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Doc Name: Easement

Document Recording Fee \$46.00

Multiple Certificates Affected \$20.00
Fee

Document Total \$66.00

Existing Certs

New Certs

1128873

1329665

RETURN TO: *Box 104*
First American Title Insurance Co, NCS
1900 Midwest Plaza
801 Nicollet Mall
Minneapolis, MN 55402

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT ("Agreement") is made as of December 21, 2010, by the City of Minneapolis, a Minnesota municipal corporation (hereinafter referred to as "City") and The American Academy of Neurology Institute (formerly known as The American Academy of Neurology), a Minnesota nonprofit corporation (hereinafter referred to as "Developer"). City and Developer are hereinafter sometimes collectively referred to as "Parties."

RECITALS

WHEREAS, City is the fee owner of real property situated in Hennepin County, Minnesota, which is legally described as Tract B, Registered Land Survey No. 1740, Hennepin County, Minnesota (hereinafter "Tract B"). City has constructed a parking ramp on Tract B (the "Ramp").

WHEREAS, Developer is the fee owner of real property situated in Hennepin County, Minnesota, which is legally described as follows:

That part of Lot 1, Block 1, Mill Quarter Second Addition, Hennepin County, Minnesota, which lies above, but not below, a horizontal plane having an elevation of 790 feet above sea level according to the National Geodetic Vertical Datum 1929 Adjustment

(hereinafter "Lot 1"). Developer intends to construct an office project on Lot 1. Tract B and Lot 1 are sometimes collectively referred to herein as the "Parcels."

WHEREAS, Parties desire to create certain easements for access and maintenance, as more particularly described herein, that will benefit and burden the Parcels in perpetuity.

AGREEMENT

NOW, THEREFORE, Parties hereby agree that the Parcels shall be occupied, held, sold and conveyed subject to and together with the private, perpetual and non-exclusive easements hereinafter described, which easements shall run with the Parcels as appurtenant thereto, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in the Parcels, or any part thereof, including, without limitation, the respective Owner (as defined herein) of each of the Parcels and its heirs, administrators, legal representative, successors, devisees and assigns:

1. **Easements Over, Under and Across Tract B**

a. **Access Easement**

City, as owner of Tract B, hereby grants to Developer, as owner of Lot 1, and its successors in title, an access easement for pedestrian ingress and egress purposes for the benefit of Lot 1 over, under and across that portion of Tract B in the approximate location depicted on Exhibit A attached hereto, or such area of Tract

NCS-461271-MPLS(JD)

(6)

B as such pedestrian passageway may be relocated or reconfigured from time to time hereafter as may be permitted herein ("Access Easement").

Developer must pay the costs of (i) constructing the above-grade connections between Tract B and Lot 1 and (ii) any additional lighting, striping, security cameras and/or signage desired by Developer in the Access Easement. Developer shall submit its construction plans to City for approval prior to commencement of construction.

Developer also must make monthly access payments to the owner of Tract B in an amount equal to the market rate, from time to time, for a reserved parking space in the Ramp. Commencing January 1, 2012, City will invoice Developer on a monthly basis around the tenth day of each month. Each access payment will be due by the last business day of the month in which the invoice is sent for use of the Access Easement the following month.

b. **Temporary Construction Easement(s)**

City and Developer (or its contractor) will enter into a Temporary Construction Easement Agreement providing temporary easements for construction of the pedestrian passageway from the parking ramp on Tract B to the building on Lot 1 and other improvements related to the building to be constructed on Lot 1.

2. **Amendment of Agreement.** The Owners of the Parcels agree that, upon request of the other Parcel Owner, they shall amend this Agreement of record from time to time as may be necessary to reflect relocation of easements, which shall be permitted hereunder, or to specifically legally describe the easements created hereunder, provided there is no adverse impact on the use of Lot 1. The Owners of the Parcels shall share equally in the cost of preparation and recording of any amendment.

3. **Definition of "Owner".** For purpose of this Agreement, the term "Owner" shall be defined to mean one or more persons or entities holding a fee simple interest, or a vendee's interest, in one or more of the Parcels, or any portion thereof, subject to this Agreement; provided, however, that the term "Owner" shall not include any holder of a lien secured by all or part of one or more of the Parcels, unless and until such lienholder acquires ownership in fee by foreclosure, deed in lieu of foreclosure or otherwise.

4. **Nature of Easement.** The Access Easement shall be appurtenant to Lot 1 and any conveyance of fee title to Lot 1, or any portion thereof, shall be deemed to include a conveyance of the Access Easement regardless of whether the Access Easement is specifically identified in the instrument of conveyance. Nothing contained in this Agreement shall be deemed a gift or dedication of any portion of the area of the Access Easement to the general public or for the general public or for any public purpose.

5. **Scope, Use of Easement.** The Access Easement shall be used, subject to the terms of this Agreement, for ingress and egress purposes. The Access Easement shall at all times be for the use and benefit of the Owner of Lot 1 and its successors, assigns, agents, employees, contractors, tenants, licensees and invitees (collectively, "Affiliated Parties"). Except for rights expressly granted above, all rights in and to Tract B are hereby reserved to the Owner of Tract B, who may utilize Tract B for all uses

and purposes that do not materially interfere with the rights expressly granted to said benefited Owner of Lot 1.

6. **Maintenance and Repair.** The Owner of Tract B shall be obligated to maintain and repair the Access Easement, including without limitation, removal of all papers, debris, filth and refuse, concrete repairs, painting, periodic sweeping or washing of the paved areas within the Access Easement, all in accordance with generally accepted maintenance standards for similar properties in the Twin City Metropolitan Area.

The Owner of Lot 1, at its sole cost, shall maintain, repair and replace (a) the doors covering the portal from the building on Lot 1 to the Ramp on Tract B, (b) any additional lighting, striping, security cameras and/or signage installed by Developer in the Access Easement, and (c) the waterproofing flashing and expansion joint materials spanning the interstitial space between the west wall of the Ramp on Tract B and the east wall of the building on Lot 1.

Except as provided above, each Owner shall be responsible for maintaining the buildings and improvements on its Parcel. The Owner of Tract B may access Lot 1 and the Owner of Lot 1 may access Tract B to the extent reasonably necessary for purposes of performing the maintenance, repair and replacement obligations herein described. Except in the case of emergencies, such access shall require three (3) business day's prior written notice.

7. **Self-Help Remedies.** If any Owner shall default with respect to any of its obligations set forth herein (including its maintenance obligations) and shall fail within thirty (30) days after receipt of written notice from any other Owner to cure such default, then a nondefaulting party Owner shall have the right, at its election, but not the obligation, and in addition to such other rights and remedies as may be available at law or in equity, to cure such default for the account of the defaulting Owner, and shall be reimbursed by the defaulting Owner for the reasonable cost and expenses so incurred (including attorneys' fees) within ten (10) days after receipt of written demand for payment, together with reasonable documentation substantiating said costs and expenses. Any sums not reimbursed within said ten (10) day period shall bear interest thereon at the rate of ten percent (10%) per annum, or the highest lawful rate, whichever is lower. The thirty (30) day cure period shall be extended in cases where the default cannot be cured within thirty (30) days but can be cured during a longer time, so long as the defaulting Owner is diligently pursuing such cure. In the event of an emergency, no prior notice shall be required to be given by the nondefaulting Owner prior to exercising its remedies hereunder so long as the nondefaulting Owner provides written notice of such emergency to the defaulting Owner promptly upon completion of cure.

8. **Indemnification and Waiver of Subrogation.** The Owner of Lot 1, for itself and for its Affiliated Parties, shall indemnify, defend and hold harmless the Owner of Tract B, from and against any and all damages, liability, fees (including reasonable attorney's fees), penalties and claims, including without limitation, those for personal injury, wrongful death or property damage arising out of or related to the negligent actions or omissions of the Owner or Affiliated Parties relative to utilization of the Access Easement. Nothing in this Section 8 will limit the Owner's right to seek recovery from any Affiliated Parties.

The Owner of Lot 1 shall maintain or cause to be maintained in full force and effect Commercial General Liability Insurance with a combined single limit of liability of Two Million Dollars (\$2,000,000) for bodily injury, personal injury and property damage, arising out of any one occurrence, with the Owner

of Tract B endorsed as an "additional insured" under a CG 2026 07 04 Additional Insured—Designated Person or Organization endorsement, a CG 20 11 01 96 Additional Insured—Managers or Lessors of Premises endorsement, or a similar endorsement providing equal or broader coverage under such policy as it applies to the Access Easement. Coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability or Cross Liability. The Owner of Lot 1 shall provide to the Owner of Tract B a certificate of insurance evidencing that the insurance required to be carried is in full force and effect. The insurance shall provide that the policy cannot be cancelled or reduced in amount or coverage below the requirements of this Agreement, nor shall such policy be allowed to expire, without at least thirty (30) days prior written notice by the insurer to each insured and additional insured.

Each Owner hereby releases the other Owner from any liability for any loss or damage to its property or the improvements located on its Parcel to the extent the loss or damage is covered by property insurance, regardless of the negligence on the part of the other Owner, it being the intent of the Owners to waive any right or claim which might give rise to a right of subrogation in any insurance carrier.

The Parties acknowledge and agree that the City is covered by the municipal tort liability immunities and limitations afforded under Minnesota law.

9. **Fire or Other Casualty.** Promptly upon any loss or damage to all or any part of the Ramp on Tract B, the Owner of Tract B shall give written notice of the damage to the Owner of Lot 1. The City shall proceed with diligence to restore the improvements to the extent necessary to provide access to Lot 1 over the Access Easement. Notwithstanding the foregoing, in the event the improvements on one or both Parcels are damaged, either party may elect to not rebuild or repair its improvements. The other Party shall have such rights and easements as are reasonably necessary to remove its improvements or rebuild and operate its improvements for the intended purpose, as applicable. Each Party grants the other a temporary construction easement to the extent necessary to complete the removal, restoration and/or rebuilding. Such easements shall terminate upon completion of the restoration.

10. **Termination.** The Access Easement and this Agreement will automatically terminate one year after destruction or demolition of the improvements on one or both Parcels unless, within such one year period, restoration or reconstruction of the destroyed or demolished structure or building is commenced. Further, the Owner of Tract B may terminate this Agreement if the Owner of Tract B ceases operation of the Ramp.

11. **Mediation.** All disputes concerning this Agreement shall be referred to nonbinding mediation before, and as a condition precedent to, the initiation of any legal action thereon. Each Party agrees to participate in up to four hours of mediation. The mediator shall be selected by the Parties, or if the Parties are unable to agree on a mediator then any party can request the administrator of the Hennepin County District Court Civil ADR Program and/or similar person, to select a person from its list of qualified neutrals. The mediation shall be attended by employees or agents of each party having authority to settle the dispute. All expenses related to the mediation shall be borne equally by each Party, including without limitation, the costs of any experts or legal counsel. All applicable statutes of limitations and all defenses based on the passage of time are tolled while the mediation procedures are pending, and for a period of 30 days thereafter.

12. **Binding Effect.** The provisions of this Agreement shall constitute covenants running with and be binding upon the Parcels, and shall inure to the benefit of and be binding upon the Owners of the

respective Parcels, and their heirs, administrators, legal representatives, successors, devisees and assigns in title, and any other party acquiring all or any portion of the Parcels or any interest therein whether by operation of law or other means. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitutes covenants running with the land pursuant to applicable law.

13. **Severability.** If any provision of this Agreement shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

14. **Captions.** The captions proceedings the text of each article and section hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

15. **Governing Law.** This Agreement shall be construed under and enforced in accordance with the laws of the State of Minnesota.

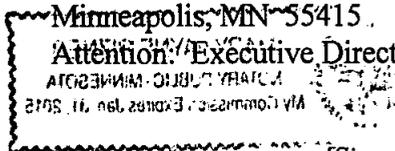
16. **Notices.** All notices, demands and requests required or desired to be given under this Agreement must be in writing and shall be deemed to have been given as of the date such writing is (a) delivered to the party intended, (b) delivered to the then current address of the party intended, or (c) rejected at the then current address of the party intended, provided such writing was sent prepaid. The initial address of the parties shall be:

To City: City of Minneapolis
Department of Public Works
Room 203 City Hall
350 South Fifth Street
Minneapolis, MN 55415
Attention: Director of Traffic and Parking Services

w/copy to: Traffic and Parking Services
33 North Ninth Street, Room 100
Minneapolis, MN 55403
Attention: Manager, Municipal Parking System

To Developer: The American Academy of Neurology Institute
201 Chicago Avenue South

Minneapolis, MN 55415
Attention: Executive Director/Chief Executive Officer

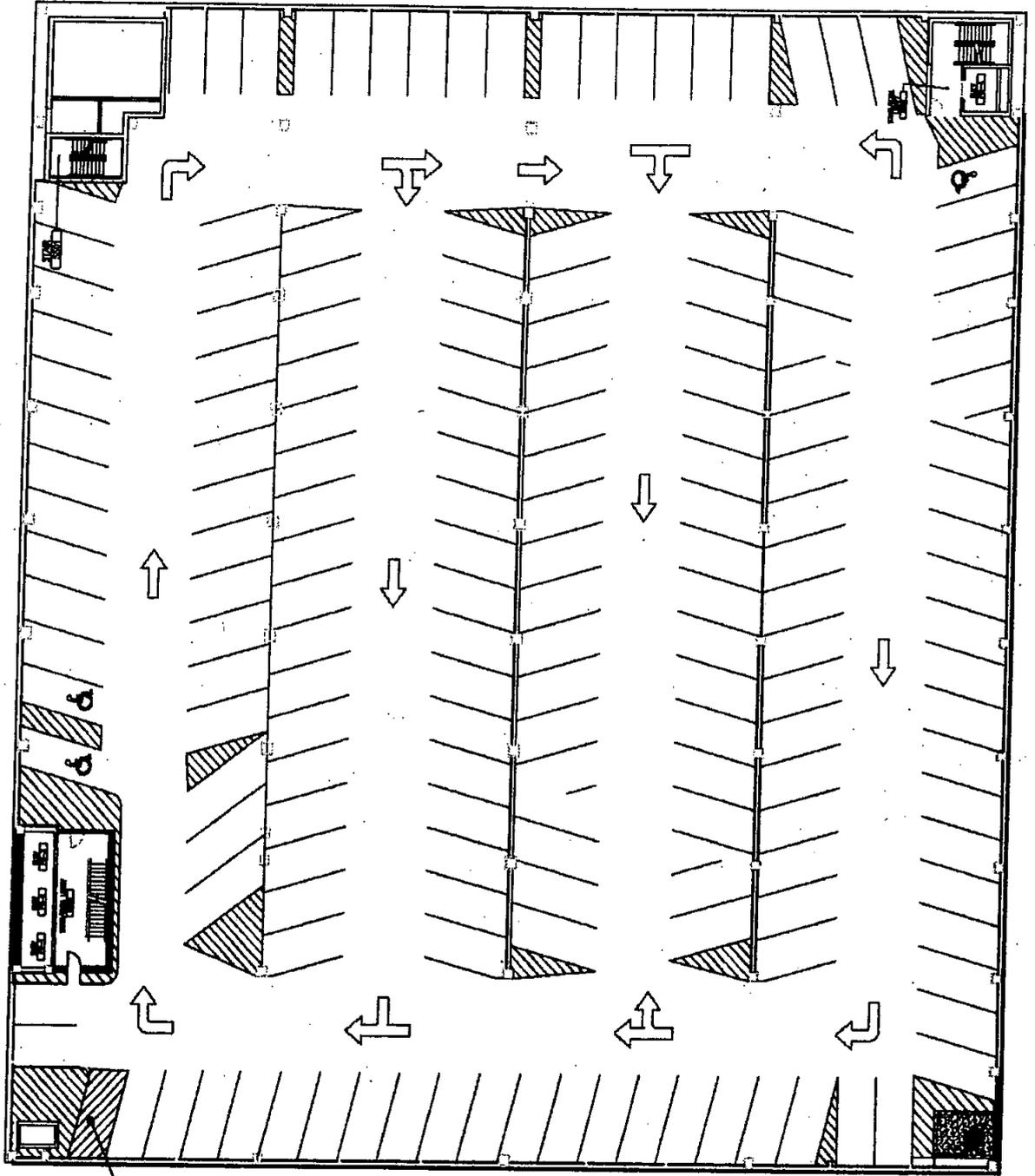


[Signature pages follow.]

**EXHIBIT A TO
ACCESS EASEMENT AGREEMENT**

CHERYL A. SHAFER
11/15/2010
11:05 AM

RiverFront Ramp Level 3



STALL TO BE REMOVED
PERMANENTLY FOR
PEDESTRIAN WALKWAY