

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), effective as of the date of attestation by the City Clerk, is entered into by and between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota ("Landlord") and ROERS LAKE & FIRST LLC, a Minnesota Limited Liability Company ("Tenant").

WHEREAS, Landlord owns the Medical District Parking Ramp located at 302 East First Street in Duluth, Minnesota, and Tenant is redeveloping the existing office building at 1 - 3 East 1st Street, Duluth, Minnesota into a multi-family apartment building that will include 47 housing units ("Project"); and

WHEREAS, Tenant desires to lease spaces within the Medical District Parking Ramp for purposes of providing parking for the Project's residential tenants; and

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

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

1 Premises

1.1 On the Commencement Date defined below, Landlord leases to Tenant fifty (50) parking spaces in the Medical District Parking Ramp accessed off of 1st Street located in the general area as shown on the attached Exhibit A (the "Premises"). The parking spaces shall be reserved for the exclusive use of the Tenant and its Project tenants and their guests, and invitees, and shall be marked with appropriate signage indicating reservation for such exclusive use, installation of such signage being at the sole cost of the Landlord.

1.2 Prior to the execution of this Lease Agreement, Tenant was provided a copy of the 2019 Annual Structural Condition Report for the Medical District Parking Ramp prepared by Palanisami & Associates, Inc. dated January 7, 2019, and based on said report and Tenant's inspection of the Premises, Tenant accepts the Premises as is and where is, with the exception that rent shall abate during any period when the Premises are not reasonably usable for parking purposes.

2 Term

2.1 Tenant will have and hold the Premises for the term of fifteen (15) years commencing on the date upon which Tenant receives a certificate of occupancy for the Project, but in no event sooner than January 1, 2020 or later than May 30, 2021 (the "Commencement Date") and continuing through the date which is fifteen (15) years from the Commencement Date (the "Termination Date"). Tenant shall give Landlord sixty (60) days' prior written notice of the anticipated date of receipt of the certificate of occupancy

for the Project. If said Termination Date does not fall on the last day of a month, the Termination Date shall be the last day of the month that includes the 15th anniversary of the Commencement Date. This Lease shall terminate at 11:59 P.M. on the Termination Date. The period beginning on the Commencement Date and ending on the Termination Date shall be the "Term." Notwithstanding anything to the contrary contained herein, if Tenant has not completed construction of the Project and received a certificate of occupancy by May 30, 2021, this Lease shall be subject to termination by either party, effective upon written notice delivered to the party after such date, except for those provisions which survive termination. Additionally, in the event the Premises are no longer used solely for parking for Project tenants and their invitees, the City may terminate this Lease effective upon written notice delivered to Tenant, except for those provisions which survive termination.

3 Rent and Other Fees

3.1 Beginning on the Commencement Date, Tenant shall pay monthly rent installments in advance in the amount of Forty Five (\$45) per parking space, per month, payable into Fund 505-015-1480-2512-4374-04 (Parking Fund, Public Administration, Off Street Parking, Medical District Ramp, Contract Parking – Long Term Lease (the "Base Rent"). Beginning on the 1st anniversary of the Commencement Date, and annually thereafter, Base Rent shall increase by a percentage equal to the average of the Consumer Price Index (as hereinafter defined) calculated annually on the anniversary month of the Commencement Date for the preceding ten (10) years (the "CPI Adjustment"), Notwithstanding anything to the contrary contained herein, the CPI Adjustment shall not be greater than 3% or less than 1% annually. For purposes hereof, "Consumer Price Index" shall mean the index number published by the United States Department of Labor, Bureau of Labor Statistics (the "Bureau") for All Urban Consumers for the US City Average in the "Monthly Labor Review" of the Department of Labor. In the event the Bureau ceases publishing the Consumer Price Index, the CPI Adjustment shall be made by resort to comparable statistics on the purchasing power of the consumer dollar in Duluth, or if not available then in the United States, as published. The Tenant shall pay the Base Rent at the address of the Landlord set out below, or at such other place as the Landlord may direct in writing, by the first of each month in advance until the end of the Term. Payment of the Base Rent shall be made by certified check, money order, wire, or ACH electronic payments.

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

3.3 For the purposes of this Lease, "Taxes" means (i) any transaction value, ad valorem or sales taxes required by any governmental authority to be collected or paid (or both collected and paid) by Tenant, and (ii) all real property, school, local improvement, business and all other taxes, rates, charges, duties, assessments and impositions, both

general and special, that may be levied, rated, charged or assessed by any governmental authority with respect to the Premises and its use, including all improvements in existence upon the Premises on the Commencement Date.

3.4 For purposes of this Lease, any payments to be made by Tenant pursuant to Sections 3.2, 3.3, 5.2 and 6.2 shall be "Additional Rent". The Base Rent and the Additional Rent shall collectively be the "Rent".

4 Tenant's Covenants

4.1 Tenant covenants with Landlord:

- (a) to pay the all Rent in the manner provided in this Lease;
- (b) to use the Premises solely for the purpose of parking for Tenant's Project residential tenants or their invitees;
- (c) to not alter or damage any structural components or infrastructure of the Medical District Parking Ramp including but not limited to columns, walls, asphalt floor, pipes, electrical or mechanical systems;
- (d) to permit Landlord and its agents to enter upon the Premises at all times to maintain or repair structural components, infrastructure or utilities, to conduct the annual ramp inspection, and to inspect and review the condition of the Premises;
- (e) not to carry on, or allow to be carried on, any business on the Premises that would constitute a nuisance;
- (f) at the expiration or sooner termination of the Term, to deliver the Premises to Landlord.
- (g) (i) to defend, indemnify and hold Landlord, its officers, agents and employees, harmless from and against all liabilities, damages, losses, expenses, claims, fines, or judgments, including reasonable attorneys' fees and expenses incidental thereto, by reason of loss of, or damage to, property, or injury or death of any person, or other legal liability arising out of Tenant's acts or omissions or the acts or omissions of Tenant's officers, agents, employees, contractors, tenants or their invitees arising out of this Lease, and (ii) to defend, indemnify and hold Landlord, its officers, agents and employees, harmless from and against all liabilities, damages, losses, expenses, claims, fines, or judgments, including reasonable attorneys' fees and expenses incidental thereto, by reason of loss of, or damage to, property, or injury or death of any person, or other legal liability arising out of or by reason of the acts or omissions of Tenant related to the occupancy or use of the Premises by Tenant, or its officers, agents, employees, contractors, tenants or their invitees.

- (h) to obtain and keep in force during the Term commercial general liability insurance and business automobile liability insurance, providing for liability for premises, operations, completed operations, independent contractors, contractual liability, owned and/or leased automobile liability, non-owned and hired automobile liability, against claims for bodily injury, personal injury, death or property damage arising out of the use of the Premises, its officers, agents, employees, contractors, tenants or invitees in an amount per occurrence of not less than \$2,000,000 and to provide Landlord with certificates evidencing such insurance prior to the Commencement Date of this Lease and upon request thereafter. Such insurance will be primary and not call into contribution any insurance held by Landlord; will to the extent commercially available provide 30 days' notice of cancellation, non-renewal or material change; will be taken out and maintained in responsible insurance companies organized under the laws of the United States and licensed to do business in the State of Minnesota; will name Landlord as an additional insured; will contain a cross-liability clause and a waiver of the insurer's right of subrogation against Landlord and its respective officers, employees and agents. Tenant shall also provide workers' compensation insurance in accordance with the laws of the State of Minnesota. Landlord reserves the right to require Tenant to increase the coverages set forth above and to provide evidence of such increased insurance coverage to the extent that the liability limits as provided in Minnesota Statute Section 466.04 are increased. Landlord does not represent or guarantee that these types or limits of coverage are adequate to protect Tenant's interests and liabilities. It is understood that the specified amounts of insurance stated in this paragraph shall in no way limit the liability of Tenant under Sections 4.1(g); and
- (i) promptly upon execution of this Lease, to record this Lease in the Offices of the St. Louis County Recorder and the Registrar of Titles and to pay all costs associated therewith. Upon recordation, Developer shall promptly submit to DEDA an executed original of this Lease showing the date and document numbers of record, or a certified copy of the filed original.

5 Landlord's Covenants

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

5.2 Landlord shall be responsible for the maintenance and repair of the Premises. In the event repairs are necessary as a result of the negligent or intentional acts of Tenant, its officers, agents, employees, contractors, tenants or invitees, Tenant shall be responsible for the cost of such repairs to be paid by Tenant upon invoice therefor. All maintenance and repairs of Landlord shall be done in a good and workmanlike manner, and the Premises shall be kept in good, working order for parking purposes.

6 Conditions and Rights

6.1 Events of Default. Each of the following shall be an “Event of Default” by Tenant: (i) If Tenant files a petition of bankruptcy, or makes an assignment for the benefit of creditors, or if Tenant is adjudicated bankrupt or insolvent, or (ii) if Tenant files any petition or institutes any proceeding under any insolvency or bankruptcy legislation seeking to effect a reorganization or a composition, or (iii) if a receiver or trustee of the Premises is appointed by Tenant, or (iv) if the leasehold estate created by this Lease is taken in execution or by any process of law, except as otherwise permitted by this Lease, or (v) if Tenant, without the written consent of Landlord, abandons the Premises, or (vi) if Tenant fails to pay Rent when due and such failure shall continue for five (5) business days after written notice to Tenant (a “Payment Default”), or (vii) if a breach or non-performance of any of the other covenants or obligations contained in this Lease on the part of Tenant has not been rectified within thirty (30) days of written notice to Tenant (or where such default cannot reasonably be rectified within thirty (30) days, such additional time as may be reasonably required to remedy such default).

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

6.3. Access. Tenant shall not prohibit or inhibit Landlord access to any portion of the Premises. Landlord shall be exclusively responsible for the duplication and distribution of all keys or access cards allowing ramp users access to the Premises. Landlord shall provide an allotment of key cards to Tenant and will be responsible for activation of the key cards. Tenant shall notify Landlord in writing at least sixty (60) days prior to the Commencement Date of the number of key cards required for the Premises. Tenant is prohibited from duplicating any key to the Premises. Tenant agrees to keep a list of individuals to whom it has distributed keys and to provide the names of those individuals to Landlord upon request. In the event Tenant requires additional cards due to loss, damage, or otherwise, additional cards shall be provided to Tenant at their actual cost plus a \$4 convenience fee.

7. General

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

7.2 Time is of the essence concerning this Lease.

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

If to Landlord:

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

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

and:

If to Tenant:

Roers Lake & First LLC
110 Cheshire Lane, Suite 120
Minnetonka, MN 55305
Attn: Brian Roers

Telephone: (952) 210-7460
Email: brian@roerscompanies.com

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

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

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

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

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

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

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

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

7.12 Notwithstanding anything to the contrary herein and with the prior written consent of the City's Chief Administrative Office or designee which consent shall not be unreasonably withheld, Tenant shall be permitted to assign its right, title, and interest in this Lease and in the leasehold estate created hereby to any lender providing financing for the acquisition, construction, rehabilitation, and/or refinancing of the Project. Tenant understands and agrees that this Lease and the leasehold estate created hereby is granted solely for the purpose of facilitating the development and operation of the Project and, therefore, shall not be severable from the Project. In the event that Tenant's interest in this Lease and/or the leasehold estate created by this Lease is taken by such lender or its designee by any process of law, such lender or designee, as applicable, shall upon substantially performing all covenants and conditions to be performed under this Lease,

be entitled to all rights of the Tenant hereunder, but only in conjunction with the operation of the Project.

[Signatures Follow on Next Page]

Roers Lake & First LLC
a Minnesota limited liability company

By: Roers Lake & First MM LLC
Its: Managing Member

By: Roers Companies LLC
Its: Manager

By: _____

Brian J. Roers, its Manager

STATE OF MINNESOTA

) ss.

COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Brian J. Roers, the Manager of Roers Companies LLC, a Minnesota limited liability company, the Manager of Roers Lake & First MM LLC, a Minnesota limited liability company, the Managing Member of Roers Lake & First LLC, a Minnesota limited liability company, on behalf of the Company.

Notary Public

NOTARIAL STAMP OR SEAL

This Instrument was drafted by:

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

Exhibit A
General Location of the Premises



17485853v2