

[Above Space Reserved for Recording Data]

Saint Paul, MN

**DECLARATION OF RESTRICTIONS AND COVENANTS
THE HEIGHTS**

THIS DECLARATION (the “Declaration”) is made this ___ day of _____, 202___, by the PORT AUTHORITY OF THE CITY OF SAINT PAUL, a Minnesota public body corporate and politic (“Declarant”).

WITNESSETH

WHEREAS, Declarant is the owner of real property situated in the City of Saint Paul (“City”), Minnesota, legally described in Exhibit A attached hereto and depicted in Exhibit B attached hereto (the “Property”); and

WHEREAS, Declarant intends to develop the Property and adjacent land as a mixed use development to be known as “The Heights” (the “Development”), subject to certain use restrictions and design guidelines; and

WHEREAS, Declarant seeks to guide the future development and use of the Property and the Development by future owners of the Property, or portions thereof (each such owner, together with its successors and assigns and all other future owners of the Property, an “Owner”, and each portion of the Property, a “Development Parcel”), in order to preserve and maintain the value of the Property, the Development and the surrounding community. In particular, Declarant seeks to utilize new concepts of integration of housing, workplaces, energy efficiency and sustainable design as contributing factors to the total community of the Development.

NOW THEREFORE, Declarant makes the following declarations as to limitations, restrictions and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the Property.

ARTICLE 1
PROHIBITED USES

- 1.1 Nuisance. No noxious or offensive trade or activity shall be conducted upon any Development Parcel, nor shall anything be done thereon which shall constitute a public nuisance by reason of excessive emissions of odors, dust, fumes, smoke, or noise.
- 1.2 Uses. Use of the Property shall be consistent with existing City zoning. No portion of the Property shall be used for automobile wrecking purposes or the commercial storage or salvage of used materials, wastepaper, scrap paper, rags, scrap metal, bottles, or junk. No Development Parcel shall be used for self-storage or outdoor storage uses. No Development Parcel shall be property tax-exempt, except for those that have entered into a Payment In Lieu of Taxes (PILOT) agreement with Declarant and Ramsey County.

ARTICLE 2
DESIGN GUIDELINES

- 2.1 Heights Design Guidelines. Declarant has developed a set of design guidelines (the "Heights Design Guidelines") to guide its design review under Article 7 below and to assist Owners in the initial development and subsequent alteration of the Property. The Heights Design Guidelines are subject to change from time to time as determined by Declarant in its sole discretion. Each Owner shall comply with the Heights Design Guidelines, except where a waiver has been granted. A current version of the Heights Design Guidelines shall be made available on Declarant's website and shall be available upon request to Declarant.

ARTICLE 3
SUSTAINABILITY

- 3.1 Purpose. In order to advance Declarant's mission to mitigate the effects of climate change through sustainable development and reduce energy use and carbon dioxide ("CO2") emissions, Declarant has created the Heights Design Guidelines to address: Leadership in Energy and Environmental Design ("LEED") Certification, energy efficient design and operations, electrification, renewable energy, embodied carbon, electric vehicle infrastructure, and construction and building waste management.
- 3.2 Reporting. The United States Environmental Protection Agency has created the "Energy Star Portfolio Manager," an energy management tool. Declarant has created an Energy Star Portfolio Manager for the Development. Each Owner shall report whole-building energy consumption, on-site energy generation, electrical demand, and water use (i) to the Energy Star Portfolio Manager for its Development Parcel (or such other energy management tool as determined by Declarant) on a monthly basis and (ii) to Declarant on an annual basis. Owners shall provide other building data upon the reasonable request of Declarant.

ARTICLE 4
LANDSCAPING

- 4.1 General Requirements. Each Owner shall landscape its Development Parcel in accordance with a landscape plan (a "Landscape Plan") prepared by a licensed landscape architect and

approved by Declarant pursuant to the design review process set forth in Article 7. Each Landscape Plan shall indicate the type, size, quantity, and placement of all plant materials proposed by the Owner and shall include information regarding the landscaping budget and biodiversity plans. Areas for snow storage shall be identified on the landscape plan. Use of the front setback area of the lot or any other area not designated for snow storage in the approved landscape plan shall not be permitted.

ARTICLE 5 FENCING

- 5.1 Types of Fences. Various types of fencing may be used depending on the location of each Development Parcel in accordance with the Heights Design Guidelines. All fencing plans must be approved by Declarant pursuant to the design review process set forth in Article 7.

ARTICLE 6 MAINTENANCE

- 6.1 Common Area Maintenance. Declarant shall provide for the maintenance of the areas of the Development used in common by all Owners, which areas include, but are not limited to, the entrance features, stormwater ponds and all related structures and improvements, wetlands, landscaping berms, public art installations, passive open space, interpretive areas, public amenities, driveways, roads, sidewalks, trails, and electrical, plumbing, gas, and other utility lines installed to provide service to the Development as a whole (the "Common Areas"). Each Owner shall pay to Declarant on a quarterly basis each year, without demand, deduction or setoff, as "Common Area Maintenance", such Owner's Proportionate Share multiplied by the Operating Expenses of the Development for each Operating Year all in accordance with the provisions of Exhibit C which is incorporated herein by this reference. Declarant shall have a lien upon each parcel for any such assessment levied for Operating Expenses from the time such assessment becomes payable.
- 6.2 Parcel Maintenance. Each Owner shall be responsible for maintaining its Development Parcel in a well-kept manner. Landscape maintenance shall include, but not be limited to, mowing, pruning, watering, fertilizing, mulching of planting beds, plant replacement, keeping planting beds and turf transitions neatly edged, ensuring ground layer plantings do not intrude upon walkways, drives, or curbs, litter collection, and other activities needed to keep the parcel neat and orderly, and to keep the plants healthy and in vigorous growing condition. Each Owner shall be responsible for maintenance, repair, and replacement of all public and private sidewalks and private paved areas on its Development Parcel, such as walkways, parking lots, and loading areas, including prompt removal of snow and ice from such areas.

ARTICLE 7 DESIGN REVIEW

- 7.1 Purpose. Certain aspects of design and development (beyond technical criteria) are not easily prescribed by rules and regulations. Among these are such intangibles as the spatial

relationships of structures and open spaces, the architectural compatibility of buildings, the patterns of human activity, and a general interpretation of the design framework as applied to the development of each Development Parcel. Such matters require the timely exercise of judgment by those familiar with the Development's goals and qualified to evaluate the design of development proposals. Therefore, improvements to be constructed on the Property shall be subject to review by Declarant for compliance with the Heights Design Guidelines, which shall guide the placement, design and maintenance of buildings, improvements, open spaces, landscaping and other matters impacting the Property. Improvements for which Declarant approval is required shall be reviewed for compliance with the Heights Design Guidelines in existence as of the date the preliminary plans were submitted to Declarant for approval. Changes to the Heights Design Guidelines shall not require changes in construction of plans previously approved by Declarant.

7.2 Prohibition on Construction or Alterations. Except as expressly provided in this Article, no structure, building, addition, deck, patio, wall, enclosure, window, exterior door, sign, display, decoration, exterior color change, topographical or landscaping change, exterior antenna, stormwater facility, fence, ground source heating/cooling facility, utilities or any other exterior improvements above or below ground to, or alteration or demolition of, any building or any other improvement on the Property which is visible from the exterior of the building or any interior alteration to any building which would cause the building to be out of compliance with this Declaration or the approved Plans (as defined below) for the building (collectively referred to as "Alterations"), shall be commenced, erected or maintained, unless and until the plans and specifications describing the nature, kind, shape, height, color, materials and locations of the Alterations shall have been approved in writing by Declarant.

7.3 Design Review Process. The design review process includes three stages with the end result of an Approval Letter provided by Declarant and is required for all initial construction and any subsequent Alterations. In some cases, additional informal meetings or submittals may be required, based on unique project circumstances. The review process is as follows:

7.3.1 Concept Design Phase: Owner or prospective purchaser is encouraged to schedule an initial meeting (or meetings, if necessary) with Declarant as early in design as feasible to establish an understanding of this Declaration and the required process (the "Concept Design Phase"). During the Concept Design Phase, the Owner shall present its concept design to Declarant. The concept design shall provide and show all information specified and required in the Heights Design Guidelines. Declarant must approve in writing the Owner's concept design before the Declarant will accept the Owner's submission for Preliminary Plans Review (as defined below).

7.3.2. Preliminary Design Phase: Based on the concept design approved by Declarant during the Concept Design Phase, the Owner shall submit to Declarant its preliminary plans for the proposed initial construction or Alterations on its Development Parcel for review by the Declarant (the "Preliminary Plans Review"). At this stage, such plans shall provide and show all the information, drawings, and data specified and required in the Heights Design Guidelines and such other

information as may be reasonably requested by Declarant. Declarant must approve in writing the Owner's preliminary plans before Declarant will accept the Owner's submission for Final Plans Review (as defined below).

7.3.3. Final Design Phase: Based on the preliminary plans approved by Declarant and at least thirty (30) days before the proposed commencement of any construction, renovation or alteration of any improvements (including landscaping, grading, and installation of drainage facilities) upon any part of the Property, the Owner shall submit to Declarant its Plans (as defined below) for the proposed initial construction or Alteration for final review by Declarant (the "Final Plans Review").

7.3.4. Approval Letters: The Declarant will review the final submitted documentation and, if it deems that the design conforms with this Declaration and the Heights Design Guidelines, it will issue a written approval (an "Approval Letter").

7.4 Plans and Documentation of Design Guidelines. As used herein, "Plans" shall mean a set of plans and specifications signed by an architect, landscape architect, and/or appropriate engineers and shall be on a common and consistent scale. Unless otherwise waived in writing by Declarant during the design review process, the Plans for any initial construction, or subsequent improvements, renovations or alterations shall include, at a minimum, each of the following:

7.4.1. A completed "Site Plan Review Application" form as required by the City of St. Paul.

7.4.2. A project description/overview narrative containing a description of the project, project contacts, design professionals, and any other information relating to the project reasonably requested by Declarant. This narrative should include a description of how the project will meet the material requirements of this Declaration, as well as describing any proposed deviations.

7.4.3. All surveys, plans, maps, exhibits, reports, memos, studies, and applications listed on the Site Plan Review Application. If an item from the checklist is not applicable, an explanation should be given in the comment column of the form.

7.4.4. Signage design documents, which shall include scaled elevation drawings, plans indicating the placement and size of any proposed sign, together with a detailed drawing of the proposed sign.

7.4.5. Cost estimate and cost summary demonstrating that 2% of the overall project budget is used for landscape (see the Heights Design Guidelines for information on what costs are included as landscaping costs).

7.4.6 The above documentation in total shall describe and depict the project's conformance with the Heights Design Guidelines for the Development Parcel's zoning.

- 7.5 Waivers. Declarant may in its sole and absolute discretion grant waivers from the strict application of any provision of the Heights Design Guidelines.

For initial construction on the Property, an Owner's submittal of Plans to Declarant for review shall be deemed an application and Declarant's issuance of an Approval Letter for any Plans that are not in compliance with the provisions of this Declaration or the Heights Design Guidelines shall be deemed approval of a waiver pursuant to this section. For subsequent Alterations to the Property that vary from the strict application of the Heights Design Guidelines, the Owner must file with Declarant a waiver application in writing, signed by an authorized Owner representative, and specifying the nature of the waiver requested with supporting documentation.

Any expenses Declarant incurs to review an Owner's waiver application shall be paid by Owner, and Declarant may require an upfront payment of a reasonable estimate of such expenses before the application will be considered by the Declarant. Declarant's waiver approval is personal to the Owner and does not run with the land and does not benefit successors-in-interest unless the written waiver is duly executed by Declarant and is recorded with the Ramsey County Recorder's Office. Declarant's grant of a waiver for an Owner shall not and does not constitute a waiver to any other Owner in the Property and does not constitute a waiver of any provision of this Declaration with respect to any other Owner.

ARTICLE 8 ENFORCEMENT

- 8.1 Right of Enforcement, Choice of Law, Jurisdiction, and Venue. This Declaration is for the mutual benefit of Declarant and all Owners. Declarant and any Owner of any Development Parcel shall have the right to enforce the requirements of this Declaration on any other Owner. This Declaration shall run with and be binding upon the Property. In addition, any violation of this Declaration constitutes a default under the terms and conditions of any lease or land sale contract entered into with respect to the Property. Any default shall be enforceable by specific performance, injunctive relief, declaratory judgment, and/or money damages by reasons of the breach of these standards. This Declaration shall be governed by and in accordance with the laws of the State of Minnesota. Any and all legal actions, claims, or disputes alleging any default of the Declaration shall be initiated, filed, and venued exclusively in the State of Minnesota, Ramsey County, and shall not be removed therefrom to any other federal or state court.
- 8.2 Compliance With Existing Ordinances and Codes. The scope and terms of this Declaration are considered as supplemental to the requirements of any existing zoning ordinance and building code of the City or other governmental authority having jurisdiction. The Declarant's design review process will not be a substitute for the normal plan review of applicable public authorities having jurisdiction.
- 8.3 Responsibility for Informing. Each Owner is solely responsible for informing its third-party developers, designers, contractors, and subcontractors of the terms of this

Declaration. Declarant assumes no responsibility for informing such parties of the terms of this Declaration.

- 8.4 Prevailing Party Attorneys' Fees. An Owner and/or Declarant if it is the prevailing party shall be entitled to recover its attorneys' fees incurred in enforcing the terms of this Declaration.
- 8.5 Severability. If it is determined by a court of competent jurisdiction that any provision(s) of this Declaration are unenforceable or unlawful, the remainder of this Declaration shall remain in full force and effect.

ARTICLE 9 MISCELLANEOUS

- 9.1 As-Is Condition; Waiver. Each Owner, its tenants, invitees, permittees, mortgagees, and anyone acquiring any right, title, or interest in the Property or any portion thereof, for itself, its successors, assigns, heirs, and anyone claiming by or through it, accepts the Property or any portion thereof in an "as-is," "where is" condition, with all faults, defects, and deficiencies, including the Property's environmental and geotechnical condition, and agrees to make no claim against Declarant, its successors or assigns, by reason of any such condition of the Property. In addition, each Owner hereby waives any and all rights or claims against Declarant for contribution, indemnity, reimbursement, or damages arising under any federal, state, or local law (including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601 *et seq.*, and the Minnesota Environmental Response and Liability Act, Minn. Stat. § 115B.01 *et. seq.*) relating to environmental, health, or safety matters, or under the common law, recognizing that Declarant is only a conduit with respect to the Property and has undertaken no activities of its own with respect to the Property except environmental remediation, if any.
- 9.2 Indemnity. Each Owner shall indemnify, defend, and hold harmless Declarant, its successors and assigns, from and against any and all claims, losses, damages, liabilities, penalties, fines, costs, and expenses (including without limitation reasonable attorneys' and consultants' fees) asserted against or incurred by Declarant, its successors or assigns, at law or in equity, and arising from or relating to activities on such Owner's Development Parcel or the acts or omissions of such Owner, its directors, officers, officials, commissioners, managers, employees, agents, contractors, tenants, licensees, permittees or invitees, or anyone acting for or on behalf of such Owner, including without limitation the failure to fulfill any obligation of such Owner under this Declaration and any activities that cause or exacerbate soil or groundwater contamination on the Property, except to the extent caused by the gross negligence or willful misconduct of Declarant.

[Signature Page Follows]

IN WITNESS WHEREOF, this instrument has been executed on the day and year first
above written.

PORT AUTHORITY OF THE
CITY OF SAINT PAUL

By: _____
Name: _____
Title: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ___ day of _____, 2023,
by _____, the _____ of the PORT AUTHORITY OF THE CITY OF
SAINT PAUL, a Minnesota public body corporate and politic.

Notary Public
My commission expires: _____

THIS INSTRUMENT WAS DRAFTED BY
AND WHEN RECORDED RETURN TO:

Stinson LLP (AWV)
50 South Sixth Street, Suite 2600
Minneapolis, MN 55402

EXHIBIT A

Legal Description of Property

EXHIBIT B

Depiction of Property

EXHIBIT C

Operating Expenses

ARTICLE 1 DEFINITIONS.

- 1.1 “Essential Capital Improvements” shall mean (i) an installation or improvement intended to improve the safety of Owners in the Development generally, whether or not voluntary or required by governmental mandate, or (ii) an installation or improvement required by reason of any local, state, or federal law, ordinance, regulation, rule, or the like which did not exist on the date of the execution of this Declaration.
- 1.2 “Operating Expenses” shall mean all of Declarant’s operating costs and expenses of whatever kind or nature paid or incurred in the operation and maintenance of the Common Areas, including without limitation a reasonable allocation of Declarant’s staff time and overhead, all computed on the accrual basis and in accordance with the terms of this Declaration.
- 1.3 “Operating Year” shall mean each calendar year or such other period of twelve (12) months as hereafter may be adopted by Declarant as its fiscal year for this purpose.
- 1.4 “Owner’s Proportionate Share” shall mean the fraction of proportional land ownership of each Owner versus the entire Development, the numerator of which shall be the square feet of land of the Owner’s applicable Development Parcel(s) and the denominator of which shall be the square footage of the Development as reasonably determined by Declarant.

ARCITLE 2. OPERATING EXPENSES

- 2.1 Except as otherwise set forth herein, beginning on the effective date of this Declaration, and for each Operating Year, each Owner shall pay the Owner’s Proportionate Share of Operating Expenses.
- 2.2 On or before December 1 of each Operating Year, Declarant shall provide each Owner with a written statement projecting such Owner’s Proportionate Share of Operating Expenses for upcoming Operating Year (the "Budget"). The Budget shall contain sufficient detail to support the Budget and the Operating Expenses to be incurred to keep the Common Areas in good condition and repair. Commencing on the first day of the first quarter following receipt of the Budget and continuing until receipt by an Owner of the Budget of the next Operating Year, such Owner shall pay to Declarant each quarter, at the start of the quarter, an amount equal to one-fourth (1/4th) of such Owner’s Proportionate Share of Operating Expenses for the Operating Year as estimated in the Budget. If Declarant shall fail to timely provide a Budget for any Operating Year, the Owner shall not be released from its obligation to pay such Owner's Proportionate Share of Operating Expenses, but shall continue to pay based on the most recently provided Budget until such time as the Declarant provides a new Budget.
- 2.3 Declarant shall, as soon as possible after the close of each such Operating Year, and in no case later than April 30th, provide each Owner with a statement of the actual Operating Expenses for such period. Any underpayment by an Owner during such Operating Year due to the fact that projected Operating Expenses were less than actual Operating Expenses shall be paid to Declarant within

thirty (30) days after Owner's receipt of a statement for such deficiency. Any overpayment by an Owner during such Operating Year due to the fact that projected Operating Expenses were greater than actual Operating Expenses shall be either (i) credited to the next Operating Expenses payable by said Owner under this Exhibit C or (ii) refunded to said Owner if no Operating Expenses are then due and payable.

ARTICLE 3 ADJUSTMENT FOR VACANCIES

In determining Operating Expenses for any Operating Year, if the Development was less than fully occupied during such entire year, Declarant shall pay the proportional share for any land owned by the Declarant.

ARTICLE 4 AUDIT

Every Owner shall have the right to examine, audit and photocopy Declarant's books and records relating to said Owner's Proportionate Share of Operating Expenses for any Operating Year for a period of three (3) months following the date that Owner receives the Operating Statement; provided, however, that (a) any Owner may exercise such right only once per twelve (12) month period; and (b) the requesting Owner signs a confidentiality agreement in form satisfactory to Declarant in its sole discretion prior to accessing Declarant's books and records. Any Owner who wishes to perform said audit shall give Declarant not less than thirty (30) days' prior written notice of its intention to examine and audit such books and records, and such examination and audit shall take place in the city where the Declarant's property manager is located. The audit shall be performed by a certified public accountant and shall be on a non-contingent fee basis and shall be borne solely by the requesting Owner. If the payments made by the requesting Owner for such year are more than that Owner's required payment on account thereof for such Operating Year, Declarant shall promptly refund such overpayment. If the payments made by the requesting Owner for such year are less than that Owner's required payment on account thereof for such Operating Year, said Owner shall pay the deficiency to Declarant within thirty (30) days after conclusion of the examination and audit as well as Declarant's actual out-of-pocket costs in connection with such examination and audit. If an Owner does not elect to exercise its right to examine and audit Declarant's books and records for any Operating Year within the time period provided for by this Article 4, said Owner shall have no further right to challenge its Proportionate Share of Operating Expenses for the applicable Operating Year.