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**SPACE ABOVE THIS LINE FOR RECORDER'S USE**

**PREPARED BY AND WHEN  
RECORDED MAIL TO:  
The City of Saint Paul  
Office of Financial Services/ Real Estate  
1000 City Hall Annex  
25 West Fourth Street  
Saint Paul, Minnesota 55102**

Final Version: January 31, 2013

**CITY HALL ANNEX FIRST FLOOR EASEMENT AGREEMENT**

This City Hall Annex Easement Agreement ("Agreement"), is made and entered into to be effective the \_\_\_\_\_ day of \_\_\_\_\_, 2013, between the **LOWRY BUILDING LLC**, a Minnesota Limited Liability Company ( "Hotel Lowry Owner") and the **CITY OF SAINT PAUL, MINNESOTA**, a municipal corporation under the laws of the State of Minnesota (the "City").

**RECITALS**

A. The Parties to this Agreement are the owners of certain parcels of real property located in Ramsey County, Minnesota, as follows:

1. The Hotel Lowry Owner is the owner of the real property described on the attached Exhibit A ("Hotel Lowry Parcel") on which is located the "Hotel Lowry";

2. The City is the owner of the real property described on the attached Exhibit B ("City Hall Annex Parcel") on which is located the "City Hall Annex."

B. The individual parcels referred to above are collectively referred to herein as the "Parcels" and, individually, as the case may be, a "Parcel."

C. Each of the Parcels is improved with certain buildings and structures situated thereon as indicated in Recital A, above. Said buildings are collectively referred to herein as the "Buildings" or, individually, as the case may be, a "Building."

D. The Parties have agreed that the City will grant an easement over a portion of the City Hall Annex Parcel and Building located thereon for the benefit of the owners, users, and occupants of the Hotel Lowry Parcel.

E. The Parties have further agreed to grant and reserve certain easements for utility purposes over a portion of the City Hall Annex Parcel and Hotel Lowry Parcel.

F. The Parties wish to memorialize the agreements, understandings, and other matters concerning the above.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Hotel Lowry Owner and the City hereby declare that the easements, covenants, conditions and restrictions hereinafter set forth shall be established over certain portions of the City Hall Annex Parcel and the Hotel Lowry Parcel.

## **ARTICLE 1**

### **GRANT OF EASEMENTS**

#### **1.1 Grant of “Annex Easement”, Destruction Termination.**

**(a) Grant of Annex Easement.** The City hereby grants to the Hotel Lowry Owner for One Dollar(\$1.00) and other good and valuable consideration, an exclusive and perpetual easement, subject to reservation of the easement described in Section 1.2 below and further subject to termination as described in Sections 1.1(b) and 1.1 (e) below (the "Annex Easement"). Provided however the Hotel Lowry Owner agrees to pay the City the additional sum of Forty Five Thousand and 00/100 Dollars (\$45,000.00) for the Annex Easement if any of the following conditions are not satisfied: (i) Ramsey County has taken possession of space in the Hotel Lowry Parcel under a lease with Hotel Lowry Owner on or before July 1, 2013; (ii) all the boarded up windows of the Hotel Lowry Parcel on Wabasha and Fourth streets are replaced with glass on or before July 1, 2013; and (iii) the restaurant in the southeast corner on the first floor of the Hotel Lowry Parcel is open for business on or before December 31, 2014. The Annex Easement may be used by the Hotel Lowry Owner for any lawful purpose.

**(b) Destruction Termination.** The City reserves the right to terminate the Annex Easement granted herein upon destruction of the Building on the City Hall Annex Parcel or substantial damage to the Annex Easement Area by fire or other casualty (“Casualty”) and no reconstruction, replacement or repairs are to be made by the City within one hundred eighty (180) days from the destruction of the Building or Casualty damage. The City may exercise its right of termination by giving written notice of termination to the Hotel Lowry Owner within thirty (30) days after the City determines to destroy the Building or the Casualty damage occurs. In the event the City elects to terminate the Annex Easement as provided in this subparagraph 1.1(b), the Hotel Lowry Owner shall have the option (“Option”) to purchase the Annex Easement Area at its then fair market value (“Fair Market Value”). The Option shall be elected, in writing,

within fifteen (15) days after the Hotel Lowry Owner receives written notice from the City electing to terminate the Annex Easement.

If the parties are unable to agree on a purchase price within fifteen (15) days after the Hotel Lowry Owner elects to purchase the Annex Easement, the Hotel Lowry Owner shall, on the 15<sup>th</sup> day, appoint a qualified independent appraiser to determine the Fair Market Value of the Annex Easement Area (the “First Appraisal”). Such appraisal shall be completed within thirty (30) days of the appointment of the appraiser. The City shall be provided a report of such independent appraiser.

In the event the City does not accept the results of the First Appraisal, the City may, within ten (10) days after the delivery of the First Appraisal to it, notify the Hotel Lowry Owner of that fact. If such notice has been timely given, the City may then elect a qualified independent appraiser to conduct a separate appraisal of the Fair Market Value of the Annex Easement Area (the “Second Appraisal”) within forty (40) days after the delivery to the City of the First Appraisal. The Hotel Lowry Owner shall pay the cost of this Second Appraisal in advance. The City shall provide a copy of the report of such independent appraiser to the Hotel Lowry Owner. If the City does not cause a second appraisal to be timely made, the First Appraisal shall conclusively determine the Fair Market Value of the Annex Easement Area.

If the Second Appraisal is timely made and submitted and, if as between the First Appraisal and Second Appraisal, the lower appraisal is not less than eighty percent (80%) of the higher appraisal, the Fair Market Value of the Annex Easement Area shall be the Fair Market Value determined by the higher of the two appraisals. If the lower appraisal is less than eighty percent (80%) of the higher appraisal, the appraisers who submitted the First and Second Appraisals shall then mutually select a third qualified independent appraiser to make an appraisal of the Fair Market Value of the Annex Easement Area (the “Third Appraisal”). In the event a Third Appraisal is required and the first and second appraisers cannot mutually agree on a selection of a qualified third appraiser within ten (10) days after the submission of the Second Appraisal, the third appraiser shall be chosen by the Chief Judge of the Second Judicial District of the State of Minnesota upon request of the Hotel Lowry Owner, the City, or either of the two appraisers.

The Third Appraisal shall be completed within thirty (30) days after the selection of the third appraiser, and the Fair Market Value set forth in the Third Appraisal shall be averaged with either of the First or Second Appraisals, whichever of those two appraisals value is closer to the value set forth in the Third Appraisal. The value so determined shall be the Fair Market Value for the purposes hereof and shall be binding upon the parties.

The cost of all appraisals shall be borne by the Hotel Lowry Owner. All appraisers selected to make an appraisal shall be qualified by training and experience to competently appraise the Fair Market Value of the Annex Easement Area.

Within thirty (30) days after the determination of the Fair Market Value of the Annex Easement Area, the purchase thereof shall be closed and the City shall convey to the Hotel Lowry Owner marketable title to the Annex Easement Area.

(c) **Location of Annex Easement Area.** The location of the Annex Easement area (the "Annex Easement Area") shall be over the first floor of the City Hall Annex, as depicted in the diagram attached hereto as Exhibit C and legally described in the attached Exhibit D. Access to the Easement Area shall include, but by no means be limited to, via an entry way on street level adjacent to the Easement Area (the "Fourth Street Entrance") to be constructed by The Hotel Lowry Owner. The approximate location of the Fourth Street Entrance is shown on the attached Exhibit C. Access to the Annex Easement Area shall not be restricted or otherwise impaired by the City.

(d) **Covenants.** The City, for itself and its successors and assigns, does covenant with the Hotel Lowry Owner, its successors and assigns, that it is the fee owner of the City Hall Annex Parcel and has good right to grant and convey the City Hall Annex Easement free of all encumbrances. The City also covenants that the City Hall Annex will be in the quiet and peaceable possession of the Hotel Lowry Owner to the extent necessary to fulfill the purposes of said easement.

(e) **Termination for NonUse.** The City reserves the right to terminate the Annex Easement granted herein upon the non use or non possession of the Annex Easement Area by a tenant of the Hotel Lowry Owner for a period of one (1) year or longer. The City may exercise this right of termination by giving written notice of termination to the Hotel Lowry Owner, and a recording of this notice of termination with the County Recorder/Registrar of Titles is prima facie evidence of the termination of this Annex Easement. Upon termination, Hotel Lowry Owner shall remove its improvements to the Annex Easement Area and return the Annex Easement Area to the City in a broom clean condition within thirty (30) days thereof.

1.2 **Reservation of Easements for Utilities.** The City reserves an easement across the Annex Easement Area for the purpose of allowing the utilities servicing the City Hall Annex Parcel to remain in their current location, and allowing the City to maintain such utilities as may be benefiting the City Hall Annex Parcel. This reservation of easement shall specifically include, but not be limited to, an easement over the Annex Easement Area for the plumbing, electrical, and other utilities which may be necessary in order to connect to and service any bathroom and other facilities which may be constructed on the City Hall Annex Parcel by the City.

1.3 **Parties in Interest; Appurtenant Nature of the Easement.** This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, representatives, successor and assigns. The Easement granted and reserved herein shall be deemed to be an interest in real property, appurtenant to both Parcels, and shall run with the land and title to such Parcels.

1.4 **Easement for Hotel Lowry Owner Utilities.** The City grants to the Hotel Lowry Owner a limited and non exclusive easement across the City Hall Annex Parcel for the purpose of allowing the utilities servicing the Annex Easement Area to remain in their current location and allowing the Hotel Lowry Owner to maintain such utilities. This grant of easement shall also specifically include, but not be limited to, an easement over the City Hall Annex Parcel for the plumbing, electrical, and other utilities which may be necessary in order to connect to and service any bathroom and other facilities which may be hereafter constructed on the Annex

Easement Area by the Hotel Lowry Owner; provided, however, that no such utility work shall be performed on the City Hall Annex Parcel without the Hotel Lowry Owner first obtaining the written consent of the City to such utility work; and, provided further, the Hotel Lowry Owner shall submit detailed plans and specifications for such utility work that meet all applicable building codes to the City for its approval, which approval will not be unreasonably delayed or withheld. All such utility work shall be performed in a good and workmanlike manner. See Exhibit C showing the plan and scope of work.

The Hotel Lowry Owner may use the existing Utility chases for fresh air supply and restroom exhaust in the City Hall Annex for the benefit of the Hotel Lowry Owner. The use of the chases will not compromise the utility and function of the City Hall Annex. The Hotel Lowry Owner will pay all the reasonable maintenance expenses and damages directly and indirectly as a result of the chase usage. The chases are located in the City Hall Annex 2nd floor break room and the east end basement area of the City Hall Annex.

1.5 **Mutual Easements for Utilities.** The Hotel Lowry Owner grants to the City a limited and non exclusive easement across the Hotel Lowry Parcel for the purpose of allowing the utilities servicing the City Hall Annex Parcel to remain in their current location and allowing the City to maintain such utilities.

The City grants to the Hotel Lowry Owner a limited and non exclusive easement across the City Hall Annex Parcel for the purpose of allowing the utilities servicing the Hotel Lowry Parcel to remain in their current location and allowing the Hotel Lowry Owner to maintain such utilities.

## ARTICLE 2

### CONSTRUCTION AND MAINTENANCE

2.1 **Improvements within the Annex Easement Area.** The Hotel Lowry Owner shall be permitted to undertake and complete any lawful improvements to or modifications of the Annex Easement Area, subject to full compliance with all applicable building codes and regulations, city ordinances and regulations, and the requirements listed on Exhibit C with respect to the doors on 4<sup>th</sup> street (the “Permitted Modifications”). All Permitted Modifications shall be performed in a good and workmanlike manner.

2.2 **Fourth Street Entrance.** The Hotel Lowry Owner may construct and improve the Fourth Street Entrance, including the construction of a canopy over the entrance, signage, and separate entry doors to the Hotel Lowry Parcel and City Hall Annex Parcel. The design and construction of the improvements to the Fourth Street Entrance shall be subject to the approval of the City, which approval shall not be unreasonably withheld or delayed.

2.3 **Costs.** The Hotel Lowry Owner shall be responsible for all costs and expenses associated with the Permitted Modifications and/or Fourth Street Entrance, and all maintenance, repair and replacement of same. The Hotel Lowry Owner shall also indemnify the City from any liability related thereto.

2.4 **Maintenance.** The Hotel Lowry Owner shall be responsible for and bear all costs associated with all maintenance, repair, replacement and renovation of the Annex Easement Area and all Permitted Modifications thereto and the sidewalk adjacent to the Annex Easement Area, which sidewalk maintenance shall include but not limited to snow and ice removal, all in accordance with applicable fire and building codes. In addition, the Hotel Lowry Owner may, but shall not be required to, maintain and repair that portion of the exterior of the City Hall Annex through the second story above and immediately adjacent to the Fourth Street entrance to the Annex Easement Area, provided, however, that the Hotel Lowry Owner shall not touch, maintain or repair any of the ornamental iron on the City Hall Annex building without the prior written consent of the City.

2.5 **Property Insurance.** The Hotel Lowry Owner shall keep the Permitted Modifications insured against loss by hazards for at least the sum of the full insurable value thereof and the City shall be named as a loss payee on such policies. The Hotel Lowry Owner shall provide the City with proof of insurance that meets the requirements of this section at all times.

2.6 **Liability Insurance.** The Hotel Lowry Owner agrees to have the City named as an additional insured on all comprehensive general liability insurance policies or other policies it maintains that afford insurance for bodily injury, death and property damage arising from the use of the Annex Easement Area by the Hotel Lowry Owner, and to deliver to the City certificates, beginning on the date hereof and continuing on the renewal dates of such insurance, stating that such insurance is in force and effect.

2.7 **Compliance with Laws:** The Hotel Lowry Owner will obtain, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and Federal laws and regulations (“Laws”) which must be obtained or met before any improvements may be lawfully constructed on the Easement Area and shall continue to comply with all Laws in connection with the construction of improvements on and use of the Annex Easement Area.

## ARTICLE 3

### GENERAL PROVISIONS

3.1 **Interpretation.** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both parties have contributed substantially and materially to the preparation of this Agreement.

3.2 **Construction.** The headings of the sections and subsections of this Agreement are for convenience and reference only and do not form a part hereof, and in no way interpret or construe such sections and subsections. Wherever the context requires or permits, the singular

shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

3.3 **Severability.** If any provision of this Agreement is held to be unenforceable or void, such provision shall be deemed to be severable and shall in no way affect the validity of the remaining terms of this Agreement.

3.4 **Governing Law.** This Agreement shall be construed as to both validity and performance and enforced in accordance with and governed by the laws of the State of Minnesota.

3.5 **No Third-Party Benefit.** Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties to this Agreement or their permitted successors or assigns, any rights, remedies, obligations, or liabilities under or by reason of this Agreement.

3.6 **Rights Reserved.** Except for rights expressly granted to the Hotel Lowry Owner herein, the City reserves all rights in and to the Annex Easement Area.

3.7 **Indemnification.** Each party hereto shall indemnify, defend and hold harmless the other party from and against all claims, expenses, losses or liabilities in connection with any action or claims paid, suffered or incurred as a result of the indemnifying party's construction, maintenance, use or occupancy of the Annex Easement Area as provided in this Agreement including without limitation claims brought by any tenant or permitted user of the Hotel Lowry of the Annex Easement Area. Provided that the City does not waive any statutory or common law immunities or limitations of damages.

3.8 **Time Limitation.** This Agreement and covenants shall remain in effect in perpetuity commencing as of the date of this Agreement, subject to the termination provisions of Section 1.1 above.

3.9 **Amendment.** This Agreement may not be amended or modified without the written consent of the parties hereto.

3.10 **Entire Agreement.** This Agreement embodies the entire agreement and understanding between the parties and supersedes any prior oral or written agreements with respect to the matters stated herein.

3.11 **Notices.** All notices, demands and other communications under this Agreement by either party to the other party shall be sufficiently given or delivered if it is dispatched by first class mail, postage prepaid or delivered personally to the other party at the following addresses:

Lowry Building, LLC  
Suite 400 Degree of Honor Building  
325 Cedar Street  
St. Paul, MN 55101

City of Saint Paul

Real Estate, Suite 1100  
25 W. 4<sup>th</sup> St.  
St. Paul, MN. 55102

Either party may change the address for notice by giving the other party at least 10 days prior written notice.

3.12 **Closing; City Consent.** Closing on this Agreement shall occur within 30 days after the City Council takes action to approve this Agreement. At closing the City shall record and deliver a fully executed copy of this Agreement to The Hotel Lowry Owner. Any consents or approvals by the City required to be given under this Easement Agreement shall not be unreasonably delayed or withheld by the City.

3.13 **Limitation of Remedy.** Nothing in this Easement Agreement shall entitle the Hotel Lowry Owner to make any claim against the City for any damages of any kind, including without limitation, direct, consequential and incidental damages, and the sole remedy of the Hotel Lowry Owner against the City under this Easement Agreement is strictly limited to an action for specific performance.

3.14 **Default/City's Remedies.** If the Hotel Lowry Owner fails to timely make any of the payments or perform any of its agreements required in this Agreement after receiving thirty (30) days notice of such failure thereof by the City, then the City may elect to bring an action for damages, cancellation of this Agreement, and/or specific performance. The City is entitled to recover its reasonable attorney's fees, expenses and costs if it is the prevailing party in any legal proceeding.



**SEPARATE SIGNATURE PAGE OF  
LOWRY BUILDING LLC  
FOR EASEMENT AGREEMENT**

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

**LOWRY BUILDING LLC**

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

Its \_\_\_\_\_

[illegible]

The instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, its \_\_\_\_\_, on behalf of the LOWRY BUILDING LLC, a Minnesota limited liability company.

Notary Public

**SEPARATE SIGNATURE PAGE OF  
CITY OF SAINT PAUL  
FOR EASEMENT AGREEMENT**

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

**CITY OF SAINT PAUL, MINNESOTA**

By: \_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_  
Its Director of Financial Services

By: \_\_\_\_\_  
Its City Clerk

Approved as to form:

Assistant City Attorney

[illegible]

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, Mayor, \_\_\_\_\_, Director, Office of Financial Services and \_\_\_\_\_, City Clerk of the City of Saint Paul, a Minnesota municipal corporation under the laws of the State of Minnesota.

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Notary Public

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF THE HOTEL LOWRY PARCEL**

Lot 11, Block 21, St. Paul Proper, Lot 12, Block 21, St. Paul Proper, the rear southerly 25 feet of Lot 1, Block 21, St. Paul Proper, the rear southerly 25 feet of Lot 2, Block 21, St. Paul Proper, City of St. Paul.

Torrens, Certificate Number 590090

## **EXHIBIT B**

### **LEGAL DESCRIPTION OF THE CITY HALL ANNEX PARCEL**

Part of Lots 8, 9 & 10 lying southeasterly of a construction building line described as follows; beginning on the westerly line of and 51.5 feet northwesterly from the southwesterly corner of Lot 8; thence northeasterly parallel with the southeasterly line of Block 21 for 51.96 feet; thence northwest at a right angle for 3.5 feet; thence northeasterly at a right angle for 12.4 feet; thence northwesterly at a right angle for 25.75 feet, thence northeasterly at a right angle more or less for 84.96 feet more or less to a point on the easterly line of and 80.7 feet northwesterly from the southeasterly corner of said Lot 10, Block 21, City of St. Paul.

**EXHIBIT C**

**DIAGRAM OF EASEMENT AREA AND CONSTRUCTION REQUIREMENTS**





**DESIGN  
GROUP**

PUBLIC WORKS DEPT..  
TECHNICAL SERVICES  
DIVISION

1000 City Hall Annex, 25 W. 4th Street  
Phone: (651)266-8850 Fax: (651)266-8855



HOTEL LOWRY IS PERMITTED TO INSTALL AN AWNING INSIDE THE STONE RECESS IN THE FACADE IN FRONT OF FRAME "B". AS INDICATED BY THE BLUE DASHED LINE



HOTEL LOWRY IS NOT PERMITTED TO APPLY ANY FINISHES OR MATERIALS TO THE FACADE OF THE CHA OUTSIDE OF FRAME "B" AND STONE/MARBLE RECESSED AREA, DEPICTED BY THE RED DASHED LINE.

City Hall Annex  
Hotel Lowry

25 W. 4th Street  
SAINT PAUL, MINNESOTA

City Hall Annex  
Easement 1st Floor

1ST FLOOR PLAN  
ACCESS DOORS &  
EASMENT AREA  
ELEVATION IMAGE

PROJECT NO: **CHA-Easments**

DRAWN BY: **Michael Michaud**

DATE: **06/28/11**

CK BY: \_\_\_\_\_

**EXHIBIT C**

2 OF 2 SHEETS

## **EXHIBIT D**

### **LEGAL DESCRIPTION OF ANNEX EASEMENT**

An Easement over and across that part of the first floor of the City Annex Building (Floor to Ceiling) located in that part of Lot 10, Block 21, City of St. Paul, commonly referred to as “Saint Paul Proper” described more particularly as follows:

Commencing at the Southwesterly corner of Lot 12, Block 21, City of St. Paul, said corner being the intersection of the existing South and East face of the Lowry Square Building, thence South 55 degrees 40 minutes and 58 seconds West (bearing based on the Ramsey County Coordinate System, December 1991 Adjustment) a distance of 99.59 feet along the southerly line of Lots 11 and 12, Block 21, City of Saint Paul, said line being the existing southerly building face of the Lowry Square Building to the Southwest corner of said Lot 11, Block 21, also being the southeast corner of Lot 10, Block 21, City of St. Paul, and the point of beginning of the Easement to be described: thence north 34 degrees 41 minutes 04 seconds West a distance of 78.90 feet along the easterly line of Lot 10, Block 21, said line also being the westerly line of Lot 11, Block 21, City of Saint Paul; thence South 55 degrees 40 minutes 57 seconds West a distance of 15.02 feet; thence South 34 degrees 14 minutes 50 seconds East a distance of 63.76 feet; thence North 56 degrees 35 minutes 36 seconds East a distance of 4.27 feet; thence South 34 degrees 07 minutes 12 seconds East a distance of 15.07 feet to the Southerly line of said Lot 10, Block 21, thence North 55 degrees 40 minutes 58 seconds East along the Southerly line of said Lot 10, Block 21, a distance of 11.38 feet to the point of beginning. Said Easement contains 188.40 square feet; the floor of said Easement is at an elevation of approximately 789.5 feet (NGVD 1929); the ceiling of said Easement is at an elevation of approximately 801.8 feet (NGVD 1929), said elevations based on a City of Saint Paul Benchmark. The top nut of the fire hydrant at the Northwest corner of the intersection of Wabasha Street and Fourth Street which has a reported elevation of 791.35 feet (NGVD 1929).