

AGREEMENT AND RESTRICTIVE COVENANT

THIS AGREEMENT AND RESTRICTIVE COVENANT is made and entered into this _____ day _____, 201____, by and between the City of St. Paul and the Metropolitan Council, a political subdivision of the State of Minnesota.

RECITALS

1. The City of St. Paul has acquired fee title to the following described real property, to-wit:

See attached **Exhibit A**, hereinafter referred to as the “Property.”
2. The Metropolitan Council has contributed funds toward the acquisition of the Property pursuant to its grant program authorized by chapter 563, Laws of Minnesota, 1974.
3. The grant program was established pursuant to the law to provide for the acquisition, preservation, protection, development, and betterment of regional recreational open space for public use.

NOW, THEREFORE, in consideration of the grant made by the Metropolitan Council for the acquisition of the Property and in consideration of the mutual agreements and covenants contained in this agreement, the parties agree as follows:

1. No sale, lease, mortgage, or other conveyance, nor the creation of any easement, restriction, or other encumbrance against the Property shall be valid for any purpose unless the written approval of the Metropolitan Council or its successors is duly filed and recorded at the time of the filing and recording of the instrument to which such approval pertains, nor shall the Property be used for any purpose except regional recreational open space purposes as those purposes are from time to time defined by the Metropolitan Council or its successors, unless the Metropolitan Council or its successors shall consent to the other use or uses by written instrument duly filed and recorded and designating the nature, extent, and duration of the use for which such consent is given.
2. As a condition to this Grant, and provided that conveyance of such easement or easements is consistent with the Approved Master Plan, the Grantee agrees to convey to the Council, its successors or assigns, a permanent easement or easements, hereinafter

referred to as “Wastewater Facilities Easement[s]” for future regional wastewater conveyance corridors on the Property. Upon written request by and at no cost to the Council, Grantee will execute and deliver to the Council the Wastewater Facilities Easement[s] substantially in the form of the Easement attached hereto and incorporated herein as **Exhibit B** for the location or locations described by the Council in its written request to Grantee. The Council may exercise this contractual right to the Wastewater Facilities Easement[s] on one or more occasions.

The Council agrees to work cooperatively with Grantee to locate the Wastewater Facilities Easement[s] and the regional wastewater conveyance facilities on the Property in a manner which minimizes the impact on existing and planned park system facilities on the Property and natural resources. As further consideration for the conveyance of the Wastewater Facilities Easement[s], the Council agrees to waive the Sewer Availability Charge for the Property.

As a further condition for this Grant, the Council may, at any time after execution of this Grant, provide to Grantee written notification of the proposed location of a future regional wastewater conveyance corridor on the Property. Grantee agrees not to place or allow to be placed any restrictions, conditions, or encumbrances on the Property within the proposed future regional wastewater conveyance corridor without the written consent of the Council

This Agreement and Restrictive Covenant may be enforced by the Metropolitan Council or its successors, as then defined, by appropriate action in the courts of the State of Minnesota.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed in their respective names all as of the date first above written.

METROPOLITAN COUNCIL

By: _____

Its: Regional Administrator

Dated: _____

Approved as to form

Office of the General Counsel

EXHIBIT A
Property Description

Lots 1 through 10 both inclusive, Block 1, Hendricks Subdivision of Lot 1, Block 1 and Lot 1, Block 2, Hendricks and McDowell's Acre Lots, Dakota County, Minnesota, and

Lots 5 and 6, Block 4, Long's Third Addition to the City of St. Paul, and

Lot 2, Block 1 and Lot 2, Block 2, Hendricks and McDowell's acre Lots, and

Lots 1 through 9 and Lots 23 through 29, Block 5, Ivy Hill Falls Addition, Dakota County, Minnesota

EXHIBIT B

EASEMENT

THIS INSTRUMENT, MADE THIS ____ day of _____, 201__, by and between _____, of the City of _____, State of Minnesota, Grantor(s), and the Metropolitan Council, a public corporation and political subdivision of the state (successor to the Metropolitan Waste Control Commission), Grantee;

WITNESSETH, that Grantor(s), in consideration of One Dollar and other good and valuable consideration to _____ in hand paid by Grantee, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey to Grantee, its successors and assigns, the following described easement for sanitary sewer and utility purposes:

[Insert]

Said temporary easement to expire on or before _____.

The above described easement includes the rights of grantee, its contractors, agents and employees to do whatever is necessary for enjoyment of the rights granted herein including the right to enter the easement for purposes of constructing, operating, maintaining, altering, repairing, replacing, and/or removing said sewers and utilities.

Grantor(s), _____ heirs, successors and assigns, will not erect, construct, or create any building, improvement, obstruction or structure of any kind, either above or below the surface, or stockpile soils, construction debris, or construction equipment or change the grade thereof, without the express written permission of the Grantee.

Notwithstanding the aforementioned provision, the following improvements by Grantor(s), heirs, successors, and assigns do not require Grantee's written approval: fences,

parking lots, street and/or roadways, landscaping, bushes, shrubs. However, Grantor(s) hereby agree(s) that Grantee will not be responsible for and will not pay for the loss of or any damage to, or replace or restore the following items within the easement area: fences, trees, shrubs, bushes or other plantings, other than grass or sod.

Grantor(s) covenant(s) that _____ is/are the Owner(s) and is/are in possession of the above described premises and has/have lawful right and authority to convey and grant the easement described herein.

IN WITNESS WHEREOF, the said Grantor(s) has/have caused this Easement to be executed as of the date noted above.

By: _____

Its: _____

By: _____

Its: _____

STATE OF _____)
) ss
COUNTY OF _____)

On the _____ day of _____, 201__, before me a notary public within and for said County, personally appeared _____, named in the foregoing instrument, and that said instrument was signed on behalf of said _____, a _____, by authority of its Board and _____ acknowledged said instrument to be the free act and deed of said _____.

Notary Public

DRAFTED BY: