

RESTATED AND AMENDED  
EASEMENT AGREEMENT

This Restated and Amended Easement Agreement ("Agreement") is made and entered into this 07<sup>th</sup> day of April, 1995, by and between the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota ("City") and Artspace Projects, Inc., a private, non-profit corporation created and existing under the laws of the State of Minnesota ("Artspace") and Washington Studios Limited Partnership, a limited partnership under the laws of the State of Minnesota ("Developer").

**ARTICLE I**

**RECITALS**

1.1 City and Artspace have previously entered into an Easement Agreement dated December 27, 1994 ("First Easement Agreement") which address various easements and rights relating to the City Parcel (defined below) and the Developer Parcel (defined below). It is intended that this Agreement shall take the place of the First Easement Agreement and that the First Easement Agreement is hereby superseded.

1.2. City is the owner of the real property located in St. Louis County, Minnesota, and legally described on **Exhibit A** which is attached hereto ("City Parcel").

1.3. Artspace is the former owner and Developer is the current owner of the real property located in St. Louis, County, Minnesota and legally described on **Exhibit D**, which is attached hereto ("Developer Parcel").

1.4. Together the City Parcel and the Developer Parcel make up the former Washington Junior High School grounds and improvements.

1.5. The former Washington Junior High School building is hereinafter referred to as the "Building".

1.6. The City Parcel is located in parts of the basement, first floor and second floor of the Building.

1.7. The Developer parcel includes the grounds outside of the footprint of the Building and parts of the basement, first floor, second floor, and all of the third floor, fourth and fifth floor of the Building.

1.8. It is intended that the Developer Parcel will be used for general residential purposes, including but not limited to, living space, studio work space, flex studios, photo labs,

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galleries, children's studios, rehearsal areas, meeting areas, classroom areas, to promote the fine arts, and for uses normally related to the foregoing uses (the "Developer Uses").

1.9. It is intended that the City Parcel will be used for public and private purposes, including, but not limited to, recreation, storage, meeting rooms, class rooms, offices, athletic uses, educational and cultural centers, community outreach programs, community assistance programs and similar and related uses (the "City Uses").

1.10. **Exhibits C-1, C-2 and C-3** show certain walkways, driveways, stairwells and stairways located on the Developer Parcel which provide ingress to and egress from the City Parcel (the "City Access Areas").

1.11. **Exhibit B** shows certain stairways, stairwells and hallways which provide ingress to and egress from the Developer Parcel (the "Developer Access Areas").

1.12. Portions of the Building which make up the City Parcel rely for support upon portions of the Building and the land which make up the Developer Parcel. These supporting portions are hereinafter referred to as the "City Support Areas".

1.13. Portions of the Building which are included in the Developer Parcel rely for support upon portions of the City Parcel. These supporting portions are hereinafter referred to as the "Developer Support Areas".

1.14. One or more conduits, pipes, cables, wires or other conveyances providing utility services (which may include, but are not necessarily limited to, water, sanitary sewer, storm sewer, electrical, gas, steam, sprinkler systems, security or fire alarm systems, drainage, cable television and telephone services) to the Developer Parcel pass through the City Parcel. These conveyances are hereinafter referred to as the "Developer Utility Areas".

1.15. One or more conduits, pipes, cables, wires or other conveyances providing utility services (which may include, but are not necessarily limited to, water, sanitary sewer, storm sewer, electrical, gas, steam, sprinkler systems, security or fire alarm systems, drainage, cable television and telephone services) to the City Parcel pass through the Developer Parcel. These conveyances are hereinafter referred to as the "City Utility Areas".

1.16. An elevator exists on a portion of the Developer Parcel which is described on Exhibit E, attached hereto (the "Developer Elevator").

1.17. One or more conduits, pipes, cables, wires or other conveyances providing utility services (which may include, but are

not necessarily limited to, water, sanitary sewer, storm sewer, electrical, gas, steam, sprinkler systems, security or fire alarm systems, drainage, cable television and telephone services) to both the Developer Parcel and the City Parcel pass through the City Parcel and/or the Developer Parcel. These conveyances are hereinafter referred to as the "Joint Utility Areas".

1.18. Exhibit C-1 also shows an area on the Developer Parcel designated (and hereinafter referred to as) the "City Parking Lot Area".

1.19. Exhibit C-1 shows an area on the Developer Parcel designated (and hereinafter referred to as) the "City Loading Zone Area".

1.20. Exhibit C-1 shows an area on the Developer Parcel designated (and hereinafter referred to as) the "City Civic Open Space Area".

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

## ARTICLE II

### CREATION OF CITY ESTATES

2.1. Developer hereby grants, bargains and conveys to City, its heirs, successors and assigns, a perpetual, appurtenant easement over the City Access Areas for ingress to and egress from the City Parcel, the City Parking Lot Area, the City Loading Zone Area and the City Open Space Area. Developer also hereby grants, bargains and conveys to City, its heirs, successors and assigns, a perpetual, appurtenant easement to use the Developer Elevator. The rights created in this section are hereinafter referred to as the "City Access Estate".

2.2. Developer hereby grants, bargains and conveys to City, its heirs, successors and assigns, a perpetual, appurtenant easement for the continued support of the City Parcel from the City Support Areas. The rights created in this section are hereinafter referred to as the "City Support Estate".

2.3. Developer hereby grants, bargains and conveys to City, its heirs, successors and assigns, a perpetual, appurtenant easement for the continued existence and use of the City Utility Areas and the Joint Utility Areas to provide utility services, including, but not limited to, water, sanitary sewer, storm sewer, electrical, gas, steam, sprinkler systems, security or fire alarm systems, cable television and telephone services, to the City Parcel. The rights created in this section are hereinafter referred to as the "City Utility Estate".

2.4. Developer hereby grants, bargains and conveys to City, its heirs, successors and assigns, a perpetual, appurtenant easement for the improvement and use of the City Parking Lot Area, for parking by the City's employees, tenants and guests and by members of the general public invited to use the City Parcel or the City Civic Open Space Area. The rights created in this section are hereinafter referred to as the "City Parking Lot Estate".

2.5. Developer hereby grants, bargains and conveys to City, its heirs, successors and assigns, a perpetual, appurtenant easement for the improvement and use of the City Civic Open Space Area to provide open space, recreational area, landscaping, benches, patios, walkways and similar open space improvements for use by City's employees, tenants and guests and by members of the general public invited to use the City Parcel. The rights created in this section are hereinafter referred to as the "City Civic Open Space Estate".

2.6. Developer hereby grants, bargains and conveys to City, its heirs, successors and assigns, a perpetual, appurtenant easement for use of the City Loading Zone Area to provide for a loading zone area serving the City Parcel and including the right to store or place therein dumpsters and loading docks or equipment. The rights created in this section are hereinafter referred to as the "City Loading Zone Estate".

2.7. The City Access Estate, City Support Estate, City Utility Estate, City Parking Lot Estate, City Loading Zone Estate and City Civic Open Space Estate benefit the City Parcel and burden the Developer Parcel.

### ARTICLE III

#### CREATION OF ART SPACE ESTATES

3.1. City hereby grants, bargains and conveys to Developer, its heirs, successors and assigns, a perpetual, appurtenant easement over the Developer Access Areas for ingress to and egress from the Developer Parcel. The rights created in this section are hereinafter referred to as the "Developer Access Estate".

3.2. City hereby grants, bargains and coveys to Developer, its heirs, successors and assigns, a perpetual, appurtenant easement for the continued support of the Developer Parcel from the Developer Support Areas. The rights created in this section are hereinafter referred to as the "Developer Support Estate".

3.3. City hereby grants, bargains and conveys to Developer, its heirs, successors and assigns, a perpetual, appurtenant easement for the continued existence and use of the Developer Utility Areas and the Joint Utility Areas to provide utility services, including, but not limited to, water, sanitary sewer,

storm sewer, electrical, gas, steam, sprinkler systems, security or fire alarm systems, cable television and telephone services, to the Developer Parcel. The rights created in this section are hereinafter referred to as the "Developer Utility Estate".

3.4. The Developer Access Estate, Developer Support Estate and Developer Utility Estate benefit the Developer Parcel and burden the City Parcel.

## ARTICLE IV

### USE

4.1. Use of the Developer Support Estate, Developer Utility Estate and Developer Access Estate is restricted to the Developer Uses and uses related thereto. Developer agrees to conduct its affairs and carry on its business and operations in such a manner as to comply with any and all applicable laws of the United States and the several states thereof and to duly observe and conform to all valid orders, regulations and requirements of any governmental authority relating to the conduct of its operations and the ownership of the Developer Parcel; provided that nothing herein contained shall require Developer to comply with, observe and conform to any such law or regulation or requirement so long as the validity thereof shall be contested by Developer in good faith through proper legal action provided that such protests shall in no way affect City's title to the City Parcel.

4.2. Developer shall operate the Developer Parcel in such a manner as to not materially or unreasonably interfere with City's access to or use of the City Parcel or City's use of the City Access Estate, City Support Estate, City Utility Estate, City Parking Lot Estate, City Loading Zone Estate and City Open Space Estate.

4.3. Use of the City Support Estate, City Utility Estate and City Access Estate is restricted to the City Uses and uses related thereto. City agrees to conduct its affairs and carry on its business and operations in such a manner as to comply with any and all applicable laws of the United States and the several states thereof and to duly observe and conform to all valid orders, regulations and requirements of any governmental authority relating to the conduct of its operations and the ownership of the City Parcel; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity thereof shall be contested by City in good faith through proper legal action provided that such protests shall in no way affect Developer's title to the Developer Parcel.

4.4. City shall operate the City Parcel in such a manner as to not materially or unreasonably interfere with Developer's access

to or use of the Developer Parcel or Developer's use of the Developer Access Estate, Developer Support Estate or Developer Utility Estate.

4.5. Subject to the provisions of this Agreement, City reserves the right to use the Developer Support Areas, Developer Access Areas, Developer Utility Areas and Joint Utility Areas for such purposes as City sees fit, so long as such use does not interfere with the rights granted to Developer herein. It is specifically intended that City and its Guests (as that term is defined below) shall, subject to the provisions of this Agreement, have the right, in common with the Developer and its Guests, to use the Developer Access Estate.

4.6. Subject to the provisions of this Agreement, Developer reserves the right to use the City Support Areas, City Access Areas and City Utility Areas, Joint Utility Areas, City Loading Zone Areas, City Civic Open Space Area and City Parking Lot Area, for such purposes as Developer sees fit, so long as such use does not interfere with the rights granted to City herein. It is specifically intended that Developer and its Guests (as that term is defined below) shall, subject to the provisions of this Agreement, have the right, in common with the City and its Guests, to use the City Civic Open Space Area, the City Loading Zone Area and the City Access Areas.

4.7. Each party to this Agreement is responsible for compliance with the provisions of this Agreement by its tenants, guests, invitees, permittees, employees and agents ("Guests") and by itself.

## **ARTICLE V**

### **MAINTENANCE, REPAIR AND REPLACEMENT**

5.1. Developer shall, at all times, cause the Developer Parcel to be operated and maintained in a neat, orderly condition, and to maintain and preserve and keep in good repair, working order and condition the Developer Parcel and to perform all needed and proper repairs, renewals and replacements necessary to be made thereto. Developer's obligation to maintain the Developer Parcel shall include but not be limited to maintenance of foundations, external walls, the Developer Elevator, doors, windows, utility openings and all roofing systems, except the roof over the gymnasium and swimming pool in the City Parcel. Developer shall also be responsible for maintenance of the portions of the Developer Parcel outside the Building, including snow removal, grass cutting and landscape maintenance, play ground maintenance, open space improvements maintenance, loading zone maintenance, parking lot cleaning, repair and striping, and all exterior maintenance of the Building, except glass and screen breakage in the City Parcel. Developer shall also be responsible for the

maintenance of the utility conveyances in the Joint Utility Areas up to the point, in each instance, where the conveyance branches off to serve only the City Parcel. The obligations set forth in this section shall include the obligation to restore areas or improvements damaged in carrying out maintenance, repair, renewal or replacement.

5.2. City shall, at all times, cause the City Parcel to be operated and maintained in a neat, orderly condition, and to maintain and preserve and keep in good repair, working order and condition the City Parcel and to perform all needed and proper repairs, renewals, and replacements necessary to be made thereto. City's obligation to maintain the City Parcel shall include but not be limited to maintenance of the roof over the gymnasium and the swimming pool in the City Parcel but shall not include maintenance of the exterior portions of the Building, except for window glass and screen breakage in the City Parcel.

5.3. If the City Parcel is destroyed or damaged by fire or other casualty in such a manner as to materially impede access to the Developer Parcel over the Developer Access Areas or to materially interfere with the Developer Uses of the Developer Parcel and if the Developer Parcel is not so damaged or destroyed or, if the Developer Parcel has been so damaged or destroyed and Developer chooses to rebuild and reconstruct the Developer Parcel in such a manner as to return the Developer Parcel to substantially the condition it was in prior to said damage or destruction, then City shall restore the City Parcel in such a manner and to such an extent as to provide reasonable access through the City Parcel to the Developer Parcel and to otherwise restore the City Parcel so as not to unreasonably interfere with or to hinder the use of the Developer Parcel for the Developer Uses.

5.4. Notwithstanding anything in this Agreement to the contrary, City shall be responsible to maintain and preserve and keep in good repair, working order and condition the utility conveyances serving the City Parcel located within the City Utility Areas in order to prevent damage to or interference with the uses of the Developer Parcel.

5.5. Notwithstanding anything in this Agreement to the contrary, Developer shall be responsible to maintain and preserve and keep in good repair, working order and condition the utility conveyances serving the Developer Parcel located within the Developer Utility Areas in order to prevent damage to or interference with the uses of the City Parcel.

5.6. City hereby grants, bargains and conveys to Developer, its heirs, successors and assigns a perpetual appurtenant easement over the City Parcel to provide access so that Developer can carry out its obligations of maintenance, repair, renewal and replacement.

5.7. Developer hereby grants, bargains and conveys to City, its heirs, successors and assigns a perpetual appurtenant easement over the Developer Parcel to provide access so that City can carry out its obligations of maintenance, repair, renewal and replacement.

## **ARTICLE VI**

### **INDEMNIFICATION**

6.1. Developer shall, to the fullest extent permitted by law, protect, indemnify and save City and its officers, agents, servants, employees and any person who controls the City within the meaning of the Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys fees and expenses, causes of action, suits, claims, demands and judgments of any nature arising from:

i. Any injury to or death of any person or damage to property in or upon the Developer Parcel, or growing out of or in connection with the use or non-use, condition or occupancy of the Developer Parcel or any part thereof, except those arising out of the use of the City Utility Areas by the City or its Guests or the failure of the City to fulfill its obligations to renew, maintain, replace and repair the utility services serving the City Parcel and contained in the City Utility Areas. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for Developer or its customers, suppliers or affiliated organizations under any workers compensation act, disability benefit act or any employee benefit act;

ii. Any violation by Developer of any provision of this Agreement;

iii. Any violation of any contract, agreement or restriction related to the Developer Parcel which shall have existed at the commencement of the term of this Agreement or shall have been approved by Developer; or

iv. Any violation of any law, ordinance, court order or regulation affecting the Developer Parcel, or the ownership, occupancy or use of the Developer Parcel.

6.2. City shall, to the fullest extent permitted by law, protect, indemnify and save Developer and its officers, agents, servants, employees and any person who controls Developer within the meaning of the Securities Act of 1993, harmless from and against any and all liabilities, losses, damages, costs, expenses,



including reasonable attorneys fees and expenses, causes of action, suits, claims, demands and judgments of any nature arising from:

i. Any injury to or death of any person or damage to property in or upon the City Parcel, or growing out of or in connection with the use or non-use, condition or occupancy of the City Parcel or any part thereof, except those arising out of the use of the Developer Utility Areas by Developer or its Guests or the failure of Developer to fulfill its obligations to maintain, renew, replace and repair the utility services serving the Developer Parcel and contained in the Developer Utility Areas;

ii. Any violation by City of any provision of this Agreement;

iii. Any violation of any contract or agreement or restriction related to the City Parcel which shall have existed at the commencement of the term of this Agreement or shall have been approved by City, or

iv. Any violation of any law, ordinance, court order or regulation affecting the City Parcel or the ownership, occupancy or use thereof.

6.3. Promptly after receipt by an indemnified party of notice of the commencement of any action with respect to which the indemnifying party is required to indemnify such person under this Article, such indemnitee shall notify the indemnitor in writing of the commencement thereof, and, subject to the provisions hereinafter stated, the indemnitor shall promptly assume the defense of such action, including employment of counsel satisfactory to the indemnitee and the payment of expenses. Insofar as such action shall relate to an alleged liability of the indemnitee with respect to which indemnity may be sought against the indemnitor, the indemnitee shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of the indemnitor.

## **ARTICLE VII**

### **INSURANCE**

7.1. Developer shall procure and continuously maintain, except as otherwise provided below, insurance covering all risks of injury to or death of persons or damage to property arising in any way out of or as a result of Developer's ownership of, occupancy of or use of the Developer Parcel, carried in the names of Developer,

any subtenant and City as their respective interests may appear, as follows:

i. The Developer Parcel, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a deductible amount not to exceed Fifty Thousand and no/100 Dollars (\$50,000) per occurrence. For the purposes hereof, "all risk" means insurance equivalent in scope or protection against all risks of direct physical loss ordinarily insured against in the region. Developer hereby waives any and all claims or causes of action against City for damages caused by an insured party hereunder, except such rights hereinafter set forth to an interest in the insurance proceeds payable in the event of such loss. At time of war in which the United States of America is a belligerent, Developer will procure and maintain continuously in effect such insurance as may be available from the United State of America to the extent of the full replacement value of the project and insuring against loss thereof or damage thereto from the risks and hazards of war, provided that the cost of such insurance is economically reasonable;

ii. Developer shall procure and maintain continuously in force public liability insurance written on an "occurrence" basis under a comprehensive general liability form with limits of not less than Five Million Dollars (\$5,000,000.00) aggregate per occurrence for personal bodily injury and death, and limits of Five Million Dollars (\$5,000,000.00) for property damage liability. If person limits are specified, they shall be for not less than One Million Dollars (\$1,000,000.00) per person and be for the same coverages. City shall be named as an additional insured therein. Insurance shall cover:

- a. Public liability, including premises and operations coverage;
- b. Independent contractors-protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned and hired vehicles;
- e. Contractual liability covering the indemnity obligations set forth herein; and
- f. Products -- completed operations.

iii. Workers compensation coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law, and the evidence of such qualification is furnished to City. Employee's liability insurance shall be carried in limits of One Hundred Thousand Dollars (\$100,000.00) per employee.

7.2. All insurance required under this Article shall be taken out and maintained with responsible insurance companies organized under the laws of the United States of America and licensed to do business in the State of Minnesota.

7.3. Developer shall supply City with written certifications of insurance as required by City and all insurance shall require the insurer to give City 30 days written notice prior to cancellation or modification of said insurance.

7.4. If the Developer Parcel or any portion of the City Parcel for which Developer bears repair or replacement, renewal or maintenance responsibilities are destroyed by fire or other casualty, Developer shall forthwith repair, reconstruct, and restore the improvements to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction, and to the extent necessary to accomplish such repair, reconstruction, and restoration, Developer shall apply the proceeds of any insurance received by Developer to payment or reimbursement of the costs. Developer shall, however, complete the repair, reconstruction and restoration of the improvements whether or not the proceeds of any insurance received by Developer are sufficient to pay for such repair, restoration, and reconstruction.

7.5. If City sells, transfers, conveys or grants the fee title to the City Parcel to any person or entity other than a municipality or other governmental entity which self insures, then the grantee of the City Parcel shall be required to provide insurance in the types and amounts required of Developer hereunder.

## **ARTICLE VIII**

### **EVENTS OF DEFAULT AND REMEDIES**

8.1. The following shall be deemed to be Events of Default by Developer:

a. Developer shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after City has given written notice to Developer of such default, or in the event that such default shall be incapable of cure during

said thirty (30) day period, Developer shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.

b. A condition has been created or suffered on the Developer Parcel which creates, in City's reasonable judgment, an immediate threat of loss or damage to the City Parcel.

8.2. The following shall be deemed to be Events of Default by City:

a. City shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after Developer has given written notice to City of such default, or in the event that such default shall be incapable of cure during said thirty (30) day period, City shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.

b. A condition has been created or suffered on the City Parcel which creates, in Developer's reasonable judgment, an immediate threat of loss or damage to Developer Parcel.

8.3. Upon the occurrence of an Event of Default by Developer, City shall have the following remedies:

a. City may seek and shall be entitled to monetary damages, including consequential damages from Developer, for any damages, including consequential damages incurred by City as a result of Developer's default.

b. City may seek and shall be entitled to injunctive or declaratory relief as is necessary to prevent Developer's violation of the terms and conditions of this Agreement or to compel Developer's performance of its obligations hereunder, including relief allowing City to enter upon the Developer Parcel to cure the violation itself at the expense of Developer.

c. City may seek and shall be entitled to such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

d. Where the Event of Default relates to a condition or occurrence on the Developer Parcel which

creates, in City's reasonable judgment, an immediate threat of loss or damage to the City Parcel or the City Support Areas, City Access Areas, City Utility Areas, Joint Utility Areas, City Parking Lot Area, City Loading Zone Area or City Civic Open Space Area or which creates a dangerous condition within the City Access Areas, City Parking Lot Area, City Loading Zone Area or City Civic Open Space Area then, without the requirement of a court order, City may immediately enter upon the Developer Parcel to provide such repair, renewal, replacement or maintenance as is necessary to halt the immediate threat of loss or damage or to cure the dangerous condition.

e. Where the Event of Default relates to the failure of Developer to make a payment, including but not limited to payment of real estate taxes and insurance premiums, then City shall have the right, but not the obligation, to make the payment and shall be immediately entitled to reimbursement from Developer.

8.4. Upon the occurrence of an Event of Default by City, Developer shall have the following remedies:

a. Developer may seek and shall be entitled to monetary damages, including consequential damages from City, for any damages, including consequential damages incurred by Developer as a result of City's default.

b. Developer may seek and shall be entitled to injunctive or declaratory relief as is necessary to prevent City's violation of the terms and conditions of this Agreement or to compel City's performance of its obligations hereunder, including relief allowing Developer to enter upon the City Parcel to cure the violation itself at the expense of City.

c. Developer may seek and shall be entitled to such other legal or equitable relief as a court of competent jurisdiction may determine is available to Developer.

d. Where the Event of Default relates to a condition or occurrence on the City Parcel which creates, in Developer's reasonable judgment, an immediate threat of loss or damage to the Developer Parcel or the Developer Support Areas, Developer Access Areas, Developer Utility Areas or the Joint Utility Areas or which creates a dangerous condition within the Developer Access Areas then, without the requirement of a court order, Developer may immediately enter upon the City Parcel to provide such repair, renewal, replacement or

maintenance as is necessary to halt the immediate threat of loss or damage or to cure the dangerous condition.

e. Where the Event of Default relates to the failure of City to make a payment, including but not limited to payment of real estate taxes and insurance premiums, then Developer shall have the right, but not the obligation, to make the payment and shall be immediately entitled to reimbursement from City.

8.5. The waiver by a party of any default by the other party or the failure by the party to declare a default by the other party of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent default on the defaulting party's part of the same or any other obligation hereunder. To be effective, any waiver of any default hereunder must be in writing and must be signed by the non-defaulting party.

8.6. Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

8.7. If Developer is in default of any of the terms and conditions of this Agreement and City shall successfully take legal action to enforce said rights herein, in addition to the foregoing, City shall be entitled to reimbursement for its reasonable attorneys fees and costs and otherwise for City's costs and disbursements occasioned in enforcing its rights hereunder.

8.8. If City is in default of any of the terms and conditions of this Agreement and Developer shall successfully take legal action to enforce said rights herein, in addition to the foregoing, Developer shall be entitled to reimbursement for its reasonable attorneys fees and costs and otherwise for Developer's costs and disbursements occasioned in enforcing its rights hereunder.

8.9. It is specifically agreed that no breach of this Agreement or Event of Default shall entitle any party to cancel, restrict or otherwise terminate this Agreement.

## **ARTICLE IX**

### **MISCELLANEOUS PROVISIONS**

9.1. Any after acquired title or interest of the City in the City Parcel or of Developer in the Developer Parcel is included and made subject to this Agreement and the grants contained herein, without further or additional act by City or Developer.

9.2. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, successors, and assigns. As used herein, the term "heirs, successor and assigns" means the subsequent owners of the City Parcel and the Developer Parcel from time to time. This Agreement shall run with the land. Notwithstanding the foregoing, the covenants contained herein shall be binding upon the City only during the period of the City's ownership of the City Parcel and the City shall have no liability or responsibility for obligations which may accrue hereunder after the City no longer holds an interest in the City Parcel. Upon conveyance, the City shall thereupon be released from any future obligation under this Agreement with respect to the City Parcel, but shall not be relieved from past obligations. The parties hereto agree to execute and deliver any and all documents or assurances necessary or desirable to evidence such a release for the purpose of recording or otherwise.

9.3. The easements granted herein shall not extend to any property other than the City Parcel and the Developer Parcel.

9.4. The easements granted herein are non-exclusive.

9.5. This Agreement may be signed in any number of counterparts and all of the counterparts taken together shall form one original agreement.

9.6. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each remaining term and provision shall be valid and enforceable to the fullest extent permitted by law.

9.7. This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota.

9.8. If construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the building or the improvements results either in the City Parcel encroaching on to the Developer Parcel, or the Developer Parcel encroaching on to the City Parcel, then an appurtenant easement, for the period of said encroachment is hereby granted and created without further act by Developer or City.

9.9. This Agreement supersedes the First Easement Agreement. Artspace and City have also executed and entered into an Agreement entitled the "Development Agreement, City of Duluth, Artspace Projects, Inc. Washington Junior High School Project" dated December 30, 1994 ("Development Agreement"). Developer acknowledges that it is bound to the terms of the Development Agreement. To the extent that there is any conflict between the provisions of this Agreement and the Development Agreement, then the provisions of the Development Agreement shall be paramount.

9.10. Notwithstanding anything in this Agreement to the contrary, use by the City and its Guests, of that portion of the City Access Area shown on Exhibit C-3 and of, the Developer Elevator (together the "C-3 City Access Area") shall be limited as set forth in this Section 9.10. City and its Guests may use the C-3 City Access Area only for the following purposes:

- (1) access to the pool balcony area located within the City Parcel for maintenance (this use includes the right to move maintenance equipment personnel and materials through the C-3 City Access Area);
- (2) access to the pool balcony area located in the City Parcel for disabled persons and their companions; and
- (3) access to the pool balcony area located within the City Parcel for special events occurring in the pool or pool balcony areas located within the City Parcel.

City shall provide at least 48 hours notice to Developer of its intention to use the C-3 City Access Area for access for special events.

9.11 Notwithstanding anything in this Agreement to the contrary, both parties acknowledge that this Agreement is being entered into prior to actual construction of some of the utility conveyances, corridors, walkways and other improvements contemplated by City and Developer in the initial rehabilitation and remodeling of the City Parcel and Developer Parcel. Therefore, City and Developer agree that if either one of them acquire "as built" surveys or drawings which more accurately depict the locations of any easement area, then both parties shall execute an amendment to this Agreement substituting the "as built" surveys or drawings. This Section 9.11 shall not be interpreted to expand or change the easements or rights granted herein or to permit any substantial deviation from the areas shown in Exhibits C-1, C-2, C-3 or D or any interference with the rights granted herein by any party without first receiving written permission from the other party.

## ARTICLE X

### NO PUBLIC DEDICATION

10.1. Nothing contained in this Agreement shall, or shall be deemed to, constitute a gift or dedication of any portion of the City Parcel or the Developer Parcel to the general public or for the benefit of the general public or for any public purposes whatsoever, it being the intention of the parties that this



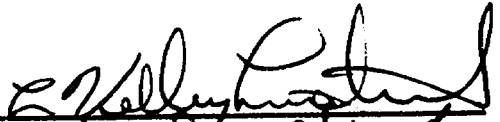
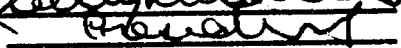
Agreement will be strictly limited to and for the purposes expressed herein.

# ARTICLE XI

## FIRE EXITS

11.1 Notwithstanding anything in this Agreement to the contrary, in each instance where an easement for access has been granted by either City or Developer along a hallway and where the easement does not run the full length of the hallway, there shall be an easement for use of the full length of the hallway for egress in case of fire or other emergency. In addition, no such hallway shall be locked or blocked at or beyond the end of the easement area except with doors which are designed to provide egress without the need of a key, card, combination or similar pass in case of fire or other emergency.

ARTSPACE PROJECTS, INC.

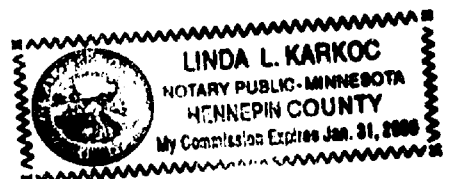
By   
Its 

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MINNESOTA )  
COUNTY OF Hennepin ) ss.

The foregoing was acknowledged before me this 21<sup>st</sup> day of April, 1995, by L. Kelley Lindquist, being the President of ARTSPACE PROJECTS, INC., a private, non-profit corporation created and existing under the laws of the State of Minnesota on behalf of said corporation.

  
Notary Public



## CITY OF DULUTH

By *Gary L. Doty*  
 Its *Mayor*

By *Jeffrey J. Cox*  
 Its *City Clerk*

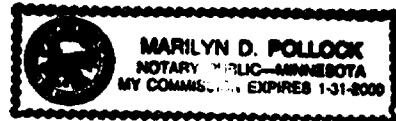
STATE OF MINNESOTA )  
 ) ss.  
 COUNTY OF ST. LOUIS )

The foregoing was acknowledged before me this 20<sup>th</sup> day of April, 1995, by *Gary L. Doty* and *Jeffrey J. Cox*, the *Mayor* and *City Clerk*, respectively, of the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, on behalf of said city.

*Marilyn D. Pollock*  
 Notary Public

Approved as to form:

*Robert L. Cullen*  
 City Attorney



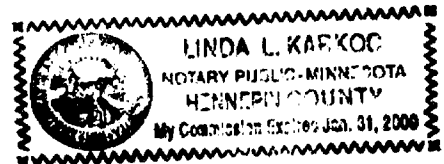
WASHINGTON STUDIOS LIMITED  
PARTNERSHIPBy: *L. Kelley Lindquist*  
Its: *Secretary*By: \_\_\_\_\_  
Its: \_\_\_\_\_STATE OF MINNESOTA )  
COUNTY OF *Hennepin* ) ss.  
~~ST. LOUIS~~

The foregoing was acknowledged before me this 01<sup>st</sup> day of April, 1995, by L. Kelley Lindquist, the President of ARTSPACE PROJECTS, INC., a non-profit corporation created and existing under the laws of the State of Minnesota, and the general partner of WASHINGTON STUDIOS LIMITED PARTNERSHIP, a limited partnership under the laws of the State of Minnesota, on behalf of the partnership.

*Linda L. Karkoc*  
Notary Public

This instrument was drafted by:

Fryberger, Buchanan, Smith &  
Frederick, P.A.  
700 Lonsdale Building  
302 West Superior Street  
Duluth, Minnesota 55802  
(218) 722-0861  
DDM/lab



ST. LOUIS COUNTY RECORDER  
STATE OF MINNESOTA  
I HEREBY CERTIFY THAT  
THE WITHIN INSTRUMENT  
WAS FILED IN THIS OFFICE  
FOR RECORD AS

DOCUMENT NO. 00629060

ON 05/03/1995  
AT 10:46AM

MARK A. MONACELLI  
COUNTY RECORDER

BY BETH TALBOT  
DEPUTY

MAY 3 1995

0629060

Exhibits

B

C - 1

C - 2

C - 3

filmed on 35 mm

+ filed in with

the plats!

## CITY LEGAL DESCRIPTION:

1. That part of Lots 1, 3, 5, 7, 9 and 11, West Third Street and that part of Lots 2, 4, 6, 8 and 10, West Fourth Street, and that part of the vacated alley between West Third Street and West Fourth Street all of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, lying between elevations 754.39 feet and 768.28 feet National Geodetic Vertical Datum (NGVD) 1929 and described jointly as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 a distance of 13.65 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 15.67 feet to the point of beginning; thence South 47 degrees 02 minutes 34 seconds West a distance of 25.96 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 1.67 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 16.00 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 1.67 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 194.95 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 139.77 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 26.71 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 16.00 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 14.25 feet; thence North 02 degrees 02 minutes 34 seconds East a distance of 5.66 feet; thence South 87 degrees 57 minutes 26 seconds East a distance of 5.66 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 14.49 feet; thence North 02 degrees 02 minutes 34 seconds East a distance of 5.66 feet; thence South 87 degrees 57 minutes 26 seconds East a distance of 5.66 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 79.47 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 27.51 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 10.21 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 27.51 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 30.13 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 70.96 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 45.63 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 4.69 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 0.92

feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 21.02 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 0.92 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 201.01 feet to the point of beginning.

EXCEPTED FROM THIS PARCEL: That part of Lot 1, West Third Street of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, described as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 a distance of 13.65 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 15.67 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 25.96 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 102.19 feet to the point of beginning; thence South 47 degrees 02 minutes 34 seconds West a distance of 4.25 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 9.76 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 11.75 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 9.76 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 7.50 feet to the point of beginning.

2. That part of Lots 3, 5 and 7, West Third Street of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, lying between elevations 768.28 feet and 773.70 feet NGVD 1929 and described as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 a distance of 13.65 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 171.43 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 31.93 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 114.97 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 13.70 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 30.04 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 42.69 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 13.97 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 2.34 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 70.96 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 10.21 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 42.26 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 6.22 feet to the point of beginning; thence South 42 degrees 57 minutes 26 seconds East a distance of 68.98 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 46.48 feet;

thence South 42 degrees 57 minutes 26 seconds East a distance of 3.82 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 36.28 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 72.80 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 82.76 feet to the point of beginning.

3. That part of Lots 7, 9 and 11, West Third Street and the vacated alley between West Third Street and West Fourth Street, all of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, lying between elevations 768.28 feet and 786.00 feet NGVD 1929 and described as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 a distance of 13.65 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 171.43 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 31.93 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 114.97 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 13.70 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 30.04 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 42.69 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 13.97 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 2.34 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 70.96 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 10.21 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 42.26 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 6.22 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 68.98 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 46.48 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 3.82 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 36.28 feet to the point of beginning; thence South 47 degrees 02 minutes 34 seconds West a distance of 72.17 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 99.06 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 26.71 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 2.90 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 45.46 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 101.96 feet to the point of beginning.

4. That part of Lots 1, 3, 5, 7, 9 and 11, West Third Street and that part of Lot 2, 4, 6, 8, and 10, West Fourth Street, and that part of the vacated alley between West Third Street and West Fourth Street all of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, lying between elevations 737.84 feet and 754.39 feet NGVD 1929 and described as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 a distance of 13.65 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 140.93 feet to the point of beginning; thence South 47 degrees 52 minutes 18 seconds West a distance of 40.59 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 81.32 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 87.88 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 3.82 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 108.45 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 99.06 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 26.71 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 16.00 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 14.25 feet; thence North 02 degrees 02 minutes 34 seconds East a distance of 5.66 feet; thence South 87 degrees 57 minutes 26 seconds East a distance of 5.66 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 14.49 feet; thence North 02 degrees 02 minutes 34 seconds East a distance of 5.66 feet; thence South 87 degrees 57 minutes 26 seconds East a distance of 5.66 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 165.44 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 30.51 feet to the point of beginning.

together with a 8-foot easement over and across that part of Lot 11. West Third Street and Lot 12, West Fourth Street and the vacated alley between said lots, all in Duluth Proper First Division, Saint Louis County, Minnesota, the northeasterly line is described as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 and Lots 3, 5, 7, 9 and 11 a distance of 251.40 feet to the point of beginning; thence North 42 degrees 57 minutes 26 seconds West a distance of 299.96 feet to the northwesterly line of said Lot 12, and there terminating.



## ART SPACE LEGAL DESCRIPTION:

Lots 1, 3, 5, 7, 9, 11, 13 and 15, West Third Street and Lots 2, 4, 6, 8, 10, 12, 14 and 16, West Fourth Street, and the vacated alley lying between West Third Street, West Fourth Street, 1st Avenue West and Lake Avenue, all of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota.

## EXCEPT THE FOLLOWING:

1. That part of Lots 1, 3, 5, 7, 9 and 11, West Third Street and that part of Lots 2, 4, 6, 8 and 10, West Fourth Street, and that part of the vacated alley between West Third Street and West Fourth Street all of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, lying between elevations 754.39 feet and 768.28 feet National Geodetic Vertical Datum (NGVD) 1929 and described jointly as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 a distance of 13.65 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 15.67 feet to the point of beginning; thence South 47 degrees 02 minutes 34 seconds West a distance of 25.96 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 1.67 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 16.00 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 1.67 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 194.95 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 139.77 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 26.71 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 16.00 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 14.25 feet; thence North 02 degrees 02 minutes 34 seconds East a distance of 5.66 feet; thence South 87 degrees 57 minutes 26 seconds East a distance of 5.66 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 14.49 feet; thence North 02 degrees 02 minutes 34 seconds East a distance of 5.66 feet; thence South 87 degrees 57 minutes 26 seconds East a distance of 5.66 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 79.47 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 27.51 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 10.21 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 27.51 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 30.13 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 70.96 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 45.63 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 4.69 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 0.92

feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 21.02 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 0.92 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 201.01 feet to the point of beginning.

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2. That part of Lots 3, 5 and 7, West Third Street of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, lying between elevations 768.28 feet and 773.70 feet NGVD 1929 and described as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 a distance of 13.65 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 171.43 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 31.93 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 114.97 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 13.70 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 30.04 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 42.69 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 13.97 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 2.34 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 70.96 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 10.21 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 42.26 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 6.22 feet to the point of beginning; thence South 42 degrees 57 minutes 26 seconds East a distance of 68.98 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 46.48 feet;

thence South 42 degrees 57 minutes 26 seconds East a distance of 3.82 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 36.28 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 72.80 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 82.76 feet to the point of beginning.

3. That part of Lots 7, 9 and 11, West Third Street and the vacated alley between West Third Street and West Fourth Street, all of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, lying between elevations 768.28 feet and 786.00 feet NGVD 1929 and described as follows:

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4. That part of Lots 1, 3, 5, 7, 9 and 11, West Third Street and that part of Lot 2, 4, 6, 8, and 10, West Fourth Street, and that part of the vacated alley between West Third Street and West Fourth Street all of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, lying between elevations 737.84 feet and 754.39 feet NGVD 1929 and described as follows:

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Subject to a 8-foot easement over and across that part of Lot 11. West Third Street and Lot 12, West Fourth Street and the vacated alley between said lots, all in Duluth Proper First Division, Saint Louis County, Minnesota, the northeasterly line is described as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 46 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 and Lots 3, 5, 7, 9 and 11 a distance of 251.40 feet to the point of beginning; thence North 42 degrees 57 minutes 26 seconds West a distance of 299.96 feet to the northwesterly line of said Lot 12, and there terminating.

**EXHIBIT E****Developer Elevator Description**

That part of Lot 1, West Third Street of the recorded subdivision of Duluth Proper First Division, Saint Louis County, Minnesota, described as follows:

Commencing at the most easterly corner of Lot 1, West Third Street; thence South 48 degrees 57 minutes 50 seconds West, along the southeasterly line of said Lot 1 a distance of 13.65 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 15.67 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 25.96 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 102.19 feet to the point of beginning; thence South 47 degrees 02 minutes 34 seconds West a distance of 4.25 feet; thence North 42 degrees 57 minutes 26 seconds West a distance of 9.76 feet; thence North 47 degrees 02 minutes 34 seconds East a distance of 11.75 feet; thence South 42 degrees 57 minutes 26 seconds East a distance of 9.76 feet; thence South 47 degrees 02 minutes 34 seconds West a distance of 7.50 feet to the point of beginning.

## FOR COUNTY RECORDER USE ONLY

LOG # 5031995

DOC. #	INST	REC. FEE	W.C.	CONF. COPY	M.T.	D.T.	R.E.
24 0629060 100980 PLAT # 101000	ET	32.00 S.C. 4.00		CERT. COPY			
25 0629061 100980 PLAT # 101000	MO	33.00 S.C. 4.00		CERT. COPY			
26 0629062 100980 PLAT # 101000	A9	15.00 S.C. 4.00		CERT. COPY			
27 0629063 100980 PLAT # 101000	A2	62.00 S.C. 4.00		CERT. COPY			
28 0629064 100980 PLAT # 101000	A3	15.00 S.C. 4.00		CERT. COPY			
29 0629065 100980 PLAT # 101000	MO	7.00 S.C.		CERT. COPY			

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## FOR COUNTY RECORDER USE ONLY

LOG # 05031995

30	DOC. # <b>0629066</b> PLAT # <u>100980</u> <u>101000</u>	INST <u>MO</u>	REC. FEE <u>15.00</u> S.C. <u>4.50</u>	W.C.	CONF. COPY <u>CERT. COPY</u>	M.T.	D.T.	R.E.
31	DOC. # <b>0629067</b> PLAT # <u>100980</u> <u>101000</u>	INST <u>MO</u>	REC. FEE <u>15.00</u> S.C. <u>4.50</u>	W.C.	CONF. COPY <u>CERT. COPY</u>	M.T.	D.T.	R.E.
32	DOC. # <b>0629068</b> PLAT # <u>100980</u> <u>101000</u>	INST <u>MO</u>	REC. FEE <u>16.00</u> S.C. <u>4.50</u>	W.C.	CONF. COPY <u>CERT. COPY</u>	M.T.	D.T.	R.E.
33	DOC. # <b>0629069</b> PLAT # <u>100980</u> <u>101000</u>	INST <u>MO</u>	REC. FEE <u>15.00</u> S.C. <u>4.50</u>	W.C.	CONF. COPY <u>CERT. COPY</u>	M.T.	D.T.	R.E.
34	DOC. # <b>0629070</b> PLAT # <u>100980</u> <u>101000</u>	INST <u>MO</u>	REC. FEE <u>S.C.</u>	W.C.	CONF. COPY <u>CERT. COPY</u>	M.T.	D.T.	R.E.
35	DOC. # <b>0629071</b> PLAT # <u>100980</u> <u>101000</u>	INST <u>MO</u>	REC. FEE <u>S.C.</u>	W.C.	CONF. COPY <u>CERT. COPY</u>	M.T.	D.T.	R.E.

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DOC. # <b>0629072</b>	INST	REC. FEE <u>15.00</u> S.C.	W.C.	CONF. COPY <u>CERT. COPY</u>	M.T.	D.T.	R.E.
PLAT #	<u>A2</u>	<u>4.25 PL</u>					

38

DOC. # <b>0629073</b>	INST	REC. FEE <u>7</u> S.C.	W.C.	CONF. COPY <u>CERT. COPY</u>	M.T.	D.T.	R.E.
PLAT # <u>100980</u> <u>101000</u>	<u>52</u>						

DOC. #	INST	REC. FEE <u>S.C.</u>	W.C.	CONF. COPY <u>CERT. COPY</u>	M.T.	D.T.	R.E.
PLAT #							

DOC. #	INST	REC. FEE <u>S.C.</u>	W.C.	CONF. COPY <u>CERT. COPY</u>	M.T.	D.T.	R.E.
PLAT #							

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CODED BY \_\_\_\_\_

LOGGED BY \_\_\_\_\_

ENTERED BY \_\_\_\_\_

VERIFIED BY \_\_\_\_\_

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