

PARKING MANAGEMENT AGREEMENT

This PARKING MANAGEMENT AGREEMENT ("Agreement") is executed on _____, 2016 by and among the City of Duluth (the "City") and Interstate Parking Company of Minnesota LLC ("Operator").

RECITALS:

- A. The City of Duluth owns that certain parking facility containing approximately 481 self-park spaces and commonly referred to as the 410 West 1st Street Public Parking Ramp and located at 410 West 1st Street in Duluth, Minnesota as is more particularly described in Exhibit A.
- B. The 410 West 1st Street Public Parking Ramp is subject to that certain Operation and Easement Agreement dated May 27, 2014 and executed on or about the same by and between City and Duluth Real Estate, LLC.
- C. Under the provisions contained in the Duluth City Charter and applicable State statute, including but not limited to Laws of Minnesota, 1977, Chapter 257, the City has been given the authority to operate and maintain public parking facilities.
- D. City desires to contract for parking management services in order to provide maintenance oversight, operational control, and outstanding customer service, convenience and cleanliness of the 410 West 1st Street Public Parking Ramp while producing adequate revenues for City.
- E. Operator is an experienced operator and manager of parking facilities for motor vehicles throughout the Midwest and is able and willing to provide such management services.
- F. The parties have an existing business relationship, entered into effective April 26, 2012, which provided that Operator would manage all of City's off-street parking facilities.
- G. The parties desire to enter into this Agreement whereby Operator will operate and manage parking of motor vehicles at the 410 West 1st Street Public Parking Ramp pursuant to the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed between the parties hereto as follows:

1. **DEFINITIONS:** The following terms, as used in this Agreement, shall have the meanings ascribed to them hereunder:

- A. Agreement shall mean this Parking Management Agreement.
- B. City Manager shall mean the City's Manager of Parking or his/her designee.
- C. Consent or Approval of City shall mean the consent or approval of the City's Chief Administrative Officer.
- D. Consent of City Manager shall mean a written document signed by the City Manager.
- E. Facility shall mean the public parking ramp located at 410 West 1st Street Duluth, Minnesota containing approximately 481 self-park parking spaces as is further described in Exhibit A.
- F. Improvements shall mean all items owned by the City and located on or within the Facility or affixed thereto, provided, purchased or used by Operator, including, but not limited to, revenue control equipment and structures, wiring and signs, and excluding Operator's personal property, if any.

- G. Operations Manual shall mean a written document describing specific procedures to be used to manage and operate the Facility including, at a minimum: facility staffing plan; accounting procedures; operation of parking equipment; annual budget procedures; customer relations including customer complaint procedures, public education regarding the Facility, annual customer survey, and mystery parker program; employment procedures including employee rules, policies, job descriptions; snow removal policies; hours of operation; returned check policy; emergency response procedures; abandoned vehicle procedures; cash and ticket handling policies; internal control and auditing procedures; monthly/validation billing and collections procedures; and cashier and event attendant standard operating procedures.
- H. Parking Manager shall mean the employee of Operator charged with managing the Facility. The Parking Manager shall reside in the greater Duluth metro area.
- I. OEA shall mean that certain Operation and Easement Agreement dated May 27, 2014 and executed on or about the same by and between City and Duluth Real Estate, LLC a copy of which is attached hereto as Exhibit D.
- J. Government Program shall mean the operation of the Facility as a public parking facility.
- K. DEED shall mean the Minnesota Department of Employment and Economic Development.

2. OPERATION OF THE FACILITY IN GENERAL: Operator agrees to manage and operate the Facility and the Improvements located thereon as public parking, as directed by City at City's cost and expense, and in a professional, economical and businesslike manner satisfactory at all times to City. The Operator agrees to perform the following in compliance with the City's requirements under the OEA, unless otherwise directed by City, and in accordance with and as set forth in the approved Operations Manual:

- A. Provide management of the day-to-day operation of the Facility. Such management requires a part-time Parking Manager.
- B. Provide day-to-day staffing of the Facility (excluding the Parking Manager) which may include:
 - i. Cashiers (full and part-time) to cover the hours of operation;
 - ii. Maintenance/janitorial positions;
 - iii. Supervisory/administrative positions.
- C. Follow parking management best practices in the operation of public parking facilities.
- D. Implement parking rate, invoicing and operational policy changes as approved and directed by City.
- E. Collect and account to the City Manager for revenues derived from the operation of the Facility.
- F. Provide for the Facility a monthly operating statement of total expenses, revenues and a summary of public usage.
- G. Provide bookkeeping and accounting functions in conformity with generally accepted accounting principles for the Facility.
- H. Provide necessary routine maintenance of the Facility.
- I. Arrange for telephone service provided at the Facility as applicable.
- J. Time stamp all ticket parking in the Facility.
- K. Maintain Facility signage and promotional/informational materials.
- L. Maintain the Facility information on the City of Duluth parking website at www.duluthparking.com.
- M. Administer a validation system for hotels and local businesses to validate customer/guest parking.
- N. Offer members of the public the option of contracting for parking on a monthly basis. The number of contract parkers allowed to utilize the Facility shall be subject to the approval of the City Manager.
- O. Meet and confer with the City Manager on a monthly basis to review the monthly report and on an as-needed basis in between to confer on operational issues as they arise, and perform quarterly operational reviews to include recommendations pertaining to Section 4, Hours of Operation; Section 5, Rates; Section 6, Repair and Maintenance; Section 7, Maintenance Obligations of City, and Section 9, Advertising/Marketing of the Facility.

- P. Maintain a local business office in downtown Duluth, Minnesota at no cost to City.
- Q. Arrange for subcontracted third party security patrols as requested by City.
- R. Ticket vehicles that are illegally or improperly parked.

Within ninety (90) days of commencement of this Agreement, Operator shall prepare for approval by the City Manager an Operations Manual describing specific procedures to be used to manage and operate the Facility. Operator may make reasonable amendments to the Operations Manual during the term of the Agreement as may be requested by the City Manager, provided such amendments clarify a provision or provisions set forth therein, and do not materially alter Operator's scope of duties.

Provided that Operator abides by all the terms and conditions hereof, the City shall not during the term of this Agreement permit the operation of the Facility by any other party other than the Operator except as set forth herein. Upon request by DEED, Operator shall allow DEED to inspect the Facility.

3. TERM AND TERMINATION: Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on April 18, 2016 and continue for a period of three (3) years thereafter (the "Initial Term"), unless terminated earlier or extended as set forth herein. Upon completion of the Initial Term, this Agreement may be extended for up to two (2) additional one (1) year periods (each an "Extended Term") at City's discretion upon providing written notice to Operator no less than sixty (60) days prior to the expiration of the Initial Term or the then current Extended Term. The Initial Term and Extended Term shall be collectively referred to herein as the Term. The City is not required to renew this Agreement beyond its Initial Term and the City may, at its sole option and discretion, allow the Agreement to expire at the end of its Initial Term and thereafter directly its operate the Facility or contract with some other entity to operate the Facility.

This Agreement shall terminate in the event that the Government Program is terminated or changed in a manner that precludes the operation of such program in the Facility. This Agreement shall also terminate upon the termination of the statutory authority under which the City is operating the Government Program.

Provided the Agreement has been extended through the Extended Terms and not otherwise terminated as provided for herein, this Agreement shall continue on a month-to-month basis in the event that a succeeding agreement is not in place as of the termination date of the Extended Term, with such continuation to be in accordance with the terms and conditions in effect immediately prior to the expiration of the then current Term of this Agreement. During the month-to-month continuation, the Agreement may be terminated at any time by either party upon giving not less than sixty (60) days' prior written notice of such termination.

4. HOURS OF OPERATION: Operator will make recommendations as to the days and hours of operation of the Facility and agrees to operate the Facility on the days and during the hours established by City. City may change such operating hours at its discretion. Current hours of operation will be set forth in the Operations Manual.

5. RATES: Operator agrees to charge and collect the parking rates as approved by City. Such rates may be adjusted by City during the Term of this Agreement. Operator acknowledges and agrees that from time to time, City may change parking rates at its discretion and may further participate in free or reduced price parking for special or other events or programs. Operator will review and recommend to City rate changes no less than every year. Rate changes shall go into effect only when approved by City.

6. REPAIR AND MAINTENANCE: All City repair and maintenance obligations as set forth in the OEA for the Facility or as otherwise set forth herein and in the Operations Manual shall be at City's sole cost and expense, and at City's direction and discretion, pursuant to which Operator will maintain the Improvements and all operating equipment at the Facility in good working order. Operator will consult with the City Manager, or other parties to the OEA as directed by City Manager, on maintenance obligations in a timely and economical manner. Operator will maintain the Facility in a clean, neat, orderly and sanitary condition, including the removal of dirt, garbage, rubbish and free of other refuse and objectionable odors, all as specifically required in the OEA or as otherwise directed by City and in a manner comparable to other first class parking facilities. As more specifically set forth in the Operations Manual and subject to City's specific obligations as set forth in the OEA, Operator shall perform:

- A. Manual litter/debris removal and sweeping of Facility floors, driveways, and sidewalks;
- B. Maintenance of ticket and revenue/access control equipment;

- C. Routine sign maintenance;
- D. Cashier booth cleaning;
- E. Graffiti removal;
- F. Sweeper/scrubber cleaning to include sidewalks and driveways;
- G. Pressure washing of parking decks including sidewalks and driveways;
- H. Wheel stop maintenance;
- I. Snow plowing, removal and ice control;
- J. Annual floor striping and curb painting;
- K. Replacement of lights, ballasts and fixtures as needed;
- L. Replacement of broken glass window panels;
- M. Periodic cleaning (flushing and snaking) of water drains, sump tanks and flammable traps;
- N. Repainting of bollards as needed;
- O. General facility painting and glass repair as needed; and
- P. Other maintenance services requested by City.

The subcontracting of any of the items above is subject to the approval of the City Manager if the item exceeds budget by both \$1,000 or more and by 10% or more.

On the first anniversary of the commencement of this Agreement, or any time thereafter, City may, at its sole option, remove any of the repair and maintenance services to be provided by Operator as set forth in subparagraphs A - O.

7. MAINTENANCE OBLIGATIONS OF CITY: City, subject to its obligations under the OEA, agrees to maintain and pay for all maintenance and all repairs of any nature at the Facility, including, but not limited to: electrical, plumbing, repairs to the walls and floors of the Facility, maintenance of ventilation system and elevators, and any structural, mechanical, electrical or other installations or any alterations required by statutes or regulations pertaining to air quality, environmental protection, provisions for persons with disabilities or other similar governmental requirements. City shall be responsible for the payment for and repair of all utilities unless otherwise provided for herein. Operator will promptly report and recommend to City any maintenance and/or unsafe conditions requiring repair, and Operator will review and recommend to City any major maintenance that otherwise may enhance the Facility.

8. OPERATOR STAFF: Operator shall provide a sufficient number of competent staff to operate and manage the Facility in accordance with the terms and conditions of this Agreement such that the Facility will be operated in a first class manner similar to other first class parking facilities of similar type in Minnesota and Wisconsin. Operator will provide all necessary executive and supervisory personnel who are not stationed at the Facility but are required for the proper management of the Facility.

City shall approve the level of staffing at the Facility. Operator agrees to increase or decrease staffing levels according to City's directive. The Operator shall list any vacant or new positions it may have with state workforce centers as required by Minn. Stat. § 116L.66, as it may be amended, modified or replaced from time to time, for the term of this Agreement.

Operator shall employ, train, assign, motivate and manage staff to operate the Facility. The Operator shall perform background checks of new hires in all positions including a criminal background check and a motor vehicle records check. The Operator shall also have a drug and alcohol testing program that at a minimum will require a negative drug test as a condition of employment including management level and hourly positions. In addition, the testing program at a minimum will include a "Drug Free Policy" and require testing for reasonable suspicion and post-accident testing for accidents involving fatality, injury or equipment being disabled. Such program will be carried out in compliance with applicable federal and state laws. Personnel will be employed, disciplined, discharged, promoted and directed in the performance of their duties by Operator.

Employees shall be clean and neatly dressed in uniforms provided by Operator at all times in order to reflect the professional levels of service expected by City. Employees shall be polite and courteous at all times. Employees shall be trained to be customer service oriented and ambassadors for City. Operator shall be obligated to control the actions of its

employees and to dispense with the services of any employee whose conduct City determines to be detrimental to the best interests of City. Upon receipt from City of any complaint concerning conduct, demeanor or appearance of any employee, Operator shall promptly investigate and correct, where warranted, the condition(s) which gives rise to the complaint.

9. ADVERTISING/MARKETING OF THE FACILITY: Operator shall be diligent in the marketing and advertising of the Facility at City's expense. Operator will utilize appropriate marketing and advertising outlets such as electronic/web based media, magazine advertising, yellow page listing, brochure printing, etc. to maximize the Facility's exposure and parking rental potential. Upon commencement of this Agreement, Operator shall provide the City Manager with a 2016 marketing plan and budget for review and approval. On or before January 1 of each subsequent year of this Agreement, Operator shall provide the City Manager with an annual marketing plan and budget for review and approval. Operator shall maintain communications with business groups to identify possible marketing opportunities.

10. INTELLECTUAL PROPERTY: City hereby grants to Operator, during the term of this Agreement only, a limited, non-assignable, non-exclusive right and license to use the intellectual property of City, including but not limited to its trade names and trademarks relating to the Facility (the "City Intellectual Property") to the extent related to Operator's administration, management and operation of the Facility.

Operator agrees that all work created by Operator or its subcontractors for City is a "work made for hire" and that the City shall own all right, title, and interest in and to the work, including the entire copyright in the work, and the work shall be considered City Intellectual Property. Operator further agrees that to the extent the work is not a "work made for hire" Operator will assign to City ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work. Operator agrees to execute, at no cost to City, all documents necessary for City to perfect its ownership of the entire copyright in the work. Operator represents and warrants that the work created or prepared by Operator will be original and will not infringe upon the rights of any third party, and Operator further represents that the work will not have been previously assigned, licensed or otherwise encumbered. Notwithstanding the forgoing, ownership by the City of City Intellectual Property shall not include any, and Operator shall retain all right, title, and interest (including any and all intellectual property) it has in trademarks, know-how, technique, software (source code), and practice tools that Operator has developed, or will develop, wholly independent of any services required by or performed under and without breach of this Agreement ("Operator Property").

Upon termination of this Agreement for any reason, City shall have the right, at its sole cost and expense to remove the Intellectual Property from the Facility, and Operator shall refrain from all further use of the Intellectual Property.

11. SOFTWARE, HARDWARE AND DATA SECURITY: During the Term of the Agreement, Operator shall maintain the hardware, software, processes, and procedures necessary for the proper and compliant operation of the Facility for public parking at City's cost. Hardware and software shall remain the property of the City upon termination of this Agreement. The hardware, software, and services, along with Operator's processes and procedures, used for processing transactions shall be compliant with the latest applicable standards established by the PCI Security Standards Council (<https://www.pcisecuritystandards.org/index.shtml>).

Operator must attest that it is complying with the Payment Card Industry Data Security Standard (PCI DSS) annually by delivering a package containing the following three items on or before February 1st of each year to the City Treasurer's office located at 411 West 1st Street, Room 105, Duluth, MN 55802:

- a. PCI Self-Assessment Questionnaire (PCI DSS SAQ)
- b. Regular network or website scanning reports completed by a PCI Approved Scanning Vendor or by another vendor approved in advance in writing by the City
- c. Signed PCI Attestation of Compliance

The City may request a PCI Report on Compliance performed by a PCI Qualified Security Assessor or a similar PCI security audit performed by either City staff or a contractor selected by the City. If the aforementioned package has not been delivered by the February 1st due date or if the audit results in a non-compliant security status, the processing of credit cards online, over the counter, and over the phone may be terminated at the discretion of the City.

12. MANAGEMENT FEE: As compensation for the professional management services rendered by Operator, City will pay Operator a monthly management fee of One Thousand Two Hundred and 00/100 Dollars (\$1,200.00). This management fee is part of the Operating Expenses as defined below and is itemized in Exhibit C.

A. It is the intent of the parties that the Management Fee shall compensate Operator for:

- i. Corporate travel, lodging and meals;
- ii. Business association memberships and sponsorships;
- iii. Salaries of Operator's employees not directly involved in the management of the Facility,
- iv. All other costs directly related to or incurred in the operation of the Facility shall be passed on to and paid for by City.

13. ACCOUNTING PROCEDURES AND EXPENSE REIMBURSEMENT:

A. Operator shall establish a bank account at U.S. Bank or such other bank selected by Operator and approved by City, with such approval not to be unreasonably withheld, for the exclusive use of depositing Gross Revenue and reimbursing itself for Operating Expenses for the Facility (the "Facility Account"). Operator will deposit the Gross Revenue into the Facility Account daily and reimburse itself for Operating Expenses from the Facility Account based upon the payment terms of the Operating Expenses, and Operator shall not use the Facility Account for any other purpose. Operator shall establish a credit card merchant account exclusively for processing of all credit card Gross Revenue (as is defined hereinafter) in connection with the Facility with such merchant account linked directly to the Facility Account. Furthermore, all Gross Revenue received by Operator through automated electronic transactions including, without limitation, automated ACH payments for monthly contract parking shall be directly deposited to the Facility Account.

B. On or before the 15th day of each month, Operator will provide City a statement for the preceding calendar month setting out the Gross Revenue and Operating Expenses for such month, together with:

- i. Payment to the City equaling Gross Revenue minus Operating Expenses for the Facility; or
- ii. An invoice for any shortfall in Gross Revenue to pay Operating Expenses for the Facility (in the event that Operating Expenses exceed Gross Revenue). City will pay said shortfall invoice within thirty (30) days of receipt and any failure by City to pay such invoice as set forth herein shall be deemed a default of this Agreement.
- iii. "Gross Revenue" means all revenue, whether hourly, daily, monthly, special event, validation, coupon, violation, or miscellaneous (including income from website advertising, billboards, wall advertising, vending machines, pay telephones, and any other income approved by City) collected by Operator in connection with the operation of the Facility, along with any such revenue collected by City and provided to Operator. Excluded from Gross Revenue is the value of all discounted and free parking granted by City for the parking of vehicles in the Facility.
- iv. "Operating Expenses" means those expenses reasonably necessary to operate the Facility including, but not limited to, the management fee, taxes, credit card fees, credit card charge backs, refunds and all expenses set out in Schedule A shown on Exhibit B and as budgeted for in an amount reasonably agreed to by the Operator and City Manager. The 2016 approved Operating Budget is attached hereto as Exhibit C. The parties agree that the Operating Budget will be subject to change during the Term of this Agreement. Certain costs, as set forth in Schedule B shown on Exhibit B, are specifically excluded from the definition of Operating Expenses for the purpose of this Agreement and will be borne directly by the City.

As part of the Operating Expenses, Operator will receive the following monthly payment for recoverable expenses during the Term of this Agreement;

Data processing	\$11.25
Payroll processing	\$8.17
Payroll taxes, employee insurance, and benefits	32% of actual direct payroll (except that Parking Manager's payroll expense shall be fixed at \$1,716.00 per month, which shall include all payroll taxes, employee insurance, and benefits)
Liability insurance rate	\$601.25

C. Sales taxes will be collected by Operator from customers and will be transmitted by Operator to the taxing authorities as required. Use tax and all other applicable taxes and licenses will be paid by Operator as Operating Expenses.

14. **REPORTS AND RECORDS:** Operator shall provide a detailed monthly statement of Gross Revenues derived for the preceding month for operation and management of each Facility, said statement to be in a form acceptable to City and minimally including reporting of revenue and expenses to budget with explanation of variances to budget of 10% or more. Operator's books, records, documents and other evidence pertaining to the costs or expenses associated with the Government Program shall be maintained in accordance with the requirements of Section 7.04 of the General Obligation Bond Proceeds Grant Agreement – Construction Grant for the 425 Public Parking Facility Project under the Minnesota Business Development Capital Projects Grant Program (City Contract No. 22173 on file with the City's Auditor) which is attached hereto as Exhibit E. Upon request, Operator shall allow the City, DEED, DEED's auditors, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract all of such items. Operator shall use generally accepted accounting principles in the maintenance of such items, and shall retain or cause to be retained all of such items that relate to the Government Program for a period of 6 years (i) from the date the Facility is fully completed and placed into operation, or (ii) from the date of termination of this Agreement; whichever is later. Upon five (5) days prior written notice by the City Manager, Operator shall provide all requested financial information regarding the Government Program.

Operator agrees that, as provided in Minnesota Statutes 16C.05, Subd. 5, all Operator's books, records, documents, and accounting procedures and practices related to the operation of the Facility are subject to examination by the City and/or the state auditor for six (6) years from the date of termination of this Agreement. Upon five (5) days prior written notice by the City Manager, Operator shall provide all requested financial information specifically regarding Operator's management of the Facility.

Operator must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the City under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Operator under this Agreement. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by Operator. If Operator receives a request to release the data referred to in this clause, Operator must immediately notify the City and consult with the City as to how Operator should respond to the request. Operator's response to the request must comply with applicable law.

Operator shall to provide to the City: (i) an initial program evaluation report for the first fiscal year that the Operator will operate the Facility, (ii) program budgets for each succeeding fiscal year showing that forecast program revenues and additional revenues available for the operation of the Facility (from all sources) by the Operator will equal or exceed expenses for such operation for each succeeding fiscal year, and (iii) a mechanism under which the City will annually determine that the Operator is using the real property being leased to the City upon which the Facility is located to operate the Facility as a parking facility.

Upon direction by the Commissioner of Minnesota Management and Budget ("MMB"), the Operator shall take such actions and furnish such documents to the Commissioner of MMB as the Commissioner of MMB determines to be necessary to ensure that the interest to be paid on the General Obligation Bonds issued by the State for this Facility is exempt from federal income taxation.

15. **INCIDENT REPORTS:** Operator shall notify the City's Claims Investigator and Adjuster in writing of any incident of injury or loss or damage to the property of City or any employees or patrons occurring within the Facility. Written notice shall be provided within twenty-four (24) hours of Operator's actual knowledge of any such incident on a

form acceptable to the City's Claims Investigator and Adjuster. Said written notice shall be mailed or faxed to the City's Claim Investigator and Adjuster, City Attorney's Office, 411 West First Street, Room 410, Duluth, MN 55802, 218-730-5918 (fax).

16. LOSS OR DAMAGE TO THE FACILITY: In the case of any substantial loss or damage to the Facility as a result of taking under the power of eminent domain, or by fire, storm or other casualty, City may (i) repair or restore the Facility at City's expense, or (ii) abandon the operation and terminate this Agreement as it relates the damaged Facility by giving at least ten (10) days' prior written notice to Operator. If City so terminates, City shall not be liable to Operator for the portion of the Management Fee for the damaged Facility arising after the date of taking or casualty; provided however, if any portion of the Facility remains suitable for parking and Operator, with City's prior written approval, continues its operation, Operator shall be entitled to receive its Management Fee for the period during which such operations are continued. If City repairs and restores the Facility, no Management Fee shall be due for the period the Facility is unsuitable for the ordinary conduct of parking business, and Operator shall not be required to provide services hereunder, but this Agreement shall continue in effect.

17. CUSTOMER RELATIONS: At City's expense, Operator shall conduct an annual customer satisfaction survey of the Facility in a form acceptable to the City Manager, the results of which shall be provided to City. At City's expense, Operator will initiate and utilize its standard mystery parking program on a recurring basis with forms developed in consultation with the City Manager. Operator shall provide the results of all mystery parking forms to City. Accessible customer service and assistance/troubleshooting will be provided 24 hours per day for customers of the Facility through the use of technology and networked on-call telephone system. At City's expense, Operator shall educate the public regarding the Facility and, if directed by City, shall implement a customer reward program.

18. MEDIA RELATIONS: All media inquiries regarding the Facility shall be referred to the City Manager or to the City's communications office so that the City may coordinate the response to the media.

19. SIGNS: Prior to the erection or installation of any sign or advertising, Operator shall provide City with a sample of the proposed sign or advertising, proposed location, and proposed method of installation. City shall promptly review and approve all such use or shall, within five (5) business days, provide Operator with objections to the sign or advertising with recommended changes. Failure to approve or disapprove the items within such five (5) day period shall be deemed an approval of the sign or advertising. Any material change in the approved items shall additionally require City's written approval of the items. Operator shall design and install all signs and advertising in compliance with all applicable ordinances and code.

20. INDEMNIFICATION: Operator shall indemnify, save, hold harmless, and defend the City, their officials, agents and employees, successors and assigns, individually or collectively, from and against any claim including a claim for contribution or indemnity, action, loss, damage, injury, liability, and the cost and expense of whatsoever kind or nature including, but not limited to, fines, reasonable attorneys' fees, disbursements, court costs, and expert fees based upon injury to persons, including death, or damage to property or any other cause of action or the violation of any federal, state, or municipal laws, statutes, resolutions, or regulations now in effect or hereafter promulgated in any way attributable to Operator's failure to perform its obligations under this Agreement.

City will, at its own cost and expense, defend and hold Operator harmless from and against any and all actions, costs, losses, expenses, and/or damages sustained by Operator by reason of claims of third-parties which are attributable to the negligence or willful misconduct of City, or to the improper design or construction of the Facility. The provisions of this Section shall survive the expiration, termination or early cancellation of this Agreement.

21. INSURANCE:

A. Insurance Requirements-Operator. Operator shall, at its expense, maintain insurance in full force and effect during the Term of this Agreement in such amounts as to meet the minimum limits of liability specified below:

- i. Comprehensive General Liability with limits no less than \$2,000,000 combined single limit per occurrence, including but not limited to, bodily injury and property damage, Facility and products/completed operations liability, contractual liability, and independent contractors liability.

- ii. Business Automobile Liability with limits no less than \$1,500,000 each occurrence including leased automobile liability and non-owned and hired automobile liability.
 - iii. Workers' Compensation Coverage in statutory amounts with "all states" endorsement including Employees Liability Insurance in limits of \$100,000 per employee.
 - iv. Employee dishonesty insurance on all of its employees in an amount of not less than \$250,000 for each occurrence.
- B. The City represents that it is self-insured with regard to comprehensive liability and property damage claims with a combined single limit of \$1,500,000 which are set forth within Minnesota Statute 466. The City also represents that it is self-insured with regard to Workers' Compensation claims. There are no certificates that are issued for self-insured Workers' Compensation and General Liability insurance.
- C. Requirements for All Insurance. All insurance required of Operator in this Section 21 shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota and with companies or underwriters satisfactory to the City Attorney.
- D. Additional Insureds. The City shall be named as additional insureds on each of the Operator's policies above except the Workers' Compensation policy.
- E. Insurance Primary. All insurance policies required above shall be primary and shall not require contribution from any coverage maintained by City.
- F. Insurance Certificate. Certificates showing that Operator is carrying the above-described insurance in the specified amounts shall be furnished to City prior to the execution of this Agreement, and a certificate showing continued maintenance of such insurance shall be filed with City during the Term of this Agreement. Failure of Operator to provide the required certificates of insurance does not invalidate or eliminate any of the insurance requirements contained herein or relieve Operator from any responsibility to carry the required types and amounts of insurance.
- G. Notice of Change or Cancellation. The certificates shall provide that the policies shall not be changed or canceled during the life of this Agreement without at least thirty (30) days' advanced notice being given to City. Failure to give such notice to City shall render any such change or changes in said policy or coverages ineffective as against City.
- H. ACORD Form. The use of an "ACORD" form as a certificate of insurance shall be accompanied by two forms - 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) - or equivalent, as approved by City Attorney's Office.
- I. Disclaimer. City does not represent or guarantee that these types or limits of coverage are adequate to protect the Operator's interests and liabilities. It shall be the obligation and responsibility of Operator to insure, as it deems prudent, its own personal property, against damage. City does not have insurance coverage for Operator's property and City expressly disclaim any and all liability for any and all losses, damage and/or claims to personal possessions of Operator.

22. **NON-DISCRIMINATION:** Operator, for itself and its officers, agents, servants and employees as part of the consideration of this Agreement, does hereby covenant and agrees:

- A. That no person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, pregnancy, political affiliation, veteran status, marital status, familial status, union status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any

participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the services provided pursuant to this Agreement.

- B. To not engage in discriminatory employment practices regarding the Facility, or operation or management of the Facility, and it shall, with respect to such activities, fully comply with all of the provisions contained in Chapters 363A and 181 of the Minnesota Statutes that exist as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.
- C. To comply with Governor's Executive Order 08-01 regarding e-verification of employment of all newly hired employees of Operator to confirm that such employees are legally entitled to work in the United States.

23. RELATIONSHIP OF THE PARTIES: It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners, joint venture or joint enterprise between the parties hereto or of constituting Operator as an agent, representative or employee of the City for any purpose or in any manner whatsoever and any such claimed status is expressly waived by Operator. Operator's employees shall not be considered employees of the City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of Operator while so engaged and any and all claims whatsoever on behalf of Operator arising out of employment or alleged employment, including without limitation, claims of discrimination against the City, or their officers, agents, contractors or employees shall in no way be the responsibility of the City. Operator and its officers and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay.

24. DEFAULT:

- A. Default Defined. "Default" shall be defined when any of the following circumstances exist:
 - i. If City has failed to make the payment set forth in Sections 12 and 13 or any other fee, charge, or tax when due hereunder and such failure to pay shall continue for ten (10) days after written notice to the non-paying party in the manner hereinafter provided.
 - ii. If Operator fails to provide and/or maintain the insurance coverages required herein.
 - iii. If City or Operator fails to comply with any term or condition of this Agreement and such failure is not cured within thirty (30) days after written notice thereof or if a cure cannot be completed within said 30 day period through no fault of the non-complying party, if the non-complying party shall have failed to commence such cure within said 30 day period or shall fail to thereafter complete such cure as expeditiously as possible.
 - iv. If City or Operator: (a) files a petition in bankruptcy or other insolvency proceeding is filed, without dismissal within thirty (30) days of filing; or (b) makes any general assignment for the benefit of creditors or composition; or (c) if a petition or other proceeding is instituted for the appointment of a trustee, receiver, or liquidator of a party pursuant to laws for the benefit of creditors; or (d) if a proceeding is instituted by any governmental authority for dissolution or liquidation of either party.
 - v. If all of the interest of the Operator in its property shall be taken by garnishment, attachment, execution or other process of law.
 - vi. If any interest of the Operator under this Agreement shall, without the approvals required in Section 27, be transferred or assigned.
 - vii. If any lien shall be filed against the Facility because of an action or omission of Operator and shall not be discharged or contested by Operator in good faith by proper legal proceedings within twenty (20) days after receipt of notice thereof by Operator.

- B. Rights Upon Default. If at any time City or Operator shall be in default, as defined in this Section, with regard to the requirements of this Agreement, the non-defaulting party may at any time thereafter:
- i. In the event of Operator default, (a) immediately, or at any time thereafter without further notice to Operator, re-enter into or upon the Facility under this Agreement or any part thereof and take possession of the same fully and absolutely with or without cancellation of this Agreement and without such re-entry representing a forfeiture of the fees and charges to be paid and of the covenants, terms and conditions to be performed by Operator for the full term of this Agreement, and in the event of such re-entry, City may collect and retain all parking revenues or City may contract with another operator for an equivalent or greater or lesser management fee and City to recover properly measured damages; or (b) City may at its election terminate this Agreement upon written notice in the manner hereinafter provided and re-enter upon the Facility, and the Operator covenants in case of such termination to indemnify the City against all loss of fees, and charges which City has suffered or paid up to the date of such termination.
 - ii. In the event of City default, Operator may at its election terminate this Agreement upon written notice to City and immediately cease all management activities and responsibilities for the Facility and the City covenants in the case of such termination to promptly pay all outstanding Management Fees and Operating Expenses.
 - iii. City and Operator shall further have all other rights and remedies at law or in equity including injunctive relief, or summary proceedings for unlawful detainer, and any or all legal remedies, actions and proceedings shall be deemed cumulative.
- C. Non-waiver. Any waiver by a non-breaching party of any breach of covenants herein contained to be kept and performed by the other party shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the waiving party from declaring a forfeiture for any succeeding breach, either of the same covenant or otherwise.

25. NOTICES: Any notices or communications required to be given to or by or served upon City or Operator may be so given or served by mailing the same, properly addressed and stamped, to such party or parties by United States regular mail, registered mail, certified mail or by reputable overnight courier service. Until new addresses shall be given, the addresses of the respective parties for the purpose of such notices or communications or for any other purposes shall be:

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

With a copy to:
City of Duluth
City Hall
411 West First Street
Duluth, MN 55802
Attention: Parking Manager

As to Operator:
Interstate Parking Company of Minnesota LLC
120 South Sixth Street
Suite 2005
Minneapolis, MN 55402
Attention: Paul Schnettler

With a copy to:
Interstate Parking Company of Minnesota LLC
710 North Plankinton Avenue, Suite 700
Milwaukee, WI 53203
Attention: Tony Janowiec

And a copy to general counsel:

Zilber, Ltd.
710 North Plankinton Avenue, Suite 1200
Milwaukee, WI 53203
Attention: Sandra J. DeLisle

26. SECURITY: City expressly acknowledges that Operator's obligations in connection with the management, operation and promotion of the Facility and employment of persons in connection therewith, do not include the rendition of service, supervision, or furnishing of personnel in connection with the personal safety and security of employees, tenants, customers, or other persons within and about the Facility. Operator does not have knowledge or expertise as a guard or security service, and does not employ personnel for that purpose, nor do Operator's employees undertake the obligation to guard or protect customers against the intentional acts of third parties. City will determine, at City's discretion, whether and to what extent any precautionary warnings, security devices, or security services may be required to protect patrons in and about the Facility. City further agrees to indemnify and to hold harmless Operator from and against any claims, demands, suits, liabilities, or judgments arising from Operator's alleged failure to warn, to guard, or to protect persons in or about the Facility from and against intentional threats, harm, or injury, except for such threats, harm or injury committed by Operator or Operator's employees, such indemnity to survive the expiration or earlier termination of this Agreement.

27. ASSIGNMENT: Except for the subcontracting of work as set forth elsewhere herein, Operator shall not assign or transfer this Agreement, in whole or in part, in any manner, nor any interest therein, nor permit the foregoing Agreement to become transferred by operation of law or otherwise, nor do or suffer any acts to be done whereby the same may be or become assigned in whole or in part, unless the written consent of City shall first be obtained in each and every case of assignment or transfer. It is expressly agreed by the Operator that in the event permission be granted by City as herein provided, the assignee shall be required to assume and agree to perform the covenants of this Agreement and that notwithstanding any such assignment, the Operator shall be and remain liable for the performance of all covenants and conditions for the full term of this Agreement.

28. OPERATOR LIENS: The Operator shall not, without the consent of DEED and the Commissioner of MMB, create or allow any voluntary or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Facility.

29. SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

30. RULES AND REGULATIONS: City shall have the right to and shall adopt and enforce reasonable rules and regulations with respect to the use of the Facility, which Operator agrees to observe and obey.

31. NONWAIVER OF LIABILITY: Nothing in this Agreement constitutes a waiver by City or Operator of any statutory or common law defenses, immunities, or limits on liability. The liability of City shall be governed by the provisions of the Minnesota Municipal Liability Tort Act, Minn. Stat. 466.04.

32. LAWS, RULES AND REGULATIONS: Operator agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

33. SEVERABILITY: 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 Agreement.

34. AMENDMENT: Any of the terms of this Agreement may be changed upon the mutual consent of City and Operator, but to be valid any such changes must be in writing, dated, and must be executed with the same formalities as this Agreement.

35. HEADINGS: The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

36. GOVERNING LAW: This Agreement shall be governed by and in accordance with the laws of the State of Minnesota, and all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement shall be venued in state or federal courts located in Duluth, Minnesota.

37. NEITHER PARTY DEEMED A DRAFTER: The parties to this Agreement have had sufficient time to consult legal counsel and negotiate changes regarding the terms hereof. Therefore, neither party shall be deemed the drafter of this Agreement and as such, this Agreement shall not be construed against either party due to the drafting hereof.

38. COUNTERPARTS: This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute the binding and enforceable agreement of the parties hereto. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party.

39. ENTIRE AGREEMENT: This Agreement, including Exhibits A, B, C, D and E, is the entire agreement between the parties. Any and all prior or contemporaneous statements and understandings not contained herein shall be of no further force and effect.

This area intentionally left blank – signature page follows

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their authorized officers or representatives on the day and year first written above.

CITY OF DULUTH

By: _____
Its: Mayor

Attest: _____
City Clerk

Countersigned:

INTERSTATE PARKING COMPANY OF
MINNESOTA, LLC

City Auditor

By: _____
Its: _____

Date: _____

Approved as to form:

By: _____
Its: _____

City Attorney

EXHIBIT A – FACILITY

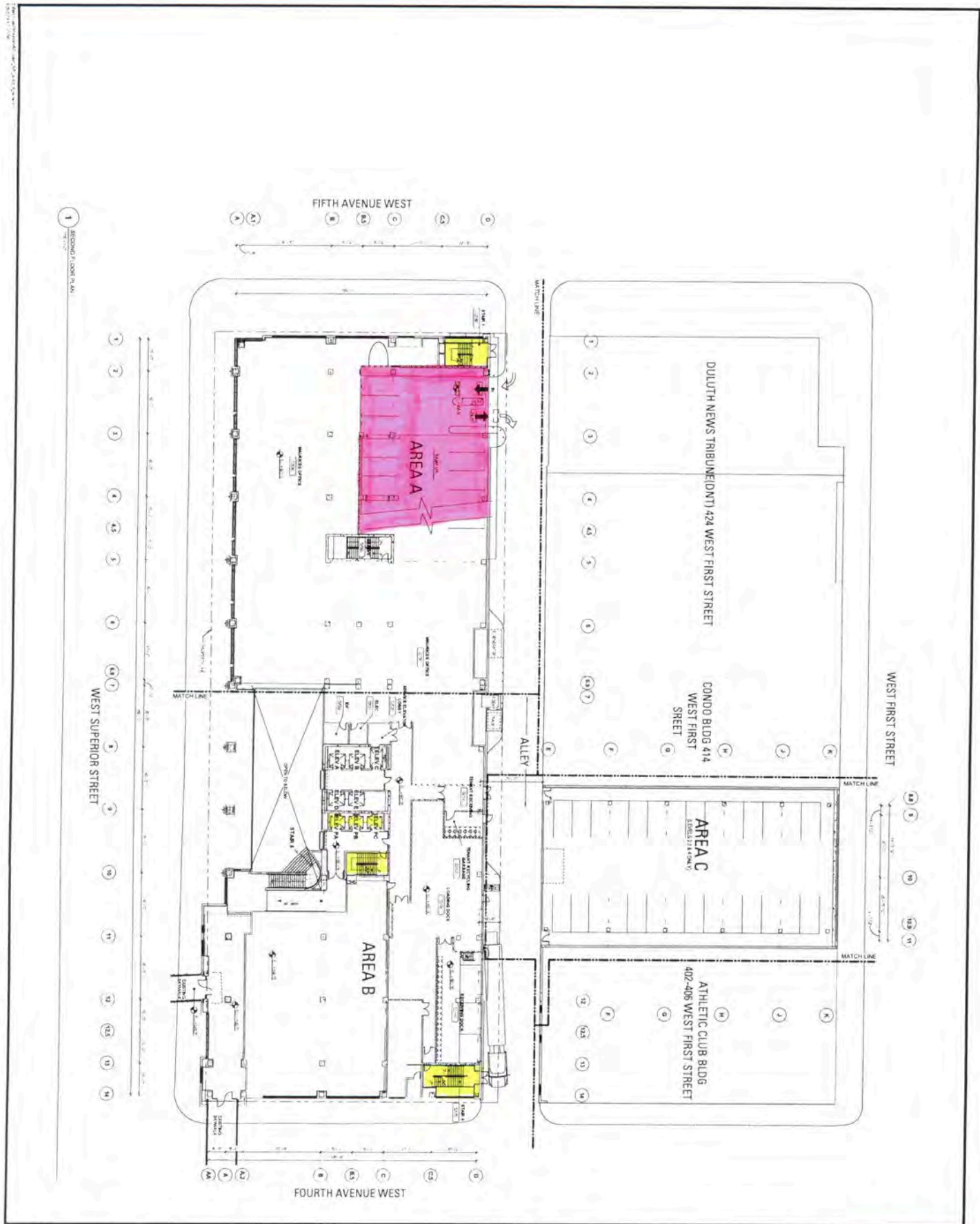
Floor plan drawings of the Facility are attached hereto and made a part of this Exhibit A. Areas included in the Facility are highlighted, according to the following legend, and areas excluded from Facility are not highlighted.



Full Services



Restricted Services – All services except revenue control and parking control



1000 Broadway, Suite 100
 Minneapolis, MN 55402
 Tel: 612.338.1000
 Fax: 612.338.1001
 Email: info@rso.com



CP-3 PROGRESS
PRINT
 06/25/14
***NOT FOR**
CONSTRUCTION*

Project No.	2599.00.00
Sheet No.	538
Date	03/01/14
Drawn By	TLH
Checked By	
Scale	1/8" = 1'-0"
Notes	1. SEE FIRST FLOOR PLAN FOR GENERAL NOTES.
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2ND FLOOR PLAN - OVERALL
CP-3
A052



1020 Main Street
Duluth, MN 55812
Phone: 218.822.1100
Fax: 218.822.1101
www.rso.com



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06/25/14
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CONSTRUCTION*

Project No.	2539.001.00
Client	SSM
Drawn by	TLH
Check by	CP-3
Date	06/25/14
Scale	AS SHOWN
Notes	1. THIS DRAWING IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION. IT IS THE PROPERTY OF RSO AND IS NOT TO BE REPRODUCED OR USED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF RSO.

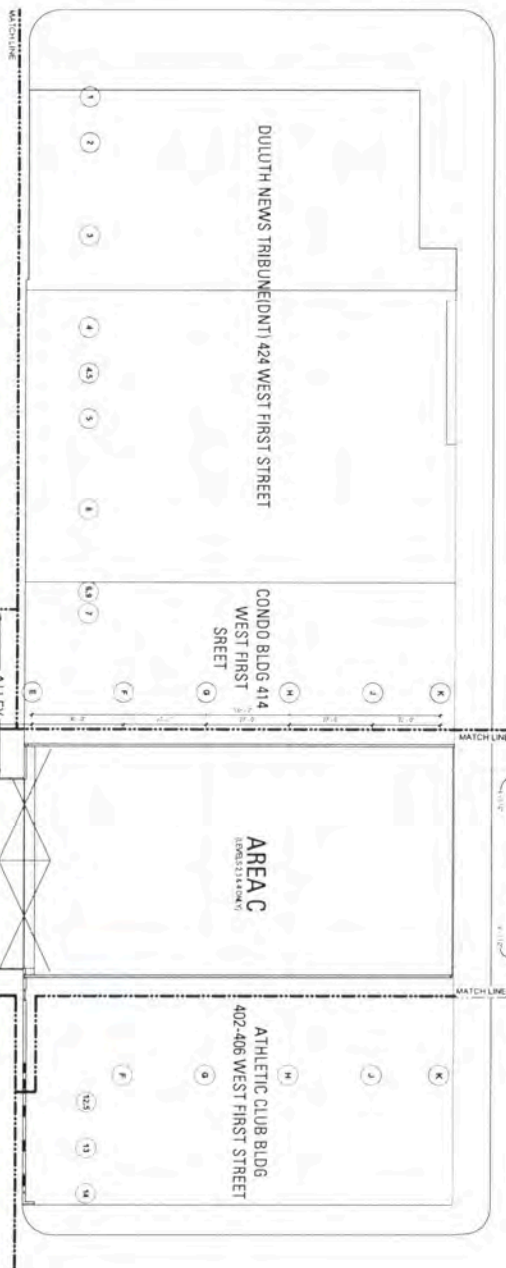
Sheet No.	2539.001.00
Client	SSM
Drawn by	TLH
Check by	CP-3
Date	06/25/14
Scale	AS SHOWN
Notes	1. THIS DRAWING IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION. IT IS THE PROPERTY OF RSO AND IS NOT TO BE REPRODUCED OR USED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF RSO.

3RD FLOOR PARKING PLAN
OVERALL

A053

1 THIRD LOOK PLAN







1000 Main Street
New York, NY 10001
Tel: 212-123-4567
Fax: 212-123-4568
www.rsp.com

1000 Main Street
New York, NY 10001
Tel: 212-123-4567
Fax: 212-123-4568
www.rsp.com

1000 Main Street
New York, NY 10001
Tel: 212-123-4567
Fax: 212-123-4568
www.rsp.com

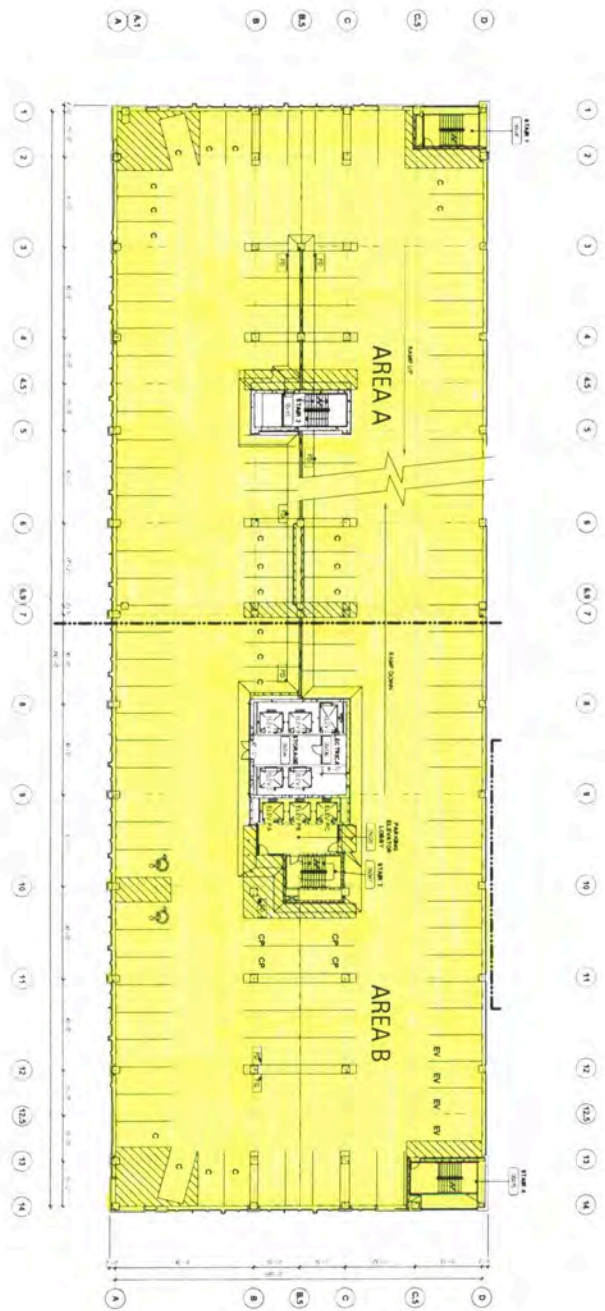


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06/25/14
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CONSTRUCTION*

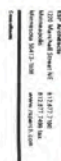
Project No.	2539.00.00
Project Name	5TH
Contract No.	TUH
Date	06/23/14
Drawn By	1000 Main Street New York, NY 10001 Tel: 212-123-4567 Fax: 212-123-4568 www.rsp.com

5TH FLOOR PARKING PLAN -
OVERALL

CP-3
A055



1 5TH FLOOR OVERALL



Editor, <i>Psychiatry</i>	417-677-7100
Editor, <i>Medical Society of NY</i>	812-877-7400 (fax)
Editor, <i>Journal of Law and Medicine</i>	812-877-7100

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CONSTRUCTION*

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EXHIBIT B – EXPENSES

Expenses managed by Operator within the scope of this Agreement are listed below in Schedule A. Expenses excluded from the scope of this Agreement and directly paid by City are listed below in Schedule B.

Schedule A: Operating Expenses

Sales Taxes
Management Fee (Corporate Overhead and Profit)
Accounting and Auditing
Telephone / Internet
Supplies – Office
Supplies – Parking
Supplies – R&M / Janitorial
Uniforms
Payroll and Payroll Taxes
Payroll Processing
Employee Development
Data Processing
Credit Card Fees
Banking Fees
Advertising / Marketing
Equipment Repair & Maintenance
Facility Repair & Maintenance
Landscaping & Grounds
Striping and Painting
Sweeping / Powerwashing
Rubbish Removal
Snow Removal and Ice Control
Contract for Security
Armored Car Service
Automobile
Equipment Rental
Amortization
Liability Insurance
All Costs Incurred by Operator Pursuant to the Requirements set forth in Section 11
Other Expenses as Reasonably Directed by City

All supplies and equipment purchased by Operator under this Agreement are property of City and must be returned to City upon termination of Agreement.

Schedule B: City Expenses

Utilities
Property Taxes
HVAC R&M
Mechanical Systems R&M
Engineering Studies
Capital / Major Structural Repairs
City's Internal Accounting & Auditing

EXHIBIT C
2016 Operating Budget

	2016
	Partial Year Operating Budget
	(June - December)
REVENUE:	
Transient	18,900
Monthly	269,100
Validation	9,450
Event - Grandma's Marathon	1,875
GROSS REVENUE:	299,325
Less Sales Tax	23,131
NET REVENUE:	276,194
YOY Growth	
OPERATING EXPENSES:	
Payroll	22,004
Payroll Taxes & Benefits	8,219
Utilities	12,495
Liability Insurance Claims	0
Liability Insurance Premiums	4,209
Depreciation	0
Snow Removal	1,950
Equipment Expense	0
Telephone	3,570
Repairs & Maintenance	3,200
Elevator Maintenance	9,450
Maintenance Reserve	21,044
Uniforms	230
Licenses	0
Supplies & Postage	275
Security	12,600
Auto Allowance	0
Professional Services	2,470
Customer Service	560
Employee Development	0
Sweeping	0
Service Charges	922
Property Insurance	8,750
Miscellaneous Expenses	700
Management Fee	8,400
TOTAL OPERATING EXPENSES:	121,047
NET OPERATING SURPLUS	155,147

EXHIBIT D
Operation and Easement Agreement

OPERATION AND EASEMENT AGREEMENT

May 23rd, 2014

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EXHIBITS:

- Exhibit A-1: Legal Description of Land
- Exhibit A-2: Legal Description of Office Parcel
- Exhibit A-3: Legal Description of Parking Facility Parcel
- Exhibit A-4: Legal Description of DNT Parcel
- Exhibit A-5: Legal Description of Alley Parcel
- Exhibit A-6: Depiction of Lobby
- Exhibit B: Allocable Share of Common Costs

OPERATION AND EASEMENT AGREEMENT

This Operation and Easement Agreement (this "Agreement") is made as of this 27th day of May, 2014, by and between Duluth Real Estate LLC, a Delaware limited liability company ("Developer"), and the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota ("City").

RECITALS

WHEREAS, Developer is the owner of certain tracts of real property situated in St. Louis County, Minnesota, more particularly described in Exhibit A-1 (the "Land");

WHEREAS, the Development will be comprised of (a) the Office Element; (b) the Retail Element; and (c) the Parking Improvements (as all such capitalized terms are defined below);

WHEREAS, the Land and the improvements thereon are physically integrated and together constitute a multi-level, multi-use complex located in downtown Duluth, Minnesota, bounded by West Superior Street, Fourth Avenue West and Fifth Avenue West;

WHEREAS, the Land is presently encumbered by the Skywalk Agreement and the Ground Lease (both as defined below); and

WHEREAS, Developer and the City desire to subject the Development and all future owners of the Development or any portion thereof to various easements, restrictions and covenants, as further set forth herein, for the purpose of providing for the future harmonious use and operation of the Development.

NOW, THEREFORE, in consideration of the premises and the covenants contained in this Agreement, Developer and the City hereby agree that the Development shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the terms and conditions set forth in this Agreement, which shall run with the Land and shall be binding upon the Development and all tenants, subtenants, occupants, licensees, concessionaires, and other parties permitted within the Development. Developer and the City further agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

1.1 "Access Facilities" means all walkways, adjoining sidewalks, entrances to Common Area, passageways, corridors, lobbies, concourses, stairways, and all other portions of the Development that are designed and intended to provide common pedestrian access within the Development, within and among the Elements, and to and from public streets adjacent to the Development, and all alterations thereto and replacements thereof, as such Access Facilities may exist from time to time, including without limitation (i) that portion of the Lobby extending from the main entrance of the Building on West Superior Street to the public sidewalk adjoining West Superior Street as shown on Exhibit A-6; and (ii) the driveways and ramps connecting the alley level of the Building to the Parking Improvements (but such driveways and ramps shall only be used for ingress to and egress from the Parking Improvements, and shall not include any

parking rights on the alley level of the Building). Neither the Parking Facility nor the Skywalks shall be considered part of the Access Facilities for any purpose under this Agreement. Office Owner and Parking Facility Owner may agree from time to time to amend this Agreement to confirm the location of Access Facilities by reference to an exhibit.

1.2 “Agreement” means this Agreement, including all Exhibits attached hereto and made part hereof.

1.3 “Alley Bridge” means the improvements to be constructed through and within the Alley Parcel, connecting the Parking Facility with the Parking Facility Extension.

1.4 “Alley Parcel” means an above-grade portion of the public alley between and adjacent to the DNT Easement Parcel and the Parking Facility Parcel through and within which the Alley Bridge and a skywalk are to be constructed, as described on Exhibit A-6 attached hereto, as such description may be amended upon substantial completion of the Parking Improvements and Skywalks pursuant to the Ground Lease.

1.5 “Alter” or “Alteration” means any construction, reconstruction, replacement, removal, installation, alterations, changes, additions, improvements, and demolitions of or to any part of the Development and improvements and all excavations at any time made or to be made in, on or about the Development, all of which are subject to Article 8 and all other applicable provisions of this Agreement.

1.6 “Bond End Date” means the earlier of (i) the date upon which all principal and interest under the Bond has been paid in full, and (ii) April 1, 2044.

1.7 “Bond Holder” means the Purchaser, as defined in the Bond Resolution.

1.8 “Bond Resolution” means the Resolution Providing for the Issuance, Sale and Delivery of \$11,500,000 Taxable Tax Increment and Parking Facility Revenue Bond, Series 2014A, Resolution Number 14-__R, adopted by the City Council of the City of Duluth, Minnesota on _____, 2014.

1.9 “Building” means all improvements located on the Office Parcel and all Alterations thereto and replacements thereof, as the same may exist from time to time.

1.10 “Capital Account” has the meaning given to such term in the Bond Resolution.

1.11 “Certificate of Completion” means a certificate issued by the City of Duluth certifying the completion of construction of the Development pursuant to the Development Agreement dated on or about the date hereof between Developer and the City, including each of the Elements therein.

1.12 “City” means the City of Duluth, Minnesota.

1.13 “Common Areas” means those areas of the Development that are from time to time provided for use in common by two (2) or more Owners and their respective Permittees, whether or not the same are open to the general public, and shall include the Access Facilities, Sidewalks and Public Walkways, and any fixtures, chattels, systems, décor, signs, facilities, and landscaping and open areas contained therein or maintained or used in connection therewith. Neither the Parking Facility nor the Skywalks shall be considered part of the Common Areas for any purpose under this Agreement. Office Owner and Parking Facility Owner may agree from time to time to amend this Agreement in order to confirm the location of Common Areas by reference to an exhibit.

1.14 “Common Costs” means the amounts payable in connection with the operation, management, maintenance and repair of those portions of the Common Areas, and any other areas maintained by Office Owner for the benefit of the other Owners, in the condition required by this Agreement, including without limitation all commercially reasonable costs, charges and expenses (including a commercially reasonable administrative fee) attributable to the operation, repair, maintenance and improvement of the Common Areas, as determined in accordance with generally accepted accounting principles.

1.15 “Constant Dollars” means the present value of the dollars to which such term refers. An adjustment shall occur on January 1, 2019, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index and the denominator of which is the Base Index. The “Base Index” shall be the level of the Index for April, 2014. The “Current Index” shall be the level of the Index for the month of September of the year preceding the adjustment year. The “Index” shall be the Consumer Price Index for All Urban Consumers, U.S. City Average, All items published by the Bureau of Labor Statistics of the United States Department of Labor (base year 1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then Office Owner may substitute (and give notice of such substitution to the other Owners) for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

1.16 “Current Expenses” has the meaning given to such term in the Bond Resolution.

1.17 “Debt Service Account” has the meaning given to such term in the Bond Resolution.

1.18 “Developer” means Duluth Real Estate LLC, its successors and assigns.

1.19 “Development” means all of the Elements, collectively.

1.20 “DNT Easement Agreement” means that certain Easement Agreement of even date herewith between Office Owner and Forum Communications Company pursuant to which the Office Owner has been granted the DNT Easement Rights as the same may be amended from time to time.

1.21 “DNT Easement Parcel” means that portion of the DNT Parcel over which Office Owner holds the DNT Easement Rights pursuant to the DNT Easement Agreement.

1.22 “DNT Easement Rights” means all of the rights and obligations of “Parking Facility Owner” (as that term is defined in the DNT Easement Agreement), under and pursuant to the DNT Easement Agreement.

1.23 “DNT Parcel” means the land more particularly described in Exhibit A-5.

1.24 “Easement Parcel Owner” has the meaning set forth in the DNT Easement Agreement.

1.25 “Element” means each of the Office Element, Retail Element, and Parking Facility Element, or collectively the “Elements,” as the context indicates.

1.26 “Fiscal Year” means a twelve (12) month calendar year, at the termination of which period the Office Owner’s books are balanced for auditing or taxation purposes.

1.27 “Floor Area” means the aggregate of the actual number of square feet of space contained on each floor within an Element as measured from the interior faces of the interior walls or store front. During any period of Alteration, rebuilding, repairing, replacement or reconstruction of an Element, the Floor Area attributable to that Element shall be deemed to be the same as existed immediately prior to such period. Upon completion of such Alteration, rebuilding, repairing, replacement or reconstruction, the Owner of such Element shall cause a new determination of Floor Area for such Element to be made in the manner described above, and such determination shall be provided promptly to all Owners.

1.28 “Governmental Authorities” means all federal, state, county, municipal and local governments having jurisdiction over the Development, and all departments, commissions, boards, bureaus and officers thereof.

1.29 “Ground Lease” means that certain Ground Lease of even date herewith between Developer and the City, as the same may be amended from time to time, pursuant to which the City leases from Developer the Parking Improvement Premises.

1.30 “Interest Rate” means the simple per annum interest rate equal to the lesser of (a) the prime rate plus two percent (2%) and (b) the maximum lawful rate of interest. As used herein, the “prime rate” means the rate of interest published from time to time as the “Prime Rate” in the Wall Street Journal under the heading Money Rates; provided, however, that (i) if more than one such rate is published therein, the prime rate shall be the highest such rate, and (ii) if such rate is no longer published in the Wall

Street Journal or is otherwise unavailable, the prime rate shall be a substantially comparable index of short-term loan interest rates charged by banks to corporate borrowers selected by Office Owner. Interest shall be due on any amount past due pursuant to Article 13 of this Agreement.

1.31 “Land” has the meaning set forth in the Recitals.

1.32 “Legal Requirements” means all laws, statutes, codes (including, without limitation, any building, zoning or land use codes), acts, ordinances, orders, judgments, decrees, injunctions, directions and requirements of all Governmental Authorities, foreseen and unforeseen, ordinary or extraordinary, that now or at any time hereafter may be applicable to or required in connection with the Development or any part thereof, or any of the adjoining sidewalks, or any use or condition of the Development or any part thereof, or any construction required or permitted by this Agreement.

1.33 “Lobby” means that portion of the Development as depicted in Exhibit A-6.

1.34 “Normal Business Hours” means the days and hours from time to time established by Office Owner for the Development or any portion thereof, and, unless extended by Office Owner, the term shall mean 7:00 a.m. to 7:00 p.m., weekends and holidays excluded, or such extended hours as Office Owner may specify from time to time. Normal Business Hours shall not affect access to the Parking Improvements, access to which is governed by Section 3.3(e) of this Agreement, respectively.

1.35 “Occupant” means any person from time to time entitled to the use and occupancy of any Element of the Development under an ownership right or any lease, sublease, license, concession, or similar agreement with the Owner of such Element.

1.36 “Office Element” means the Office Parcel and that portion of the Building located upon and within the Office Parcel, and all alterations thereto and replacements thereof, as the same may exist from time to time, but specifically excluding the Retail Element.

1.37 “Office Owner” means Developer, its successors and assigns as Owner of the Office Parcel from time to time.

1.38 “Office Parcel” means that portion of the Land described on Exhibit A-2.

1.39 “Operating Budget” has the meaning given to such term in Section 3.3(b).

1.40 “Operator” means the management company or other entity, if any, designated from time to time by Office Owner, after consultation with the Parking Facility Owner, to perform any or all of the Common Area maintenance responsibilities or other obligations in the nature of property management of Office Owner under this Agreement.

1.41 “Owner” means the fee owner of an Element or a part thereof, or, in the case of the Parking Improvements, the City (or any Permitted Transferee from the City) from and after the issuance of the Certificate of Completion and thereafter during the term of the Ground Lease. As used in this Agreement, the term “Owner” may refer to any one or more of the Office Owner, the Retail Owner, or Parking Facility Owner, as the context indicates.

1.42 “Parking Commission” means the Parking Commission established by the City to oversee and make recommendations to the Duluth City Council with respect to City parking facilities, including recommendations as to parking rates, and any successor or replacement body, agency, or commission performing such function for the City that may be established from time to time.

1.43 “Parking Contract” means an agreement or license pursuant to which a person or entity gains the right to park (or to have its employees or other designated persons park) in the Parking Facility or Alley Bridge on a monthly basis.

1.44 “Parking Facility” means the multi-level parking structure with approximately 485 parking spaces to be constructed on the Parking Facility Parcel, along with any and all other structures, driveways, and other improvements that are constructed, placed or located on or within the Parking Facility Parcel, as the same may from time to time exist, and the appurtenances of all of the foregoing.

1.45 “Parking Facility Element” means the Parking Facility Parcel and the Parking Improvements, and all alterations thereto and replacements thereof, as the same may exist from time to time.

1.46 “Parking Facility Extension” means the improvements constructed on the DNT Easement Parcel pursuant to the DNT Easement Agreement.

1.47 “Parking Facility Owner” from and after the issuance of a certificate of completion for the Development issued by the City and thereafter during the term of the Ground Lease, means the City (or any Permitted Transferee from the City); thereafter “Parking Facility Owner” shall mean the Developer, its successors and assigns as Owner of the Parking Facility Parcel from time to time.

1.48 “Parking Facility Parcel” means that portion of the Land described on Exhibit A-3, as such description may be amended upon substantial completion of the Parking Improvements and Skywalks pursuant to the Ground Lease.

1.49 “Parking Improvement Premises” means, collectively, the Parking Facility Parcel, the Alley Parcel, and the DNT Easement Parcel.

1.50 “Parking Improvements” means, collectively, the Parking Facility, the Alley Bridge and the Parking Facility Extension, and all alterations thereto and replacements thereof, as the same may exist from time to time.

1.51 “Parking Manager” means the Parking Manager selected in accordance with Section 3.3(c) hereof.

1.52 “Payment Date” has the meaning given to such term in the Bond Resolution.

1.53 “Permitted Transferee” has the meaning set forth in the Ground Lease.

1.54 “Permittee” means all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors and invitees of Occupants to the extent their activities relate to the use and occupancy of the Development as limited by this Agreement.

1.55 “Person” means any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or Governmental Authority.

1.56 “Qualified Management Contract” means an agreement (i) between the Parking Facility Owner and Parking Manager; (ii) not exceeding five (5) years in duration; (iii) by which the Parking Manager agrees to manage the Parking Improvements in accordance with requirements of this Agreement; (iv) that requires the Parking Manager to promptly pay over to and deposit with or at the direction of the Parking Facility Owner all Revenues; (v) containing the Parking Manager’s acknowledgment that, to the extent Parking Manager receives, holds, or has custody of funds constituting Revenues, the Parking Manager has no interest in or claim to such funds, but instead receives, holds or has custody of such funds only on behalf of, and as custodian for, Parking Owner; and (vi) will, at all times the Ground Lease is in effect, be in compliance with (to the extent applicable) Revenue Procedure 97-13 or other guidance provided by the Internal Revenue Service, and will not meet the private business use test under Internal Revenue Code Section 141(b), and regulations promulgated thereunder, in each case as amended from time to time.

1.57 “Qualified Parking Manager” means a parking management firm that (i) is experienced in the management and operation of multi-level, urban parking facilities with operational characteristics reasonably comparable to the Parking Improvements, and (ii) is not affiliated with or controlled by the Parking Facility Owner; *provided, however*, in the event the City becomes experienced in the management and operation of multi-level, urban parking facilities with operational characteristics reasonably comparable to the Parking Improvements, nothing herein shall prevent the City from itself acting as the Parking Manager.

1.58 “Real Estate Taxes” has the meaning set forth in Article 9.

1.59 “Restore” or “Restoration” means the repair, restoration or rebuilding of any Element or any part thereof following any Taking, damage to or destruction of the same, as nearly possible to its size, type and character immediately prior to such Taking, damage or destruction, in accordance with all Legal Requirements and Insurance Requirements, together with any temporary repairs and property protection pending

completion of the work and with any Alterations permitted by (including by consent obtained pursuant to) this Agreement.

1.60 “Retail Element” means the Retail Parcel and the improvements located upon and within the Retail Parcel, and all alterations thereto and replacements thereof, as the same may exist from time to time.

1.61 “Retail Owner” means Developer, its successors and assigns as Owner of the Retail Parcel from time to time.

1.62 “Retail Parcel” means that portion of the Development (exclusive of the Parking Improvements) designated by Office Owner from time to time.

1.63 “Revenue Account” has the meaning given to such term in the Bond Resolution.

1.64 “Revenues” has the meaning given to such term in the Bond Resolution.

1.65 “Shared Services” has the meaning given to such term in Section 3.1(B).

1.66 “Sidewalks and Public Walkways” means the sidewalks and public walkways adjacent to the exterior of the Development.

1.67 “Skywalk Agreement” means that certain Pedestrian Passageway Agreement Pertaining to the Maurices Office Tower Property of even date herewith between Office Owner and the City, providing for the construction and operation of the Skywalks.

1.68 “Skywalks” means the enclosed pedestrian bridges, walkways or skyways, and pedestrian corridors within and through the Development, that from time to time connect the Development to any building across any street or alley from the Development and those portions of the Development that are described as Skywalk Easements in the Skywalk Agreement.

1.69 “Transient Parkers” means a person parking a motor vehicle in the Parking Facility or Alley Bridge on an hourly or daily basis.

1.70 “Unavoidable Delays” means delays in the performance of an obligation under this Agreement due to causes beyond the control of the Owner performing the obligation, including but not limited to acts of God, acts of the public enemy, acts of terrorism, the direct result of strikes, walkouts and lockouts, fire, floods, epidemics, quarantines, restrictions, unavailability of power, unavailability of materials, acts of governmental entities including legislative or administrative actions taken by any entity, unusually severe weather not reasonably foreseeable or delays of contractors and subcontractors due to such causes, other casualty to the Development or a portion thereof, or litigation commenced by third parties that by injunction or other similar judicial action directly results in delays, provided that no such occurrence shall constitute an “Unavoidable Delay” unless such Owner gives written notice of such occurrence to the

other Owners within thirty (30) days of the date of its first occurrence, and provided further that for each day of occurrence of such cause beyond the control of the Owner performing an obligation, one day of Unavoidable Delay shall be granted under this Agreement.

2. Easements and Licenses.

2.1 General Provisions. This Article 2 sets forth the easements and licenses granted by Developer. Each easement or license granted with respect to an Element is for the benefit of all other Elements unless specifically limited to benefit a particular Element. Unless otherwise specifically stated herein, each easement is perpetual and non-exclusive. All easements and licenses and the use thereof shall be applicable only to the extent reasonably necessary to accomplish the purposes for which such easements and licenses are granted. No easements or licenses shall be deemed to have been granted to any Owner by implication. Each Owner shall comply (and cause its respective Occupants and Permittees to comply) with all applicable Legal Requirements in using the easements and licenses granted herein.

2.2 Easement for Use of Common Areas. Developer hereby grants for the benefit of each of the Owners, as an appurtenance to its respective Element, an easement to use and enjoy the Common Areas for their respective intended purposes. The easement with respect to the Common Areas may be exercised during Normal Business Hours and shall be subject to such non-discriminatory security restrictions as Office Owner may reasonably impose pursuant to this Agreement after consultation with the Parking Facility Owner.

2.3 Easement for Access Facilities. Developer hereby grants for the benefit of each of the Owners, as an appurtenance to its respective Element, non-exclusive easements for pedestrian and other appropriate access to and from such Owner's Element over the Access Facilities for their intended purpose. This easement may be exercised (a) over all Access Facilities during Normal Business Hours, and (b) twenty-four (24) hours per day, every day of the year, over those Access Facilities that are designed and intended for emergency egress from any of the Elements; provided that such reasonably direct routes may be subject to such non-discriminatory security restrictions as Office Owner may impose after consultation with the Parking Facility Owner. The easements provided in this Section 2.3 are subject to interruption by other causes beyond the control of the granting Owner.

2.4 No Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Development or the easements created hereby (except as set forth in the Skywalk Agreement) to the general public, and the grantor of any easement or license under this Agreement is entitled to make such temporary closures as may be reasonably necessary to avoid creation of any public rights. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third-party beneficiary rights in any person not specifically benefited by the terms and provisions hereof.

2.5 Security Restrictions. All of the easements granted in this Agreement are subject to reasonable restrictions including access controls through any security system promulgated by Office Owner after consultation with the other Owners, provided that no such restrictions shall unreasonably impair the utility of the easements granted herein.

2.6 Lobby. Developer and the City acknowledge and agree that a portion of the Skywalks will pass through the Lobby. Notwithstanding anything contained herein to the contrary, such portions of the Skywalks that pass through the Lobby (i) shall only be used for the purpose of a pedestrian passageway through the Development, and (ii) Developer and Parking Facility Owner reserve the right to require removal of any person or persons that are disruptive within those portions of the Skywalks passing through the Lobby or that otherwise impede or interfere with the normal course of business within the Development.

2.7 Normal Business Hours. Normal Business Hours shall apply to the Skywalks passing through the Development, including the Lobby; *provided, however*, that Office Owner will agree to extend Normal Business Hours for the Skywalks as required by, and subject to the terms and conditions of, the Skywalk Agreement.

3. Maintenance and Operation.

3.1 Owner Responsibilities.

(a) General. Each Owner shall, at its sole cost and expense and without contribution from any other Owners, maintain its Element in a good state of repair and condition, ordinary wear and tear excepted.

(b) Shared Services. The Owners acknowledge that the coordination of certain shared services may be beneficial to all Owners and to the operation of the Development ("Shared Services"). Office Owner may, from time to time, provide Shared Services (but no other Owner shall be obligated to accept or be responsible for the costs of such Shared Services) or discontinue or change the nature of any Shared Services currently provided, so long as any Owner benefitted by such service reasonably consents to the same. The costs to provide the Shared Services by Office Owner shall be included in Common Costs.

3.2 Office Owner's Responsibilities.

(a) Maintenance of Stairways. Office Owner shall maintain all stairways in the Office Building that are publicly accessible and which are designed and intended to provide common pedestrian access within the Development. Developer and the Parking Facility Owner may agree from time to time to amend this Agreement in order to confirm Office Owner's responsibilities with respect to specific stairways by reference to an exhibit.

(b) Sidewalks and Public Walkways. Office Owner shall maintain (including snow removal) all Sidewalks and Public Walkways located adjacent to or within the property line of the Development, and shall at all times keep the same in first-class order

and condition, ordinary wear and tear excepted, making all necessary repairs thereto, and keeping the same in compliance with all Insurance Requirements and Legal Requirements, the cost of which shall be included in Common Costs.

(c) Common Area. Office Owner shall maintain any other Common Areas not referenced above, and shall at all times keep the same in first-class order and condition, ordinary wear and tear excepted, making all necessary repairs thereto, and keeping the same in compliance with all Insurance Requirements and Legal Requirements, the cost of which shall be included in Common Costs.

3.3 Parking Facility Owner's Responsibilities.

(a) Maintenance of Stairways. Parking Facility Owner shall maintain all stairways in the Parking Improvements that are publicly accessible and which are designed and intended to provide common pedestrian access within the Development. Developer and the Parking Facility Owner may agree from time to time to amend this Agreement in order to confirm Parking Facility Owner's responsibilities with respect to specific stairways by reference to an exhibit.

(b) Maintenance of Vertical Transportation. Parking Facility Owner shall maintain all elevators in the Parking Improvements that are publicly accessible and which are designed and intended to provide common pedestrian access within the Development.

(c) Parking Manager; Selection.

(i) Parking Facility Owner will engage a Parking Manager to manage the operations of the Parking Improvements pursuant to a Qualified Management Contract. Each Parking Manager selected by the Parking Facility Owner from time to time will be a Qualified Parking Manager or, subject to Section 3.3(c)(iv), the City.

(ii) Parking Facility Owner will in good faith solicit and take into account the recommendations of the Office Owner in selecting the Parking Manager.

(iii) The Qualified Parking Manager selected pursuant to this Section 3.3(c) shall, upon execution of a Qualified Management Contract by such Qualified Parking Manager and the Parking Facility Owner, become the Parking Manager during the term of such Qualified Management Contract.

(iv) Nothing herein shall be deemed to prevent the City from acting as the Parking Manager, provided it meets the qualifications of a Qualified Parking Manager as set forth herein.

(d) Operating Budget.

(i) Not later than August 1 of each calendar year, Parking Facility Owner shall prepare a proposed budget for the operation, maintenance and

improvement of the Parking Improvements during the next succeeding calendar year. Each proposed budget shall be consistent with the standards for management, operation, maintenance and repair of the Parking Improvements set forth in Section 3.1(a), and shall include (A) a description of any plans to improve, repair or renovate the Parking Improvements, or any plans to change any operating policies or procedures relating to the use, management or operation of the Parking Improvements; and (B) a proposed budget setting forth (v) amounts expected to be deposited in the Revenue Account over the course of such year; (w) amounts reasonably proposed to be deposited in the Capital Account over the course of such year; (x) amounts expected to be paid on account of Current Expenses; (y) amounts reasonably proposed to be paid out of the Capital Account for major improvements, repairs or renovations to, or replacements of, the Parking Improvements; and (z) amounts projected to be deposited into the Debt Service Account over the course of such year.

(ii) Parking Facility Owner and Office Owner acknowledge that it is their mutual long-term objective to maintain the Parking Improvements as a first-class parking facility that is compatible and coordinated with the balance of the Development and is competitive with other first-class parking facilities in the vicinity. Accordingly, Parking Facility Owner will provide Office Owner a copy of its proposed budget each year at least thirty (30) days before its adoption by Parking Facility Owner. Office Owner may review and comment on the proposed budget (it being understood, however, that Office Owner will not have input on the parking rates proposed to be charged by the Parking Facility Owner for Parking Contracts). Parking Facility Owner will in good faith take into account the comments of Office Owner with respect to the proposed budget in adopting a budget (which shall be the "Operating Budget") for such year.

(iii) Parking Facility Owner shall operate the Parking Improvements in accordance with the Operating Budget in effect from time to time. Parking Facility Owner will permit the Office Owner to inspect from time to time the books and records relating to the operations of the Parking Improvements, including the books and records relating to the accounts established under the Bond Resolution.

(e) Compliance with Bond Resolution.

(i) At all times to and including the Bond End Date, Parking Facility Owner shall apply all Revenues in accordance with the Bond Resolution. The Bond Holder is an intended third-party beneficiary of the provisions of this Section 3.3(d), and the provisions of this Section 3.3(d) cannot be amended, modified, waived or abridged with the prior written consent of the Bond Holder.

(ii) At all times after the Bond End Date, Parking Facility Owner shall apply all Revenues in accordance with the Bond Resolution just as if the Bond End Date had not occurred, except no further amounts shall be deposited or credited to the Debt Service Account.

(f) Hours of Operation; Parking Contracts.

(i) The Parking Improvements will be open and available for use 24 hours a day, seven days a week, every day of the year, subject to temporary interruption for maintenance, repair or casualty.

(ii) Each person parking a vehicle in the Parking Improvements other than Transient Parkers shall be required to execute a Parking Contract in such form as may be established by Parking Facility Owner from time to time.

4. Allocation of Costs.

4.1 Allocable Share.

(a) Certain costs of operating and maintaining the Common Areas and any other areas or items located on another Element that are the responsibility of Office Owner as set forth in Section 3 or elsewhere in this Agreement will be allocated among the Owners in the manner set forth on Exhibit B.

(b) Each Owner shall pay to Office Owner its applicable share of the Common Costs within thirty (30) days after submission of a statement by Office Owner, together with reasonably acceptable evidence of the actual costs incurred.

(c) Office Owner may re-allocate the share of the Common Costs applicable to the Office Element, Parking Facility Element and Retail Element (including both Common Costs which are allocated to the Office Element, Parking Facility Element and Retail Element on Exhibit B, and those Common Costs which are not so allocated on Exhibit B), among the Office Element, Parking Facility Element and Retail Element in an equitable manner based on usage, floor area, or a combination thereof, as the case may be.

4.2 Cost Composition.

(a) Emergency Costs. In the event that Office Owner deems it necessary, in its sole judgment, to make emergency repairs to any portion of the Development to prevent injury or damage to Persons or property, Office Owner shall have the right to do so, it being understood that Office Owner shall nevertheless consult with each other Owner of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof and shall give reasoned consideration to the reasonable objections of any such Owner as to the need for such emergency repairs or to the proposed method or cost of such repairs or both. If the cost of the emergency action exceeds \$25,000 in Constant Dollars, and if such cost is not attributable solely to a particular Element, then Office Owner shall submit a supplemental billing to each other Owner, together with evidence supporting such cost, and each other Owner shall pay its share thereof within thirty (30) days after receipt of such billing. If the cost of the emergency action does not exceed \$25,000 in Constant Dollars and such cost is not attributable solely to a particular Element, then such costs shall be included as part of the Common Costs for that year. If the cost of the emergency action is attributable solely to a

particular Element, then Office Owner shall submit a supplemental billing to the Owner of such particular Element, together with evidence supporting such cost, and the Owner of such particular Element shall pay the cost thereof (whether such costs exceeds \$25,000 in Constant Dollars or not) within thirty (30) days after receipt of such billing.

(b) Exclusions from Common Costs. The following costs and expenses shall not be included in Common Costs:

(i) interest, late charges, and penalties on any Common Cost, unless such interest, late charges or penalties are caused by any Owner, in which case such Owner shall be responsible for such costs;

(ii) attorneys' fees and costs, other than attorneys' fees and costs incurred in connection with enforcing this Agreement;

(iii) Common Costs that are reimbursed by insurance proceeds or condemnation awards;

(iv) any and all expenses incurred in procuring, retaining, negotiating, amending, extending, administering, or terminating leases with any existing or prospective Occupants, including without limitation advertising, brokerage commissions, architectural and engineering fees, and legal fees;

(v) costs that are reimbursable to Office Owner by another Owner as a result of provisions contained in a separate agreement between the Office Owner and such Owner;

(vi) Amounts paid to persons or entities affiliated with, controlled by, controlling of, or under common control with Office Owner to the extent such amounts are greater than would have been charged by an unaffiliated third party in an arms-length transaction; and

(vii) costs attributable to repairing items that are covered by warranties, to the extent of Office Owner's recovery under such warranties.

4.3 Method of Payment; Audit Rights.

(a) On or before August 1 of each calendar year, Office Owner shall compute and deliver to the other Owners a *bona fide* estimate of Common Costs for the upcoming Fiscal Year determined in accordance with such fair and equitable methodology selected by Office Owner from time to time in its sole but reasonable discretion. The Owners shall pay to Office Owner in monthly installments on the first day of each month of such Fiscal Year, without further notice, one-twelfth (1/12) of each Owner's allocable share of such estimate.

(b) Unless delayed by reasons beyond Office Owner's reasonable control, Office Owner shall deliver to each Owner within one hundred twenty (120) days after the end of each Fiscal Year a written statement setting out in reasonable detail the amount of

Common Costs for the preceding Fiscal Year. If the aggregate of monthly installments of Common Costs actually paid by an Owner to Office Owner during such Fiscal Year differs from the amount of Common Costs allocated to such Owner and payable for such Fiscal Year, such Owner shall pay the shortage, or Office Owner shall refund or credit against next payment the overage (at Office Owner's option in its sole discretion), without interest, within thirty (30) days of delivery of such statement.

(c) No Owner may claim a re-adjustment in respect of any Common Costs, whether paid or payable in installments or otherwise, if based on any error of estimation, allocation, calculation or computation thereof, unless claimed in writing prior to the expiration of six (6) months following such Owner's receipt of the written statement from Office Owner given in accordance with Section 6.3(b). The foregoing six (6) month time period shall not apply to any claims for readjustment arising or resulting from any fraudulent acts or omissions.

(d) Office Owner agrees to keep and maintain a proper and accurate system of books of account and records in accordance with generally accepted accounting principles so as to show as accurately and completely as is commercially reasonable all Common Costs and to preserve the same for at least two (2) years after the close of the year to which they relate. Office Owner further agrees to permit any other Owner, its accountants and authorized representatives, to examine and copy (at their sole cost and expense and after 7 days prior written notice) at reasonable times during regular business hours all books and records of Office Owner pertaining to Common Costs. Such other Owner shall not disclose any information obtained by such examination or copying except to the extent that disclosure is necessary for the conduct of such Owner's audit or is otherwise required by law.

(e) Any Owner shall have the right, from time to time (but not after six (6) months subsequent to the expiration of the pertinent year and not more than once during any twelve (12) month period), to cause an audit of the books and records relating to Common Costs to be made by a nationally or regionally recognized accounting firm selected by such Owner and reasonably approved by Office Owner, to verify the amount of Common Costs reported by Office Owner in any year. Such accounting firm shall not have been engaged by any Owner within the immediately preceding twelve (12) months, may not be retained on a contingency fee basis and shall bill such Owner on a time and disbursement basis only. Unless Office Owner contests such audit, if such audit reveals an understatement of Common Costs for the period in question and a consequent deficiency in the payment of Common Costs, such Owner shall forthwith pay the amount of such deficiency to Office Owner, and if such audit reveals an overpayment of Common Costs, Office Owner shall promptly refund or credit the overpayment, at Office Owner's option and without interest.

5. Alterations to Common Areas.

(a) The Office Owner may perform Alterations on the Common Areas from time to time, provided all such Alterations shall be made with reasonable diligence and

dispatch (subject to Unavoidable Delays) in a first-class manner and with materials and workmanship at least as good as existed prior to such Alteration.

(b) Any Alteration to the Common Areas shall be performed so as to minimize any disruption to the use and enjoyment thereof by the affected Owners, and shall not permanently and materially diminish the ingress and egress to any Element.

(c) All Alterations to the Common Areas shall be made and completed in accordance with all Legal Requirements and Insurance Requirements.

6. Real Estate Taxes. Each Owner shall timely pay all Real Estate Taxes payable with respect to its Element. "Real Estate Taxes" means the aggregate of all taxes, rates, charges, levies or assessments now or hereafter imposed by a competent authority upon or in respect of the applicable Element, but shall not include (a) any federal, state or local income, profit or business tax assessed upon the income of an Owner, (b) any estate or inheritance taxes, (c) any franchise, successor or transfer taxes, or (d) any other impost of a personal nature charged or levied against an Owner, except to the extent that any such tax is in lieu of taxes, rates, charges, levies or assessments upon or in respect of the applicable Element. If Real Estate Taxes relate to more than a single Element, the amount shall be equitably allocated to each applicable Element, and the Owner of any of the applicable Elements may pay all of such Real Estate Taxes and recover the allocated share from the Owner(s) of the other applicable Element(s). Office Owner shall have the right, but not the obligation, to cure any failure to pay Real Estate Taxes by any other Owner and shall be entitled to prompt reimbursement therefor within 10 business days after written request.

7. Building Code. The Land on which the Development is located includes multiple lots as platted. The Office Owner hereby confirms that the Development will be constructed in conformance with the applicable provisions of the building code promulgated by the State of Minnesota as if the Development were located on a single lot. No Owner may perform any Alteration or otherwise modify any Element or other portion of the Development in any way that would cause noncompliance with the building code promulgated by the State of Minnesota. Each Owner shall be bound by this Section 7 as if such Owner had originally executed this Agreement.

8. Failure of Performance.

8.1 General.

(a) Event of Default. The occurrence of any one or more of the following events shall constitute an event of default by any non-performing Owner (the "Defaulting Owner"):

(i) The failure to make any payment required to be made hereunder within ten (10) business days of the due date, or

(ii) The failure to observe or perform any of the covenants, conditions or obligations of this Agreement, within thirty (30) days after notice by an Owner (the "Non-Defaulting Owner") specifying the nature of the default claimed.

Upon an event of default, a Non-Defaulting Owner shall be entitled to pursue any proceeding to which it is entitled at law or in equity, in such Non-Defaulting Owner's sole discretion. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another Owner of any of the terms, covenants, or conditions of this Agreement, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to an Owner under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. Only Owners and the Operator, if any, shall have the right to enforce the provisions of this Agreement pursuant to this Article 8. In no event shall any Owner be liable for any consequential or punitive damages to any other Owner.

(b) Notice and Cure. If any Owner defaults in any obligation hereunder that can be cured by the payment of money and the default is not cured within thirty (30) days after written notice thereof, or if any Owner defaults in any other obligation under this Agreement and the default continues for thirty (30) days after written notice thereof (or such longer period as may be necessary to cure the default provided that the defaulting Owner commences to cure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion, provided that such cure must be completed within one hundred eighty (180) days of written notice), then any Non-Defaulting Owner, after additional notice given to the Defaulting Owner, may exercise any one or more of the remedies set forth herein. The first mortgagee of any Owner in default under this Agreement shall be entitled to receive a concurrent notice of said default in the same manner that other notices are required to be given under this Agreement; provided, however, that the first mortgagee has, prior to the time of the default, delivered written notice of the first mortgagee's mailing address to the Owner(s) giving the notice of default. Any first mortgagee who has given notice hereunder shall have the right to cure a default by the applicable Owner hereunder on the same terms as applicable to the Owner.

(c) Upon the occurrence of an event of default under this Agreement and the expiration of any period to cure without a curing of the default, Office Owner or Operator, if any, and thereafter if Office Owner or Operator declines to pursue such remedies, any Non-Defaulting Owner, shall be entitled to one or more of the following remedies:

- (i) cure the default and charge the cost thereof to the Defaulting Owner, and all such costs shall be payable on demand, including any interest thereon at the Interest Rate from the date of such demand until paid; or
- (ii) specific enforcement, injunctive relief, damages, or any other remedy available at law or in equity.

In the event of any litigation hereunder, the prevailing Owner shall be entitled to reimbursement of its reasonable costs of litigation, including reasonable attorney's and expert's fees. Any action seeking one or more forms of relief shall not be a bar to an action at the same or subsequent time seeking other forms of relief. Any delay in realizing, or failure to realize, on any remedy provided herein for a default hereunder shall not be deemed a waiver of that default or any subsequent default of similar or different kind, and no waiver of any right or remedy hereunder shall be effective unless in writing and signed by the person against whom the waiver is claimed.

9. Miscellaneous.

9.1 Relationship of Parties. No provision of this Agreement and no action taken pursuant hereto shall create any relationship between and among the Owners other than as specifically set forth herein. Without limiting the generality of the foregoing, the Owners shall not be deemed partners of, or joint venturers with, or agents for, one another, and nothing contained in this Agreement shall be construed to render any Owner liable for the debts or obligations of another Owner.

9.2 Headings; Interpretation. The language in this Agreement shall be construed simply according to its generally understood meaning, and not strictly for or against Developer or any Owner. Whether or not expressly provided where such term appears in this Agreement, the term "include" (and any variation thereof) is not limiting and instead means "including but not limited to" and shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter. The term "sole" or "absolute" discretion means a party's sole, unqualified and absolute discretion. The headings to the Articles and Sections of this Agreement are incorporated for convenience only and shall have no effect upon the construction or interpretation of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

9.3 Notice. All notices, consents, approvals and other communications which may be or are required to be given by an Owner under this Agreement shall be properly given only if made in writing and sent by (a) hand delivery, (b) U.S. Certified Mail, Return Receipt Requested, (c) electronic transfer device with telephone or other confirmation of receipt on a business day, or (d) a nationally recognized overnight delivery service (such as Federal Express, UPS Next Day Air, or Airborne Express), with all delivery charges paid by the sender and addressed to the applicable Owner, at the addresses set forth below. Such notices shall be deemed received (i) if delivered by hand, certified mail or overnight delivery service, on the date of delivery and (ii) if sent by electronic transfer on a business day during the recipient's normal business hours, on the date of transmission (with confirmation of successful transmission); otherwise the same shall be deemed to have been received on the following business day. The refusal to accept delivery shall constitute acceptance and, in such event, the date of delivery shall be the date on which delivery was refused. Said addresses for notices are to be as follows:

If to Office Owner or
Retail Owner:

Duluth Real Estate LLC
c/o Maurices Incorporated
105 West Superior Street
Duluth, MN 55802
Attn: Senior Vice President and Chief
Financial Officer

with a copy to:

Duluth Real Estate LLC
c/o Maurices Incorporated
105 West Superior Street
Duluth, MN 55802
Attn: Legal Department

If to Parking Facility
Owner:

The City of Duluth
411 West First Street
Room 330 City Hall
Duluth, MN 55802
Attn: City Clerk

or to such other address as the Owner to receive notice may designate in writing to the other Owners by notice given as herein required.

9.4 Time. Time is of the essence of this Agreement and each and all of its provisions.

9.5 Amendment or Modification.

(a) This Agreement and any of the rights, licenses and easements created hereby may be terminated or amended by an instrument duly executed by all of the then-current Owners and consented to in writing by the holder of any first mortgage on the fee title of any Element and the holder of any certificate of sale arising from foreclosure of any such mortgage, if any, and no other party need join in or consent to any such termination or amendment to make the same effective. Any purported amendment or termination not executed or consented to by all of the parties whose execution or consent is required under this Section 9.5 shall be of no force or effect. Any amendment, change, modification or supplement to this Agreement, in order to be effective, shall be by written instrument in recordable form executed by all of the Owners and first mortgagees, if any, and duly recorded in the Office of the Registrar of Titles, St. Louis County, Minnesota, and the Office of the County Recorder, St. Louis County, Minnesota.

(b) Upon any amendment to the legal descriptions contained in the Ground Lease, the legal descriptions attached as exhibits to this Agreement shall also be amended.

9.6 Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, any successor or assign of any Owner. Any Owner shall be liable only for such obligations of such Owner hereunder as accrue during its period of ownership. Developer does hereby declare that the Elements are, and shall be, held, transferred, sold, conveyed and occupied subject to the restrictions and covenants of this Agreement, which restrictions and covenants (a) are for the purpose of protecting the value, desirability and amenities of the Development; (b) shall operate as equitable covenants, restrictions and reservations, which shall run with each Element and which shall be binding on all parties having any right, title or interest in the same, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each of such other parties their heirs, personal representatives, successors and assigns; and (c) are imposed upon each Element, respectively, as a servitude in favor of the other Elements.

9.7 Term. This Agreement shall run with the Land, shall be effective as of the date hereof, and shall terminate on the earlier of (i) 50 years from the date hereof, or (ii) upon the termination of the Ground Lease. Each easement, reservation, covenant, condition and restriction contained in this Agreement shall remain in full force and effect until this Agreement terminates, unless the provisions of the Agreement expressly provide that such easement, covenant, reservation, condition or restriction shall be perpetual, in which event it shall remain in effect until it is released or abandoned by the Owner of the Element benefited by such easement, covenant, reservation, condition or restriction. Upon the termination of this Agreement, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Agreement, except as relates to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this Agreement shall not limit or affect any remedy at law or in equity that an Owner may have against any other Owner with respect to any liability or obligation arising or to be performed under this Agreement prior to the date of such termination.

9.8 Severability. If any term contained in the Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term to Persons or circumstances other than those in respect of which it is invalid or unenforceable), except those terms that are made subject to or conditioned upon such invalid or unenforceable term, shall not be affected thereby, and each such unaffected term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.9 Law Applicable. This Agreement shall be governed by and construed under the laws of the State of Minnesota.

9.10 Agreement Shall Continue Notwithstanding Breach. No breach of this Agreement shall entitle any Owner to cancel, rescind or otherwise terminate this Agreement. However, such limitation shall not affect in any manner any other rights or remedies that any Owner may have hereunder, or at law or in equity, by reason of a breach.

9.11 Attorney's Fees. If any Owner brings an action to enforce or interpret this Agreement, the prevailing Owner in such action shall be entitled to recover reasonable attorney's fees and court costs from the non-prevailing Owner, in addition to any other relief granted.

9.12 Commercially Reasonable. With respect to matters arising under this Agreement, each Owner shall act in a commercially reasonable manner except when another standard is expressly provided. Whenever the consent or approval of an Owner is expressly required hereunder, such consent or approval shall not be unreasonably withheld or delayed, unless a different standard is expressly set forth herein. If any consent or approval is expressly required from more than one Owner, then the consent or approval must be obtained from all such Owners. All consents or approvals under this Agreement must be given in writing.

9.13 Inapplicability of MCIOA; Restrictions on Duration. Developer does hereby declare that (i) no part of the Development may be used for residential purposes, and (ii) it does not intend or elect to have the Development or any part thereof governed by Minnesota Common Interest Ownership Act ("MCIOA"), Minnesota Statutes Chapter 515B. Accordingly, the terms and provisions of MCIOA shall have no applicability to any part of the Development. Developer acknowledges and agrees that this Agreement and the covenants, conditions and restrictions hereof are within the scope of Minnesota Statutes Section 500.20, Subd. 2a(6) and, as such, are not subject to the thirty (30) year limitation of Section 500.20, Subd. 2a, nor, pursuant to Minnesota Statutes Section 541.023, Subd. 2(c), subject to the forty (40) year limitation of Section 541.023, Subd. 1.

9.14 Estoppel Certificates. Each Owner covenants that, within twenty (20) days of any written request of another Owner, it will issue to such requesting Owner, or to any mortgagee or a *bona fide* purchaser under an agreement of sale or similar document, an estoppel certificate stating as of the date of such certificate whether the Owner to whom the request has been directed knows: (a) of any default under the Agreement and if there are known defaults, specifying the nature thereof; (b) whether, to its knowledge, the Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); (c) that, to its knowledge, the Agreement is in full force and effect; and (d) such other things as the requesting party may reasonably request. The issuance of an estoppel certificate shall in no event subject the issuer to any liability for the negligent or inadvertent failure of the issuer to disclose correct or relevant information, nor shall such issuance be construed to waive any rights of the issuer to perform an audit or obtain an adjustment with respect to Common Costs for any year it is entitled to do so; provided, however, such estoppel certificate shall nonetheless act to estop the issuer from asserting a claim or defense against a *bona fide* encumbrancer or purchaser for value to the extent that such claim or defense is contrary to the statements contained in the estoppel certificate, and such *bona fide* purchaser or encumbrancer has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary.

9.15 Merger Not Intended. Common ownership of any Elements or portions thereof shall not cause this Agreement to be extinguished by operation of merger in whole or in part.

9.16 Minimization of Damages. Each Owner agrees to cause the least possible interference with the activities of the other Owners and their Permittees.

9.17 Rights Reserved. Except for rights expressly granted to the Owners herein, each Owner reserves all rights in and to the easement areas on its Element. Each Owner shall continue to enjoy the use of the easement areas on its Element for any and all purposes that do not interfere with the rights granted to the other Owners' use of the easement areas. The rights reserved herein are expressly limited by those actions that might damage the easement areas or prevent easy access thereto.

9.18 No Waiver. The failure of any Owner to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies that Owner may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by any Owner of any default under this Agreement shall be effective or binding on such Owner unless made in writing by such Owner and no such waiver shall be implied from any omission by an Owner to take action with respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default or period of time specified in such express waiver. One (1) or more written waivers of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Agreement. The failure of an Owner to provide a reconciliation or statement for amounts owed within a specified time shall not act as a waiver of such Owner's right to collect such amount upon the later issuance of the required Reconciliation or statement.

9.19 Naming Rights. Office Owner shall have the right to change the name by which the Development is known to the public from time to time in Office Owner's sole discretion.

9.20 Developer's Rights. Notwithstanding anything stated to the contrary in this Agreement, upon the execution and recordation of this Agreement, the Developer shall have no further rights under this Agreement, and the consent and/or approval of the Developer shall not need to be obtained for any purpose under this Agreement, except to the extent that the Developer is the Owner of an Element and then only in its capacity as an Owner of an Element under the terms and provisions of this Agreement.

9.21 Limitation on Claims Against City. During all times that the Parking Facility Owner is the City of Duluth (or a Permitted Transferee, as defined in the Ground Lease):

- (a) Parking Facility Owner's obligation to pay or perform any duty or obligation under this Agreement is a revenue obligation and not a general

obligation of Parking Facility Owner, and Parking Facility Owner's payment and performance obligations are limited to the following sources of funds: (i) the Revenues of the Parking Improvements (and the payment by Parking Facility Owner of obligations under this Agreement shall be considered Current Expenses payable from Revenues, each defined in the Bond Resolution); (ii) insurance proceeds and condemnation awards relating to the Parking Improvements actually received or to be received by Parking Facility Owner; and (iii) any other amounts actually received or to be received by Parking Facility Owner by reason of its ownership of the leasehold estate hereunder and/or its ownership and operation of the Parking Improvements.

(b) If Parking Facility Owner faces a duty or obligation under this Agreement requiring an expenditure of funds which are projected to cause Current Expenses to exceed Revenues and other amounts described in the foregoing clause (a), the City of Duluth's administration shall recommend and the City Council shall consider the options available to the Parking Facility Owner to perform and/or pay for such duty and obligation under this Agreement, including the issuance of revenue bonds payable from Revenues of the Parking Improvements.

(c) Neither the full faith and credit nor the taxing powers of Parking Facility Owner are pledged to the payment or performance of the Parking Facility Owner's duties

[Signature Pages Follow]

US.53800500.10

SIGNATURE PAGE
OF
DEVELOPER
TO
OPERATION AND EASEMENT AGREEMENT

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be made as of the day and year first above written.

Duluth Real Estate LLC

By: 
Name: Brian Thun
Its: Treasurer

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

The foregoing instrument was acknowledged before me this 13th day of may, 2014, by Brian Thun, the Treasurer of Duluth Real Estate LLC, a Delaware limited liability company, on behalf of the company.


Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
FAEGRE BAKER DANIELS LLP
(Tory L. Jackson)
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402



IN WITNESS WHEREOF, the undersigned has caused this Agreement to be made as of the day and year first above written.

City of Duluth

By: _____

Mayor

Attest: _____

[Signature]
City Clerk

Countersigned: _____

City Auditor

Approved: _____

[Signature]
Assistant City Attorney

Sign Here

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

The foregoing instrument was acknowledged before me this 23rd day of May, 2014, by Don Ness, the Mayor of the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota, on behalf of the municipal corporation.

Bronwyn Lipinski

Notary Public

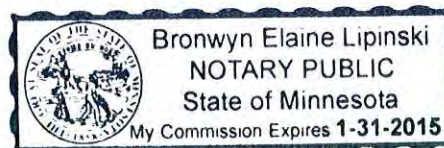


EXHIBIT A-1

Legal Description of Land

Parcel 1: Lot 65, Duluth Proper, First Division, St. Louis County, Minnesota. ABSTRACT PROPERTY

Parcel 2: Lots 67, 69, 71, 73, 75, 77 and 79, EXCEPT the E'ly 5 feet of the W'ly 34 feet thereof, West Superior Street, Duluth Proper, First Division, and all that part of Government Lot 5 Section 27 Township 50 North Range 14 West of the Fourth Principal Meridian, which is necessary to make said Lot 79 on Superior Street, a full lot, with a frontage of 50 feet of said Street and a depth of 140 feet of Fifth Avenue West, Duluth, EXCEPT that portion of said lots and said Government Lot 5 lying within 29 feet of the East line of Fifth Avenue West as originally platted. TORRENS PROPERTY

EXHIBIT A-2

Legal Description of Office Parcel

Parcel 1: Lot 65, Duluth Proper, First Division, St. Louis County, Minnesota. ABSTRACT PROPERTY

and

Parcel 2: Lots 67, 69, 71, 73, 75, 77 and 79, EXCEPT the E'ly 5 feet of the W'ly 34 feet thereof, West Superior Street, Duluth Proper, First Division, and all that part of Government Lot 5 Section 27 Township 50 North Range 14 West of the Fourth Principal Meridian, which is necessary to make said Lot 79 on Superior Street, a full lot, with a frontage of 50 feet of said Street and a depth of 140 feet of Fifth Avenue West, Duluth, EXCEPT that portion of said lots and said Government Lot 5 lying within 29 feet of the East line of Fifth Avenue West as originally platted. TORRENS PROPERTY

Except the portion thereof which constitutes the Parking Facility Parcel, Alley Parcel and Retail Parcel.

EXHIBIT A-3

Legal Description of Parking Facility Parcel

Tract 1 (Elevators on First Floor of the Development, as defined in the Development Agreement)

That portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 129.31 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 56.92 to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 29.04 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 8.08 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 29.04 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 8.08 feet to the point of beginning.

Said parcel lies above elevation 635.0 feet and below elevation 651.37 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 2 (Elevators on Second Floor of the Development)

That portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 129.31 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 56.92 to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 29.04 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 8.08 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 29.04 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 8.08 feet to the point of beginning.

Said parcel lies above elevation 651.37 feet and below elevation 668.04 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 3 (Portion of Inclined Ramp between Second Floor and Third Floor)

That portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 138.64 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 86.25 feet to the point of beginning of

the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 45.08 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 153.00 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 27.25 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 13.00 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 33.67 feet; thence North 41 degrees 36 minutes 41 seconds East a distance of 7.33 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 15.83 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 12.67 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 15.83 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 87.92 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 15.83 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 32.08 feet to the point of beginning.

Said parcel lies above Inclined Plane ABCD (as herein defined) and below elevation 668.04, National Geodetic Vertical Datum ("NGVD"), 1929 Adjustment.

"Inclined Plane ABCD" is an inclined plane, the lower end of which coincides with Line AB (as herein defined), and the upper end of which coincides with Line CD (as herein defined).

"Line AB" is a line of elevation 657.62 (NGVD, 1929 Adjustment) described as follows: Commencing at the most easterly corner of Lot 65, DULUTH PROPER FIRST DIVISION, St. Louis County, Minnesota; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of Lots 65, 67 and 69 said DULUTH PROPER FIRST DIVISION, a distance of 138.64 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 131.33 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 153.00 feet to the point of beginning of said Line AB; thence South 48 degrees 23 minutes 09 seconds East a distance of 60.91 feet and said described Line AB there terminating.

"Line CD" is a line of elevation 667.62 (NGVD, 1929 Adjustment) described as follows: Commencing at the most easterly corner of Lot 65, DULUTH PROPER FIRST DIVISION, St. Louis County, Minnesota; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of Lots 65, 67 and 69 said DULUTH PROPER FIRST DIVISION, a distance of 138.64 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 70.42 feet to the point of beginning of said Line CD; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 60.91 feet and said described Line CD there terminating.

Tract 4 (Third Floor of the Development)

That portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 1.47 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 8.50 feet to the point of beginning of the parcel to be described; thence continuing North 48

degrees 23 minutes 09 seconds West a distance of 94.13 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 28.70 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 114.99 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 15.04 feet; thence South 71 degrees 57 minutes 56 seconds East a distance of 31.28 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 31.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 9.48 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 32.83 feet; thence North 71 degrees 51 minutes 56 seconds West a distance of 27.95 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 16.65 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 211.09 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 24.54 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 98.29 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 364.67 feet to the point of beginning.

EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 103.05 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 65.28 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 19.34 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 16.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 19.34 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 16.15 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, and 69, a distance of 137.39 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 10.77 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.77 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69 and 71, a distance of 158.37 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 12.22 feet; thence South 48 degrees 23 minutes 09 seconds

East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 12.22 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71 and 73, a distance of 224.61 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 59.30 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 21.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 3.33 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 21.40 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 3.33 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71, 73, and 75, a distance of 258.40 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning of the easement to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 13.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 13.15 feet to the point of beginning.

Said parcel lies above elevation 668.04 feet and below elevation 678.37 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 5 (Floors Four through Six of the Development)

That portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 1.47 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 8.50 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 94.13 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; North 48 degrees 23 minutes 09 seconds West a distance of 28.70 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 334.19 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 24.54 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.24 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 98.29 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 364.67 feet to the point of beginning.

EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67 and 69, a distance of 103.05 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 65.28 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 19.34 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 16.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 19.34 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 16.15 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, and 69, a distance of 137.39 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 10.77 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.77 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69 and 71, a distance of 158.37 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 12.22 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 12.22 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65, 67, 69, 71 and 73, a distance of 224.61 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 59.30 feet to the point of beginning; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 21.40 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 3.33 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 21.40 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 3.33 feet to the point of beginning.

ALSO EXCEPT, that portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lots 65,

67, 69, 71, 73, and 75, a distance of 258.40 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 53.51 feet to the point of beginning of the easement to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 32.98 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 13.15 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 32.98 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 13.15 feet to the point of beginning.

Said parcel lies above elevation 678.37 feet and below elevation 712.35 feet, National Geodetic Vertical Datum, 1929 adjustment.

Tract 6 (Top of Elevator Shaft on Seventh Floor of the Development)

That portion of the Land described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, 67 & 69, a distance of 127.50 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 54.18 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 14.76 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 5.00 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 16.76 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 15.23 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 31.52 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 10.23 feet to the point of beginning.

Said parcel lies above elevation 712.35 feet and below elevation 729.71 feet, National Geodetic Vertical Datum, 1929 adjustment.

EXHIBIT A-4

Legal Description of DNT Parcel

West Half of Lot 68 and all of Lot 70, DULUTH PROPER, FIRST DIVISION,
WEST FIRST STREET. ABSTRACT PROPERTY

EXHIBIT A-5

Legal Description of Alley Parcel

That portion of Lots 65, 67, 69, 71, 73, 75, 77 and that part of Lot 79 lying northeasterly of the southwesterly 34.00 feet thereof, all in DULUTH PROPER FIRST DIVISION, St. Louis County, Minnesota, and that part of the Alley as dedicated in DULUTH PROPER FIRST DIVISION that lies adjacent to said lots, described as follows:

Commencing at the most easterly corner of said Lot 65; thence on an assumed bearing of South 41 degrees 36 minutes 51 seconds West, along the southeasterly line of said Lot 65, a distance of 77.81 feet; thence North 48 degrees 23 minutes 09 seconds West a distance of 140.00 feet to the point of beginning of the parcel to be described; thence continuing North 48 degrees 23 minutes 09 seconds West a distance of 20.00 feet; thence South 41 degrees 36 minutes 51 seconds West a distance of 62.00 feet; thence South 48 degrees 23 minutes 09 seconds East a distance of 20.00 feet; thence North 41 degrees 36 minutes 51 seconds East a distance of 62.00 feet to the point of beginning.

Said parcel lies above elevation 668.04 feet and below elevation 679.0 feet, National Geodetic Vertical Datum, 1929 adjustment.

Depiction of Lobby



EXHIBIT B

Allocable Share of Common Costs

The Budget and Allocable Shares will be prepared and determined by Office Owner or its appointee (hereinafter collectively "Office Owner"), all subject to the provisions of this Agreement. Subject to the provisions of Section 6 of the Agreement, the following general principles will be applied, in Office Owner's reasonable discretion, for costs not included in the chart below:

1. Expenses related to items, systems and issues that directly benefit a specific Owner will be charged directly to that Owner.
2. Shared items that can be practically allocated based on usage through metering or sub-metering or other method will be allocated based on usage.
3. Those shared items that benefit all of the Owners in either equal measure or in a non-quantifiable manner will be allocated based on Floor Area.

CERTIFIED COPY OF RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DULUTH, MINNESOTA

RESOLUTION 14-0235

ADOPTED: MAY 12, 2014

RESOLVED, that the proper city officials are hereby authorized to enter into the agreements with Duluth Real Estate, LLC, a Minnesota limited liability company, substantially in the form of those on file in the office of the city clerk bearing the public documents numbers set forth below, related to the Maurices office tower project:

<u>DOCUMENT</u>	<u>Public Document No.</u>
Development Agreement	14-0512-16(a)
Ground Lease	14-0512-16(b)
Disbursing Agreement	14-0512-16(c)
Operating and Easement Agreement	14-0512-16(d)
Pedestrian Passageway Agreement	14-0512-16(e)
pertaining to the Maurices office tower property	

Resolution 14-0235 was adopted upon the following vote:

Yeas: Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Larson, Russ and Sipress -- 8

Nays: None -- 0

Abstention: President Krug - 1

Approved May 12, 2014

DON NESS, Mayor

I, JEFFREY J. COX, city clerk of the city of Duluth, Minnesota, do hereby certify that I have compared the foregoing resolution passed by the city council on the 12th day of May, 2014, with the original in my custody as city clerk of said city and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth, this 29th day of May, 2014.

JEFFREY J. COX
City Clerk

by 
Assistant
CITY OF DULUTH, MINNESOTA

EXHIBIT E

**Section 7.04 of the General Obligation Bond Proceeds Grant Agreement – Construction Grant for the 425 Public
Parking Facility Project under the Minnesota Business Development Capital Projects Grant Program (City
Contract No. 22173 on file with the City's Auditor)**

such Real Property or, if applicable, Facility by increasing the value thereof or improving its ability to be used to operate the Governmental Program thereon or therein, (c) do any act or thing which would unduly impair or depreciate the value of the Real Property or, if applicable, Facility, (d) abandon the Real Property or, if applicable, Facility, (e) commit or permit any waste or deterioration of the Real Property or, if applicable, Facility, (f) remove any fixtures or personal property from the Real Property or, if applicable, Facility, that was paid for with the proceeds of the G.O. Grant unless the same are immediately replaced with like property of at least equal value and utility, or (g) commit, suffer or permit any act to be done in or upon the Real Property or, if applicable, Facility, in violation of any law, ordinance or regulation.

If the Public Entity fails to maintain the Real Property and, if applicable, Facility in accordance with the provisions contained in this Section, then the State Entity may perform whatever acts and expend whatever funds that are necessary to so maintain the Real Property and, if applicable, Facility and the Public Entity irrevocably authorizes and empowers the State Entity to enter upon the Real Property and, if applicable, Facility, to perform such acts as may be necessary to so maintain the Real Property and, if applicable, Facility. Any actions taken or funds expended by the State Entity hereunder shall be at its sole option and discretion, and nothing contained herein, including but not limited to this Section, shall require the State Entity to take any action, incur any expense, or expend any funds, and the State Entity shall not be responsible for or liable to the Public Entity or any other entity for any such acts that are undertaken and performed in good faith and not in a negligent manner. Any funds expended by the State Entity to perform such acts as may be necessary to so maintain the Real Property and, if applicable, Facility shall be due and payable on demand by the State Entity and bear interest from the date of advancement by the State Entity at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365 day year.

Section 7.04 Record Keeping and Reporting. The Public Entity shall maintain or cause to be maintained books, records, documents and other evidence pertaining to the costs or expenses associated with the Project and operation of the Real Property and, if applicable, Facility needed to comply with the requirements contained in this Agreement, the G.O. Compliance Legislation, the Commissioner's Order, and the G.O. Bonding Legislation, and upon request shall allow or cause the entity which is maintaining such items to allow the State Entity, auditors for the State Entity, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract, all of such items. The Public Entity shall use or cause the entity which is maintaining such items to use generally accepted accounting principles in the maintenance of such items, and shall retain or cause to be retained (i) all of such items that relate to the Project for a period of 6 years from the date that the Project is fully completed and placed into operation, and (ii) all of such items that relate to the operation of the Real Property and, if applicable, Facility for a period of 6 years from the date such operation is initiated.

Section 7.05 Inspections by State Entity. Upon reasonable request by the State Entity and without interfering with the normal use of the Real Property and, if applicable, Facility, the Public Entity shall allow and will require any entity to whom it leases, subleases, or enters into a Use Contract for any portion of the Real Property and, if applicable, Facility to allow the State Entity to inspect the Real Property and, if applicable, Facility.