

## • PUBLIC SIDEWALK AND CITY STREET LIGHT EASEMENT •

This agreement (hereinafter “Easement” or “Agreement”) made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, between the State of Minnesota, a sovereign entity (hereinafter “Grantor”), acting by and through its Department of Administration, and the City of St. Paul, a municipal corporation under the laws of the State of Minnesota, (hereinafter “Grantee”).

**WHEREAS**, Grantor’s Commissioner of Administration has authority under the provisions of Minnesota Statutes Section 16B.26, and with the rules promulgated thereto, to grant easements over certain state owned property;

**WHEREAS**, the State of Minnesota owns the parcels of land legally described in the attached Exhibit A, the contents of which are incorporated herein by reference, all of which lands are situated in Ramsey County, Minnesota, hereinafter referred to as the “Easement Area”;

**WHEREAS**, Grantee wishes to acquire from Grantor a non-exclusive easement with the right, privilege and authority to construct, use, replace, repair, and maintain a public sidewalk and city street lights over, across, under and upon the land described and depicted in Exhibit B attached hereto (hereinafter referred to as the “Easement Area”).

**WHEREAS**, Grantee wishes to acquire from Grantor an easement over, under and across the Easement Area to accommodate said improvements.

**NOW, THEREFORE**, in consideration of all the covenants, terms and conditions herein contained, and intending to be legally bound hereby, the parties agree to the following terms and conditions:

1. Grant of Easement.

- 1.1 For and in consideration of the sum of One and 00/100 Dollar (\$1.00), the receipt of which is hereby acknowledged and in consideration of the promises, conditions, and covenants contained herein and subject to Section 6 below, Grantor hereby grants a

non-exclusive easement for the purpose of using, replacing, repairing and maintaining a public sidewalk and city street lights within the Easement Area.

1.2 Grantor provides no warranties of fitness of any kind pertaining to the Easement Area. Grantee takes the Easement Area “as is” in its existing physical condition. Further, Grantor makes no warranty or representation as to the safe condition of Easement Area or the suitability of said Easement Area for the purposes set forth.

1.3 This easement shall be granted subject to and restricted by easements, reservations and restrictions of record.

2. Use of Easement Area. Grantee’s use of the Easement Area must be in compliance with the purpose, terms and conditions set forth herein. It is agreed that Grantee shall not use the Easement Area for any purpose contrary to any federal, state or local law, rule, or regulation. Subject to Section 6 below, Grantee shall use the Easement Area only to operate, maintain, use, rebuild and remove sidewalks and city street lights over, under and across the Easement Area for the purpose of providing sidewalks and city street lights for public use.

3. Revocation of Easement. The Easement shall be revocable by written notice given by the Grantor if at any time its continuance will conflict with a public use of the Easement Area, over, under or upon which it is granted; or upon request of the head of the agency having jurisdiction over the land if other than the Department of Administration; or for any other reason. Such notice shall be effective ninety (90) days after the mailing thereof addressed to the record holder of this easement at its last known address by certified mail. Upon revocation Grantor will allow Grantee a reasonable time to vacate the Easement Area, not to exceed one year. Notwithstanding anything to the contrary herein, in the event that Grantor revokes this Easement pursuant to this Section 3, Grantee shall not be required to remove the public sidewalk and city street lights from the Easement Area upon vacating the Easement Area. If the Grantee does not remove the public sidewalk and city street lights upon vacating the Easement Area, they shall be deemed to be surrendered by Grantee to Grantor and ownership of the public sidewalk and city street lights shall automatically vest in Grantor.

4. Easement Area Runs With the Land. This Easement shall run with the land and be binding upon all successors, heirs and assigns of Grantor and Grantee

5. Compliance with Laws. In conducting its activities hereunder, Grantee will, at its sole expense and effort, comply with all laws, ordinances, permits, rules and regulations, enacted by any federal, state, or local governmental agency having jurisdiction or control over any activity occurring upon the Easement Area resulting from or applicable to usage based upon this Easement. Grantee further agrees to obtain all required permits for its activities hereunder at its sole expense and to comply with all such permits.

6. Restoration, Maintenance and Repair. Grantor agrees to be responsible at its expense for following within the Easement Area: repair and maintenance of the pavement and pavement

markings, sweeping the sidewalk and street within the Easement Area, the removal of snow and ice, and weed control. Grantee agrees to be solely responsible at its expense for (i) maintenance, repair, and upkeep of the city owned street lights within and around the Easement Area and (ii) the replacement of unrepairable or obsolete sidewalk panels. After any future maintenance or repair work within the Easement Area, the Grantee shall at its expense restore the affected Easement Area, exclusive of those areas actually occupied by a structure or equipment, to substantially the same condition as existed prior to such construction, maintenance or repair. When maintaining and repairing the city owned street lights, Grantee further agrees to keep and maintain the Easement Area in a neat and orderly condition and remove all refuse and debris that may accumulate thereon.

7. Indemnification.

- 7.1 Each party will be responsible for its own acts and the results thereof and shall not be responsible for the acts of any others and the results thereof. The State's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Chapter §3.736 and other applicable law. Grantee's liability shall be limited by the provisions of Minnesota Statutes Chapter 466 and other applicable law. The provisions of this Section shall survive the termination of this Agreement and any subsequent amendments to it.
- 7.2 The Grantee agrees to require its contractor(s) to indemnify, defend and hold harmless Grantor, including its subsidiaries, facilities, employees, officers, agents, successors and assigns from and against any and all claims, costs, demands, damages, liabilities, judgments, or expenses, including attorney fees, court costs, consultant fees and other legal costs, for any personal injury, death or property damage arising out of or resulting from, or in any way associated with the activities described herein of Grantee, its employees, agents, invitees, licensees, successors, and assigns except for Grantor's willful misconduct or negligence.
- 7.3 The obligations set forth in this section shall continue after any termination of this Agreement as to any matters that occurred during or resulted from the term of this Agreement.

8. Insurance during Construction. Prior to any commencement to excavate, construct, install, operate, maintain, use, rebuild, remove, or any activities that may constitute a modification within, under or across the Easement Area, Grantee shall either (i) at its sole cost and expense, procure and maintain the insurance coverage stated below or (ii) arrange for a third party contractor (hereinafter "Contractor" or "Subcontractor") to procure and maintain the insurance coverage to cover claims which may arise from any construction-related activities in the Easement Area, whether such construction-related activities are by the Contractor, their Subcontractor, or by anyone directly or indirectly employed under this Agreement. The Contractor shall not commence work under the Agreement until all the insurance described below has been obtained and the State of Minnesota has approved such insurance.

All policies shall remain in force and effect throughout the period of construction, naming the State of Minnesota as additional insured thereunder.

- 8.1 Requirements for the Contractor The insurance policy(ies) shall be primary and non-contributory insurance to any other valid and collectible insurance available to the state of Minnesota with respect to any claim arising out of this Agreement.

The Contractor is responsible for payment of insurance premiums and deductibles related to this Agreement.

Insurance Companies must have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota.

Certificates of Insurance acceptable to the State of Minnesota shall be submitted prior to commencement of the work under this Agreement. Such Certificates shall contain a provision that coverage afforded under these policies shall not be cancelled without at least thirty (30) days advanced written notice to the State.

If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota.

- 8.2 Notice to the Contractor The failure of the State of Minnesota to obtain Certificate(s) of Insurance for the policies or renewals thereof or failure of the insurance company to notify the State of the cancellation of policies required under this Agreement shall not constitute a waiver by the State to the Contractor to provide such insurance.

The State will reserve the right to immediately terminate the Agreement if the Contractor is not in compliance with the insurance requirements. In the event that a court of competent jurisdiction orders Contractor to disclose its insurance policy(ies) in connection with discovery during litigation brought as a result of a dispute between the parties, Contractor agrees to adhere to such court's order with respect to disclosure of such policy(ies).

- 8.3 Notice to Insurer The Contractor's insurance company waives its right to assert the immunity of the State as a defense to any claims made under said insurance. Contractor's insurance company is notified that the liability of their policyholder is not limited by statute, and as a result, they are precluded from limiting claim

payments based on any assumption that they are protected by immunity of the State.

#### 8.4 Policy Requirements

8.4.1 Workers' Compensation Insurance Contractor shall provide workers' compensation insurance for all employees and shall require any Subcontractor to provide workers' compensation insurance in accordance with the statutory requirements of the State of Minnesota and must include:

a. Part 2, Employers Liability including Stop Gap Liability for monopolistic states, at limits of not less than:

\$100,000 – Bodily Injury by disease per employee

\$500,000 – Bodily Injury by disease aggregate

\$100,000 – Bodily Injury by accident

b. Coverage C: All States Coverage

c. If applicable, USL&H, Maritime, Voluntary and Foreign Coverage.

d. A waiver of subrogation in favor of the State of Minnesota, as Owner.

If Contractor is self-insured for its obligation under the Workers' Compensation Statutes in the jurisdiction where the project is located, a Certification of the Authority to Self-Insure such obligations shall be provided.

Evidence of Subcontractor insurance shall be filed with the Contractor.

8.4.2 Automobile Liability Insurance The Contractor shall maintain insurance to cover liability arising out of the operations, use, or maintenance of all owned, non-owned, and hired automobiles.

a. Minimum Limits of Liability: \$2,000,000 per occurrence combined Single Limit Bodily Injury and Property Damage

b. Coverages:

i. Owned Automobile

ii. Non-owned Automobile

iii. Hired Automobile

iv. Waiver of subrogation in favor of the State of Minnesota

8.4.3 Commercial General Liability The Contractor shall maintain insurance to cover claims arising from operations under this Agreement, whether such claims are by the Contractor, Subcontractor, Sub-Subcontractor or by anyone directly or indirectly employed under this Agreement.

- a. Minimum Limits of Liability:
  - i. \$2,000,000 - Per Occurrence
  - ii. \$2,000,000 - Annual Aggregate
  - iii. \$2,000,000 - Annual Aggregate applying to Products and Completed Operations
  - iv. \$50,000 - Fire Damage (any one fire)
  - v. \$5,000 - Medical Expense (any one person per occurrence)
- b. Coverages:
  - i. Premises and Operations Bodily Injury and Property Damage
  - ii. Personal Injury & Advertising Injury
  - iii. Products and Completed Operations Liability
  - iv. Contractual Liability as provided in ISO form CG 00 01 10 01 or its equivalent.
  - v. Pollution exclusion with standard exception as per Insurance Services Office (ISO) Commercial General Liability Coverage Form – CG 00 01 10 01 or equivalent
  - vi. Explosion, Collapse, and Underground (XCU) perils
  - vii. Broad Form PD
  - viii. Independent Contractors – Let or Sublet work
  - ix. Waiver of Subrogation in favor of the State of Minnesota
  - x. Owner named as an Additional Insured, by endorsement, ISO Forms CG 20 10 and CG 20 37 or their equivalent for claims arising out of the Contractor's negligence or the negligence of those for whom the Contractor is responsible.

8.4.4 Umbrella or Excess Liability An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limit to satisfy the full policy limits required by the Agreement.

Notwithstanding anything contained herein to the contrary, during the term of this Agreement, the Grantor may at any time make changes respecting the insurance requirements as necessary to be consistent with the State's risk management policies and recommendations. Grantor shall provide Grantee any revisions to the aforementioned insurance requirements as *reasonably* determined by Grantor to meet the State's risk management policies and recommendations. Grantee shall provide proof of insurance as required by Grantor, at least three (3) days prior to any modification or construction-related activity to the Easement Area.

9. Damages. The Grantee shall take all reasonable precautions to prevent any damage to the Easement Area and shall fully reimburse the State of Minnesota for any damages resulting from its use of said Easement Area. The Grantee shall be responsible for the cost of repairing any equipment or facilities in the Easement Area that it or its equipment damages.

10. Modifications. The Grantor may at any time order such changes or modifications respecting construction or maintenance of structures, use or other conditions of this easement as deemed necessary to protect the public health and safety. The foregoing sentence does not

relieve the Grantee of any obligations under this Easement.

11. Assignment. This Easement shall not be assignable by the Grantee except upon written consent of the Grantor.

12. Assessments. Except for the replacement of unrepairable or obsolete sidewalk panels, the Grantee agrees that the Grantor shall not be liable for assessments for any current or future improvements associated with this Easement. In the event Grantee the replaces unrepairable or obsolete sidewalk panels in accordance with Section 6 above, Grantee may assess Grantor for such work.

13. Term of Easement. This Easement shall continue in effect until canceled by the Grantor, subject to change or modifications as provided herein above.

14. Access. The grant of an easement herein contained shall include the right of Grantee to have reasonable access to said Easement Area across other land of State of Minnesota immediately adjacent thereto, said access route to be designated by Grantor as needed within a reasonable time following receipt of any written request of Grantee, its contractors, agents or assigns, for such temporary access rights.

15. Recording. On or before ten (10) days after receipt of the executed Easement, Grantee shall file the Easement for recording with the Ramsey County Recorder's Office. On or before ten (10) days after receipt of the recorded Easement, Grantee shall provide to Grantor a copy of such recorded Easement.

16. Existing Utilities. Grantee acknowledges that there may be other utilities located within the Easement Area and takes full responsibility for determining their location to prevent damage to or interference with any rights held by other easements holders, whether those rights are held under recorded or unrecorded easements, and to determine that the location of the Easement Area is suitable for Grantee's purposes. Grantee shall not construct any other buildings, structures, or other improvements except as permitted herein.

17. Relocation of Existing Facilities. When working in the Easement Area, Grantee shall not interfere with the safety and convenience of ordinary travel along and over the Easement Area nor interfere with other uses to which the Easement Area may be put by Grantor or with other facilities that are already in place. Grantee shall promptly and at its own expense, permanently remove and relocate its facilities in the Easement Area when it is necessary to prevent interference and not merely convenience of the Grantor, in connection with: (a) a present or future governmental use for a public project; (b) the public health or safety; or (c) the safety and convenience of travel over the Easement Area.

18. Notification. Grantee must obtain the written approval of Grantor prior to conducting any work in the Easement Area. Notwithstanding the foregoing, the Grantee shall immediately notify the Grantor of any event regarding its facilities that it considers an emergency. Grantee

may proceed to take whatever actions are necessary in order to respond to the emergency subject to compliance with applicable laws. Grantor may take whatever action it deems necessary in order to respond to any event regarding Grantee's facilities that it considers an emergency, the cost of which shall be borne by the Grantee.

19. Captions. The paragraph headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

20. Entire Agreement; Modification. This written Agreement constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the easement. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in writing executed by the parties.

21. Binding Effect. This Agreement binds and benefits the parties and their successors in interest.

22. Controlling Law. This Agreement has been made under the laws of the State of Minnesota, and such laws will control its interpretation.

23. Authority. Grantee represents and warrants that it has full power and authority to execute, deliver and perform under this Agreement.

24. Waiver. Neither the failure by any party hereto, in anyone or more instances, to insist upon the complete and total observance or performance of any term or provision hereof, or to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of any party hereto in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

25. Severability. If any provision of this Agreement is finally judged by a court of competent jurisdiction to be invalid, then the remaining provisions shall remain in full force and effect and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

26. Time of Essence. Time is of the essence with respect to all of the matters contained in this Agreement.

27. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.



28. Recitals. The on recitals pages 1 are hereby incorporated herein.

29. Notices. All notices or communications between Grantor and Grantee shall be deemed sufficiently given or rendered if in writing and delivered to either party personally; or if mailed by United States registered or certified mail to the addresses set forth below, or such future addresses as may be subsequently supplied by the parties hereto to each other, return receipt requested, postage prepaid; or if transmitted by facsimile copy followed by mailed notice; or if deposited cost paid with a nationally recognized, reputable overnight courier, properly addressed as follows:

<b>Grantee:</b>	City of Saint Paul Office of Financial Services – Real Estate Section Attn: Real Estate Manager 25 West Fourth Street, 10 <sup>th</sup> floor Saint Paul, MN 55102
<b>Grantor:</b>	MN Department of Administration Real Estate & Construction Services Attn: Director of Real Estate and Construction Services 50 Sherburne Avenue – Room 309 Saint Paul MN 55155

**The remainder of this page is intentionally blank.**

**IN WITNESS WHEREOF**, the parties hereto have set their hands on the date(s) indicated below intending to be bound thereby.

**GRANTEE:**

CITY OF SAINT PAUL, a Minnesota  
municipal corporation

By: \_\_\_\_\_  
Its Mayor or designee

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

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

Approved as to form:

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

STATE OF MINNESOTA    )  
                                          ) ss.  
COUNTY OF Ramsey        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, Mayor or designee, \_\_\_\_\_, Director, Office of Financial Services and \_\_\_\_\_, City Clerk of the City of Saint Paul, a Minnesota municipal corporation, on behalf of the municipal corporation.

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

**GRANTOR**  
STATE OF MINNESOTA

BY: \_\_\_\_\_  
Matt Massman  
Commissioner of Administration

DATE: \_\_\_\_\_

STATE OF MINNESOTA            }  
                                              } ss.  
COUNTY OF RAMSEY            }

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019,  
by MATT MASSMAN Commissioner of Administration, on behalf of the State of Minnesota.

NOTARY PUBLIC

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

**EXHIBIT A  
LEGAL DESCRIPTION  
PROPERTY**

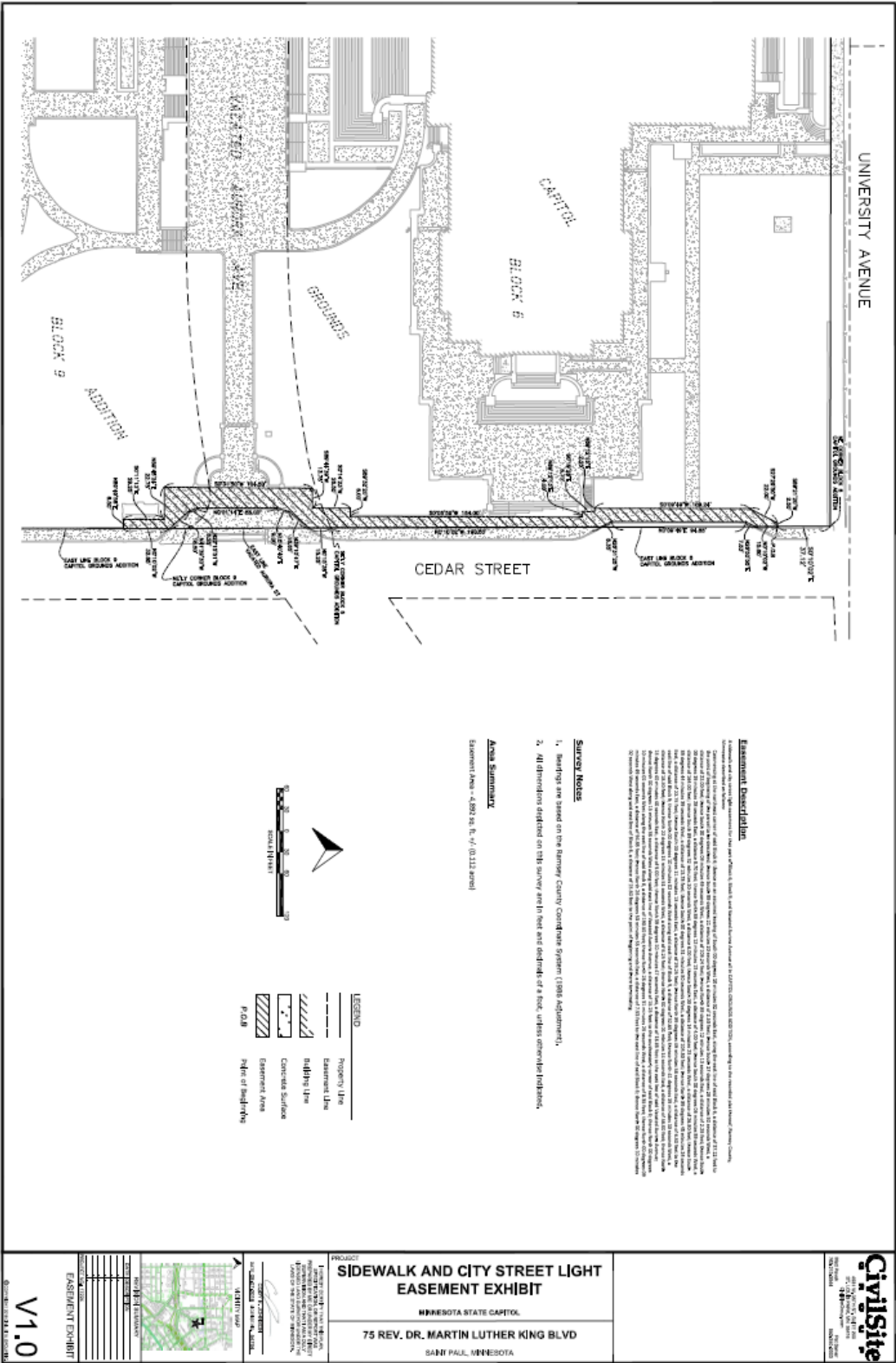
Block 6, Block 9, and Vacated Aurora Avenue all in CAPITOL GROUNDS ADDITION,  
according to the recorded plat thereof, Ramsey County, Minnesota.

## **EXHIBIT B**

### **EASEMENT AREA LEGAL DESCRIPTION**

A sidewalk and city street light easement for that part of Block 6, Block 9, and Vacated Aurora Avenue all in CAPITOL GROUNDS ADDITION, according to the recorded plat thereof, Ramsey County, Minnesota described as follows:

Commencing at the northeast corner of said Block 6; thence on an assumed bearing of South 00 degrees 10 minutes 02 seconds East, along the east line of said Block 6, a distance of 37.12 feet to the point of beginning of the parcel to be described; thence South 89 degrees 21 minutes 20 seconds West, a distance of 2.50 feet; thence South 27 degrees 29 minutes 50 seconds West, a distance of 22.00 feet; thence South 00 degrees 09 minutes 49 seconds West, a distance of 109.24 feet; thence North 89 degrees 12 minutes 13 seconds East, a distance of 2.25 feet; thence South 00 degrees 19 minutes 28 seconds East, a distance 8.70 feet; thence North 89 degrees 12 minutes 13 seconds East, a distance of 4.00 feet; thence South 00 degrees 06 minutes 59 seconds West, a distance of 164.00 feet; thence South 89 degrees 32 minutes 20 seconds West, a distance 6.00 feet; thence South 00 degrees 14 minutes 23 seconds West, a distance of 26.50 feet; thence South 89 degrees 44 minutes 39 seconds West, a distance of 13.75 feet; thence South 00 degrees 31 minutes 50 seconds West, a distance of 104.50 feet; thence North 89 degrees 45 minutes 24 seconds East, a distance of 22.75 feet; thence South 00 degrees 11 minutes 13 seconds East, a distance of 29.25 feet; thence North 89 degrees 49 minutes 58 seconds East, a distance of 6.50 feet to the east line of said Block 9; thence North 00 degrees 10 minutes 02 seconds West along said east line of Block 9, a distance of 32.65 feet; thence North 41 degrees 39 minutes 30 seconds West, a distance of 18.50 feet; thence North 22 degrees 15 minutes 51 seconds West, a distance of 6.25 feet; thence North 00 degrees 01 minutes 14 seconds East, a distance of 56.00 feet; thence North 15 degrees 40 minutes 40 seconds East, a distance of 9.00 feet; thence North 39 degrees 10 minutes 47 seconds East, a distance of 18.65 feet to the east line of said Vacated Aurora Avenue; thence North 00 degrees 15 minutes 38 seconds West along said east line of Vacated Aurora Avenue, a distance of 15.25 feet to the southeasterly corner of said Block 6; thence North 00 degrees 10 minutes 02 seconds West along the east line of said Block 6, a distance of 190.50 feet; thence North 28 degrees 31 minutes 25 seconds West, a distance of 8.35 feet; thence North 00 degrees 09 minutes 49 seconds East, a distance of 94.85 feet; thence North 26 degrees 50 minutes 55 seconds East, a distance of 7.53 feet to the east line of said Block 6; thence North 00 degrees 10 minutes 02 seconds West along said east line of Block 6, a distance of 15.60 feet to the point of beginning and there terminating.



This instrument was drafted by:

MN Department of Administration (RFB)  
309 Administration Building  
50 Sherburne Avenue  
Saint Paul MN 55155