following the initial sixty (60) day cure period (the "Mortgage Lender's Cure Period") so long as Mortgage Lender is (i) diligently and continuously (if not enjoined or stayed) pursuing the same, and (ii) otherwise making all payments of Rent due and payable under this Lease and performing all other obligations of Tenant hereunder during the extended cure period. Landlord agrees to accept any Mortgage Lender's cure of an Event of Default. Landlord acknowledges that the Mortgage Lender is relying on the Tenant's interest in this Lease as collateral. Notwithstanding anything to the contrary contained herein, and in furtherance of the foregoing, Landlord agrees that it shall not terminate this Lease nor shall the Leasehold Estate be surrendered as the result of any Event of Default so long as Mortgage Lender commences the foreclosure of its Leasehold Mortgage during the ninety (90) day period after the expiration of the Mortgage Lender's Cure Period and completes such foreclosure with reasonable diligence (the time for completion by

Mortgage Lender being continued so long as Mortgage Lender is enjoined or stayed and thereafter so long as Mortgage Lender proceeds to completion with reasonable diligence), provided that Mortgage Lender pays all delinquent Rent and other sums then due and owing under this Lease, and continues to pay all Rent and other sums due and owing and performs all other obligations of Tenant arising through the date of foreclosure. Neither Mortgage Lender nor any transferee as to a permitted lender transfer shall be required to cure any Event of Default that is not reasonably susceptible to cure by it.

7.4 Performance under Lease. No Mortgage Lender, simply by virtue of its lien on the Leasehold Estate or by taking any action to cure any Event of Default by Tenant or otherwise to exercise Tenant's rights hereunder, shall be deemed to have assumed any of the obligations or liabilities of Tenant hereunder or to be a mortgagee in possession, unless the Mortgage Lender elects in writing to become a mortgagee in possession. Notwithstanding the foregoing, a Mortgage Lender or its successors or assigns shall be responsible for the performance of Tenant's obligations under this Lease, including but not limited to payment of past due Rent, from and after the date that Mortgage Lender acquires title to the Leasehold Estate. Mortgage Lender's liability shall terminate on Mortgage Lender's sale, transfer or assignment of this Lease, or the Leasehold Estate, as applicable.

7.5 Entry by Mortgage Lender. Landlord and Tenant hereby authorize any Mortgage Lender to enter on the Premises during the term of this Lease and to exercise Mortgage Lender's cure rights and powers under this Lease, provided Mortgage Lender pays all Rents that would be owing under the terms of the Lease for such periods that Mortgage Lender is in possession of the Premises.

7.6 Nondisturbance Agreement. Landlord shall from time to time, within thirty (30) business days after written request by Tenant enter into Mortgage Lender's customary form of nondisturbance and attornment agreement with such modifications as reasonably requested by Landlord with respect to the matters covered by this Lease.

## 8. General

8.1 The whole contract and agreement between the parties is set forth in this Lease, including Exhibit A, and no representations, warranties or conditions have been made other than those expressed or implied herein.

8.2 Time is of the essence of this Lease.

8.3 Any notice required or permitted to be given pursuant to this Lease shall be valid only if in writing. Telephone calls may be used to expedite communications but shall not be official communication unless confirmed in writing. Any person required to give notice pursuant to this Lease shall have the burden of proving the validity of the notice. All notices or other communications made pursuant hereto shall be deemed properly delivered, given or served when (a) three days after the date such notice is sent by certified mail, (b) one day after the date such notice is sent by Federal Express or similar one-day private carrier service, (c) confirmed electronic delivery (which may include a .pdf, .tif, .gif, .jpeg or similar attachment to the electronic mail message):

If to Landlord:

City of Duluth  
Attn: Chief Administrative Officer  
402 City Hall  
411 West First Street  
Duluth, MN 55802

Telephone: (218)730-5370  
Email: nschuchman@duluthmn.gov

and:

If to Tenant:

The Lakeview at 333 Superior Parking, LLC  
10 West Mifflin Street, Suite 400  
Madison, WI 53703  
Attention: Mr. William Robinson  
Telephone No.: (608) 274-7447  
Email: robinsonw@landmarkcompany.com

With a copy to:

Michael Best & Friedrich LLP  
One South Pinckney Street  
Suite 700  
Madison, WI 53703  
Attention: Michael S. Green, Esq.  
Telephone: (608) 257-7482  
Email: MSGreen@michaelbest.com

8.4 Tenant shall have the right from time to time without the consent of Landlord, to assign Tenant's interest in this Lease to an Affiliate or to a Mortgage Lender pursuant to Section 7 of this Lease and/or to sublet, concession or license all or any portion of the Premises to an Affiliate, subject to all of the terms and conditions of this Lease. Additionally, Tenant shall have the right from time to time, with the prior written consent of the CAO, to assign Tenant's interest in this Lease and/or to sublet, concession or license all or any portion of the Premises, subject to all of the terms and conditions of this Lease. Notwithstanding the above, it is agreed that Tenant may lease parking spaces to the tenants of the Project.

8.5 This Lease is to be binding upon, and inure to the benefit of, the parties and any successors and permitted assigns of the parties. Nothing in this Lease confers or purports to confer on any third party any benefit or any right to enforce any term of this Lease.

8.6 If the singular or the neuter pronoun is used, the plural or the masculine or feminine is to be construed wherever the circumstances so require.

8.7 Any amendments to this Lease shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

8.8 This Lease will be governed by the laws of the state of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota. However, litigation in the federal courts involving the parties shall be in the appropriate federal court within the State of Minnesota.

8.9 Tenant agrees to observe and comply with all laws, ordinances, zoning codes, rules and regulations as may be amended from time to time, including but not limited to those regarding unlawful discrimination, of the United States of America, the State of Minnesota and the City of Duluth and their respective agencies which are applicable to this Lease.

8.10 In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Lease.

8.11 No act or omission of either party is to be construed as a waiver of any term of, or right under, this Lease by that party. Any waiver by either party of any provisions of this Lease shall not imply a subsequent waiver of that or any other provision. Any such waiver must be in writing.

8.12 Each of the parties hereto agrees that within ten (10) business days after request therefor by the other to provide the requesting party with an estoppel certificate certifying (if such be the case) in writing that this Lease is in full force and effect, that there are no defenses or offsets thereto, or stating those claimed by such party, and such other matters as the requesting party or any applicable mortgagee or purchaser may reasonably request.

8.13 At Landlord's option, this Lease shall be subordinated to any existing mortgages covering the Premises, any extension or renewal thereof, or to any new mortgages which may be placed thereon from time to time after the date hereof, provided, however, anything to the contrary contained herein notwithstanding, every such mortgage shall contain a provision that the mortgagee shall recognize the validity of this Lease in the event of foreclosure of the Landlord's interest and shall not make Tenant a party to any such foreclosure actions unless Tenant is a necessary party under applicable law and then only for such purpose and not for purposes of dispossessing Tenant, in each case so long as no Event of Default has occurred. Landlord will use its best efforts to provide Tenant a subordination, non-disturbance and attornment agreement from any current or future mortgagee in the commercially reasonable and customary form of said mortgagee.

# CITY OF DULUTH

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**The Lakeview at 333 Superior Parking, LLC,**  
a Delaware limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, the \_\_\_\_\_, of the The Lakeview at 333 Superior Parking, LLC, a Delaware limited liability company, on behalf of the Company.

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

NOTARIAL STAMP OR SEAL

This Instrument was drafted by:

Joan M. Christensen  
Assistant City Attorney  
410 City Hall  
411 West First Street  
Duluth, MN 55802  
(218)730-5273

## Exhibit A

