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ENVIRONMENTAL COVENANT AND EASEMENT

This Environmental Covenant and Easement ("Environmental Covenant") is executed pursuant to the Uniform Environmental Covenants Act, Minn. Stat. ch. 114E ("UECA") in connection with an environmental response project approved by the Minnesota Pollution Control Agency.

1. Grantor and Property Description.

A. Owner and Legal Description of Property.

City of St. Paul is the fee owner of certain real property located at 360 Broadway Street in St. Paul, Ramsey County, Minnesota, PIN 32-29-22-33-0383, shown on Attachment 1 and legally described in Attachment 2. The PIN and legal description do not include the area east of John Street, between John Street and Highway 52; however, this area is also owned by the City of St. Paul and was included within the site boundary for the Response Action Plan. There is no PIN or legal description available for that area. Together, the parcel with PIN referenced above and the unplatted area between John Street and Highway 52 comprise the Property.

B. Grantor.

City of St. Paul is the Grantor of this Environmental Covenant.

2. Grant of Covenant; Covenant Runs With The Land.

Grantor does hereby Covenant and Declare that the Property shall be subject to the Activity and Use Limitations and associated terms and conditions set forth in this Environmental Covenant including the Easement in Paragraph 9, and that these Activity and Use Limitations and associated terms and conditions constitute covenants which run with the Property and which shall be binding on Grantor, its heirs, successors and assigns, and on all present and future Owners of the Property and all persons who now or hereafter hold any right, title or interest in the Property. An Owner is bound by this Environmental Covenant during the time when the Owner holds fee title to the Property. Any other person that holds any right, title or interest in or to the Property is bound by this Environmental Covenant during the time the person holds the right, title or interest. An Owner ceases to be bound by this Environmental Covenant when the Owner conveys fee title to another person, and any other person that holds any right, title or interest in or to the Property ceases to be bound when the person conveys the right, title or interest to another person.

3. Environmental Agency; Grantee and Holder of Environmental Covenant; Acceptance of Interest in Real Property.

A. Environmental Agency.

The Minnesota Pollution Control Agency ("MPCA") is the environmental agency with authority to approve this Environmental Covenant under UECA.

B. Grantee and Holder; Acceptance of Interest in Property.

The MPCA is the Grantee and Holder of the interest in real property conveyed by this Environmental Covenant. MPCA has authority to acquire an interest in real property, including an Environmental Covenant, for response actions under Minn. Stat. § 115B.17, subd. 15. MPCA's signature on this Environmental Covenant constitutes approval of this Environmental Covenant under UECA and acceptance of the interest in real property granted herein for purposes of Minn. Stat. § 115B.17, subd. 15.

4. Environmental Response Project.

The Property is the location of releases or threatened releases of hazardous substances, or pollutants or contaminants that are addressed by an environmental response project under the MPCA Voluntary Investigation and Cleanup ("VIC") Program, pursuant to Minn. Stat. § 115B.17, subd. 14. MPCA has determined that an Environmental Covenant is needed for the Property because impacted soil, groundwater, and soil vapors remain at the site.

5. Statement of Facts.

A. Facts about the Release and Response Actions

Soil, soil vapor and groundwater at the Property has been impacted by historical operations at the site. According to the previous investigations, the Property was developed for coal gas manufacturing by 1885. Coal gas manufacturing operations were located mainly in the central to eastern portion of the Property. The coal gasification plant included at least three gas holders/gasometers, a purifying house, retorts, and several tar and gas distillate storage tanks. The western portion of the Property was historically occupied by a shoe factory, a plumbing wholesaler and fish company and transformer yard. The northern portion of the Property was historically occupied by meat packing and cold storage facilities. A facility that manufactured personal care products (i.e., hair spray, shampoo, deodorant) and paper correction fluid (Gillette Company) was constructed in the southern portion of the Property in the late 1960s and began operations in 1970. Several previous subsurface investigations found elevated concentrations of volatile organic compounds (VOCs), including coal distillate and chlorinated VOCs, polynuclear aromatic hydrocarbons (PAHs) and cyanide in groundwater. VOCs and PAHs and other compounds consistent with coal tar were detected in soil. Elevated concentrations of 1,3-butadiene and trichloroethene (TCE) were detected in soil vapor. The Property was previously enrolled into the MPCA Voluntary Investigation and Cleanup (VIC) Program as part of the larger Diamond Products Co. site (VP14220 through VP14223) and a No Action Determination was issued on March 31, 2003 for hazardous substances detected in soil and groundwater. A Declaration of Restrictions and Covenants and Affidavit Concerning Real Property Contaminated with Hazardous Substances dated March 7, 2007, was filed by one of the parties involved with the Diamond Products Co. site (M Rasoir LTD).

The City of St. Paul entered the Property into the VIC Program on July 3, 2012, as the Diamond Products North site (VP14224) in preparation for redevelopment of the Property with a municipal baseball stadium. A 2012 Remedial Investigation conducted by the City of St. Paul identified fill soils ranging to

depths of 7 feet to 31 feet across the Property. Buried rubble consisting of brick, concrete and limestone was encountered in the fill soils in the northwest portion of the Property and along the north boundary of the Property. The fill soil associated with the rubble was impacted by VOCs and PAHs. Elevated concentrations of coal tar contaminants in soils, including pockets of coal tar, were present in the central and eastern portions of the Property. PAH and lead impacted surface soils were also found in this area.

Response actions conducted at the Property between the fall of 2013 and summer of 2015 by the City of St. Paul were in accordance with the MPCA-approved Additional Investigation and Response Action Plan/Construction Contingency Plan (RAP/CCP) dated October 12, 2012, Addendum to Additional Investigation Results and RAP/CCP dated December 5, 2012, and the Response Action Plan Addendum #2 dated October 1, 2013. Response actions included off-site disposal of stained concrete encountered during building demolition; the excavation and landfill disposal of approximately 71,547 tons of contaminated soil and 10,474 tons of asbestos-containing contaminated soil; installation of water main, storm sewer and sanitary sewer piping that included the wrapping of utility piping in polyethylene sheeting or installation of double line sewer pipes to prevent vapors from contaminated soils located outside the utility excavation from entering the utilities; the installation of an impermeable barrier system below the playing field and in green space areas (where a previous restrictive covenant was in place) to prevent infiltration to underlying impacted soil and groundwater; construction of at least 7 feet of clean soil buffers overlying residual contaminated soil (see Attachment 3); sealing of an artesian well and discharge of contaminated groundwater to sanitary sewer during the sealing of the artesian well; installation of an engineered, passive vapor mitigation system beneath the concourse and clubhouse for the ballpark; and excavation and removal of five underground storage tanks.

Based on soil sampling results, an area of historical fill impacted by lead and PAHs of undefined magnitude and extent is present in the vicinity of soil boring ST-6, located east of former John Street (see Attachment 3). This area is outside the ballpark fenced boundary and is a sloped area leading up to Highway 52. The area is not accessible to the general public. Additional investigation is needed to further evaluate the extent of the impacts if this area is planned to be disturbed.

A RAP Implementation Report dated August 13, 2015 and RAP Implementation Report Addendum dated April 11, 2016, both prepared by Braun Intertec have been reviewed by the MPCA. Approval of the response actions described therein is reliant on recording of this environmental covenant.

In 2018, Response Actions were completed in accordance with the MPCA-approved RAP/CCP dated August 21, 2018 for a 2,200 square foot slab-on-grade building addition located in the north central portion of the Site, extending from the east end of the existing building. The building addition is identified and shown on the Attachments, 1, 3, and 4. In summary, no impacted soil was encountered and an engineered, passive vapor mitigation system was installed beneath the new building.

B. Facts Constitute Affidavit Under Minn. Stat. § 115B.16, subd. 2.

The facts stated in Paragraph 5.A. are stated under oath by the person signing this Environmental Covenant on behalf of the Grantor, and are intended to satisfy the requirement of an affidavit under Minn. Stat. § 115B.16, subd. 2. In the event of a material change in any facts stated in Paragraph 5.A. requiring the recording of an additional affidavit under Minn. Stat. § 115B.16, subd. 2, the additional affidavit may be made and recorded without amending this Environmental Covenant.

6. Definitions.

The terms used in this Environmental Covenant shall have the meanings given in UECA, and in the Minnesota Environmental Response and Liability Act (MERLA), Minn. Stat. §115B.02. In addition, the definitions in this Paragraph 6 apply to the terms used in this Environmental Covenant.

A. "Commissioner" means the Commissioner of the Minnesota Pollution Control Agency, the Commissioner's successor, or other person delegated by the Commissioner to act on behalf of the Commissioner.

B. "MPCA" means the Minnesota Pollution Control Agency, an agency of the State of Minnesota, or its successor or assign under any governmental reorganization.

C. "Owner" means a person that holds fee title to the Property and is bound by this Environmental Covenant as provided in Paragraph 2. When the Property is subject to a contract for deed, both the contract for deed vendor and vendee are collectively considered the Owner.

D. "Political Subdivision" means the county, and the statutory or home rule charter city or township, in which the Property is located.

E. "Property" means the real property described in Paragraph 1 of this Environmental Covenant.

F. "Restricted Area" means the entire Property as identified as VIC Site Boundary on Attachment 1.

7. Activity and Use Limitations.

The following Activity and Use Limitations shall apply to the Property:

A. Use Limitations.

Grantor's response actions at the Property were conducted to comply with requirements for industrial or commercial use of the Property. Use of the Property for residential purposes is prohibited without prior notification to and approval by MPCA in accordance with Paragraph 8.

B. Activity Limitations.

The following activities on the Property are prohibited except as provided in Paragraph 8:

There shall be no disturbance or alteration of soils greater than 7 feet below ground surface on the Property of any nature whatsoever, specifically including, but not limited to, excavation, boring, drilling or construction without prior notification to and approval from MPCA in accordance with Paragraph 8.

There shall be no disturbance, removal or interference with the subsurface impermeable barrier systems installed beneath the playing field and in other green space areas, as depicted on Attachment 4, that provide a barrier to infiltration of precipitation without prior notification to and approval from MPCA in accordance with Paragraph 8.

There shall be no disturbance, removal or interference with the vapor mitigation system installed in and beneath the concourse and clubhouse on the Property, as depicted on Attachment 4, which provides a barrier to subsurface vapor intrusion into these buildings without prior notification to and approval from MPCA in accordance with Paragraph 8.

There shall be no extraction of ground water from beneath the Property for any purpose and no installation of any wells, borings, trenches or drains which could be used to extract such ground water without prior notification to and approval from MPCA in accordance with Paragraph 8.

C. Affirmative Obligations of Owner.

The Activity and Use Limitations imposed under this Environmental Covenant include the following affirmative covenants and obligations:

Owner shall maintain the integrity of pavement, building floors, buried foundations, clean soil buffer, and vegetative cover at the Property to minimize infiltration of precipitation and/or prevent human exposure to residual contamination in the Restricted Area.

Owner shall maintain, operate and monitor the subsurface impermeable barrier systems installed beneath the playing field and in other green space areas, as depicted on Attachment 4, in accordance with the Operation and Maintenance Plan approved by the MPCA set forth in Attachment 5.

Owner shall maintain, operate and monitor the vapor mitigation system in the concourse and clubhouse located on the Property as depicted on Attachment 4 in accordance with the Vapor Control System Operation, Maintenance and Monitoring Plan set forth in Attachment 5.

8. Prior MPCA Approval Required For Activities Limited Under Environmental Covenant.

A. Approval Procedure.

Any activity subject to limitation under Paragraph 7.B. shall not occur without the prior written approval of the Commissioner. The Commissioner's approval may include conditions which the Commissioner deems reasonable and necessary to protect public health or welfare or the environment, including submission to and approval of a contingency plan for the activity. Within 60 days after receipt of a written request for approval to engage in any activities subject to a limitation under Paragraph 7.B., the MPCA shall respond, in writing, by approving such request, disapproving such request, or requiring that additional information be provided. A lack of response from the Commissioner shall not constitute approval by default or authorization to proceed with the proposed activity.

B. Emergency Procedures.

Owner shall follow the procedures set forth in this Paragraph 8.B. when an emergency requires immediate excavation affecting contaminated soil or other media at the Property to repair utility lines or other infrastructure on the Property, or to respond to other types of emergencies (e.g., fires, floods):

i. notify the Minnesota Duty Officer, or successor officer, immediately of obtaining knowledge of such emergency conditions; the current phone numbers for the Duty Officer are (651) 649-5451 (Twin Cities Metro Area and outside Minnesota); fax (any location) (651) 296-2300 and TDD (651) 297-5353 or 800-627-3529.

ii. assure that the persons carrying out the excavation limit the disturbance of contaminated media to the minimum reasonably necessary to adequately respond to the emergency;

iii. assure that the persons carrying out the excavation prepare and implement a site-specific health and safety plan for excavation and undertake precautions to minimize exposure to workers, occupants and neighbors of the Property to contaminated media (e.g., provide appropriate types of protective clothing for workers conducting the excavation, and establish procedures for minimizing the dispersal of contaminated dust); and

iv. assure preparation and implementation of a plan to restore the Property to a level that protects public health and welfare and the environment. The plan must be submitted to and approved by the MPCA prior to implementation of the plan, and a follow-up report must be submitted to the MPCA after implementation so that the MPCA can determine whether protection of the public health and welfare and the environment has been restored.

9. Easement; Right of Access to the Property.

Owner grants to the MPCA and Ramsey County an easement to enter the Property from time to time, to inspect the Property and to evaluate compliance with the Activity and Use Limitations set forth in Paragraph 7. In addition, for the purpose of evaluating compliance, Owner grants to the MPCA the right to take samples of environmental media such as soil, ground water, surface water, and air, and to install, maintain and close borings, probes, wells or other structures necessary to carry out the sampling.

MPCA and Ramsey County, and their employees, agents, contractors and subcontractors, may exercise the rights granted under this Paragraph 9 at reasonable times and with reasonable notice to the then-current owner, conditioned only upon showing identification or credentials by the persons seeking to exercise those rights.

10. Duration; Amendment or Termination of Environmental Covenant.

A. Duration of Environmental Covenant.

This environmental covenant is perpetual as provided in Minn. Stat. § 114E.40(a).

B. Amendment or Termination by Consent.

i. This Environmental Covenant may be amended or terminated in writing by the Owner and the MPCA. If an interest in real property is subject to this Environmental Covenant, the interest is not affected by an amendment of the Environmental Covenant unless the current owner of the interest consents to the amendment or has waived in the Environmental Covenant or other signed record the right to consent to the amendment.

ii. The Grantor of this Environmental Covenant agrees that, upon conveying fee title to the Property to any other person, the Grantor waives the right to consent to amendment or termination of this Environmental Covenant.

C. Termination, Reduction of Burden, or Modification By MPCA.

The MPCA may terminate, reduce the burden of, or modify this Environmental Covenant as provided in Minn. Stat. § 114E.40.

11. Disclosure in Property Conveyance Instruments.

Notice of this Environmental Covenant, and the Activity and Use Limitations and Compliance Reporting Requirements set forth in Paragraphs 7 and 19 of this Environmental Covenant, shall be incorporated in full or by reference into all instruments conveying an interest in and/or a right to use the Property <e.g., easements, mortgages, leases>. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT UNDER MINN. STAT. CH. 114E, DATED _____, RECORDED IN THE OFFICIAL PROPERTY RECORDS OF _____ COUNTY, MINNESOTA AS DOCUMENT NO. _____.

12. Recording and Notice of Environmental Covenant, Amendments and Termination.

A. The Original Environmental Covenant.

Within 30 days after the MPCA executes and delivers to Grantor this Environmental Covenant, the Grantor shall record this Environmental Covenant in the office of the County Recorder or Registrar of Titles of Ramsey County.

B. Termination, Amendment or Modification.

Within 30 days after MPCA executes and delivers to Owner any termination, amendment or modification of this Environmental Covenant, the Owner shall record the amendment, modification, or notice of termination of this Environmental Covenant in the office of the County Recorder or Registrar of Titles of Ramsey County.

C. Providing Notice of Covenant, Termination, Amendment or Modification.

Within 30 days after recording this Environmental Covenant, the Grantor shall transmit a copy of the Environmental Covenant in recorded form to:

- i. each person that signed the covenant or their successor or assign;
- ii. each person holding a recorded interest in the Property;
- iii. each person in possession of the Property;
- iv. the environmental officer of each political subdivision in which the Property is located; and
- v. any other person the environmental agency requires.

Within 30 days after recording a termination, amendment, or modification of this Environmental Covenant, the Owner shall transmit a copy of the document in recorded form to the persons listed in items i to iv above.

13. Notices To Grantor and Environmental Agency.

A. Manner Of Giving Notice.

Any notice required or permitted to be given under this Environmental Covenant is given in accordance with this Environmental Covenant if it is placed in United States first class mail postage prepaid; or deposited cost paid for delivery by a nationally recognized overnight delivery service; or transmitted by facsimile if followed by mailed notice or overnight delivery as above required.

B. Notices to the Grantor.

Notices to the Grantor shall be directed to:

Mr. Michael Hahm
City of St. Paul
Department of Parks and Recreation
25 West 4th Street, Suite 400
St. Paul, MN 55102
651.266.6409
Michael.hahm@ci.stpaul.mn.us

C. Notices to MPCA.

All notices, including reports or other documents, required to be submitted to the MPCA shall reference the MPCA Project Number and be submitted to:

Minnesota Pollution Control Agency
Remediation Division
MPCA Project No. VP14224;
520 Lafayette Road North
St. Paul, MN 55155-4194
instcontrols.pca@state.mn.us

14. Enforcement and Compliance.

A. Civil Action for Injunction or Equitable Relief.

This Environmental Covenant may be enforced through a civil action for injunctive or other equitable relief for any violation of any term or condition of this Environmental Covenant, including violation of the Activity and Use Limitations under Paragraph 7 and denial of Right of Access under Paragraph 9. Such an action may be brought by:

- i. the MPCA;
- ii. a political subdivision in which the Property is located;
- iii. a person whose interest in the Property or whose collateral or liability may be affected by the alleged violation of the covenant;
- iv. a party to the covenant, including all holders; or

- v. any person to whom the covenant expressly grants power to enforce.

B. Additional Rights of Enforcement by MPCA.

In addition to its authority under subparagraph A of this Paragraph 14, the MPCA may enforce this Environmental Covenant using any remedy or enforcement measure authorized under UECA or other applicable law, including remedies pursuant to Minn. Stat. §§ 115.071, subds. 3 to 5, or 116.072.

C. No Waiver of Enforcement.

Failure or delay in the enforcement of this Environmental Covenant shall not be considered a waiver of the right to enforce, nor shall it bar any subsequent action to enforce, this Environmental Covenant.

D. Former Owners And Interest Holders Subject to Enforcement.

Subject to any applicable statute of limitations, an Owner, or other person holding any right, title or interest in or to the Property that violates this Environmental Covenant during the time when the Owner or other person is bound by this Environmental Covenant remains subject to enforcement with respect to that violation regardless of whether the Owner or other person has subsequently conveyed the fee title, or other right, title or interest, to another person.

E. Other Authorities of MPCA Not Affected.

Nothing in this Environmental Covenant affects MPCA's authority to take or require performance of response actions to address releases or threatened releases of hazardous substances or pollutants or contaminants at or from the Property, or to enforce a consent order, consent decree or other settlement agreement entered into by MPCA, or to rescind or modify a liability assurance issued by MPCA, that addresses such response actions.

15. Administrative Record.

Subject to the document retention policy of the MPCA, reports, correspondence and other documents which support and explain the environmental response project for the Property are maintained by the MPCA Brownfields Program at the MPCA's office at 520 Lafayette Road North in St. Paul, Minnesota in the file maintained for VIC project number VP14224.

16. Representations and Warranties.

Grantor hereby represents and warrants to the MPCA and any other signatories to this Environmental Covenant that, at the time of execution of this Environmental Covenant:

- A. Every fee owner of the Property has been identified;
- B. Grantor holds fee simple title to the Property which is:

subject to the interests and encumbrances identified in Attachment 6 to this Environmental Covenant.

C. Grantor has authority to grant the rights and interests and carry out the obligations provided in this Environmental Covenant;

D. Nothing in this Environmental Covenant materially violates, contravenes, or constitutes a default under any agreement, document or instrument that is binding upon the Grantor.

E. Except as otherwise directed by MPCA, Grantor has obtained, from each person holding an interest and encumbrance in the Property identified in Attachment 6 a Subordination Agreement, or other agreement satisfactory to the Commissioner, assuring that such person is bound by this Environmental Covenant and that this Environmental Covenant shall survive any foreclosure or other action to enforce the interest. Such an agreement may include a waiver of that person's right to consent to any amendment of this Environmental Covenant. Executed agreements by such persons are included in Attachment 6 to this Environmental Covenant.

17. Governing Law.

This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Minnesota.

18. Compliance Reporting.

The Owner shall submit to MPCA on an annual basis a written report confirming compliance with the Activity and Use Limitations provided in Paragraph 7 and summarizing any actions taken pursuant to Paragraph 8 of this Environmental Covenant. Reports shall be submitted on the first July 1 that occurs at least six months after the effective date of this Environmental Covenant, and on each succeeding July 1 thereafter.

Owner shall notify the MPCA as soon as possible of any actions or conditions that would constitute a breach of the Activity and Use Limitations in Paragraph 7.

19. Notice of Conveyance of Interest in Property.

Owner shall provide written notice to MPCA within 30 days after any conveyance of fee title to the Property or any portion of the Property. The notice shall identify the name and contact information of the new Owner, and the portion of the Property conveyed to that Owner.

20. Severability.

In the event that any provision of this Environmental Covenant is held by a court to be unenforceable, the other provisions of this Environmental Covenant shall remain valid and enforceable.

21. Effective Date.

This Environmental Covenant is effective on the date of acknowledgement of the signature of the MPCA.

THE UNDERSIGNED REPRESENTATIVE OF THE GRANTOR REPRESENTS AND CERTIFIES THAT HE/SHE IS AUTHORIZED TO EXECUTE THIS ENVIRONMENTAL COVENANT.

IN WITNESS WHEREOF, THIS INSTRUMENT HAS BEEN EXECUTED ON THE DATES INDICATED BELOW:

FOR THE GRANTOR:

City of St. Paul

By _____ (signature)
Michael Hahm
City of Saint Paul, Director of Parks and Recreation

State of Minnesota)
) SS.
County of Ramsey)

On _____, 2019, this instrument was acknowledged before me, and the facts stated herein were [sworn to or affirmed] [select one] by Michael Hahm, Director of Parks and Recreation, on behalf of the City of St. Paul

_____ (signature)
Notary Public
My Commission Expires _____

Approved as to Form:

Assistant City Attorney

Mayor

Office of Financial Services

City Clerk

FOR THE ENVIRONMENTAL AGENCY AND HOLDER:

MINNESOTA POLLUTION CONTROL AGENCY

By _____ (signature)

[Name] _____ (print)

Kathryn J. Sather
Division Director
Remediation Division
Delegate of the Commissioner of the
Minnesota Pollution Control Agency

State of Minnesota)
) SS.
County of Ramsey)

This instrument was acknowledged before me on _____, 2019, by _____,
a delegate of the Commissioner of the Minnesota Pollution Control Agency, a state agency, on behalf of
the State of Minnesota.

_____ (signature)
Notary Public
My Commission Expires _____

THIS INSTRUMENT WAS DRAFTED BY
AND WHEN RECORDED RETURN TO:

Jeremiah R. Hansen
Braun Intertec
11001 Hampshire Avenue South
Bloomington, Minnesota 55438