

TEMPORARY CONSTRUCTION EASEMENT,  
ACCESS EASEMENT AND CONSTRUCTION  
AGREEMENT

THIS AGREEMENT, effective as of the date of attestation thereto by the Duluth City Clerk, by and between the CITY OF DULUTH, a municipal corporation created and existing under the law of the State of Minnesota, hereinafter referred to as "City", and GATEWAY PROPERTIES, LLLP a Minnesota Limited Liability Limited Partnership hereinafter referred to as "Owner".

WHEREAS, Owner is the owner of that property, hereinafter referred to as the "Property" legally described on Exhibit A attached hereto and made a part hereof, which Property will be materially impacted by the City's impending Superior Street Reconstruction Project (the "Project") which is anticipated to be constructed from 2018 through 2020; and

WHEREAS, in order for the City to be able to construct the Project on and in the vicinity of the Property, City will require a construction easement on the Property as hereinafter described on and the right to construct certain improvements on and to the Property as hereinafter described; and

WHEREAS, Owner has agreed to grant the referenced construction easement and has approved the City constructing the referenced improvements under the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto hereby agree as follows:

1. Definitions

The following terms and phrases shall have the meanings hereinafter ascribed to them:

- A. Construction Easement: shall mean a temporary easement for construction purposes over and across that portion of the Property described on Exhibit B and depicted on Exhibit C, which easements are attached hereto and made a part hereof
- C. Engineer: shall mean the Duluth City Engineer or such other person as he may have designated from time to time in writing.

- D. Plans: shall mean the plans and specifications for the construction of the improvements to be constructed on the Property. Which plans and specifications are attached hereto and made a part hereof as Exhibit D.
- E. Project: shall mean the reconstruction of Superior Street from Mesaba Avenue to 4<sup>th</sup> Avenue East including all utilities to be constructed during 2018 through 2020.
- F. Property: shall mean the property in St. Louis County, Minnesota described on Exhibit A.

2. Construction Easement

Owner hereby grants to City a temporary Construction Easement over that portion of the Property described on Exhibits B and C attached hereto and made a part hereof for the purpose of constructing the improvements on the Property as shown on the Plans. The duration of this temporary Construction Easement shall run from the effective date of this Agreement until December 31, 2020 or until the City Engineer certifies in a document in recordable form that the Project has been completed, whichever is sooner; provided that Owner shall have the right but not the obligation to extend the term of said easement for an additional term by written authorization therefor given by an authorized person representing Owner to the City.

3. City to Construct Improvements

In consideration of the above grant of easement by Owner, City hereby agrees to cause to be constructed the improvements substantially as described on Exhibit D, provided that City may cause to be made minor modifications to the plans for the Improvements determined to be reasonable and prudent by the City's City Engineer without seeking approval of Owner, so long as Owner's rights under this Agreement are not materially altered. In the event that City wishes to make modifications to the Plan as shown on Exhibit D which would materially adversely affect the Owner or the Property, City shall provide a revised Exhibit D showing such changes. Owner shall have ten (10) business days from the date the City provides a request for such modification and provides such revised Exhibit D to approve or disapprove such proposed revisions of the Improvements. If Owner approves of the modification in writing or fail to object to such modification within said ten (10) day period, City shall have the right to have the improvements constructed in accordance with the revised Exhibit D. If the Owner disapproves of the proposed revisions, City and Owner agree to meet as expeditiously as possible and to negotiate in good faith to reach an agreement with regard to modification of Exhibit D.



6. Construction Costs

City agrees that it will be solely responsible for paying all of the costs of constructing the improvements as shown on Exhibit D and as the same may be modified by City and approved by Owner as provided for in Paragraph 3 above, including any unforeseen costs associated therewith.

7. Insurance

As part of the City's process of contracting for the construction of the Improvements, the City will require that the City's contractor agree to indemnify the Owner and that the Owner be named as additional insureds as to any portion of the work being constructed on their properties respectively. Such indemnification and insurance shall be the same indemnification and insurance required by the City for its protection.

8. Maintenance and Operation of Improvements

Upon completion of the construction of the improvements, ownership of and title to the Improvements shall be deemed to be solely in the Owner. Thereafter, City shall have no obligations to maintain or to operate the improvements or the property upon which they are located and responsibility for the maintenance and operation thereof shall be solely that of the Owner.

9. Independent Contractor

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 between the parties hereto or of constituting Owner as an agent, representative or employee of City for any purpose or in any manner whatsoever. Nether Owner nor any officers or employees thereof shall not be considered an employee of City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of Owner while so engaged and any and all claims whatsoever on behalf of Owner arising out of employment or alleged employment, including without limitation, claims of discrimination against City, its officers, agents, contractors or employees shall in no way be the responsibility of City. Owner and its officers, agents, contractors 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. Furthermore, City shall not, in any way, be responsible to defend, indemnify or save harmless Owner from liability or judgments arising out of the intentional or negligent acts or omissions of Owner while performing the work specified by this Agreement.

10. Default and Remedies

In the event that any party shall fail to perform any obligation of said party owed to another party hereunder, the non-defaulting party may give notice in writing to the defaulting party setting forth the obligation or obligations which the defaulting party shall have failed to perform in conformance with the requirements of this Agreement and upon receipt thereof the defaulting party shall immediately commence to cure any such default or, if cure cannot be reasonably commenced immediately, shall commence such cure as soon as reasonably practical and shall complete such cure as soon as is reasonably practical. If cure of such default shall not be so commenced and completed, the non-defaulting party shall be entitled to seek damages for any damages resulting from such failure to cure, injunctive relief to compel performance of any obligation under the Agreement with regard to which the defaulting party is in default or both.

11. Notices

Notices to be given hereunder shall be deemed to be sufficient if deposited in the U.S. Mail, postage prepaid to the address set forth below or if sent by overnight mail to the address set forth below unless a party shall send notice to the other party as herein provided directing that such notices shall be sent to a different address:

In the case of City:            Director of Public Works and Utilities  
   City of Duluth  
   411 West First Street, Room 211B  
   Duluth, MN 55802

In the case of Owner:       Gateway Properties, LLLP  
   12 East 4<sup>th</sup> Street  
   Duluth, MN 55805

12. Civil Rights Assurances

Owner, for themselves and their officers, agents, servants and employees as part of the consideration under this Agreement, does hereby covenant and agree that:

- A. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital 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 work to be done pursuant to this Agreement.

- B. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code and any regulations and executive orders which may be affected with regard thereto.

13. Rules and Regulations

Owner agree to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and City and their respective agencies which are applicable to its activities under this Agreement.

14. Waiver

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

15. Applicable Law

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

16. 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.

17. Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations

between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

CITY OF DULUTH, a Minnesota  
Municipal Corporation

Gateway Properties, LLLP,  
a Minnesota Limited Liability  
Limited Partnership

By: \_\_\_\_\_  
Emily Larson  
Its Mayor

Attest:

By: \_\_\_\_\_  
Jeffrey J. Cox  
Its City Clerk

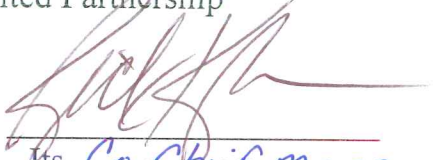
\_\_\_\_\_  
Date

Approved:

\_\_\_\_\_  
Assistant City Attorney

Countersigned:

\_\_\_\_\_  
City Auditor

By:   
Its *Co-Chief manager,*  
*Gateway Redevelopment, LLC*  
*Its General Partner*

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Emily Larson and Jeffrey J. Cox, Mayor and City Clerk respectively of the City of Duluth, a Minnesota municipal corporation on behalf of the City.

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

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



The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of JANUARY, 2018, by RICK KLUN, the CoChief Manager of Gateway Properties LLLP, a Minnesota Limited Liability Limited Partnership

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

Drafted by:  
Robert E. Asleson  
Assistant City Attorney  
City of Duluth  
411 West First Street  
Room 410, City Hall  
Duluth, MN 55802  
(218) 730-5490

EXHIBIT A

1298702

**PARCEL 1**

The northeasterly 18.60 feet of Lot 108, in Block 3, DULUTH PROPER THIRD DIVISION according to the plat thereof on record in the Office of the County Recorder, St. Louis County, Minnesota.

101350

**PARCEL 2**

All of Lots Ninety-eight (98), One-hundred (100), One-hundred and Two (102), One hundred and Four (104), One-hundred and Six (106), in Block 3, DULUTH PROPER THIRD DIVISION according to the plat thereof on record in the Office of the County Recorder, St. Louis County, Minnesota.

10-1230-500 x div.



## EXHIBIT B

### DESCRIPTION:

Lots 98, 100, 102, 106 and the Northeasterly 18.60 feet of Lot 108, all in Block 3, DULUTH PROPER THIRD DIVISION, according to the recorded plat thereof on record in the Office of the St. Louis County Recorder, St. Louis County, Minnesota; EXCEPT that part of said Block 3 described as follows:

Commencing at the Southwest corner of said Northeasterly 18.60 of said Lot 108; thence North 48 degrees 13 minutes 45 seconds West along the west line of said Northeasterly 18.60 feet, a distance of 24.50 feet to the POINT OF BEGINNING; thence continuing North 48 degrees 13 minutes 45 seconds West along west line of said Northeasterly 18.60 feet, a distance of 74.50 feet; thence North 41 degrees 36 minutes 54 seconds East, a distance of 24.40 feet; thence North 48 degrees 13 minutes 45 seconds West, a distance of 11.60 feet; thence North 41 degrees 36 minutes 54 seconds East, a distance of 70.00 feet; thence South 48 degrees 13 minutes 45 seconds East, a distance of 26.70 feet; thence North 41 degrees 36 minutes 54 seconds East, a distance of 68.00 feet; thence South 48 degrees 13 minutes 45 seconds East, a distance of 21.50 feet; thence North 41 degrees 36 minutes 54 seconds East, a distance of 19.00 feet; thence South 48 degrees 13 minutes 45 seconds East, a distance of 37.90 feet; thence South 41 degrees 36 minutes 54 seconds West, a distance of 181.50 feet to the POINT OF BEGINNING and there terminating.

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the state of Minnesota.

Paul A. Vogel

Signed

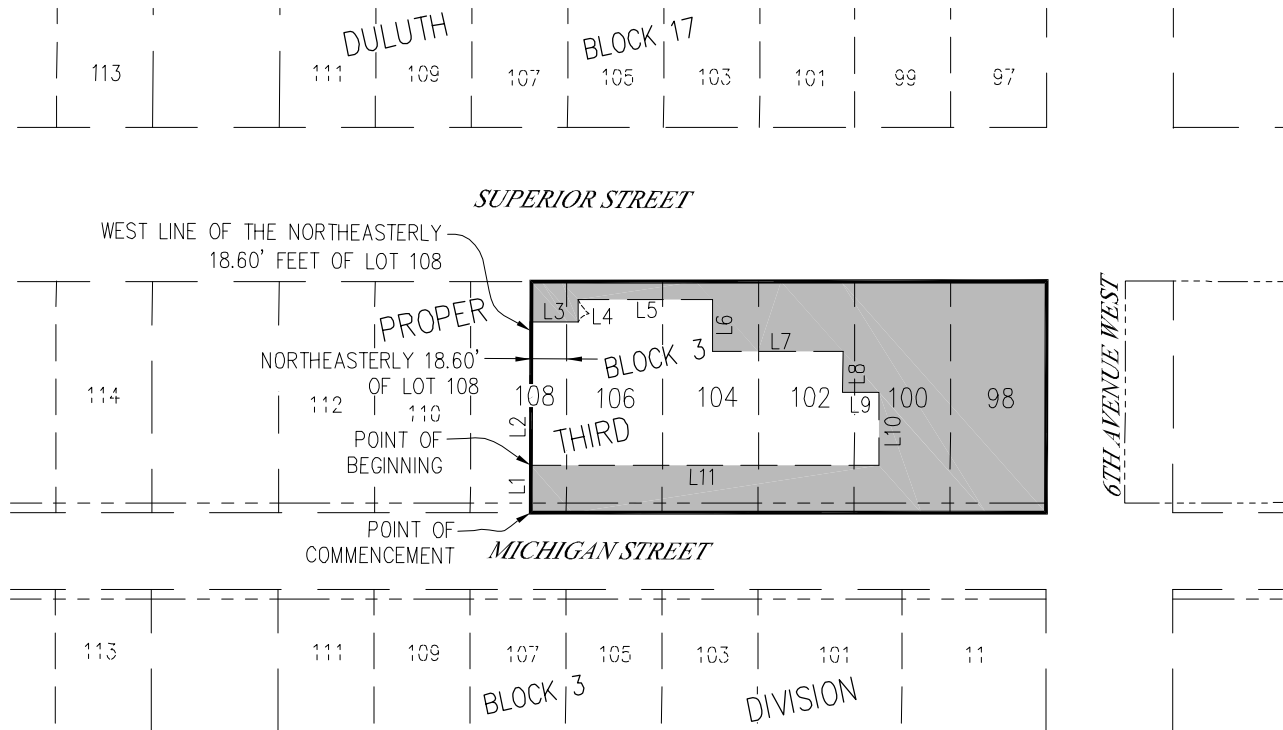
Date

  
11/22/2017 License No. 44075



# EXHIBIT C

## GATEWAY PROPERTIES, LLLP



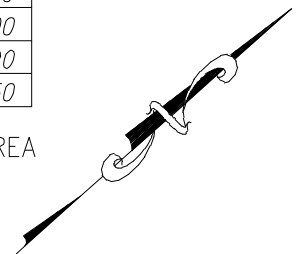
**DESCRIPTION:**

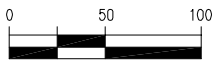
Lots 98, 100, 102, 106 and the Northeasterly 18.60 feet of Lot 108, all in Block 3, DULUTH PROPER THIRD DIVISION, according to the recorded plat thereof on record in the Office of the St. Louis County Recorder, St. Louis County, Minnesota; EXCEPT that part of said Block 3 described as follows:

Commencing at the Southwest corner of said Northeasterly 18.60 of said Lot 108; thence North 48 degrees 13 minutes 45 seconds West along the west line of said Northeasterly 18.60 feet, a distance of 24.50 feet to the POINT OF BEGINNING; thence continuing North 48 degrees 13 minutes 45 seconds West along west line of said Northeasterly 18.60 feet, a distance of 74.50 feet; thence North 41 degrees 36 minutes 54 seconds East, a distance of 24.40 feet; thence North 48 degrees 13 minutes 45 seconds West, a distance of 11.60 feet; thence North 41 degrees 36 minutes 54 seconds East, a distance of 70.00 feet; thence South 48 degrees 13 minutes 45 seconds East, a distance of 26.70 feet; thence North 41 degrees 36 minutes 54 seconds East, a distance of 68.00 feet; thence South 48 degrees 13 minutes 45 seconds East, a distance of 21.50 feet; thence North 41 degrees 36 minutes 54 seconds East, a distance of 19.00 feet; thence South 48 degrees 13 minutes 45 seconds East, a distance of 37.90 feet; thence South 41 degrees 36 minutes 54 seconds West, a distance of 181.50 feet to the POINT OF BEGINNING and there terminating.

LINE TABLE		
LINE	BEARING	LENGTH
L1	N48°13'45"W	24.50
L2	N48°13'45"W	74.50
L3	N41°36'54"E	24.40
L4	N48°13'45"W	11.60
L5	N41°36'54"E	70.00
L6	S48°13'45"E	26.70
L7	N41°36'54"E	68.00
L8	S48°13'45"E	21.50
L9	N41°36'54"E	19.00
L10	S48°13'45"E	37.90
L11	S41°36'54"W	181.50

 = EASEMENT AREA



0 50 100  
  
 (SCALE IN FEET)

Basis of Bearing is Grid North,  
 St. Louis County Transverse  
 Mercator 96 Coordinate System.

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Print Name: Paul A. Vogel License # 44075

Signature:  Date: 03/20/2018

REVISED: 3/20/18

DATE PREPARED: 11/22/17

PROJ NO: 150714

FILE: 150714vSurv

SHEET 1 of 1 SHEETS

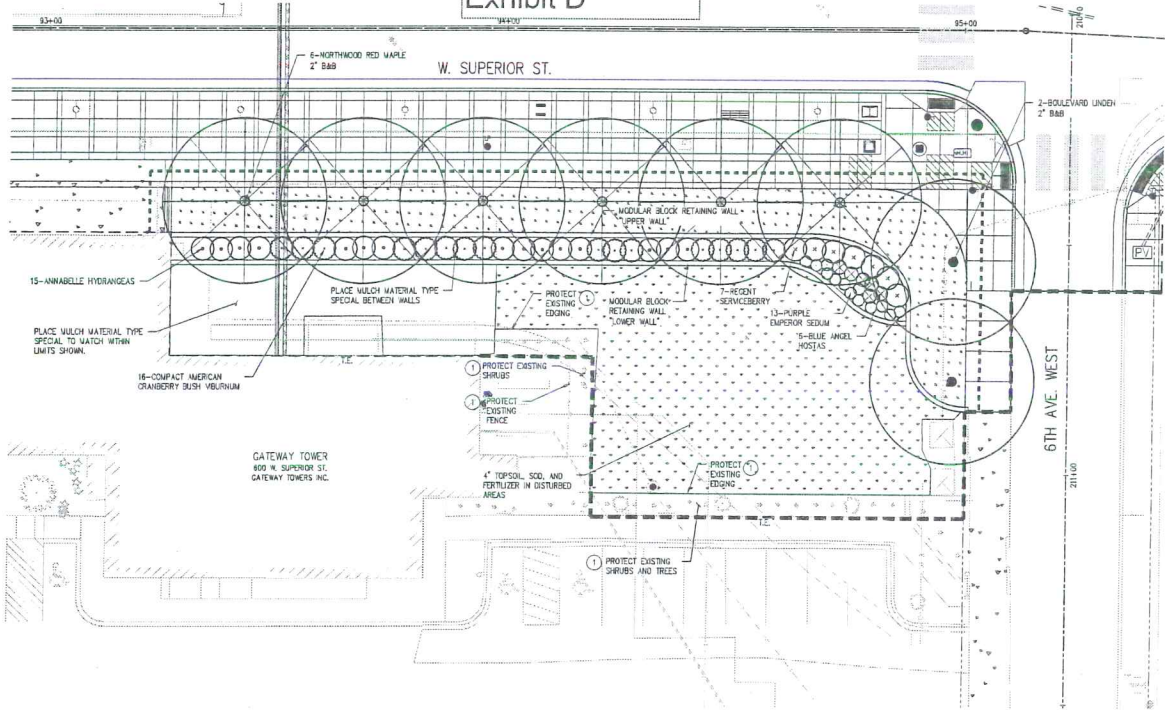


**PERFORMANCE  
 DRIVEN DESIGN.**

LHBcorp.com

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

# Exhibit D



PLANTING SCHEDULE				
QUANT	COMMON NAME	BOTANICAL NAME	SIZE	NOTES
6	NORTHWOOD RED MAPLE	ACER RUBRUM "NORTHWOOD"	2' B&B	
1	BOLLEVARD LINDEN	TILIA AMERICANA "BOLLEVARD"	2' B&B	
15	ANNABELLE HYDRANGEA	HYDRANGEA ARBORESCENS "ANNABELLE"	Ø5 CONT.	4' O.C.
16	COMPACT AMERICAN CRANBERRY BUSH VIBURNUM	VIBURNUM TRICOLOR "BAILEY COMPACT"	Ø5 CONT.	4' O.C.
7	RECENT SERVICEBERRY	AMELANCHIER ALNIFOLIA "RECENT"	Ø5 CONT.	4' O.C.
6	BLUE ANGEL HOSTAS	HOSTA "BLUE ANGEL"	Ø1 CONT.	3' O.C.
13	PURPLE EMPEROR SEDUM	SEDUM PURPLE EMPEROR	Ø1 CONT.	2' O.C.

**KEY NOTES**  
 ① INCIDENTAL



LEGEND	
— P.E.	PERMANENT EASEMENT
— T.E.	TEMPORARY EASEMENT
—	RETAINING WALL
■ ■ ■ ■ ■	SITE B CONSTRUCTION LIMITS
—	MULCH MATERIAL TYPE SPECIAL
—	4" TOPSOIL, SOO, AND FERTILIZER

LHB PROJECT NO. 150714

I HEREBY CERTIFY that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

BRAD SCOTT  
 PRINTED NAME                      SIGNATURE

DATE  
 4/1/18  
 LIC. NO.

SUPERIOR STREET  
 CITY PROJECT NO. 0923TR

S.A.P. NO. 118-171-006

SITE B - GATEWAY PLAZA  
 CONSTRUCTION DETAILS  
 SHEET NO. 591 OF 598 SHEETS