

3. Attached as Exhibit B is a true and correct copy of the State's Memorandum in Support of its Motions in Limine from *State v. Nocella*, 27-CR-15-3146 (4th Dist., June 21, 2015).

4. Attached as Exhibit C is a true and correct copy of the file-stamped copy of the complaint with exhibits in *Webster v. City of Bloomington*, 27-CV-15-10552 (4th Dist., June 19, 2015).

5. Attached as Exhibit D is a true and correct copy of a document from <https://www.fbi.gov/minneapolis/press-releases/2015/update-on-mall-of-america> titled "FBI—Update on Mall of America."

6. Attached as Exhibit E is a true and correct copy of a document from <http://www.mallofamerica.com/guests/security> titled "Security Information - Mall of America."

7. Attached as Exhibit F is a true and correct copy of the 2012 Master Redevelopment Contract, also filed in *State v. Nocella*, 27-CR-15-3146.

8. Attached as Exhibit G is a true and correct copy of the transcript from the May 1, 2015 hearing in this action.

9. Attached as Exhibit H is a true and correct copy of Bloomington's privilege log and related correspondence dated March 6, 2015.

Under Minn. Stat. § 358.116, I declare under penalty of perjury that everything I have stated in this document is true and correct.

July 1, 2015

s/ Scott M. Flaherty
Scott M. Flaherty

From: Johnson, Sandra
Sent: Friday, December 19, 2014 9:52 AM
To: 'Kathleen Allen'; Rich Hoge (rich.hoge@moa.net); Doug Reynolds
Subject: MOA

Follow Up Flag: Follow up
Flag Status: Flagged

None of the organizers contacted me. No surprise there. The Chief and DC are meeting with 'Kat' Solonic this afternoon. The message is that civil disobedience has its price and the City has absolutely no authority to tell MOA how to manage its property. They will listen to them.

You probably thought of these already or they are untenable ideas. Find the organizers and deal with them as you did for Idle no More. WCCO was nice enough to get Mica and Michael on camera.

Also, most of these individuals will be coming by transit – work with MTC. Fill the rotunda with objects, sound and light. Create distractions and confusion. They may have a plan B but it will be posted on social media.

Nat'l Lawyers Guild are now involved and they have a bail fund.

Keep me posted. I have a family party I am hosting tomorrow, otherwise I would come to watch how it goes down. I will give you my cell [REDACTED BY DEFENSE COUNSEL]

Sandra H. Johnson

Bloomington City Attorney
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From: Kathleen Allen <kathleen.allen@moa.net>
Sent: Wednesday, December 17, 2014 2:56 PM
To: Johnson, Sandra
Subject: Any quick thoughts? This is MOA statement but we reference the City

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STATEMENT FOR MEDIA

We are aware of the group and their stated intentions for a Dec. 20 demonstration and protest at Mall of America.

Mall of America is a commercial retail and entertainment center. We respect the right to free speech, but Mall of America is private property and not a forum for protests, demonstrations or public debates. We have consistently and continually prohibited all manner of groups – regardless of cause or message – from protesting and demonstrating on our property. This policy was upheld in the Minnesota Supreme Court decision involving fur protesters on Mall of America; that decision held MOA is private property and cannot be used for demonstrations without the permission of MOA. *State v. Wicklund, 589 N.W.2d 793 (Minn. 1999)*.

Any attempt by groups to conduct a protest is a violation of our policies and would subject a group to removal from the property and potential arrest by the City of Bloomington police, in addition to exclusion from Mall of America for one (1) year.

We have made every effort to communicate this position to the Black Lives Matter organization, so that their participants are fully aware of MOA's long standing policy and the consequences of violating the rules against protesting and demonstrating. It's our hope that those efforts will result in the group moving their protest to the public property identified by the City of Bloomington, where they may conduct their protest peacefully and legally. This option would afford the group high visibility while minimizing the risk to public.

We would like our guests to know that we are taking this matter very seriously. Guests will notice an enhanced security presence on that date and throughout the holiday season. Our priority is to keep guests, employees and tenants safe and secure.



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From: Johnson, Sandra
Sent: Tuesday, January 06, 2015 1:57 PM
To: Giles, Jeff
Subject: FW: black lives matter protest
Attachments: WP_20141229_028.jpg; WP_20141229_007.jpg; WP_20141229_009.jpg; WP_20141229_013.jpg; WP_20141229_016.jpg; WP_20141229_018.jpg; WP_20141229_024.jpg; WP_20141229_029.jpg

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Flag Status: Flagged

FYI

Sandra H. Johnson

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From: Doug Reynolds [<mailto:doug.reynolds@moa.net>]
Sent: Monday, January 05, 2015 4:05 PM
To: Johnson, Sandra
Cc: Kathleen Allen
Subject: FW: black lives matter protest

Ma'am,

Mall of America delivered video images, copies of online content, and a summary of protest related expenses to BPD Detective Heather Jensen at the end of last week. We continue to investigate and will forward any additional findings to Detective Jensen. I wanted to let you know in case your office was waiting for these items from MOA.

We also delivered a backpack to BPD which was recovered from one of the protestors who was arrested at MOA on 12-20-2014. The contents of the backpack suggest this was not a group intent on a peaceful gathering and some were anticipating problems. The items found in the pack include: gasmask with sealed filter, "Anonymous" style mask, section of chain and wrench with a carabiner on one end (clip them together and it's easily a weapon), a bandana the person was wearing to conceal their identity, a spray bottle likely for personal decontamination following use of tear gas or pepper spray, and more – images of the items are attached.

If you have any questions please do not hesitate to ask.

Respectfully,

Doug Reynolds
Director of Security
Mall of America

952 883-8881

From: Jensen, Heather [<mailto:hjensen@BloomingtonMN.gov>]
Sent: Friday, December 26, 2014 4:11 PM
To: Doug Reynolds
Subject: black lives matter protest

Hello Doug,

I will be preparing the charging supplement for the Black Lives matter incident. Are you able to get me photographs and video that the mall has for charging purposes? Looking for evidence of organizers actively giving direction/leading chants and so on. Please call me with any questions

*Detective Heather Jensen
CREU Unit
Bloomington Police Dept
952-563-8863*

From: Johnson, Sandra
Sent: Monday, December 22, 2014 3:35 PM
To: Doug Reynolds; Potts, Jeff
Subject: FW: Nick Espinosa's Facebook Page

Follow Up Flag: Follow up
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From: Cross, Jennifer
Sent: Monday, December 22, 2014 3:30 PM
To: Johnson, Sandra
Subject: Nick Espinosa's Facebook Page

<https://www.facebook.com/espinosa.nick?fref=ts>

Jennifer Cross
Assistant Attorney
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Please note my new email address: jcross@BloomingtonMN.gov

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From: Kathleen Allen <kathleen.allen@moa.net>
Sent: Monday, December 22, 2014 5:14 PM
To: Johnson, Sandra
Subject: RE: Documenting MOA Protest

Follow Up Flag: Follow up
Flag Status: Flagged

Agree – we would defer any civil action depending on how the criminal charges play out. I think there's just a concern that this is our third year in a row – and our efforts this year were ineffective in shutting it down.



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From: Johnson, Sandra [mailto:sjohnson@BloomingtonMN.gov]
Sent: Monday, December 22, 2014 5:10 PM
To: Kathleen Allen
Subject: RE: Documenting MOA Protest

I agree that you need to have consequences but MOA may wish to await the criminal charges. It's the prosecution's job to be the enforcer and MOA needs to continue to put on a positive, safe face. The City's prosecution team is taking this very seriously. I do not usually posture in the media, but I want to deter future criminal activity. I will follow WCCO's comments on the future prosecution.

From: Kathleen Allen [kathleen.allen@moa.net]
Sent: Monday, December 22, 2014 5:05 PM
To: Johnson, Sandra
Subject: RE: Documenting MOA Protest

Yes – we understand that and we need to follow the direction of our owners regardless if the management here would like to pursue additional remedies. I wanted to give you the update since there's a lot of conversation going on about that.

The bigger issue for me is pushing them to consider civil action. I'm concerned that if these other charges don't carry greater penalties than a trespass charge, we'll be in the same position as last year.



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From: Johnson, Sandra [<mailto:sjohnson@BloomingtonMN.gov>]
Sent: Monday, December 22, 2014 5:01 PM
To: Kathleen Allen
Subject: RE: Documenting MOA Protest

MOA can and should make its own decisions on the trespass. The other charges are more serious but carry the same maximum penalties. The actual sentencing should there be convictions are likely to be higher.

From: Kathleen Allen [kathleen.allen@moa.net]
Sent: Monday, December 22, 2014 4:57 PM
To: Johnson, Sandra
Subject: RE: Documenting MOA Protest

Hi Sandra,

Just as an FYI, we are having additional discussions with our owners tomorrow, but they are not on board with trespassing the LUSH employees. We will be sending LUSH a warning/reprimand letter in accordance with their Lease, but they want to eliminate the potential for further press on this matter.

They're also hesitant about going down the path of pursuing civil actions. If the City pursues these escalated/additional charges against the organizers/leaders of BLM, what are the penalties associated with those charges? I'd like to understand how they differ (and are more severe) than those for trespass.

Thanks,

Kathleen



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From: Johnson, Sandra [<mailto:sjohnson@BloomingtonMN.gov>]
Sent: Monday, December 22, 2014 3:42 PM
To: Doug Reynolds; Kathleen Allen
Cc: Potts, Jeff; Hartley, Mike
Subject: RE: Documenting MOA Protest

Mica Grimm, Nick Espinosa, Michael McDowell and Kandace Montgomery all reference the event on their Facebook pages, which appear to have no privacy guards on them.

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From: Doug Reynolds [<mailto:doug.reynolds@moa.net>]
Sent: Monday, December 22, 2014 3:38 PM
To: Johnson, Sandra; Kathleen Allen
Cc: Potts, Jeff; Hartley, Mike
Subject: RE: Documenting MOA Protest

Understood. We've been doing screen grabs of key messages to document the event. I'll let MOA know to do another look at the sites.

Doug R.

Sent from my Windows Phone

From: Johnson, Sandra
Sent: 12/22/2014 3:32 PM
To: Kathleen Allen; Doug Reynolds
Cc: Potts, Jeff; Hartley, Mike
Subject: Documenting MOA Protest

You are probably doing this already – but please document all the social media and video feeds on social media concerning the event. The groups are very likely to take these sites down when they hear that we intend to prosecute them. That is likely to air tonight.

My office cannot do that – it would require us to be witnesses in our own prosecutions.

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From: Kathleen Allen <kathleen.allen@moa.net>
Sent: Monday, December 22, 2014 3:11 PM
To: Johnson, Sandra
Subject: RE: MOA LUSH store

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks for the clarification.



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From: Johnson, Sandra [mailto:sjohnson@BloomingtonMN.gov]
Sent: Monday, December 22, 2014 3:02 PM
To: Kathleen Allen
Subject: RE: MOA LUSH store

I am in agreement with a 6 mo trespass.

Sandra H. Johnson

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From: Kathleen Allen [mailto:kathleen.allen@moa.net]
Sent: Monday, December 22, 2014 2:54 PM
To: Johnson, Sandra
Subject: RE: MOA LUSH store

Sandra,

Just to confirm – are you in agreement with a 6 month trespass, or were you referencing a different type of sanction? There was a little confusion and we wanted to make sure we were on the same page and didn't misinterpret your statement.



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From: Johnson, Sandra [<mailto:sjohnson@BloomingtonMN.gov>]

Sent: Monday, December 22, 2014 1:46 PM

To: Kathleen Allen

Cc: Rich Hoge; Doug Reynolds

Subject: RE: MOA LUSH store

I also heard about this from City personnel. Because of the sheer number of people employed at MOA, their participation in a disturbance should be dealt with sanctions. A 6 month trespass with access for work only might send a good message to all persons employed at MOA. The two news stations I have been talking to indicate that there is a great deal of outrage for the conduct of the demonstrators and the danger this demonstration posed to the general public. In my WCCO interview today, I indicated that the City Attorney's Office will be seeking punitive consequences for all of the organizers and leaders of this demonstration because future demonstrations cannot be tolerated. MPR has some good photos of this group too. Thanks for the heads up.

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From: Kathleen Allen [<mailto:kathleen.allen@moa.net>]

Sent: Monday, December 22, 2014 1:32 PM

To: Johnson, Sandra

Cc: Rich Hoge; Doug Reynolds

Subject: FW: MOA LUSH store

Hi Sandra,

Below is an email from a BPD officer's wife regarding the behavior of the LUSH employees on Saturday afternoon. I've also attached a picture of the LUSH employees standing outside the LUSH store during the protest – "standing in solidarity" with the protesters. The employees later went back into their store, brought some protestors into the store with them, and kept the store in lockdown for the remainder of the protest. This was verified by Dan Jasper, our VP of PR, who witnessed the behavior and the timing.

As evidenced by the email below, a significant amount of conversation on social media, and the reaction by other tenants and MOA staff, there is great concern over the behavior of the LUSH employees at MOA. The behavior is in clear violation of their Lease, and we are preparing a letter to their corporate representatives regarding the behavior of the employees and the resulting violations of their lease. The question has been raised, however, as to whether we should also trespass the manager and/or employees who cooperated in the behavior. The initial thought is that this would be a six (6) month trespass with a Restricted Access Permit allowing the employees to work during that time, but not be on the property outside of work hours. This would be an MOA trespass –and would not involve arrest by the BPD. We are reviewing footage to determine the full actions by the employees, as well as making sure this was not a corporate directive by LUSH (which is known for their cause marketing).

We feel it's important to reinforce with all staff that violations of the rules will not be tolerated. At the same time we recognize that there is risk involved that this may become a media story – and we don't want to impede any actions by your office or divert the attention away from charges against the main culprits (organizers and leaders). We will be reviewing these options with our owners, but wanted to see if you also had any concerns.

Kathleen



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From: Patti Hein

Sent: Monday, December 22, 2014 10:53 AM

To: Rich Hoge; Kathleen Allen; Kathy H. Hayden; Jill Renslow; Doug Reynolds

Subject: FW: MOA LUSH store



PATTI HEIN
Construction Business Manager Tenant Services
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From: The Nybecks [<mailto:nybeck@mac.com>]

Sent: Monday, December 22, 2014 10:33 AM

To: Patti Hein

Subject: MOA LUSH store

Happy Holidays!

My name is Birgitta Nybeck and I have been a Bloomington resident for the last 12 years. I am also a proud Bloomington Police wife to Matt Nybeck #246 who has been on the force for over 13 years and the SWAT team for almost 5 years. I appreciate you taking the time to read this during such a busy time of year.

I am very proud of how the Mall of America Security team, the BPD, and other local agencies worked together to manage the chaos during the illegal protest at MOA on Saturday 12/20/14. It was very stressful to watch the live feed online, but from all accounts it appears law enforcement handled themselves professionally and with integrity. The media did not applaud law enforcement, did not even properly portray the nasty behavior a lot of the "peaceful" protestors screamed at the officers. I was grateful all officers made it home to their families safely, something I pray for daily.

What I'm most upset about is the disrespect towards law enforcement and unlawful protesting that occurred at the LUSH cosmetics store located at MOA E112. I have included the photos taken and wish I had the audio of them booing and shouting at officers when they walked by their store. I'm a firm believer in freedom of speech when lawfully shared, but do not think the Mall of America should tolerate the behavior these employees exhibited outside of their store while being paid. On Saturday evening I called the LUSH store hoping to have a respectful conversation with a manager about the situation and was appalled by the behavior of the acting manager on duty. I wish I had her name (she wouldn't give it to me), but I called at 8:30 that evening. She was very outspoken about her beliefs and how proud she was of her company for taking a stand. She told me that her company did not care that I supported law enforcement and I could take my money elsewhere, there were plenty of other places for me to shop for cosmetics. She said her company is receiving so many new customers due to their actions that it doesn't matter if they lose support and business from people who support cops who murder black people. I tried to calmly explain that officers do not murder black people but are defending themselves, just like she would try to do if she were attacked, and she would repeatedly yell and interrupt me while I was calmly speaking. I worked in retail management for 8 years and was floored by her lack of customer service skills, her immature attitude, and clear disrespect towards officers.

LUSH has released this statement in support of their employees on their MOA Facebook page: "While the employees were not acting officially for the company, we are a campaigning company, and we support the right to free speech and peaceful protest. Standing in solidarity of fairness, justice and equality for all, regardless of gender, race, age, sexuality, and religion - this is something that as a business we do wholeheartedly believe in.- Laura" Laura also wrote this on another post: "While LUSH staff were not officially participating in the protest, they were photographed as individuals standing in solidarity of fairness, justice and equality for all, regardless of gender, race, age, sexuality, and religions--this is something that as a business we do wholeheartedly believe in. At yesterday's peaceful protest at Mall of America, LUSH's employees acted in full accordance with the police, ensuring first and foremost that our staff and customers were safe and taken care of." LUSH also told another police wife over the phone that the photos must be fakes because LUSH employees lawfully protested within their lease space.

I'd appreciate action being taken against the LUSH store and hope that in the long run they will no longer be tenets at MOA. I think LUSH needs to release a public apology on their Facebook page and show support for law enforcement instead of encouraging such division and disrespect to be shared with their company name. The protest leaders have encouraged all of their followers to support LUSH due to their behavior during the protest. Their behavior was not honorable and should not be rewarded.



From: Bernhardson, Mark
Sent: Monday, December 22, 2014 12:32 PM
To: Doug Reynolds; Johnson, Sandra; Kathleen Allen; Potts, Jeff; Rich Hoge; Dan Jasper; Jill Renslow; Kirby, Diann
Cc: Lee, Larry
Subject: RE: MOA Disturbance

Follow Up Flag: Follow up
Flag Status: Flagged

1. Thanks for your very complimentary note about BPD and others in handling a very difficult situation !!
2. Very much appreciate all the MOA did both in advance, during and as follow up on this as well !!
3. Agree that additional means need to be explored as well to lessen or preclude this and other more problematic incidents from occurring in the future.

Thanks !! MEB

From: Doug Reynolds [doug.reynolds@moa.net]
Sent: Monday, December 22, 2014 11:09 AM
To: Johnson, Sandra; Kathleen Allen; Potts, Jeff; Hartley, Mike; Hart, Rick; Stehlik, Mark; Rich Hoge; Dan Jasper; Jill Renslow
Cc: Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna; Bernhardson, Mark; Kirby, Diann
Subject: RE: MOA Disturbance

That kiosk employee is correct. I do need to tell you the amount of positive feedback I've heard about the level of restraint the Bloomington Police Department showed. To bring it back to topic I heard BPD leadership stress the importance of being calm, professional, and methodical and I believe the video evidence will clearly show that.

Despite that we were so overwhelmed by the volume of protesters we had to ignore large groups just to try to control even bigger ones. This lack of control could have ended tragically.

I believe BPD and MOA resisted arresting anyone until there was really no choice. There were many opportunities throughout this when we did not arrest because we wanted the protesters to simply listen.

To watch the BPD leaders plan and coordinate resources that came from as far as Hastings (and possibly even Red Wing) to maintain control was impressive. But it took all of those resources and I believe protests cannot become commonplace at MOA. None of us want

I believe we made it through this with zero injuries. Everytime something like this occurs there is significant likelihood of an officer, a protester, a guest, an employee or any number of others being harmed as chaos erupts. None of us wants that and it's easier to control when protest groups work with CoB and MOA as requested.

Thank you for allowing me to let key CoB leadership read this and I apologize if I vented a bit. It's all still fresh and disconcerting to clearly see how badly it could have gone at a moments notice.

Doug Reynolds

Sent from my Windows Phone

From: [Johnson, Sandra](#)

Sent: 12/22/2014 10:39 AM

To: [Doug Reynolds](#); [Kathleen Allen](#); [Potts, Jeff](#); [Hartley, Mike](#); [Hart, Rick](#); [Stehlik, Mark](#); [Rich Hoge](#); [Dan Jasper](#); [Jill Renslow](#)

Cc: [Glassberg, Erica](#); [Magnuson, Heather](#); [Schneider, Torrie](#); [Cross, Jennifer](#); [Sullivan, Anna](#); [Bernhardson, Mark](#); [Kirby, Diann](#)

Subject: RE: MOA Disturbance

Thank you so much. My fear is that if we do not take a strong stance – it's going to happen again. MOA is just too convenient a venue. One of the prosecutor's husband was working at a kiosk near the rotunda. He said it all it needed was a match to explode.

Sandra H. Johnson

Bloomington City Attorney
1800 W. Old Shakopee Road
Bloomington, MN 55431
(952) 563-4895

sjohnson@BloomingtonMn.gov

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From: Doug Reynolds [<mailto:doug.reynolds@moa.net>]

Sent: Monday, December 22, 2014 10:32 AM

To: [Johnson, Sandra](#); [Kathleen Allen](#); [Potts, Jeff](#); [Hartley, Mike](#); [Hart, Rick](#); [Stehlik, Mark](#); [Rich Hoge](#); [Dan Jasper](#); [Jill Renslow](#)

Cc: [Glassberg, Erica](#); [Magnuson, Heather](#); [Schneider, Torrie](#); [Cross, Jennifer](#); [Sullivan, Anna](#); [Bernhardson, Mark](#); [Kirby, Diann](#)

Subject: RE: MOA Disturbance

I have already talked to the top leadership within MOA Security and we plan to dedicate three people to sorting through our own video (CCTV, GoPro, and body camera footage) as well as utilizing social media to identify persons and their roles by postings or statements to the media.

We agree a strong message needs to go to those that were in leaders positions and those clearly inciting the crowd.

Doug R.

Sent from my Windows Phone

From: [Johnson, Sandra](#)

Sent: 12/22/2014 10:27 AM

To: Kathleen Allen; Potts, Jeff; Hartley, Mike; Hart, Rick; Doug Reynolds; Stehlik, Mark; Rich Hoge; Dan Jasper; Jill Renslow

Cc: Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna; Bernhardson, Mark; Kirby, Diann

Subject: RE: MOA Disturbance

Video and still footage from the event is needed.

Sandra H. Johnson

Bloomington City Attorney
1800 W. Old Shakopee Road
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From: Kathleen Allen [mailto:kathleen.allen@moa.net]

Sent: Monday, December 22, 2014 10:26 AM

To: Johnson, Sandra; Potts, Jeff; Hartley, Mike; Hart, Rick; Doug Reynolds; Stehlik, Mark; Rich Hoge; Dan Jasper; Jill Renslow

Cc: Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna; Bernhardson, Mark; Kirby, Diann

Subject: RE: MOA Disturbance

Sandra,

We fully support all efforts by your office to charge the organizers and key leaders with additional criminal charges. As we discussed last week trespass charges are not enough of a deterrent, especially to activists trying to prove a point. Additionally, after review with our owners, we will be looking at the possibility of pursuing civil actions against the key organizers and leaders. We need to have additional deterrents to prevent individuals from disobeying our rules and creating this kind of havoc with our business.

Dan Jasper and our Public Relations Department are currently working on gathering all of intel, interviews, etc. from traditional media and social media. Doug Reynolds and his security team will also be pulling similar information. MOA will also be composing a list of all of our costs incurred as a result of this demonstration. We are meeting internally today at 11:00 – please let us know what else you need to support your efforts. We are happy to help.

Thank you again for all your efforts and the efforts of the Bloomington Police Department. It was greatly appreciated and helped ensure the safety of our employees, guests and tenants.

Kathleen



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Corporate Counsel
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Mobile: 612.366.7561
60 East Broadway | Bloomington, Minnesota 55408
[Website](#) | [Blog](#) | [Facebook](#) | [Twitter](#)

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From: Johnson, Sandra [<mailto:sjohnson@BloomingtonMN.gov>]
Sent: Monday, December 22, 2014 9:32 AM
To: Potts, Jeff; Hartley, Mike; Hart, Rick; Doug Reynolds; Stehlik, Mark
Cc: Kathleen Allen; Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna; Bernhardson, Mark; Kirby, Diann
Subject: MOA Disturbance
Importance: High

In order to deter future mass disturbances at MOA, I discussed with the prosecutors the possibility of our office charging by criminal complaint the organizers and the 'on the ground' persons inciting this disorder (if we can ID them) under Minn. Stat. Sec. 609.05, subd. 2 (Aiding and Abetting) the following crimes:
Riot in the 3rd degree; 609.74 – Public Nuisance; 609.705 Unlawful Assembly; 609.71, subd. 3 and 609.72 Disorderly conduct. (See attached.)

To do that we need copies of all of their media interviews, their Facebook page, and any footage we can recover from MOA or BPD of their participation in the disturbance.

Legal is also willing to consider other prosecutions of persons who were leading the march through the corridors or chants down in the rotunda.

Can BPD assemble the interviews and other evidence? Can MOA assist in getting us what footage and evidence they have?

I would also like an estimate of the cost to the City and the MOA for this event. Although it is unlikely we could collect much, I would like to include a restitution claim in the body of the complaint. (I believe I did this with the 'Fur Protestors').

Our thoughts are that if the organizers have no consequence it is likely another disturbance will occur organized by social media. I watched this event on their Facebook page's videographer's link – great police work kept people safe even though protestors were getting in their faces and calling them names attempting to provoke a reaction. Next time, the protestors may be more violent.

Sandra H. Johnson
Bloomington City Attorney
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From: Kathleen Allen <kathleen.allen@moa.net>
Sent: Thursday, December 18, 2014 4:34 PM
To: Johnson, Sandra
Subject: RE: Black Lives Matter Bail Fund

Follow Up Flag: Follow up
Flag Status: Flagged

Are you planning on being out here to observe on Saturday? I just put a call into Marsh Halberg – I'm going to have him out here observing too in case I find myself in a position where I need to utilize his services again.

Let me know – thanks.

Kathleen



KATHLEEN ALLEN
Corporate Counsel
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From: Johnson, Sandra [<mailto:sjohnson@BloomingtonMN.gov>]
Sent: Thursday, December 18, 2014 4:32 PM
To: Cross, Jennifer; Magnuson, Heather; Glassberg, Erica; Schneider, Torrie
Cc: Sullivan, Anna; Potts, Jeff; Kathleen Allen
Subject: RE: Black Lives Matter Bail Fund

They also have set up a legal hotline with the National Lawyers Guild. Remember them from the RNC??

From: Cross, Jennifer
Sent: Thursday, December 18, 2014 3:14 PM
To: Magnuson, Heather; Glassberg, Erica; Schneider, Torrie
Cc: Johnson, Sandra; Sullivan, Anna
Subject: Black Lives Matter Bail Fund

Just so you know, they have started crowd funding a bail fund: <http://www.payitsquare.com/collect-page/56349>

Jennifer Cross
Assistant Attorney
Bloomington City Attorney's Office
1800 West Old Shakopee Road

Bloomington, MN 55431
(952) 563-4894
Fax: (952) 563-8520
jcross@BloomingtonMN.gov

Please note my new email address: jcross@BloomingtonMN.gov

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From: Hartley, Mike
Sent: Thursday, December 18, 2014 11:26 AM
To: Johnson, Sandra
Subject: RE: MOA Protests

Follow Up Flag: Follow up
Flag Status: Flagged

Very articulate response. Thanks.

From: Johnson, Sandra
Sent: Thursday, December 18, 2014 11:09 AM
To: Potts, Jeff; Bernhardson, Mark; Hartley, Mike; Hart, Rick; 'Kathleen Allen'; Rich Hoge (rich.hoge@moa.net); Doug Reynolds
Cc: Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna
Subject: MOA Protests

I spoke at length with one of the individuals claiming to be associated with Black Lives Matter, Kerry Felder. She asked many good questions about the private property status of MOA and I discussed with her the Wicklund case. She then responded that MOA had allowed some demonstrations, citing the 2012 Idle No More, and I explained that never was permission granted or the demonstration facilitated; in fact we prevented the repeat demonstration last year by the arrest of the organizers upon arrival. Finally, she requested that the City remain passive and not arrest anyone. To which I responded that police and prosecutors do not have the discretion to pick and choose between the laws they wish to enforce, particularly in the 'free speech' area because that would result in de facto discrimination. A slippery slope. Bottom line, I told her that if the law was broken the City would respond in a calm, respectful manner but people would be charged and prosecuted – please use the alternative site.

WCCO Radio just interviewed me and I gave them the same message and asked Ms. Lewrenz that if she had contact with the organizers to urge them to call me. Oh, I repeated the message that police contacts with the organizers were NOT aimed at intimidating them but only to establish lines of communication.

WCCO TV is coming here at noon.

Sandra H. Johnson

Bloomington City Attorney
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From: Hart, Rick
Sent: Wednesday, December 17, 2014 3:05 PM
To: Johnson, Sandra
Subject: FW: statement

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Sandra,

This just came out from MOA. Can you give me a quick call?

Rick
X8680

From: Dan Jasper [<mailto:dan.jasper@moa.net>]
Sent: Wednesday, December 17, 2014 3:03 PM
To: Hart, Rick
Subject: statement

Just sent this out.

**STATEMENT FOR MEDIA
DECEMBER 17, 2014**

We are aware of the group and their stated intentions for a Dec. 20 demonstration and protest at Mall of America.

Mall of America is a commercial retail and entertainment center. We respect the right to free speech, but Mall of America is private property and not a forum for protests, demonstrations or public debates. We have consistently and continually prohibited all manner of groups – regardless of cause or message – from protesting and demonstrating on our property. This policy was upheld in the Minnesota Supreme Court decision involving fur protesters on Mall of America; that decision held MOA is private property and cannot be used for demonstrations without the permission of MOA. *State v. Wicklund, 589 N.W.2d 793 (Minn. 1999)*.

Any attempt by groups to conduct a protest is a violation of our policies and would subject a group to removal from the property and potential arrest by the City of Bloomington police, in addition to exclusion from Mall of America for one (1) year.

We have made every effort to communicate this position to the Black Lives Matter organization, so that their participants are fully aware of MOA's long standing policy and the consequences of violating the rules against protesting and demonstrating. It's our hope that those efforts will result in the group moving their protest to the public property identified by the City of Bloomington, where they may conduct their protest peacefully and legally. This option would afford the group high visibility while minimizing the risk to public.

We would like our guests to know that we are taking this matter very seriously. Guests will notice an enhanced security presence on that date and throughout the holiday season. Our priority is to keep guests, employees and tenants safe and secure.



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From: Bernhardson, Mark
Sent: Wednesday, December 17, 2014 11:30 AM
To: Potts, Jeff; Johnson, Sandra; Hartley, Mike; Hart, Rick; 'Kathleen Allen'; Doug Reynolds; Rich Hoge (rich.hoge@moa.net)
Cc: Kirby, Diann; Lee, Larry; Seal, Ulysses
Subject: RE: Protest

Follow Up Flag: Follow up
Flag Status: Flagged

My thanks to all for your continued work on this matter in a very proactive manner !!

Mark Bernhardson

From: Potts, Jeff
Sent: Wednesday, December 17, 2014 10:43 AM
To: Johnson, Sandra; Hartley, Mike; Hart, Rick; 'Kathleen Allen'; Doug Reynolds; Rich Hoge (rich.hoge@moa.net)
Cc: Bernhardson, Mark; Kirby, Diann; Lee, Larry
Subject: RE: Protest

Sandra,

Thanks for forwarding. There was some media coverage of the event on channel 9 last night indicating the same basic info as is posted on their FB page. Some of my staff are going attempt to meet with the event organizers later today. In the meantime we are putting together an operational plan for Saturday. We have met with MOA management and will continue to work closely with them as this unfolds.

Jeffrey D. Potts, Chief of Police
Bloomington Police Department
1800 W Old Shakopee Rd
Bloomington, MN 55431

Ph. 952-563-8601
FAX 952-563-4936



From: Johnson, Sandra
Sent: Wednesday, December 17, 2014 10:33 AM
To: Potts, Jeff; Hartley, Mike; Hart, Rick; 'Kathleen Allen'; Doug Reynolds; Rich Hoge (rich.hoge@moa.net)
Subject: Protest

They have updated their Facebook page to indicate that the protestors are to meet in the MOA rotunda. <https://www.facebook.com/BlackLivesMatterMinneapolis/photos/a.840301319346996.1073741830.838424259534702/844616432248818/?type=1&theater>

Sandra H. Johnson

Bloomington City Attorney
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From: Kathleen Allen <kathleen.allen@moa.net>
Sent: Tuesday, January 06, 2015 5:49 PM
To: Johnson, Sandra
Subject: City Council Meeting

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Sandra,

I wanted to send you a quick note about the Council meeting last night. Under difficult circumstances you did an excellent job of laying out the law, the history of enforcement at MOA, and the potential for discrimination if politics are allowed to influence the enforcement of the law. As lawyers we have a deep appreciation for the Constitution, the importance of free speech, and the right to free assembly – and I appreciate the passion of the people that came forward to voice their opinion. You were able to strike the right balance and hopefully help the crowd understand that, in recognition of those important rights, a prosecutor needs to follow the law and proceed with charges when people have broken the law.

Thank you again. I know these are difficult situations and I appreciate all the hard work by your office.

Kathleen



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Thank you

From: Griffith, William C. <wgriffith@larkinhoffman.com>
Sent: Saturday, December 20, 2014 4:36 PM
To: Johnson, Sandra
Cc: Potts, Jeff; Kathleen Allen
Subject: Re: Arrests

Follow Up Flag: Follow up
Flag Status: Flagged

Lock down over. Doors opened and operations returning to normal. 12-14 arrests. BPD and MOA security well coordinated and very restrained.

Sent from my iPhone

> On Dec 20, 2014, at 3:45 PM, Johnson, Sandra <sjohnson@BloomingtonMN.gov> wrote:
>
> When you know please advise me of the number of arrests and if any are in custody. Hope everyone stayed safe.
>
>
>
> Sent with Good (www.good.com)
>
> Sandra Johnson Bloomington City Attorney

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From: Kathleen Allen <kathleen.allen@moa.net>
Sent: Tuesday, December 16, 2014 2:21 PM
To: Johnson, Sandra; Potts, Jeff; Bernhardson, Mark; Hart, Rick; Hartley, Mike
Cc: Rich Hoge; Doug Reynolds
Subject: RE: MOA Event - possible response....
Attachments: BLM.Pkg sent to Metro Legal.pdf; Public Assembly License App.pdf; BLM Aerial photo.pdf

Importance: High

Follow Up Flag: Follow up

Flag Status: Flagged

Sandra,

I'm glad to see we have an additional avenue to communicate with this organization. We believe the more the message is communicated, they will realize MOA is serious about preventing protests within our building. We also want to work with them and the City to identify a location where they can safely and legally communicate their message.

My only comment on the proposed letter is that we did identify a space for them in our communication to their organizers letter (per the discussions with Officer Hartley and your office). I've attached a pdf of the letter and attachments that were sent to the Mr. Espinosa, Ms. Grimm and Mr. McDowell. I've also attached a separate pdf of just the location/permit attachments if you want to include them in your letter. I don't believe that we have an issue if you want to identify another location, I just want to make clear that you know which space was identified. I've copied Doug Reynolds on this letter so he's aware of the response.

Thank you Sandra, and please feel free to reach out to myself or anyone here at MOA if there are additional questions or concerns.

Kathleen



KATHLEEN ALLEN
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From: Johnson, Sandra [mailto:sjohnson@BloomingtonMN.gov]
Sent: Tuesday, December 16, 2014 1:59 PM
To: Potts, Jeff; Bernhardson, Mark; Hart, Rick; Hartley, Mike
Cc: Johnson, Sandra; Kathleen Allen; Rich Hoge

Subject: FW: MOA Event - possible response....

Importance: High

Please review and give me your thoughts on improving the language below by this evening.

Please do not block any of the rights of way – it will be very dangerous given the traffic volumes anticipated at that day and time. I am concerned about your safety. Many travelers to MOA that day will have come from some distances and could become very upset if your group impedes their access to MOA. In my opinion use of this right of way on that day and time would be more dangerous than the I35W demonstration. Because of the sheer numbers of cars, I don't believe any number of law enforcement officers could assure the safety of your group at that time. Please be safe and stay out of the roadway.

We can assist in finding a very visible space that is safer. I would suggest that you apply for a public assembly permit otherwise you could be asked to disperse by police wherever you assemble. The permit allows us to work with you to plan a peaceful, safe event. It is likely to be on property adjacent to MOA, across the street. I understand that the point of the demonstration is to garner public attention by being visible to the crowds coming and going from MOA. We can work with that. Contact me if you are willing to consider this and I can facilitate it. We can look are safe areas that are very visible.

The City does not control access to the MOA. It is private property and they have never allowed demonstrations there. (I have worked here since before they opened and have litigated the issue.) They will ask your group to depart and once that order is given – failure to depart results in criminal trespass and the police will be involved. The City has no authority to tell MOA how to manage its property.

The Bloomington police have a history of protecting public safety – yours and the public's- in a responsible, calm manner. I have no reason to believe that there will be any deviation from that. We are very concerned about this event from a safety perspective. Whatever happens, I trust that you will do whatever is possible to keep it safe and peaceful. That is the best strategy when lobbying for public support for your cause.

Sandra H. Johnson

Bloomington City Attorney
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From: Nick Espinosa [<mailto:espinosa.nick@gmail.com>]

Sent: Tuesday, December 16, 2014 1:32 PM

To: Johnson, Sandra

Cc: Michael McDowell; Mica Grimm

Subject: MOA Event

Hi Sandra,

I wanted to reach out in response to the letter that was sent to establish contact with you.

We would like to let you know that the event is happening on Saturday and there are not plans to cancel it. We hope that you will allow for the peaceful planned event to take place so that everyone can stay safe without any escalation on behalf of the police or security.

We believe this is the best way to ensure the safety of all involved.

We thank you for your cooperation,

--

Nick Espinosa

From: Kathleen Allen <kathleen.allen@moa.net>
Sent: Thursday, December 18, 2014 11:23 AM
To: Johnson, Sandra; Potts, Jeff; Bernhardson, Mark; Hartley, Mike; Hart, Rick; Rich Hoge; Doug Reynolds
Cc: Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna
Subject: RE: MOA Protests

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks Sandra – we appreciate the update.

It looks like there are participants that are concerned about being arrested – so that's good to the extent it may discourage some of the protesters. Did you get a sense that this message is being communicated throughout their ranks? I'm still not sure I'm sensing that from the Facebook page, but hopefully this additional coverage will get that message out to them.

Kathleen



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From: Johnson, Sandra [<mailto:sjohnson@BloomingtonMN.gov>]
Sent: Thursday, December 18, 2014 11:09 AM
To: Potts, Jeff; Bernhardson, Mark; Hartley, Mike; Hart, Rick; Kathleen Allen; Rich Hoge; Doug Reynolds
Cc: Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna
Subject: MOA Protests

I spoke at length with one of the individuals claiming to be associated with Black Lives Matter, Kerry Felder. She asked many good questions about the private property status of MOA and I discussed with her the Wicklund case. She then responded that MOA had allowed some demonstrations, citing the 2012 Idle No More, and I explained that never was permission granted or the demonstration facilitated; in fact we prevented the repeat demonstration last year by the arrest of the organizers upon arrival. Finally, she requested that the City remain passive and not arrest anyone. To which I responded that police and prosecutors do not have the discretion to pick and choose between the laws they wish to enforce, particularly in the 'free speech' area because that would result in de facto discrimination. A slippery slope. Bottom line, I told her that if the law was broken the City would respond in a calm, respectful manner but people would be charged and prosecuted – please use the alternative site.

WCCO Radio just interviewed me and I gave them the same message and asked Ms. Lewrenz that if she had contact with the organizers to urge them to call me. Oh, I repeated the message that police contacts with the organizers were NOT aimed at intimidating them but only to establish lines of communication.

WCCO TV is coming here at noon.

Sandra H. Johnson

Bloomington City Attorney
1800 W. Old Shakopee Road
Bloomington, MN 55431
(952) 563-4895

sjohnson@BloomingtonMn.gov

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From: Doug Reynolds <doug.reynolds@moa.net>
Sent: Thursday, December 18, 2014 11:21 AM
To: Johnson, Sandra; Potts, Jeff; Bernhardson, Mark; Hartley, Mike; Hart, Rick; Kathleen Allen; Rich Hoge
Cc: Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna
Subject: RE: MOA Protests

Follow Up Flag: Follow up
Flag Status: Flagged

Ma'am,

Thanks for passing this on to me and for clarifying the message to the potential protesters.

Miss Felder left a message at MOA this morning that seems similar to the talking points she covered with you.

Respectfully,

Doug Reynolds
Director of Security
Mall of America

Sent from my Windows Phone

From: Johnson, Sandra
Sent: 12/18/2014 11:09 AM
To: Potts, Jeff; Bernhardson, Mark; Hartley, Mike; Hart, Rick; Kathleen Allen; Rich Hoge; Doug Reynolds
Cc: Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna
Subject: MOA Protests

I spoke at length with one of the individuals claiming to be associated with Black Lives Matter, Kerry Felder. She asked many good questions about the private property status of MOA and I discussed with her the Wicklund case. She then responded that MOA had allowed some demonstrations, citing the 2012 Idle No More, and I explained that never was permission granted or the demonstration facilitated; in fact we prevented the repeat demonstration last year by the arrest of the organizers upon arrival. Finally, she requested that the City remain passive and not arrest anyone. To which I responded that police and prosecutors do not have the discretion to pick and choose between the laws they wish to enforce, particularly in the 'free speech' area because that would result in de facto discrimination. A slippery slope. Bottom line, I told her that if the law was broken the City would respond in a calm, respectful manner but people would be charged and prosecuted – please use the alternative site.

WCCO Radio just interviewed me and I gave them the same message and asked Ms. Lewrenz that if she had contact with the organizers to urge them to call me. Oh, I repeated the message that police contacts with the organizers were NOT aimed at intimidating them but only to establish lines of communication.

WCCO TV is coming here at noon.

Sandra H. Johnson

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Despite that we were so overwhelmed by the volume of protesters we had to ignore large groups just to try to control even bigger ones. This lack of control could have ended tragically.

I believe BPD and MOA resisted arresting anyone until there was really no choice. There were many opportunities throughout this when we did not arrest because we wanted the protesters to simply listen.

To watch the BPD leaders plan and coordinate resources that came from as far as Hastings (and possibly even Red Wing) to maintain control was impressive. But it took all of those resources and I believe protests cannot become commonplace at MOA. None of us want

I believe we made it through this with zero injuries. Everytime something like this occurs there is significant likelihood of an officer, a protester, a guest, an employee or any number of others being harmed as chaos erupts. None of us wants that and it's easier to control when protest groups work with CoB and MOA as requested.

Thank you for allowing me to let key CoB leadership read this and I apologize if I vented a bit. It's all still fresh and disconcerting to clearly see how badly it could have gone at a moments notice.

Doug Reynolds

Sent from my Windows Phone

From: [Johnson, Sandra](#)

Sent: 12/22/2014 10:39 AM

To: [Doug Reynolds](#); [Kathleen Allen](#); [Potts, Jeff](#); [Hartley, Mike](#); [Hart, Rick](#); [Stehlik, Mark](#); [Rich Hoge](#); [Dan Jasper](#); [Jill Renslow](#)

Cc: [Glassberg, Erica](#); [Magnuson, Heather](#); [Schneider, Torrie](#); [Cross, Jennifer](#); [Sullivan, Anna](#); [Bernhardson, Mark](#); [Kirby, Diann](#)

Subject: RE: MOA Disturbance

Thank you so much. My fear is that if we do not take a strong stance – it's going to happen again. MOA is just too convenient a venue. One of the prosecutor's husband was working at a kiosk near the rotunda. He said it all it needed was a match to explode.

Sandra H. Johnson

Bloomington City Attorney
1800 W. Old Shakopee Road
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From: Doug Reynolds [<mailto:doug.reynolds@moa.net>]

Sent: Monday, December 22, 2014 10:32 AM

To: Johnson, Sandra; Kathleen Allen; Potts, Jeff; Hartley, Mike; Hart, Rick; Stehlik, Mark; Rich Hoge; Dan Jasper; Jill

Renslow

Cc: Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna; Bernhardson, Mark; Kirby, Diann

Subject: RE: MOA Disturbance

I have already talked to the top leadership within MOA Security and we plan to dedicate three people to sorting through our own video (CCTV, GoPro, and body camera footage) as well as utilizing social media to identify persons and their roles by postings or statements to the media.

We agree a strong message needs to go to those that were in leaders positions and those clearly inciting the crowd.

Doug R.

Sent from my Windows Phone

From: Johnson, Sandra

Sent: 12/22/2014 10:27 AM

To: Kathleen Allen; Potts, Jeff; Hartley, Mike; Hart, Rick; Doug Reynolds; Stehlik, Mark; Rich Hoge; Dan Jasper; Jill Renslow

Cc: Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna; Bernhardson, Mark; Kirby, Diann

Subject: RE: MOA Disturbance

Video and still footage from the event is needed.

Sandra H. Johnson

Bloomington City Attorney
1800 W. Old Shakopee Road
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From: Kathleen Allen [<mailto:kathleen.allen@moa.net>]

Sent: Monday, December 22, 2014 10:26 AM

To: Johnson, Sandra; Potts, Jeff; Hartley, Mike; Hart, Rick; Doug Reynolds; Stehlik, Mark; Rich Hoge; Dan Jasper; Jill Renslow

Cc: Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna; Bernhardson, Mark; Kirby, Diann

Subject: RE: MOA Disturbance

Sandra,

We fully support all efforts by your office to charge the organizers and key leaders with additional criminal charges. As we discussed last week trespass charges are not enough of a deterrent, especially to activists

trying to prove a point. Additionally, after review with our owners, we will be looking at the possibility of pursuing civil actions against the key organizers and leaders. We need to have additional deterrents to prevent individuals from disobeying our rules and creating this kind of havoc with our business.

Dan Jasper and our Public Relations Department are currently working on gathering all of intel, interviews, etc. from traditional media and social media. Doug Reynolds and his security team will also be pulling similar information. MOA will also be composing a list of all of our costs incurred as a result of this demonstration. We are meeting internally today at 11:00 – please let us know what else you need to support your efforts. We are happy to help.

Thank you again for all your efforts and the efforts of the Bloomington Police Department. It was greatly appreciated and helped ensure the safety of our employees, guests and tenants.

Kathleen



KATHLEEN ALLEN
Corporate Counsel
kathleen.allen@moa.net
Phone: 952.883.8815
Mobile: 612.366.7561
300 Executive Center, Bloomington, MN 55425
www.mallofamerica.com

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From: Johnson, Sandra [mailto:sjohnson@BloomingtonMN.gov]
Sent: Monday, December 22, 2014 9:32 AM
To: Potts, Jeff; Hartley, Mike; Hart, Rick; Doug Reynolds; Stehlik, Mark
Cc: Kathleen Allen; Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna; Bernhardson, Mark; Kirby, Diann
Subject: MOA Disturbance
Importance: High

In order to deter future mass disturbances at MOA, I discussed with the prosecutors the possibility of our office charging by criminal complaint the organizers and the 'on the ground' persons inciting this disorder (if we can ID them) under Minn. Stat. Sec. 609.05, subd. 2 (Aiding and Abetting) the following crimes:
Riot in the 3rd degree; 609.74 – Public Nuisance; 609.705 Unlawful Assembly; 609.71, subd. 3 and 609.72 Disorderly conduct. (See attached.)

To do that we need copies of all of their media interviews, their Facebook page, and any footage we can recover from MOA or BPD of their participation in the disturbance.

Legal is also willing to consider other prosecutions of persons who were leading the march through the corridors or chants down in the rotunda.

Can BPD assemble the interviews and other evidence? Can MOA assist in getting us what footage and evidence they have?

I would also like an estimate of the cost to the City and the MOA for this event. Although it is unlikely we could collect much, I would like to include a restitution claim in the body of the complaint. (I believe I did this with the 'Fur Protestors').

Our thoughts are that if the organizers have no consequence it is likely another disturbance will occur organized by social media. I watched this event on their Facebook page's videographer's link – great police work kept people safe even though protestors were getting in their faces and calling them names attempting to provoke a reaction. Next time, the protestors may be more violent.

Sandra H. Johnson

Bloomington City Attorney
1800 W. Old Shakopee Road
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From: Kathleen Allen <kathleen.allen@moa.net>
Sent: Friday, December 26, 2014 10:17 AM
To: Johnson, Sandra
Cc: Tom Rabiola; Doug Reynolds
Subject: Fwd: MOA OPS Team Protest Labor
Attachments: ATT00001.htm; MOA Labor for Protest.xlsx; ATT00002.htm

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Sandra,

Hope you had a wonderful Christmas.

Here is an attachment that details the additional labor costs incurred by our operations team. This does not include any of the security costs - Doug Reynolds will send those separately. Let us know if you this is sufficient.

Thank you.

Kathleen

Begin forwarded message:

From: Tom Rabiola <tom.rabiola@moa.net>
Date: December 26, 2014 at 9:34:47 AM CST
To: Kathleen Allen <kathleen.allen@moa.net>
Subject: MOA OPS Team Protest Labor

See attached

From: Bernhardson, Mark
Sent: Saturday, December 20, 2014 6:53 PM
To: Potts, Jeff; Johnson, Sandra
Cc: 'Kathleen Allen'; Glassberg, Erica; Schneider, Torrie; Cross, Jennifer; Magnuson, Heather; Hart, Rick; Kirby, Diann
Subject: RE: MOA

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks for this update !! MEB

From: Potts, Jeff
Sent: Saturday, December 20, 2014 6:52 PM
To: Johnson, Sandra
Cc: 'Kathleen Allen'; Glassberg, Erica; Schneider, Torrie; Cross, Jennifer; Magnuson, Heather; Hart, Rick; Kirby, Diann; Bernhardson, Mark
Subject: RE: MOA

Looks like we made a total of 25 arrests today at the MOA. All for a variety of misdemeanors. None are in-custody.

Sent with Good (www.good.com)

-----Original Message-----

From: Johnson, Sandra
Sent: Saturday, December 20, 2014 02:44 PM Central Standard Time
To: Potts, Jeff
Cc: 'Kathleen Allen'; Glassberg, Erica; Schneider, Torrie; Cross, Jennifer; Magnuson, Heather
Subject: MOA

It looks like you successfully broke it up. Let us know if there were arrests or charges.

Sent with Good (www.good.com)

Sandra Johnson Bloomington City Attorney

You replied to this message on 12/22/2014 5:40 PM.

From: Kathleen Allen <kathleen.allen@moa.net>
To: Johnson, Sandra
Cc:
Subject: RE: Documenting MOA Protest

Sent: Mon 12/22/2014 5:14 PM

Agree – we would defer any civil action depending on how the criminal charges play out. I think there's just a concern that this is our third year in a row – and our efforts this year were ineffective in shutting it down.



KATHLEEN ALLEN

Corporate Counsel

kathleen.allen@moa.net

Phone: 952.883.8815

Mobile: 612.366.7561

60 East Broadway | Bloomington, Minnesota 55426

[Website](#) | [Blog](#) | [Facebook](#) | [Twitter](#)

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Thank you.

From: Johnson, Sandra [<mailto:sjohnson@BloomingtonMN.gov>]
Sent: Monday, December 22, 2014 5:10 PM
To: Kathleen Allen
Subject: RE: Documenting MOA Protest

I agree that you need to have consequences but MOA may wish to await the criminal charges. It's the prosecution's job to be the enforcer and MOA needs to continue to put on a positive, safe face. The City's prosecution team is taking this very seriously. I do not usually posture in the media, but I want to deter future criminal activity. I will follow WCCO's comments on the future prosecution.

From: Kathleen Allen [kathleen.allen@moa.net]
Sent: Monday, December 22, 2014 5:05 PM
To: Johnson, Sandra
Subject: RE: Documenting MOA Protest

Yes – we understand that and we need to follow the direction of our owners regardless if the management here would like to pursue additional remedies. I wanted to give you the update since there's a lot of conversation going on about that.

The bigger issue for me is pushing them to consider civil action. I'm concerned that if these other charges don't carry greater penalties than a trespass charge, we'll be in the same position as last year.



KATHLEEN ALLEN

Corporate Counsel

kathleen.allen@moa.net

Phone: 952.883.8815

Mobile: 612.366.7561

60 East Broadway | Bloomington, MN

[Website](#) | [Blog](#) | [Facebook](#) | [Twitter](#)

FLAHERTY DECL. EX. A

BLOOM-MOA43

You replied to this message on 12/22/2014 5:40 PM.

Sent: Mon 12/22/2014 5:14 PM

From: Kathleen Allen <kathleen.allen@moa.net>
To: Johnson, Sandra
Cc:
Subject: RE: Documenting MOA Protest

Warning: This transmission is in error. Please notify the sender immediately by reply e-mail, delete the message, and destroy any hard copy print-outs.

Thank you.

From: Johnson, Sandra [mailto:sjohnson@BloomingtonMN.gov]
Sent: Monday, December 22, 2014 5:01 PM
To: Kathleen Allen
Subject: RE: Documenting MOA Protest

MOA can and should make its own decisions on the trespass. The other charges are more serious but carry the same maximum penalties. The actual sentencing should there be convictions are likely to be higher.

From: Kathleen Allen [kathleen.allen@moa.net]
Sent: Monday, December 22, 2014 4:57 PM
To: Johnson, Sandra
Subject: RE: Documenting MOA Protest

Hi Sandra,

Just as an FYI, we are having additional discussions with our owners tomorrow, but they are not on board with trespassing the LUSH employees. We will be sending LUSH a warning/reprimand letter in accordance with their Lease, but they want to eliminate the potential for further press on this matter.

They're also hesitant about going down the path of pursuing civil actions. If the City pursues these escalated/additional charges against the organizers/leaders of BLM, what are the penalties associated with those charges? I'd like to understand how they differ (and are more severe) than those for trespass.

Thanks,

Kathleen



KATHLEEN ALLEN
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I

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Thank you.

From: Johnson, Sandra [mailto:sjohnson@BloomingtonMN.gov] FLAHERTY DECL. EX. A

BLOOM-MOA44

You replied to this message on 12/22/2014 5:40 PM.

Sent: Mon 12/22/2014 5:14 PM

From: Kathleen Allen <kathleen.allen@moa.net>
To: Johnson, Sandra
Cc:
Subject: RE: Documenting MOA Protest

Received this transmission in error, please notify the sender immediately by reply e-mail, delete the message, and destroy any hard copy printouts.

From: Johnson, Sandra [mailto:sjohnson@BloomingtonMN.gov]
Sent: Monday, December 22, 2014 3:42 PM
To: Doug Reynolds; Kathleen Allen
Cc: Potts, Jeff; Hartley, Mike
Subject: RE: Documenting MOA Protest

Mica Gnm, Nick Espinosa, Michael McDowell and Kandace Montgomery all reference the event on their Facebook pages, which appear to have no privacy guards on them.

Sandra H. Johnson

Bloomington City Attorney
1800 W. Old Shakopee Road
Bloomington, MN 55431
(952) 563-4895

sjohnson@BloomingtonMn.gov

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From: Doug Reynolds [mailto:doug.reynolds@moa.net]
Sent: Monday, December 22, 2014 3:38 PM
To: Johnson, Sandra; Kathleen Allen
Cc: Potts, Jeff; Hartley, Mike
Subject: RE: Documenting MOA Protest

Understood. We've been doing screen grabs of key messages to document the event. I'll let MOA know to do another look at the sites.

Doug R.

Sent from my Windows Phone

I

From: Johnson, Sandra
Sent: 12/22/2014 3:32 PM
To: Kathleen Allen; Doug Reynolds
Cc: Potts, Jeff; Hartley, Mike
Subject: Documenting MOA Protest

● You replied to this message on 12/22/2014 5:40 PM.

From: Kathleen Allen <kathleen.allen@moa.net>
To: Johnson, Sandra
Cc:
Subject: RE: Documenting MOA Protest

Sent: Mon 12/22/2014 5:14 PM

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From: Doug Reynolds [mailto:doug.reynolds@moa.net]
Sent: Monday, December 22, 2014 3:38 PM
To: Johnson, Sandra; Kathleen Allen
Cc: Potts, Jeff; Hartley, Mike
Subject: RE: Documenting MOA Protest

Understood. We've been doing screen grabs of key messages to document the event. I'll let MOA know to do another look at the sites.

Doug R.

Sent from my Windows Phone

From: Johnson, Sandra
Sent: 12/22/2014 3:32 PM
To: Kathleen Allen; Doug Reynolds
Cc: Potts, Jeff; Hartley, Mike
Subject: Documenting MOA Protest

You are probably doing this already – but please document all the social media and video feeds on social media concerning the event. The groups are very likely to take these sites down when they hear that we intend to prosecute them. That is likely to air tonight.

My office cannot do that – it would require us to be witnesses in our own prosecutions.

Sandra H. Johnson
Bloomington City Attorney
1800 W. Old Shakopee Road
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(952) 563-4895
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From: Kathleen Allen <kathleen.allen@moa.net>
To: Johnson, Sandra
Cc:
Subject: RE: MOA LUSH store

Sent: Mon 12/22/2014 5:11 PM

From: The Nybecks [mailto:nybeck@mac.com]
Sent: Monday, December 22, 2014 10:33 AM
To: Patti Hein
Subject: MOA LUSH store

Happy Holidays!

My name is Birgitta Nybeck and I have been a Bloomington resident for the last 12 years. I am also a proud Bloomington Police wife to Matt Nybeck #246 who has been on the force for over 13 years and the SWAT team for almost 5 years. I appreciate you taking the time to read this during such a busy time of year.

I am very proud of how the Mall of America Security team, the BPD, and other local agencies worked together to manage the chaos during the illegal protest at MOA on Saturday 12/20/14. It was very stressful to watch the live feed online, but from all accounts it appears law enforcement handled themselves professionally and with integrity. The media did not applaud law enforcement, did not even properly portray the nasty behavior a lot of the "peaceful" protestors screamed at the officers. I was grateful all officers made it home to their families safely, something I pray for daily.

What I'm most upset about is the disrespect towards law enforcement and unlawful protesting that occurred at the LUSH cosmetics store located at MOA E112. I have included the photos taken and wish I had the audio of them booing and shouting at officers when they walked by their store. I'm a firm believer in freedom of speech when lawfully shared, but do not think the Mall of America should tolerate the behavior these employees exhibited outside of their store while being paid. On Saturday evening I called the LUSH store hoping to have a respectful conversation with a manager about the situation and was appalled by the behavior of the acting manager on duty. I wish I had her name (she wouldn't give it to me), but I called at 8:30 that evening. She was very outspoken about her beliefs and how proud she was of her company for taking a stand. She told me that her company did not care that I supported law enforcement and I could take my money elsewhere, there were plenty of other places for me to shop for cosmetics. She said her company is receiving so many new customers due to their actions that it doesn't matter if they lose support and business from people who support cops who murder black people. I tried to calmly explain that officers do not murder black people but are defending themselves, just like she would try to do if she were attacked, and she would repeatedly yell and interrupt me while I was calmly speaking. I worked in retail management for 8 years and was floored by her lack of customer service skills, her immature attitude, and clear disrespect towards officers.

LUSH has released this statement in support of their employees on their MOA Facebook page: "While the employees were not acting officially for the company, we are a campaigning company, and we support the right to free speech and peaceful protest. Standing in solidarity of fairness, justice and equality for all, regardless of gender, race, age, sexuality, and religion - this is something that as a business we do wholeheartedly believe in. - Laura" Laura also wrote this on another post: "While LUSH staff were not officially participating in the protest, they were photographed as individuals standing in solidarity of fairness, justice and equality for all, regardless of gender, race, age, sexuality, and religions--this is something that as a business we do wholeheartedly believe in. At yesterday's peaceful protest at Mall of America, LUSH's employees acted in full accordance with the police, ensuring first and foremost that our staff and customers were safe and taken care of." LUSH also told another police wife over the phone that the photos must be fakes because LUSH employees lawfully protested within their lease space.

I'd appreciate action being taken against the LUSH store and hope that in the long run they will no longer be tenants at MOA. I think LUSH needs to release a public apology on their Facebook page and show support for law enforcement instead of encouraging such division and disrespect to be shared with their company name. The protest leaders have encouraged all of their followers to support LUSH due to their behavior during the protest. Their behavior was not honorable and should not be rewarded.

Sincerely and Respectfully,

Birgitta Nybeck

Bloomington, MN

952

From: Kathleen Allen <kathleen.allen@moa.net>

Sent: Mon 12/22/2014 9:11 AM

To: Johnson, Sandra

Cc: Subject: RE: MOA LUSH store

FROM: KATHLEEN ALLEN [mailto:kathleen.allen@moa.net]

Sent: Monday, December 22, 2014 1:32 PM

To: Johnson, Sandra

Cc: Rich Hoge; Doug Reynolds

Subject: FW: MOA LUSH store

Hi Sandra,

Below is an email from a BPD officer's wife regarding the behavior of the LUSH employees on Saturday afternoon. I've also attached a picture of the LUSH employees standing outside the LUSH store during the protest - "standing in solidarity" with the protesters. The employees later went back into their store, brought some protesters into the store with them, and kept the store in lockdown for the remainder of the protest. This was verified by Dan Jasper, our VP of PR, who witnessed the behavior and the timing.

As evidenced by the email below, a significant amount of conversation on social media, and the reaction by other tenants and MOA staff, there is great concern over the behavior of the LUSH employees at MOA. The behavior is in clear violation of their Lease, and we are preparing a letter to their corporate representatives regarding the behavior of the employees and the resulting violations of their lease. The question has been raised, however, as to whether we should also trespass the manager and/or employees who cooperated in the behavior. The initial thought is that this would be a six (6) month trespass with a Restricted Access Permit allowing the employees to work during that time, but not be on the property outside of work hours. This would be an MOA trespass - and would not involve arrest by the BPD. We are reviewing footage to determine the full actions by the employees, as well as making sure this was not a corporate directive by LUSH (which is known for their cause marketing).

We feel it's important to reinforce with all staff that violations of the rules will not be tolerated. At the same time we recognize that there is risk involved that this may become a media story - and we don't want to impede any actions by your office or divert the attention away from charges against the main culprits (organizers and leaders). We will be reviewing these options with our owners, but wanted to see if you also had any concerns.

Kathleen



KATHLEEN ALLEN
Corporate Counsel
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Phone: 952.883.8815
Mobile: 612.366.7561
80 East Broadway | Bloomington, Minnesota 55425
Website | Blog | Facebook | Twitter

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Thank you.

From: Patti Hein

Sent: Monday, December 22, 2014 10:53 AM

To: Rich Hoge; Kathleen Allen; Kathy H. Hayden; Jill Renslow; Doug Reynolds

Subject: FW: MOA LUSH store



PATTI HEIN
Construction Business Manager Tenant Services
patti.hein@moa.net
Phone: 952.883.8822
Mobile: 952.240.9310
80 East Broadway | Bloomington, Minnesota 55425
Website | Blog | Facebook | Twitter

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Thank you.

FLAHERTY DECL. EX. A

BLOOM-MOA48

From: The Nybecks [mailto:nybeck@mac.com]

From: Kathleen Allen <kathleen.allen@moa.net>
To: Johnson, Sandra
Cc:
Subject: RE: MOA LUSH store
Trespass agreement with a 6 month trespass.

Sandra H. Johnson

Bloomington City Attorney
1800 W. Old Shakopee Road
Bloomington, MN 55431
(952) 563-4895
sjohnson@BloomingtonMn.gov

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From: Kathleen Allen [mailto:kathleen.allen@moa.net]
Sent: Monday, December 22, 2014 2:54 PM
To: Johnson, Sandra
Subject: RE: MOA LUSH store

Sandra,

Just to confirm - are you in agreement with a 6 month trespass, or were you referencing a different type of sanction? There was a little confusion and we wanted to make sure we were on the same page and didn't misinterpret your statement.

I



KATHLEEN ALLEN
Corporate Counsel
kathleen.allen@moa.net
Phone: 952.883.8815
Mobile: 612.366.7561
80 East Broadway | Bloomington, Minnesota 55405
Website | Blog | Facebook | Twitter

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Thank you.

From: Johnson, Sandra [mailto:sjohnson@BloomingtonMN.gov]
Sent: Monday, December 22, 2014 1:46 PM
To: Kathleen Allen
Cc: Rich Hoge; Doug Reynolds
Subject: RE: MOA LUSH store

I also heard about this from City personnel. Because of the sheer number of people employed at MOA, their participation in a disturbance should be dealt with sanctions. A 6 month trespass with access for work only might send a good message to all persons employed at MOA. The two news stations I have been talking to indicate that there is a great deal of outrage for the conduct of the demonstrators and the danger this demonstration posed to the general public. In my WCCO interview today, I indicated that the City Attorney's Office will be seeking punitive consequences for all of the organizers and leaders of this demonstration because future demonstrations cannot be tolerated. MPR has some good photos of this group too. Thanks for the heads up.

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FLAHERTY DECL EX 1A

BLOOM-MOA49

From: Kathleen Allen <kathleen.allen@moa.net>
To: Johnson, Sandra
Subject: RE: MOA LUSH store

Sent: Mon 12/22/2014 3:15 PM

Thanks for the clarification.



KATHLEEN ALLEN
Corporate Counsel
kathleen.allen@moa.net
Phone: 952.883.8815
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Thank you.

From: Johnson, Sandra [<mailto:sjohnson@BloomingtonMN.gov>]
Sent: Monday, December 22, 2014 3:02 PM
To: Kathleen Allen
Subject: RE: MOA LUSH store

[In Reply](#) [Printout](#)

I

I am in agreement with a 6 mo trespass.

Sandra H. Johnson

Bloomington City Attorney
1800 W. Old Shakopee Road
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sjohnson@BloomingtonMn.gov

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From: Kathleen Allen [<mailto:kathleen.allen@moa.net>]
Sent: Monday, December 22, 2014 2:54 PM
To: Johnson, Sandra
Subject: RE: MOA LUSH store

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Thank you.

FLAHERTY DECL. EX. A

BLOOM-MOA50

Re: Arrests

Griffith, William C. <wgriffith@larkinhoffman.com>

Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.
Extra line breaks in this message were removed.

Sent: Sat 12/20/2014 4:36 PM

To: Johnson, Sandra

Cc: Potts, Jeff; Kathleen Allen

Lock down over. Doors opened and operations returning to normal.
12-14 arrests. BPD and MOA security well coordinated and very restrained.

Sent from my iPhone

> On Dec 20, 2014, at 3:45 PM, Johnson, Sandra
> <sjohnson@BloomingtonMN.gov> wrote:

>

> When you know please advise me of the number of arrests and if
> any are in custody. Hope everyone stayed safe.

>

>

>

> Sent with Good (www.good.com)

>

> Sandra Johnson Bloomington City Attorney

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THE RECIPIENT(S) NAMED ABOVE. This message may be an

RE: Pictures from MOA Protest

Jensen, Heather

Sent: Fri 12/26/2014 2:40 PM

To: Potts, Jeff; Johnson, Sandra

Cc: Hart, Rick; Hartley, Mike

SENT: Friday, December 26, 2014 1:55 PM

To: Johnson, Sandra

Cc: Jensen, Heather

Subject: Pictures from MOA Protest

Sandy,

I just received a call from JP (Jeremy) Armstrong who was at MOA during the recent protest. He works with loss prevention issues for 3 stores at MOA and was there taking pictures of the protest for these stores.

He has many pictures he is willing to share with our Police Department and can be reached at 612-787-5113.

I
Thanks!

Kris Graves

Legal Department

Ext. 4893

HAPPY HOLIDAYS

FW: black lives matter protest

Johnson, Sandra

Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.

Sent: Tue 1/6/2015 1:57 PM

To: Giles, Jeff

Message

WP_20141229_028.jpg (350 KB)

WP_20141229_007.jpg (336 KB)

WP_20141229_009.jpg (404 KB)

FYI

I

Sandra H. Johnson

Bloomington City Attorney
1800 W. Old Shakopee Road
Bloomington, MN 55431
(952) 563-4895

sjohnson@BloomingtonMn.gov

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From: Doug Reynolds [<mailto:doug.reynolds@moa.net>]

Sent: Monday, January 05, 2015 4:05 PM

To: Johnson, Sandra

	A	B	C
1	MOA Team Member	Labor Expense	
2	Jerry Wasilk	\$ 261.85	
3	Brad Pearson	\$ 179.87	
4	James Dralle	\$ 110.50	
5	James Strobel	\$ 87.35	
6	Peter Widstrand	\$ 111.92	
7	Steve Kleim.	\$ 122.74	
8	Mike Leibfried	\$ 281.49	
9	Lonnie Olson	\$ 248.99	
10	Michael Heidelberger	\$ 145.03	
11	George Bemis	\$ 221.60	
12	Andy Geier	\$ 120.94	
13	Dave Jahn	\$ 78.38	
14	Deacon Stewart	\$ 159.75	
15	Robin Mrozek	\$ 74.72	
16	Mark Halling	\$ 207.23	
17	Greg P.	\$ 40.50	
18	Karl Swanson	\$ 90.65	
19	Jim Avis	\$ 219.25	
20	Dale Ericson	\$ 90.65	
21	Mark Hanson	\$ 170.78	
22	Rick Czaja	\$ 65.79	
23	Donald Young	\$ 177.59	
24	Shane Allen	\$ 120.23	
25	Jesse Lee	\$ 45.00	
26	Ken Dorsey	\$ 125.58	
27	Michael Newton	\$ 146.63	
28	Tracy Briggs	\$ 92.40	
29	Julis Caparas	\$ 79.20	
30	Mark Carney	\$ 141.45	

23	Donald Young	\$	177.59		
24	Shane Allen	\$	120.23		
25	Jesse Lee	\$	45.00		
26	Ken Dorsey	\$	125.58		
27	Michael Newton	\$	146.63		
28	Tracy Briggs	\$	92.40		
29	Julis Caparas	\$	79.20		
30	Mark Carney	\$	141.45		
31	John Granlund	\$	90.00		
32	Jim Huebner	\$	49.96		
33	Ben Moe	\$	100.40		
34	Ram Rajendralall	\$	81.41		
35	Keth Schnagl	\$	87.60		
36	Mark Schwendeman	\$	100.00		
37	Brad Buckeridge	\$	543.25		
38	Ed Whitten	\$	446.54		
39	Phillip Jensen	\$	506.68		
40	John Glenn	\$	368.23		
41	Brad Cheney	\$	213.00		
42	Clayton Omberg	\$	286.00		
43	Scott Jones	\$	186.22		
44	Ivan Rosen	\$	200.46		
45	Glen Lamb	\$	217.62		
46	Mohan Ramsarran	\$	164.95		
47	Jeff Hockstein	\$	121.12		
48	Robert Powell	\$	375.84		
49	Kenneth Cook	\$	129.60		
50	John Beach	\$	551.55		
51					
52	Total	\$	8,838.49		

Fwd: MOA OPS Team Protest Labor

Kathleen Allen <kathleen.allen@moa.net>

🕒 Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.

Sent: Fri 12/26/2014 10:17 AM

To: Johnson, Sandra

Cc: Tom Rabiola; Doug Reynolds

Message

📎 ATT00001.htm (5 KB)

📎 MOA Labor for Protest.xlsx (15 KB)

📎 ATT00002.htm (400 B)

Hi Sandra,

Hope you had a wonderful Christmas.

Here is an attachment that details the additional labor costs incurred by our operations team. This does not include any of the security costs - Doug Reynolds will send those separately. Let us know if you this is sufficient.

Thank you.

Kathleen

Begin forwarded message:

From: Tom Rabiola <tom.rabiola@moa.net>

Date: December 26, 2014 at 9:34:47 AM CST

To: Kathleen Allen <kathleen.allen@moa.net>

Subject: MOA OPS Team Protest Labor

	Donald Young	\$	177.59		
14	Shane Allen	\$	120.23		
25	Jesse Lee	\$	45.00		
26	Ken Dorsey	\$	125.58		
27	Michael Newton	\$	146.63		
28	Tracy Briggs	\$	92.40		
29	Julis Caparas	\$	79.20		
30	Mark Carney	\$	141.45		
31	John Granlund	\$	90.00		
32	Jim Huebner	\$	49.96		
33	Ben Moe	\$	100.40		
34	Ram Rajendralall	\$	81.41		
35	Keth Schnagl	\$	87.60		
36	Mark Schwendeman	\$	100.00		
37	Brad Buckeridge	\$	543.25		
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40	John Glenn	\$	368.23		
41	Brad Cheney	\$	213.00		
42	Clayton Ormberg	\$	286.00		
43	Scott Jones	\$	186.22		
44	Jean Rosen	\$	200.46		
45	Glen Lamb	\$	217.62		
46	Melvin Remsler/An	\$	164.95		
47	Jeff Wuckman	\$	121.12		
48	Robert Fowler	\$	375.84		
49	Kenneth Cook	\$	123.60		
50	John Brock	\$	113.30		

FLAHERTY DODD & CO. P.C.

1000 N. W. 10th Street, Suite 1000, Fort Lauderdale, FL 33304

Phone: (954) 561-1111

Fax: (954) 561-1112

RE: MOA LUSH store

Kathleen Allen <kathleen.allen@moa.net>

Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.

Sent: Mon 12/22/2014 3:11 PM

To: Johnson, Sandra

their company name. The protest leaders have encouraged all of their followers to support LUSH due to their behavior during the protest. Their behavior was not honorable and should not be rewarded.

Sincerely and Respectfully,

Birgitta Nybeck

[REDACTED]
Bloomington, MN 554 [REDACTED]

952- [REDACTED]

Redactions of the address and phone number in this email only were not made by the City of Bloomington.

FLAHERTY DECL. EX. A

BLOOM-MOA58

RE: MOA LUSH store

Kathleen Allen <kathleen.allen@moa.net>

Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.

Sent: Mon 12/22/2014 3:11 PM

To: Johnson, Sandra

protest. Standing in solidarity of fairness, justice and equality for all, regardless of gender, race, age, sexuality, and religion - this is something that as a business we do wholeheartedly believe in. - Laura" Laura also wrote this on another post: "While LUSH staff were not officially participating in the protest, they were photographed as individuals standing in solidarity of fairness, justice and equality for all, regardless of gender, race, age, sexuality, and religions--this is something that as a business we do wholeheartedly believe in. At yesterday's peaceful protest at Mall of America, LUSH's employees acted in full accordance with the police, ensuring first and foremost that our staff and customers were safe and taken care of." LUSH also told another police wife over the phone that the photos must be fakes because LUSH employees lawfully protested within their lease space.

I'd appreciate action being taken against the LUSH store and hope that in the long run they will no longer be tenets at MOA. I think LUSH needs to release a public apology on their Facebook page and show support for law enforcement instead of encouraging such division and disrespect to be shared with their company name. The protest leaders have encouraged all of their followers to support LUSH due to their behavior during the protest. Their behavior was not honorable and should not be rewarded.

Sincerely and Respectfully, FLAHERTY DECL. EX. A

BLOOM-MOA59

RE: MOA LUSH store

Kathleen Allen <kathleen.allen@moa.net>

Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.

Sent: Mon 12/22/2014 3:11 PM

To: Johnson, Sandra

was appalled by the behavior of the acting manager on duty. I wish I had her name (she wouldn't give it to me), but I called at 8:30 that evening. She was very outspoken about her beliefs and how proud she was of her company for taking a stand. She told me that her company did not care that I supported law enforcement and I could take my money elsewhere, there were plenty of other places for me to shop for cosmetics. She said her company is receiving so many new customers due to their actions that it doesn't matter if they lose support and business from people who support cops who murder black people. I tried to calmly explain that officers do not murder black people but are defending themselves, just like she would try to do if she were attacked, and she would repeatedly yell and interrupt me while I was calmly speaking. I worked in retail management for 8 years and was floored by her lack of customer service skills, her immature attitude, and clear disrespect towards officers.

LUSH has released this statement in support of their employees on their MOA Facebook page: "While the employees were not acting officially for the company, we are a campaigning company, and we support the right to free speech and peaceful protest. Standing in solidarity of fairness, justice and equality for all, regardless of gender, race, age, sexuality, and religion - this is something that as a business we do wholeheartedly believe in. - Laura" Laura also wrote this on another post: "While LUSH staff were not officially participating in the protest, they were photographed as individuals standing in solidarity of fairness, justice and equality for all, regardless of gender, race, age, sexuality, and religions - this is something that

RE: MOA LUSH store

Kathleen Allen <kathleen.allen@moa.net>

Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.

Sent: Mon 12/22/2014 3:11 PM

To: Johnson, Sandra

Police wife to Matt Nybeck #246 who has been on the force for over 13 years and the SWAT team for almost 5 years. I appreciate you taking the time to read this during such a busy time of year.

I am very proud of how the Mall of America Security team, the BPD, and other local agencies worked together to manage the chaos during the illegal protest at MOA on Saturday 12/20/14. It was very stressful to watch the live feed online, but from all accounts it appears law enforcement handled themselves professionally and with integrity. The media did not applaud law enforcement, did not even properly portray the nasty behavior a lot of the "peaceful" protestors screamed at the officers. I was grateful all officers made it home to their families safely, something I pray for daily.

What I'm most upset about is the disrespect towards law enforcement and unlawful protesting that occurred at the LUSH cosmetics store located at MOA E112. I have included the photos taken and wish I had the audio of them booing and shouting at officers when they walked by their store. I'm a firm believer in freedom of speech when lawfully shared, but do not think the Mall of America should tolerate the behavior these employees exhibited outside of their store while being paid. On Saturday evening I called the LUSH store hoping to have a respectful conversation with a manager about the situation and was appalled by the behavior of the acting manager on duty. I wish I had her name (she wouldn't give it to me), but I called at 8:30 that evening. She is FLAHERTY DECL EX A about BLOOM-MOA61

RE: MOA LUSH store

Kathleen Allen <kathleen.allen@moa.net>

Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.

Sent: Mon 12/22/2014 3:11 PM

To: Johnson, Sandra

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Thank you.

From: The Nybecks [<mailto:nybeck@mac.com>]

Next

Last

Sent: Monday, December 22, 2014 10:33 AM

To: Patti Hein

Subject: MOA LUSH store

I

Happy Holidays!

My name is Birgitta Nybeck and I have been a Bloomington resident for the last 12 years. I am also a proud Bloomington Police wife to Matt Nybeck #246 who has been on the force for over 13 years and the SWAT team for almost 5 years. I appreciate you taking the time to read this during such a busy time of year.

I am very proud of how the Mall of America Security team, the BPD, and other local agencies worked together to manage the chaos during the illegal protest at MOA on Saturday

RE: MOA LUSH store

Kathleen Allen <kathleen.allen@moa.net>

i Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.

Sent: Mon 12/22/2014 3:11 PM

To: Johnson, Sandra

From: Kathleen Allen [<mailto:kathleen.allen@moa.net>]

Sent: Monday, December 22, 2014 1:32 PM

To: Johnson, Sandra

Cc: Rich Hoge; Doug Reynolds

Subject: FW: MOA LUSH store

Hi Sandra,

Below is an email from a BPD officer's wife regarding the behavior of the LUSH employees on Saturday afternoon. I've also attached a picture of the LUSH employees standing outside the LUSH store during the protest – "standing in solidarity" with the protesters. The employees later went back into their store, brought some protestors into the store with them, and kept the store in lockdown for the remainder of the protest. This was verified by Dan Jasper, our VP of PR, who witnessed the behavior and the timing.

As evidenced by the email below, a significant amount of conversation on social media, and the reaction by other tenants and MOA staff, there is great concern over the behavior of the LUSH employees at MOA. The behavior is in clear violation of their Lease, and we are preparing a letter to their corporate representatives regarding the behavior of the employees and the resulting violations of their lease. The question has been raised, however, as to whether we should also trespass the manager

RE: MOA LUSH store

Kathleen Allen <kathleen.allen@moa.net>

Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.

Sent: Mon 12/22/2014 3:11 PM

To: Johnson, Sandra

and/or employees who cooperated in the behavior. The initial thought is that this would be a six (6) month trespass with a Restricted Access Permit allowing the employees to work during that time, but not be on the property outside of work hours. This would be an MOA trespass –and would not involve arrest by the BPD. We are reviewing footage to determine the full actions by the employees, as well as making sure this was not a corporate directive by LUSH (which is known for their cause marketing).

We feel it's important to reinforce with all staff that violations of the rules will not be tolerated. At the same time we recognize that there is risk involved that this may become a media story – and we don't want to impede any actions by your office or divert the attention away from charges against the main culprits (organizers and leaders). We will be reviewing these options with our owners, but wanted to see if you also had any concerns.

Kathleen



KATHLEEN ALLEN

Corporate Counsel

kathleen.allen@moa.net

Phone: 952.883.8815

Mobile: 612.366.7561

50 East Broadway | Bloomington, Minnesota 55425

[Website](#) | [Blog](#) | [Facebook](#) | [Twitter](#)

RE: MOA LUSH store

Kathleen Allen <kathleen.allen@moa.net>

Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.

Sent: Mon 12/22/2014 3:11 PM

To: Johnson, Sandra

Thank you.

From: Johnson, Sandra [<mailto:sjohnson@BloomingtonMN.gov>]

Sent: Monday, December 22, 2014 1:46 PM

To: Kathleen Allen

Cc: Rich Hoge; Doug Reynolds

Subject: RE: MOA LUSH store

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Sandra H. Johnson

Bloomington City Attorney
1800 W. Old Shakopee Road
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(952) 563-4895

RE: MOA LUSH store

Kathleen Allen <kathleen.allen@moa.net>

📧 Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.

Sent: Mon 12/22/2014 3:11 PM

To: Johnson, Sandra

From: Kathleen Allen [<mailto:kathleen.allen@moa.net>]

Sent: Monday, December 22, 2014 2:54 PM

To: Johnson, Sandra

Subject: RE: MOA LUSH store

Sandra,

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BLOOM-MOA66

STRICTLY PROHIBITED

Kathleen Allen <kathleen.allen@moa.net>

Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.

Sent: Mon 12/22/2014 3:11 PM

To: Johnson, Sandra

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Thank you.

From: Johnson, Sandra [<mailto:sjohnson@BloomingtonMN.gov>]

Sent: Monday, December 22, 2014 3:02 PM

To: Kathleen Allen

Subject: RE: MOA LUSH store

I am in agreement with a 6 mo trespass.

Sandra H. Johnson

Bloomington City Attorney
1800 W. Old Shakopee Road
Bloomington, MN 55431
(952) 563-4895

sjohnson@BloomingtonMn.gov

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RE: MOA LUSH store

Kathleen Allen <kathleen.allen@moa.net>

📧 Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.

Sent: Mon 12/22/2014 3:11 PM

To: Johnson, Sandra

Thanks for the clarification.



KATHLEEN ALLEN

Corporate Counsel

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60 East Broadway | Bloomington, Minnesota 55425

[Website](#) | [Blog](#) | [Facebook](#) | [Twitter](#)

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Thank you.

From: Johnson, Sandra [<mailto:sjohnson@BloomingtonMN.gov>]

Sent: Monday, December 22, 2014 3:02 PM

To: Kathleen Allen

Subject: RE: MOA LUSH store

I am in agreement with a 6 mo trespass

FLAHERTY DECL. EX. A

BLOOM-MOA68

RE: MOA LUSH store

Schneider, Torrie

Sent: Mon 12/22/2014 1:51 PM

To: Johnson, Sandra

Cc: Magnuson, Heather; Cross, Jennifer; Glassberg, Erica

I saw their photos on mpr's website. I had the same reaction and I will never give them my money.

Torrie J. Schneider, J.D.
Assistant City Attorney
City of Bloomington
1800 W Old Shakopee Road
Bloomington, MN 55431-3027
(952) 563-8781 (office)
(612) 250-2683 (cell)
(952) 563-8520 (fax)

From: Johnson, Sandra

Sent: Monday, December 22, 2014 1:46 PM

To: 'Kathleen Allen'

Cc: Rich Hoge; Doug Reynolds

Subject: RE: MOA LUSH store

I also heard about this from City personnel. Because of the sheer number of people employed at MOA, their participation in a disturbance should be dealt with sanctions. A 6 month trespass with access for work only might send a good message to all persons employed at MOA. The two news stations I have been talking to indicate that there is a great deal of outrage for the conduct of the demonstrators and the danger this demonstration posed to the general public. In my WCCO interview today, I indicated that the

Bernhardson, Mark

Sent: Mon 12/22/2014 1:50 PM

To: Johnson, Sandra

Cc: Potts, Jeff; Kirby, Diann; Lee, Larry

Thanks for the update !! MEB

From: Johnson, Sandra

Sent: Monday, December 22, 2014 12:43 PM

To: 'Doug Reynolds'; Kathleen Allen; Potts, Jeff; Hartley, Mike; Hart, Rick; Stehlik, Mark; Rich Hoge; Dan Jasper; Jill Renslow

Cc: Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna; Bernhardson, Mark; Kirby, Diann

Subject: RE: MOA Disturbance

WCCO is coming over. Like KARE 11 – they are being hit with a barrage of calls from residents upset about the lack of consequences for the demonstrators. I explained that the charges can come via complaint and that we are looking at the possibility of charging the ringleaders.

Sandra H. Johnson

Bloomington City Attorney
1800 W. Old Shakopee Road
Bloomington, MN 55431
(952) 563-4895

sjohnson@BloomingtonMn.gov

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Bernhardson, Mark

Sent: Mon 12/22/2014 1:50 PM

To: Johnson, Sandra

Cc: Potts, Jeff; Kirby, Diann; Lee, Larry

From: Doug Reynolds [<mailto:doug.reynolds@moa.net>]

Sent: Monday, December 22, 2014 11:09 AM

To: Johnson, Sandra; Kathleen Allen; Potts, Jeff; Hartley, Mike; Hart, Rick; Stehlik, Mark; Rich Hoge; Dan Jasper; Jill Renslow

Cc: Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna; Bernhardson, Mark; Kirby, Diann

Subject: RE: MOA Disturbance

That kiosk employee is correct. I do need to tell you the amount of positive feedback I've heard about the level of restraint the Bloomington Police Department showed. To bring it back to topic I heard BPD leadership stress the importance of being calm, professional, and methodical and I believe the video evidence will clearly show that.

Despite that we were so overwhelmed by the volume of protesters we had to ignore large groups just to try to control even bigger ones. This lack of control could have ended tragically.

I believe BPD and MOA resisted arresting anyone until there was really no choice. There were many opportunities throughout this when we did not arrest because we wanted the protesters to simply listen.

To watch the BPD leaders plan and coordinate resources that came

MOA Disturbance

ernhardson, Mark

nt: Mon 12/22/2014 1:50 PM

: Johnson, Sandra

: Potts, Jeff; Kirby, Diann; Lee, Larry

----- THIS LACK OF CONTROL COULD HAVE ENDED TRAGICALLY. -----

I believe BPD and MOA resisted arresting anyone until there was really no choice. There were many opportunities throughout this when we did not arrest because we wanted the protesters to simply listen.

To watch the BPD leaders plan and coordinate resources that came from as far as Hastings (and possibly even Red Wing) to maintain control was impressive. But it took all of those resources and I believe protests cannot become commonplace at MOA. None of us want

I believe we made it through this with zero injuries. Everytime something like this occurs there is significant likelihood of an officer, a protester, a guest, an employee or any number of others being harmed as chaos erupts. None of us wants that and it's easier to control when protest groups work with CoB and MOA as requested.

Thank you for allowing me to let key CoB leadership read this and I apologize if I vented a bit. It's all still fresh and disconcerting to clearly see how badly it could have gone at a moments notice.

Doug Reynolds

RE: MOA Disturbance

Bernhardson, Mark

Sent: Mon 12/22/2014 1:50 PM

To: Johnson, Sandra

Cc: Potts, Jeff; Kirby, Diann; Lee, Larry

From: Johnson, Sandra

Sent: 12/22/2014 10:39 AM

To: Doug Reynolds; Kathleen Allen; Potts, Jeff; Hartley, Mike; Hart, Rick; Stehlik, Mark; Rich Hoge; Dan Jasper; Jill Renslow

Cc: Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna; Bernhardson, Mark; Kirby, Diann

Subject: RE: MOA Disturbance

Thank you so much. My fear is that if we do not take a strong stance – it's going to happen again. MOA is just too convenient a venue. One of the prosecutor's husband was working at a kiosk near the rotunda. He said it all it needed was a match to explode.

Sandra H. Johnson

Bloomington City Attorney
1800 W. Old Shakopee Road
Bloomington, MN 55431
(952) 563-4895

sjohnson@BloomingtonMn.gov

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RE: MOA Disturbance

Bernhardson, Mark

Sent: Mon 12/22/2014 1:50 PM

To: Johnson, Sandra

Cc: Potts, Jeff; Kirby, Diann; Lee, Larry

From: Doug Reynolds [<mailto:doug.reynolds@moa.net>]

Sent: Monday, December 22, 2014 10:32 AM

To: Johnson, Sandra; Kathleen Allen; Potts, Jeff; Hartley, Mike; Hart, Rick; Stehlik, Mark; Rich Hoge; Dan Jasper; Jill Renslow

Cc: Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna; Bernhardson, Mark; Kirby, Diann

Subject: RE: MOA Disturbance

I have already talked to the top leadership within MOA Security and we plan to dedicate three people to sorting through our own video (CCTV, GoPro, and body camera footage) as well as utilizing social media to identify persons and their roles by postings or statements to the media.

We agree a strong message needs to go to those that were in leaders positions and those clearly inciting the crowd.

Doug R.

I

Sent from my Windows Phone

From: [Johnson, Sandra](#)

Sent: 12/22/2014 10:27 AM

RE: MOA Disturbance

Bernhardson, Mark

Sent: Mon 12/22/2014 1:50 PM

To: Johnson, Sandra

Cc: Potts, Jeff; Kirby, Diann; Lee, Larry

Sent from my Windows Phone

From: Johnson, Sandra

Sent: 12/22/2014 10:27 AM

To: Kathleen Allen; Potts, Jeff; Hartley, Mike; Hart, Rick; Doug Reynolds; Stehlik, Mark; Rich Hoge; Dan Jasper; Jill Renslow

Cc: Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna; Bernhardson, Mark; Kirby, Diann

Subject: RE: MOA Disturbance

Video and still footage from the event is needed.

Sandra H. Johnson

Bloomington City Attorney
1800 W. Old Shakopee Road
Bloomington, MN 55431
(952) 563-4895

sjohnson@BloomingtonMn.gov

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RE: MOA Disturbance

Bernhardson, Mark

Sent: Mon 12/22/2014 1:50 PM

To: Johnson, Sandra

Cc: Potts, Jeff; Kirby, Diann; Lee, Larry

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From: Kathleen Allen [<mailto:kathleen.allen@moa.net>]

Sent: Monday, December 22, 2014 10:26 AM

To: Johnson, Sandra; Potts, Jeff; Hartley, Mike; Hart, Rick; Doug Reynolds; Stehlik, Mark; Rich Hoge; Dan Jasper; Jill Renslow

Cc: Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna; Bernhardson, Mark; Kirby, Diann

Subject: RE: MOA Disturbance

Sandra,

We fully support all efforts by your office to charge the organizers and key leaders with additional criminal charges. As we discussed last week trespass charges are not enough of a deterrent, especially to activists trying to prove a point. Additionally, after review with our owners, we will be looking at the possibility of pursuing civil actions against the key organizers and leaders. We need to have additional deterrents to prevent individuals from disobeying our rules and creating this kind of havoc with our business.

Dan Jasper and our Public Relations Department are currently working on gathering all of intel, interviews, etc. from traditional media and social media. Doug Reynolds and his security team will also be pulling similar information.

RE: MOA Disturbance

Bernhardson, Mark

Sent: Mon 12/22/2014 1:50 PM

To: Johnson, Sandra

Cc: Potts, Jeff; Kirby, Diann; Lee, Larry

not enough of a deterrent, especially to activists trying to prove a point. Additionally, after review with our owners, we will be looking at the possibility of pursuing civil actions against the key organizers and leaders. We need to have additional deterrents to prevent individuals from disobeying our rules and creating this kind of havoc with our business.

Dan Jasper and our Public Relations Department are currently working on gathering all of intel, interviews, etc. from traditional media and social media. Doug Reynolds and his security team will also be pulling similar information. MOA will also be composing a list of all of our costs incurred as a result of this demonstration. We are meeting internally today at 11:00 – please let us know what else you need to support your efforts. We are happy to help.

Thank you again for all your efforts and the efforts of the Bloomington Police Department. It was greatly appreciated and helped ensure the safety of our employees, guests and tenants.

Kathleen

RE: MOA Disturbance

Bernhardson, Mark

Sent: Mon 12/22/2014 1:50 PM

To: Johnson, Sandra

Cc: Potts, Jeff; Kirby, Diann; Lee, Larry

the sender immediately by reply e-mail, delete the message, and destroy any hard copy print-outs.

Thank you.

From: Johnson, Sandra [<mailto:sjohnson@BloomingtonMN.gov>]

Sent: Monday, December 22, 2014 9:32 AM

To: Potts, Jeff; Hartley, Mike; Hart, Rick; Doug Reynolds; Stehlik, Mark

Cc: Kathleen Allen; Glassberg, Erica; Magnuson, Heather; Schneider, Torrie; Cross, Jennifer; Sullivan, Anna; Bernhardson, Mark; Kirby, Diann

Subject: MOA Disturbance

Importance: High

In order to deter future mass disturbances at MOA, I discussed with the prosecutors the possibility of our office charging by criminal complaint the organizers and the 'on the ground' persons inciting this disorder (if we can ID them) under Minn. Stat. Sec. 609.05, subd. 2 (Aiding and Abetting) the following crimes:

Riot in the 3rd degree; 609.74 – Public Nuisance; 609.705 Unlawful Assembly; 609.71, subd. 3 and 609.72 Disorderly conduct. (See attached.)

To do that we need copies of all of their media interviews, their Facebook page, and any footage we can recover from MOA or BPD of their participation in the disturbance.

RE: MOA Disturbance

Bernhardson, Mark

Sent: Mon 12/22/2014 1:50 PM

To: Johnson, Sandra

Cc: Potts, Jeff; Kirby, Diann; Lee, Larry

Assembly; 609.71, subd. 3 and 609.72 Disorderly conduct. (See attached.)

To do that we need copies of all of their media interviews, their Facebook page, and any footage we can recover from MOA or BPD of their participation in the disturbance.

Legal is also willing to consider other prosecutions of persons who were leading the march through the corridors or chants down in the rotunda.

Can BPD assemble the interviews and other evidence? Can MOA assist in getting us what footage and evidence they have?

I would also like an estimate of the cost to the City and the MOA for this event. Although it is unlikely we could collect much, I would like to include a restitution claim in the body of the complaint. (I believe I did this with the 'Fur Protestors').

Our thoughts are that if the organizers have no consequence it is likely another disturbance will occur organized by social media. I watched this event on their Facebook page's videographer's link - great police work kept people safe even though protestors were getting in their faces and calling them names attempting to provoke a reaction. Next time, the protestors may be more violent.

MOA Disturbance

Bernhardson, Mark

Sent: Mon 12/22/2014 1:50 PM

To: Johnson, Sandra

Cc: Potts, Jeff; Kirby, Diann; Lee, Larry

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Sandra H. Johnson

Bloomington City Attorney

1800 W. Old Shakopee Road

Bloomington, MN 55431

(952) 563-4895

sjohnson@BloomingtonMn.gov

I
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Bernhardson, Mark

Sent: Tue 12/23/2014 1:56 PM

To: Johnson, Sandra; **Legal Staff**; Potts, Jeff; 'Doug Reynolds'; Kathleen Allen; Rich Hoge (rich.hoge@moa.net)

Cc: Kirby, Diann

1. Thanks for promptly pulling together !!
2. When finalized in memo form - please send to me and I will be happy to forward to Council

Thanks !! MEB

From: Johnson, Sandra

Sent: Tuesday, December 23, 2014 1:52 PM

To: Legal Staff; Potts, Jeff; 'Doug Reynolds'; Kathleen Allen; Rich Hoge (rich.hoge@moa.net)

Cc: Kirby, Diann; Bernhardson, Mark

Subject: MOA - Summary to City Council

The attached is the summarization I was asked to provide today to the City Council. It pretty much sums things up. Anna will put it in memo form. It is a public document.

I

Sandra H. Johnson

Bloomington City Attorney
1800 W. Old Shakopee Road
Bloomington, MN 55431
(952) 563-4895

sjohnson@BloomingtonMn.gov

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FLAHERTY DECL. EX. A



BLOOM-MOA81

Sullivan, Anna

Sent: Tue 12/23/2014 2:07 PM

To: Bernhardson, Mark; Johnson, Sandra; **Legal Staff**; Potts, Jeff; 'Doug Reynolds'; Kathleen Allen; Rich Hoge (rich.hoge@moa.net)

Cc: Kirby, Diann

 Message  CMI MOA Protest.docx (35 KB)

Here it is in memo form.

Anna K. Sullivan

Office Manager/Paralegal

Bloomington City Attorney's Office

1800 West Old Shakopee Road

Bloomington, MN 55431

(952) 563-8518

   
Happy
  
 **Holidays**

From: Bernhardson, Mark

Sent: Tuesday, December 23, 2014 1:56 PM

To: Johnson, Sandra; Legal Staff; Potts, Jeff; 'Doug Reynolds'; Kathleen Allen; Rich Hoge (rich.hoge@moa.net)

Cc: Kirby, Diann

FLAHERTY DECL. EX. A

BLOOM-MOA82

RE: black lives matter protest

Cross, Jennifer

Sent: Tue 1/6/2015 10:24 AM

To: Johnson, Sandra

Cc: Sullivan, Anna; Magnuson, Heather; Schneider, Torrie

From: Doug Reynolds [<mailto:doug.reynolds@moa.net>]

Sent: Monday, January 05, 2015 4:05 PM

To: Johnson, Sandra

Cc: Kathleen Allen

Subject: FW: black lives matter protest

Ma'am,

Mall of America delivered video images, copies of online content, and a summary of protest related expenses to BPD Detective Heather Jensen at the end of last week. We continue to investigate and will forward any additional findings to Detective Jensen. I wanted to let you know in case your office was waiting for these items from MOA.

We also delivered a backpack to BPD which was recovered from one of the protestors who was arrested at MOA on 12-20-2014. The contents of the backpack suggest this was not a group intent on a peaceful gathering and some were anticipating problems. The items found in the pack include: gasmask with sealed filter, "Anonymous" style mask, section of chain and wrench with a carabiner on one end (clip them together and it's easily a weapon), a bandana the person was wearing to conceal their identity, a spray bottle likely for personal decontamination following use of tear gas or pepper spray, and more - images of the items are attached.

If you have any questions please do not hesitate to ask.

RE: Documenting MOA Protest

Kathleen Allen <kathleen.allen@moa.net>

Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.
You replied to this message on 12/22/2014 5:40 PM.

Sent: Mon 12/22/2014 5:14 PM

To: Johnson, Sandra

Agree – we would defer any civil action depending on how the criminal charges play out. I think there's just a concern that this is our third year in a row – and our efforts this year were ineffective in shutting it down.



KATHLEEN ALLEN

Corporate Counsel

kathleen.allen@moa.net

Phone: 952.883.8815

Mobile: 612.366.7561

60 East Broadway | Bloomington, Minnesota 55425

[Website](#) | [Blog](#) | [Facebook](#) | [Twitter](#)

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From: Johnson, Sandra [<mailto:sjohnson@BloomingtonMN.gov>]

Sent: Monday, December 22, 2014 5:10 PM

To: Kathleen Allen

RE: Documenting MOA Protest

Kathleen Allen <kathleen.allen@moa.net>

Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.
You replied to this message on 12/22/2014 5:40 PM.

Sent: Mon 12/22/2014 5:14 PM

To: Johnson, Sandra

Thank you.

From: Johnson, Sandra [<mailto:sjohnson@BloomingtonMN.gov>]

Sent: Monday, December 22, 2014 5:10 PM

To: Kathleen Allen

Subject: RE: Documenting MOA Protest

I agree that you need to have consequences but MOA may wish to await the criminal charges. It's the prosecution's job to be the enforcer and MOA needs to continue to put on a positive, safe face. The City's prosecution team is taking this very seriously. I do not usually posture in the media, but I want to deter future criminal activity. I will follow WCCO's comments on the future prosecution.

From: Kathleen Allen [kathleen.allen@moa.net]

Sent: Monday, December 22, 2014 5:05 PM

To: Johnson, Sandra

Subject: RE: Documenting MOA Protest

Yes – we understand that and we need to follow the direction of our owners regardless if the management here would like to pursue additional remedies. I wanted to give you the update since there's a lot of conversation going on about that.

The bigger issue for me is pushing them to consider civil action. I'm concerned that if these other charges don't carry greater penalties

RE: Documenting MOA Protest

Kathleen Allen <kathleen.allen@moa.net>

Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.
You replied to this message on 12/22/2014 5:40 PM.

Sent: Mon 12/22/2014 5:14 PM

To: Johnson, Sandra

WCCO's comments on the future prosecution.

From: Kathleen Allen [kathleen.allen@moa.net]

Sent: Monday, December 22, 2014 5:05 PM

To: Johnson, Sandra

Subject: RE: Documenting MOA Protest

Yes – we understand that and we need to follow the direction of our owners regardless if the management here would like to pursue additional remedies. I wanted to give you the update since there's a lot of conversation going on about that.

The bigger issue for me is pushing them to consider civil action. I'm concerned that if these other charges don't carry greater penalties than a trespass charge, we'll be in the same position as last year.



KATHLEEN ALLEN

Corporate Counsel

kathleen.allen@moa.net

Phone: 952.883.8815

Mobile: 612.366.7561

16200 Grand Avenue, Suite 1000, Bloomington, MN 55425

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RE: Documenting MOA Protest

Kathleen Allen <kathleen.allen@moa.net>

Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.
You replied to this message on 12/22/2014 5:40 PM.

Sent: Mon 12/22/2014 5:14 PM

To: Johnson, Sandra

Thank you.

From: Johnson, Sandra [<mailto:sjohnson@BloomingtonMN.gov>]

Sent: Monday, December 22, 2014 5:01 PM

To: Kathleen Allen

Subject: RE: Documenting MOA Protest

MOA can and should make its own decisions on the trespass. The other charges are more serious but carry the same maximum penalties. The actual sentencing should there be convictions are likely to be higher.

From: Kathleen Allen [kathleen.allen@moa.net]

Sent: Monday, December 22, 2014 4:57 PM

To: Johnson, Sandra

Subject: RE: Documenting MOA Protest

Hi Sandra,

Just as an FYI, we are having additional discussions with our owners tomorrow, but they are not on board with trespassing the LUSH employees. We will be sending LUSH a warning/reprimand letter in accordance with their Lease, but they want to eliminate the potential for further press on this matter.

RE: Documenting MOA Protest

Kathleen Allen <kathleen.allen@moa.net>

Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.
You replied to this message on 12/22/2014 5:40 PM.

Sent: Mon 12/22/2014 5:14 PM

To: Johnson, Sandra

employees. We will be sending LISA a warning/reprimand letter in accordance with their Lease, but they want to eliminate the potential for further press on this matter.

They're also hesitant about going down the path of pursuing civil actions. If the City pursues these escalated/additional charges against the organizers/leaders of BLM, what are the penalties associated with those charges? I'd like to understand how they differ (and are more severe) than those for trespass.

Thanks,

Kathleen



KATHLEEN ALLEN

Corporate Counsel

kathleen.allen@moa.net

Phone: 952.883.8815

Mobile: 612.366.7561

60 East Broadway | Bloomington, Minnesota 55425

Website | Blog | Facebook | Twitter

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RE: Documenting MOA Protest

Kathleen Allen <kathleen.allen@moa.net>

- Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015. You replied to this message on 12/22/2014 5:40 PM.

Sent: Mon 12/22/2014 5:14 PM

To: Johnson, Sandra

print-outs.

Thank you.

From: Johnson, Sandra [<mailto:sjohnson@BloomingtonMN.gov>]

Sent: Monday, December 22, 2014 3:42 PM

To: Doug Reynolds; Kathleen Allen

Cc: Potts, Jeff; Hartley, Mike

Subject: RE: Documenting MOA Protest

Mica Grimm, Nick Espinosa, Michael McDowell and Kandace Montgomery all reference the event on their Facebook pages, which appear to have no privacy guards on them.

Sandra H. Johnson

Bloomington City Attorney
1800 W. Old Shakopee Road
Bloomington, MN 55431
(952) 563-4895

sjohnson@BloomingtonMn.gov

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RE: Documenting MOA Protest

Kathleen Allen <kathleen.allen@moa.net>

- Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.
You replied to this message on 12/22/2014 5:40 PM.

Sent: Mon 12/22/2014 5:14 PM

To: Johnson, Sandra

From: Doug Reynolds [mailto:doug.reynolds@moa.net]

Sent: Monday, December 22, 2014 3:38 PM

To: Johnson, Sandra; Kathleen Allen

Cc: Potts, Jeff; Hartley, Mike

Subject: RE: Documenting MOA Protest

Understood. We've been doing screen grabs of key messages to document the event. I'll let MOA know to do another look at the sites.

Doug R.

Sent from my Windows Phone

From: Johnson, Sandra

Sent: 12/22/2014 3:32 PM

To: Kathleen Allen; Doug Reynolds

Cc: Potts, Jeff; Hartley, Mike

Subject: Documenting MOA Protest

You are probably doing this already – but please document all the social media and video feeds. FLAHERTY DECL. EX. A BLOOM-MOA90

RE: Documenting MOA Protest

Kathleen Allen <kathleen.allen@moa.net>

- Follow up. Start by Friday, March 06, 2015. Due by Friday, March 06, 2015.
You replied to this message on 12/22/2014 5:40 PM.

Sent: Mon 12/22/2014 5:14 PM

To: Johnson, Sandra

From: Johnson, Sandra

Sent: 12/22/2014 3:32 PM

To: Kathleen Allen; Doug Reynolds

Cc: Potts, Jeff; Hartley, Mike

Subject: Documenting MOA Protest

You are probably doing this already – but please document all the social media and video feeds on social media concerning the event. The groups are very likely to take these sites down when they hear that we intend to prosecute them. That is likely to air tonight.

My office cannot do that – it would require us to be witnesses in our own prosecutions.

Sandra H. Johnson

Bloomington City Attorney
1800 W. Old Shakopee Road
Bloomington, MN 55431
(952) 563-4895

sjohnson@BloomingtonMn.gov

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Attorney's office that is **FLAHERTY DECL. EX. A** confidential and if sent BLOOM-MOA91

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

**STATE'S MEMORANDUM IN SUPPORT
OF MOTIONS IN LIMINE**

vs.

District Court File. No. 27-CR-15-3146

Anthony John Nocella,

Defendant.

STATEMENT OF FACTS

On or about December 9, 2014, Bloomington police learned that a group identifying itself as "Black Lives Matter" ("BLM") was organizing a large scale, unauthorized demonstration to be held at the Mall of America ("MOA") on December 20, 2014. The movement never sought approval to hold an event on MOA property. On December 12, 2014, MOA management sent correspondence to the self-identified organizers of the demonstration, advising them that the MOA is a private commercial retail center that prohibits all forms of protest, demonstration, and public debate on its premises. (Exh. #1). The letter notified the group that their planned demonstration would be a violation of MOA policies and would subject the group to removal from mall property and potential arrest by the Bloomington police.

On December 20, 2014 between 1:45 and 2:00 p.m., an estimated 1,000-1,500 people gathered at the main rotunda of the MOA. All entrances to the MOA contained a warning that the MOA was private property and that demonstrations and protests were strictly prohibited. (Exh. #2). MOA management also announced to the assembling crowd at 2:03 p.m., via the public address

system, that their event was unauthorized and ordered all participants to leave the building. At 2:10 p.m. MOA management posted the same warning on the audio visual screen in the rotunda. (Exh. #3). MOA management gave additional audible orders to leave at 2:19 p.m. and 2:30 p.m. Each time this order was given, the crowd vehemently objected and became demonstrably louder. After about 30 minutes of chanting, police attempted to disperse the protestors. As officers were moving protestors out of the second floor east doors and into the parking ramp, Bloomington Police Deputy Chief Hartley made a final request for several protestors to leave. Mall management had previously made at least three requests to leave and Bloomington police had also made several requests. Deputy Chief Hartley informed a group of remaining protestors that they would be arrested for trespassing if they did not leave. After Deputy Chief Hartley gave the final warning, those who still refused to leave were arrested. One of the individuals who was arrested for refusing to leave was identified as Anthony John Nocella, the defendant herein. Defendant was charged with trespassing, in violation of Minn. Stat. §609.605, subd. 1(b)(3).

ARGUMENT

Defendant Should Be Prohibited From Making Arguments That Are In Contravention Of Established Law.

A. State v. Wicklund

In 1999, the Minnesota Supreme Court specifically ruled that the MOA was private property and did not constitute a “public forum” for the purpose of the free speech protections under either the United States or the Minnesota Constitutions. *Wicklund*, 589 N.W.2d 793. The touchstone of the opinion was that constitutional protections guarantee the right of free speech against abridgement by the government, not by private entities. *See Hudgens v. NLRB*, 424 U.S. 507, 513 (1976). State action is required before a constitutional violation can be found. *See Brennan v.*

Minneapolis Society for the Blind, Inc., 282 N.W.2d 515, 525 (Minn. 1979).¹ Thus, without “state action” behind an abridgement of free expression, there is no constitutional violation. *Id.* In other words, constitutions are not capable of being used as a sword by one private party against another private party.

In support of its “public forum” argument, the defense in *Wicklund* argued that the MOA was a “fully controlled enclosed environment” that should be considered the functional equivalent of a company-owned town, as found in *Marsh v. Alabama*, 326 U.S. 501 (1946).² In analyzing this issue, the *Wicklund* Court correctly cited *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972), wherein the U.S. Supreme Court rejected the argument that a shopping mall was the equivalent of a company town. The Court in *Lloyd Corp.* held that the Constitution did not require such an attenuated doctrine of dedication of private property to public use and that property does not lose its private character merely because the public is generally invited to use it for designated purposes. *Id.* at 568-69. The Court in *Wicklund* held:

The clear state of the law then is that property is not somehow converted from private to public for free speech purposes because it is openly accessible to the public. Appellants’ argument that the MOA is a ‘fully controlled enclosed environment’ like the company town in *Marsh* was rejected in *Lloyd*. It is now beyond debate that under the circumstance here, appellants’ speech is not protected under the First Amendment.

589 N.W.2d at 798.

¹ State action may be found either where a sufficiently close nexus exists between the state and the challenged activity or where there is a symbiotic or interdependent relationship between the state and the private entity. See *Brennan*, 282 N.W.2d at 525-26. “A symbiotic relationship between a private entity and the state exists when the state has ‘so far insinuated itself into a position of interdependence with [the private entity] that it must be recognized as a joint participant in the challenged activity.’” *In re Molnar*, 720 N.W.2d 604, 613 (Minn. App. 2006) (citing *Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 725 (1961)).

² The *Marsh* holding was briefly expanded to cover shopping malls by *Amalgamated Food Employees Union, Local 590 v. Logan Valley Plaza*, 391 U.S. 308 (1968), abrogated by *Hudgens*, 424 U.S. at 520-21.

The Minnesota Supreme Court further declined to interpret our state constitutional free speech protection more broadly than its federal counterpart, finding that “[t]here is no historical basis for making such a distinction nor do we consider in today’s balance of free speech versus property rights that free speech should have any more exalted a position than is accorded it under the Federal Constitution.” *Id.* at 801.

The *Wicklund* Court also analyzed the defense’s argument that the MOA should be considered a “state actor” because of its public financing and because of the “public nature” of the mall’s interior. The Court noted the high standard for finding such a transformation, namely that the “power, property and prestige” of the state is behind the discriminatory conduct.³ *Id.* at 802. Quoting the Court of Appeals in *State v. Wicklund*, 576 N.W.2d 753, 758 (Minn. App. 1998), the Court found:

We are aware also of the uncertainties created by the trial court’s application of free speech rights to an undetermined class of properties that are privately owned, but publicly-funded, at least in part. *If the “state action” requirement is discarded, it is difficult to formulate a principled line between those privately-owned locations in which constitutional free speech guarantees should apply and those where they should not.*

Id. (emphasis in original).

In the end, the Court found no entanglement between any governmental function and MOA management stating, “[t]he lack of evidence connecting the ‘power, property and prestige’ of the State of Minnesota or the City of Bloomington with the actions of MOA management compellingly persuades us that there is neither sufficient nexus nor symbiosis to establish that the MOA is the alter ego of a governmental entity.” *Id.* The Court also found that the invitation to the public to shop and be entertained at the MOA was only a license that may be revoked and that this license

³ Extensive regulation of a private business is also insufficient to transform private conduct into state action. *Molnar*, 720 N.W.2d at 611 (upholding Canterbury Park’s right to exclude the defendant from its card club).

was insufficient to transform privately-owned property into public property for purposes of state action.⁴ *Id.*

The *Wicklund* case is on all fours with the instant case and has not been modified or distinguished by the Minnesota Supreme Court in the intervening years. Hence, the essential question becomes whether or not the MOA has, in the intervening sixteen years, made changes to its ownership or operations so as to intertwine the “power, property and prestige” of the state or city with the actions of its management, thereby forming a partnership with government sufficient to transform its private actions in managing and operating that facility into state action under the law.

When the *Wicklund* defendants were charged with trespassing, they moved to dismiss the charges against them arguing that they had a “claim of right” to remain on the private property over the objections of its owners under the state and federal constitutions. They based their argument on the following allegations:

1. That the MOA openly invites members of the public to its premises;
2. That the MOA allows large, private events to be held on its premises;
3. That public funding was involved in the development of the MOA;
4. That enclosed malls constitute the functional equivalent of the town square.

Substantial evidence was presented by both the state and defense counsel on the defendants’ motion to dismiss the charges on constitutional grounds over a two-day hearing. The evidence included the fact that private events at the MOA were only allowed through a permit process, administered through its event department and subject to a number of rules and conditions. These rules and conditions required that the organizer fill out an application, work with the MOA to

⁴ Not only is the MOA’s invitation to the public a license that can be revoked, it is a limited license that includes restrictions on the hours of access, rules of conduct, juvenile access, proper attire, and non-public areas. These rules prohibit a number of non-criminal actions for the avowed purpose of maximizing the safety, convenience, and enjoyment of its guests.

manage the event to avoid congestion, safety, security risks, or impediments to retail sales and obtain insurance for the event. The *Wicklund* Court noted the following facts in evidence as significant in its decision upholding the “private property” status of the MOA:

1. The MOA is the largest shopping mall in the United States encompassing 4.2 million square feet and attracting 37.5 million visitors annually;
2. Its tenants include department stores, 400 retail stores, movie theaters, entertainment venues, the nation’s largest indoor amusement park, a wedding chapel, a post office, a police substation, and an alternative school;
3. It sponsors promotional events aimed at attracting specific groups of consumers, such as senior citizens and families;
4. Public financing contributed 21% of the total cost for the MOA development;
5. The MOA employs 150 full-time security guards to patrol its common areas and assist in individual stores as requested and their duties include enforcing the property’s code of conduct for patrons that prohibits unauthorized petitioning, hand-billing, and picketing;
6. Those wishing to use the common areas of the mall, including MOA tenants, must apply to the management office for permission;
7. The police substation did not have assigned staff;
8. The MOA also hires off-duty police officers to provide contractual police services, a service available to any private entity in the City.

In the intervening sixteen years, few facts have changed:

1. The MOA has expanded since 1999, adding the Radisson Blu hotel in 2012 and is currently constructing an expansion that will include a JW Marriott hotel, an office tower, and expanded retail. Hence, it is larger and attracts more visitors, currently estimated at 42 million per year;
2. It still offers a mix of retail and entertainment venues, including the amusement park, aquarium, movie theaters, flight simulator, House of Comedy, dozens of restaurants, and a wedding chapel;
3. The MOA still hosts a wide variety of private events, including charitable promotions such as the “Clouds” Choir for a Cause that was part of the KS95 Kids Radiothon to benefit the Children’s Cancer Research Fund and Gillette Children’s Hospital, which occurred in 2013 and 2014 (Exh. #4);
4. The Master Redevelopment Contract between the MOA, the city of Bloomington and Bloomington Port Authority limits the public investment ratio (Exhs. #5 and #6). In

Wicklund, public financing contributed 21% of the total cost for the MOA development. Currently, public financing contributes between 8–10% of the total cost of new developments. (The public financing ratio for the Radisson Blu is approximately 13% and the ratio for the Phase IC expansion is approximately 14% (Ex. #7));

5. The MOA still employs over 150 security guards with essentially the same duties as in 1999;
6. The MOA still requires private events to meet their criteria on the types of events allowed, subject to several rules and conditions, including that the host of the event provide insurance and pay for the cost of the event, including contractual police overtime. The MOA continues to prohibit unauthorized private use of its common areas and prohibits protests and demonstrations (Ex. #8);
7. The police substation now includes between two and six assigned police officers, depending on estimated visitor volumes;
8. The MOA continues to hire Bloomington police officers for contractual police services on the same basis as any other private entity in the city (Ex. #9).

Hence, there has been no substantial change in the MOA's operation or management relevant to the issues at hand. Although there has been a change related to the staffing of the police substation, this decision was made by the City, not the MOA. The main purpose of this change was to improve the efficiency of its police operations by reducing response time to calls for service.⁵ Significantly, the Court in *Wicklund* noted that this type of circumstance would not have altered their decision. *Wicklund*, 589 N.W.2d at 802 n. 8. Specifically, in support of their state action argument, the defendants cited to a Colorado Supreme Court decision where the Court found state action for purposes of the free speech protections offered by the Colorado Constitution, based in part on the fact that local police patrolled the mall during business hours. *Bock v. Westminster Mall Co.*, 819 P.2d 55, 62-63 (Colo. 1991). The *Wicklund* Court declined to adopt the holding in *Bock*, noting that under our state constitution, the circumstances presented in *Bock* would not rise to the level of

⁵ One of the primary focuses of the officers is to work with business owners on crime prevention by educating and training on ways to prevent theft and enhance communication. This allows officers to get to know merchants and form partnerships in an attempt to reduce crime. Also, by having a highly visible police storefront, this encourages guests to contact police with questions of to report criminal activity. The storefront office is located on the second level of the MOA, near the east entrance, and is staffed only during retail hours.

“power, property and prestige” necessary to implicate state actin. *Wicklund*, 589 N.W.2d at 802 n.8.

It is also important to note that even when property is publicly owned, which the MOA is not, reasonable time, place, and manner restrictions can be imposed on free speech and under no circumstances are demonstrators entitled to the best possible forum. *See United States v. Kokinda*, 479 U.S. 3115 (1990). There are many public fora in the metropolitan area, including the state capitol, college and university commons, public parks and sidewalks. Many groups seeking to make their viewpoints known to the public use the media in an extremely effective manner, including using social media sites and the Internet.

In conclusion, the *Wicklund* decision declaring the MOA to be private property and not a “public forum” continues to be good law and Defendant should be prohibited from arguing to the contrary. Nothing in the intervening sixteen years has altered or diminished the viability of that decision. The planned demonstration at issue was not authorized by the owner of the MOA. The undisputed facts of this case leave no doubt that Defendant was on notice of this fact. Any argument or reference to the MOA being a “public forum” or public property would be unduly misleading to a jury and, therefore, must be excluded from trial in this case.

B. *State v. Brechon* – Understanding Claim of Right

Defendant is charged with violating Minn. Stat. §609.605, subd. 1(b) (3), which states that it is unlawful for an individual to intentionally trespass “on the premises of another and, without claim of right, refuse to depart from the premises on demand of the lawful possessor.” Trespassing laws were enacted to protect the rights of property owners. “[O]ne of the essential sticks in the bundle of property rights is the right to exclude others.” *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 82 (1980).

The phrase “without claim of right” was added to the trespassing statute in 1963 to protect innocent trespassers from criminal prosecution. *See State v. Quinnell*, 277 Minn. 63, 151 N.W.2d 598 (1967). The claim of right provision, however, is finite in its application. The Advisory Committee Comments to the statute explain that the phrase “claim of right” was intended to cover only bona fide claims of right, not false claims. “Claim of right” exists to protect persons who have a good-faith belief, though mistaken, that they have a property right to enter the property of another. *State v. Hoyt*, 304 N.W.2d., 884, 891 (Minn. 1981) (stating that the legislature could not have intended to punish a person who committed the act of trespass while holding “the bona fide belief that the land is the property of the trespasser”) (quoting 75 Am. Jur. 2d Trespass § 87 (1974)).

In 1984, the Minnesota Supreme Court analyzed “claim of right” in the context of criminal trespassing. *State v. Brechon*, 352 N.W.2d 745 (Minn. 1984). In what has become the pivotal case addressing the trespass statute, the Court properly defined a bona fide claim of right within the confines of property interests—the very interests that the trespass statute exists to protect. The Court noted that the type of evidence that the prosecution would typically use to infer that a defendant had no claim of right would be “in the realm of property law.” *Id.* at 750. The Court gave examples of the types of evidence that would be appropriate to offer for purposes of proving or disproving claim of right: title, right of possession, and permission.⁶ *Id.*

The Court also addressed whether “claim of right” was an affirmative defense or an element of the offense that the State needed to prove beyond a reasonable doubt. *Id.* The Court concluded that “without claim of right” was an essential element of the offense and that “the state must present evidence from which it is reasonable to infer that the defendant has no legal claim of right to be on

⁶ *See* Minn. Crim. JIG 17.22 comments where “claim of right” is defined as: “[1] a bona fide claim by the defendant of title to or ownership of the premises; or [2] a bona fide claim by the defendant or expression of limited permission given the defendant by the lawful possessor of the premises, or someone authorized by the lawful possessor to give such permission; or [3] a bona fide claim by the defendant that permission is given to the defendant to be upon the premises by a statute, rule, or regulation duly promulgated by a federal or state agency.”

the premises where the trespass is alleged to have occurred.” *Id.* Once the State presents evidence that the defendant has no claim of right, “the burden then shifts to the defendant who may offer evidence of his **reasonable** belief that he has a property right, such as that of an owner, tenant, lessee, licensee or invitee.” *Id.* (emphasis added). Notably, the Court held that “[s]ubjective reasons not related to a claimed property right or permission are irrelevant and immaterial to the issue of claim of right.” *Id.*

For an in-depth analysis of what constitutes a bona fide claim of right, the Court in *Brechon* looked to other jurisdictions that similarly defined “claim of right” as a defendant’s reasonable belief in a right to enter the property. In those jurisdictions, the courts limited “claim of right” arguments to property-related reasons and dismissed attempts by defendants to avoid convictions for trespass on the grounds that they believed so deeply in a cause that they had a “right” to be there. For example, in *People v. Tuchinsky*, 419 N.Y.S.2d 843, 844 (N.Y. Dist. Ct. 1979), the Court upheld the defendant’s trespass conviction, stating that one “does not acquire immunity from prosecution for trespass by closing one’s eyes to reality and stubbornly asserting an ‘honest belief’ to remain where one is not privileged to be.”

Similarly, the Court of Appeals for the District of Columbia upheld the convictions of abortion protestors who trespassed at an abortion clinic. *Gaetano v. U.S.*, 406 A.2d 1291 (D.C. 1979). While the protestors argued that they did not have the requisite intent necessary to be convicted of trespass because they reasonably believed they had a right to enter the clinic, the Court of Appeals disagreed:

The clear rule of law . . . is that a reasonable belief in an individual’s right to remain on property not owned or possessed by that individual must be based in the pure indicia of innocence. There must be some evidence that, for example, the individual had no reason to know that he was trespassing on the rights of others. Perhaps the individual could reasonably believe that he had title or a possessory interest in the land, or that the land was publicly owned. Perhaps he could believe

that he was invited onto the land. The “bona fide belief” defense was not meant to, and does not exonerate individuals who believe they have a right, or even a duty, to violate the law in order to affect a moral, social, or political purpose, regardless of the genuineness of the belief or the popularity of the purpose.

Id. at 1294.

The same Court also upheld the conviction of an individual who refused to leave White House grounds after closing time. *Leiss v. U.S.*, 364 A.2d 803, 804 (D.C. 1979). The *Leiss* Court rejected the defendant’s argument that he had a bona fide claim of right to be on the property to read a statement protesting the government’s policy in Asia by reading from the Paris Peace Accords. The Court stated:

Appellant’s real defense seems to be not that he was innocent of any intent to violate the law, but rather that the self-ordained sincerity and substance of his convictions placed him above the law. Whatever the source of inspiration for appellant’s intentional transgression of a valid statute, it does not immunize him from the consequences of his act. Under our system of justice, the depth or character of an individual’s political beliefs can have no bearing upon either his obligation to adhere to the law or the courts’ duty of impartial adjudication.

Id. at 809.

Other courts have also limited the bona fide belief concept to a belief by the defendant that he or she possessed property rights. *See State v. Batten*, 20 Wash. App. 77, 79-80, 578 P.2d 896, 897 (Wash. Ct. App. 1978); *Hayes v. State*, 13 Ga. App. 647, 79 S.E. 761 (1913); *State v. Cobb*, 262 N.C. 262, 136 S.E.2d 674 (1964). These courts remained unwavering in their proper application of the law, even when met by defendants with strongly held beliefs that were not property-related. These courts have also properly refused to expand “claim of right” beyond the concept of property rights from which trespassing statutes arise, as should this Court.

The State recognizes that the Court cannot grant a motion in limine which would completely remove the issue of claim of right from the jury and that defendants have a fundamental due process right to explain their conduct to a jury. *Brechon*, 352 N.W.2d at 750-51. But a motion in limine to limit “claim of right” testimony from the defense is appropriate where such testimony would be irrelevant.⁷ *Id.* at 751. The Court may also rule that “no expert testimony or objective proof may be admitted.” *Id.* Finally, the Court “should instruct the jury to disregard defendant’s subjective motives in determining the issue of intent.” *Id.* These limitations are appropriate because Defendant does not have the unfettered right to make any argument he deems fit regardless of how tenuous the claim may be.

In considering what limitations are appropriate, the Court should be aware that there are significant consequences in allowing the sincerity of one’s belief, whatever it may be, to substitute for a mistaken belief as to property rights. The most significant consequence is the erosion of the right of a property owner to exclude an individual from that owner’s private property, as the right no longer applies to any person, so long as she strongly believes she has a right to remain on the private property of another, regardless of the wishes of the property owner. If non-property related justifications are allowed to excuse criminal behavior, the right of exclusion inherent in property rights would be crippled and the enforceability of the trespass statute rendered impossible. As the Minnesota Supreme Court indicated, and as other courts have more fervently stated, “claim of right” cannot be allowed to excuse from criminal responsibility those who refuse to leave the property of another because they strongly believe that their reason for being there trumps the rights of the property owner. *Brechon*, 352 N.W.2d at 749-51.

⁷ Although a defendant's constitutional right to give testimony regarding his intent and motivation is very broad, it is “not without limitation. . . and must be balanced against interests served by imposing strict relevancy requirements on the defendant's testimony.” *State v. Buchanan*, 431 N.W.2d 542, 550 (Minn.1988).

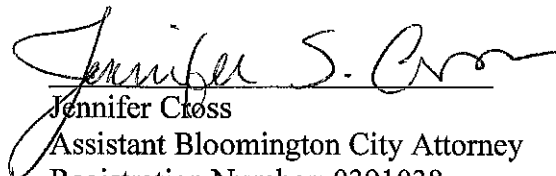
The Court should follow the wisdom set forth above, acknowledging from the outset that “the depth or character of an individual’s political beliefs can have no bearing upon either his obligation to adhere to the law or the courts’ duty of impartial adjudication.” *Leiss v. U.S.*, 364 A.2d at 809. The Court should not allow Defendant to argue “claim of right” under any basis previously rejected by the Minnesota Supreme Court in *Wicklund*. The Court should also not allow Defendant to ignore the proper scope of “claim of right,” which is confined to property interests, as so clearly set forth by the Court in *Brechon* and by other courts examining the same or similar concepts.

CONCLUSION

Based upon the foregoing, the State respectfully requests this Court prohibit Defendant from proffering any arguments contrary to *State v. Wicklund* and *State v. Brechon*.

Respectfully submitted,

Dated: 6/19/15


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STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Tony Webster,

Plaintiff,

v.

The City of Bloomington,

Defendant.

Case Type: Other Civil
Court File No.: _____
Judge: _____

COMPLAINT

Plaintiff Tony Webster (“Webster”), for his complaint against Defendant City of Bloomington (“City”) alleges as follows:

Introduction

Webster asks the Court to require the City of Bloomington to comply with the Minnesota Government Data Practices Act (“Act”). On December 23, 2014, Webster requested access to inspect data collected or maintained by the City pertaining to a protest organized by the group Black Lives Matter Minneapolis that occurred at the Mall of America in Bloomington, Minnesota and attracted significant national media attention. Webster asked to inspect responsive data in its original form, specifying that his request was for news gathering and research. The City (1) improperly delayed gathering responsive data, (2) provided Webster incomplete access to only a fraction of the responsive data, (3) refused Webster access to inspect most of the responsive electronic data maintained in its original form, and (4) on information and belief, withheld,

concealed, and destroyed responsive data without disclosing that it was doing so, nor providing any legal basis for doing so. The City attempted to intimidate Webster and discourage him from exercising his rights under the Act by presenting false and misleading legal justification to deny him access, by improperly researching Webster's online social media accounts and voter registration data to tailor its response to his request, by assigning a uniformed police officer to watch over Webster during an inspection, and by making false and accusatory comments about Webster in the press. The City now refuses to allow Webster access to inspect any data. The City has flipped the statutory presumption of public access to government data, and improperly demanded that Webster prove his right to access public data. Webster respectfully asks the Court to enjoin the City's further violations and award damages and other relief allowed under the Act.

Parties

1. Plaintiff Tony Webster is a natural person who resides in the City of Minneapolis, Hennepin County, Minnesota.
2. Defendant City of Bloomington is a municipal corporation located in Hennepin County, Minnesota.

Jurisdiction and Venue

3. This action arises under the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, *et seq.* This Court's subject matter jurisdiction over actions to compel compliance with the Act is conferred by statute. Minn. Stat. § 13.08, subd. 4(a).
4. The City is a government entity, subject to the Act's requirements. Minn. Stat. § 13.02, subs. 7a and 11.

5. This Court has personal jurisdiction over the City because it is located within Hennepin County.

6. Venue is proper because the facts giving rise to Webster's claims in this case occurred in Hennepin County; the City is located in Hennepin County; and Webster resides in Hennepin County. Minn. Stat. §§ 542.09 and 13.08, subd. 3.

The Minnesota Government Data Practices Act

7. The Minnesota Government Data Practices Act is Minnesota's freedom of information law, which requires that the City provide the public with access to inspect all "data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use." Minn. Stat. § 13.03, subd. 1.

8. The Act requires the City to "keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use." Minn. Stat. § 13.03, subd. 1.

9. The Act provides that a person seeking access shall be permitted "to inspect *and* copy public government data. . . ." Minn. Stat. § 13.03, subd. 3(a). (emphasis added)

10. The Act forbids a government entity from charging for access to inspect data, except under a "specific statutory grant of authority" or if "the data or the access is enhanced at the request of the person seeking access." Minn. Stat. § 13.03, subd. 3(b).

11. Upon request, the person seeking access shall be informed of the data's meaning. Minn. Stat. § 13.03, subd. 1.

12. The Act provides several non-exclusive illustrations of permissible access for inspection. Paper and similar types of government data may be inspected visually. For data “stored in electronic form and made available in electronic form on a remote access basis to the public by the government entity, inspection includes remote access to the data by the public and the ability to print copies of or download the data on the public's own computer equipment.” Minn. Stat. § 13.03, subd. 3.

13. The Act “establishes a presumption that government data are public and are accessible by the public for both inspection and copying unless there is federal law, a state statute, or a temporary classification of data that provides that certain data are not public.” Minn. Stat. § 13.01, subd. 3.

14. If a government entity “determines that the requested data is classified so as to deny the requesting person access, the responsible authority or designee shall inform the requesting person . . . and shall cite the specific statutory section, temporary classification, or specific provision of federal law on which the determination is based. Upon the request of any person denied access to data, the responsible authority or designee shall certify in writing that the request has been denied and cite the specific statutory section, temporary classification, or specific provision of federal law upon which the denial was based.” Minn. Stat. § 13.03, subd. 3(f).

15. A court’s determination of a government entity’s obligations under the Act should be expedited and public. Minn. Stat. § 13.08, subd. 4.

Webster's Use of Government Data

16. Webster is a software engineer and an active member of a growing national movement advocating for open data and more transparency in government. He regularly makes requests for government data under state and federal statutes.

17. Webster uses the data gathered from government entities to benefit the public. For example, Webster has created web applications that send job listings to war veterans¹ and alerts to a towed vehicle's owner about the towing and the location of their vehicle, using government data.² His interest in government data is also journalistic. Among other things, he once published restaurant health-code violation information available for online searching.³ On another occasion, he used a data request to highlight the dangerous level of detail in government automated license-plate recognition system data that could be used, for example, to track victims of domestic abuse.⁴ Webster also

¹ "Startup DC to entrepreneurs: Don't just network, do something," The Washington Post, Feb. 1, 2015 (available at http://www.washingtonpost.com/business/on-small-business/startup-dc-to-entrepreneurs-dont-just-network-do-something/2012/02/01/gIQAwfDhiQ_story.html) (last visited June 14, 2015).

² "A warrior for open data," Southwest Journal, Sept. 4, 2013 (available at <http://www.southwestjournal.com/news/news/a-warrior-for-open-data>) (last visited June 14, 2015).

³ *Id.*

⁴ "MPD's license plate data allows stalkers to track their victims using public data," Citypages, Dec. 11, 2012 (available at http://blogs.citypages.com/blotter/2012/12/mpds_license_plate_data_allows_stalkers_to_track_their_victims_using_public_data.php) (last visited June 14, 2015).

regularly engages in public discussion and debate about the benefits of public access to government data, and spoke at a University of Minnesota panel on the subject.⁵

Mall of America Protest

18. On December 20, 2014, a large number of protestors assembled within the Mall of America, located in Bloomington, Minnesota (the “Protest”).

19. On information and belief, the Protest was coordinated by the group Black Lives Matter Minneapolis to bring attention to issues of racial equality in the criminal justice system and police violence directed toward people of color in America.

20. The City sent a large number of Bloomington Police, Hennepin County Deputy Sheriffs, and members of other law enforcement agencies to disperse the Protest and arrest or cite the protestors.

21. This Protest as well as the police response garnered significant media attention and was reported in the Star Tribune, the Pioneer Press, the New York Times, CNN, Minnesota Public Radio, local television stations, as well as social media.

Webster’s Data Request

22. The Black Lives Matter Protest was the principal subject matter of Webster’s Request.

23. On December 23, 2014, Webster sent the City a data request pursuant to the Act (“Request”). *Exhibit A*.

⁵ “Conversation Among Crafts: Public Records Access/FOIA,” University of Minnesota, Minnesota Journalism Center, Sep. 7, 2013 (*available at* <http://mjc.umn.edu/events/ConversationSeries.html>) (last visited June 14, 2015).

24. The Request was directed to the City's statutory responsible authority.

25. The City's responsible authority received Webster's Request on December 23, 2014.

26. Webster's Request included detailed specific and tailored categories of data that Webster wished to inspect and requested access "in its original form" and he specified that the City should provide for inspection of all data, "regardless of its physical form, storage media or condition of use."

27. Webster's Request specifically directed the City to reference by citation to the Act any grounds for withholding responsive data.

28. Webster's Request was submitted as a standing request, for all responsive data up through July 15, 2015.

29. Webster's Request asked the City to preserve and retain responsive data until he was allowed an inspection of such data.

The City's Response

30. The City responded to Webster's Request by providing limited access to a small portion of the responsive data but refusing to allow inspection and copying of a large portion of the responsive data, including without limitation, metadata that provides information essential to understanding the data maintained by the City.

31. The City also attempted to intimidate Webster by improperly accessing his voter records, making false statements about Webster in the press, and by making false and misleading legal justifications for denying Webster access to the requested data.

A. The City's Delay and Destruction of Data

32. Webster made his Request on December 23, 2014. On information and belief, the City made little or no effort to gather or preserve responsive data from all City departments until January 28, 2015.

33. The City exchanged internal emails about Webster and Webster's Request on December 23, 2014, but it was not until January 28, 2015, that Anna Sullivan, the Office Manager for the Bloomington City Attorney's Office, asked City Clerk Janet Lewis via email to "send out an e-mail to the departments inquiring whether they have any data pertaining to the 'Black Lives Matter' protest at the Mall of America" with regard to Webster's Request. *Exhibit B*.

34. It was not until February 9, 2015, that City Clerk Lewis sent an email to the heads of all City departments regarding Webster's Request, stating, "Please indicate whether or not your department has any responsive data regarding the Black Lives Matter protest . . ." *Exhibit C*.

35. On information and belief, this delay resulted in the loss of responsive data. For example, Request 6 asked for voicemails for a certain telephone number, including "voicemails saved or in a pending deletion state at the number . . ." Most voicemail systems permanently delete voicemails in the pending deletion state after a short period of time, so it is likely that responsive voicemails were deleted while the City delayed responding to Webster's Request.

36. On information and belief, emails and other data responsive to Webster's Request, but not flagged for retention before January 28, 2015, were improperly deleted by the City.

37. On information and belief, the City did not collect responsive data from all City employees in possession of responsive data.

38. The City has consistently treated Webster's Request as suspect, based on what the City believes motivated it.

39. Before responding to the Request, the City first investigated whether Webster was a registered voter, determined his occupation, and examined his social media profiles. On information and belief, the City formed its belief about what motivates Webster's Request upon information gleaned from these improper probes into Webster's background.

40. There is no provision of the Act that allows a government entity to tailor its response to a data request based on the requestor's motivation or beliefs.

41. The Act makes no requirement that a person making a request for public data under the Act be a citizen, a registered voter, or have any particular motivation or purpose for making the request.

42. Therefore, there could be no legitimate reason for the City to investigate Webster's background before responding to his Request.

B. The City's Denial of Access

43. On February 12, 2015, City Clerk Lewis sent an email to Webster offering him access to inspect some data responsive to six of the 22 categories of requested data. Lewis said that the data would be made available for inspection on February 20, 2015.

44. On February 20 and 23, 2015, Webster raised concerns with City Clerk Lewis that data was being inappropriately withheld by the City without legal justification. The City allowed Webster to view responsive emails on a computer screen, but did not allow him to inspect the data using his own equipment, download the data, or print the data. The computer did not have speakers, so Webster was unable to inspect audio files or video files with audio. The computer also lacked software that would allow Webster to view all of the metadata for image files.

45. On February 20 and 23, 2015, Webster objected to the inadequate access to responsive data and reiterated that he would like access to inspect all responsive public data, including the metadata for all the responsive electronic files.

46. On March 4, 2015, Webster received a letter from Bloomington City Attorney Sandra Johnson denying Webster access to electronic documents in their original form and to the metadata for responsive electronic documents. *Exhibit D*.

47. In her March 4, 2015, letter, City Attorney Johnson misleadingly cited an overturned appellate decision from an Arizona court, falsely claiming that Arizona law supported her claim that “[t]here is no authority for the proposition that you are entitled to electronic access to documents in their original form for the purpose of accessing metadata.” However, the decision she cited was reversed in 2009 by the Arizona

Supreme Court, a fact Johnson omitted from her letter. Contrary to City Attorney Johnson's claims, the Arizona Supreme Court specifically held that a public entity must produce metadata for public records maintained in electronic form.

48. In addition to Arizona, the Washington Supreme Court and appellate courts in New York and Illinois have also held that a public entity must produce metadata for public records maintained in electronic form. City Attorney Johnson's March 4, 2015, letter is claim that "[t]here is no authority for the proposition that you are entitled to electronic access to documents in their original form for the purpose of accessing metadata" is contradicted by these opinions.

49. City Attorney Johnson's March 4, 2015, letter improperly shifted the statutory presumption of public access to government data, placing the burden on Webster to prove his right to access responsive data. For instance, City Attorney Johnson claimed that the definition of "public record" is "not unlimited and the presumption requiring disclosure arises only after a determination is made that a certain record constitutes a public record."

50. On March 4, 2015, Webster also received a letter from City Clerk Lewis. Since the City had denied Webster the right to inspect responsive emails using his own equipment, Lewis offered Webster the choice between receiving responsive email files in hard copy or PDF format, neither of which contain the responsive metadata associated with this data, accurate representation of photograph or image attachments, nor allow inspection of video or audio attachments. Lewis' letter also told Webster that he would have to pay \$1,008.00 for this data. *Exhibit E*.

51. On March 6, 2015, the City allowed Webster to continue viewing some of the emails responsive to his Request on a computer screen. After being told he was not allowed to print copies from the data he was inspecting, Webster was then given access to a printer and allowed to print a select number of emails. The City prevented Webster from inspecting metadata for the email files he was permitted to view on the City's computer. When Webster printed the email files the formatting was changed, sometimes resulting in obscured text. Some of the emails had attached audio files which could not be printed and for which no metadata was accessible. Other emails had attached multimedia files which could not be accurately printed and for which no metadata was accessible.

52. On March 6, 2015, the City allowed Webster to inspect and copy certain electronic files – but not emails – in their original form on a hard drive, using Webster's own equipment. However, some of the video files on this hard drive could not be accessed for unexplained reasons, which City Clerk Lewis stated in advance was likely.

53. At no time on or before March 6, 2015, did the City assert that it was withholding government data because the data was classified as not public data, designated as such by statute, federal law, or deemed confidential or privileged.

Webster's Response

54. Webster responded to the City's denial letters on the same day he received them. In a response letter dated March 4, 2015, Webster detailed the limitations to and restrictions on accessing the data the City had gathered in response to the Request, discussed the importance of the metadata portion of the requested data, and proposed that the City allow him to download the requested data on his own computer equipment as

allowed by the Act. Webster maintained that the City was out of compliance with the Act and asked that the City cite the specific statutory section, temporary classification, or specific provision of federal law upon which the City justified its denial. Webster also noted that neither of the City's March 4, 2015, letters contained any statutory basis to deny his Request. *Exhibit F*.

55. Webster's March 4, 2015, letter clearly stated his intention to press his legal right to access the responsive data. He concluded by saying that he "look[ed] forward to inspecting this data."

The Importance of the Withheld Data

56. The metadata in the City's email, video recordings, photographs, and other files produced for inspection by the City is part of the underlying records; it does not stand on its own.

57. Data becomes subject to disclosure the moment it is recorded. When the City's public officials used computers and other digital devices to make a public record, the metadata forms part of the data as much as the words, images, and sounds within the electronic data.

58. The metadata withheld by the City contains important information about the responsive data not available from any other source. For example, the metadata for a digital photographic image can contain information about the time the photo was taken, the device on which it was recorded, and the dates, times, and locations where the photograph has been saved since it was taken.

The City's Destruction of Data

59. Although the City had not yet contacted all City departments and staff to ensure responsive data was collected and preserved, City Attorney Office Manager Sullivan wrote in an internal Outlook calendar appointment on or about January 28, 2015, that "The responsive emails [to Webster's Request] from November 15, 2014 to January 15, 2015 total 52,825." *Exhibit G.*

60. In a statement to the media on or about March 10, 2015, City Attorney Johnson stated that the City had offered 58,000 emails for inspection in response to Webster's Request. *Exhibit H.*

61. The City actually offered Webster limited access to less than 7% of the number of emails it claimed to have offered, and it withheld important metadata for the emails it did provide for inspection.

62. While reviewing emails and email attachments on the City's computer on February 20 and March 6, 2015, Webster found potential evidence of destruction or concealment of responsive data.

63. Some computer files had changed size between the two inspections.

64. Webster noted that between inspections, one document attached to an email had been substantially altered, with large portions of the document deleted. A comparison of the files, as viewable on the City's computer, illustrates the missing portions of the City's meeting agenda. The subject matter of this document directly related to the Black Lives Matter Protest, and was responsive to Webster's Request. *Exhibit I.*

65. When asked by Webster, City Clerk Lewis stated that no data had been modified by the City between inspections.

66. The City allowed Webster to inspect an external hard drive said to contain photographs and videos, using his own equipment, and to copy responsive data from the hard drive without fee.

67. The City did not indicate that it was withholding some of the photos based on those photos being “nonpublic” pursuant to the Act, privileged, confidential, or otherwise restricted.

68. Digital photos offered for inspection had file names that included sequential numbers and there were gaps in that sequence which would indicate that at least one photograph was removed, concealed, or destroyed.

69. At least one of the missing sequential files corresponded with a file found in that external hard drive’s “recycle bin” indicating that someone deliberately attempted to conceal the file. Since Webster used a Mac computer, it did not recognize the “recycle bin” as hidden. *Exhibit J*.

70. On information and belief, the City has altered, destroyed, or withheld data responsive to the Request beyond what is described above.

71. The apparent alteration of responsive data by the City further establishes why the metadata associated with such data is important. The metadata for the above referenced files will show when, how, and by whom these files were modified, providing important information about the City’s response to Webster’s Request.

The City's Continuing Violations

72. In addition to making false claims in the press about the amount of data to which Webster has been provided access, City Attorney Johnson falsely identified Webster as an “apparent agent of Black Lives Matter” in a statement to the media.

Exhibit K. Webster is not a member of Black Lives Matter Minneapolis and was not present at the December 20, 2014, Protest.

73. Although the City denied Webster's Request, the City has not provided Webster with written certification that his Request was denied citing the specific statutory section, temporary classification, or specific provision of federal law upon which the denial was based.

74. The City has not provided Webster with access to all of the City's data access policies and retention schedules, despite multiple requests.

75. In light of the City's denial of his Request and its other improper actions, Webster determined that he needed legal counsel to enforce his right to inspect the responsive data. Webster accordingly ceased contact with the City after March 6, 2015, and sought the assistance of legal counsel.

76. On June 4, 2015, counsel for Webster wrote to City Attorney Johnson, reiterating Webster's request for access to inspect data in electronic format in a manner that provided Webster with access to the entirety of the responsive data, including metadata.

77. In a June 10, 2015 response letter, City Attorney Johnson stated that the City would not comply with Webster's Request, and had no obligation to maintain data in

an electronic format, despite the fact that a substantial amount of data responsive to Webster's Request is maintained in electronic form.

78. City Attorney Johnson's letter further stated that the City would now refuse to offer Webster access to any of the government data because it now believed Webster's requests were made to harass the City in retaliation for its decision to criminally prosecute some of the protestors. City Attorney Johnson did not cite any specific statutory section, temporary classification, or specific provision of federal law to support her determination and denial.

79. At no time prior to City Attorney Johnson's June 10, 2015, letter did the City raise any concerns or make any statements to Webster about Webster's Request being made for improper purposes, harassment, or retaliation.

80. On information and belief, the City's actions were willful and deliberate.

81. The City's grounds for refusing Webster access to request data has no basis in fact and is contrary to Minnesota law. In fact, the City has deliberately disregarded its obligations under the Act.

82. For the purpose of pursuing his rights under the Act, Webster has retained the services of Maslon LLP and Godfread Law Firm.

On information and belief, the City continues to destroy and not preserve data responsive to Webster's Request.

83. Some of the records Webster's Request sought were official records that the City is obligated to preserve pursuant to Minn. Stat. § 15.17, and, on information and belief, the City's retention policies or schedules.

84. The City's denial of access has harmed Webster because, among other things, he was prevented from exercising his rights under the Act to inspect government data.

85. Webster was able to use what little data that the City permitted him to see for research and journalistic purposes. City emails that Webster inspected were the basis for a news article pertaining to the FBI's Joint Terrorism Task Force tracking the Protest, and a separate news article about the Mall of America's use of a fake Facebook profile to surveil and monitor Protest organizers; both stories received national media coverage.

Causes of Action

Count 1

Violation of the Minnesota Government Data Practices

86. Webster restates and realleges the preceding paragraphs of the Complaint.

87. Webster's Request was properly made under the Minnesota Government Data Practices Act.

88. The Act governs the City's response to Webster's Request.

89. The data responsive to Webster's Request includes government data.

90. The City denied Webster access to the data responsive to his Request.

91. The City's denial of access violated the Act.

92. The City's denial of access was willful.

93. Webster was harmed as a result of the City's violations.

94. Webster has standing to challenge the City's response to his Request because he is an individual that made a request for government data and suffered harm because of the City's violations.

95. Webster is entitled to an award of damages to cover the injuries sustained, plus costs and reasonable attorneys' fees. Minn. Stat. § 13.08, subd. 1.

96. The City's willful violation of the Act entitles Webster to recover exemplary damages. Minn. Stat. § 13.08, subd. 1.

97. The City's denial of Webster's request justifies assessment of a civil penalty. Minn. Stat. § 13.08, subd. 4.

98. Webster is entitled to an immediate injunction preventing the City's continued violation of the Act. Minn. Stat. § 13.08, subd. 2.

Count 2

Declaratory Judgment

99. Webster restates and realleges the preceding paragraphs of the Complaint.

100. A present, ripe, justiciable controversy exists as to the City's compliance with the Minnesota Government Data Practices Act.

101. Based on the above-described allegations, Webster is entitled to a declaratory judgment pursuant to Minn. Stat. §§ 555.01 and 555.02, that: (1) the government data responsive to Webster's Request includes metadata of data that is maintained in electronic format under the Act; (2) the City must provide Webster with access to inspect the metadata for data responsive to Webster's Request, including without limitation all electronic data presented to Webster on February 20 and March 6,

2015, or cite the specific statutory section, temporary classification, or specific provision of federal law upon which it continues to deny Webster access; and (3) when allowing Webster to inspect the data, the City must allow Webster to inspect and download data maintained in electronic form with and onto his own computer equipment and may not charge a fee for inspection, or, in the alternative, if the Court determines that the City must provide Webster with a copy of the responsive data, the City may only charge Webster for the actual cost of providing an electronic copy in the medium it is maintained.

Demand for Jury Trial

102. Webster is entitled to and demands a trial by jury.

Demand for Relief

For the reasons stated above, Plaintiff Tony Webster requests the following:

- A. Declaratory and injunctive relief against Defendant City of Bloomington;
- B. An award of compensatory damages in an amount to be determined at trial;
- C. An award of exemplary damages under Minn. Stat. § 13.08, subd. 1;
- D. Assessment of a civil penalty under Minn. Stat. § 13.08, subd. 4;
- E. Leave to amend this complaint to add a claim for punitive damages pursuant to Minn. Stat. § 549.191;
- F. Fees, costs, and disbursements, including reasonable attorneys' fees under Minn. Stat § 13.08, subd. 1 and other applicable law; and
- G. Such other, further, different, and additional relief as the Court may deem just and equitable.

Dated: June 19, 2015

MASLON LLP

By: /s/ Casey Beckett

E. Casey Beckett

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E. Casey Beckett (#388214)
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paul@godfreadlaw.com

Attorneys for Plaintiff Tony Webster

Acknowledgement

I acknowledge that sanctions may be imposed on me under Section 549.211 of the Minnesota Statutes.

/s/ Casey Beckett

E. Casey Beckett (#388214)

EXHIBIT A

TONY WEBSTER

PHONE 612-255-5905

FAX 612-568-5994

EMAIL tony@tonywebster.com

December 23, 2014

VIA EMAIL AND FACSIMILE

Mark Bernhardson
City Manager
City of Bloomington
1800 West Old Shakopee Road
Bloomington, MN 55431-3027
mbernhardson@ci.bloomington.mn.us

**Re: “Black Lives Matter” Protest
Request for Access to Data (Minn. Stat. § 13.03, subd. 3)**

Dear Data Practices Act Responsible Authority:

I write to you with a request to inspect data collected, created, received, maintained, or disseminated by the City of Bloomington and any and all of its departments (including but not limited to the Bloomington Police Department), and all of its employees and contractors, pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.

This request applies to all data, regardless of its physical form, storage media, or conditions of use. I would like to inspect any responsive data in its original form. In the case of responsive data stored or maintained electronically or in a computer storage medium, I would like to inspect such data in its original electronic form. The charging of fees for inspection of data is prohibited by Minn. Stat. § 13.03, subd. 3(a).

This request is made for the purposes of news gathering and research, and is not made for commercial purposes. As such, I would appreciate “full convenience and comprehensive accessibility” as provided by Minn. Stat. § 13.03, subd. 2(b).

Definitions

“Data” means any and all government data, as that term is defined pursuant to Minn. Stat. § 13.02, subd. 7. Data includes, but is not limited to: communications, emails, email attachments, papers, memorandums, letters, presentations, plans, documents, meeting agendas and minutes, text, text messages, phone messages, voicemails, phone logs, video recordings, audio recordings, photos and images, invoices, contractual agreements, bills, logs, law enforcement data, databases, data in databases, database queries, logs of queries performed, Mobile Data Terminal messages and queries, files, and electronically stored information.

City of Bloomington

December 23, 2014

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“City” means the City of Bloomington and any and all of its departments (including but not limited to the Bloomington Police Department and Bloomington City Attorney’s Office or Legal Department), and all of its officials, employees, contractors, and assigns.

“Mall of America” means the Mall of America and any of its parent corporations, subsidiaries, assigns, agents, employees, contractors, security agents, attorneys, and includes any stores within the Mall of America and their employees or assigns.

Scope of Data Request

I wish to inspect data as follows:

- (1) Any and all data regarding or relating to the “Black Lives Matter” protest held at the Mall of America on December 20, 2014. Without limiting the broad nature of the foregoing, and intending to aid you with your search for responsive data, this request specifically includes but is certainly not limited to:
 - (a) Any and all data, communications, emails, email attachments, memorandums, letters, notes, documents, files, voicemails, papers, and files containing the phrases “Black Lives Matter” or “BlackLivesMatter” or “BLM” or “protest” or “protesters” or “mall” or “Mall of America” or “MOA” or “moa.net” since November 15, 2014;
 - (b) Any and all data, communications, emails, email attachments, memorandums, letters, notes, documents, files, voicemails, papers, and files that were made with, sent from, sent by, sent to, exchanged with, or relate to the Mall of America since November 15, 2014, including but not limited to any communication with “moa.net” email addresses, or phone numbers beginning with “952-883”;
 - (c) Any and all audio recordings, video recordings, or photographs made at or in the surrounding area of the Mall of America on December 20, 2014;
 - (d) Any and all law enforcement data relating to the Mall of America or its surrounding area, the protest, or protesters, on or after December 20, 2014, including but not limited to police reports, officer notes or narratives, arrest data, charging documents, drafts of charging documents, indictments, citations, tab charges, complaints, call for service data, 911 logs, dispatch data, squad car video or audio, Mobile Data Terminal queries or messages, communications, patrol assignments, police radio communications, dispatch records, GPS logs, assignment records, etc.;
 - (e) Any and all police radio communications in the City of Bloomington on December 20, 2014;

City of Bloomington

December 23, 2014

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- (f) Any and all trespass notices issued at the Mall of America or surrounding area since November 15, 2014;
 - (g) Any and all citizen's arrest forms, documents, or data at the Mall of America, in the area near the Mall of America, or signed by a Mall of America representative or assign, since November 15, 2014;
 - (h) Any records or claims relating to injury, damage, or lost revenue on December 20, 2014;
 - (i) Any records or data relating to "restitution" or "reparations" relating to the protest;
 - (j) Any and all data relating to the "Black Lives Matter" Facebook page, the "Black Lives Matter Minneapolis" Facebook page, the "#BlackLivesMatter at the Mall of America" event on Facebook, BlackLivesMpls on Twitter, including but not limited to any data collected from Facebook, Twitter, any screenshots, messages, print-outs, records, communication, or data relating to the foregoing;
 - (k) Any and all data relating to or regarding individual protesters or organizers of the protest;
 - (l) Any and all data referencing or relating to "Black Christmas" or "BlackChristmas" or "BlackXmas" or "Black Xmas";
 - (m) Any and all data referencing or relating to "#ChargeMeToo" or "Charge Me Too";
 - (n) Any and all data or communication with any news or media organization since December 1, 2014, including but not limited to calls, emails, letters, notes, calendar events, meetings, or other communication with or regarding WCCO, KSTP, KMSP, KARE, City Pages, the Star Tribune, Pioneer Press, Minnesota Public Radio, Associated Press, and any other similar organization;
 - (o) Any and all data which would identify the law enforcement agencies participating in or assisting with the "Black Lives Matter" protest;
 - (p) Any accountings of staff time relating to the protest;
- (2) Any and all data regarding or relating to Bloomington Police officers bringing or serving any communication or messages on any individuals prior to the "Black Lives Matter" protest;
- (3) Any and all data or communication sent by, sent to, drafted by, or received by Sandra Johnson, which includes but is not limited to emails, email attachments,

City of Bloomington

December 23, 2014

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email drafts, text messages, letters, memorandums, notes, phone calls, logs of phone calls, and voicemails;

- (4) The full and complete email box or email store of sjohnson@ci.bloomington.mn.us or sjohnson@bloomingtonmn.gov, to include but not be limited to any sent, received, saved, or draft email and any email attachments;
- (5) The full and complete calendar and schedule of Sandra Johnson;
- (6) Any and all voicemails saved or in a pending deletion state at the number 952-563-4895 or any voicemail box associated with that number or any extension available at that number;
- (7) Any and all call logs associated with 952-563-4895 or any telephone system that Sandra Johnson used or could have used since December 1, 2014;
- (8) Any and all phone calls, voicemails, text messages, emails, photos, or other communication on the device associated with the telephone number 651-373-4197;
- (9) All phone bills, logs, invoices, and statements associated with telephone number 651-373-4197;
- (10) Any list or roster of City of Bloomington email addresses or email accounts;
- (11) Any and all emails sent to, sent by, or received by the Mayor or Council Members from December 10, 2014 through December 23, 2014;
- (12) Any and all tab charges, citations, complaints, or other criminal charging documents and data relating to rioting and/or alleged violations of Minn. Stat. § 609.71 since January 1, 2000;
- (13) Any and all tab charges, citations, complaints, or other criminal charging documents and data relating to unlawful assembly since January 1, 2000;
- (14) Any and all data regarding State v. Wicklund, Freeman Wicklund, Althea Schaffer, Peter Eckholdt, and Alissa Eggert, including but not limited to all criminal charging documents, civil court documents, tab charges, citations, indictments, complaints, filings, findings, opinions, notes, correspondence, restitution documents, financial statements, invoices, or other related data;
- (15) Any and all communication with other government agencies, municipalities, security companies or agents, or police departments relating to the Mall of America after December 10, 2014;
- (16) Any and all contractual agreements, exhibits and addenda to such agreements, invoices, or memorandums of understanding between the Mall of America (or its

City of Bloomington

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assigns) and the City of Bloomington or Bloomington Police Department (or their departments or assigns);

- (17) Any and all information about large gatherings or events at the Mall of America since January 1, 2014;
- (18) Any and all requests for data or requests made or processed pursuant to the Minnesota Government Data Practices Act since December 10, 2014;
- (19) Public access data policy (Minn. Stat. § 13.025, subd. 2);
- (20) Data subject rights and access policy (Minn. Stat. § 13.025, subd. 3);
- (21) Data inventory (Minn. Stat. § 13.025, subd. 1); and
- (22) Records retention policies and schedules.

I anticipate that the City will take any and all steps necessary to locate responsive data, including but not limited to the searching of databases, server email stores, paper files, and electronic storage systems, based on keywords, individuals, names, dates, times, etc.

If you have any information regarding the arrangement and condition of the City of Bloomington's records and how this request might be more efficiently processed, I would be more than willing to engage in such a conversation to prioritize requests or possibly reduce the scope of requests included herein. Absent such a conversation, please prioritize request items 1(a), 1(b), 1(c), 1(d), 1(f), 1(g), 1(h), 1(i), 1(j), 3, 4, 6, 7, 8, 9, 11, and 15.

Please be advised that any correspondence sent by the City of Bloomington or its assigns to me, including correspondence directed to me that is marked with "DO NOT FORWARD OR DISSEMINATE THIS EMAIL WITHOUT PERMISSION" may be forwarded and disseminated.

STANDING REQUEST: Please consider this a standing request through July 15, 2015, and notify me when new responsive data is collected, created, received, maintained, or disseminated, and when it is available for inspection. You must honor a standing request (*See e.g.* Minnesota Department of Administration Advisory Opinions 04-007, 96-047).

REQUEST FOR CERTIFICATION: Pursuant to Minn. Stat. § 13.03, subd. 3(f), if the responsible authority or designee determines that any portion of the requested data is classified so as to deny me access, I request certification in writing that the request has been denied, along with a citation of the specific statutory section, temporary classification, or specific provision of federal law upon which the denial was based, for each element of redacted or withheld data.

REQUEST FOR PRESERVATION AND RETENTION: Please indefinitely preserve and maintain any and all data likely to be responsive to this request until the data has been inspected, including any data which does not yet exist but would become responsive to the standing request.

City of Bloomington

December 23, 2014

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Your assistance in this matter is greatly appreciated, and I thank you for your time. If you have any questions pertaining to this request, please feel free to call or email.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Webster", with a large, sweeping flourish extending to the left and right.

Tony Webster

cc: Gene Winstead – Mayor, City of Bloomington
Bloomington City Council Members
Jeff Potts – Chief of Police, Bloomington Police Department
Sandra Johnson – City Attorney, City of Bloomington

EXHIBIT B

From: Sullivan, Anna
Sent: Wednesday, January 28, 2015 1:25 PM
To: Lewis, Janet
Cc: Johnson, Sandra; Kaul, Ann
Subject: Tony Webster Data Request

Follow Up Flag: Follow up
Flag Status: Flagged

Janet –

Sandy and I briefly discussed the Tony Webster data request today. Could you please send out an e-mail to the departments inquiring whether they have any data pertaining to the “Black Lives Matter” protest at the Mall of America on December 20, 2014? Sandy wisely pointed out that request number 1 (which includes the e-mail request) pertains only to the protest itself. Thankfully (and to my great relief), it’s not quite as giant of a request as I originally thought.

Also, since this is a multi-department project, could you take over in coordinating the response to this request? I’ve set up a couple of meetings between Legal and Police since we are likely to be the heaviest responders to this request, but you are far more skilled in coordinating a multi-department response. I have some responsive documentation assembled. If you would like that documentation immediately, please let me know. If you would like me to wait to provide it until our meeting next week, I would be happy to do that as well. I will likely be your point of contact for Legal and can involve Ann and Sandy when necessary, or at their discretion.

Thanks,

Anna K. Sullivan
Office Manager/Paralegal
Bloomington City Attorney’s Office
1800 West Old Shakopee Road
Bloomington, MN 55431
(952) 563-8518

EXHIBIT C

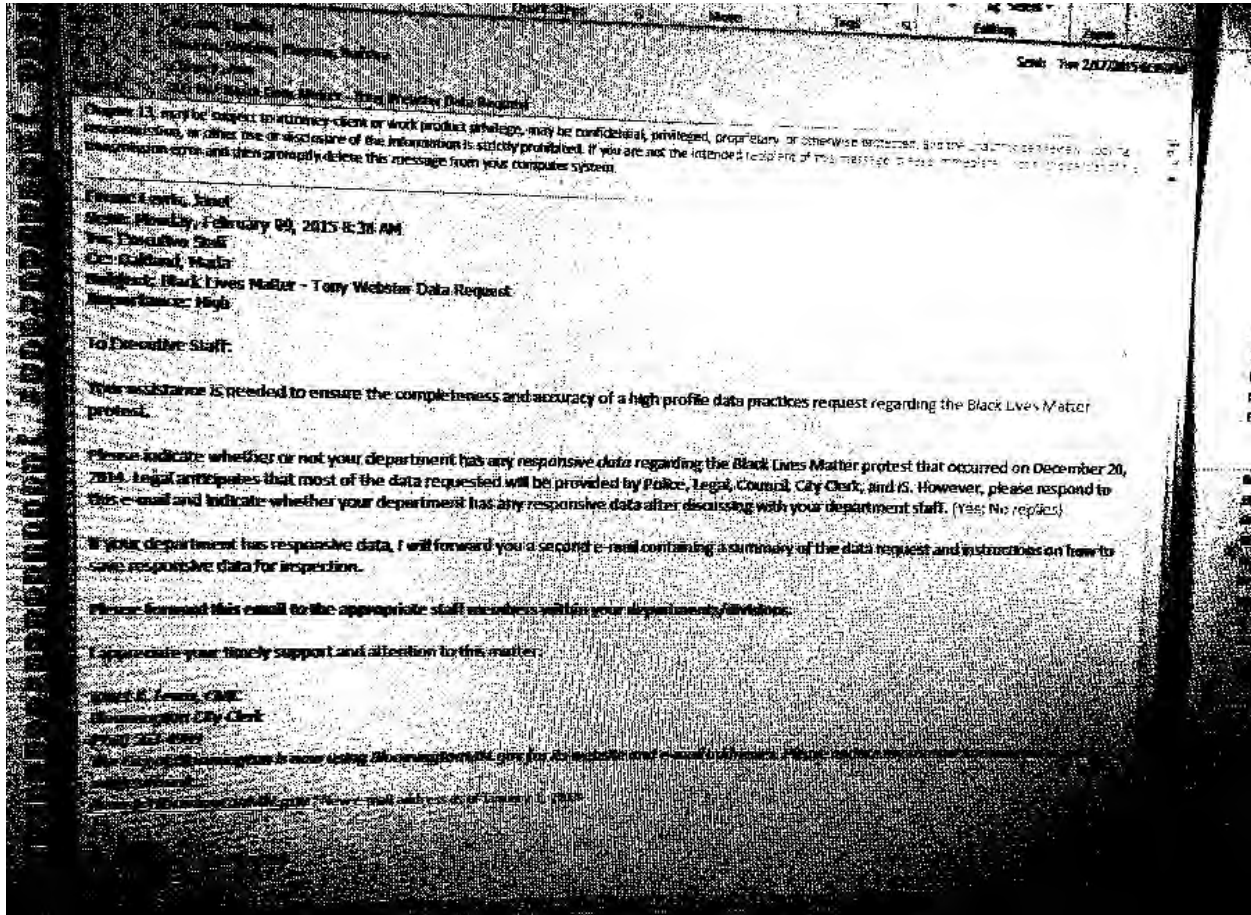


EXHIBIT D



March 4, 2015

Tony Webster
tony@tonywebster.com

Dear Mr. Webster:

Your letter of yesterday was forwarded to me for the purpose of evaluating whether or not your request to inspect emails "in their original form" was a requirement of the Minnesota Government Data Practices Act (MGDPA). The purpose you set forth for this particular request is so that you can examine the metadata.

There is no authority for the proposition that you are entitled to electronic access to documents in their original form for the purpose of accessing metadata. The broad definition of 'public record' under the MGDPA, which essentially mirrors its Arizona counterpart A.R.S. §§39-121 et seq., is not unlimited and the presumption requiring disclosure arises only after a determination is made that a certain record constitutes a public record *Lake v. City of Phoenix*, 207 P.3d 725 (Ariz. 2009). The court in that case defined 'public record' as follows:

- (1) A record made by a public officer in pursuance of a duty, the immediate purpose of which is to disseminate information to the public, or to serve as a memorial of official transactions for public reference;
- (2) A record required to be kept, or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said or done;
- (3) A written record of transactions of a public officer in his office which is a convenient and appropriate method of discharging his duties and is kept by him as such, whether required by law or not. *Id.* at 731.

The court reasoned that the metadata that was being requested under the Arizona data practices law was not made by a public officer in pursuance of official duties. It went on to hold that metadata failed the second definition in that the public officer was not legally obligated to create the metadata at issue. Finally, it held that metadata also failed the third definition in that it was not kept by the public officer as a record of his transactions. The court went on to distinguish between discovery in the context of a civil lawsuit and a public data request. While an Arizona appellate decision is not precedential, it is very persuasive. Therefore, I am concluding it is not required under the MGDPA that the City provide you with access to documents, including emails "in their original form".

This is particularly true with respect to any emails from or forwarded by the City Attorney's Office. Lawyers have a duty under the Minnesota Rules of Professional Conduct (MRPC) not to knowingly reveal information relating to the representation of a client and a duty to act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure. The MRPC has issued an opinion specifically addressing a lawyer's ethical obligations regarding



Page 2, T. Webster, March 4, 2015

metadata at 52 M.S.A., Lawyers Prof. Resp. Bd., Opinion 22 and warns that metadata "mining" can often result in inadvertent disclosure of privileged material.

Many city attorney offices take the position that all attorney communication in the performance of their representation is confidential attorney/client work product. My office attempts to provide maximize transparency while still adhering to Rule 1.6(a), MRPC which requires lawyers to not knowingly reveal information relating to the representation of a client. The City of Bloomington is the client of this office. Therefore, it is not permissible for the City to provide you with attorney emails or other documents "in their original form".

As you correctly observed, the City of Bloomington takes great pride in its willingness and ability to professionally process requests under the MGDPA. Ms. Lewis does an excellent job. With respect to the other issues raised in your request I will defer to her and am certain that she can resolve them.

Sincerely,

Sandra H. Johnson
Bloomington City Attorney

CC: Janet Lewis, City Clerk

EXHIBIT E



March 4, 2015

Tony Webster
tony@tonywebster.com

Re: Response to Access for Responsive Data letter dated March 3, 2015

Dear Mr. Webster:

On February 20, 2015, the City provided you responsive data/records for your December 23, 2014, data request. The following list is a summary of the data made available to you at your February 23, 2015 inspection:

Item Number	Subject
01 d	Law Enforcement Data
01 d Legal	Law Enforcement Data relating to MOA, surrounding area, Protest or protestors on or after 12/20/14
01 d Police	Law Enforcement Data relating to MOA, surrounding area, Protest or protestors on or after 12/20/14
01 e	Police Radio Communications (DVD) (not inspected)
01 f	Trespass notices issued
01 g	Citizen Arrest Forms related to BLM
01 h	Claims related to 12/20/14
01 p	Staff time related to Protest
03 & 04	S. Johnson's emails, correspondence, attachments, and the like (inspection not completed)
05	Communications with other governmental agencies
07	Call logs (S. Johnson) 952-563-4895 or any phone system
09	Phone bills logs 951-373-4197
10	List of Roster of city staff & email accounts (list of mailbox names)
12	See Note
12	Documents related to rioting or alleged violations
13	Tab charges, citations, complaints, criminal charging documents
13	Data relating to unlawful assembly
14	Wicklund Data (not inspected)
17	Special Events at MOA
18	Data Requests 12/10/14 – 1/31/15
18	Police Data Requests
19	Procedures & Guideline MGDPA

In your March 3, 2015 correspondence, you identify several limitations to your data inspection that occurred on February 20, 2015. It is my understanding that you did not make the City aware of these limitations until the very end of your data inspection, providing no opportunity for the City to rectify those limitations on February 20, 2015. Due to the volume of documents provided by the City on February 20, 2015, and due to your own time constrictions, additional inspection dates were set up for March 2, 2015, and March 6, 2015.

CITY CLERK'S OFFICE

1800 W. OLD SHAKOPEE ROAD, BLOOMINGTON MN 55431-3027
PH 952-563-8700 FAX 952-563-4741 TTY 952-563-8740

AN AFFIRMATIVE ACTION/EQUAL
OPPORTUNITIES EMPLOYER

FLAHERTY DECL. EX. C

In anticipation of your March 2, 2015, inspection, a City laptop was made available with the capability to inspect all electronic data, including audio files and e-mail attachments. In addition to the data above-described (which was previously provided on February 20, 2015), the City provided an external hard drive with responsive data from the Mall of America and the Bloomington Police Department. As you were unable to attend the March 2, 2015 inspection¹, the City laptop, external hard drive, and all data previously provided to you on February 20, 2015, will be provided to you on March 6, 2015.

Providing a City computer for the electronic inspection of e-mails is a deviation of our standard response procedure. Typically, e-mails are provided in paper format. However, in an attempt to maximize transparency and be fully responsive to your request without jeopardizing any privilege or the City's security, the City has provided you with a computer for electronic data inspection. The City has not prohibited a reasonable inspection of its data. On the contrary, the City has been diligent in ensuring maximal and timely responsiveness.

After consultation with our City Attorney, copies of City e-mails will only be provided in hard copy or PDF format. If you select to have e-mails in PDF format, they can be put on a USB thumb drive. E-mails in their native format will not be provided on a USB thumb drive for the reasons set forth in City Attorney Sandra Johnson's March 4, 2015 correspondence. You may bring in your own laptop and scanner solely for the purpose of inspecting/scanning hard copies or PDFs of any data provided. If PDF copies of e-mails are placed on a USB thumb drive, you will in fact have received copies of data/records and actual costs will be charged with fees payable to the City of Bloomington. Inspection of electronic data in its original form will be conducted on City equipment with a staff monitor for security purposes.

To summarize the above, and in direct response to the requests set forth on page two of your March 3, 2015 correspondence, the City's response to your request is as follows:

Request (a): Provide a USB stick with "blm1.pst" on it for inspection that I can inspect using my own equipment since the City's equipment is not capable of allowing me to inspect the responsive data in its original form.

Response: Inspection of electronic data in its original form will be conducted on City equipment with a staff monitor for security purposes. The City-provided laptop will provide you with the capability to inspect all electronic data, including audio files and e-mail attachments.


Request (b): Provide an estimate for the City to copy "blm1.pst" so that I can take with me, e.g. copies requested after inspection.

Response: Copies of e-mails will only be provided in PDF or hard copy format. There are 3,506 e-mails in the blm1.pst. If you select to receive hard copies of the e-mails, it would take approximately 40 hours of City staff time to print those e-mails. The staff member who provides this service is paid an hourly wage of \$25.00 (inclusive of benefits). Therefore, the estimated charge would be \$1,000 for time to print hard copies of the e-mails. Saving each e-mail as a PDF onto a USB flash drive would take approximately the same amount of time, but you would also need to pay for the USB flash drive (approximately \$8 for 16GB of data). The anticipated cost would therefore be \$1,008 for e-mails in PDF form.

¹ You advised me via e-mail at 9:11 a.m. on March 2, 2015, the date of your second inspection, that you were unable to attend due to a sick family member.

The City has been, and continues to be, reasonable and responsive to your request. As a reminder, we have a third inspection date scheduled for Friday, March 6, 2015, beginning at 8:30 a.m. in the Ellingson Conference Room at Bloomington Civic Plaza.

Sincerely,

A handwritten signature in cursive script that reads "Janet Lewis".

Janet Lewis
City Clerk

EXHIBIT F

TONY WEBSTER

PHONE 612-255-5905

FAX 612-568-5994

EMAIL tony@tonywebster.com

March 4, 2015

VIA EMAIL

Sandra Johnson

City Attorney

City of Bloomington

sjohnson@bloomingtonmn.gov

Janet Lewis

City Clerk

City of Bloomington

jlewis@bloomingtonmn.gov**Re: December 23, 2014 Data Practices Act Request**

Ms. Johnson and Ms. Lewis:

I am in receipt of Ms. Johnson's March 4 correspondence regarding my December 23, 2014 request made pursuant to the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 ("MGDPA").

As you know, my data request sought to inspect – among other things – City of Bloomington communications, including emails and email attachments. The City made these emails available for my inspection on February 21 by giving me access to a City computer screen, keyboard, and mouse, but there were multiple technical limitations and restrictions in place that prevented my full inspection of the responsive data.

First, some responsive emails had attachments such as images, documents, audio files, and forwarded emails. I was not able to open all of the image attachments because the City computer did not have appropriate software capable of opening these images. I was not able to play audio files or hear audio from video files because in some cases, the City computer did not have the correct software, and in all cases, the City computer did not have speakers or a way for me to listen using headphones. Additionally, some document files would not open on the City computer, I presume because it either lacked software or had technical restrictions in place.

I am also concerned about metadata. Metadata exists as part of every piece of electronic data. In the case of images, metadata can identify the date, time, and location of where an image was captured, and the equipment used to capture the image. In the case of emails, metadata – primarily, email headers – identifies the sender and recipient of an email, the date an email was sent and transmitted, software used to create an email, identification of attachments and attachment sizes. Metadata can and does provide important indications as to the authenticity of data, and is affirmatively part of the data.

By way of example, an audio MP3 file of a song would of course contain audio data, but it would also have metadata that indicates the artist, title, album, and file information necessary to

City of Bloomington**March 4, 2015****Page 2 of 4**

play the music. If metadata was not an integral part of data, everyone would have an iTunes library full of untitled songs by anonymous artists.

Luckily, there is an easy to solution all of these concerns, which I have proposed to the City twice. I saw that the City had already gathered the responsive emails thus far into a single file titled "blm1.pst" which contains all of the responsive emails, the attachments included with those emails, and the metadata of those emails. PST files are a standard email mailbox format, and the City used that format to collect and store responsive emails.

My proposal was that instead of the City copying the "blm1.pst" file to a non-working computer that the City setup for my inspection, the City could copy the "blm1.pst" file over to a USB thumb drive that I could inspect using my own equipment, which is capable of performing the inspection. At all times, the thumb drive and original data would remain in the city's possession, and thus would not trigger the imposition of copy costs under Chapter 13.

This is not a request for the City to change the format of the data or to create data in response to my request, but rather a request that the City allow me to inspect the complete data. By only permitting inspection at a restricted computer screen with insufficient software and capabilities, the City has prohibited me from inspecting the data.

Ms. Lewis responded to this proposal on March 2 stating that the ". . . costs will include staff time to search & retrieve data, move data to the pst for inspection (of the data in its original form), staff time to move the file to a flash drive, and the cost of the flash drive."

The City already searched and retrieved data responsive to my request, which email is a part of. The City has already copied (not moved) data to its PST file for the purposes of inspection, and now the City intends to retroactively charge me staff time if I desire to inspect the emails within that PST file using my own equipment. Charging fees for the purposes of inspection is prohibited by Minn. Stat. § 13.03, subd. 3. If the City's computer system is not capable of allowing me to inspect the complete data, it does not constitute an inspection.

* * *

Unfortunately, Ms. Johnson's response was only regarding the City denying me access to email and email attachment metadata, which is but a portion of my concern, but a concern nonetheless.

Government data is broadly defined at Minn. Stat. § 13.02, subd. 7 as ". . . all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use", emphasis mine.

As a member of the public, I am entitled to inspect all public government data, and that certainly includes metadata. In *Minnesota Department of Administration Advisory Opinion 04-031*, the Commissioner of Administration opined: "... when an individual asks to inspect

City of Bloomington**March 4, 2015****Page 3 of 4**

public data, the entity shall provide the requestor with the actual data. This ensures that the requestor will be able to gain an understanding of the context relating to the data s/he is seeking...”

The MGDPA is “. . . intended to regulate every aspect of how government manages the information it collects and records.” *Keezer v. Spickard*, 493 N.W.2d 614, 618 (Minn. App. 1992). Moreover, the MGDPA “. . . establishes a presumption that government data are public and are accessible by the public for both inspection and copying unless there is federal law, a state statute, or a temporary classification of data that provides that certain data are not public.” *Minn. Stat. § 13.01, subd. 3*.

Further, the MGDPA “. . . mandates all data collected, created, received, maintained or investigative data are disseminated by a public body must be accessible to the public . . . [and the] burden is on the public body resisting disclosure to identify the law which prevents disclosure.” *Demers v. City of Minneapolis*, 458 N.W.2d 151 (Minn. App. 1992).

Data becomes government data subject to disclosure the moment it is “. . . recorded somewhere other than the human brain.” *Keezer v. Spickard*, 493 N.W. 2d 614 (Minn. Ct. App. 1992). Certainly, emails, email attachments, and email metadata are all affirmatively recorded outside the human brain, and are vital aspects of how the government manages the information it collects and records.

Although I can appreciate Ms. Johnson’s responsibilities under the Minnesota Rules of Professional Conduct as the City Attorney to safeguard certain data, the City has already classified all of the responsive data it placed on the inspection computer as public.

Moreover, Ms. Lewis has already offered to individually provide statutory copies at my cost of certain emails in the City’s PST format – which would include emails, email metadata, attachments, and attachment metadata. Of course, I wouldn’t know what emails I would want a statutory copy of if I’m not able to do a full inspection. So it seems this is a matter of cost, not ensuring nonpublic data isn’t released.

Even if I did want statutory copies made, it is my understanding that the City had collected 52,825 emails responsive to my request as of approximately January 28, with more emails coming in after that. Despite those emails being collected into one “blm1.pst” file for the purposes of inspection already, the City now wants me to pay the retroactive search and retrieval costs for those 52,825 emails – even though they are but a portion of my request – when the City could spend a few minutes copying the “blm1.pst” file to a USB thumb drive or allow me to do it from the inspection computer.

Any way you slice it, the City is not in compliance with the MGDPA and the City is denying me access to government data, and pursuant to Minn. Stat. § 13.03, subd. 3(f), I have already

City of Bloomington

March 4, 2015

Page 4 of 4

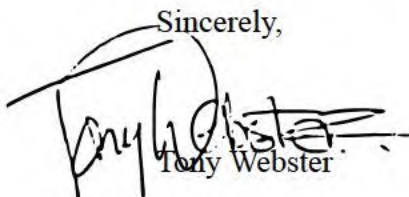
requested citation of the specific statutory section, temporary classification, or specific provision of federal law upon which the denial was based.

Although I appreciate citation of Arizona law as a matter of discussion, I respectfully insist on compliance with Minnesota law.

As I have said before, I appreciate the City and City staff's time in handling my request, and I recognize the City's efforts thus far. I provided a reasonable solution here that I presume would be mutually amenable and save City staff time, and I have not seen any statutory basis to deny my request or my reasonable suggestions.

I again appreciate your assistance and look forward to inspecting this data.

Sincerely,



Tony Webster

cc: Jamie Verbrugge, City Manager

EXHIBIT G

Location: Sandy's Office
When: Wednesday, January 28, 2015 10:00 AM-11:00 AM

Meeting cannot be found in the Calendar

9 am

10:00

11:00

Sandy -

Ann and I had a chance to meet with IS last week regarding the responsive e-mails to Mr. Webster's data practices request. The responsive e-mails (to his request) from November 15, 2014 to January 15, 2015 total 52,825. Ann and I would like to discuss with you how to best proceed with classifying and providing such a large number of e-mails to Mr. Webster.

I will also schedule another large group meeting for a status update on the information "assigned" to the various departments.

Thanks!
Anna

Tony Webster
NYTimes.com
Reed, Katie

Data Practices Act Request: Black Lives Matter
Today's Headlines: Taliban Besiege Pakistan School, leaving 145 Dead
NOVEMBER Deadline is fast approaching

EXHIBIT H

SOUTH METRO

Protesters say e-mails show 'disturbing' coordination between Bloomington and Mall of America

Prosecutor scoffs at notion that e-mails show collusion over response to demonstration.

By John Reinan (<http://www.startribune.com/john-reinan/273043871/>) Star Tribune

MARCH 10, 2015 — 9:11AM

As 11 Mall of America protesters prepare to make their first court appearance on Tuesday, the group Black Lives Matter released e-mails that it said revealed “disturbing levels of coordination” between Mall of America and city of Bloomington attorneys in legal decisions arising from the Dec. 20 demonstration.

Sandra Johnson, Bloomington’s city attorney, said the e-mails simply show normal discussions among lawyers handling issues for their clients.

The e-mails, gathered through a public records request, document communication between Johnson and mall officials. In one exchange on Dec. 22, two days after the protest, Johnson and mall attorney Kathleen Allen discuss whether the mall should pursue a lawsuit in addition to possible criminal charges by the city.

“I agree that you need to have consequences, but MOA may wish to await the criminal charges,” Johnson wrote to Allen. “It’s the prosecution’s job to be the enforcer and MOA needs to continue to put on a positive, safe face. The city’s prosecution team is taking this very seriously.”

Allen responded, “Agree — we would defer any civil action depending on how the criminal charges play out.”

Johnson said Monday that her comment was merely meant to indicate that the mall should stick to what it does best and prosecutors should stick to what they do best.

“You do your job and we’ll do ours,” Johnson said. “I’m not going to tell them their business. But I’m trying to keep their [potential] civil matter separate from the criminal prosecution.”

Protest organizers denounced what they called a “political prosecution at the behest of the largest mall in the U.S.” The criminal charges are “a clear attempt to silence peaceful activists asserting the value of black lives, which sets a dangerous precedent for democracy and free speech everywhere,” said Nekima Levy-Pounds, a University of St. Thomas law professor and Black Lives Matter organizer who is among those charged in the protest.

Johnson said Black Lives Matter has spent countless hours combing through months’ worth of her e-mails and has come up with nothing improper.

“They’ve been here for days in the last several weeks, going through 58,000 e-mails,” Johnson said. “They’ve gone to great lengths to find a smoking gun, I believe. And this is the best they could get?”

In another e-mail, Johnson asks mall officials to keep a record of social media use by the protesters. “The groups are very likely to take these sites down when they hear that we intend to prosecute them,” she wrote.



(<http://stmedia.startribune.com/images/1MOA031115.JPG>)
DAVID JOLLES, STAR TRIBUNE

People gather outside the Hennepin County District Court in Edina (Southdale Service Center) in advance of Tuesday’s hearing for...

6/17/2015

Protesters say e-mails show 'disturbing' coordination between Bloomington and Mall of America - StarTribune.com

Johnson said Monday that she was simply asking the mall to preserve evidence — a common request in criminal investigations.

Allen, the mall's corporate counsel, was not available Monday afternoon. A mall spokeswoman said, "We are not straying from any other statements. The city attorney is really the one carrying it."

Before the demonstration, the mall cautioned protest organizers that it was private property.

The idea that there's some kind of back-channel communication between the city and the mall is ridiculous, Johnson said, noting that she regularly deals with mall attorneys on a wide range of issues, including licenses, permits, leases, contracts, security and other routine matters.

"Certainly, they're a taxpayer and they're one of the biggest draws in town," Johnson said. "But they're not the only draw in town."

✉ john.reinan@startribune.com 📞 612-673-7402 🐦 [sribguy](#)

EXHIBIT I

Photographs captured at February 20, 2015 data inspection:

Paragraph

BLM Prosecution
1/28/2015
9:00 a.m. – 10:00 a.m.

1. Desired Resolution of Cases

A. STS/Restitution
B. Acceptable Plea Negotiation Standards

Notes:

- Actual costs for demonstration are likely three times the "requested/listed" amount of \$25,000 which is an objectively verifiable amount.
- Paying the public back is important. Organizers/protestors were offered an alternative and viable option which included lighting, sound, and escorts.
- For those who were arrested at the MOA on day of protest:
 - Standard plea standards for a trespass charge are appropriate in most circumstances;
 - Request STS for the obstruct cases;
 - Make sure to obtain a no contact/stay away order from the MOA
 - If the defendant was a "simple" trespasser without a prior record, offer a plea to trespass with 609.135 for vacation and dismissal after one year, \$300/\$100 PD costs, stay away;
 - If the defendant was a trespasser with a record, offer a plea to trespass with 30 days stayed for one year, \$300/\$50 PD fine, stay away; or
 - If the defendant obstructed/caused issues, offer plea to trespass with 30 days, 28 days stayed for one year, \$300/\$50 fine, stay away.
- For the organizers:
 - With restitution: Offer plea to trespass with 30 days stayed, \$3,000 restitution—acceptable down to \$1,000, \$300 fine, stay away; or
 - Without restitution: Offer plea to trespass with 40 days, 30 stayed for one year, 10 days of STS, \$300 fine, stay away.
 - SI will assist with any pre-trial motions that deal with the MOA financing issue.
 - Suried in 35W and MLK march reports

Paragraph

2. Judge Removals

A. Process of Removal
B. Timeline of Removal
C. Sandy to Sign Notice to Remove

Notes:

- Only removal should be for McShane
- Prepare removals in advance and have them in an envelope in each file in the event it is needed.

3. Discovery

A. Videos from MOA
B. Discussion of Heightened Discovery Costs with Defense Attorneys
C. Scheduled Time for Prosecution Team to Review Evidence

Notes:

- Group to meet on 2/4 at 9:30 a.m. to review evidence

4. Courtroom Presence on 2/17

Notes:

- See e-mail from Anna

5. Other Items of Note/Concern

Styles

Photographs captured at March 6, 2015 data inspection:

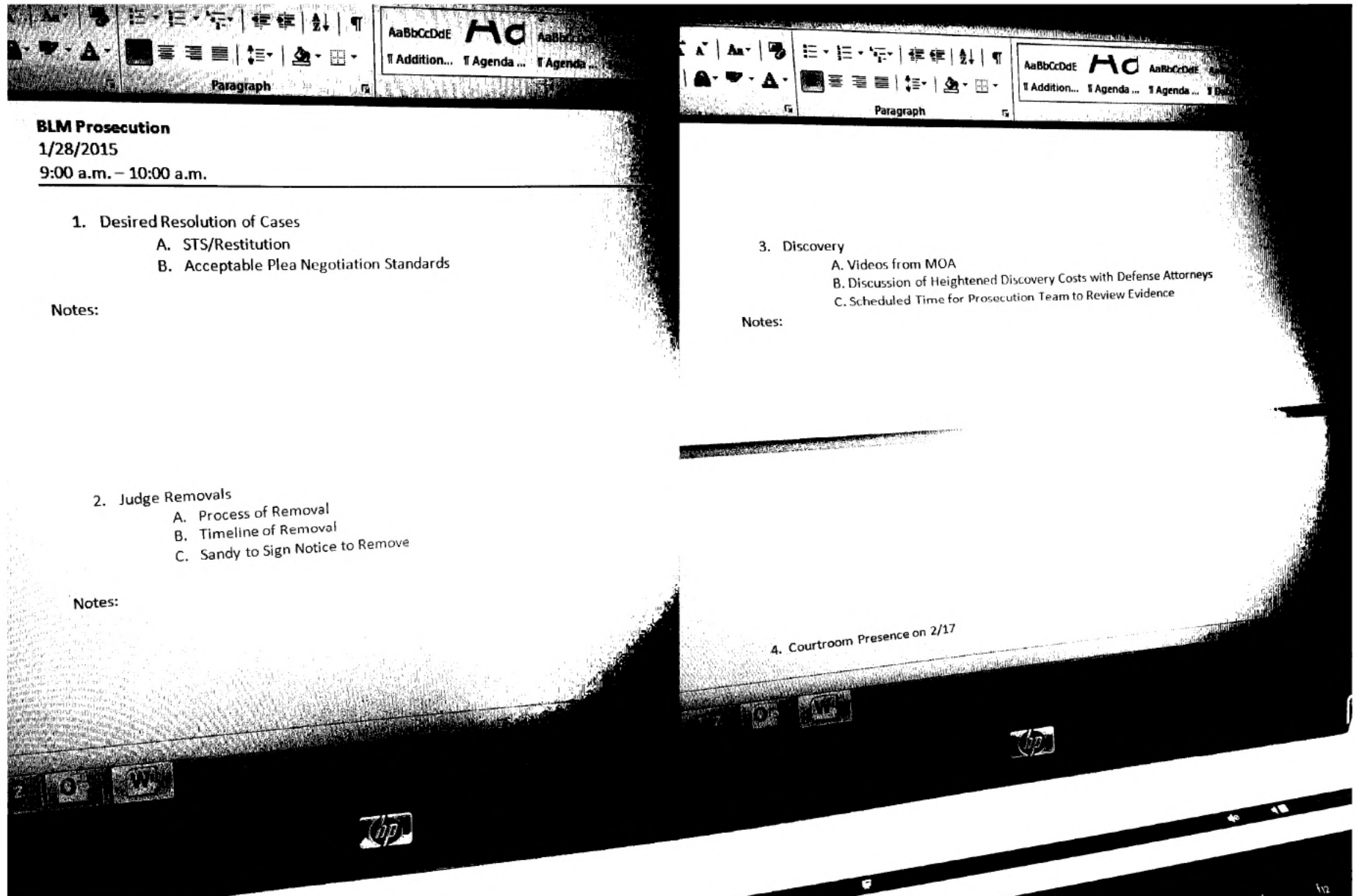


EXHIBIT J

“12202014_MOA_Protest_004.jpg” image:

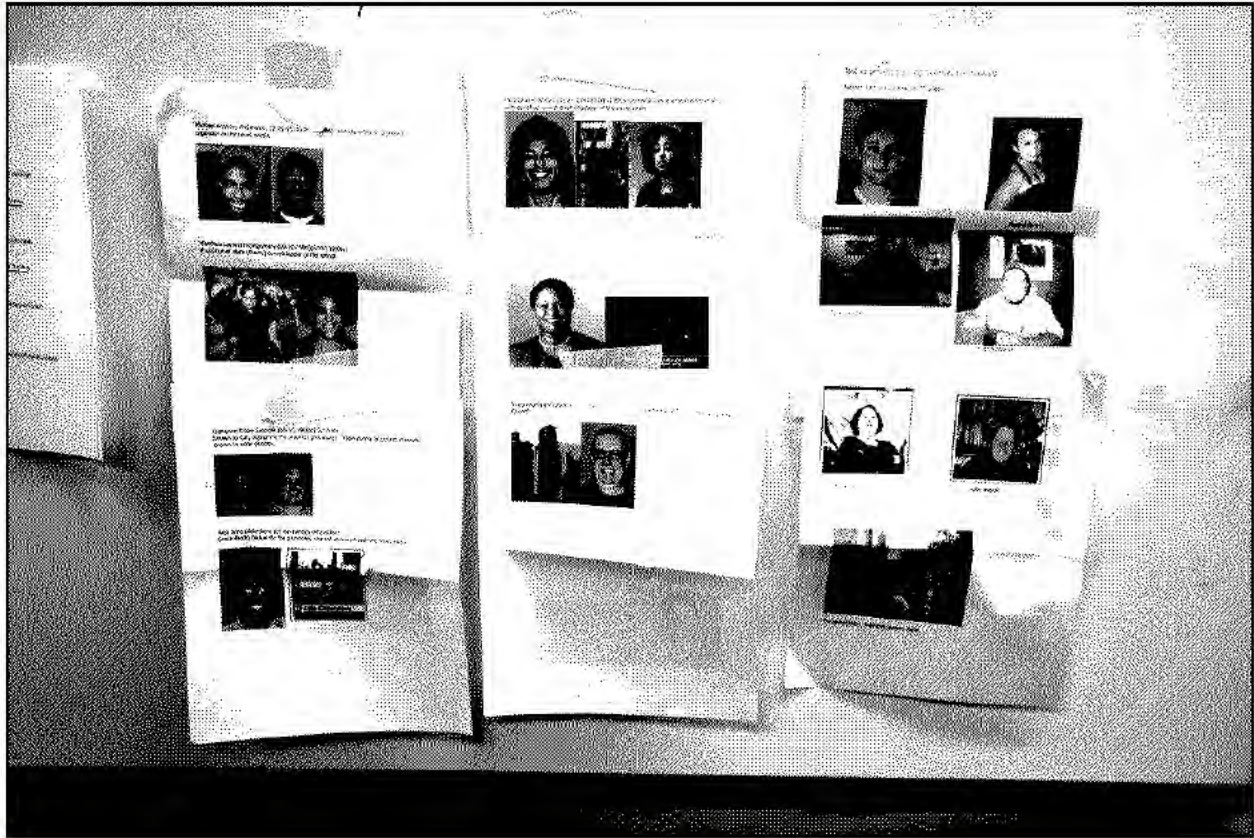


EXHIBIT K



KMSP-TV | MINNEAPOLIS-ST. PAUL

CONNECT



67°

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Mall of America wanted to trespass pro-Black Lives Matter Lush employees for 6 months

Posted: Mar 10 2015 9:12 AM CDT
Updated: Apr 12 2015 10:47 AM CDT

(KMSP) - Emails released by Black Lives Matter supporters indicate Mall of America officials wanted to trespass Lush employees who showed solidarity with demonstrators

Backstory – Lush Cosmetics supports workers who participated in Mall of America protest

In an email exchange two days after the December 20 anti-police brutality demonstration, Kathleen Allen, corporate counsel for the MOA, wrote to Bloomington City Attorney Sandy Johnson, "there is great concern over the behavior of the LUSH employees at MOA"

"The behavior is in clear violation of their Lease, and we are preparing a letter to their corporate representatives regarding the behavior of the employees and the resulting violations of their lease," Allen continues "The question has been raised however, as to whether we should also trespass the manager and/or employees who cooperated in the behavior. The initial thought is that this would be a six (6) month trespass with a Restricted Access Permit allowing the employees to work during that time, but not be on the property outside of work hours"

After pointing out that the trespass notice would be from the MOA, and there were wouldn't necessarily subject Lush employees to arrest, Allen's email ends on an ironic note

"We feel it's important to reinforce with all staff that violations of the rules will not be tolerated," Allen writes "At the same time we recognize that there is risk involved that this may become a media story -- and we don't want to impede any actions by your office or divert attention away from charges against the main culprits (organizers and leaders)"

Johnson, in response, writes, "A 6 month trespass with access or work only might send a good message to all persons employed at MOA" In another message, she explicitly states, "I am in agreement with a 6 mo trespass"

Later that same day, however, Allen writes to Johnson, "Just as an FYI, we are having additional discussions with our owners tomorrow, but they are not on board with trespassing the LUSH employees"

"We will be sending LUSH a warning/reprimand letter in accordance with their Lease, but they want to eliminate the potential for further press on this matter," she adds

Johnson responds, "MOA can and should make its own decisions on the trespass"

Ultimately, Allen expresses a desire to hit Lush employees and other demonstrators with penalties stiff enough to provide a deterrent for other people considering demonstrating at the MOA going forward

When demonstrators were ultimately charged in connection with the Black Lives Matter event, and they're due in court to enter pleas today, but supportive Lush employees weren't issued trespass notices

More – Bloomington attorney hits back after Black Lives Matter alleges impropriety

On the same day the above email exchange was taking place, one of MOA Lush's assistant managers, Chase Burns, told Fox 9, "Everybody was acting as an individual, but Lush tends to employ a lot of activists"

"Black Lives Matter is not in any way a Lush-sponsored thing, but [Lush corporate] is supporting the employees in the decision to act as individuals during the protest," Burns says

Brandi Halls, director of brand communications for Lush, told us, "LUSH employees acted with respect and in full accordance with law enforcement"

"Due to the protest happening in the mall, our shop was closed and staff were asked to stay within our lease line, which again they did in accordance with that request," she added "While not acting in any official LUSH capacity or as part of the organized protest, a few LUSH employees did, as individuals, raise their hands in solidarity of fairness and equality for all"

:::: UPDATE ::::

Bloomington city attorney Sandy Johnson sent us the following statement this morning

The e-mails were not leaked - they were provided to an apparent agent of BLM pursuant to a public data request Mr. Tony Webster. Placing them in context MOA was considering taking a civil legal action against the protestors and wanted my advice on that - as do many other victims of a crime (such as robbery or damage to property) I gave them my stock answer - you do what you have to do - but you might want to await the outcome of the prosecutions. I assured the MOA that the City was taking the matter very seriously and understood their concern that this was the third year in a row where protestors endangered the safety of their guests and disrupted the peace and quiet. I also told them - as with any other crime victim- to preserve the evidence that they had because it would soon evaporate once the charges came out.

Essentially - let us do our job as prosecutors and you do your job of maintaining a happy and safe venue for shoppers

These emails do not constitute a 'smoking gun' and surely do not stand for the proposition that the City in its prosecution function is directed by the MOA



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Update on Mall of America

FBI Minneapolis

February 22, 2015

Chief Division Counsel Kyle A. Loven

(763) 569-8540

A statement from the Bloomington Police Department in partnership with the FBI, Hennepin County Sheriff's Department, Minnesota Department of Public Safety, Metro Transit Police and Mall of America:

Federal, state, and local law enforcement partners are aware of the recently released propaganda video that mentions Mall of America, among others. At this time, there is no credible threat associated with Mall of America, but we will continue to work together at all levels to evaluate this and other information as it becomes available.

We take all security concerns seriously and have responded appropriately. Enhanced security measures, to include additional personnel, have been implemented, and all information is being monitored. We will continue to focus on and to prioritize the safety, security, and well-being of our citizens and visitors.

Mall of America remains a very safe place and employs a large, well-trained professional security force that patrols and monitors activity with a 24-hour presence. Bloomington Police have a permanent presence, with dedicated, full-time staffing at Mall of America. Additionally, several other law enforcement agencies maintain a high visibility in and around the property.

To report suspicious activities, contact your local law enforcement agency at 911. For more information on the Department of Homeland Security's safety and security initiatives, visit <http://www.dhs.gov/see-something-say-something>.

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- What We Investigate
- Our Partnerships
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[BLOG \(HTTP://BLOG.MALLOFAMERICA.COM\)](http://BLOG.MALLOFAMERICA.COM)

TODAY

AN UPDATE FROM MALL OF AMERICA®

You may be aware of a recent propaganda video that mentions Mall of America, among other malls. We've worked extensively with federal, state and local law enforcement agencies to determine that there is no credible threat associated with our property. Safety of our guests, tenants and employees remains our top priority, and we will continue to work with law enforcement at all levels to evaluate this and other information as it becomes available.

We take all security concerns seriously and have responded appropriately. Enhanced security measures have been implemented, and will remain in place for the foreseeable future. Some of them will be visible to you, our shopper, and others will not.

Mall of America remains a very safe place and employs an extensive, well-trained professional security force that patrols and monitors activity with a 24-hour presence. Bloomington Police have a permanent presence with dedicated, full-time staffing at Mall of America. Additionally, several other law enforcement agencies maintain a high visibility in and around the property.

At Mall of America®, safety is a top priority.

Mall of America Security is a nationally recognized department staffed with over 100 highly-trained personnel that prides itself on its high caliber officers, training and forward thinking attitude. MOA™ Security is leading the way in innovation, introducing programs such as the [Parental Escort Policy](http://www.mallofamerica.com/guests/escorts) (<http://www.mallofamerica.com/guests/escorts>), the special operations plain clothes unit and K9 program. Each year, Mall of America Security Officers respond to thousands of calls for service ranging from emergency situations to lost children to celebrity appearances. MOA Security also works closely with various local and federal law enforcement agencies to enhance the safety and security of our guests, tenants and employees.

Our state-of-the-art Dispatch Center employs the latest technology and monitors numerous cameras located throughout the parking ramps, surface lots, common areas and Nickelodeon Universe around the clock. The Mall's call boxes help phones and pay phones also have direct lines to the Dispatch Center (952.883.8888).

We would like to remind you to watch your valuables. For the security of our guests, please do not leave purses and other items unattended. Also, please note that while at Mall of America®, you may be subject to a security interview.

Violators of any of the Mall Rules will be asked to leave the property or possibly be arrested.

In order to assist in our efforts to provide a safe, secure and pleasant shopping environment, we ask for your cooperation with the following:

SECURITY EMPLOYMENT

Mall of America® is a nationally recognized Security Department that fosters personal and professional growth in the criminal justice field. If you wish to play a vital role in the private security field, come join our highly motivated, professional, disciplined and industry-leading team. You will be part of a service / action-oriented team, focused on creating a safe and enjoyable experience for guests and tenants.

If you are interested in learning more about employment with Mall of America Security, please [download the Security Brochure](http://www.mallofamerica.com/content/doc/security-brochure.pdf) (<http://www.mallofamerica.com/content/doc/security-brochure.pdf>).

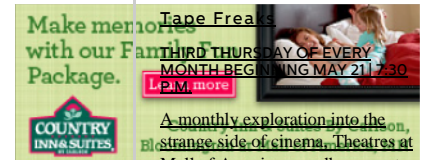
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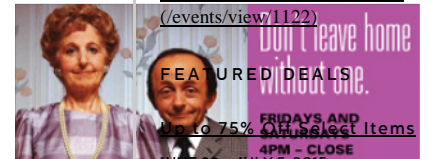
THURSDAY, JUNE 18 - SUNDAY, AUGUST 30 | DAILY AT 1, 2 AND 3 P.M.



<http://www.bloomingtonmn.gov/1/shopping>



<http://www.countryinn.com/offers/11083.html>



<http://www.mallofamerica.com/guests/escorts>

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Tuesday, June 30 | 6:29 p.m.

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What's Happening

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(/events/view/1164)

COMING SOON

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THIRD THURSDAY OF EVERY MONTH BEGINNING MAY 21 | 7:30 P.M.

A monthly exploration into the strange side of cinema. Theatres at Mall of America proudly presents: TAPE FREAKS. Each month we will bring you a weird, unique...
(/events/view/1122)

FEATURED DEALS

Up to 75% Off Select Items

JUNE 29 – JULY 5, 2015

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(/deals/view/2972)

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CONTACT SECURITY

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CONDUCT

- Conduct that is disorderly, disruptive or which interferes with or endangers business or guests is prohibited. Such conduct may include running, loud offensive language, spitting, throwing objects, fighting, obscene gestures, gang signs, skating, skateboarding, bicycling etc.
- Intimidating behavior by groups or individuals, loitering; engaging in soliciting; blocking storefronts, hallways, skyways, fire exits or escalators, and walking in groups in such a way as to inconvenience others is prohibited.
- Picketing, demonstrating, soliciting and petitioning are prohibited.
- Distributing handbills requires the prior written consent of Mall of America® management.

VIOLATIONS OF THE LAW

- The commission of any act defined by Federal, State or local ordinances as a criminal act is prohibited. These include, but are not limited to: graffiti, property damage, defacing, damaging or destroying any real or personal property, etc.
- Guns are banned on these premises.
- Using or possessing consumer fireworks is prohibited.

CLOTHING / ATTIRE

- Appropriate attire, including shirts and shoes, must be worn.
- Wearing apparel which has obscene language, obscene gestures, or racial / religious / ethnic slurs that are likely to create a disturbance is prohibited.
- Wearing clothing which deliberately obscures the face: such as hooded tops, will not be allowed.
- Bulletproof vests or simulated bulletproof vests will not be allowed.

LOCKDOWN DRILLS

Please note that Mall of America conducts monthly lockdown drills. The drill will take place five minutes after Mall opening and five minutes before Mall close every month on the dates below:

- Jan. 27
- Feb. 23
- March 31
- April 28
- May 29
- June 30
- July 31
- Aug. 25
- Sept. 29
- Oct. 30
- Nov. 24
- Dec. - No Drill

Nickelodeon Universe will participate in the morning drill ONLY during summer hours.



Persons with disabilities are permitted within Mall of America.

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[DINING \(/DINING\)](#)

[EVENTS \(/EVENTS\)](#)

[DEALS \(/DEALS\)](#)

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GUESTS & SECURITY

- Escalators are not to be used as stairways when not operating.
- WHEELCHAIRS are allowed on escalators.

GENERAL PARKING AND DELIVERIES

Hotel shuttles, charter/tour buses and taxis drop off and pick up passengers at the Transit Center located in the sub-level of the East parking ramp off of 24th Avenue. Passengers enter Mall of America at the East Entrance. This includes the daily shuttles to/from Mystic Lake Hotel Casino and Twin Cities tours operated by metroConnections. Please note that RV's are not allowed to park or drop off at this area.

- RV, semi, school bus and charter bus parking is only allowed in the Lindau Lot, located next to IKEA.
- Any vehicle left unattended in the drop off/pick-up area is subject to being towed at the owner's expense.
- There is no overnight parking at Mall of America which includes the parking area north of Lindau Lane and south of American Boulevard.
- There is no dropping off, picking up or parking allowed on the ring road surrounding Mall of America. Please park vehicles in designated parking lots and ramps. Any vehicle left unattended on the ring road will be subject to tow at the owner's expense.
- Deliveries must utilize the inspection check point located on the east side of Mall of America, off 24th Avenue.
- All delivery vehicles are subject to inspection.
- Documentation supporting the delivery must be provided at the check point.
- Vehicles with trailers, semi-trucks, box trucks and any other oversized vehicle must park in the Lindau Lot, north of Mall of America.

THE FOLLOWING IS A LIST OF LOCAL TRUCK STOPS:

- 10 MINUTES FROM MOA: Stockmens Truck Stop
651.455.0034 — Located in South St. Paul off 494
- 11 MILES FROM MOA: Olsons Truck Stop
651.438.3397 — Located in Inver Grove Heights off of Highway 52
- 15 MILES FROM MOA: MegaStop Truck Stop
952.469.1998 — Located in Lakeville off 35W

THE FOLLOWING IS A LIST OF LOCAL CAMPGROUNDS FOR OVERNIGHT RV'S:

- 6 MILES FROM MOA: LeBanon Hills Regional Park
651.688.1376 — Located next to the Minnesota Zoo in Eagan off of Highway 77
- 18 MILES FROM MOA: St. Croix Bluffs Regional Park
651.430.8240 — Located in Lake Elmo off of Highway 94
- 14 MILES FROM MOA: Mystic Lake Casino Campgrounds
952.445.9000 — Located in Prior Lake, west of 35W

COMPANY

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- [Employment \(/employment\)](#)
- [Meetings \(/visit/meetings-events\)](#)
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- [Hours \(/shopping/hours\)](#)
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- [Gift Cards \(/guests/giftcards\)](#)

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- [Blog \(http://www.mallofamerica.com/blog\)](#)
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- [Twitter \(http://twitter.com/mallofamerica\)](#)
- [Instagram \(http://instagram.com/mallofamerica\)](#)
- [Foursquare \(http://foursquare.com/venue/23554\)](#)
- [Tumblr \(http://www.mallofamerica.tumblr.com\)](#)



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2012 MASTER REDEVELOPMENT CONTRACT

(PHASE 1-C)

FOR PRIVATE REDEVELOPMENT OF LAND

By and Among

THE CITY OF BLOOMINGTON

and

THE PORT AUTHORITY OF THE CITY OF BLOOMINGTON

and

MOAC MALL HOLDINGS, LLC

and

MOAC LAND HOLDINGS LLC

**2012 MASTER REDEVELOPMENT CONTRACT
(PHASE 1-C)**

THIS CONTRACT, made on or as of this 28th day of August, 2012, by and among the CITY OF BLOOMINGTON, MINNESOTA, a Minnesota municipal corporation ("City"), THE PORT AUTHORITY OF THE CITY OF BLOOMINGTON, a public body politic and corporate, organized under the laws of the State of Minnesota ("Authority"), and MOAC MALL HOLDINGS, LLC, a Delaware limited liability company created in 1999 as a single purpose entity to own the Mall of America ("MOAC Mall"), MOAC LAND HOLDINGS LLC, a Delaware limited liability company created in 1999 to own and develop certain lands in and around the Mall of America ("MOAC Land"). All parties to this Agreement are collectively referred to herein as the "Parties."

RECITALS

WHEREAS, the City, Authority, MOAC Mall and MOAC Land entered into the Prior Restated Contract, as hereinafter defined, concerning the same subject matter; and

WHEREAS, it is the intent of the Parties that this Contract supersede, amend, and replace the Prior Restated Contract with respect to the development of Subsequent Phases of the Project from and after the date hereof, nonetheless, the Improvement Funding Agreement between MOAC, the City and Authority, dated December 19, 2011 ("2011 Funding Agreement") has continuing validity and is attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, Authority is a development agency of City properly created pursuant to Minnesota Statutes, Chapter 469 to, among other things, implement the development and redevelopment goals of the City in Industrial Development District I, which encompasses the real estate defined in Section 1.2 as the "Project Property" owned by the Developer (as defined in Section 1.2); and

WHEREAS, Authority has created an industrial development district in accordance with Minnesota Statutes, Section 469.058, Industrial Development District I, also known as the Airport South District for the purpose of creating jobs and increasing the City's tax base; and

WHEREAS, Authority adopted Tax Increment Financing Plans in accordance with Minnesota Statutes, Chapter 469 and caused the certification of Tax Increment Financing Districts within Industrial Development District I, pursuant to Minnesota Statutes, Sections 469.174 to 469.1799, for the purpose of financing redevelopment within Industrial Development

District I through the use of tax increment generated from captured net tax capacity in the Tax Increment District; and

WHEREAS, this Contract is intended to provide for the continuing redevelopment of the Project Property within Industrial Development District I by a uniquely qualified private developer in coordination with the Authority and with the cooperation and assistance of City; and

WHEREAS, Authority previously designated MOAC Mall and MOAC Land, based upon their development experience, capabilities and qualifications as well as unique development concepts, as the Developer to work with Authority to accomplish continued development of the Project Property; and

WHEREAS, MOAC Mall and MOAC Land have and may continue to, in the redevelopment of the Project Property, accomplish development through Secondary Developer(s), who must be approved by the Authority in accordance with Section 3.4 hereof; and

WHEREAS, this Contract is intended to provide a plan for the Project, to assure that development will be accomplished in an orderly and timely fashion and also to protect and preserve the investment of Authority and City; and

WHEREAS, the redevelopment of the Project Property, pursuant to this Contract is in the vital and best interests of the State of Minnesota, the Twin Cities metropolitan region, the City, and Authority and the health, safety, and welfare of the residents of City and Industrial Development District I, and is in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements; and

WHEREAS, the Subsequent Phases of the Project are likely to occur in multiple Subphases, each with its own level of connectivity, but part of a final project that is substantially integrated by and between all of its development components; and

WHEREAS, Laws of Minnesota 1986, Chapter 391, as amended by Laws of Minnesota 2010, Chapter 216, Section 44, authorizes the City to impose certain taxes, including taxes on revenues from liquor and lodging sales, in support of development of the former Metropolitan Stadium Site, as well as Industrial Development District 1, including the Mall of America and Old Cedar Avenue Bridge, as a public purpose that benefits the metropolitan area; and

WHEREAS, Minnesota Laws 2008, Chapter 366, Article 5, Section 28, as amended by Laws 2010, Chapter 216, Section 48 authorizes the City to impose certain local taxes, the net amount of which must be used for parking or other public improvements for any phase of the Mall of America, contingent and effective upon local approval of and compliance by the governing body of the City with the requirements of Minn. Stat. §645.021; and

WHEREAS, Minnesota Laws 2008, Chapter 366, Article 5, subd. 2, amending Minnesota Laws 2010, Chapter 216, Section 49, authorizes the City, at its option, to charter a special taxing authority for TIF Districts 1-C and 1-G, contingent and effective upon local approval of and compliance by the governing body of the City with the requirements of Minn. Stat. §645.021; and

WHEREAS, pursuant to state law and the terms of this Contract, the City and Authority can only expend public funds for public improvements for which there is a public accounting; and

WHEREAS, the intent of the Authority and the City in entering into this Contract and the activities authorized hereunder is to create higher density development of a superior quality than what the market rate of return on private investment alone could support, thereby preserving and enhancing the employment and tax base of the City and to further the public purposes stated in the Project Act.

NOW, THEREFORE, each of the Parties hereto does hereby amend and restate the Prior Restated Contract and mutually covenant and agree as follows:

ARTICLE 1.

MUTUALITY OF OBLIGATION, CONSIDERATION, DEFINITIONS, AND RULES OF INTERPRETATION

1.1 Mutuality of Obligation and Consideration - In consideration of the covenants and obligations of City and Authority contained herein, and in consideration of the covenants and obligations of Developer contained herein, the Parties do mutually agree to the terms and conditions set forth herein and hereby incorporate into this Contract the preceding Recitals.

1.2 Definitions -

Additional Revenues means the new local tax revenues generated and collected as a result of special local taxes authorized by Laws of Minnesota 2010, Chapter 216, Sections 48 and 49, or other subsequently enacted Laws of Minnesota to the extent that those laws are approved by the City Council and adopted by ordinance into law or otherwise enacted by the City and Authority. Currently under state law, Additional Revenues can only be used for public infrastructure on the Metropolitan Stadium Site and the Met Center Site. The term "Additional Revenues" does not include Liquor and Lodging Tax Revenue authorized by Laws of Minnesota 1986, Chapter 391, as amended by Laws of Minnesota 2010, Chapter 216, Section 44.

Affiliate means with respect to an entity (a) any corporation, partnership, limited liability company or other business entity or person controlling, controlled by or under common control with the entity, and (b) any successor to such party by merger, acquisition, reorganization or similar transaction involving all or substantially all of the assets of such party or such Affiliate. For the purposes of this definition the terms "controlling", "controlled by" and "under common control with" means with respect to any corporation, partnership, limited liability company or other business entity, the ownership of more than fifty percent of the voting interests in such entity or possession, directly or indirectly, or the power to direct or cause the direction of management policies of such entity, whether through ownership of voting securities or by contract or otherwise.

Authority means the Port Authority of the City of Bloomington, Minnesota.

Certificate of Occupancy means that final document issued by the City's building official that authorizes the occupancy of a structure or portion thereof for its approved use and does not include any conditions or requirements to be satisfied for the continued uninterrupted operation of the structure or portion thereof, as opposed to certificates of occupancy issued during the construction phases for a limited purpose.

City means the City of Bloomington, Minnesota, acting through its City Council.

City Code means the city code of the City and includes both the building code and the zoning code of the City.

City Council means the city council for the City of Bloomington, Minnesota.

City Representative means the city manager of the City or any other person duly designated by the city manager to serve in that capacity.

Commence Construction/Commencement of Construction means that Developer has received approval of the Final Development Plans for a Subsequent Phase and has satisfied the following conditions:

- i.) Submittal to the City of a signed construction contract for construction of Developer Improvements; and
- ii.) Submittal to the City and Authority of either (i) a commitment for financing; or (ii) other evidence reasonably satisfactory to the City and Authority of the availability of funds sufficient for construction of the Subsequent Phase, from the Developer, Secondary Developer or an entity with net assets exceeding \$2 billion; and
- iii.) Issuance by the City, or other applicable governing bodies, of grading, foundational and building permits enabling work to begin on Developer Improvements; and
- iv.) Actual and visible beginning of the improvement on the Project Property for the construction of Developer Improvements, and which actual and visible beginning of the improvement on the Project Property is commenced with the intent to continue the work until said Developer Improvements are completed.

Committed Public Improvement Cost means any item of cost of construction of the Committed Public Improvements paid or incurred by Developer, including, but not limited to, all costs and expenses listed in the definition of "Cost of Public Improvements," below.

Committed Public Improvements means the Public Improvements eligible for reimbursement in accordance with Minnesota law that have been approved by the City as part of the Final Development Plans, plus any Developer Improvements, where the Public Improvements or Developer Improvements have been agreed to in writing by the City, Authority

and Developer as to both type of construction and estimated cost, to be included in the category of Committed Public Improvements.

Completion of Construction means with respect to each Subsequent Phase, the date on which a Certificate of Occupancy has issued for the Developer Improvements set forth in the approved Final Development Plan for the Subsequent Phase.

Construction Lender means any person under any outstanding construction mortgage loan to finance any Prior Phase or any of the Subsequent Phases currently under construction, or to be constructed in the future.

Contract means this 2012 Master Redevelopment Contract for Private Redevelopment of Land, as it may be amended or supplemented from time to time.

Contract Termination Date means that date on which the rights and responsibilities of the Parties pursuant to this Contract terminate in accordance with the terms of Section 12.15 hereof.

Cost of Public Improvements means the cost of Public Improvements and all costs associated with the construction of those improvements, including but not limited to:

- i.) all costs which the Authority or City pay under the terms of this Contract;
- ii.) all obligations of the Authority or City incurred for labor and materials in connection with the construction;
- iii.) the cost of performance or other bonds and any and all types of insurance that may be necessary or appropriate to have in effect during the course of construction;
- iv.) all costs incurred by the Authority, City or Developer for engineering, architectural and other professional services, including, but not limited to the costs for test borings, surveys, right-of-way acquisition and its related costs, estimates, plans and specifications and preliminary investigations therefor, and for allocated overhead pertaining to construction and construction supervision, as well as for the performance of all other duties required by or consequent to the proper construction, including directly related legal and accounting costs;
- v.) administrative expenses paid or incurred prior to the completion of construction, all expenses incurred in connection with the issuance of bonds, including but not limited to: all issuer expenses and allocated overhead, compensation, fees and expenses of the Authority, City or Developer and trustee; compensation to any financial consultants or underwriters; legal fees and expenses directly related to the construction; fees for credit enhancement; costs of printing and engraving; recording and filing fees and costs of title insurance;

- vi.) any sums required to reimburse the Authority, City or Developer for expenses or advances made by it for any of the above items or for any costs incurred and for work done by the Authority or City; and
- vii.) interest on the TIF Bonds, also referred to as "capitalized interest" accrued up to six months after the Completion of Construction.

Counted Value means the qualifying private and public investment in each Subsequent Phase equaling the sum of:

- i.) **Initial Buildout** – the cost incurred by the Developer or tenant for the materials and services required for the initial construction of Developer Improvements and any Expansion thereof, including initial tenant improvements that constitute a part of the approved Final Development Plans for each Subsequent Phase or Subphase. The term "Initial Buildout" does not include inventory or retail stock. Improvements to finish and place into active use the previously unfinished shell space in the Bloomingdale's store basement, and any other unfinished shell space, shall be deemed to be an Initial Buildout (not a Renovation) so long as the Counted Value is certified within five years of the initial construction;
- ii.) **Renovations** – the cost incurred by the Developer or tenant for the renovation of previously constructed Developer Improvements as part of an approved Final Development Plan where its inclusion in Counted Value is specifically agreed to by the Authority and City in the form of a resolution adopted prior to the commencement of construction of the renovation but only to the extent that those renovations exceed the initial cost of the improvement;
- iii.) **Eligible Soft Costs** – as defined herein;
- iv.) **Cost of Committed Public Improvements** – the public cost of the initial design, construction and construction financing of Committed Public Improvements associated with each Subsequent Phase; and
- v.) **Capitalized Interest** – interest on construction financing, also referred to as "capitalized interest" accrued up to six months after the Completion of Construction.

Destroyed Value means the initial cost of constructing, without interest thereon, a Committed Public Improvement, or any portion of an existing Committed Public Improvement, such as a parking ramp, roadway, or plaza, previously constructed on the Project Property that is to be or has been destroyed or razed in order to facilitate a Subsequent Phase or Subphase, to be determined in accordance with Section 3.7 of this Contract.

Developer means MOAC Mall, MOAC Land, an approved Secondary Developer, or a Permitted Successor Developer, as applicable. By way of example, if a Subsequent Phase or

Subphase is being developed by MOAC Land, then MOAC Land shall be deemed the Developer; if the Subsequent Phase or Subphase is being developed by a Secondary Developer, then the Secondary Developer shall be deemed to be the Developer; and if the Subsequent Phase or Subphase is being developed by a Permitted Successor Developer, then the Permitted Successor Developer shall be deemed to be the Developer, as applicable.

Developer Improvements means the improvements to be constructed on the Project Property or on adjacent right-of-way by the Developer or a tenant, consisting, in part, of a structure or structures which are built consisting of walls and a roof or roofs all composed of parts joined together and physical extensions or expansions of the structure's height or footprint, but shall not include Public Improvements. Developer Improvements may also include, as agreed to by the Parties in the Redevelopment Agreement for the specific Subsequent Phase, nonstructural improvements, such as landscaping, signage, pavement, private utilities, lighting, heating, ventilation, air conditioning, building controls, flooring, building finishes, elevators and escalators and any other improvement that increases the tax value of the Property. The term Developer Improvements does not include costs incurred by the Developer, or tenant for operation, maintenance, renovation or repair of a previously completed space except as otherwise provided in the definition of Counted Value.

Development Plans means the plans for the Prior Phases of Developer Improvements and subsequent plans for Subsequent Phases of Developer Improvements.

Development Pro Forma means the Developer's summary of the various hard and soft development costs for a Subsequent Phase or Subphase of future development and the revenues proposed to finance the project, including for the sake of analysis the relevant assumptions relating to development costs, financing terms, revenue rates and operating expenses.

Effective Date means the effective date as provided under Section 12.18 of this Contract.

Eligible Soft Cost means any cost incurred by the Developer eligible for inclusion in Counted Value as part of the Developer Improvements by virtue of the fact that the labor, materials or services acquired thereby were required by, or consequent to, the proper design, engineering, materials and construction of the Developer Improvements and Committed Public Improvements for Subsequent Phases subject to verification and audit at the reasonable request of the City or Authority. Certain furniture, fixtures, and equipment may constitute an Eligible Soft Cost, as agreed to by the Parties in the Redevelopment Agreement for the specific Subsequent Phase, to the extent that they are customarily and reasonably required for the initial operation of a Subsequent Phase or Subphase. Expenses for the following do not constitute Eligible Soft Costs: public relations expenses, legislative lobbying, informational updates to the City Council or Authority, or other costs not related to the construction of the Subsequent Phase or Subphase. Expenditures for professional services without a direct nexus to the actual construction, including but not limited to fees for legal services, financing, financial consulting, accounting, and preliminary architectural renderings qualify as Eligible Soft Costs up to a cumulative amount that is equal to or less than 5% of the total Project cost reimbursable under Section 7.3 for that Subsequent Phase.

Event of Default shall have the meaning given in Article 12 of this Contract.

Expansion means the physical expansion of a previously constructed Developer Improvements building or structure within an existing Phase or Subsequent Phase.

Final Development Plans means the Final Development Plans approved by the City for the Initial Phase or any Subsequent Phase of the Project, as required pursuant to this Contract and City Code and includes revisions to the Final Development Plans approved by the City.

Ground Lease means the Ground Lease and Management Agreement dated April 11, 1989, between the Developer and Authority, as amended, as well as any subsequent lease agreement between the Developer and City and Authority setting forth the following, without limitation:

- i.) the terms by which the Committed Public Improvement is allowed to be constructed on the Project Property;
- ii.) the terms by which the Committed Public Improvement is to be managed and maintained during the lease term;
- iii.) the ownership interests of the Authority in the Committed Public Improvement during the lease term;
- iv.) the obligations of the Parties to maintain mutually acceptable safety conditions for operations, security and maintenance of the Committed Public Improvement;
- v.) the Developer's rights to construct Developer Improvements on all or a portion of the Committed Public Improvement, subject to the consent of the City and Authority and the payment of reimbursement to the Authority for any Destroyed Value or loss of public access or use of the Committed Public Improvement; and
- vi.) such other terms as the Parties agree upon.

IKEA means the IKEA store and related improvements that were constructed after the Initial Phase on the lot subdivided from the Met Center Site in 2003 as Lot 2, Block 1, Mall of America 6th Addition, according to the recorded plat thereof, Hennepin County, Minnesota ("IKEA Lot") and which is no longer owned by MOAC Mall or MOAC Land.

Improvements means the Developer Improvements, Public Improvements, and Committed Public Improvements.

Improvement Expense means any sum of money, subject to the limitations of Section 7.2 hereof, expended or applied by the Developer to pay for all or a portion of a Committed Public Improvement Cost.

Improvement Reimbursement Certificate means the Improvement Reimbursement Certificate described in Section 7.3 hereof.

Industrial Development District means Industrial Development District I, established by the Authority and the City and within which the Metropolitan Stadium Site, Met Center Site and Southpad Lot are located.

Initial Note means the \$46,606,000 Tax Increment Revenue Note (Stadium Site Redevelopment Project) issued by the Authority to the Developer or its lender as of the date of execution of the Prior Restated Contract on May 31, 1988.

Initial Development Plans means the Final Development Plans for the Initial Phase of Developer Improvements approved by the City Council and Authority on March 16, 1987, and as may be amended and approved by the Developer, City Council and Authority from time to time.

Initial Phase means the first Phase of 4.2 million square feet of Developer Improvements which opened to the public on August 11, 1992.

Liquor and Lodging Revenue means the net revenue derived from those liquor and lodging sales taxes authorized by Laws of Minnesota 1986, Chapter 391, as amended by Laws of Minnesota 2010, Chapter 216, Section 44.

Met Center Site means Lot 1, Block 1, Mall of America 6th Addition, and Outlot A, Mall of America 5th Addition, according to the recorded plat thereof, Hennepin County, Minnesota.

Metropolitan Stadium Site means Lot 1, Block 1, Mall of America 7th Addition, and Lots 2, 3, 4 and 5, Block 1, Mall of America 3rd Addition, according to the recorded plats thereof, Hennepin County, Minnesota.

Parking Facilities means the total parking facilities for the Project including Public Parking Facilities.

Parties or Party means the Authority, City, and Developer.

Permanent Lender means any person or entity under any outstanding permanent financing or equity contribution to finance, refinance or renew financing on the Initial Phase, or any Subsequent Phase of the Project.

Permitted Successor Developer means (i) any corporation owned or controlled by the owners of Triple Five Group of Companies ("Triple Five") or any Affiliate of Triple Five, (ii) any general or limited partnership in which Triple Five (or any Affiliate of Triple Five) is a general or limited partner, (iii) any limited liability company in which Triple Five (or any Affiliate of Triple Five) is a member, (iv) any Construction Lender; (v) any Permanent Lender or (vi) a purchaser at a foreclosure sale or who receives title by deed in lieu of foreclosure or any subsequent transferee from a Construction Lender or Permanent Lender.

Phase means each portion of the Project separately approved within a single Final Development Plan for a defined portion of the Project Property all built as part of an integrated development.

Port Representative means the Port Authority administrator or any other person duly designated by the Port Authority administrator to serve in that capacity.

Preliminary Development Plan means a preliminary development plan approved by the City for the Subsequent Phases as required by this Contract and Bloomington City Code Section 21.501.02 and includes the Preliminary Development Plan for approximately 5.6 million square feet of development, subsequent to the Initial Phase, approved on November 20, 2006, and any revisions thereto as approved by the City.

Prior Phases means the Initial Phase, IKEA and the Southpad Hotel Project, collectively.

Prior Restated Contract means the 1988 Restated Contract for Purchase and Private Redevelopment of Land entered into by the City, Authority, Mall of America Company and Triple Five and dated May 31, 1988, as amended five times, with the most recent amendment thereto dated June 29, 2010.

Project means Public Improvements, Committed Public Improvements and Developer Improvements on the Project Property, IKEA Lot, Southpad Lot and including all related rights-of-way, which may, depending on market conditions and economic feasibility, be constructed pursuant to this Contract for an ultimate development of mixed uses including retail, entertainment, cultural attractions, scientific and educational facilities, hotel and residential development, and office complexes which may ultimately result in a completed Project development of approximately 9,500,000 square feet of Developer Improvements, excluding parking, and including 5,600,000 square feet of development subsequent to the Initial Phase all consistent with the Mall of America Environmental Impact Statement, dated November 2000.

Project 1-C means the development to be constructed on the northerly portion of the Metropolitan Stadium Site and may extend onto the Public Plaza consisting of a mix of high density uses, which may include a hotel of approximately 347 rooms, retail space and a medical office component, all of which shall constitute an integrated development built as a single Phase.

Project Act means all Laws of Minnesota relevant or applicable to the Project from 1986 to 2012, specifically including Laws of Minnesota 1985, Chapter 295, Laws of Minnesota 1986, Chapter 391, Laws of Minnesota 1996, Chapter 464, Laws of Minnesota 2008, Chapter 366, Laws of Minnesota 2008, Article 5, Section 28, subdivisions 1 and 2; and Laws of Minnesota 2010, Chapter 216.

Project Completion means the date on which a Certificate of Occupancy has issued for the final Developer Improvements set forth in the approved Final Development Plan for the entire Project, as defined herein.

Project Property means the Metropolitan Stadium Site, Met Center Site, and any other land or vertical space that is legally subdivided from the above-referenced properties in the future, including space provided to Developer under the Public Plaza lease described in this Contract.

Public Improvements means the public infrastructure constructed by the City or Authority.

Public Investment means the public investment of funds for the proper construction of Committed Public Improvements which have been determined by the City and Authority to be essential to the construction of Developer Improvements on the Project Property where the costs thereof are not recouped through special assessment or repayment to the City or Authority of Destroyed Value.

Public Investment Fund means those funds held by the City or Authority specifically dedicated by source and amount to reimburse the cost of Committed Public Improvements. This term is a collective reference for the several separate funds serving as a source of Public Investment in the Project, which may include TIF Revenue, Additional Revenues, Reserved Liquor and Lodging Revenues and any other public funds, including Liquor and Lodging Revenue to the extent that those funds are specifically dedicated for investment in the Project by the City and Authority in the form of a resolution.

Public Investment Ratio means the ratio of Public Investment paid or committed to the Developer, exclusive of interest, debt service or financing costs (except capitalized interest) relative to the committed or certified Counted Value for the Project or Subsequent Phase. The term includes two sub-categories: 1) the **Cumulative Ratio**, which is the resulting ratio over the course of the Project based on the ratio of Public Investment to Counted Value paid or committed to the Developer pursuant to Section 7.2 of this Contract and 2) the **Per Phase Public Investment Ratio**, which is the maximum ratio to be paid or committed to the Developer pursuant to Section 7.2 of this Contract for a specific Subsequent Phase.

Public Parking Facilities means the structured parking facilities, or surface parking facilities specifically agreed to constitute a Committed Public Improvement by the City and Authority in the Redevelopment Agreement for a Subsequent Phase and subject to a parking management agreement, that are primarily open to the public and which serve two or more structures or uses on the Project Property, constructed or to be constructed and paid for in part or in whole by Public Investment.

Public Plaza means the bridge structure, abutment and foundations, beyond the retaining walls, constructed above the lowered Lindau Lane, upon which may be constructed internal roadways, parking, landscaping and other architectural features or recreational elements primarily open to the public and which serves two or more structures or uses on the Project Property and which may, in whole or in part, be later converted from public to private use upon payment of Plaza Reimbursement as that term is defined in the 2011, Improvement Funding Agreement.

Recapture means the reimbursement to the Authority or City by Developer of a portion of the Public Investment in the Project where the Developer realizes an excess return on the Developer's costs associated with the Developer Improvement as determined by the yield on sale, internal rate of return or the appreciated market value of the Developer Improvement as set forth in the Redevelopment Agreement for the Subsequent Phase.

Redevelopment Agreement means the agreement between the Developer, Secondary Developer, Authority and City setting forth the obligations of the Parties relative to the design and construction of the Committed Public Improvements and Developer Improvements and the

terms upon which the City and Authority agree to provide Public Investment for the Subsequent Phase. Redevelopment Agreements for a Subsequent Phase must contain at a minimum, the following:

- i.) a risk analysis, along with the prerequisite finding that Developer's financing commitments, or the loan to value ratio for the Project Property does not pose an unreasonable risk to the City or Authority's rights under this Contract, as set forth in Section 7.2 (07);
- ii.) a summary analysis of the financial information provided by the Developer pursuant to Section 3.6, including an analysis of the proposed construction financing for the Subsequent Phase, along with the prerequisite finding that there is adequate and secure financing to construct the Subsequent Phase;
- iii.) a public expenditure analysis, along with the prerequisite finding that the Public Investment is necessary to make the Subsequent Phase financially feasible, as set forth in Section 7.2(06);
- iv.) a Recapture clause pursuant to Article 9;
- v.) a description of the Committed Public Improvements included in that Subsequent Phase;
- vi.) a description of the Developer Improvements included in the Subsequent Phase;
- vii.) the identification of any Secondary Developer serving as a party to the agreement;
- viii.) a Destroyed Value compensation clause as set forth in Section 3.7 (if applicable);
- ix.) a business subsidy analysis and agreement, if applicable, as set forth in Section 12.14;
- x.) a description of the Eligible Soft Costs for the Subsequent Phase;
- xi.) insurance requirements for the Subsequent Phase;
- xii.) renewed representations by the parties to the Redevelopment Agreement that, upon examination of their respective business records, there exists no contractual relationships or obligations, judgment, order or decree of any court, or pending or intended legal action that would have the potential to materially limit, breach or conflict with the party's obligations under this Contract or the Redevelopment Agreement; and

xiii.) a commitment by the Developer to construct adequate parking for the Subsequent Phase determined using a shared parking model mutually agreed upon by the Parties.

Reserved Liquor and Lodging Tax Revenue means the \$6,000,000 of the accumulated Liquor and Lodging Revenues reserved by the City Council by Resolution 2011-165, adopted December 6, 2011, for the exclusive use of the Developer for the construction of Committed Public Improvements or Public Improvements in an approved Final Development Plan for a Subsequent Phase. These funds shall be considered part of the Public Investment Fund until June 1, 2017.

Secondary Developer means any developer, other than MOAC Land or MOAC Mall, whose participation in the Project is authorized pursuant to Section 3.4 of this Contract and who is contractually obligated to construct Developer Improvements which may include, without limitation, any hotel, office, residential, entertainment, or retail development.

South Loop District Development Fund means the fund hereafter established by the City or Authority for use in any development project in Industrial Development District I, including the Project.

Southpad Hotel Project means the construction of a 500-room hotel on the Southpad Lot, which is connected to the Initial Phase and includes the construction of a structured public parking facility and skyway connecting the hotel to the Initial Phase facility and which was the subject matter addressed in Amendment V of the Prior Restated Contract.

Southpad Lot means Lot 2, Block 1, Mall of America 7th Addition, according to the recorded plat thereof, Hennepin County, Minnesota.

Subphase means the separate Developer Improvements within a Prior Phase or Subsequent Phase. For example, a Subsequent Phase may consist of several Subphases or components that may be separately operated. The separate identification of specific Subphases within a prior Phase or Subsequent Phase is useful, at a minimum, for the calculation of Destroyed Value, Recapture, Eligible Soft Costs, and the public expenditure analysis set forth at Section 7.2 (06).

Subsequent Final Development Plans means the plans approved by the City and Authority for Subsequent Phases of Developer Improvements beyond the Initial Phase.

Subsequent Phase means any phase or Subphase of the Project other than the Prior Phases.

Substantially Completed means construction is substantially complete except for minor "punch list" items and work related to landscaping and exterior items that cannot be completed due to seasonal weather conditions.

Tax Increment Act and TIF Act means Minnesota Statutes, Section 469.174 to 469.179, and any amendments thereto in effect as of the date of relevant actions under this Contract.

Tax Increment Bonds or TIF Bonds means any bonds or obligations issued by the Authority or City pursuant to the TIF Act or payable from Tax Increments to finance the Public Improvements or Committed Public Improvements for the Project or to refund such bonds or obligations and includes but is not limited to the Special Tax Revenue Refunding Bonds (Mall of America Project), Series 2009 issued by the Authority on October 14, 2009, in the amount of \$9,835,000, and the Taxable General Obligation Parking Ramp Bonds, Series 2010 issued by the Authority on December 29, 2010, in the amount of \$14,550,000, and any TIF Note.

Tax Increment District or TIF District means

- i.) redevelopment tax increment financing district 1-C (Metropolitan Stadium Site), and
- ii.) redevelopment tax increment financing district 1-G (Met Center Site), or
- iii.) both as the context may require.

Tax Increment Revenue Note or TIF Note means the Initial Note and any similar note, substantially in the form and content, except as to amounts and dates, of the Initial Note.

Tax Increments means the tax increments derived from the TIF Districts 1-C and 1-G and which are specifically reserved for use for the Project.

TIF Revenue means tax increment derived from the TIF Districts.

Triple Five means Triple Five Group of Companies, a private Canadian group of affiliated companies with offices located at 8882 170th Street, #3000, Edmonton, Alberta, Canada T5T 4M5 and also has the meaning given in the definition of Permitted Successor Developer in this Contract.

Unavoidable Delay means a forced delay by any Party to this Contract in the performance of its obligations due to causes beyond its control, including, but not limited to, acts of nature, acts of government, legal proceedings brought by a non-party to this Contract with respect to any provision or requirement of this Contract, fires, floods, epidemics, quarantine restrictions, freight embargoes, or unusually severe weather.

U.S. Currency means the currency of the United States of America. Wherever in the contract "\$" followed by an amount of money appears, it refers to U.S. currency.

1.3 Rules of Interpretation

(01) The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or articles of this Contract.

(02) The recitals preceding Article 1 of this Contract are correct and are made a part of this Contract.

(03) The words "herein" and "hereof" and words of similar import, without reference to any particular section or subdivision, refer to this Contract as a whole rather than to any particular section or subdivision hereof.

ARTICLE 2.

REPRESENTATIONS AND COVENANTS

2.1 Representations and Covenants by Developer - MOAC Mall, MOAC Land and the Developer (if different from MOAC Mall and MOAC Land), as applicable, represent and covenant that:

(01) Authority to Contract - MOAC Mall - MOAC Mall has been duly formed under the laws of the State of Delaware and is in good standing under the laws of Minnesota, is duly qualified to transact business in Minnesota, and has the requisite power and authority to enter into and perform the terms of this Contract and any other documents and instruments required to be executed and delivered by MOAC Mall pursuant to this Contract.

(02) Authority to Contract - MOAC Land - MOAC Land has been duly formed under the laws of the State of Delaware and is in good standing under the laws of Minnesota, is duly qualified to transact business in Minnesota, and has the requisite power and authority to enter into and perform this Contract and any other documents and instruments required to be executed and delivered by MOAC Land pursuant to this Contract.

(03) No Conflict with By-Laws, Articles of Incorporation, Indebtedness or Law - The execution and delivery of this Contract and the consummation of the transactions herein contemplated will not conflict with or constitute a breach or default under either MOAC Mall's or MOAC Land's articles of organization, bylaws, or the provisions of any loan agreement, mortgage agreement, lease, or other contract or agreement to which MOAC Mall or MOAC Land is party or by which it is bound, or violate any law, regulation, or order of United States of America or the State of Minnesota, or any agency or political subdivision thereof or any court order or judgment in any proceeding to which MOAC Mall or MOAC Land is or was a party or by which it is bound.

(04) Consistent with Existing Legal Obligations - MOAC Mall and MOAC Land hereby attest that they have each made a reasonable, diligent and thorough investigation of their business records and determined that neither entity has made or entered into any contract, agreement or undertaking, including legal actions that would have the potential to materially limit, breach or conflict with this Contract and that there is no action, suit, proceeding, or investigation at law or in equity, or by or before any United States or Canadian court, arbitrator, administrative agency, or other federal, state, or local governmental authority, pending against Developer, or threatened in writing against the Developer, wherein an unfavorable decision, ruling, or finding would have an adverse effect on the validity of this Contract, or a material adverse effect on the transactions contemplated hereby.

(05) Mortgage Consents - MOAC Mall and MOAC Land, on behalf of themselves, as well as their successors and assigns, hereby agree to obtain a recordable consent or release from each holder of a security interest in the development rights of or a mortgage interest of record in the Project Property for all aspects of the development of a Subsequent Phase and provide proof thereof to the City as a precondition to the issuance of any City permits for each Subsequent Phase thereafter.

(06) Valid and Binding Obligation - MOAC Mall and MOAC Land agree that this Contract shall constitute a valid and binding obligation of each of them to the extent applicable to MOAC Mall and MOAC Land respectively, and shall be binding upon their successors and assigns and enforceable in accordance with its terms. This Contract and the documents and instruments required to be executed and delivered by MOAC Mall and MOAC Land pursuant hereto have been duly authorized by all necessary action on the part of MOAC Mall and MOAC Land.

(07) No Future Legal Action or Creation of Conflict - MOAC Mall and MOAC Land hereby agree that neither entity will make or enter into any contract, agreement or undertaking, including any legal action, that would have the potential to materially limit, breach or conflict with this Contract and agree to promptly and fully disclose to the City and Authority any such contract, agreement or undertaking, including any legal action affecting any portion of the Project Property.

(08) Duty to Advise of Future Legal Actions or Conflicts - The Developer of each Subsequent Phase agrees to fully and promptly advise the City and Authority in writing of any future litigation, claims, mortgages, defaults, foreclosures or sales affecting any Party (other than the City or Authority) to the Subsequent Phase or any portion of the Project Property and of any and all complaints or charges made by a governmental authority (other than the City or Authority) affecting the Committed Public Improvements, any portion of the Project Property, or their businesses and which has the potential to materially delay or require changes in the construction of the Subsequent Phase of the Project.

(09) Compliance with Law - Developer represents that it will comply with all local, state and federal laws and regulations applicable to the development of the Project Property and that as of the date of this Contract that Developer is aware of no facts the existence of which would cause it to be in violation of any local, state or federal law applicable to the Project, including environmental laws, regulations or review proceedings.

(10) Acknowledgement of Full Reimbursement of Committed Public Improvement Costs and Credit for Counted Value Relating to Initial Phase and IKEA - MOAC Mall and MOAC Land agree and acknowledge that the Public Improvements and Committed Public Improvements have been constructed for the Initial Phase as contemplated in the Prior Restated Contract and acknowledge that all of the Counted Value for the Initial Phase and the next phase of the Project thereafter, known as IKEA, has been credited towards all Committed Public Improvement Costs attributable to those portions of the Project, with the exception of finishing and placing into active use previously unfinished

shell space in the Bloomingdale's store basement, which was constructed in 1992, and any other unfinished shell space, shall be deemed to be an Initial Buildout (not a Renovation) so long as the Counted Value is certified within five years of the initial construction.

The foregoing representations are express representations that the City and Authority shall be entitled to rely on regardless of any investigation or inquiry made by or any knowledge of the City and Authority. The execution and delivery of this Contract by the City and the Authority with knowledge of any such breach shall not constitute a waiver or release by the City or Authority of any claims arising out of or in connection with such breach. The foregoing representations shall survive the governmental approvals of the City and Authority contemplated by this Contract.

2.2 Representations and Covenants by Authority - Authority represents and covenants that:

(01) Authority to Contract - Authority is a public body politic and corporate organized under the laws of the State of Minnesota, is authorized to do business in the State of Minnesota, has power to enter into this Contract, and by proper corporate action has been duly authorized to execute and deliver this Contract.

(02) No Conflict with By-Laws, Indebtedness or Law - The execution and delivery of this Contract and the consummation of the transactions herein contemplated will not conflict with or constitute a breach or default under Authority's special law or bylaws, under the provisions of any Minnesota Statute, or the provisions of any bond, debenture, loan agreement, lease, or other contract or agreement to which Authority is party or by which it is bound, or violate any law, regulation, or order of United States of America or the State of Minnesota, or any agency or political subdivision thereof or any court order or judgment in any proceeding to which Authority is or was a party or by which it is bound.

(03) Consistent with Existing Legal Obligations - Authority hereby attests that it has made a reasonable, thorough and diligent investigation of its business records and has determined that it has not made or entered into any contracts, agreements or undertakings, including legal actions that would have the potential to materially limit, breach or conflict with this Contract and that there is no action, suit, proceeding, or investigation at law or in equity, or by or before any United States court, arbitrator, administrative agency, or other federal, state, or local governmental authority, pending, against Authority, or threatened in writing against the Authority, wherein an unfavorable decision, ruling, or finding would have an materially adverse effect on the validity of this Contract, or a material adverse effect on the transactions contemplated hereby.

(04) Valid and Binding Obligation - This Contract and the documents and instruments required to be executed and delivered by the Authority pursuant hereto have each been duly authorized by all necessary action on the part of the Authority. This Contract constitutes a valid and binding obligation on the Authority and its successors and assigns, enforceable in accordance with its terms.

(05) No Future Legal Action or Creation of Conflict - Authority, on behalf of itself, as well as its successors and assigns, hereby agrees that neither it nor any officer of Authority will make or enter into any contract, agreement or undertaking, including any legal action, that would have the potential to materially limit, breach or conflict with this Contract and agrees to promptly and fully disclose to City, MOAC Mall, MOAC Land and the Developer (if different than MOAC Mall or MOAC Land) any such contract, agreement or undertaking, including any such legal action.

(06) Authority's TIF Plans - Authority has established the Industrial Development District, which includes the Project Property. The Industrial Development District is a "project" as defined by Section 469.174, subd. 8, of the TIF Act. Each TIF District is a "redevelopment tax increment district" within the meaning of Section 469.174, subdivision 10, of the TIF Act, and the requisite action with respect to each parcel within each TIF District has been taken within four years of certifications of the original assessed value of the TIF District as provided in Section 469.176, subd. 6, of the TIF Act, so as to assure that the original assessed value of each parcel will continue to be part of the original assessed value of the TIF District within which the parcel is located. Authority shall amend, if necessary, the TIF Plans to finance Public Improvements or Committed Public Improvements to the extent and as provided in this Contract.

The foregoing representations are express representations that City, MOAC Mall, MOAC Land and the Developer (if different than MOAC Mall or MOAC Land) shall be entitled to rely on regardless of any investigation or inquiry made by or any knowledge of City, MOAC Mall, MOAC Land and the Developer (if different than MOAC Mall or MOAC Land). The execution and delivery of this Contract with knowledge of any such breach shall not constitute a waiver or release by City, MOAC Mall, MOAC Land and the Developer (if different than MOAC Mall or MOAC Land) of any claims arising out of or in connection with such breach. The foregoing representations shall survive the execution and delivery of other documents by City, MOAC Mall, MOAC Land and the Developer (if different than MOAC Mall or MOAC Land) to Authority.

2.3 Representations and Covenants by City - City represents and covenants that:

(01) Authority to Contract - The City is a municipal corporation duly organized under the laws of the State of Minnesota, is in good standing under said laws, is authorized to do business in the State of Minnesota, and has the requisite power and authority, along with the Authority, to enter into and perform the terms of this Contract and any other documents and instruments required to be executed and delivered by the City pursuant to this Contract.

(02) No Conflict with Charter, Ordinances, Indebtedness or Law - The execution and delivery of this Contract and the consummation of the transactions herein contemplated will not conflict with or constitute a breach or violation under the City's charter or ordinances, or the provisions of any bond, debenture, note, or any other evidence of indebtedness, debenture, loan agreement, lease, or other contract or agreement to which City is a party or by which it is bound, or violate any law, regulation, or order of the United States of America or the State of Minnesota or any agency or

political subdivision thereof or of any court order or judgment in any proceeding to which City is or was a party or by which it is bound.

(03) Consistent with Existing Legal Obligations - The City hereby attests that it has made a reasonable, thorough and diligent investigation of its business records and has determined that it has not made or entered into any contracts, agreements or undertakings, including legal actions that would have the potential to materially limit, breach or conflict with this Contract and that there is no actual or contemplated action, suit, proceeding or investigation at law or in equity, by or before any court, arbitrator, administrative agency, or other federal, state or local governmental authority, pending against the City, or threatened in writing against the City, wherein an unfavorable decision, ruling or finding would have a materially adverse impact on the validity of the Contract or would have a materially adverse impact on the transactions contemplated thereby or hereby.

(04) Valid and Binding Obligation - This Contract and the documents and instruments required to be executed and delivered by the City pursuant hereto have each been duly authorized by all necessary action on the part of the City. This Contract constitutes a valid and binding obligation on the City and its successors and assigns, enforceable in accordance with its terms.

(05) No Future Legal Action or Creation of Conflict - The City, on behalf of itself, as well as its successors and assigns, hereby agrees that neither it nor any officer of the City will make or enter into any contract, agreement or undertaking, including any legal action, that would have the potential to materially limit, breach or conflict with this Contract and agrees to promptly and fully disclose to Authority, MOAC Mall, MOAC Land and the Developer (if different than MOAC Mall or MOAC Land) any such contract, agreement or undertaking, including such legal action.

The foregoing representations are express representations that Authority, MOAC Mall, MOAC Land and the Developer (if different than MOAC Mall or MOAC Land) shall be entitled to rely on regardless of any investigation or inquiry made by or any knowledge of Authority, MOAC Mall, MOAC Land and the Developer (if different than MOAC Mall or MOAC Land). The execution and delivery of this Contract with knowledge of any such breach shall not constitute a waiver or release by Authority, MOAC Mall, MOAC Land and the Developer (if different than MOAC Mall or MOAC Land) of any claims arising out of or in connection with such breach. The foregoing representations shall survive the execution and delivery of other documents by Authority, MOAC Mall, MOAC Land and the Developer (if different than MOAC Mall or MOAC Land) to the City.

ARTICLE 3.

COMMITMENTS AND OBLIGATIONS OF THE PARTIES

3.1 Generally - City and Authority have previously designated the Developer as the developer to work with the Authority to accomplish the redevelopment of the Project Property.

The Initial Phase and IKEA have been completed. The Southpad Hotel Project is currently being constructed. It is anticipated that the completion of the remaining portions of the Project will be accomplished over multiple Subsequent Phases and incorporate construction of Improvements on various parcels within the Project Property. The provisions of this Contract specify the conditions applicable to construction of Improvements on the Project Property that occur after the date of this Contract, as well as construction of Improvements within some portions of the adjacent rights-of-way.

The construction of Subsequent Phases will depend upon future market and economic conditions, and shall be at the sole discretion of Developer. The Preliminary Development Plan for the Subsequent Phases of the Project contemplates 5,600,000 square feet of Developer Improvements beyond the Initial Phase.

3.2 Developer Improvements - Developer, by itself or through permitted or approved Secondary Developers or Permitted Successor Developers, shall construct and maintain the Developer Improvements, in accordance with the terms of this Contract, in conformity with local, state, and federal laws and regulations and will cause all Developer Improvements, and all associated plant and equipment, to be kept in good repair and condition. Developer will use all reasonable efforts to meet all requirements of all local, state, and federal laws and regulations that must be obtained or met before the Project may be constructed.

3.3 Developer's Commitment to Redevelop the Project Property - Developer's undertakings pursuant to this Contract are for the sole purpose of redevelopment of the Project Property pursuant to this Contract and for no other purpose. The Developer recognizes that, in view of:

(01) the importance of the redevelopment to the general welfare of the City and Authority; and

(02) the substantial financing and other public participation that will be made available by local, state, and federal governments for the purpose of making such redevelopment possible;

the qualifications and identity of Developer are of particular concern to City and Authority. Developer further recognizes that it is because of such qualifications and identity that City and Authority are entering into this Contract and, in so doing, are relying upon the Developer's representations as to its capabilities and financing and its schedule for Commencement of Construction and completion of Developer Improvements for the Subsequent Phases and acceptance of the undertakings and obligations of Developer pursuant to this Contract.

3.4 Secondary Developers - One or more Secondary Developers may participate in the development of the Project or portions thereof, provided that each of them has been approved by the Authority and City and all development undertaken by the Secondary Developers shall be in accordance with the terms and conditions of this Contract and City Code. A Secondary Developer approved by the Authority shall have the right to participate in the development of the Project provided that:

(01) The Secondary Developer is approved by the Authority in the form of a resolution;

(02) All development undertaken by the Secondary Developer is in accordance with the terms and conditions of this Contract and City Code;

(03) The Secondary Developer agrees in writing to take no action in derogation of the Developer's obligations under this Contract, except as otherwise provided herein or in the Redevelopment Agreement for the Subsequent Phase.

Any Developer Improvements constructed by a Secondary Developer or a Permitted Successor Developer shall be included in calculating the value of Developer Improvements for the purposes of certifying Counted Value.

3.5 Dedication of Easements and Rights-of-Way and Rights of Access - The Developer will dedicate or cause to be dedicated all public easements and right-of-way and rights of access reasonably required for Public Improvements or portions of Public Improvements lying within or on the Project Property at no cost to City.

3.6 Developer's Financial Information - Developer agrees to provide detailed financial information in a timely manner upon the reasonable request of the City or the Authority if such information is provided and held in confidence pursuant to now existing or future confidentiality agreement(s). This information shall be relevant to the Subsequent Phase under consideration at the time of the request and may include, without limitation:

(01) a detailed Development Pro Forma for each Subsequent Phase or Subphase of development for the purpose of the Authority's Section 7.2 analysis of the project's feasibility and its demonstrated need for public improvement investment by the City or Authority;

(02) detailed information relating to the financial condition of Developer;

(03) a detailed report of any existing encumbrances on any portion of the Project Property and any other financial information having relevance to the loan to value ratio for the purpose of the Authority's Section 7.2 analysis of whether or not the encumbrances or financial condition of the Developer pose an unreasonable risk to the rights of the Authority or City under this Contract; and

(04) detailed reports of the proposed and permanent construction financing for the completion of a Subsequent Phase or Subphase so that the City and Authority can analyze the adequacy or security of that construction financing. This detailed financial information may include, in the discretion of the City or the Authority, without limitation, the following with respect to Developer as well as its parent corporations, or other controlling entities including without limitation:

i.) articles of organization and bylaws and all amendments thereto;

ii.) corporate organizational structures and officers;

- iii.) audited financial statements for three years with the auditor's reports;
- iv.) corporate credit reports;
- v.) a list and analysis of all fixed and variable expenses;
- vi.) a schedule of fixed assets along with their unencumbered valuation;
- vii.) a description of depreciation and amortization methods and changes in accounting methods over the past five years;
- viii.) a schedule of all indebtedness and contingent liabilities;
- ix.) a schedule of all accounts receivable and accounts payable;
- x.) material contractual obligations; and
- xi.) pending or threatened litigation against the Developer.

If the City or Authority rejects the financial information provided by the Developer as inadequate, it shall do so in writing specifying the basis for the rejection. Developer then must submit adequate financial information within 30 days of such rejection.

3.7 Destroyed Value Compensation - Developer agrees to compensate the Authority or City for Destroyed Value as of the date of Closing on any Subsequent Phase that requires the destruction of all or a portion of Committed Public Improvement, in an amount to be agreed upon in the Redevelopment Agreement for the Subsequent Phase. This obligation shall terminate upon the earlier of (a) the Contract Termination Date; (b) the expiration of the mutually agreed upon useful life of the Committed Public Improvement or (c) the transfer of ownership or title to the Committed Public Improvement to the Developer (which transfer shall not occur earlier than 20 years from the Completion of Construction of the Committed Public Improvement). The Authority agrees to deposit funds paid by the Developer as compensation for Destroyed Value in the Public Investment Fund.

3.8 Parties' Responsibilities Regarding Governmental Approvals - Developer will use all reasonable efforts to obtain the required permits and approvals of local, state, and federal governments and related agencies for Developer Improvements and Committed Public Improvements at the Developer's expense. At the request of the Developer, Authority and City will provide their cooperation and assistance in a timely manner in obtaining such permits and approvals.

3.9 City's Future Zoning Amendments or Changes to the Comprehensive Plan - Pursuant to the provisions of Minnesota Statutes, Section 462.358, subd. 3c, unless Developer's rights hereunder have been terminated pursuant to Section 12.15 of this Contract, no amendment to the City's Comprehensive Plan or other official control that is inconsistent with this Contract, or that would curtail any development contemplated by this Contract, shall apply to the Project until the Contract Termination Date. This provision shall not prevent amendments to the City's Comprehensive Plan or other official land use controls that are consistent with this Contract, and

that would not curtail development contemplated by this Contract where such amendments are required by law or any other changes in the system plans of the Metropolitan Council.

3.10 City's Future Land Use Approvals - The City shall approve Subsequent Final Development Plans for the Subsequent Phases of Developer Improvements if such plans are substantially consistent with approved Preliminary Development Plans and are not in conflict with the development intent of the Parties as set forth in this Contract, and provided the Subsequent Final Development Plans are consistent with applicable City Code requirements, the Comprehensive Plan or other City official controls.

3.11 Public Improvements and Committed Public Improvements - The location, type, design, manner of construction, cost, funding source, timing of construction and placement of Public Improvements and Committed Public Improvements shall be as approved in writing by Developer, City and Authority prior to Commencement of Construction. The City will diligently construct the Public Improvements (other than Committed Public Improvements to be constructed by the Developer) so as not to delay the construction or opening of the Subsequent Phases. Upon petition by Developer, and following notice and hearing or proper waiver of Minnesota Statutes, Chapter 429 rights, the City will construct Public Improvements in accordance with the approved Final Development Plans as it determines are required to serve the Subsequent Phases of Developer Improvements. The cost of Public Improvements may be specially assessed in accordance with Minnesota Statutes, Chapter 429 and the Developer may in its sole discretion elect to treat all or a portion of such special assessments against the Project Property or costs as Committed Public Improvement Costs and submit an Improvement Reimbursement Certificate with respect thereto as provided in Section 7.3 hereof.

3.12 Public Investment in the Project - To finance the cost of the Committed Public Improvements to be undertaken on or adjacent to the Project Property, as authorized by the City and Authority, the City and Authority will use Public Investment in accordance with the schedule shown in Section 7.2 of this Contract.

3.13 Structured Public Parking – Exempt from Bid Requirements - Authority hereby agrees that it will determine by resolution that the Public Parking Facilities for the Subsequent Phases are to be constructed in connection with a "development" within the meaning of Minnesota Statutes, Section 469.071, subdivision 5, which provides the authority for the Authority to construct certain structured parking facilities without competitive bidding. Accordingly, the Authority shall be responsible for financing and constructing the Public Parking Facilities without requiring any public bidding, to the extent allowed by law.

3.14 Public Plaza – Leasehold Interest - The Authority shall initially own all components of the Public Plaza, and Developer represents and covenants that it will, in consideration of One Dollar \$1.00, or other valuable consideration mutually acceptable to the Parties, lease sufficient ground area within the Project Property to Authority prior to accommodate the Public Plaza in connection with development of the Subsequent Phases of Developer Improvements. Developer agrees that it will manage the Public Plaza so that is open to the public. Developer shall maintain, equip and operate the Public Plaza constructed in connection with the Project. The leasehold interest of the Authority in the Public Plaza real estate will terminate upon the earlier of: (a) the Contract Termination Date; (b) the expiration

date of the separate Ground Lease for the Public Plaza in accordance with its terms; or (c) the date on which the Authority receives complete Public Plaza Reimbursement, as that term is defined in the 2011 Funding Agreement, for the total conversion of the Public Plaza from public to private use. Notwithstanding the foregoing, in no case shall the leasehold interest of the Authority terminate prior to the latter of: (a) the date of retirement of any bonds for which the Plaza serves as security; or (b) twenty years from the date the Certificate of Occupancy is issued for the Plaza. The Authority's leasehold interest in the land required for the Public Plaza shall be shown on a recordable document, and as a permitted encumbrance on any mortgage financing of the Project or Developer Improvements. Developer shall advise any mortgage lenders of this permitted encumbrance and cause it to be reflected in all mortgage financing documents applicable to the Project or Developer Improvements. Authority agrees to subordinate its Ground Lease to any mortgage financing obtained by Developer and agrees to recognize and accept any successor of Developer under the Public Plaza lease and management agreement. The ground lease for the Public Plaza must contain at a minimum all of the terms and conditions set forth in the 2011 Funding Agreement.

3.15 Public Parking Facilities Leasehold Interest - The Authority shall initially own all components of the Public Parking Facilities, with the exception of surface parking, and Developer represents and covenants that it will, in consideration of One Dollar \$1.00, or other valuable consideration mutually acceptable to the Parties, lease sufficient area of the Project Property to Authority prior to the Commencement of Construction to accommodate the Public Parking Facilities in connection with the Subsequent Phases of Developer Improvements. Developer agrees that it will, in turn, manage the Public Parking Facilities to be constructed by or paid for in part by Public Investment in a manner so that the Public Parking Facilities are primarily open to the public and serve two or more uses or structures on the Project Property. Authority and City shall review and approve plans for all Parking Facilities, including Public Parking Facilities, which plans shall be prepared by the Developer and shall show where and how the Parking Facilities will be incorporated into the Project. Developer shall maintain, equip and operate all Public Parking Facilities constructed in connection with the Project. The leasehold interest of the Authority in the Public Parking Facilities will terminate upon the earlier of: (a) the Contract Termination Date; (b) the expiration date of the separate Ground Lease for the Public Parking Facilities according to its terms; or (c) the date on which the Developer pays Destroyed Value for the removal or replacement of the Committed Public Improvement. Notwithstanding the foregoing, in no case shall the leasehold interest of the Authority terminate prior to the latter of: (a) the date of retirement of any bonds for which the Public Parking Facilities serves as security; or (b) twenty years from the Date the Certificate of Occupancy is issued for the Public Parking Facility. The Authority's leasehold interest in the land required for the Public Parking Facilities shall be shown on a recordable document, and as a permitted encumbrance on any mortgage financing of the Project or Developer Improvements. Developer shall advise any mortgage lenders of this permitted encumbrance and cause it to be reflected in all mortgage financing documents applicable to the Project or Developer Improvements. Authority agrees to subordinate its Ground Lease to any mortgage financing obtained by Developer and agrees to recognize and accept any Permitted Successor Developer under the Public Parking Facilities lease and management agreement.

3.16 Execution of Ancillary Agreements - The Parties agree to negotiate in good faith and cooperate in the proper execution of ancillary agreements that serve as a condition to the

rights and responsibilities set forth in this Contract; such ancillary agreements are essential to each Subsequent Phase and must include, without limitation, the following: 1) consent and subordination agreements or the release by all holders of a mortgage interest in that portion of the Project Property under development; 2) a Redevelopment Agreement as defined herein; 3) a development services contract for the construction of Committed Public Improvements; and 4) a Ground Lease as defined herein. Ancillary agreements may also include: 1) a special funding agreement with respect to Public Improvements benefiting the Project Property or Project that are constructed by the City within public right of way or outside of the Project Property; and 2) a site development agreement requiring the fulfillment of the conditions of development approval established by the City Council for the Subsequent Phase.

3.17 Resume Negotiations-The parties agree that they will resume good faith negotiation of the Master Redevelopment Contract for the purpose of guaranteeing public funding in the Project for the Subsequent Phases promptly after the Minnesota Legislature authorizes financial sources for the future funding of the Project, such as the authorization of an extension to the TIF Districts, a share of Fiscal Disparities funds or other state or local tax revenue dedicated to the Project.

3.18 Additional Revenues - The Developer hereby consents to the City's imposition of the following Additional Revenues: 1) one-percent additional on-site admissions tax; and 2) the additional one-percent on-site lodging tax for the purposes authorized by Laws of Minnesota 2008, Article 5, Section 28, subdivisions 1 and 2, for a period to commence within 365 days of the Effective Date of this Contract and to continue until the earlier of the Contract Termination Date or ten years after the Effective Date.

ARTICLE 4.

ASSIGNMENTS AND TRANSFERS

4.1 Transfer and Assignment - No transfer of, or change with respect to, ownership in a Subsequent Phase or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate to deprive or limit the City or Authority of any rights or remedies or controls provided in or resulting from this Contract with respect to the Project Property and the construction of Subsequent Phases thereon that City and Authority would have had, had there been no such transfer or change. The Developer shall submit to the City and Authority for review all instruments and other legal documents involved in effecting transfer. If a transfer is made to a Permitted Successor Developer or an approved Secondary Developer, or if the City and Authority approve a transfer, the City and Authority shall release the Developer from its obligations under this Contract to the extent that the Developer's obligations relate to the Subsequent Phase, Subphase or other real estate being transferred.

4.2 Continuing Obligations - Under all other circumstances, in the absence of a specific written agreement by the Authority to the contrary, no transfer or approval by the Authority thereof shall be deemed to relieve Developer or any other party bound in any way by this Contract or otherwise with respect to the construction of a Subsequent Phase from any of its obligations with respect thereto.

ARTICLE 5.**CONSTRUCTION OF PHASES****5.1 Revised Preliminary Development Plans and Final Development Plans -**

(01) The Developer, as required by the City Code, will submit to the Authority revised Preliminary Development Plans and Final Development Plans for each Subsequent Phase of the Project.

(02) City and Authority shall review and approve, in writing, the Final Development Plans for Subsequent Phases of Developer Improvements if:

- i.) the Final Development Plans are consistent with this Contract and are in conformance with the City Code, Comprehensive Plan and other applicable official controls;
- ii.) the time for commencement and completion of construction is in conformance with this Contract and public financing schedules; and
- iii.) no Event of Default by Developer under this Contract has occurred and is continuing.

(03) If after approval the Developer desires to make any material change in either the Preliminary or Final Development Plans, the Developer shall first submit the proposed change to the City and Authority for approval in writing. If the revised Preliminary Development Plans and Final Development Plans, as modified by the proposed change, conform to the requirements of this Article with respect to such previously approved revised Preliminary Development Plans and Final Development Plans, the Authority and City shall approve the proposed change and notify the Developer in writing of its approval. Such change in the revised Preliminary Development Plans and Final Development Plans shall, in any event, be deemed approved by the City and Authority unless rejected within 120 days after receipt by City and Authority, in whole or in part, by written notice by the Authority or the City to the Developer setting forth in detail the reasons therefor.

5.2 Completion of Construction - The Developer shall not be considered in breach or default of its obligations to construct and complete the Subsequent Phases of Developer Improvements if the City and Authority fail to consider and act on the Final Development Plans for the Subsequent Phases in accordance with Minnesota Statutes, Section 15.99 to enable construction to commence, or if the City or Authority have caused an Event of Default or if the occurrence of an Unavoidable Delay requires extension of the time or times for performance. The Party seeking to extend the period for its performance under the Contract must, within 30 days after the beginning of such Unavoidable Delay, notify the other Parties in writing of the causes thereof and request an extension for performance of its obligations for the period of the Unavoidable Delay. If a Party fails to send such notice within 30 days after the beginning of the

claimed Unavoidable Delay, but notifies the other Parties during the period of Unavoidable Delay, the Party shall be entitled to extend any applicable time period by the time period equal to the difference between (a) the time period of such Unavoidable Delay and (b) the number of days from the date of the commencement of the Unavoidable Delay to the date of notification of the other Parties, less 30 days.

ARTICLE 6.

PRIVATE FINANCING

6.1 Financing - Subject to the restrictions and limitations of this Article and applicable provisions of this Contract, the review by the City and Authority of evidence of financing commitments and encumbrances on the Project Property obtained hereafter for Subsequent Phases, shall be to determine that the financing commitments and encumbrances do not pose an unreasonable risk to Authority and City and that Authority and City, upon review of the evidence of construction and permanent financing commitments, are satisfied that the construction financing commitments are adequate to complete the proposed Subsequent Phase, and will not impair the rights of Authority and City, under this Contract. If the Authority or City rejects the evidence of financing as inadequate, it shall do so in writing, specifying the basis for the rejection. The Developer must then submit adequate evidence of financing prior to Commencement of Construction of the proposed Subsequent Phase.

6.2 Copy of Notice of Default to Mortgagee - Whenever the Authority or City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations or covenants under this Contract, the Authority or City shall at the same time forward a copy of such notice or demand to each holder of any mortgage, Secondary Developer and Permitted Successor Developer authorized by this Contract at the last address of such holder shown in the records of Authority. It shall be the obligation of the Developer to provide, on an on-going basis, the current contact information for each holder of a mortgage. Failure of the Authority or City to deliver a copy of the notice or demand to any mortgage holder shall not affect the Authority or City's rights with respect to the Developer.

6.3 Mortgagee's Option to Cure Defaults - After any breach or default referred to in Article 12 hereof by Developer, each holder of any mortgage authorized by this Contract shall have the right, at its option, to cure or remedy such breach or default (or such breach or default to the extent that it relates to the part of the Project Property covered by its mortgage) and to add the cost thereof to the mortgage debt and the lien of its mortgage. If the Developer is in default under Article 12, the Authority shall provide each holder of any mortgage authorized by this Contract with a copy of any notice of default when it delivers such notice to the Developer. The holder of such mortgage shall have the right to cure or remedy such default within a reasonable time after the expiration of Developer's time to cure such default, not to exceed six months after the expiration of Developer's time to cure.

6.4 Authority's Option to Cure Defaults - If the Developer is in default under any mortgage authorized pursuant to this Article 6, the mortgage holder shall provide Authority with a copy of any notice of default that it delivers to Developer within ten days after it delivers any such notice to Developer. If, after 30 days after receipt of said notice, the Authority cures any

monetary default or commences the actions necessary to cure any nonmonetary default (and cures such default within a reasonable time, not exceeding six months after receipt of said notice), then the mortgage holder shall not cause title to the Project to be transferred based upon default of the Developer.

6.5 Mortgage Terms - Any mortgage on the Project Property which is recorded after the date of this Contract must contain terms that do not conflict with the terms of this Article 6. The Developer shall secure the agreement of the mortgage holder to the terms and conditions of this Contract.

6.6 Amendment and Subordination Agreements - City and Authority agree to reasonably negotiate and consider the execution of amendments to this Contract, subordination agreements, or other agreements reasonably required by the Developer's lenders related to financing for the Subsequent Phases, provided, however, that the City and Authority shall not be required to enter into such amendments or subordination agreements if the amendments or subordination agreements do not adequately protect or otherwise do materially alter the legitimate interests and security of the Authority or City with respect to the Project.

6.7 Notice of Future Mortgage Financing - The Developer agrees to provide to the Authority and the City a written notice and description of any proposed encumbrance on the Project Property including, but not limited to additional mortgage financing or restructured mortgage financing on the Project Property, with delivery of the notice and description at least 60 days prior to the closing date thereon.

ARTICLE 7.

PUBLIC IMPROVEMENT FINANCING

7.1 Counted Value - Timeliness of Certification - The Developer must submit an Improvement Reimbursement Certificate, along with the current certification of Counted Value to the City and Authority within 365 days of the date on which the Developer expended funds for Committed Public Improvements, except as specifically set forth below in this Article 7. Failure to make a timely certification as to these costs will result in waiver of any future claim that the costs qualify as Counted Value, unless such failure is due to circumstances beyond the reasonable control of the Developer. No costs shall qualify as Counted Value where the Developer submits the costs for certification more than 365 days after of the issuance of a final Certificate of Occupancy for the Subsequent Phase unless: (a) the costs constitute part of the approved Final Development Plan; (b) the completion of the Subsequent Phase has been delayed for objectively reasonable business purposes such as, but not limited to, completion of finish work or completion of tenant improvements in space that has not been previously occupied or in use or for approved renovations (as described in the definition of Counted Value); and (c) the costs are certified no later than five years after the issuance of the final Certificate of Occupancy for the Subsequent Phase. Costs incurred in of finishing and placing into active use previously unfinished shell space shall qualify as Counted Value, so long as the costs are certified no later than five years after the issuance of a Certificate of Occupancy for that space. Where the above-described delayed improvement costs are not certified within the prescribed period, the costs shall only qualify for Counted Value if their inclusion is specifically agreed to by the Authority

and City in the form of a resolution in response to a request submitted by the Developer prior to the commencement of construction or as soon as a reasonably unanticipated delay in construction completion is recognized.

7.2 Payment of and Reimbursement for Committed Public Improvement Costs for Subsequent Phases – Notwithstanding anything contained herein to the contrary, any and all Public Investment for Committed Public Improvements shall be limited to the Per Phase Public Investment Ratio set forth in this Article 7. This subsection constitutes the successor to Section 9.2 (05) of the Prior Restated Contract for purposes of prior references in the Laws of Minnesota. Developer shall be responsible for the payment (or reimbursement of the City or Authority for the payment) of all Committed Public Improvement Costs, provided that after Commencement of Construction Developer may provide for the payment or reimbursement for the payment of Committed Public Improvements Costs in the manner provided in subsection (01) or (02) below, and subject to the applicable Per Phase Investment Ratio set forth in subsections (03), (04) or (05) below:

(01) Concurrent Request for Reimbursement - If a request for reimbursement for Committed Public Improvements is made concurrent with construction of the Committed Public Improvements, Developer may, subject to the limitations of this Section 7.2 of this Contract, request funds from the Public Investment Fund dedicated to the payment of Committed Public Improvements to either pay or reimburse Developer for its costs of construction of Committed Public Improvements upon satisfying the requirements for an Improvement Reimbursement under Section 7.3 hereof. To the extent funds are available, Authority will timely reimburse Developer for the cost of construction of Committed Public Improvements. Where available funds are insufficient to reimburse the Developer or otherwise to facilitate the construction of structured parking facilities pursuant to Minnesota Statutes §469.071, subdivision 5, or other approved Committed Public Improvements, the Authority shall issue TIF revenue bonds pursuant to Minnesota Statutes §469.178, subdivision 4, in an amount sufficient to reimburse Developer if and only if, based upon the Authority's reasonable projection of future TIF Revenues, those future revenues will be equal to or greater than 125% of the debt service on the bonds or the then current market coverage ratio, whichever is greater.

(02) Subsequent Request for Reimbursement - If a request for reimbursement for Committed Public Improvements is made after construction of the Committed Public Improvements is completed, Developer may treat its prior payment of Committed Public Improvement Costs as an Improvement Expense under the Public Investment Fund. Upon satisfying the requirements for an Improvement Reimbursement under Section 7.3 hereof, Authority will timely reimburse Developer for the cost of construction of Committed Public Improvements to the extent that there are adequate proceeds available in the Public Investment Fund. Where available funds are insufficient to reimburse the Developer, or otherwise to facilitate the construction of structured parking facilities pursuant to Minnesota Statutes §469.071, subdivision 5, or other approved Committed Public Improvements, the Authority shall issue TIF revenue bonds pursuant to Minnesota Statutes §469.178, subdivision 4, in an amount sufficient to reimburse Developer if and only if, based upon the Authority's reasonable projection of future TIF Revenues, those

future revenues will be equal to or greater than 125% of the debt service on the bonds or the then current market coverage ratio, whichever is greater.

(03) **Ratio Requirements** - Except as provided in subsections (04) and (05) of this Section 7.2, and notwithstanding any other provisions herein to the contrary, Public Investment shall be limited to the Per Phase Public Investment Ratio, as set forth in Table 7-A below.

Counted Value Total Investment (\$ million)	Per Phase Public Investment Ratio Percent	Cumulative Public Investment (\$ million)	Counted Value Cumulative Ratio
775	\$108.50 + 7.0% of \$25.0	110.25	14.200%
800	\$110.25 + 7.0% of \$25.0	112.00	14.000%
850	\$112.0 + 5.0% of \$50.0	114.50	13.500%
900	\$114.5 + 5.0% of \$50.0	117.00	13.000%
1,000	\$117.0 + 8.0% of \$100.0	125.00	12.500%
1,100	\$125.0 + 9.5% of \$100.0	134.50	12.200%
1,200	\$134.5 + 9.5% of \$100.0	144.00	12.000%
1,200/1,500	\$144.0 + 2.0% of amounts between \$1,200 and \$1,500		
1,500 and higher	\$150.0 + 10% of amounts over \$1,500	150.0+	10.000%

(04) **Ratio Requirements – Southpad Hotel Project** – As agreed under Amendment V to the Prior Restated Contract the Per Phase Public Investment Ratio will not exceed 13% for the Southpad Hotel Project, as shown below in Table 7-B. After this increase in the Per Phase Public Investment Ratio for the Southpad Hotel Project, the Per Phase Public Investment Ratio will revert the limitations set forth in Table 7-A. Because the Southpad Hotel Project was under construction at the time of this Contract, the actual Per Phase Public Investment Ratio, along with the corresponding calculated estimates of Total Investment, Cumulative Public Investment, and Counted Value Cumulative Ratio will be finally calculated and certified at the time the Southpad Hotel Project is completed and the final Counted Value is reviewed and approved by the Authority.

Estimated Counted Value Total Investment (\$ millions)	Per Phase Public Investment Ratio	Estimated Cumulative Public Investment (\$ millions)	Estimated Counted Value Cumulative Ratio
\$ 789 - 916	13.0%	\$127	13.9%

(05) **Ratio Requirements Project 1-C** -- The Per Phase Public Investment Ratio for Project 1-C will not exceed 14% as shown in Table 7-C. The increase in the Per Phase Public Investment Ratio for Project 1-C will be valid for 24 months from the Effective Date of this Contract, and if Commencement of Construction on Project 1-C occurs within that period, said increase will continue in effect 60 months after the Commencement of Construction. The increase in the Per Phase Public Investment Ratio is valid only for the Counted Value directly related to Project 1-C and for no other Subsequent Phase, regardless of the actual, final total project cost for Project 1-C.

Committed Public Improvements approved for construction in Project 1-C will be reimbursed through use of \$6,000,000 of the Reserved Liquor and Lodging Revenue and accumulated TIF Revenue.

The Per Phase Public Investment Ratio for all future Subsequent Phases after Project 1-C will revert to those in Table 7-A.

Estimated Counted Value Total Investment (\$ millions)	Per Phase Public Investment Ratio	Estimated Cumulative Public Investment (\$ millions)	Estimated Counted Value Cumulative Ratio
\$ 916 - 1100	14.0%	\$153	13.9%

This Contract modifies the provisions of Section 7.a of the 2011 Funding Agreement only as provided in this paragraph. Except as provided in the following sentence, the Counted Value Public Improvements to which MOAC is entitled, after those directly relating to the Southpad Hotel Project and Project 1-C, must be first dedicated to the repayment of the TIF Advance under the 2011 Funding Agreement, without interest thereon. If, however, the Developer certifies at least \$130 million in Developer Improvements that are eligible for inclusion in Counted Value within the time frame for the increase in the ratio set forth in this subsection, then the TIF Advance of \$21,174,000 made under the 2011 Funding Agreement will be deemed to have been fully accounted for, and the provisions of Section 7.a. of the 2011 Funding Agreement will have no further force and effect. The parties do not intend to modify any other terms or conditions of the 2011 Funding Agreement.

(06) **Public Expenditure Analysis** - The Per Phase Public Investment Ratio for any Subsequent Phase or Subphase shall be determined at the time of approval of a Redevelopment Agreement for a Subsequent Phase or Subphase based in part upon the City and Authority's analysis of the Development Pro Forma provided at the time the Developer makes a specific request for public investment in Committed Public Improvements. The City and Authority must each conclude that the Public Investment is necessary to make the Subsequent Phase or Subphase financially feasible and required to permit a competitive market return on the investment. If it is determined that the Public Investment will result in an internal rate of return that is in excess of a competitive market return for similar development projects, then the amount of Public Investment in the Subsequent Phase will be limited to the reasonable need. The difference between the

Per Phase Public Investment Ratio and the reasonable need will be reserved for reimbursement of future Committed Public Improvements, notwithstanding the Per Phase Investment Ratio. The public expenditure analysis shall conclude with specific written findings of the City and Authority to ensure that the requested Public Investment is appropriate given the public infrastructure required for the Subsequent Phase or Subphase. Any Secondary Developer or other third party benefiting from the Public Investment may also be subject to a public expenditure analysis as a precondition to the City and Authority's commitment to finance Committed Public Improvements proposed by the Secondary Developer for a Subsequent Phase or Subphase.

(07) Risk Analysis - If the Authority or City's analysis of the Developer's financing data provided under Sections 3.6 and 6.1 reveals that the Developer's financing commitments or the loan to value ratio for the Project Property pose an unreasonable risk to the City or Authority's financial condition or the Public Investment in the Project under this Contract, the City or Authority may withhold their commitment of Public Investment hereunder for the Project until such time as that loan to value ratio is adjusted or the risk mitigated by the Developer.

(08) All Future Subsequent Phases - The Developer must demonstrate to the City and Authority committed or certified Counted Value as a precondition to reimbursement for the costs of constructing the Committed Public Improvements. As Counted Value is established, the Developer will be eligible for Public Investment funds in the manner set forth in Section 7.2 of this Contract in accordance with the above limitations (i) as determined by the issuance of an Improvement Reimbursement Certificate if during construction of the Committed Public Improvement (to be submitted by Developer not more frequently than monthly) or (ii) upon the issuance of a Certificate of Occupancy, if following Completion of Construction.

(09) No Assessments or Impositions - Except for generally imposed real property taxes, except as otherwise agreed to by the Parties in writing, neither the City nor the Authority shall impose a charge, assessment, or other governmental imposition upon the Developer, the Project (in whole or part), or any other user of the Project (in whole or part) to provide for the payment of Committed Public Improvement Costs, provided that nothing herein shall preclude the City or Authority from making Public Improvements which are not designated as Committed Public Improvements and from defraying the costs of those other Public Improvements through special assessments, charges, taxes, or other governmental impositions allowed by law. The Developer does not hereby waive its right to appeal or otherwise challenge the imposition of any special assessment, charge, tax or any other governmental imposition.

(10) Impact of State, County or Federal Grant Money - If the City or Authority obtains grant money from the County of Hennepin, State of Minnesota or federal government earmarked for the construction of Public Improvements for the Project, that sum, upon its receipt by the City or Authority, shall be credited against the project cost for those Public Improvements but will not be eligible for inclusion in the calculation of Public Investment or Counted Value for the purpose of determining the ratio set forth in Section 7.2.

(11) **Impact of Special Assessments** - If a portion of the cost of a Public Improvement for the Project is subject to a special assessment against a third party, those taxes upon receipt will be credited against the project cost for that Public Improvement, but will not be eligible for inclusion in the calculation of Public Investment or Counted Value for the purpose of determining the ratio set forth in Section 7.2.

7.3 Improvement Reimbursement - At any time after the Commencement of Construction, the Developer may submit to the Authority Representative or City Representative, no more often than monthly, an Improvement Reimbursement Certificate signed by its duly authorized representative stating that the Developer has paid or incurred a cost for a Committed Public Improvement. All Improvement Reimbursement Certificates must be received by the City and Authority within the time period set forth in Section 7.1. The Improvement Reimbursement Certificate must contain the following:

(01) A statement that each cost identified in the Improvement Reimbursement Certificate qualifies as a Committed Public Improvement Cost and that no part of such cost has been included in any previous Improvement Advance or Improvement Reimbursement Certificate;

(02) A certified copy of the draw request or similar instrument submitted by the Developer to the City's chief financial officer that includes in detail the items of Committed Public Improvement Costs contained in the Improvement Reimbursement Certificate;

(03) A statement that no uncured Event of Default by the Developer has occurred under the terms of this Contract or any Redevelopment Agreement for the Subsequent Phase or Subphase for which the Improvement Reimbursement Certificate is submitted; and

(04) A statement that no portion of the costs set forth in the Improvement Reimbursement Certificate has been expended for a cost other than a Committed Public Improvement Cost.

If the Developer, the Authority Representative and City Representative agree to a process for approving and funding a series of Improvement Reimbursement Certificates for a Committed Public Improvement at least 90 days prior to submitting the first Improvement Reimbursement Certificate in the series, then within 45 days after receipt of the Improvement Reimbursement Certificate from the Developer, the Authority Representative and City Representative, if satisfied in their reasonable judgment that the Developer has complied with all requirements of this section, shall approve the issuance of an Improvement Reimbursement in the amount contained in the Improvement Reimbursement Certificate to the extent that there are Public Investment Funds available. If the Developer, the Authority Representative and City Representative do not so agree, then the 45-day period provided in the preceding sentence shall be extended to 90 days. If not satisfied in their reasonable judgment that the conditions of this section have been met, the Authority Representative and City Representative may return the Improvement Reimbursement Certificate to the Developer within 30 days after its receipt with a statement of the reasons why

the Improvement Reimbursement Certificate is not acceptable and requesting reasonable documentation or clarification relevant to the Improvement Reimbursement Certificate.

An Improvement Reimbursement shall be deemed to have occurred on the date that the applicable reimbursement of costs is paid in full, subject to the limitations of this Article 7. If there are not sufficient Public Investment Funds available, the City and Authority must issue a partial Improvement Reimbursement to the extent of the available funds. Within 30 days of the date on which the full amount of the remaining obligation to pay the Improvement Reimbursement is accumulated in the Public Investment Fund, the City and Authority must issue an Improvement Reimbursement for the remaining obligation.

ARTICLE 8.

INSURANCE AND CONDEMNATION

8.1 Insurance During Construction – Developer shall procure and maintain, or cause to be provided and maintained at all times during the process of construction of the Developer Improvements until completion of construction of the Developer Improvements as evidenced by a Certificate of Occupancy issued by the City, insurance against loss or damage to the Developer Improvements and Committed Public Improvements under a policy or policies covering such risks as are ordinarily insured against for similar structures, including:

(01) Builder's risk insurance, written on the "Builder's Risk-Completed Value Basis" in an amount equal to 100 percent of the insurable value of the Developer Improvements during the process of construction exclusive of footings, foundations, and underground items. The interest of the City and Authority shall be protected in accordance with this clause in form and content normal for real estate development, subject to the interests of lender;

(02) Commercial general liability insurance together with an Owner's Contractor's Policy with limits against bodily injury and property damage of not less than \$5,000,000 for each occurrence;

(03) Workers' compensation insurance, with statutory coverage; and

(04) Terrorism risk insurance coverage, to the extent available under the United States government TRIA program, to the full available policy limit.

The policies of insurance required pursuant to clauses (01) and (02) above shall be in form and content satisfactory to Developer's mortgagee(s), as well as the Authority and City in their reasonable judgment, and shall be placed with financially sound and reputable insurers licensed to transact business in the State of Minnesota. The policy of insurance obtained pursuant to all clauses above shall contain an agreement of the insurer to give not less than 30 days' advance written notice to Authority and City in the event of cancellation of such policy or change affecting the coverage thereunder. Developer shall provide the City and Authority with evidence of such insurance, which must name the City and Authority as additional named insureds.

8.2 Insurance After Construction - Upon Completion of Construction and thereafter until the expiration of the Authority's ownership and leasehold interests under Article 3 or until any associated debt on the Committed Public Improvement has been retired, whichever occurs later, Developer will insure the Committed Public Improvements in the manner and in the amounts usual and customary for facilities of the same general nature, including:

(01) Insurance against loss or damage to a completed Committed Public Improvement under a policy or policies providing so called all-risk insurance covering such risks as are ordinarily insured against by similar businesses on a 100% replacement-cost basis, including business interruption or rental income protection on an actual-loss sustained basis, but in no event shall the insurance coverage be less than the amount which would provide City or Authority an amount equal to the insurable value of the Committed Public Improvements;

(02) Terrorism risk insurance coverage, to the extent available under the United States government TRIA program, to the full available policy limit;

(03) Commercial general public liability insurance for the Committed Public Improvements, including personal injury liability (with employee exclusion deleted) against liability for injuries to persons or property in the minimum amount of \$5,000,000 for each occurrence not arising out of the ownership or operation of automobiles or other motor vehicles, and

Developer shall provide Authority and City with evidence of such insurance which shall name Authority and City as additional insureds as their interest may appear hereunder. The Developer must provide not less than 30 days' advance written notice to Authority and City in the event of cancellation of such policy or any change affecting the coverage thereunder.

8.3 Proceeds - In the event that a Committed Public Improvement or a major portion thereof is destroyed by fire, act of terrorism or other casualty and a determination is made by Developer (or mortgagee(s) of the Project) not to reconstruct or repair the Committed Public Improvement, the City and Authority shall be entitled to that share of the proceeds equal to 100 percent of the insurable value of the Committed Public Improvement, or portion thereof which as destroyed.

The obligation of Developer under this Section shall continue until the earlier of the Contract Termination Date or the expiration of the Authority's ownership or leasehold interest in the Committed Public Improvement. The Developer must provide not less than 30 days' advance written notice to Authority and City in the event of cancellation of such policy or any change affecting the coverage thereunder.

8.4 Condemnation - In the event that title to and possession of the Committed Public Improvement or any material part thereof shall be taken by eminent domain by any governmental body or other person (except Authority or City), prior to the Contract Termination Date, Developer shall notify the City as to the nature and extent of such taking. The Authority shall be named as a party to the extent of its ownership interest in any of the Committed Public Improvements, and the City shall be named as holder of a security interest to the extent that any

TIF Bonds remain outstanding. In any award in condemnation or settlement in lieu thereof, the Developer agrees to cooperate with the Authority and City in requesting a separate allocation of damages between the Committed Public Improvements and Developer Improvements. Developer further agrees to assign to the City or Authority, or both, the Developer's interest in condemnation proceeds for any portion of the Project, to the extent necessary to: (i) pay the outstanding principal of and interest on the TIF Bonds (provided that TIF Bonds other than TIF Notes shall be paid first) issued by Authority or City, but only to the extent such payment would not cause the interest on any TIF Bonds issued by Authority or City to be subject to federal income taxation; or (2) reimburse the Authority and City for any payment or reimbursement, other than payments for Committed Public Improvement Costs payment made to the Developer under Section 7.2 or otherwise incurred by the City or Authority for Committed Public Improvements that were taken by eminent domain, to the extent not reimbursed under Section 8.4(01).

ARTICLE 9

RECAPTURE OF EXCESS RETURN ON INVESTMENT

9.1 The financial assistance to the Project under this Contract is based upon certain assumptions regarding the likely costs and expenses associated with constructing the Subsequent Phases. As partial consideration to the Authority for its providing Public Investment for Public Improvements and Committed Public Improvements essential to the Subsequent Phases, the Parties agree to determine, in the Redevelopment Agreement specific to the Subsequent Phase, what constitutes excess return on investment, as triggered by an event such as, but not limited to a sale or lease of all or a part of the Developer Improvements for a Subsequent Phase. (Leases, subleases and renewals of leases and subleases will not constitute a triggering event within the meaning of this Section.) In that Redevelopment Agreement specific to the Subsequent Phase, the Developer shall be obligated to reimburse the Authority or City in an amount equal to the excess return on investment up to the amount of the Authority or City's payment or reimbursement to the Developer for Committed Public Improvement Costs for that Subsequent Phase.

ARTICLE 10

LABOR PEACE AGREEMENT

10.1 Hotel Development - The Developer agrees that if the construction of a hotel is included in any Final Development Plan for a Subsequent Phase, then the Developer will negotiate in good faith, or require the hotel operator to negotiate in good faith, a labor peace agreement with the labor organization which is most actively engaged in representing and attempting to represent hotel workers in Hennepin and Ramsey Counties (the "Union"). The labor peace agreement must be an enforceable agreement and must meet the requirements of Laws of Minnesota 2008, Chapter 366, Article 5, Section 28, as amended by Laws of Minnesota 2010, Chapter 216, Section 48, or any subsequent amendment thereto ("Valid LPA"). The legal adequacy of the Valid LPA will be evaluated by the Bloomington City Attorney and Authority General Counsel, who shall each notify Developer of their opinion regarding the legal adequacy, including a reasonable explanation of any opinion that it is not legally adequate. The

Bloomington City Council may make the full execution and delivery of a Valid LPA a condition of development approval for any Final Development Plan which includes the construction of a hotel and that condition of approval must be memorialized in the Site Development Agreement between the City and the Developer.

10.2 Impasse in Negotiations - Pursuant to the following procedure, the Developer may be relieved of the obligations of Section 10.1 with respect to the Union based upon an arbitrator's finding that the Union placed arbitrary or capricious conditions upon entering into a Valid LPA or is acting arbitrarily or capriciously in rejecting a Valid LPA.

(01) Upon a declaration of impasse by either the Developer or Union, the party declaring an impasse shall request from the Federal Mediation and Conciliation Services Field Office for the State of Minnesota a list of five arbitrators who are members of the National Academy of Arbitrators and who have their principal residence in the State of Minnesota. Within 14 days of receiving the list the parties must either agree to an arbitrator or determine by coin toss which party may first strike one of the arbitrators from the list and continue to strike arbitrators until just one arbitrator remains.

(02) Both the Developer and the Union must cooperate and actively participate in the arbitration process with the costs of arbitration being shared equally. Each party to the arbitration shall be responsible for its own costs and expenses, including attorneys' fees.

(03) As soon as reasonably practicable, the matter shall be heard by the arbitrator to determine whether the Union has placed arbitrary or capricious conditions upon the Valid LPA or is arbitrarily or capriciously rejecting a Valid LPA.

(04) If either finding is made by the arbitrator then the Developer is relieved of the obligations of Section 10.1.

10.3 Delay During Impasse - If an impasse in the labor peace negotiations is submitted to a neutral arbitrator or mediator as set forth in this Article then the City may issue permits required for the hotel development, in accordance with the specific conditions of approval established by the Bloomington City Council for the hotel's construction despite the absence of a Valid LPA. Nonetheless, City and Authority will not provide tax increments or other financial assistance for the hotel project until a Valid LPA has been agreed to and executed by the Union and the Developer, or in the alternative the arbitrator has made a finding that the Union has acted arbitrarily or capriciously pursuant to Section 10.2. If this finding is made then the requirement of a Valid LPA can be waived.

ARTICLE 11.

EVENTS OF DEFAULT

11.1 Events of Default by Developer - The following shall be "Events of Default" by the Developer under this Contract and the term "Event of Default" shall mean, whenever it is used in this Contract, any one or more of the following events (and the term "default" shall mean

any event which would with the passage of time or giving of notice, or both, be an "Event of Default" hereunder):

(01) failure by the Developer to pay or provide when due any payment or other security that is required to be paid or provided to City or Authority within 30 days after giving written notice to the Developer specifying such failure and requesting that it be remedied;

(02) failure by the Developer to observe and perform any covenant, condition, contingency, obligation, or agreement on its part to be observed or performed hereunder within 30 days after written notice to the Developer specifying such failure and requesting that it be remedied (or within such other period as otherwise expressly provided in this Contract), or within such further period of time as is reasonably necessary to cure such failure, but only if the Developer has within said 30 days provided the Authority with reasonable assurances that the Developer will cure the failure as soon as is reasonably possible;

(03) failure by Developer to pay real estate taxes or special assessments on the Project Property or any part thereof when due, and failure to cure said default within 30 days after written demand from the Authority to do so, unless contested or appealed as allowed by law.

(04) the Developer: (a) filing any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law; (b) making any assignment for benefit of its creditors; (c) admitting in writing its inability to pay its debts generally as they become due; or (d) being adjudicated as bankrupt or insolvent.

City and Authority acknowledge that as of the date of this Contract no default or Event of Default by the Developer has occurred.

11.2 Remedies on Developer's Default - Whenever any Event of Default by the Developer occurs, subject to the mortgage lender's right to cure pursuant to Section 6.3, the City or Authority may take any one or more of the following actions:

(01) upon seven days' notice by City or Authority to Developer, suspend its performance under this Contract until it receives reasonable assurances from the Developer that are deemed adequate in the sole discretion of the Authority and City that the Developer will cure its default and continue its performance under this Contract;

(02) withhold the net proceeds from the insurance policies provided to the City and Authority;

(03) retain all sums paid to the City or Authority, or

(04) take whatever action at law or in equity that may appear necessary or desirable to the City or Authority to collect any payments due under this Contract,

recover any funds improperly received by Developer under Sections 7.2 or 7.3, recover any recapture amounts owed by Developer, or to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Contract.

11.3 Events of Default by Authority - The term "Events of Default" by Authority has the meaning given it in this Section and includes any one or more of the following events:

(01) failure by City to reasonably start or complete construction of Public Improvements other than Committed Public Improvements in accordance with the schedule to be established by mutual agreement of the parties;

(02) failure of Authority to observe and perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Contract, within 30 days after written notice to Authority specifying such failure and requesting that it be remedied, or within such further period of time as provided herein as is necessary to cure such failure;

(03) failure by Authority, upon Developer's compliance with the terms of this Contract and the City Code, to approve the Final Development Plans for construction of the Subsequent Phases of Developer Improvements and to issue in a timely manner all required permits, licenses, or other approvals necessary for construction and operation of the Project;

(04) failure to provide Public Investment in the Project, as provided herein.

The Developer acknowledges that as of the date of this contract, no Event of Default by the Authority has occurred.

11.4 Events of Default by City - The term "Events of Default" by City has the meaning given it in this Section and includes any one or more of the following events:

(01) failure by City to reasonably start or complete construction of Public Improvements other than Committed Public Improvements in accordance with the schedule to be established by mutual agreement of the parties;

(02) failure of City to observe and perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Contract, or under any Preliminary or Final Development Plan, within 30 days after written notice to City specifying such failure and requesting that it be remedied, or within such further period of time as is necessary to cure such failure; or

(03) failure by City, upon Developer's compliance with the terms of this Contract and the City Code, to approve in a timely manner the Preliminary and Final Development Plans for the Subsequent Phases of Developer Improvements and to issue in a timely manner required permits, licenses, or other approvals necessary for construction and operation of the Project.

The Developer acknowledges that as of the date of this Contract, no Event of Default by the City has occurred.

11.5 Remedies on Authority's and City's Default - Whenever any Event of Default, caused by Authority or City, shall have happened and be continuing, MOAC Mall, MOAC Land and the Developer (if different than MOAC Mall and MOAC Land) (as applicable, the "Enforcing Party," whether one or more) shall have the following remedies provided by this Section:

(01) The Enforcing Party may, upon 30 days' written notice, suspend the performance of its obligations under this Contract until it receives from the City or Authority or both reasonable assurances that are deemed adequate in the sole discretion of the Enforcing Party that the City and Authority will cure their Defaults and continue their performance under the Contract in a timely and diligent manner.

(02) The Enforcing Party may, upon 30 days' written notice, take whatever action at law or in equity or administratively that may appear necessary, appropriate, or desirable, including, but not limited to, action to specifically enforce the performance and the observance of any obligation, agreement, or covenant of City or Authority under this Contract or to collect damages for any amounts of money suffered by the Enforcing Party as a result of such breach under this Contract.

11.6 No Remedy Exclusive - No remedy herein conferred upon or reserved to the City and Authority or the Developer is intended to be exclusive of any other available remedy or remedies unless otherwise expressly stated, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Contract or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City, the Authority or the Developer to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article 11.

11.7 No Additional Waiver Implied by One Waiver - If any agreement contained in this Contract should be breached by any Party and thereafter waived by another Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous, or subsequent breach hereunder.

11.8 Non-Recourse Clause - Notwithstanding anything herein or otherwise to the contrary: (a) the recourse for recovery of or enforcement with respect to any liability or obligation under this Contract, shall be solely against the Authority, the City or the Developer, as applicable; and (b) no Party to this Contract shall seek to enforce any liabilities or obligations against any person or entity who is not expressly named above in this paragraph, including, but not limited to any present or future partner, stockholder, member, governor, officer, director, employee, or agent in or of a Party or a Party's Affiliate; and (c) no persons or entities described in (b) above who are not Parties to this Contract shall have any liability or obligation under or with respect to this Contract, with the exception of any Secondary Developer or Permitted

Successor Developer (to whom this Contract shall apply with respect to any Subsequent Phase or Subphase it develops).

ARTICLE 12.

MISCELLANEOUS PROVISIONS

12.1 Time Periods - Notwithstanding any time period specified in the City Code, in the event of a conflict between a time period specified in the City Code and a time period specified in this Contract, any time period specified in this Contract shall prevail.

12.2 Notices - The Parties hereby designate the following, located in Hennepin County, Minnesota, as agents to receive service of process and all notices, certificates, requests, or other communications required hereunder. All notices shall be sufficient only if given in writing and shall be deemed given only when delivered personally or by next day delivery or five (5) days after mailing when mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To City: Mayor and City Manager
1800 West Old Shakopee Road
Bloomington, Minnesota 55431

To Authority: President and Administrator
Port Authority of the City of Bloomington
1800 West Old Shakopee Road
Bloomington, Minnesota 55431

**To MOAC Land:
and/or MOAC Mall** MOAC Mall Holdings, LLC
MOAC Land Holdings LLC
Mall of America Company
c/o Kurt Hagen
60 East Broadway
Bloomington, MN 55425

With a copy to:
William C. Griffith, Jr.
Larkin, Hoffman, Daly & Lindgren, Ltd.
1500 Wells Fargo Plaza
7900 Xerxes Avenue South
Bloomington, Minnesota 55431

A duplicate copy of each such notice, certificate, request, or other communication given hereunder to City, Authority, MOAC Land or MOAC Mall shall also be given to the other Parties. Any Party hereunder may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests, or other communications shall be sent.

12.3 Time is of the Essence - The times for performance provided in this Contract are essential due to the obligations and expenditures of the Parties. If a specific time is not specified, performance shall be prompt and with due regard to the conditions of performance of other Parties in reliance thereon.

12.4 Cooperation Between Parties - All approvals required to be given by any Party to this Contract shall not be unreasonably withheld or delayed.

12.5 Binding Effect - This Contract shall inure to the benefit of and shall be binding upon City, Authority and Developer and their respective successors and assigns.

12.6 Amendments and Modifications - From and after the date hereof, with respect to Subsequent Phases only, this Contract amends, restates, replaces and supersedes the Prior Restated Contract and all prior negotiations and agreements and constitutes the entire agreement between the Parties on the subjects that it addresses. With respect to Subsequent Phases, to the extent that any terms of this Contract conflict with any prior agreement, written or oral, between the Parties governing the redevelopment of the Project Property, this Contract supersedes and cancels those inconsistent terms. No change, amendment, or modification to or extension of or waiver of any provisions of or consent provided under this Contract shall be valid unless such change, amendment, modification, extension, consent, or waiver is in writing and signed by all the Parties to this Contract, or, in the case of consent or waiver, by the Party granting the same. To the extent applicable, the Prior Restated Contract shall continue to apply with respect to the Prior Phases.

12.7 Severability - In case any Article or provision of this Contract, or in case any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into, or taken under this Contract, or any application thereof, is, for any reason, held to be illegal or invalid, or is at any time inoperable by reason of any law, or actions thereunder, such illegality or invalidity or inoperability shall not affect the remainder thereof or any other Article or provision under this Contract or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Contract, which shall, at the time, be construed and enforced as if such legal or invalid or inoperable portion were not contained therein.

12.8 Nonmerger Provisions - None of the provisions of this Contract are intended to be or shall be merged by reason of deeds or other conveyances, and any such deeds or other conveyances shall not be deemed to affect or impair the provisions and covenants of this Contract.

12.9 Recorded with the Properties - The City and Authority's obligations under this Contract to provide Public Investment in the Project is personal to the Developer; nonetheless, in order to place all parties with an interest in this Contract on notice of its term, it shall be recorded with each property in the Offices of the Hennepin County Registrar of Titles by the City.

12.10 Consent of Mortgage Holders - MOAC agrees that it will secure the consent, or obtain releases from, each and every holder of a security interest in the development rights of, or a mortgage interest in, the Project Property in a form acceptable to the City and Authority and

recorded with the abovesaid properties prior to the sale of any publicly issued financing for a Subsequent Phase. The requirement to obtain consent will only apply to the Developer as to property owned or controlled by the Developer and not to transferees as to property owned or controlled by a transferee, including without limitation the owner of the leasehold interest in the Southpad Lot.

12.11 No Partnership – Nothing herein shall be construed to create a partnership or joint venture between the Developer and the City or Authority nor shall anything herein be construed to create a fiduciary relationship between the Parties as to any activity described herein.

12.12 No Personal Liability or Conflict of Interest – No member, official or employee of either the City or Authority shall have any personal interest, direct or indirect, in this Contract, nor shall any such member, official or employee participate in any decision relating to this Contract that affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. No member, official or employee of the City or Authority shall be personally liable to the Developer, any successor in interest, in the event of any default or breach by the City or Authority for any amount that may become due to the Developer, successor or on any obligations under the terms of this Contract. No employee of the Developer shall be personally liable to the City or Authority or its successors in the event of any default or breach by the Developer or for any amount that may become due to the City or Authority or its successor or on any obligations under the terms of this Contract.

12.13 Indemnification – The Parties will indemnify and hold each other harmless, including their respective agents, officers and employees, from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees, causes of action, suits, claims, demands, judgment of any nature, because of bodily injuries to, or death of, any person and because of damages to property of the Parties or others, including loss of use from any cause whatsoever (collectively, "Liabilities"), arising out of, incidental to, or in connection with the use, nonuse, ownership, condition, or occupancy of the Project Property or with the construction of the Project or any Committed Public Improvements or Public Improvements, due to any acts of omission or commission, including negligence of another Party, or any contractor of such Party or their employees or agents; provided however, that the obligations of the indemnifying Party hereunder shall not extend to Liabilities to the extent caused by the negligence or willful misconduct of the Party to be indemnified, its officers, employees or agents. Liability of any Party hereunder shall not be limited to the extent of insurance carried by or provided by such Party or subject to any exclusions from coverage in any insurance policy.

12.14 Business Subsidy – It is anticipated the financial assistance provided by the City and Authority under this Contract will not constitute a "business subsidy" as that term is defined in Minnesota Statutes, Section 116J.993 to 116J.995 (the "Business Subsidy Act") because it is expected that the financial assistance provided will fall within an exception under the Business Subsidy Act for projects where the developer's investment in the purchase of the redevelopment site and the site preparation is 70 percent or more of the assessor's current year's estimated market value as those terms are defined in the Business Subsidy Act. For each Subsequent Phase a Redevelopment Agreement will be executed that includes an analysis of the Developer's investment into the purchase of the site and the cost of its preparation for development relative to the assessor's estimated market value for the year in which the

Redevelopment Agreement is executed. Should the private investment to value ratio fall below 70 percent and no other exceptions to the Business Subsidy Law apply, a Business Subsidy Agreement must be executed as a condition of any Article 7 disbursements.

12.15 Contract Termination – Unless otherwise modified by the Parties in accordance with Section 12.6, the rights and responsibilities of the Parties pursuant to this Contract shall continue until the earlier of the Project Completion date or June 1, 2040.

12.16 Excess Public Investment Funds – All sums remaining in the Public Investment Fund at the time of Contract Termination shall be the property of the City and Authority and shall be deposited in the South Loop District Development Fund.

12.17 Governing Law - The Parties hereto agree that the laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Contract and the legal relations between the Parties and performance under it without regard to the principles of conflicts of law. The language of this Contract is and shall be deemed the result of negotiation among the Parties and their respective legal counsel and shall not be strictly construed for or against any party. Each Party agrees that any action arising out of or in connection with this Contract shall be brought solely in the courts of the State of Minnesota, Fourth Judicial District, or the United States District Court for the District of Minnesota.

12.18 Effective Date – This Contract will become effective upon execution of the ancillary agreements described in Section 3.16 of this Contract for Project 1-C. If the ancillary agreements for Project 1-C are not executed within 12 months of the date of this Contract, this Contract will become null and void and the Parties' rights and obligations will be governed by the Prior Restated Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed by their their respective duly authorized officers the day and year first above written.

[Signature pages to follow]

**THE PORT AUTHORITY OF THE CITY
OF BLOOMINGTON**

Dated: August 21, 2012

By: [Signature]
President

Dated: August 21, 2012

By: [Signature]
Administrator

Reviewed and Approved by:
[Signature]
General Counsel for the Authority

Dated: August 21, 2012

CITY OF BLOOMINGTON
By: [Signature]
Mayor

Dated: August 21, 2012

By: [Signature]
City Manager

Reviewed and Approved by:
[Signature]
City Attorney

[Signature page to 2012 Master Redevelopment Contract]

Dated: August 28, 2012

MOAC MALL HOLDINGS, LLC
By: [Signature]
Senior Vice President of Development

Dated: August 28, 2012

MOAC LAND HOLDINGS, LLC
By: [Signature]
Senior Vice President of Development

[Signature page to 2012 Master Redevelopment Contract]

THIS INSTRUMENT WAS DRAFTED BY:

**City of Bloomington
1800 West Old Shakopee Road
Bloomington, MN 55431**

EXHIBIT

A

**2011 IMPROVEMENT FUNDING
AGREEMENT BETWEEN MOAC AND
THE CITY OF BLOOMINGTON AND
THE BLOOMINGTON PORT AUTHORITY**

This Agreement is made this 17th day of Dec, 2011, by and between MOAC Mall Holdings LLC, MOAC Land Holdings, LLC, both Delaware limited liability companies (together "MOAC") and the City of Bloomington, a Minnesota municipal corporation (the "City") and the Port Authority of the City of Bloomington, a body corporate or politic organized under Minnesota Statutes Chapter 469 (the "Authority"). (MOAC, the City and the Authority are collectively referred to herein as the "parties").

RECITALS

A. MOAC, the City and the Authority are parties to a redevelopment contract that limits the amount and timing of public funds made available for Committed Public Improvements contained and described within City-approved Final Development Plans for any Subsequent Phase of the Mall of America Project. (Capitalized terms are defined within that redevelopment contract that is currently entitled the *1988 Restated Contract for the Purchase and Private Redevelopment of Land*, which has been amended five times with the most recent amendment dated June 29, 2010). The parties to that 1988 redevelopment contract are in the process of drafting a successor master development contract. For the purposes of this Agreement the term "Restated Contract" includes the 1988 contract, as amended, as well as any successor master development contract between the parties concerning the same subject.

B. MOAC is proposing to develop the Subsequent Phases of the Mall of America Project and that development requires and will benefit from certain roadway improvements that are part of the Lindau Lane Corridor Complete Streets and Safety Enhancement Project, (the "Corridor Project") specifically the Lindau Lane Grade Separation at approximately 21st Avenue as set forth in the drawing attached hereto as Exhibit A (the "Improvement").

C. MOAC represents that it is the fee owner of the property adjacent to Lindau Lane, on which substantial portions of the Improvement will be constructed, located at 8100 24th Avenue South in the City of Bloomington, Hennepin County, Minnesota and legally described as: LOTS 1 and 2, BLOCK 1, MALL OF AMERICA 7th ADDITION, LOTS 2, 3, 4 and 5, BLOCK 1, MALL OF AMERICA 3rd ADDITION and LOT 1, BLOCK 1, MALL OF AMERICA 6th ADDITION and OUTLOT A, MALL OF AMERICA 5th ADDITION, according to the recorded plats thereof (the "Property").

D. The parties agree that the Improvement benefits each of the City, the Authority and MOAC, and propose by this Agreement to set out the financial responsibility of the parties for the Improvement, the maximum cost of which is Thirty-two Million Dollars (\$32,000,000).

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E. The City and MOAC have received approval for a grant from the State of Minnesota as part of the state capital investment bonding authority to cover a portion of the costs of the Improvement and several other improvements contained and described within the Corridor Project, in the total amount of Fifteen Million Four Hundred and Fifty Thousand Dollars (\$15,450,000) (the "State Grant") and Ten Million Dollars (\$10,000,000) of that State Grant is dedicated to the cost of the Improvement.

F. The State Grant is contingent upon the satisfaction of the Commissioner of the Department of Employment and Economic Development that state funding is matched and committed to the Corridor Project from nonstate funding sources, in a ratio of at least 2 to 1 (non-state: state). The commitment of the parties to use tax increment revenue from TIF District 1-C for this Improvement in the manner and amount set forth in Paragraph 7 of this Agreement is essential to establishing that match. The City's receipt of the \$15,450,000 in State Grant funds and proceeding to construct the Improvement is contingent upon the negotiation and execution of a grant agreement between the City and the Minnesota Department of Employment and Economic Development, as well as the Project Cost of the Improvement coming in at equal to or less than \$32,000,000.

G. The City has agreed to initiate the process for constructing the Improvement described in Exhibit B.

H. The construction of the Improvement is contingent upon MOAC causing to be provided easements, or providing the City financial reimbursement for such easements and dedication of right-of-way necessary for the Improvement. The City will provide legal descriptions of the temporary construction areas and dedicated property in a form acceptable to MOAC in conjunction with the preliminary design process for such Improvement.

I. The parties agree and understand that this Agreement has been negotiated to provide public and private funding for the Improvement described herein and is not intended to create a precedent, expectation or formula for any future funding of improvements, public, committed or otherwise, except as provided in Paragraph 7.e of this Agreement.

J. Based upon the discussion and analysis provided by the Bloomington City Council and Bloomington Port Authority at their November 15, 2011, joint meeting, it is the intent of the parties to allow for future amendments to this Agreement, or for a superseding agreement, at or prior to such time as the City approves a Final Development Plan for the next Subsequent Phase of the MOA development, as those amendments, or superseding agreement, are deemed necessary by the Bloomington City Council and Bloomington Port Authority to facilitate the Committed Public Improvements essential to that next Subsequent Phase.

K. The parties agree that the Lindau Lane Safety Improvement on the off-ramp from TH 77 to Lindau Lane and adjacent to the intersection serving the Nordstrom anchor of the Mall of America, the estimated cost of which is One Million Five Hundred Thousand

Dollars (\$1,500,000), is not subject to this Agreement and that MOAC will not bear any of the costs of that, or any other portion of the Corridor Project east of 24th Avenue South.

Now, therefore, in consideration of the mutual covenants of the parties here provided, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Recitals: Incorporation. The preceding recitals are incorporated and made a part of this Agreement.
2. The Improvement Subject to this Agreement. The subject matter of this funding agreement is the Lindau Lane Grade Separation (SP 107-444-006) at approximately 21st Avenue. The reconstruction and lowering of Lindau Lane from approximately TH 77 to 24th Avenue including the appurtenant intersections (IKEA Way and 22nd Avenue) and the bridge and tunnel construction spanning Lindau Lane at 21st Avenue. Specific work items will include, but not be limited to, pavement, curbing, retaining wall, signals, signing, bridging, bridge aesthetic improvements, lighting, tunnel safety treatments, explosion mitigation, landscaping, storm sewer, sanitary sewer, water main, private utilities, plaza and work reimbursed as Pad Costs as defined in subsection 8.h of this Agreement. The design will be consistent with the Preliminary Design Report prepared for Kurt Hagen, Mall of America Development Manager dated April 12, 2006 by Short Elliot Hendrickson, Inc. as shown in Exhibit B. The legal description of the property affected by the Improvement, the estimated Project Cost, and terms under which the City will initiate the project are set forth and defined in Exhibit B.
3. Dedication. MOAC agrees to provide, at no cost to City or Authority, all construction easements, right of way dedication and rights of entry from the Property as the City and MOAC reasonably determine to be required for the Improvement. MOAC also agrees to use its best efforts to obtain the necessary construction easements from IKEA, located at 8000 IKEA Way, Bloomington, Hennepin County, Minnesota, legally described as LOT 2, BLOCK 1, MALL OF AMERICA 6th ADDITION, ("IKEA Property") at no cost to the City and further provided the cost, if any, is acceptable to MOAC. The City agrees to use its best efforts to assist MOAC in the negotiation of these easements, which may include, with the consent of the MOAC, the exercise of its right of eminent domain to acquire the easements at a price mutually agreed to by the parties, with the entire cost thereof being reimbursed to the City by MOAC.
4. Project Cost. Project Cost, as estimated in Exhibit B, includes but is not limited to, the costs of design, engineering, construction engineering, construction, surveying, materials testing, legal fees, financing costs, easements, rights-of-way exclusive of easements provided from the Property, permit fees, and construction interest carrying costs. The Project Costs identified as attributable to the special design features for increased safety and security and load bearing capacity required to enable the placement of MOAC's Developer Improvements safely on the plaza above the lowered Lindau Lane

are separately identified and will be separately accounted for during construction. All costs will be reasonable for a project of the kind and scope undertaken by the City and based upon actual costs incurred by the City or submitted to the City by third party consultants, engineers, and others without adjustment or increase. MOAC will have the right to review all costs submitted or incurred for the Improvement.

5. Review and Approval of Plans and Specifications. MOAC will have the right to review plans and specifications for the Improvement that are the subject of this Agreement. A signed approval by MOAC and its designated engineer will be required for the Lindau Lane Grade Separation or any portion of the Improvement immediately adjacent to or within the Property in that MOAC will own parts of the Improvement in the future.

6. "Destroyed Value" Contribution of the Authority. The Authority agrees to contribute to the cost of constructing the Improvement the sum of \$826,000 that MOAC previously paid to the Authority as compensation for the destruction of that portion of the MOA Phase I parking ramps as was necessary to allow for the construction of the Southpad Hotel. This contribution is in accordance with the terms set forth in the 2010 Redevelopment Agreement between the parties.

7. Tax Increment Financing Revenue Advance ("TIF Advance"). Notwithstanding Paragraph 12 of this Agreement, Authority agrees to provide a "TIF Advance" (as defined in this paragraph) in favor of MOAC for the purpose of financing the remaining costs of the Improvement, other than those costs covered by grant funds and the contribution referenced in paragraph 6 above, up to a maximum of Twenty-one Million One Hundred Seventy-four Thousand and No/100ths Dollars (\$21,174,000). The term "TIF Advance" means the use of tax increment financing revenues collected and accumulated by the Authority from Bloomington Tax Increment Financing District 1-C, but not yet earned by MOAC through the Counted Value formula set forth in the Restated Contract at Paragraph 9.02(5) and which, in the absence of this Agreement, would not be qualified for use in this Improvement or any next Subsequent Phase. Notwithstanding subsection a of this Paragraph 7 and Paragraph 12, as an inducement to the development of Subsequent Phases, the Authority agrees to provide an additional TIF Advance in favor of MOAC in an amount that the City, the Authority and MOAC agree to be necessary to construct the Committed Public Improvements for the next Subsequent Phase, such amount to be determined and the TIF Advance to be made at or prior to such time as the City approves the Final Development Plan for the next Subsequent Phase up to the sum of Six Million Dollars (\$6,000,000). The TIF Advances contemplated by this paragraph shall be subject to the following terms and conditions:

a. All Counted Value reimbursements for Committed Public Improvements to which MOAC is entitled, after those directly relating to the Southpad Hotel Project are reimbursed, will be first dedicated to the repayment of this TIF Advance without interest thereon.

b. This Agreement will be incorporated into and made a part of the Restated Contract by reference.

c. The Authority's receipt of any Plaza Reimbursements, as that term is

defined at Paragraph 8 g, from MOAC will, for the purposes of calculating Counted Value, result in a recalculation of the amount of the TIF Advance by crediting the Plaza Reimbursement against the total TIF Advance. (For example, if a Plaza Reimbursement for \$4,000,000 is paid to the Authority, then the TIF Advance will be reduced to \$17,174,000.)

d. The only recourse for repayment of the TIF Advance will be against TIF revenues earned by MOAC pursuant to the Restated Contract or any Plaza Reimbursement paid by the MOAC to the Authority at the time all or a portion of the plaza is converted from public to private use.

e. With respect to the TIF Advance, the Authority and MOAC will enter into a business subsidy agreement, if required pursuant to Minn. Stat. sections 116J.993-116J.995 and

f. The Authority and City agree to make such amendments to this Agreement or to enter into a superseding agreement, at or prior to such time as the City approves a Final Development Plan for the next Subsequent Phase of the MOA development, as those amendments, or superseding agreement, are deemed necessary by the Bloomington City Council and Bloomington Port Authority to facilitate the Committed Public Improvements essential to that next Subsequent Phase.

8. Ground Lease and Security Agreement. After substantial completion of the Improvement has occurred, and upon 14 days advance written notice by City or Authority, MOAC agrees to undertake and be responsible for all tunnel and plaza maintenance and operational costs pursuant to the terms set forth in the separate Ground Lease, Management and Security Agreement (the "Ground Lease"), which shall include, at a minimum, each of the following:

a. The City will plow snow and perform routine maintenance, repair and improvements of and to the roadway including curbs, sidewalks, gutters and medians and stormwater system in the tunnel at no additional cost to MOAC.

b. The tunnel and plaza are to be managed and maintained by MOAC during the lease term consistent with applicable law.

c. The details of the operation, security and maintenance for the tunnel and plaza, including: tunnel cleaning, electricity for lighting and security cameras, maintenance of fixtures and security cameras, as well as the agreement of the parties that until they develop mutually acceptable safety conditions for operations, security and maintenance of the plaza and tunnel, it will not be opened for use or travel by the public.

d. The City's right to assess MOAC the reasonable costs for the operations, security, management and maintenance in the event that MOAC does not perform under the conditions set out in the Ground Lease consistent with applicable law.

e. MOAC's right to first be given thirty (30) days written notice of nonperformance with an opportunity to cure such nonperformance consistent with Paragraph 13 hereof.

f. MOAC's right, pursuant to a City-approved Final Development Plan to construct buildings, internal roadways, parking, landscaping and other architectural features or recreational elements on the plaza above the lowered Lindau Lane (the Developer Improvements) at no additional cost other than the cost of construction of the Developer Improvements, the cost of ongoing operations, security and maintenance of the plaza, the Developer Improvements thereon and tunnel maintenance, except for any Plaza Reimbursement as set forth in subsection g. of this Paragraph 8. The City agrees not to unreasonably withhold development approvals for the Developer Improvements.

g. The Authority's right to obtain reimbursement from MOAC for that part of the cost of constructing the bridge structure and foundations, beyond the retaining wall costs, as it relates to the percentage portion of the plaza that MOAC seeks to convert from public to private use. ("Plaza Reimbursement"). This Plaza Reimbursement is to be paid to the Authority at the time the parties, including any Secondary Developer, close on and execute those documents necessary to finance that next Subsequent Phase requiring the conversion of all or a portion of the plaza from public to private use. MOAC agrees to make Plaza Reimbursement payments to the Authority for each portion of the plaza converted from public to private use up to the total actual construction cost therefor, as such costs and payments are more fully defined within the Ground Lease. Each Plaza Reimbursement will be first credited against any outstanding TIF Advance in the manner set forth in subsection 7.c of this Agreement and deposited in the TIF account from which it was originally expended. Plaza Reimbursement payments will reduce, on a dollar for dollar basis, the amount of the TIF Advance, but will otherwise not be eligible for inclusion in Counted Value if the expense was originally included in Counted Value as a cost of a Committed Public Improvement or Public Improvement. If the expense was not included in Counted Value, then the Plaza Reimbursement will be included in Counted Value at such time as the Developer or Secondary Developer builds the next Subsequent Phase of the Project.

h. If after a period of 10 years from the Completion of Construction of the Improvement, MOAC has not Commenced Construction of the next Subsequent Phase consisting of at least a 100,000 finished square foot structure on or immediately adjacent to a portion of the development pad located on the plaza above the lowered Lindau Lane ("Development Pad") MOAC agrees to reimburse the City for all of the additional costs of constructing the plaza in a manner that enables the construction of Developer Improvements thereon ("Pad Cost"). This Pad Cost reimbursement does not impact MOAC's right to own all or a portion of the Development Pad upon the payment of Plaza Reimbursement or upon expiration of the Ground Lease.

i. MOAC shall have the right to own that portion of the Development Pad for which it pays Plaza Reimbursement pursuant to the schedule set forth in subsection g of this Paragraph 8. After the expiration of the Ground Lease based on a 20-year term, MOAC shall own the entire Development Pad including the plaza. During the Ground lease period, MOAC will bear all responsibility for the maintenance, security and management of the tunnel and plaza, other than maintenance described in subsection 8.2 of this Agreement. The City will retain ownership of the tunnel and the Lindau Lane roadway improvements after transfer of ownership in the Development Pad to MOAC.

- j. The City and MOAC's agreement to maintain reasonable roadway and pedestrian access routes to and upon Lindau Lane and the plaza during the lease period, subject to MOAC's right to build Developer Improvements over and upon the plaza as provided herein.
9. Construction of the Improvement and Air Rights. The City will design and construct the Improvement, subject to MOAC review and approval. Design conditions will include height and width requirements so as to facilitate roadway maintenance and maintain roadway safety, load bearing capacity minimums, and design and construction of the plaza in a manner that provides blast and safety protection. Based upon the understanding that the Developer Improvements to be constructed on the plaza are intended to be significant and permanent, the City agrees to forego its usual condition with respect to air rights over the right of way and will not require removal of Developer Improvements constructed thereon.
10. Destroyed Value of Lindau Lane. In consideration for the terms and conditions of this Agreement and in recognition of the fact that MOAC is obligated to pay 75% of the costs of constructing the 2004 roadway improvements to Lindau Lane, the City and Authority hereby waive any rights either may have to recover compensation for the destruction of that portion of the Lindau Lane necessary to construct the Improvement.
11. City Obligations. The City agrees to commence construction of the Improvement and carry out the construction with reasonable adherence to the construction timelines set out in Exhibit C.
12. Restated Contract. MOAC, the City and the Authority agree that nothing in this Agreement shall be interpreted to modify or amend the terms of the Restated Contract.
13. Remedies for Breach. In the event of a breach of this Agreement, either party may, upon thirty (30) days written notice, take whatever action at law, in equity or administratively that may appear necessary, appropriate, or desirable to specifically enforce performance and observance of any obligation, agreement or covenant under this Agreement, or to collect damages for any amounts of money suffered as a result of such breach under this Agreement.
14. No Remedy Exclusive. No remedy conferred by this Agreement upon or reserved to the City and Authority or MOAC is intended to be exclusive of any available remedy or remedies unless otherwise expressly stated herein, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement and not or hereafter existing at law or by statute.
15. Coordination. The City and MOAC acknowledge and agree that the construction of the Improvement may impact the operation of the MOAC businesses, and the City and MOAC agree to use best efforts to coordinate the construction of the Improvement to avoid unreasonable interference or delay to the operation of the businesses.
16. Severability. In the event any provisions of this Agreement shall be held invalid, illegal, or unenforceable by any court of competent jurisdiction, such holding shall not

invalidate or render unenforceable any other provisions hereof, and the remaining provisions shall not in any way be affected or impaired thereby.

17. **Law Governing.** This Agreement shall be construed in accordance with the laws of the State of Minnesota, without regard to choice of law provisions.

18. **Successors and Assigns.** It is agreed by and between the parties hereto that this Agreement shall be binding upon and inure to the benefit of MOAC and the City and the Authority and their respective successors and assigns.

19. **Representations Relating to Authority and Organization.** Each of the undersigned parties warrants that it has full authority to execute this Agreement and each individual signing the Agreement on behalf of the respective parties hereby warrants that he or she has full authority to sign on behalf of the organization that he or she represents and to bind such organization thereby. MOAC warrants and represents that it is duly organized, existing, and in good standing under and subject to the laws of the State of Delaware, and is authorized to do business in the State of Minnesota. MOAC represents that it has the power and authority to enter into this Agreement.

20. **Complete Agreement.** This Agreement, and the Restated Contract constitute the entire agreement between the parties regarding the subject matter hereof.

21. **Nonmerger.** None of the provisions of this Agreement are intended to be or shall be merged by reason of deeds or other conveyances and any such deeds or other conveyances shall not be deemed to affect or impair the provisions and covenants of this Agreement, which shall survive the execution of any such deeds or other conveyances.

22. **Amendment.** No change, amendment or modification to or waiver of any provisions of the Agreement shall be valid unless such change, amendment, modification of waiver is in writing and signed by the parties to this Agreement.

23. **Notices.** Any notice required or permitted to be given by any party upon the other is given in accordance with this Agreement if it is directed to MOAC by delivering it personally to an officer of MOAC; or if it is directed to the City, by delivering it personally to the Bloomington City Attorney, and to the Authority by delivering it personally to the Port Administrator; or if it is mailed by United States registered or certified mail, return receipt required, postage prepaid; or if deposited cost-paid with a nationally recognized, reputable overnight courier, properly addressed as follows:

If to MOAC:

MOAC Land Holdings, LLC
60 East Broadway
Bloomington, MN 55425

Attention: Vice President of Development

with a copy to MOAC's legal counsel:

Larkin Hoffman Daly & Lindgren Ltd.
1500 Wells Fargo Plaza

7900 Xerxes Avenue South
Bloomington, MN 55431

If to City of Bloomington:

City of Bloomington
1800 W. Old Shakopee Road
Bloomington, MN 55431

Attention: City Attorney

If to the Port Authority of the City of Bloomington

Port Authority of the City of Bloomington
1800 W. Old Shakopee Road
Bloomington, MN 55431

Attention: Port Administrator

with a copy to Authority's legal counsel:

Kennedy & Graven,
200 South Sixth Street, Suite 470
Minneapolis, MN 55402

Attention: Bloomington Port Authority General Counsel

Notices shall be deemed effective upon receipt by the party to whom it is delivered. Any party may change its address for the service of notice by giving written notice of such change to the other party in any manner above specified ten days prior to the effective date of such change.

24. Contingency. The parties hereto agree that this Agreement is contingent upon the each of the following:

- a. Minnesota Department of Employment and Economic Development's approval of a Grant Agreement with the City that authorizes the disbursement of the proceeds of the State Grant for all elements of the Project Cost for the Improvement, as set forth in Exhibit B.
- b. The Project Cost for the Improvement not exceeding \$32,000,000, as determined by the City and Authority at the time the bids are opened.
- c. MOAC's ability, with the assistance of the City, to obtain the necessary construction and/or permanent easements from IKEA or to reimburse the City for the cost of acquiring these easements should the City agree to obtain them through eminent domain pursuant to a written request from MOAC on the terms provided in Paragraph 3 of this Agreement.
- d. The ability of the City to obtain the permits required for the Improvement from the applicable regulatory agencies.

IN WITNESS to this Agreement, the parties have caused this instrument to be executed as of the day and year first above written, subject to all of the terms and conditions set forth herein.

[Signature Pages to Follow]

**2011 Improvement Funding and Special Assessment Agreement
Between MOAC and the City of Bloomington**

MOAC LAND HOLDINGS, LLC

By: V. W.

V. W.
(Printed Name)

Its: SIP DEVELOPMENT

MOAC MALL HOLDINGS LLC

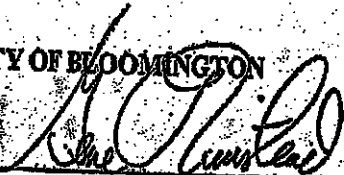
By: V. W.

V. W.
(Printed Name)

Its: SIP DEVELOPMENT

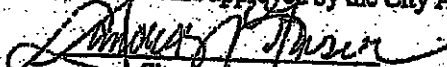
**2011 Improvement Funding and Special Assessment Agreement
Between MOAC and the City of Bloomington**

CITY OF BLOOMINGTON

By: 
Gene Winstead
Mayor

By: 
Mark Bernhardson
City Manager

Reviewed and approved by the City Attorney.


City Attorney

**2011 Improvement Funding and Special Assessment Agreement
Between MOAC and the City of Bloomington**

PORT AUTHORITY OF THE CITY OF BLOOMINGTON


By: _____

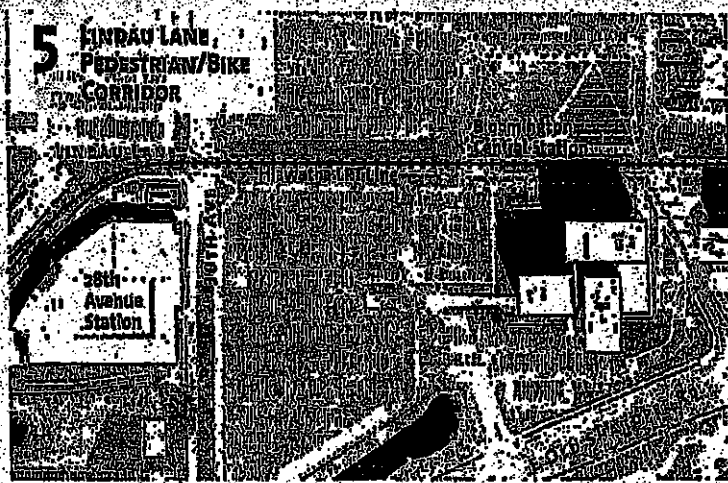
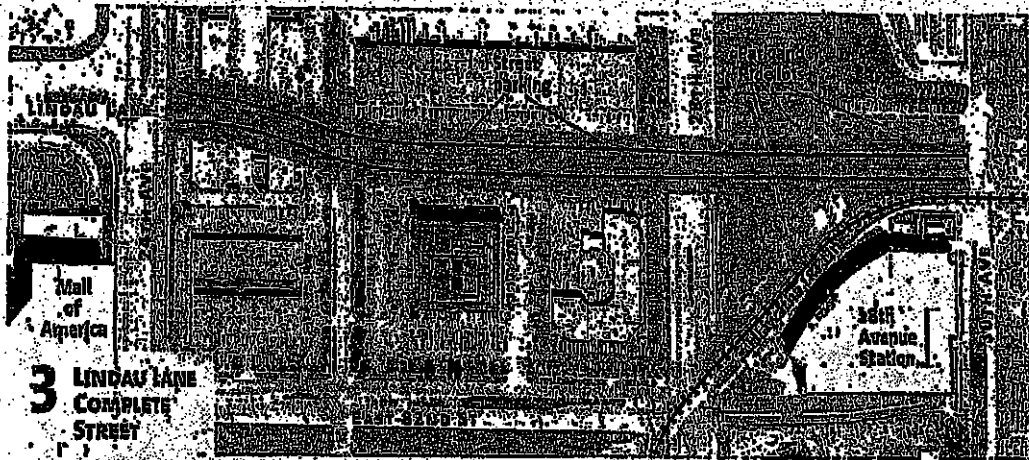
Robert Erickson
Port Authority President


By: _____







Schane Rudlang
Port Authority Administrator


Reviewed and approved by the Authority General Counsel.


General Counsel



LEGEND

-  Proposed Roadway
-  Proposed Bridge
-  Proposed Sidewalk
-  Proposed Landscaping
-  Proposed Bike Lane
-  Hiawatha LRT Line



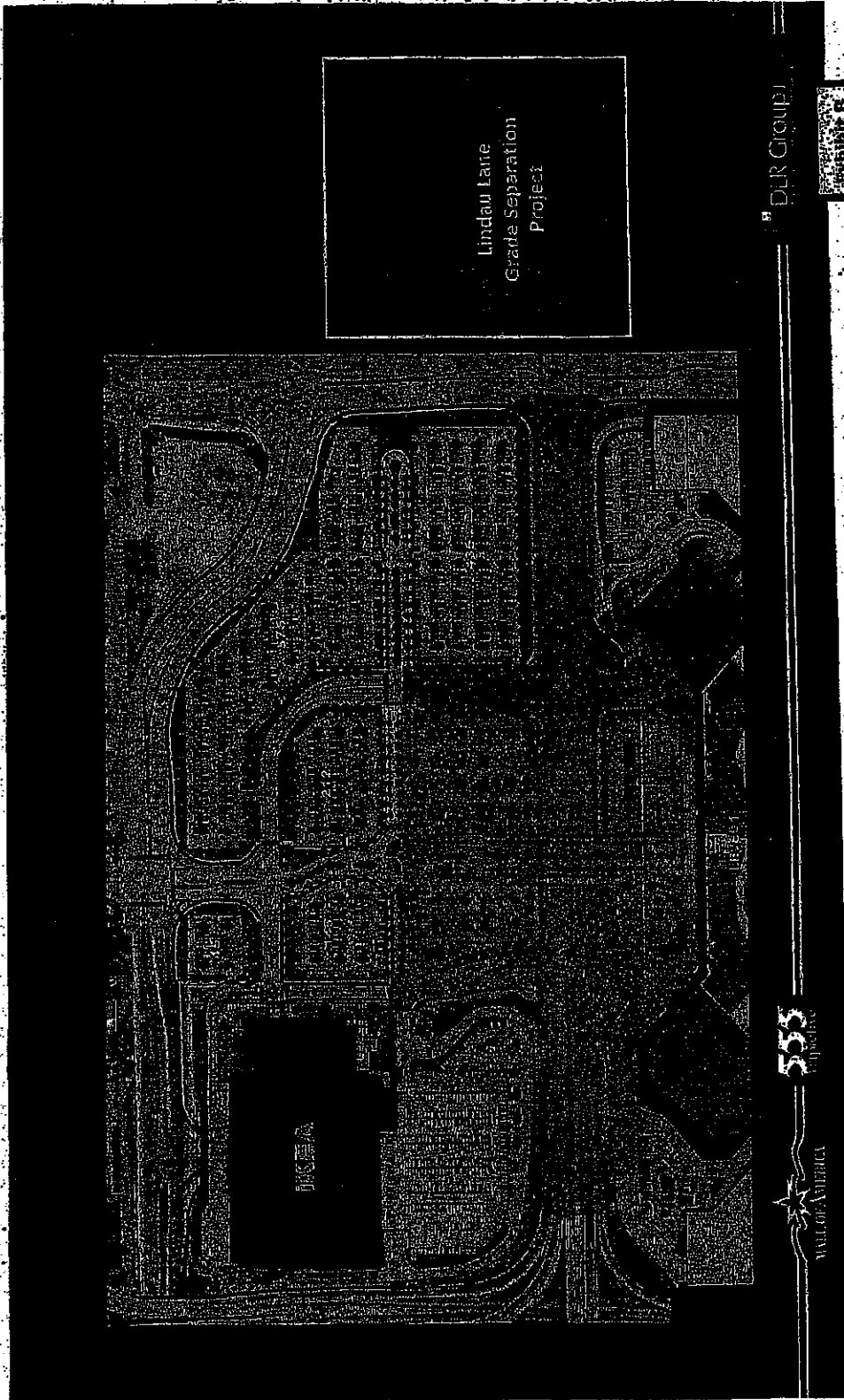


Exhibit C

Lindau Lane Lowering Project cost

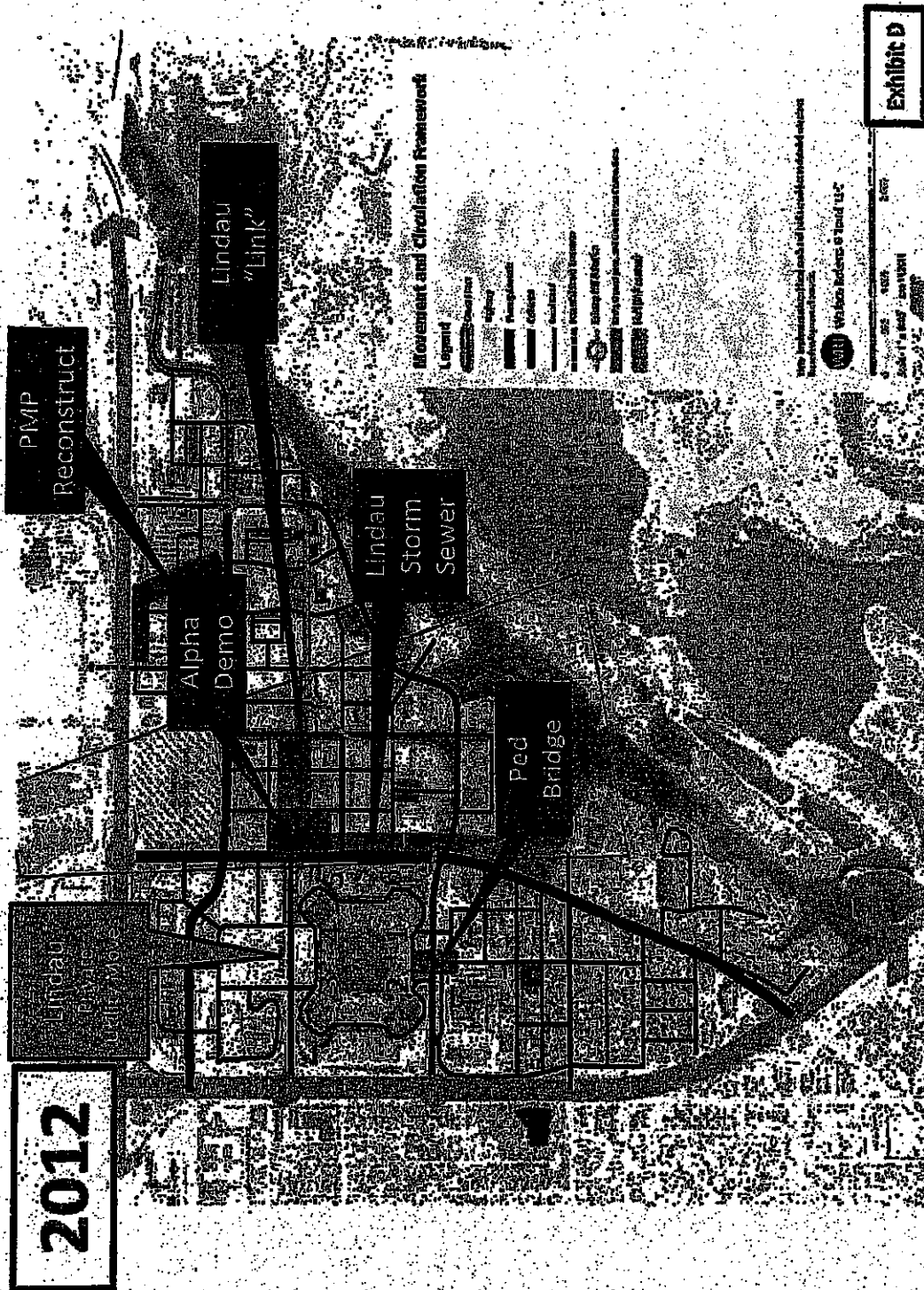
\$32,000,000.

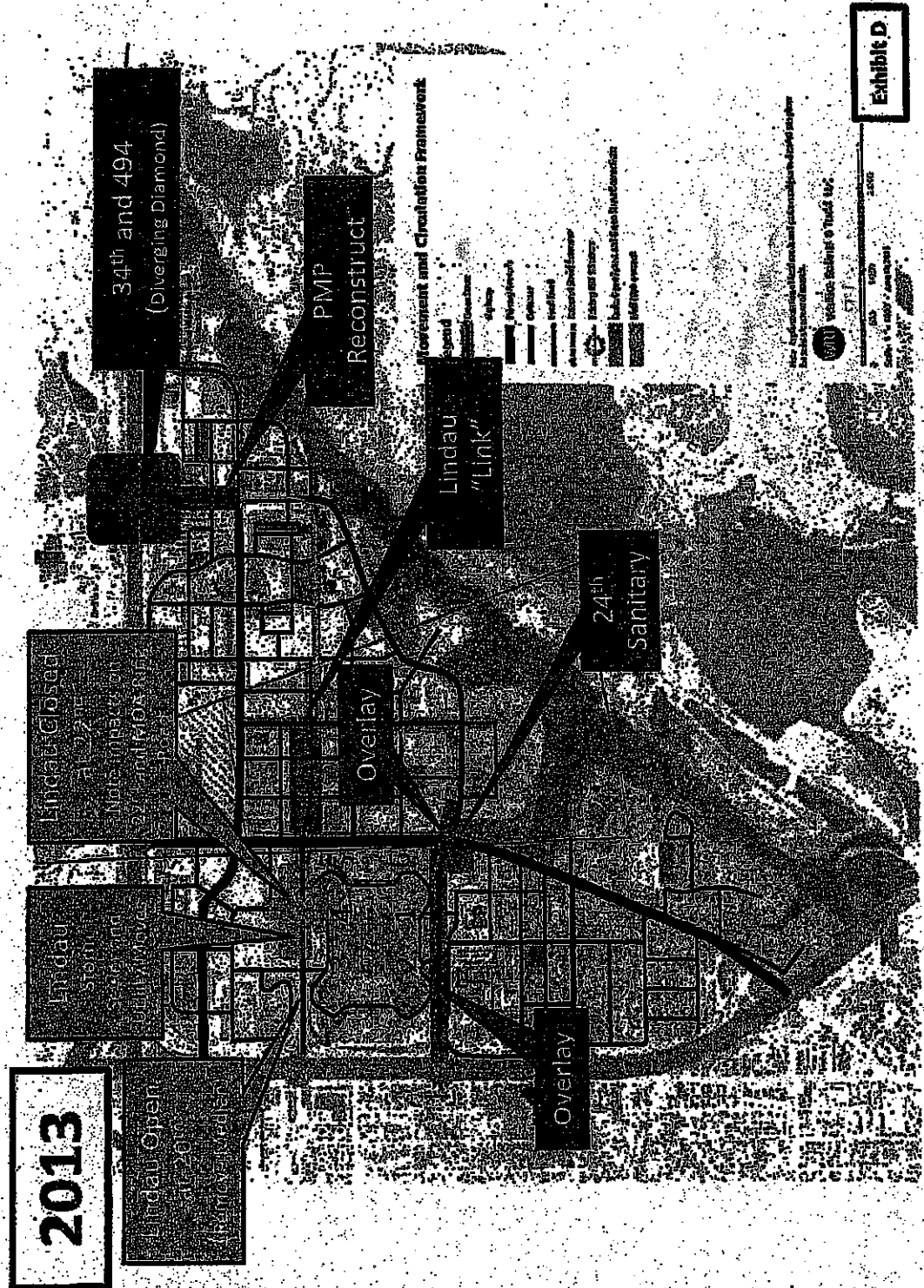
EXHIBIT C - LINDAU LANE GRADE SEPARATION COST ESTIMATE

	TOTAL ESTIMATED QUANTITY	UNIT	UNIT COST	CONSTRUCTION COST	10% CONTINGENCY	25% ENGINEERING & CONSTRUCTION ADMIN	TOTAL
LINDAU LANE SURFACE ROAD WORK =							
MOBILIZATION				\$ 75,000.00	\$ 7,500.00	\$ 21,952.62	\$ 104,452.62
RENT MACADAMICENT LAND FOR PARKING DURING PROJECT	84 Weeks	\$	3,800.00	\$ 322,000.00	\$ 32,200.00	\$ 72,374.49	\$ 426,574.49
SITE DEMOLITION				\$ 280,572.75	\$ 28,057.28	\$ 82,832.86	\$ 401,462.89
EARTHWORK				\$ 447,972.20	\$ 44,797.22	\$ 128,471.58	\$ 621,240.99
MASS GRADING FOR LOWERING ROADWAY	60000 CY	\$	20.00	\$ 1,200,000.00	\$ 120,000.00	\$ 340,847.54	\$ 1,660,847.54
ADJUSTABLE CURBS				\$ 2,278,312.45	\$ 227,831.24	\$ 652,328.28	\$ 2,958,471.97
CONSTRUCTION TRAFFIC CONTROL				\$ 701,752.54	\$ 70,175.25	\$ 201,976.52	\$ 973,904.31
SIGNAGE & STRIPES				\$ 74,000.00	\$ 7,400.00	\$ 21,531.81	\$ 102,931.81
LANDSCAPING (Includes EROSION CONTROL)				\$ 130,944.27	\$ 13,094.43	\$ 38,431.50	\$ 182,469.79
				\$ 12,922.03	\$ 1,292.20	\$ 3,813.59	\$ 18,027.82
SITE WORK ON LOCAL ROAD (MATCH NEW 22ND AVE & (NEW WAY DIV) =							
SITE DEMOLITION				\$ 152,162.23	\$ 15,216.22	\$ 43,337.07	\$ 210,715.52
EARTHWORK				\$ 477,800.00	\$ 47,780.00	\$ 136,774.58	\$ 662,354.58
ROADWAY				\$ 60,000.00	\$ 6,000.00	\$ 17,162.48	\$ 83,162.48
STORM SEWER				\$ 210,000.00	\$ 21,000.00	\$ 61,370.28	\$ 292,370.28
LIGHTING				\$ 65,000.00	\$ 6,500.00	\$ 18,622.50	\$ 89,122.50
CONSTRUCTION TRAFFIC CONTROL				\$ 4,100.00	\$ 410.00	\$ 1,162.66	\$ 5,672.66
SIGNAGE & STRIPES				\$ 180,000.00	\$ 18,000.00	\$ 51,982.45	\$ 249,982.45
LANDSCAPING (Includes EROSION CONTROL)				\$ 50,000.00	\$ 5,000.00	\$ 14,381.53	\$ 69,381.53
LINDAU LANE STORM SEWER =							
72" STORM SEWER UPGRADE	300 LF	\$	70.00	\$ 21,000.00	\$ 2,100.00	\$ 603,755.63	\$ 626,855.63
REMOVE 48" STORM SEWER	300 LF	\$	30.00	\$ 9,000.00	\$ 900.00	\$ 26,390.74	\$ 35,290.74
CONSTRUCTION (6-8')	40 LF	\$	200.00	\$ 8,000.00	\$ 800.00	\$ 2,329.25	\$ 11,129.25
64" STORM SEWER DIRECTIONAL DRILLING	100 LF	\$	700.00	\$ 70,000.00	\$ 7,000.00	\$ 201,659.70	\$ 278,659.70
24" STORM SEWER OPEN CUT	100 LF	\$	30.00	\$ 3,000.00	\$ 300.00	\$ 854.72	\$ 4,154.72
24" STORM SEWER RESTORATION	1 LF	\$	275,000.00	\$ 275,000.00	\$ 27,500.00	\$ 80,318.40	\$ 382,818.40
CONSTRUCTION MANHOLE (6-15')	10 LF	\$	700.00	\$ 7,000.00	\$ 700.00	\$ 2,017.24	\$ 10,717.24
GRIT CHAMBER	1 LF	\$	150,000.00	\$ 150,000.00	\$ 15,000.00	\$ 43,044.34	\$ 208,044.34
BASEMENT COSTS	1 LF	\$	100,000.00	\$ 100,000.00	\$ 10,000.00	\$ 28,886.63	\$ 138,886.63
LINDAU UTILITIES =							
12" WATER MAIN LOWERING	1 LF	\$	50,000.00	\$ 50,000.00	\$ 5,000.00	\$ 14,248.11	\$ 69,248.11
UTILITY RELOCATION	1 LF	\$	500,000.00	\$ 500,000.00	\$ 50,000.00	\$ 143,481.13	\$ 693,481.13
TUNNEL FINISHING & RETAINING WALLS OUTSIDE ADJUTMENT							
RETAINING WALLS	1000 LF	\$	40.00	\$ 40,000.00	\$ 4,000.00	\$ 11,457.20	\$ 55,457.20
WATERPROOFING RETAINING WALLS	1000 SF	\$	6.00	\$ 6,000.00	\$ 600.00	\$ 1,704.28	\$ 8,304.28
PAINT CONCRETE RETAINING WALLS	1000 SF	\$	1.00	\$ 1,000.00	\$ 100.00	\$ 279.54	\$ 1,379.54
SHOTCRETE	6000 SF	\$	10.00	\$ 60,000.00	\$ 6,000.00	\$ 17,038.88	\$ 83,038.88
TRAILING	6000 SF	\$	20.00	\$ 120,000.00	\$ 12,000.00	\$ 34,167.60	\$ 166,167.60
LINDAU PLAZA/PAV							
SITE DEMO & WOOD COMPACTION				\$ 783,152.00	\$ 78,315.20	\$ 222,752.68	\$ 1,084,219.88
PLAZA REQUIRED UTILITIES				\$ 121,850.00	\$ 12,185.00	\$ 35,577.53	\$ 169,612.53
STRUCTURAL EXCAVATION				\$ 71,418.00	\$ 7,141.80	\$ 20,484.27	\$ 99,044.07
SITEWORK (Includes LANDSCAPING & SITE FURNISHINGS)				\$ 1,153,782.00	\$ 115,378.20	\$ 333,635.20	\$ 1,602,795.40
STRUCTURAL				\$ 5,500,000.00	\$ 550,000.00	\$ 1,550,243.52	\$ 7,600,243.52
MECHANICAL				\$ 12,000.00	\$ 1,200.00	\$ 3,448.77	\$ 16,648.77
ELECTRICAL				\$ 80,550.00	\$ 8,055.00	\$ 23,018.93	\$ 111,623.93
SUBTOTAL				\$ 12,071,004.91	\$ 1,207,100.49	\$ 3,520,734.63	\$ 16,798,840.03
10% CONTINGENCY				\$ 1,207,100.49			\$ 1,207,100.49
CONSTRUCTION COST				\$ 13,278,105.40			\$ 13,278,105.40
25% ENGINEERING & CONSTRUCTION ADMIN				\$ 3,017,734.63			\$ 3,017,734.63
GRAND TOTAL							\$ 19,513,575.52

NOTES:
 1. UTILITY QUANTITIES FOR LINDAU LOWERING ARE FROM THE 2011 30% ESTIMATE, EXCEPT THAT THE QUANTITIES FOR DIRECTIONAL DRILLING VERSUS OPEN CUT FOR STORM SEWER HAVE BEEN UPDATED TO REFLECT THE CITY OWNING ALPHAV
 2. THIS IS A PRELIMINARY ESTIMATE. THE SCOPE, TERMS, QUANTITIES AND COSTS ARE SUBJECT TO CHANGE AS THE DESIGN AND BIDDING PROCESS CONTINUES, AND WILL NEED TO BE MODIFIED TO STAY WITHIN BUDGET.

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STATE OF MINNESOTA

DISTRICT COURT

HENNEPIN COUNTY

FOURTH JUDICIAL DISTRICT
CRIMINAL DIVISION

State of Minnesota,
Plaintiff,

vs.

**MOTION TO COMPEL DISCOVERY
MOTION ON RESTITUTION
MOTION FOR GAG ORDER**

Kandace Montgomery,	Court File No. 27-CR-15-1304
Nekima Levy-Pounds,	27-CR-15-1307
Michael McDowell,	27-CR-15-1320
Catherine Salonek,	27-CR-15-1326
Todd Dahlstrom,	27-CR-15-1331
Adja Gildersleve,	27-CR-15-1335
Amity Foster,	27-CR-15-1346
Jie Wronski-Riley,	27-CR-15-1349
Shannon Bade,	27-CR-15-1350
Mica Grimm,	27-CR-15-1829
Pamela Twiss,	27-CR-15-2766
Kimberly Ann Socha,	27-CR-15-3068
Dakota Ryan Machgan,	27-CR-15-3069
Deann Lynne Pratt,	27-CR-15-3071
Nakami Faridah Tongrit-Green	27-CR-15-3073
Mautau Kakemwa Alima Tongrit-Green,	27-CR-15-3074
Rahsaan Hansraj Mahadeo,	27-CR-15-3144
Anthony John Nocella,	27-CR-15-3146
Tamera Janae Larkins,	27-CR-15-3491
Andrew Jared Edwards,	27-CR-15-3492
Benjamin Michael Painter,	27-CR-15-3493
Christopher Mark Juhn,	27-CR-15-3494
Imani Christian McCray,	27-CR-15-3495
Aaron Lamar Abram,	27-CR-15-3496
Tadele Kelemework Gebremedin,	27-CR-15-3497
Dua Safaldien Saleh,	27-CR-15-3582
Emmett James Doyle,	27-CR-15-3583
Madeline Cady Jacobs,	27-CR-15-3586
Roxxanne Liegh Rittenhouse,	27-CR-15-3602
Rose Marie Meyer,	27-CR-15-3072
Sara Jean Gieseke,	27-CR-15-4953

Defendants.

1 The above-entitled proceeding came duly on for hearing
2 before The Honorable Peter A. Cahill, Judge of District
3 Court, commencing on the 1st day of May, 2015, at the
4 Southdale Courthouse, Courtroom 22, city of Edina, county of
5 Hennepin, state of Minnesota.

6 **A P P E A R A N C E S**

7 SANDRA JOHNSON, ESQ., and TORRIE SCHNEIDER, ESQ.,
8 appeared for and on behalf of the Plaintiff.

9 JORDAN KUSHNER, ESQ., appeared for and on behalf
10 of various Defendants.

11 ANDREW GORDON, ESQ., Legal Rights Center appeared
12 for and on behalf of various defendants.

13 Also present: Tim Phillips, Esq., Andrea Palumbo,
14 Esq., Larry Leventhal, Esq., Michael Sawers, Esq., Scott
15 Flaherty, Esq., and Teresa Nelson, Esq.

16 SUSAN GAERTNER, ESQ., appeared for and on behalf
17 of the Mall of America.

18
19 Jeanne Manko, RMR
20 Official Court Reporter
21

22

23

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1 Whereupon, the following proceeding was held
2 on May 1, 2015, and entered of record, to wit:

3 THE DEPUTY: All rise, this court is now in
4 session, The Honorable Peter A. Cahill is presiding.

5 THE COURT: Thank you, please be seated. All
6 right, we're going to go on the record on all the cases
7 to begin with to deal with some motions, and, then,
8 we'll proceed, calling cases individually in order to
9 set future trial dates.

10 Are we on the record?

11 THE CLERK: We are on the record, Your Honor.

12 THE COURT: All right, I would note one of
13 the first motions that was brought to the Court's
14 attention is a motion to compel disclosure; who would
15 like to speak to that on behalf of the defense?

16 Mr. Kushner?

17 MR. KUSHNER: Thank you, Judge.

18 THE COURT: Would you note your appearance
19 for the record first, we are on monitoring.

20 MR. KUSHNER: I'm Jordan Kushner, K-u-s-h-n-
21 e-r, attorney of record for Nekima Levy-Pounds, Adja
22 Gildersleve, Michael McDowell, Katherine Salonek and
23 Jie Wronski-Riley, not sure whether or not I'm attorney
24 of record right now for Mica Grimm, but I'm also
25 believe -- I'm also speaking on behalf of the other

1 defendants who are the group of the eleven organizers,
2 which would also include Kandace Montgomery, Shannon
3 Bade, Todd Dahlstrom, and Amity Foster, and Pamela
4 Twiss.

5 THE COURT: Well, I think the disclosure
6 motion has applicability across all the cases that are
7 on the calendar today, so I'll consider this --

8 MR. KUSHNER: Okay.

9 THE COURT: -- even if you aren't technically
10 the attorney of record, and I'll allow any other
11 attorneys who wish to speak on it for additional
12 information to do so as well.

13 Go ahead.

14 MR. KUSHNER: Thank you. So we've got --
15 I've got fourteen different specific requests in the
16 motion to compel discovery, and so we'll start with
17 items 1 through 5, our PowerPoint presentations and
18 Word documents that the prosecution identified in a
19 privilege log of items that they're withholding based
20 on privilege concerns.

21 Now, apparently these are all documents that they
22 obtained from the Mall of America, and, so, they are
23 claiming privilege on behalf of Mall of America because
24 Mall of America considers it to be work product, and,
25 in some cases, they claim that it's security data.

1 There's been no statute -- now with respect to one
2 of these items which is a timeline which is Request No.
3 3, the prosecution has informed us that they're going
4 to disclose that document so assuming that that's the
5 case that we only have to -- we can leave out number 3;
6 is that right?

7 MS. JOHNSON: That's correct. I think it's
8 relevant --

9 THE COURT: Ms. Johnson, note your appearance
10 for the record.

11 MS. JOHNSON: Sandra Johnson on behalf of the
12 State. I believe it's relevant and useful, and I don't
13 see any work product nature to that; that could have
14 been done by anybody who was looking at the monitor and
15 recording when the orders to leave the premises were
16 given.

17 THE COURT: All right.

18 MR. KUSHNER: Okay. So, so that leaves us
19 with the first category of documents are included in 1
20 through 2 and 4 through 5, and these are documents that
21 the Mall of America has identified as discoverable
22 documents, but claiming privilege; and, so, there isn't
23 -- they haven't provided any legal grounds for them to
24 claim privilege.

25 With respect to work-product privilege, these are

1 documents that the Mall -- that the prosecution has in
2 its possession that the Mall of America decided to
3 provide to them. Mall of America could have claimed
4 work product possibly with respect to subpoenas of
5 documents to them. The subpoena duces tecum is
6 suspended because it's on hold right now, but if the
7 City obtains these documents, they're not representing
8 the Mall of America, so they have no attorney-client
9 privities with the Mall of America.

10 THE COURT: Hold on, hold on. Go ahead.

11 MR. KUSHNER: So there's no attorney-client
12 privities between the -- between the City of
13 Bloomington Prosecutor's Office and the Mall of
14 America. We've certainly raised issues informally and
15 in communications about whether the City Attorney is
16 acting on behalf of Mall of America, but legally, of
17 course, they're representing the City of Bloomington
18 and the public, the State of Minnesota. They don't
19 have any attorney-client obligation to Mall of America,
20 and, so, they don't have any grounds to assert
21 privilege on behalf of Mall of America, based on any
22 kind of attorney-client relationship.

23 Once they've obtained these documents, they're in
24 the public domain, at that point, and, so, the City
25 Attorney does not have any kind of privilege groundful

1 of holding them. The City also hasn't asserted any
2 kind of statutory authority for security -- for it
3 being security data of any sort.

4 THE COURT: If anybody has a phone and it is
5 in your hand, it is going to be seized. Your phones
6 are to be turned off and in a purse, backpack, pocket,
7 somewhere where you are not holding it or have access
8 to it. There will not be a second warning. The
9 Sheriff will seize it on my order if any phone or
10 electronic device is out other than counsel using it at
11 counsel table.

12 Mr. Kushner?

13 MR. KUSHNER: So, um, their arguments with
14 respect to documents that the police created about
15 whether they're protected by the Data Practices Act,
16 there isn't any claim that Mall of America's private
17 documents are protected by the Data Practices Act. The
18 Data Practices Act applies to public entities so there
19 isn't any grounds for claiming security privilege, it's
20 not something that exists and there hasn't been any
21 authority that's been asserted.

22 The Mall of America has filed -- has sent a letter
23 to the Court saying that they want to be heard on the
24 issue. The Mall of America doesn't have any standing,
25 they're not a party in these proceedings; they seem to

1 be trying to latch onto the -- or having served them
2 with a subpoena duces tecum --

3 THE COURT: I'll deal with that; move on.

4 MR. KUSHNER: Okay. So we'd ask that these
5 documents be disclosed, if there is an issue about
6 their relevance, and, of course, we don't know, these
7 are -- we haven't seen them, so the proper procedure
8 would be if the Court didn't know about the relevance
9 of the documents to conduct an in camera review and
10 determine if they contain any kind of possibly
11 exculpatory information.

12 Okay, the next category of documents are audio
13 files that the City of Bloomington -- two items, 6 and
14 7; the City of Bloomington has disclosed that they took
15 audio recordings of meetings where defendants were
16 present and were withholding them based on the Data
17 Practices Act.

18 Ms. Johnson has stated with respect to these two
19 audio files and provision 6 and 7 of our motion, that
20 they are going to disclose this information, so this
21 should be settled and can you confirm that that's the
22 case?

23 MS. JOHNSON: Your Honor, that is correct.

24 THE COURT: Thank you.

25 MR. KUSHNER: And, then, you know, and then

1 Item No. 8 requests any other kind of other audio or
2 video recordings of meetings or statements involving
3 any defendants that we don't know about, and Ms.
4 Johnson has agreed that if they find any other sorts of
5 recordings that they will disclose those as well.

6 MS. JOHNSON: Again, Your Honor, that is
7 correct.

8 THE COURT: All right, thank you.

9 MR. KUSHNER: Okay. Then Items No. 9 and 10
10 of the motion to compel involve photographs of
11 undercover police officers who were present at pre --
12 at planning meetings prior to the event giving rise to
13 the charges, as well as the event itself.

14 Provision 9 deals with photographs that were
15 identified in the State's privilege log; it is evidence
16 that they have that they don't want to turn over. And
17 Item No. 10 requests photographs, you know, from the
18 personnel records of all the undercover police officers
19 who participated in the actions that involved this
20 event, whether they are identified in the privilege log
21 or not.

22 Now, this is very important for us to obtain
23 because it's a critical part of the State's case, is
24 that they said that they had these undercover officers,
25 you know, attending meetings and attending the protest

1 itself, and, based on these allegations that the
2 undercover officers are making, these are grounds for
3 the charges based on things that they allege that the
4 various defendants said at meetings, and various
5 behaviors that they're alleging that the defendants
6 engaged in at the Mall.

7 Now, we don't have any information about who these
8 undercover officers are. They haven't been identified.
9 We wouldn't be -- unlike uniformed officers, which
10 maybe we could look at the video and see what they were
11 up to, we don't have any way of determining what the
12 conduct of these undercover officers are unless we know
13 what they look like; and, so, in order for the
14 defendants to be able to respond to the charges of the
15 State, they need to know who they're talking about, who
16 is it that's saying that this defendant said X, Y and Z
17 at a meeting.

18 If they recognize a person, they could say, "Well,
19 you know, that person -- I remember that person. This
20 person started conversation with me and this is
21 actually what I said in that person's presence, I
22 didn't say X, Y and Z, I said A, B and C. But the
23 problem is, without knowing who this person is who is
24 making the allegation and being able to identify them,
25 we're left completely guessing and not able to respond

1 to the allegations; and, so, it's important that we
2 actually be able to see who it is that's participating.

3 If there was an undercover officer who was in the
4 protest, someone might remember a client, a defendant
5 or a witness might say, "Hey, you know, that person was
6 actually being provocative. They were trying to egg
7 people on." Again, we don't know, we don't know about
8 this until we actually see them.

9 So that's -- we have to know who these
10 participants were in the event. There's dangers here
11 with the undercover officers, especially given that
12 this was all a peaceful action, about whether they were
13 antagonizing or provoking, and whether they're making
14 allegations that are true or not, you know, based on
15 their presence and where they were in the videos, it
16 might be that we can prove that it's impossible that
17 they saw what they're claiming to have seen.

18 THE COURT: I'm going to stop you there, Mr.
19 Kushner.

20 MR. KUSHNER: Yeah.

21 THE COURT: You made pretty much an identical
22 request in State vs. Bagley back during the animal
23 genetics trial.

24 MR. KUSHNER: Yes.

25 THE COURT: And that did go up to the Court

1 of Appeals, and the one thing that's clear from that
2 case is that the District Court should do an in camera
3 review.

4 MR. KUSHNER: Right.

5 THE COURT: I'm just curious, because I did
6 not see any subsequent procedural history on that case.
7 Can you fill me in on what happened after it came back;
8 was it remanded from the Court of Appeals?

9 MR. KUSHNER: Yeah, it was remanded from the
10 Court of Appeals, and between the -- between the appeal
11 and the remand, 9-11-2001 happened right after that, so
12 within several weeks after that Judge Hopper issued an
13 order without any explanation, did not -- after
14 previously ordering disclosure of all undercover
15 police, shortly after 9-11, 2001, he issued a summary
16 order just denying any disclosure.

17 THE COURT: All right, thank you.

18 MR. KUSHNER: There wasn't any kind of
19 reasoning of it, so there wasn't -- I don't think
20 there's any kind of precedent in that case.

21 THE COURT: Is there any precedent that
22 you're aware of? Bagley was the only thing that could
23 come to that was close --

24 MR. KUSHNER: Yeah, right.

25 THE COURT: -- on the revelation of

1 undercover police officers.

2 MR. KUSHNER: Yes.

3 THE COURT: There's a lot obviously on
4 undercover confidential informants --

5 MR. KUSHNER: Uh-huh, sure.

6 THE COURT: -- and Bagley almost seemed to
7 imply that it's the same standard.

8 MR. KUSHNER: Yeah.

9 THE COURT: But are you aware of anything on
10 point other than a Bagley?

11 MR. KUSHNER: No, no; I think the precedent
12 Bagley relied on said that the -- had said that the
13 Court could not outright deny this kind of discovery,
14 that it had to conduct an in camera review; and, in
15 Bagley's case, the trial judge had ordered that we
16 obtain the discovery without conducting an in camera
17 review, the Court of Appeals said no, you have to, same
18 thing, you have to conduct an in camera review first.

19 THE COURT: Okay, you're not aware of any of
20 other cases, any other --

21 MR. KUSHNER: No, I'm not.

22 THE COURT: Okay.

23 MR. KUSHNER: So, we're fine with the Court
24 conducting in camera review. I'm not -- as to the
25 photographs and the purposes, I'm not sure what the

1 Court will discover in an in camera review. There are
2 other items, obviously, we went through where the --
3 where the -- where a court in camera review, the
4 relevance is obvious, but the Court can do what it
5 feels it needs to under the law to review this
6 information.

7 THE COURT: Has any defendant filed a notice
8 of an entrapment defense that you're aware of?

9 MR. KUSHNER: You know, we haven't filed it,
10 you know, it's -- these are misdemeanor cases, so we
11 don't have discovery requirements under Rule 9.04 that
12 would apply in felony gross misdemeanor cases, but we
13 are going to be -- some of the defendants are going to
14 be asserting a defense of entrapment by estoppel
15 because they were given representation; they were given
16 permission by police high brass to be present to help
17 out in terms of dealing with the crowd, so that the
18 conduct of the police is going to be very much at issue
19 with respect to each -- some of the -- with respect to
20 each -- with respect to at least some of the
21 defendants.

22 THE COURT: Okay.

23 MR. KUSHNER: Now, if the Court -- you know,
24 the City of Blooming -- the prosecution has said that
25 one of these police might still be under -- in an

1 undercover capacity, it's not clear if they are or not,
2 they don't allege that the other ones are.

3 I think if there's concerns about security the
4 appropriate thing to do and I don't think we'd have a
5 problem with it in this case, we'd be sensitive to it,
6 would be to issue a protective order that limits the
7 dissemination of these photos. There's this -- I think
8 there's this almost panic kind of tone in the motion
9 that we're going to take these undercover police
10 officers pictures and put them in the press, and put
11 them on Face Book, and there's no -- and they suggest,
12 which, frankly, I find offensive, that we can't be
13 trusted to keep this information private.

14 Well, the attorneys are officers of the Court, so
15 I think we can easily address, provide this, these
16 items, the photographs in a way with restrictions so
17 that they don't get disseminated at all to the public.
18 The way I would envision it is, that the attorneys
19 could have hard copies of the photos, agree that they
20 can't copy them, that the attorneys can show them to
21 defendants or people that they reasonably believe, or
22 witnesses, and meet with people in person and show them
23 the people involved in the cases the photographs, but
24 not allow them to leave their possession, so that there
25 wouldn't be any basis for other people to see these

1 photographs, and I think that would -- that sort of
2 process would adequately protect the security concerns
3 that are present here.

4 THE COURT: Okay.

5 MR. KUSHNER: Then I'll move on then. Item
6 No. 11, you know, is requesting the, you know, police -
7 - other police reports, or notes, or any kind of
8 documentation of events by the police that we haven't
9 received yet.

10 THE COURT: Does the State have any objection
11 to that?

12 MS. JOHNSON: No, Your Honor; we discussed
13 that just yesterday morning.

14 THE COURT: Okay.

15 MR. KUSHNER: Um, all right, so we can -- I
16 was going to say that, but we can move on.

17 THE COURT: Okay, it seemed a pretty straight
18 forward --

19 MR. KUSHNER: But I'll just note that we
20 don't have any documentation from these undercover
21 police officers in any of the police reports that have
22 been disclosed, which, so we expect that there should
23 be more.

24 THE COURT: Well, let me stop you there. Is
25 the State objecting to giving over reports that were

1 written by undercover police officers?

2 MS. JOHNSON: No, Your Honor. In fact, I
3 believe what happened in this case is that the
4 undercover officers were being heard, they were
5 microphoned, and they were being heard by a uniformed
6 officer who did the report based upon what he heard.

7 THE COURT: All right.

8 MR. KUSHNER: And then I think, in that case,
9 we need to get what the oral statements are of these
10 undercover officers, who said what, you know, who's
11 claimed what, who are the officers, and who is claiming
12 what.

13 THE COURT: Well, my understanding is the
14 report reported the oral substance, or the substance of
15 the oral statement; is that right?

16 MS. JOHNSON: I don't believe that the
17 undercover officers need statements; what they were
18 reporting were what they heard going on in the meeting
19 and the presentations that were provided at that open
20 meeting that was planning this event.

21 THE COURT: Okay, I'm sorry. Go ahead.

22 MR. KUSHNER: Okay. So we -- again, we got a
23 -- so we have a gap here in terms of knowing who are
24 making the allegations that are underlying the
25 complaint.

1 THE COURT: Okay.

2 MR. KUSHNER: And whose specifically saying -
3 - who is specifically what, and, that also I think goes
4 back hand in hand with being able to identify who these
5 participants were in the meeting that the people might
6 recognize, and whether they were actually in a position
7 to see what they claim that -- or hear what -- to see
8 or hear what they claim they saw or heard.

9 Um, so the next items, 12 and -- 12, 13, and 14
10 deal with requests for witness and exhibit lists, and
11 we believe that this is appropriate, in this case,
12 because of the complexity and the extensiveness of the
13 case.

14 THE COURT: I'll deal with that in my Scheduling
15 Order.

16 MR. KUSHNER: And -- all right, and they also
17 -- I mean, witnesses would normally be discloseable, of
18 course, under the rules of was it a gross misdemeanor
19 felony, and, this case is a lot more complicated than
20 most gross misdemeanor and felonies.

21 But I think also an exhibit list is appropriate
22 here because we have so far 194 gigabytes of
23 information disclosed, and it -- and, I mean, Ms.
24 Johnson has indicated her staff, or extensive staff
25 that's working on it, has yet to even be able to go

1 through all of that, and, so, it's just impossible to
2 prepare for trial based on that kind of huge universe
3 of information, so we should be able to find out well
4 in advance what the prosecution is actually going to
5 introduce at trial so we can have the ability focus on
6 that and have time to adequately prepare.

7 THE COURT: All right.

8 MR. KUSHNER: And that would -- that covers
9 our motion requests, other than exculpatory evidence,
10 which I assume there's no objection to.

11 THE COURT: I assume so as well. Ms.
12 Johnson, it looks like we are down to essentially the
13 four power points from the Mall of America and the
14 photographs of undercover.

15 MR. KUSHNER: Power points and Word documents
16 from Mall of America.

17 MS. JOHNSON: Just to be more convenient, we
18 can share. Yes, that's correct, and Susan Gaertner was
19 here this morning.

20 FEMALE VOICE: She still is.

21 MS. JOHNSON: Is she still here? And she's
22 legal counsel for the Mall of America. She asked to
23 have opportunity to articulate the work-product
24 privilege that is being asserted by them.

25 We did the privilege log essentially to allow the

1 defense counsel to know what it is we have and to make
2 this objection, but, I honestly can't say that I am
3 privy to the basis for the withholding, and it is in
4 the possession of the prosecution and subject to the
5 Court's order.

6 THE COURT: The material that is being
7 requested is the material from the Mall of America that
8 is currently in the possession of the Bloomington City
9 Attorney's Office; is that correct?

10 MS. JOHNSON: That is correct, Your Honor.

11 THE COURT: Was that material obtained by
12 Bloomington involuntarily, that is, by search warrant
13 or other mechanism?

14 MS. JOHNSON: It was not, Your Honor.

15 THE COURT: So it was disseminated
16 voluntarily from the Mall of America?

17 MS. JOHNSON: Correct.

18 THE COURT: Okay. I did receive Ms.
19 Gaertner's letter, and I am not going allow her to
20 speak today because she is not a party and doesn't have
21 standing. I will -- since this is going to be taken
22 under advisement and I'm going to have to review things
23 in camera, I will allow two weeks for if the Gray Plant
24 Law Firm wishes to submit a brief as a friend of the
25 Court, I'm willing to look at that, but I will not

1 allow the Mall of America to speak as a party or to
2 this motion directly.

3 MS. JOHNSON: Understood, Your Honor.

4 THE COURT: All right. So as far as that
5 goes, do you have anything to add? I think your
6 arguments were in the brief as far as work product and
7 that, but anything you want to add, Ms. Johnson?

8 MS. JOHNSON: Well, just to summarize; it is
9 the State's position the defendants have not met their
10 burden of establishing a valid need for the disclosure
11 of undercover officers' photographs; the physical
12 appearance of the undercover officers is completely
13 irrelevant to the guilt or innocence of the defendant;
14 and, at the time of trial, they will have an
15 opportunity to cross-examine each and every one of the
16 State's witnesses and certainly to rebut that testimony
17 through the presentation of testimony in support of the
18 defense.

19 THE COURT: You anticipate that these
20 undercover officers will be witnesses at the trial,
21 and, I know you don't know for sure about any of the
22 witnesses, but do you think it is likely, at this
23 point, that they are going to be on your witness list?

24 MS. JOHNSON: It is possible that at least
25 one of them will be on our witness list.

1 THE COURT: All right. Mr. Kushner, anything
2 further?

3 MR. KUSHNER: Just point out, of course,
4 we're not concerned with what they look like except to
5 the point of being able to identify and recall them and
6 try to find out people's recollections of what their
7 conduct or what they did at the protest, and be able to
8 look at video to see if their descriptions of what they
9 did are consistent with what's on the videos.

10 And, you know, if we weren't able to find out what
11 these undercover officers look like until trial, we
12 would have this problem where, after each one testified
13 we'd have to take a recess, and we'd have to have
14 extensive discussions with all the people that were in
15 trial, whether it's two, four, eleven, and have them
16 discuss what they remember about this particular
17 undercover officer, and that would -- that would, you
18 know, cause quite a bit of delay, so it would be much
19 better for everyone if we could be prepared ahead of
20 time to address these witnesses, and, of course, if
21 they're not called but we find out that they had
22 favorable information we might want to subpoena them,
23 and we won't be in a position to know if they have
24 exculpatory evidence with respect to the conduct of any
25 individual defendants unless we know who they are.

1 THE COURT: All right.

2 MS. JOHNSON: Your Honor, I could probably
3 clarify things if I could describe what it is that the
4 photographs depict. They're very brief video of one of
5 the undercover officers, not all of them, and it simply
6 is -- it is a clip within the massive amount of video
7 that was provided to the defendants.

8 Whether or not that officer could be picked out of
9 that crowd, I don't know, but because that officer is
10 still undercover and involved in narcotics transactions
11 and other crimes of violence, the State will oppose the
12 discovery of the officer's appearance, at this time,
13 and that is something that isn't even subject to
14 critical impact; those cases can go right up on Court
15 of Appeal.

16 THE COURT: All right. Any further --
17 anything further from any other defense attorney who
18 wishes to speak?

19 MICHAEL SAWERS: Very briefly, Your Honor, I
20 don't need to recount anything. My name is Michael
21 Sawers, S-a-w-e-r-s, here on behalf of defendant
22 Kandace Montgomery.

23 The very discrete point I wanted to talk about was
24 something that Mr. Kushner just brushed over, and that
25 was the quality of the ability to prepare and cross-

1 examine. As the State made clear in our conference
2 yesterday on the telephone trying to resolve some of
3 these disputes, we certainly will have the opportunity
4 to cross-examine and the State acknowledged that we'll
5 have the opportunity to put our own witnesses on if we
6 choose, obviously not required.

7 But if we are hearing for the very first time and
8 seeing for the very first time these witnesses at
9 trial, the idea of a recess would certainly be on our
10 mind, and it would be something that we'd like to
11 confer with our client with all the other witnesses who
12 may have information, and, that really is the crux of
13 what I wanted to say is that, in order to prepare at
14 all for the testimony of those witnesses, it's
15 important to know names and what they look like as well
16 as confer with our clients in advance to see if they
17 were at all involved in the preparation.

18 Thank you, Your Honor.

19 THE COURT: Thank you; anything else on this
20 motion? All right, let's move to the second motion
21 which is the -- oh, Mr. Leventhal, I'm sorry.

22 MR. LEVENTHAL: Just a very brief emphasis on
23 that point, Your Honor. I don't think that what we're
24 talking about are just brief recesses. If they're --
25 or saying, well, you have the right to cross-

1 examination, you can ask a witness on exam, "Well, is
2 what you said correct and do you believe yourself?"
3 Well, that may really be besides the point, it may be
4 necessary to talk to various witnesses, "Oh, that
5 person that you described was doing this and that, who
6 was it? Was it the guy on the stand?" Well, we don't
7 know. The witness isn't even in the courtroom.

8 There's several thousand potential witnesses and
9 there's a need to organize beforehand not just when
10 something is heard.

11 THE COURT: Thank you, Mr. Leventhal;
12 anything else? All right, let's go ahead then with the
13 motion for pretrial determination -- I'll take that
14 under advisement, and I actually am going to direct the
15 State to provide me with all the material that was
16 listed so I can do an in camera review, that includes
17 the photographs of the undercover officers.

18 I do not need the material that the parties have
19 already stipulated will be disclosed, just the things
20 that are still in contention, and I'll do an in camera
21 review and try and get an order out as quickly as
22 possible since I know it impacts your trial
23 preparation.

24 Now the motion to have a pretrial determination of
25 restitution, who would like to speak to that, Mr.

1 Kushner?

2 MR. KUSHNER: Yes. So the prosecution has
3 prior to bringing this charge has stated in the press
4 that one of the reasons they want to bring this charge
5 was because they wanted to recover the costs of the
6 police and security.

7 THE COURT: Let's start with the basic
8 threshold; is the State still seeking the cost of
9 police time in the Mall of America protest enforcement?

10 MS. JOHNSON: Your Honor, the State has not
11 made a motion for restitution, at this point, it's
12 premature; that comes after conviction, putting the
13 cart before the horse. We identified loses to the City
14 of Bloomington, but we have not determined whether we
15 are going to ask for restitution.

16 MR. KUSHNER: Do you dispute that you stated
17 in the press that you want to --

18 THE COURT: Do not talk to opposing counsel.
19 Are you saying that the City does not -- has not made
20 up its mind yet?

21 MS. JOHNSON: The City has not made a
22 determination that is final yet, nor does it have to.

23 THE COURT: All right, Mr. Kushner?

24 MR. KUSHNER: Okay, thank you. And the Court
25 could probably take judicial notice that the City of

1 Bloomington has publically represented that it would
2 like to recover the costs, the police costs, otherwise
3 we could provide the Court with press clippings if it
4 would be helpful.

5 We --

6 THE COURT: You can take the hat off.

7 THE DEPUTY: You need to just take the hat
8 off; you can have a seat here.

9 THE COURT: Mr. Kushner?

10 MR. KUSHNER: So that the City has publically
11 stated in the press prior to bringing the charges that
12 an important reason for bringing the charges is to
13 recover the police costs, and, they do state the police
14 costs in the complaint itself, they claim that it's
15 \$25,000 and there's some intimation that it might be
16 more.

17 Now, originally there was also discussion about
18 the Mall of America trying to recover security costs
19 and even loss to business, but I do have representation
20 from their attorney, their previous attorney, that
21 they're no longer planning to make any claim for
22 restitution, so this comes down, at this point, to
23 whether or not the City of Bloomington, if they get any
24 convictions, can try and recover police costs, which
25 appears, at this point, would be at least \$25,000.

1 Well, that's a huge amount, especially for cases
2 of this magnitude; these are misdemeanor cases that
3 carry a maximum penalty of 90 days in jail and/or a
4 \$1,000 fine; and, yet, the defendants could be subject
5 to request -- to be responsible for \$25,000 or more
6 restitution even if there are many defendants, it's
7 usually joint and several, so it's possible that anyone
8 who gets convicted of an offense here could end up
9 having a restitution bill of \$25,000 for a misdemeanor
10 case, where the most that they would normally have to
11 be subject to would be a fine of up to \$1,000.

12 And that's a huge consequence, and it's a
13 consequence I think they need -- they have a right to
14 be able to weigh when they're deciding how to move
15 forward with the case in terms of whether or not they
16 want to try to enter into plea negotiations to resolve
17 the case, what are the consequences going to be if they
18 go to trial and get convicted, and it's appropriate and
19 only fair to them, and we would suggest that it really
20 is within their constitutional due process purview, to
21 be able to have that information.

22 Of course, you know, everyone has to be advised of
23 what the maximum penalty is for any charge when they
24 have -- as stated in the complaint; they have to be
25 told that in court, everyone has a right to know what

1 the maximum penalty is. Well, this is a potential
2 penalty that's exponentially higher than what the
3 normal maximum penalty is for a misdemeanor case, and,
4 so given that the defendants are -- you know, given
5 that this is controversial, it's something I don't
6 think there's any precedent, I couldn't find any
7 precedent in the case law for ultimately assessing
8 police costs, at least published precedent, and, so,
9 this is one of -- this is a question mark that has
10 great magnitude that's going to be hanging over every
11 defendant's head about whether -- and they don't have -
12 - that's why it's appropriate to have a resolution, for
13 the Court to have a resolution.

14 Whether they're required -- the Court is required
15 or not to do it, I don't think we even need to even get
16 to that. I don't think there's any dispute that the
17 Court should be allowed to provide a resolution on that
18 issue as long as the City hasn't waived its claim to
19 restitution, and, in that way, the defendants all have
20 the information that they need to know what the
21 consequences are if they were to get conviction.

22 THE COURT: The State's response?

23 MS. JOHNSON: Your Honor, under 611A.01,
24 victim does include a government entity under paragraph
25 B(2) that incurs a loss or harm as a result of a crime.

1 We have not gotten any documentation. We haven't
2 put together an assessment of the total loss to the
3 City of Bloomington. And you also have to prove that
4 the loss or harm is a result of the particular
5 defendant's actions, and that would be in a separate
6 hearing after conviction.

7 The Court then, as the Judge knows well, under
8 611A.045, has a great deal of discretion and saying,
9 "Have you proved up your loss? Have you proved up the
10 causation?" And then you look at the income, resources
11 and obligations of the defendant; and, if the defendant
12 is not financially able to make restitution, the Court
13 can give a payment schedule, it can order STS in lieu
14 of restitution, and it can give priority and must give
15 priority to victims who are not government entities,
16 but government entities are within the ambit of
17 restitution.

18 Right now --

19 THE COURT: Let me stop you. Ms. Johnson,
20 that wasn't always the case until the statute was
21 amended, that government agencies were considered
22 victims under the restitution statute. Obviously, they
23 are now, but 611A.04 still requires that it be a direct
24 loss, and the cases --

25 MS. JOHNSON: Correct.

1 THE COURT: -- on restitution from a
2 government agency seem to be restricted to direct
3 losses such as the loss of buy-money in a drug
4 transaction, damage to a squad car in a fleeing case,
5 and that type of thing.

6 Do you have any authority whatsoever for the
7 general costs of police enforcement being ordered as
8 restitution, or that the Court has authority that that
9 falls under the phrase "direct loss"?

10 MS. JOHNSON: That would be something that we
11 would be researching. I have not done that because
12 there have not been convictions yet. The State is not
13 prepared to present on the restitution issue. This is
14 a hypothetical. There is no case or controversy in
15 front of the Court right now.

16 THE COURT: Well, these cases are controversy
17 it's just not conviction, so --

18 MS. JOHNSON: Well, there's no conviction.

19 (Laughter and applause)

20 THE COURT: All right, calm down, calm down.

21 MR. LEVENTHAL: It's a motion for dismissal.

22 THE COURT: No, no, everybody seriously, you
23 got to take this seriously.

24 I do have a very serious question, and, that is
25 that it also requires a conviction.

1 MS. JOHNSON: It certainly does, Your Honor.

2 THE COURT: If -- let me, hypothetically, and
3 if you don't know the answer yet to this, if
4 hypothetically one of the defendants charged with
5 trespass were to plead guilty this morning and I
6 imposed a petty misdemeanor sentence, would that be a
7 conviction or would that bar the State's ability to get
8 restitution?

9 MS. JOHNSON: I do not know the answer to
10 that question, Your Honor. The statute doesn't say
11 what level of conviction is required.

12 THE COURT: All right, fair enough; anything
13 else?

14 MS. JOHNSON: Nothing else, Your honor, on
15 that issue. It was rather surprising that it was
16 brought at this second appearance prior to conviction.

17 THE COURT: Yeah, I am going to deny the
18 motion for -- to have the Court determine it ahead of
19 time. It think I would encourage the State to make a
20 decision so that defendants can make a reasoned
21 decision on how they want to proceed in the case, but I
22 think it is premature without a conviction for the
23 Court to determine restitution.

24 I'm not saying obviously -- I think there are two
25 issues here; first, whether restitution is even

1 appropriate under 611A.04, second is, if appropriate,
2 *if appropriate*, what is the amount? And I'm denying
3 the request to make a decision on those. That will be
4 reserved when it becomes ripe. It is not a ripe issue
5 yet. If it becomes ripe then we'll litigate it.

6 All right, there's one last motion which the State
7 brought today which was for a gag order. Ms. Johnson?

8 Do not react to motions or what the Court says or
9 you will be ejected.

10 Ms. Johnson?

11 MS. JOHNSON: Your Honor, I'm going to defer
12 to Ms. Schneider who briefed that issue.

13 THE COURT: Ms. Schneider?

14 MS. SCHNEIDER: Thank you, Your Honor, Torrie
15 Schneider on behalf of the State.

16 Your Honor, the State has filed a motion to
17 prohibit further extrajudicial statements. We rely on
18 our brief. I hadn't anticipated arguing because I
19 didn't think that was fair to the defense without
20 having an opportunity to respond.

21 THE COURT: So it is because I'm going to
22 deny your motion?

23 MS. SCHNEIDER: That's what I figured, Your
24 Honor, so I don't know if argument is necessary.

25 THE COURT: All right. This is something I

1 somewhat anticipated, that someone would eventually
2 bring this, and, so, I did make myself familiar aside
3 from the State's brief.

4 The defendants obviously have a First Amendment
5 right which I have to balance against the due process
6 right to a fair trial, and whether it would prejudice
7 everyone's right to a fair trial in this case. I do
8 not see that it has risen to that level yet.

9 I think these are cases of community interest and
10 there will be community discussion about it. I think
11 it's an inappropriate case to issue a gag order. I
12 simply remind the attorneys of their ethical obligation
13 as cited in the State's brief, that a lawyer who is
14 participating or who has participated in the
15 investigation or litigation of a criminal matter shall
16 not make an extrajudicial statement about the matter
17 what the lawyer knows, or reasonably should know, will
18 be disseminated by means of public communication and
19 will have a substantial likelihood of materially
20 prejudicing a jury trial in a pending criminal matter.

21 I've been involved in many cases with high
22 publicity, both as a defense lawyer, prosecutor and
23 judge, and, invariably, when you get to trial it's
24 amazing how uninformed the jurors are about what has
25 been said, so I do not have a concern, at this point.

1 If during jury selection, it appears that a jury
2 pool has been tainted by extrajudicial statements we
3 can deal with a change of venue at that time, and,
4 perhaps, even strike the pool and move it to another
5 county. In this age of Twitter and social media, I
6 don't know how there's any county in the state that we
7 could move it to that it may not have heard of the
8 case, but I think, at this point, I think it is
9 incumbent that we all respect each other's rights and
10 say what is only true when we are out in the media, and
11 try this case in the court of law and not in the media,
12 but, at the same time, everyone has a First Amendment
13 right to speak and I'm not going to put a gag order on
14 that today.

15 And with that, that is that motion. Sorry to deal
16 with it so expeditiously, but I figured it was
17 something I better research ahead of time, which I did;
18 anything else from either side as far as motions?
19 Hearing none, then we are going to call each individual
20 case simply to give new court dates. A couple of
21 things; there are going to be some -- for everyone's
22 benefit, the lawyers are aware of this, I'm going to
23 issue a Scheduling Order where there are certain
24 deadlines as to when motions and memoranda will be
25 filed. If there is an evidentiary hearing where

1 witnesses are called for the purpose of supporting
2 those motions, we will set that date as well.

3 Defendants are not required to be at that hearing.
4 Defendants may be at the hearing if they wish; it is
5 not a bar, it's just you're not being ordered by the
6 Court. In other words, I can't throw you in jail for
7 not showing up, that's the bottom line. But you do
8 have to show up for trial, I will throw you in jail if
9 you don't show up for trial, that's -- and when I say
10 nine o'clock I mean nine o'clock, and that means get
11 through weapon screening and be ready to role at nine
12 o'clock, just so everyone is aware on how I run my
13 courtroom.

14 So you have the opportunity as call each person to
15 the podium, I would ask that we verify your address is
16 correct in case you're representing yourself, because
17 any order that the Court issues we got to make sure
18 that you get it so that you are aware of the scheduling
19 order and if there is any change in the trial dates.

20 I will be giving all the defendants trial dates
21 today; those might change based on the lawyers getting
22 -- get together and telling me there is a better way of
23 doing this, because we're not going to have individual
24 trials, with some exceptions, with some exceptions, but
25 it makes sense when we have common issues of law and

1 fact on some cases that we join them for trial, and the
2 parties are going to get together and give further
3 suggestions to the Court, but for now you all have to
4 leave here with a court date. So that's what it's
5 going to be.

6 All future hearings will be downtown in the
7 Hennepin County Government Center. It's easier for
8 security. You can see how we're all sitting on top of
9 each other in this little courtroom, and I think it
10 just is easier to get through weapon screening, if
11 nothing else, because they are better equipped for
12 large groups coming through, but for the defendants
13 that means only the trial.

14 So, with that, when I call your name please come
15 up to the podium, and if I mispronounce your name
16 because I didn't take notes last time, so I apologize
17 if I mispronounce your name, but give me your correct
18 pronunciation.

19 First, Kimberly Ann Socha, and, counsel, please
20 note your appearance for the record because we are on
21 monitoring. Ms. Socha? Come up to the podium.

22 MR. PHILLIPS: Good morning, Your Honor. My
23 name is Tim Phillips on behalf of the defendant
24 Kimberly Socha.

25 THE COURT: And you have filed a certificate

1 of representation?

2 MR. PHILLIPS: I believe so, yes.

3 THE COURT: Okay, check on it and make sure
4 you have.

5 MR. PHILLIPS: I know I've filed discovery
6 requests so I'm assuming so, but I will check on it.

7 THE CLERK: Your Honor, he has.

8 THE COURT: All right. And is it correct,
9 Socha?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. You are ordered back to
12 court for trial on October 12th of 2015 at 9:00 a.m.

13 THE DEFENDANT: Okay.

14 THE COURT: We will give you a reminder slip.
15 We'll have you sign that, and then you are free to
16 either return to your seat or leave if you wish,
17 whichever is appropriate.

18 THE DEFENDANT: Okay.

19 THE COURT: So see the clerk and they'll give
20 you -- who is going to handle it?

21 THE CLERK: She can just sit back down, Your
22 Honor, and when I get them I will have them sign.

23 THE COURT: Fair enough; trying to get
24 through everybody might be a little tough.

25 THE CLERK: Thank you, Judge, yeah.

1 THE COURT: Have a seat and we will get you a
2 reminder slip; do not leave before you get a reminder
3 slip.

4 MR. PHILLIPS: Your Honor, I apologize for
5 interrupting, that is Columbus Day; is that still your
6 intention to set it on that day?

7 THE COURT: Yes.

8 MR. PHILLIPS: All right.

9 THE COURT: It's not a court holiday.

10 THE CLERK: Next, Your Honor, we need -- is
11 the address correct for them.

12 THE COURT: Oh, Ms. Socha, what's -- why
13 don't you see the clerk and she will show you your
14 address and we'll see if that's correct, so why don't
15 you come on up.

16 THE DEFENDANT: She's so quick, she'll have
17 them ready.

18 THE COURT: Of course, she's quick. We're
19 just going to show it to you as opposed to saying it on
20 the record.

21 THE DEFENDANT: Okay.

22 THE COURT: Hold on. All right, Dakota Ryan
23 Machgan, for the defense?

24 MS. PALUMBO: Andrea Palumbo, P-a-l-u-m-b-o,
25 representing Dakota Machgan.

1 THE COURT: And you have filed a certificate?

2 MS. PALUMBO: Yes, I have, Your Honor.

3 THE COURT: Okay; and how do you pronounce
4 the last name?

5 THE DEFENDANT: Machgan.

6 THE COURT: Machgan.

7 MS. PALUMBO: Sorry.

8 THE COURT: That's why I ask.

9 MS. PALUMBO: Thank you, Your Honor.

10 THE COURT: Because when we're in front of a
11 jury I want to make sure we get your name right, all
12 right. You are also ordered out to trial October 12th,
13 at 9:00 a.m. I want you to see the clerk to verify
14 your address is correct, although with your attorney
15 it's less of an issue, and, then, we'll give you a
16 reminder slip as well.

17 All right, so why don't you see the clerk and
18 verify your address. And if anybody wants to plead
19 guilty, you can.

20 (Laughter)

21 THE COURT: No takers, all right.

22 MS. PALUMBO: I have a few clients, Your
23 Honor, so I'm waiting to see if I have to stay here.

24 THE COURT: Okay; and I have to call them in
25 the order I have just so that I keep things --

1 MS. PALUMBO: Okay.

2 THE COURT: Deann Lynne Pratt?

3 MS. PALUMBO: Yep, she's one of mine.

4 THE COURT: Good morning?

5 MS. PALUMBO: Good morning; and, again,
6 Andrea Palumbo for Deann Pratt.

7 THE COURT: Okay, Ms. Pratt, you're ordered
8 out to trial October 12th at 9:00 a.m., and I'd like you
9 to verify your address with the clerk, and, then, we'll
10 give you a reminder slip, and I assumed I got that
11 right, Pratt?

12 MS. PRATT: Yes, yep.

13 THE COURT: All right. Nakami Faridah
14 Tongrit-Green? I'm sure I didn't do well there.
15 Ma'am, could you pronounce your name for me?

16 THE DEFENDANT: That was actually the correct
17 pronunciation.

18 THE COURT: It was?

19 MS. PALUMBO: And again, Andrea Palumbo for
20 Nakami Tongrit-Green.

21 THE COURT: All right; Ms. Tongrit-Green, you
22 are ordered to trial October 12th at 9:00 a.m. as well.

23 THE DEFENDANT: Okay, um, I just would like
24 to indicate that I will be leaving the state in July
25 for a program, a master's program that I will be

1 beginning on the East Coast, so I will not be in the
2 City. I don't know if that changes residency issues or
3 anything, but --

4 THE COURT: You'll be here for trial, though,
5 right?

6 THE DEFENDANT: Yeah.

7 THE COURT: Okay.

8 THE DEFENDANT: I just wanted to make that
9 clear that --

10 THE COURT: You are under no order to stay in
11 the State of Minnesota.

12 THE DEFENDANT: Okay, all right.

13 THE COURT: I am sure you'll show up.

14 THE DEFENDANT: Okay.

15 THE COURT: Verify your address with the
16 clerk and you'll get a reminder slip and then you're
17 free to go.

18 Mautai Kakemwa Alima Tongrit-Green? How badly
19 did I do?

20 THE DEFENDANT: Not too bad, Mautai.

21 THE COURT: Mautai. All right, you're
22 ordered up to trial on October 12th at 9:00 a.m. as
23 well, verify your address. Oh, I'm sorry, Ms. Nakami
24 Tongrit-Green, make sure that your lawyer communicates
25 to the Court your current address if you do move, so

1 that we always have your current address on file. All
2 right, I'm sorry.

3 You can verify your address with the clerk, and
4 then you are free to go when you get your notice of
5 appearance, okay.

6 THE DEFENDANT: Okay.

7 THE COURT: Rahsaan Hansraj Mahadeo?

8 MR. GORDAN: Good morning, Your Honor; Andrew
9 Gordon with the Legal Rights Center for Mr. Mahadeo who
10 is present this morning in court.

11 THE COURT: Is it Mahadeo?

12 THE DEFENDANT: The correct pronunciation is
13 Mahadeo.

14 THE COURT: Mahadeo, all right.

15 THE CLERK: I'm sorry, Your Honor, which case
16 did you just call or I mean which --

17 THE COURT: Mr. Mahadeo.

18 THE CLERK: Thank you.

19 THE COURT: Is that better?

20 THE DEFENDANT: Yes.

21 THE COURT: All right; you are ordered out to
22 trial on October 12th at 9:00 a.m., and verify your
23 address at the clerk, and when you get a reminder slip
24 you're free to go.

25 Anthony John Nocella?

1 MR. PHILLIPS: Good morning again; Tim
2 Phillips on behalf of the defendant, Mr. Nocella. I
3 will note that Mr. Nocella initially requested a speedy
4 trial, he didn't waive that request at the initial
5 appearance, but he would like to re-request a speedy
6 trial in this matter.

7 THE COURT: All right, trial will be in front
8 of me, June 24th for trial downtown, 9:00 a.m. Verify
9 with the clerk.

10 MR. PHILLIPS: June 24th, Your Honor?

11 THE COURT: Yes.

12 MR. PHILLIPS: Is it possible to do it any
13 earlier, Your Honor?

14 THE COURT: No.

15 MR. PHILLIPS: Okay.

16 THE COURT: June 24th, 9:00 a.m., verify your
17 address with the clerk and get a reminder slip.

18 Tamera Janae Larkins? For the defense?

19 MS. PALUMBO: Andrea Palumbo for Tamera
20 Larkins. It's Tamera.

21 THE COURT: Tamera.

22 MS. PALUMBO: Yeah. I'm just having a
23 problem today.

24 THE COURT: All right, you're out to trial
25 October 12th at 9:00 a.m., and verify with the clerk and

1 you will get a reminder slip as well.

2 Andrew Jared Edwards?

3 MR. GORDON: Good morning, Your Honor; Andrew
4 Gordon with the Legal Rights Center on behalf of Mr.
5 Edwards who is present this morning.

6 THE COURT: All right, Mr. Edwards, you are
7 also ordered out to trial on October 12th at 9:00 a.m.,
8 and see the clerk to verify your address and get a
9 reminder slip. Go ahead, you can talk to your lawyer
10 if you need, okay.

11 Benjamin Michael Painter?

12 MR. GORDON: Good morning, Your honor; Andrew
13 Gordon, Legal Rights Center, on behalf of Mr. Painter
14 who is present.

15 THE COURT: Okay. And, Mr. Painter, you're
16 ordered out to trial October 12th at 9:00 a.m. as well,
17 and see the clerk to verify your address, get the
18 reminder slip and then you're free to go.

19 I'll let you catch up.

20 THE CLERK: I'm right with you, Judge.

21 THE COURT: All right. This is Mr. Painter.
22 Christopher Mark Juhn?

23 MS. PALUMBO: Andrea Palumbo for Christopher
24 Juhn.

25 THE COURT: All right, and, Mr. Juhn, you're

1 also ordered out to trial on October 12th at 9:00 a.m.,
2 see the clerk, verify your address and then get an
3 appearance date, okay?

4 THE DEFENDANT: Thank you.

5 THE COURT: Imani Christian McCray?

6 MR. GORDON: Good morning, Your Honor; Andrew
7 Gordon with the Legal Rights Center, on behalf of Mr.
8 McCray who is present.

9 THE DEFENDANT: Good morning, Your Honor.

10 THE COURT: Good morning. You are ordered
11 out to trial October 12th, 9:00 a.m., verify with the
12 clerk your address and get a reminder slip and then
13 you're free to go.

14 THE DEFENDANT: Good.

15 THE COURT: Okay. And I apologize in
16 advance; Tadele Kelemework Gebremedin? How close did I
17 get?

18 THE DEFENDANT: You got my last name right;
19 Tadele.

20 THE COURT: Tadele.

21 THE DEFENDANT: Thank you. Just one second,
22 please.

23 THE COURT: Sure.

24 THE DEFENDANT: Thank you, Your Honor.

25 THE COURT: Okay. See the clerk, verify your

1 address, and then you'll get a reminder slip, you're
2 ordered out to trial October 12th at 9:00 a.m.

3 Dua Safaldien Saleh? And how do you do?

4 FEMALE VOICE: This defendant speaks Arabic,
5 so Assay Labine Sonet (ph) for Dua Safaldien Saleh.

6 THE COURT: I didn't hear the middle one
7 because of the printer.

8 FEMALE VOICE: Dua Safaldien Saleh.

9 THE COURT: Okay.

10 MS. PALUMBO: Andrea Palumbo here with Dua
11 Saleh who is present.

12 THE COURT: All right, you're ordered out to
13 trial October 12th at 9:00 a.m.; verify your address
14 with the clerk, get a reminder slip and then you're
15 free to go.

16 THE DEFENDANT: Thank you.

17 THE COURT: Emmett James Doyle? Mr. Doyle,
18 are you representing yourself or --

19 THE DEFENDANT: No.

20 THE COURT: Trying to remember who your --

21 THE DEFENDANT: Ah, no, I'm represented by
22 Mr. Gordon.

23 THE COURT: Mr. Gordon?

24 MR. GORDON: I'm present. I thought he was
25 Steve. All right, never mind.

1 THE DEFENDANT: You did pronounce it
2 correctly.

3 (Laughter)

4 MR. GORDON: Andrew Gordon with the Legal
5 Rights Center on behalf of Mr. Doyle.

6 THE COURT: Okay, October 12th at 9:00 a.m.
7 for trial, verify your address with the clerk, get a
8 reminder slip and then you're free to go.

9 THE DEFENDANT: Thank you, Your Honor.

10 THE CLERK: I don't believe we have a
11 certificate filed on that one.

12 THE COURT: Does it showing him as self-
13 represented at this point?

14 THE CLERK: Yes.

15 MR. GORDON: Yeah, and I'll take care of
16 that.

17 THE CLERK: Okay, thank you, Mr. Gordon.

18 THE COURT: Okay, Mr. Gordon, thank you.

19 Madeline Cady Jacobs? Madeline Cady Jacobs?
20 There was one person whose presence was waived by the
21 Court.

22 MS. PALUMBO: That's Roxxanne.

23 THE COURT: Okay.

24 MS. PALUMBO: I represent Madeline Jacobs who
25 is not here; Andrea Palumbo representing Madeline

1 Jacobs.

2 THE COURT: Do you know where she is?

3 MS. PALUMBO: I expected her here, Your
4 Honor.

5 THE COURT: Tell you what, we'll order her
6 out to trial October 12th at 9:00 a.m., I'll stay a
7 bench warrant until that time, might want to advise her
8 to show up.

9 MS. PALUMBO: I certainly will, Your Honor.

10 THE COURT: Thank you, appreciate that, all
11 right.

12 THE CLERK: Do you want to sign for your
13 client?

14 MS. PALUMBO: Certainly, I can do that.

15 THE CLERK: Thank you.

16 THE COURT: And, again, these are all nine
17 o'clock at the Hennepin County Government Center
18 downtown. That concludes those I'm going to set for
19 October 12th. The following will be set for October
20 26th.

21 Michael McDowell?

22 MR. KUSHNER: Jordan Kushner representing Mr.
23 McDowell.

24 THE COURT: Mr. McDowell, you're ordered out
25 to trial on October 26th at 9:00 a.m., that will be in

1 the Government Center downtown, verify with the clerk
2 your address and then sign a reminder slip and you're
3 free to go.

4 THE DEFENDANT: All right.

5 THE COURT: Catherine Salonek? And is it
6 Salonek, did I get it right?

7 THE DEFENDANT: Salonek.

8 THE COURT: Salonek?

9 THE DEFENDANT: Uh-huh.

10 THE COURT: Okay. Mr. Kushner, you represent
11 Ms. Salonek?

12 MR. KUSHNER: Yes.

13 THE COURT: All right, Ms. Salonek, you're
14 ordered out to trial October 26th at 9:00 a.m.; that
15 will be downtown.

16 THE DEFENDANT: Sounds good.

17 THE COURT: Verify your address, get a
18 reminder slip.

19 Todd Dahlstrom?

20 MR. KUSHNER: Todd Dahlstrom waived his
21 appearance. It's been electronically filed and I'm
22 representing Mr. -- Bruce Nester is representing Mr.
23 Dahlstrom, but I'll fill in for Mr. Nester.

24 THE COURT: Okay. All right, then if you
25 would sign an appearance slip on his behalf, October

1 26th at 9:00 a.m.

2 Adja Gildersleve? Did I get both wrong?

3 THE DEFENDANT: Adja Gildersleve.

4 THE COURT: Adja Gilder -- okay, just like
5 it's spelled.

6 THE DEFENDANT: Yes.

7 THE COURT: All right. You are ordered out
8 to trial October 26th at 9:00 a.m.; if you could verify
9 with the clerk your address and notice of appearance.

10 Amity Foster; good morning, you are ordered out to
11 trial October 26th at 9:00 a.m. Mr. Kushner, is this
12 your client as well?

13 MR. KUSHNER: I'll be -- Mr. Nester's client
14 and I'll be standing in -- I'm standing in for Mr.
15 Nester.

16 THE COURT: All right, October 26th, 9:00
17 a.m., verify with the clerk your address and a reminder
18 slip.

19 Jie Wronski-Riley? Is it Jie or Jiao?

20 THE DEFENDANT: It's Jie Wronski-Riley.

21 THE COURT: So none of the above; call you
22 Giah (ph) Wronski-Riley. Okay, you are ordered out to
23 trial October 26th at 9:00 a.m., it will be downtown
24 Minneapolis.

25 THE DEFENDANT: Thank you, Your Honor.

1 THE COURT: Okay.

2 Shannon Bade? Body (ph)?

3 Mr. Kushner, is this Mr. Nester?

4 MR. KUSHNER: Yes.

5 THE COURT: Okay, how do you pronounce?

6 THE DEFENDANT: Bade.

7 THE COURT: Bade. All right, Ms. Bade,
8 you're ordered out to trial October 26th at 9:00 a.m.,
9 also downtown, if you could verify your address and get
10 a reminder slip.

11 THE DEFENDANT: Okay.

12 THE COURT: Thank you. Pamela Twiss? Mr.
13 Leventhal?

14 MR. LEVENTHAL: Yes, good morning, Your
15 Honor; Larry Leventhal appearing on behalf of Pamela
16 Twiss.

17 Ms. Twiss has a difficulty with the date announced
18 by the Court of October 26th. She had planned to be in
19 China from October 20 to November 7, accompanying her
20 husband who is a professor at the University of
21 Minnesota in Pharmacology. He has a series of lectures
22 in China during that period of time, which has, I
23 understand, been set for quite a while.

24 THE COURT: I -- as I stated to counsel, it's
25 going to be hard to accommodate everyone's calendar,

1 but, in this case, I think we will be able to; I'll
2 change it to November 9th at 9:00 a.m.

3 THE DEFENDANT: Thank you.

4 MR. LEVENTHAL: Thank you, Your Honor.

5 THE COURT: Okay, see the clerk to verify
6 your address and also to get a reminder slip.

7 Kandace Montgomery?

8 MR. SAWERS: Good morning, Your Honor,
9 Michael Sawers along with Scott Flaherty and Teresa
10 Nelson, who are also at counsel table for Miss Kandace
11 Montgomery.

12 THE COURT: All right. Ms. Montgomery,
13 you're out to trial November 9th at 9:00 a.m., if you
14 could verify your address to the clerk and get a
15 reminder slip.

16 MR. SAWERS: Thank you, Your Honor.

17 THE DEFENDANT: Okay.

18 THE CLERK: Was that November 9th you stated?

19 THE COURT: Correct.

20 Nekima Levy-Pounds, appearing as her own attorney
21 along with co-counsel, Mr. Jordan Kushner, correct?

22 MR. KUSHNER: That's correct.

23 THE COURT: Professor, you're ordered out to
24 trial November 9th, 9:00 a.m., please verify your
25 address with the clerk and grab a reminder slip.

1 THE DEFENDANT: Thank you, Your Honor.

2 THE COURT: You bet.

3 Now, the next five people who I am going to name,
4 your next appearance is actually going to be a pretrial
5 and it's going to be here at the Southdale Court, just
6 so you're aware. They'll be on different dates. You
7 do have to appear for this pretrial, but we also
8 definitely need your address in case this changes, if
9 the plan for your case changes, and we'll let the clerk
10 catch up a little bit first.

11 THE CLERK: Thank you, Judge.

12 THE COURT: Mica Grimm?

13 THE DEFENDANT: Good job, Your Honor.

14 THE COURT: Did I get it right?

15 THE DEFENDANT: Yeah.

16 THE COURT: Oh, okay.

17 THE CLERK: Your Honor, if I may have one
18 moment?

19 THE COURT: Sure.

20 THE CLERK: Your Honor, this may -- I'm not
21 sure I don't -- this may change, um, having Ms. Grimm's
22 case out here at Southdale. I know it's listed as an
23 arraignment today --

24 THE COURT: Uh-huh.

25 THE CLERK: -- and that is maybe why -- no?

1 THE COURT: That's not why I'm doing this.

2 THE CLERK: Okay, okay. There had been a --
3 her case got accidentally continued by a downtown clerk
4 and so there was some mix-up.

5 THE COURT: Okay. Ms. Grimm, I'm going to
6 order you out to pretrial October 12th at 8:30 here in
7 the Southdale Court, at that time. This case is still
8 assigned to me for purposes of all the motions that
9 we're doing. When you show up at the pretrial,
10 whatever judge is on your pretrial is actually going to
11 be your trial judge, if you go to trial, just so you're
12 aware of that.

13 All right, so October 12th, 8:30, Southdale Court
14 for pretrial; see the clerk to verify your address and
15 get a reminder slip.

16 THE DEFENDANT: Thank you, Your Honor.

17 THE COURT: Aaron Lamar Abram?

18 MR. GORDON: Good morning, Your Honor, Andrew
19 Gordon with the Legal Rights Center on behalf of Mr.
20 Abram who is present.

21 THE COURT: Okay. Mr. Abram, I'm going to
22 order you out to pretrial on October 19th at 8:30 a.m.,
23 and that will be here at Southdale, verify your address
24 with the clerk and get a reminder slip.

25 THE DEFENDANT: Sounds good, thank you.

1 THE COURT: Roxxanne Liegh Rittenhouse?

2 MS. PALUMBO: Andrea Palumbo here for
3 Roxxanne Rittenhouse whose waived her appearance, she
4 had a death in her family.

5 THE COURT: And thank you for advising the
6 Court beforehand about that. Ms. Rittenhouse is
7 ordered out for pretrial on October 26th at 8:30 a.m.,
8 if you could sign a reminder slip on her behalf?

9 MS. PALUMBO: Certainly. Thank you, Your
10 Honor.

11 THE COURT: You bet. Rose Marie Meyer?

12 MR. KUSHNER: Jordan Kushner representing
13 Rose Meyer. She's waived her appearance. The waiver
14 was electronically filed.

15 THE COURT: Okay. November 2nd for pretrial
16 at 8:30 a.m. at Southdale, if you could sign an
17 appearance slip for her; Mr. Kushner, you are her
18 attorney of record?

19 MR. KUSHNER: Yes.

20 THE COURT: Okay.

21 MR. KUSHNER: What time, 8:30?

22 THE COURT: Eight-thirty. Sara Jean Gieseke,
23 how do you do? Is it right, Gieseke?

24 THE DEFENDANT: Gieseke.

25 THE COURT: Gieseke? All right, you are

1 ordered out for pretrial on November 9th at 8:30; that
2 will be here at the Southdale Court.

3 THE DEFENDANT: Okay.

4 THE COURT: Verify your address with the
5 clerk and also grab a reminder slip. And are you
6 represented by a counsel?

7 THE DEFENDANT: Yes, I don't know. I have to
8 talk to counsel.

9 THE COURT: Okay, if you are represented --
10 all counsel, make sure that you file certificate on all
11 the cases in which you are the attorney; even if you
12 are co-counsel, you should file a certificate, and
13 we'll probably just keep whoever is lead counsel
14 currently on the case as lead counsel.

15 So, with that, did I miss any of the defendants
16 who are here today?

17 (No response)

18 THE COURT: Okay. One last thing, I would
19 ask the lawyers, I know Mr. Kushner had a problem with
20 August 6th as the evidentiary hearing date; is there
21 another date that, in August, that counsel would like
22 to set? For example, what about the next Friday, the
23 14th, August 14th; how does that work for the State or --

24 THE CLERK: August 6th, oh, he said -- yeah,
25 eight day off, right.

1 (Off-the-record discussion)

2 THE COURT: I have a problem with the 13th
3 that's why. How does August 14th look for everybody?
4 Again, defendants do not have to appear for that, so
5 does that work?

6 MR. KUSHNER: It looks like it works for
7 everybody here, Your Honor.

8 THE COURT: All right, I'll include that in
9 the Scheduling Order, but just for your benefit August
10 14th for evidentiary hearing; anything further before
11 the Court this morning?

12 MR. KUSHNER: At 9:00 a.m.?

13 THE COURT: 9:00 a.m., 9:00 a.m. not 9:01.
14 All right, we're in recess.

15 (Thereupon, the hearing adjourns)

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STATE OF MINNESOTA)
COUNTY OF HENNIPIN) ss.

I, Jeanne Manko, Official Court Reporter in and for the Fourth Judicial District of the State of Minnesota, do hereby certify that the above and foregoing transcript, consisting of the preceding 58 pages, is a correct transcript of my original electronic recording, and is a full, true, and complete transcript of the hearing of May 1, 2015, the above entitled matter to the best of my ability.

Dated: May 21, 2015.

Jeanne Manko, RMR



March 6, 2015

Jordan S. Kushner, Esq.
431 South 7th Street, Suite 2446
Minneapolis, MN 55415

RE: State v. Kandace Leanne Montgomery, Court File No. 27-CR-15-1304
State v. Nekima Valdez Levy-Pounds, Court File No. 27-CR-15-1307
State v. Michael Anthony McDowell, Court File No. 27-CR-15-1320
State v. Catherine Claire Salonek, Court File No. 27-CR-15-1326
State v. Todd Allan Dahlstrom, Court File No. 27-CR-15-1331
State v. Adja Sara Gildersleve, Court File No. 27-CR-15-1335
State v. Amity Lebaube Foster, Court File No. 27-CR-15-1346
State v. Jie Rose Wronski-Riley, Court File No. 27-CR-15-1349
State v. Shannon Lee Bade, Court File No. 27-CR-15-1350
State v. Mica Lauren Grimm, Court File No. 27-CR-15-1829

Dear Mr. Kushner:

Enclosed, please find the following:

1. External hard drive containing responsive documentation to requests nos. 1 and 3 of your February 1, 2015, discovery request;
2. Privilege Log; and
3. Affidavit of Service.

Thank you for your time and attention to this correspondence.

Sincerely,

Anna K. Sullivan
Paralegal/Office Manager
Bloomington City Attorney's Office

State v. Kandace Leanne Montgomery, Court File No. 27-CR-15-1304

State v. Nekima Valdez Levy-Pounds, Court File No. 27-CR-15-1307

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State v. Shannon Lee Bade, Court File No. 27-CR-15-1350

State v. Mica Lauren Grimm, Court File No. 27-CR-15-1829

PRIVILEGE LOG

Document Type	Date of Document	Author	Recipient(s)	Subject Matter	Category of Privilege
PowerPoint Presentation	December 19, 2014	Mall of America	N/A	Black Lives Matter Protest	The Mall of America has identified the document as work product and security data.
PowerPoint Presentation	December 30, 2014	Mall of America	N/A	Black Lives Matter Protest	The Mall of America has identified the document as work product and security data.
Word Document	January 5, 2014	Mall of America	N/A	Black Lives Matter Timeline	The Mall of America has identified the document as work product and security data.
Word Document	December 19, 2014	Mall of America	N/A	Black Lives Matter Organizer Document	The Mall of America has identified the document as work product and security data.

State v. Kandace Leanne Montgomery, Court File No. 27-CR-15-1304

State v. Nekima Valdez Levy-Pounds, Court File No. 27-CR-15-1307

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PRIVILEGE LOG

Document Type	Date of Document	Author	Recipient(s)	Subject Matter	Category of Privilege
Word Document	December 19, 2014	Mall of America	N/A	Document on Cat Salonek	The Mall of America has identified the document as work product and security data.
Excel Spreadsheet	January 6, 2015	Mall of America	N/A	Security Unbudgeted Expenses	The Mall of America has identified the document as work product.
Excel Spreadsheet	December 31, 2014	Mall of America	N/A	Security Unbudgeted Expenses	The Mall of America has identified the document as work product.
Audio File	Downloaded on January 12, 2015	BPD	N/A	Audio from undercover officers attending 12/20/14 pre-protest meetings	Private data on individuals under Minn. Stat. 13.43, subd. 5, and Minn. State. 18.82, subd. 17(a).

State v. Kandace Leanne Montgomery, Court File No. 27-CR-15-1304

State v. Nekima Valdez Levy-Pounds, Court File No. 27-CR-15-1307

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State v. Shannon Lee Bade, Court File No. 27-CR-15-1350

State v. Mica Lauren Grimm, Court File No. 27-CR-15-1829

PRIVILEGE LOG

Document Type	Date of Document	Author	Recipient(s)	Subject Matter	Category of Privilege
Audio File	Downloaded on January 12, 2015	BPD	N/A	Audio from undercover officers attending 12/17/14 pre-protest meetings	Private data on individuals under Minn. Stat. 13.43, subd. 5, and Minn. State. 18.82, subd. 17(a).
Photograph	December 20, 2014	BPD	N/A	Photograph of undercover officer at protest	Private data on individuals under Minn. Stat. 13.43, subd. 5, and Minn. State. 18.82, subd. 17(a).
Photograph	December 20, 2014	BPD	N/A	Photograph of undercover officer at protest	Private data on individuals under Minn. Stat. 13.43, subd. 5, and Minn. State. 18.82, subd. 17(a).

