

**DECLARATION AND AGREEMENT FOR ACCESS, UTILITY, AND STORMWATER
FACILITIES EASEMENTS AND INSTALLATION AND OPERATION OF
STORMWATER FACILITIES**

This DECLARATION AND AGREEMENT FOR ACCESS, UTILITY, AND STORMWATER FACILITIES EASEMENTS AND INSTALLATION AND OPERATION OF STORMWATER FACILITIES is made as of _____, 2013, by and between CROCUS NEW HILL, L.L.C., a Minnesota limited liability company (“Crocus”) and the CITY OF ST. PAUL, MINNESOTA, a Minnesota municipal corporation (“City”).

RECITALS

WHEREAS, Crocus is the owner of certain real property situated in the City (the “Property”) which is presently as legally described in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, Crocus desires to subdivide the Property by plat, with a new legal definition as particularly described in Exhibit B (the “Plat”), pursuant to the City’s subdivision regulations and create thirteen new lots suitable for single-family home development; and

WHEREAS, Each individual parcel of real property described on the Plat shall hereinafter be referred to as a “Lot;” and

WHEREAS, Crocus intends to sell each Lot so that it may be subsequently developed with a single-family residential dwelling (the “Project”); and

WHEREAS, The record owner of each Lot, at any given time, shall hereinafter be referred to as a “Lot Owner” individually and all such owners, collectively, as the “Lot Owners;” and

WHEREAS, Crocus desires to achieve the most favorable development of the Property and in order to do this, Crocus recognizes that it must declare easements and other covenants, conditions, and restrictions on the Property’s Lots; and

WHEREAS, In particular, Crocus and the City have discussed the stormwater runoff requirements for the Property and Crocus recognizes that in order to achieve its preferred development of the Property, stormwater runoff management must occur on the Property. Crocus has proposed to manage the Property’s stormwater runoff by constructing an underground

system consisting primarily, but not exclusively, of catch basins, perforated HDPE pipe and fabric wrapped rock ballast which will be constructed under and along the rear 10 feet of each Lot, as more fully described in Exhibit E (hereinafter, the “Storm Water Facility Site Plan” or the “Stormwater Facilities”) and the City will consent to these Stormwater Facilities provided; that the Stormwater Facilities are privately constructed by Crocus and thereafter maintained by the Lot Owners, at no expense to the City, and in the manner provided in this Declaration; and

WHEREAS, In order to provide vehicular access to the Lots and in keeping with the historical pattern of development adjacent to the Property, Crocus has proposed that vehicular access to each Lot shall be along a 20-foot wide alley constructed along the rear 10-feet of each Lot, as described in Exhibit C (hereinafter, the “Access Easement Area” or the “Alley”). The Alley will be private and constructed on top of the Stormwater Facilities. Crocus will declare that the Alley is a material, reciprocal and private benefit and complement to each Lot, and to all future owners of the Lots. The City will consent to the Alley location provided that Crocus further declares a permanent and perpetual right to the public to traverse the Alley; and

WHEREAS, To minimize disturbance to the historic character of the streets abutting the Property, Crocus has proposed that the underground municipal sanitary and water service lines for the Property’s Lots shall be installed along the rear of each Lot and connected to the City’s existing sanitary and water service lines in the Fairmount Avenue right-of-way. The City will consent to this proposal provided that Crocus dedicates a public utility easement on the Plat and as described in Exhibit D (hereinafter, the “Utility Easement Area” or the “Utility Easement”), and provided further, because the Project’s Stormwater Facilities, Access Easement Area and Utility Easement Area are to be located at the rear of the Project’s lots and constructed one above the other within the same 10-foot wide strip running along the back of each Lot, as more specifically provided in this Declaration, the width of the Utility Easement Area dedicated on the Plat and as described in Exhibit D, must be 35-feet wide in order to accommodate any need to install, operate, and safely maintain the sanitary and water service lines to the Lots as well as provide access to any persons or corporations which now or may provide public instrumentalities (e.g. cable or telecommunication services or other public utilities) to the Project’s Lots;

NOW, THEREFORE, in consideration of the above Recitals and the covenants contained in this Declaration, Crocus does hereby declare for itself and all future owners and occupants of any Lot or Lots of the Property, that such Lot or Lots will be and are hereby subject to the terms, covenants, easements, and restrictions set forth in this Declaration, such that the Property’s Lots shall be maintained, kept, used, and sold in full compliance with and subject to this Declaration.

GRANT OF EASEMENTS AND DECLARATIONS

In consideration of the foregoing recitals, which are deemed a material and substantive part of this Declaration, Crocus hereby states:

1. Recitals. The above Recitals are true, correct and are fully incorporated herein and made a part hereof.

2. Successors and Assigns. The terms “Crocus” and “City,” wherever used in this instrument, are intended in each instance to include the successors and assigns of Crocus and the City.

3. Running with the Land. All easements, covenants, rights, benefits, obligations and liabilities created in this Declaration shall be deemed covenants and easements running with and binding upon the land.

4. No Merger. The estate of the fee and easement created herein shall not be merged by reason of the same person or entity acquiring, owning or holding title to both.

5. Grant of Easements. Subject to any express conditions, limitations or reservations contained herein, Crocus hereby declares that the Property’s Lots shall be benefited and burdened by the following nonexclusive, permanent and perpetual easements which are hereby imposed upon the Lots and all present and future owners of the Lots:

(a) Access Easement. To the City, a permanent, non-exclusive and perpetual access easement on, over, and across the Access Easement Area described in Exhibit B herein, for the benefit of the general public, as well as any Owner of a Lot, for the purpose of providing unobstructed vehicular and pedestrian ingress and egress upon the Access Easement Area, which shall benefit and burden each Lot respectively, provided:

(1) To facilitate public ingress, egress, passage and delivery by vehicles and pedestrians, the Alley in the Access Easement Area shall be designed and constructed, with the approval of the City which approval shall not unreasonably be withheld, with a bituminous surface and include a common curb cut and driveway

(2) The Alley shall be kept open and unobstructed at all times, and nothing shall allow any Lot Owner, or their invitees, to otherwise obstruct Alley access within the Access Easement Area.

(3) Crocus reserves and retains all other property rights in and to the Access Easement Area, including but not limited to, the right to construct and maintain the Alley as well as the related Stormwater Facilities under the Access Easement Area.

(4) Crocus hereby grants and establishes temporary easements for the installation of improvements and for incidental encroachments upon the Lots which may occur as a result of any construction work performed in the development, repair or maintenance of the Access Easement Area, so long as such encroachments are kept within the reasonable requirements of construction work which is expeditiously pursued, and so long as customary insurance is maintained to protect the Lot Owner of the Lot on which work is being performed.

(b) Utility Easement. Crocus will establish and grant on the Plat, a permanent, non-exclusive, and perpetual utility easement to the City on, over, under, and across the Lots

described in Exhibit C (“Utility Easement Area”) for the purpose of providing public utility services to the Property including future public instrumentalities, and for the purpose of connecting the Project’s utilities into the City’s public utilities located in the Fairmount Avenue right of way, and to provide access for maintenance of the utilities serving each Lot. Reference here to the dedication of the Utility Easement Area in the Plat is for the contextual purposes of this Declaration. Accordingly, Crocus further declares:

(1) The Utility Easement Area shall be kept open and unobstructed at all times. No permanent structures may be constructed within the Utility Easement Area nor shall any Lot Owners or their invitees otherwise obstruct access within the Utility Easement Area

(c) Stormwater Facilities Easement and Declaration. Crocus hereby declares, establishes, and grants a non-exclusive and perpetual Stormwater Facilities Easement as described in Exhibit C, to fulfill stormwater management requirements for the use, drainage, collection, detention, retention, treatment and discharge of stormwater runoff from the Property in the manner and in the location indicated in Exhibit E, and to install, maintain, repair and replace any stormwater drainage, collection, detention, retention treatment and discharge, lines, conduits, pipes, and any other apparatus located under the Access Easement Area dedicated under Paragraph 5(a), and above the Utility Easement dedicated under Paragraph 5(b), as may be required for the benefit of the Lot Owners. All such easements, covenants, rights, benefits, obligations, and liabilities created in this Declaration for the installation, maintenance, repair and replacement of the Project’s Stormwater Facilities shall be deemed covenants and easements running with and binding upon the land. Once the Stormwater Facilities have been constructed as set forth in Exhibit E, the Lot Owners shall ensure that the Stormwater Facilities are operated and maintained in good order, condition, and repair, and meet the stormwater storage and treatment capacity requirements for the Property and shall make, as required by the City, any and all such repairs and replacements that may be required with respect thereto, as follows:

(1) Access Area and Storm Water Facilities: Construction, Maintenance and Repair

(a) Crocus shall be responsible for the initial installation of the bituminous surface and the Stormwater Facilities in the Access Easement Area as described in the Stormwater Facility Site Plan in Exhibit E. All subsequent maintenance, repair, and replacement of Stormwater Facilities are the responsibility of the Lot Owners as set forth in this Declaration and the Declaration for Lot Owners Maintenance of Stormwater Facilities attached hereto and incorporated herein by reference as Exhibit D.

(b) The Lot Owners shall be jointly responsible to maintain, repair, and replace all Access Easement Area improvements within the Stormwater Facilities Easement and to keep such improvements at all times in a safe,

sightly, good, and functional condition, including without limitation: snow and ice removal and repaving, patching, and repairing the bituminous surface of the Access Easement Area from time to time as and when necessary to provide for the orderly and safe flow of vehicles and pedestrian traffic.

(c) The Lot Owners shall be jointly responsible to maintain, repair, and replace all Stormwater Facilities improvements within the Access Easement Area and to keep such improvements at all times in a safe, slightly, good and functional condition which meets the stormwater management requirements of the Project, including without limitation: catch basins and perforated HDPE pipe, and fabric wrapped rock ballast as necessary to provide for the collection, storage, and infiltration of storm water.

(d) All work done in connection with the installation, maintenance or repair of any improvements within the Access Easement Area shall be performed in a good and workmanlike manner, and such work shall be done expeditiously so as not to unreasonably interfere with or hinder the use and enjoyment of the Access Easement Area by any person or entity having a right to use the Access Easement Area.

(2) Storm Water Facilities Responsibilities: Maintenance and Repair, Costs and Expenses, Establishment of Lot Owner Committee, Committee's Duties

(a) In January of each calendar year, the Lot Owners shall hold a meeting ("Annual Meeting") for the primary purpose of electing a committee consisting of three (3) persons ("Committee"). The Committee shall be elected by a simple majority of those in attendance at the Annual Meeting. Committee members shall serve until the next Committee is elected. Upon the resignation of any Committee member, the remaining Committee members shall appoint a replacement Committee member, who shall serve until the next Annual Meeting. The Committee shall hold such meetings as it determines necessary to carry out its responsibilities. In the event a single Lot is owned by more than one person or entities, the owners thereof shall cast a single vote for any matter requiring Lot Owner vote or approval.

(b) The Committee or any three (3) Lot Owners may call additional meetings of the Lot Owners ("Special Meetings"). The Annual Meeting and Special Meetings are collectively referred to as the "Meetings".

(c) The Committee shall, by majority vote, be responsible for:

(i) Carrying out the obligations of the Lot Owners under this Declaration including, but not limited to, deciding what

maintenance, repair or replacement is needed and obtaining the City's approval as necessary.

- (ii) Providing at least fourteen (14) days written notice to each Lot Owner of the next Annual Meeting.
- (iii) Enforcement of this Declaration.
- (iv) Undertake such further duties as prescribed by the Lot Owners at any Meeting.

(d) The owner(s) of each Lot shall be liable for one-thirteenth (1/13) of any and all costs related to the maintenance, repair and replacement all Access Easement improvements and Stormwater Facilities improvements. All payments due hereunder shall be due no later than ten (10) days after the Committee provides notice of amounts due. Additionally, each Lot Owner shall, jointly, execute any and all contracts required by the Committee related to the maintenance, repair and replacement of any Access Easement improvements or any Stormwater Facilities improvements so long as said contracts do not make the owners of any Lot responsible for more than one-thirteenth (1/13) of the cost thereof.

(e) Until such time as Crocus owns no Lot on the Property or the two year anniversary of signing this Declaration, whichever is sooner, the Committee will consist solely of Crocus. Upon the sooner of Crocus' conveyance of the final Lot or the two year anniversary of signing this Declaration, Crocus shall appoint three (3) Lot Owners to comprise the initial Committee and provide written notice thereof to the other Lot Owners.

(3) Default, Lot Owner

(a) In the event that any Lot Owner fails to perform any provision in accordance with the requirements of this Declaration, or fail to pay or to perform any other obligation set forth within ten (10) days following written notice of the deficiency, the remaining Lot Owners, acting through the Committee, will have the right, but not the obligation, to perform said maintenance, repair or replacement, acquire any insurance, make payment or perform such obligation for the account of the non-performing party (the "Defaulting Party"). The foregoing right to cure shall not be exercised if within the ten (10) day notice period; (i) the Defaulting Party cures the default, or (ii) if the default is curable but cannot reasonably be cured within the time period, the Defaulting Party begins to cure such default within such time period and thereafter diligently pursues such cure to completion. The ten (10) day notice period is not required if, using reasonable judgment, the Committee deems that an emergency exists. In

the event of such an emergency, the Committee shall give notice reasonable under the circumstances to the Defaulting Party. Within ten (10) days following written demand, including copies of any paid invoice, the Defaulting Party shall reimburse the Committee, and if any applicable, any Lot Owners, any sum reasonably expended to cure the default. If such amounts are not paid within thirty (30) days of billing, then such amounts shall accrue interest at the annual rate of eighteen percent (18%) until paid, and the Defaulting Party shall be responsible for reasonable attorney fees and costs in the enforcement and collection of the amounts owed. The Lot Owners, acting through the Committee, shall also have the right to restrain by injunction any violation or threatened violation by the other party hereto of any of the terms, covenants or conditions hereof, or to obtain a decree to compel performance if any such term, covenant or condition is not adequate. All remedies are cumulative and shall be deemed additional to any and all other remedies to which any Lot Owner or invitee may have at law or in equity.

(b) In the event any Lot Owner fails to pay amounts due hereunder, the Committee, acting on behalf of the other Lot Owners, shall have the right, but not the obligation, to file a lien against the applicable Lot or initiate any action, proceeding or lawsuit to enforce the applicable terms of this Declaration.

(c) In the event a lien is filed against any Lot in connection with any maintenance of the Access Easement or Stormwater Facilities, either by the Committee or any third party, the lien must be bonded, satisfied or removed by the Lot Owner responsible for said maintenance within thirty (30) days following the filing thereof.

(d) This Declaration may be enforced by the Committee, on behalf of the Lot Owners, against any person or entity having obligations hereunder. The non-defaulting Lot Owners are entitled to full and adequate relief by injunction or all such other legal and equitable remedies for the consequences of such breach. If any party or person benefited by this Declaration institutes any litigation to enforce any of the terms, covenants, conditions, or easements set out in the Declaration, the prevailing party is entitled to collect court costs and reasonable attorney fees from the non-prevailing party.

6. Insurance. Each Lot Owner shall obtain and maintain during the term of this Declaration general liability insurance including public liability and property damage in commercially reasonable amounts covering that portion of the Easement Area located on each Lot Owner's Lot, which names the other Lot Owners and the City as additional insureds on a primary and noncontributing basis. Upon the Committee's or the City's request, each Lot Owner shall provide evidence of compliance with this section to the Committee or City.

7. Notices. All notices, requests, claims, demands and other communications hereunder to any Lot Owner must be in writing and shall be personally delivered or mailed (registered or certified mail, postage prepaid, return receipt requested) to any Lot Owner at the applicable street address of the Lot Owner's Lot. All notices, requests, claims, demands and other communications hereunder to Crocus must be in writing and shall be personally delivered or mailed (registered or certified mail, postage prepaid, return receipt requested) to Crocus' address indicated in this Declaration.
8. Modifications: Cancellation. This Declaration may only be amended, modified or terminated (in whole or in part) from time to time by written documents executed and acknowledged by all Lot Owners, with the consent of City, and duly recorded in the Ramsey County Recorder's Office.
9. Binding. This Declaration shall be binding upon and inure to the benefit of Crocus, each Lot Owner and the City.
10. Governing Law. This Declaration is governed by the laws of the State of Minnesota.
11. Severability. If any term or provision of this Declaration or the application thereof to any person or circumstance is determined, to any extent, be invalid or unenforceable, the remainder of this Declaration shall not be affected thereby, and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.
12. Mortgages. Any mortgages encumbering any Lot shall at all times be subordinate to the terms of this Declaration, and any party foreclosing any such mortgage or acquiring title by deed in lieu of foreclosure or trustee's sale, shall acquire title subject to all of the terms and provisions of this Declaration. Notwithstanding the foregoing, any first mortgage lien on any Lot shall be superior to any lien filed by the Committee, or at its direction, pursuant to Section 5(c)(3).
13. Liability, Crocus. At such time as Crocus no longer owns any Lot or the two year anniversary hereof, whichever is sooner, Crocus shall have no further liability under this section, except as a Lot Owner to the extent Crocus owns a Lot after the two year anniversary hereof.
14. No Fee Interest, City. The City shall not claim or declare any fee interest in and to and of the areas of the Access, Utilities, or the Stormwater Facilities easements.

IN WITNESS WHEREOF, Crocus and City have executed this DECLARATION AND AGREEMENT FOR ACCESS, UTILITY, AND STORMWATER FACILITIES EASEMENTS AND INSTALATION AND OPERATION OF STORMWATER FACILITIES to become effective as of the date City approves the construction of the alley in the Easement Area.

CROCUS:

CROCUS NEW HILL, L.L.C.,
a Minnesota limited liability company

By: _____

Name: _____

Title: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me on _____, 2013, by
_____, the _____ of CROCUS NEW
HILL, L.L.C., a Minnesota limited liability company, on behalf of said limited liability company.

Notary Public

DRAFT

CITY OF ST. PAUL, MINNESOTA, a Minnesota
municipal corporation

By: _____

Name:

Title:

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me on _____, 2013, by
_____, the _____, of the CITY OF ST. PAUL,
MINNESOTA, a Minnesota municipal corporation, on behalf of said municipal corporation.

Notary Public

SIGNATURE PAGE TO DECLARATION OF ALLEY, SLOPE, AND DRAINAGE EASEMENTS AND
INSTALLATION OF STORMWATER FACILITIES

EXHIBIT A

Old Legal Description of Property

J.C. Stout's Addition to Summit Park Part of Lot A W of Extended E L of Lot 24 Lots 9 thru 24
and EX FT Lot 25 Blk 2

DRAFT

EXHIBIT B
New Legal Description of Property

Lots 1 through 13, inclusive, Crocus New Hill addition, Ramsey County, Minnesota

DRAFT

EXHIBIT C

Legal Description and Depiction of Access Easement Area

The South 10 feet of Lots 1 through 6, inclusive, Crocus New Hill Addition,
Ramsey County, Minnesota

AND

The North 10 feet of the West 20 feet of Lot 7, Crocus New Hill Addition,
Ramsey County, Minnesota

AND

The North 10 feet of Lots 8 through 13, inclusive, Crocus New Hill Addition,
Ramsey County, Minnesota

DRAFT

EXHIBIT D

Legal Description and Depiction of Utility Easement Area

The South 15 feet of Lots 1 through 6, inclusive, Crocus New Hill Addition,
Ramsey County, Minnesota

AND

The North 10 feet of the West 20 feet of Lot 7, Crocus New Hill Addition,
Ramsey County, Minnesota

AND

The North 20 feet of Lots 8 through 13, inclusive, Crocus New Hill Addition,
Ramsey County, Minnesota

AND

The East 12 feet of Lot 5 and the West 8 feet of Lot 6, Crocus new Hill Addition,
Ramsey County, Minnesota

DRAFT

EXHIBIT E

Declaration For Maintenance of Storm Water Facilities

DECLARATION FOR MAINTENANCE of STORMWATER FACILITIES

THIS DECLARATION is made this 29th day of October, 2012, by Crocus New Hill, LLC at 811 LaSalle Avenue, Minneapolis, MN 55402, (“Declarant”), in favor of the City of St. Paul (“City”).

WHEREAS, Declarant(s) hold(s) fee interest in real property within the City of St. Paul, Ramsey County, Minnesota, platted and legally described as:

Crocus New Hill Addition

WHEREAS, no one other than Declarant possess any right, title or interest in the Property;

WHEREAS, the facilities on or to be located on the Property to which the maintenance requirements in the Declaration apply as labeled on the scaled site plan [**Attachment A**] are as follows (the Facilities):

Catch Basin, Perforated HDPE pipe, and fabric wrapped rock ballast storm water facilities

WHEREAS, Declarant desires to subject the Property to certain conditions and restrictions imposed by the City;

NOW THEREFORE, Declarant makes this declaration and hereby declares that this declaration shall constitute covenants to run with the Property, and further declares that the Property shall be owned, used, occupied, and conveyed subject to the covenants and restrictions set forth in this declaration, all of which shall be binding in perpetuity on all persons owning or acquiring any right, title or interest in the Property, and their heirs, successors, personal representatives and assigns, but only during the period of ownership of that right, title or interest.

1. Declarant will inspect the Facilities at least annually.
2. Declarant will maintain and repair the facilities:
 - a. In the case of basins and other facilities where sediment collects, to preserve storage or capacity at or above the design volume or, where no design storage volume or capacity is incorporated into the permit, the volume or capacity recommended by the manufacturer.
 - b. In the case of conveyances and other structures, to preserve design hydraulic capacity.
 - c. In the case of facilities relying on soils and vegetation for stormwater management or treatment, to preserve healthy vegetation and design soil permeability.
 - d. In the case of all facilities, as necessary to preserve the integrity and intended function of the facility.
3. Declarant will submit annually, a report to include inspection dates, facility conditions, and corrective actions taken.
4. If Declarant fails to perform required maintenance to stormwater facilities resulting in deviation from the designed treatment performance or efficiency, the City may notify Declarant of this deficiency. If Declarant has not completed or scheduled corrective action within 60 days of receipt of notification,

the City may perform any action deemed necessary to return full design function and treatment performance to the stormwater treatment facility. The Declarant shall be responsible for reimbursement of all costs incurred from such activity including but not limited to administrative overhead and attorney's fees.

- 5. Any notice under this declaration shall be sent by certified mail, return receipt requested, or delivered to the following address:

Crocus New Hill, LLC - 811 LaSalle Ave. #102, Minneapolis, MN 55402

Declarant may change this address by certified letter to the City.

- 6. If Declarant, its successors or assigns, materially changes use of the Property so that the Facilities which are the subject of this Declaration are rendered unnecessary, or are replaced by other Facilities approved by the CRWD, its successors or assigns, this Declaration shall become void and of no further force or effect.
- 7. An executed copy of this declaration shall be filed with Ramsey County Registrar or Ramsey County Recorder, filing cost to be borne by the Declarant. This declaration will be unlimited in duration without being re-recorded.

CROCUS NEW HILL, LLC

By: _____

Its: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__

by _____ the _____ of _____

a Limited Liability Company under the Laws of Minnesota, on behalf of Declarant.

Notary

(stamp)

EXHIBIT F

Stormwater Facilities Site Plan



WILDER SITE.pdf

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