

(Top 3 inches reserved for recording)

PERMANENT DRAINAGE AND UTILITY EASEMENT AGREEMENT

(The Townhomes of Hillcrest Heights)

THIS PERMANENT DRAINAGE AND UTILITY EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into effective as of _____, 2025 (the “**Effective Date**”), between the City of Saint Paul, a Minnesota municipal corporation and home rule charter city (the “**City**” or “**Grantee**”), and Habitat Heights LLC, a Minnesota limited liability company (“**Grantor**”). The City and Grantor are also collectively referred to herein as “**Parties**”.

RECITALS

WHEREAS, Grantor is the fee title owner of certain real property situated in the City of Saint Paul, County of Ramsey, State of Minnesota that is a part of a certain larger parcel of land consisting of approximately 112 acres which formerly contained the Hillcrest Golf Course and is commonly known as the Hillcrest Redevelopment Site and now known as “The Heights” (the “**Redevelopment Area**”).

WHEREAS, The Redevelopment Area has been subdivided into the lots, blocks and outlots shown on the plat known as The Heights, which has been recorded in the Office of the Registrar of Titles for and in Ramsey County, Minnesota, a copy of which is attached hereto as **Exhibit A** (the “**Heights Plat**”).

WHEREAS, Lot 1, Block 3 and Lot 1, Block 4 of the Heights Plat has been further subdivided into the lots, blocks and outlots shown on the plat known as Townhomes of Hillcrest Heights, which has been recorded in the Office of the Registrar of Titles for and in Ramsey County, Minnesota, a copy of which is attached hereto as **Exhibit B** (the “**Townhomes of Hillcrest Heights Plat**”).

WHEREAS, the Heights Plat and the Townhomes of Hillcrest Heights Plat created a perpetual and permanent drainage and utility easement, as an easement in gross, in favor of the City (the “**Permanent Drainage and Utility Easement**”), as depicted and described with particularity on the Heights Plat and the Townhomes of Hillcrest Heights Plat (collectively, the “**Easement Area**”).

WHEREAS, Grantor intends to convey the housing units constructed on the land covered by the Townhomes of Hillcrest Heights Plat to individual and family homeowners, to be governed by a common interest community or similar communal living organization, and as used herein, the term “Grantor” shall include such applicable successors and assigns, and any such organizations, including any homeowners association, created and operating thereunder.

WHEREAS, the Parties desire to enter into this Agreement to further describe the rights, limitations, and obligations governing the Permanent Drainage and Utility Easement.

THEREFORE, in consideration of the foregoing Recitals and the mutual promises, undertakings and covenants hereinafter set forth, and intending to be legally bound hereby, the Parties hereby agree as follows:

AGREEMENT

1. Recitals and Exhibits. The above Recitals and exhibits attached hereto are incorporated into this Agreement by this reference, including the definitions set forth therein.
2. Grant of Easement.
 - A. The Permanent Drainage and Utility Easement granted in the Heights Plat and the Townhomes of Hillcrest Heights Plat shall include the right, but not the obligation, to construct, install, operate, inspect, remove, modify, and replace stormwater infrastructure and related drainage and municipal utilities systems and facilities necessary or appropriate for rate control, water quality and conveyance of storm water, as applicable in the City's sole discretion, and the obligation to repair and maintain any such systems or facilities so installed (the activities described herein are referred to in this Agreement as "**O&M**"). Grantor shall have right to use, possess and enjoy the Easement Area, provided that such activities do not unreasonably interfere with Grantee's performance of its O&M hereunder, in all cases subject to the terms hereof.
 - B. Nothing in this Agreement, in the Heights Plat or in the Townhomes of Hillcrest Heights Plat shall be deemed or interpreted to grant (or sub-grant) easement or other rights to any other utility service providers, including, without limitation, cable, internet, gas, and electric services ("**Other Utility Providers**") for their service line or systems ("**Other Utility**" or "**Other Utilities**"). Instead, any use or other rights for Other Utilities within the Permanent Drainage and Utility Easement Area (the "**Public Easements**") may only be given by the City pursuant to the utility use procedures referenced in Section 4 below. Any Public Easements shall not include (and any instrument establishing such Public Easement shall specifically prohibit) (a) any and all other below-ground uses, (b) easement or other rights for any non-City private utilities to be located within any portion of the Easement Area, and (c) the right to erect any above-ground structures that would in any manner impair or interfere with the performance of O&M by Grantee.
3. Location. If Grantee permits any Other Utility Provider the right to use or access the Easement Area as provided herein, then, upon completion of any utility service line, such Other Utility Provider shall, within ten (10) business days following completion of the installation of the Other Utility, provide an as-built drawing to the City and Grantor that accurately depicts and describes the Other Utility service line and related improvements that lie within the Easement Area.
4. Incorporating by Reference Utility Use of City Right of Way. Other Utilities shall have no greater or additional rights in the Easement Area except those expressed in this Agreement. However, to provide some guidance to all Parties as well as symmetry in process and procedure as between the City's utility facilities and Other Utility Provider's facilities located in the Permanent Drainage and Utility Easement, this Agreement incorporates by reference Minnesota Statutes Section 237.162, as amended; Minnesota Rules Chapter 7819, as amended; and Saint Paul City Code regarding utility use of City right-of-way ("**ROW**") and City approved franchise agreements, as such are amended

from time to time. For instance, all Other Utility Providers must apply for excavation/building permits and must pay permitting fees (and when appropriate, fines); and for example, an Other Utility Provider may require additional temporary areas for excavation or installation within the Easement Area, in addition to the Other Utility easement area granted by the City, which needs and requests are governed similarly to such needs and requests in a ROW. In other words, subject to the sole discretion of the City, Other Utility Providers may obtain approval for such use, subject to and conditioned upon the City's approval under the same processes and similar conditions as such approvals are obtained for use in a ROW. Other Utilities will only be allowed in the Easement Area or in the ROW with the express approval of the City.

5. Operations, Maintenance, Repair and Replacement and Related Activities. Notwithstanding anything to the contrary in this Agreement, Grantor and each Other Utility Provider shall be fully responsible for all of their own O&M responsibilities and expenses. Furthermore, if the City needs or requires a utility service line owned by an Other Utility Provider to be relocated or attended to in order for the City to undertake its own O&M work, then the Other Utility Provider shall respond promptly and shall complete all of the needed or required work at its own expense. If any such Other Utility work is undertaken by the City after a reasonable notice with no response from the Other Utility Provider, then said Other Utility Provider shall reimburse the City for all costs incurred, plus a 10% service charge, for such work. Grantor is and shall be completely and solely responsible for all its costs and expenses associated with exercise of its rights, duties, and obligations under this Agreement, including its O&M costs and expenses, and including but not limited to, compliance with all relevant rules, laws, and/or regulations.
6. Encroachment. Grantor and any Other Utility Providers shall not allow construction or installation of buildings, structures, trees or any other objects within the Easement Area that would either obstruct or otherwise unreasonably interfere with the City's facilities therein or would otherwise unreasonably interfere with the City exercising its rights under the Permanent Drainage and Utility Easement (as modified by this Agreement), except that the following encroachments have been identified by Grantor and approved by the City:
 - A. Eight (8) sanitary sewer services (one to each unit facing the Outlots B and D, as depicted on **Exhibit C** attached hereto). Sanitary service lines are the responsibility of Grantor from the mainline pipe to the residence. The City is responsible for maintaining the mainline and any structures associated with the mainline. The City at all times shall have access to the mainline for purposes of exercising its rights and performing its obligations hereunder.
 - B. A private water main and eight (8) private water services (one to each unit facing Outlots B and D, as depicted on **Exhibit C** attached hereto). Maintenance of the private water system is the responsibility of Grantor, and not the City.
 - C. Shrubs and bushes will be permitted, but Grantor must obtain an encroachment permit from the City. When maintenance is required on the sanitary sewer system, the City will not be responsible for removing and salvaging shrubs and bushes. Grantor is responsible for salvaging any shrub or bush when maintenance is performed. Restoration of the premises following maintenance by the City will be limited to turf, consistent with City protocols. Trees are not permitted in the Easement Area, and to the extent that there are trees located outside the Easement Area, but with a drip line

inside the Easement Area, those trees may be damaged during maintenance. The City is not responsible for damage to trees with drip lines extending into the Easement Area.

- D. Private irrigation lines servicing the landscaped area, and located in the Easement Area are permitted, but will require an encroachment permit from the City. When maintenance of the sanitary system is performed by the City, the City is not responsible for removing and salvaging the irrigation system, but will take commercially reasonable efforts to minimize damage or disruption to the Easement Area, adjoining lands, and the improvements and personal property each contained therein. It is the responsibility of Grantor to remove and salvage the irrigation system when the sanitary system is being maintained. The City will not reinstall any part of the irrigation system following maintenance of the sanitary system. Restoration of the disturbed areas will be made with turf, as consistent with the City's protocols. The City relies upon markings of Gopher State One Call (GSOC) to identify utilities in the Easement Area. The Grantor can make sure these utilities are known to the City by registering them with GSOC. GSOC normally identifies underground utility information within 48 hours. It is incumbent upon the utility owner to work with the City if more time is needed to relocate, remove, salvage, or protect the affected utility system components. Except in the event of emergency, the City will provide notice to Grantor (and subsequent owners) identifying the area and timing of work to be completed. Such notice shall be delivered to provide at least ten (10) business days' notice for Grantor (or subsequent owners) to remove irrigation systems and/or to coordinate with the City and/or utility owner to coordinate for the removal, relocation, salvage or protection of such systems. In the event of emergency, including without limitation, sewer back ups, collapses and other events in which there is imminent risk to persons or properties without timely intervention, the City shall provide such advance notice as may be reasonably feasible given the circumstances.
- E. No permanent fencing will be permitted in the Easement Aea. Grantor and subsequent owners are permitted to install temporary, and easily movable fences in the Easement Area.
- F. Any soccer nets placed in the Easement Area must be easily moveable and not affixed to any foundation.
- G. All non-utility amenities installed in the Easement Area must be removable and not affixed to a foundation. The City is not responsible for relocating any non-utility amenities. Grantor is responsible for temporarily relocating all non-utility amenities, at their own cost, due to maintenance of the sanitary system. Grantor is required to obtain encroachment permits for any amenities permanently installed or affixed in the Easement Area.

Except as noted above, and absent a duly authorized and obtained permit applied and obtained in the same manner for an encroachment into or on a ROW, as between the City and Grantor or Other Utility Providers, except for asphalt or other hard surfaces for ingress and egress and landscaping, Grantor and any Other Utility Provider will not locate any structure, fixture, or personal property of any type within the Easement Area without first obtaining the applicable permit from the City. In the

event Grantor or an Other Utility Provider exercises its rights under this Agreement, that party will minimize the amount of excavation and/or disruption and to clear away debris, with the understanding that the restoration and costs of such improvements will be the sole responsibility of that party, and not the City. In the event Grantor or an Other Utility Provider violate the non-encroachment prohibition and do not cure such violation within a reasonable time following notice thereof, the City may remove the encroachment and the City will not be liable for any claims, including for conversion, interruption with business, or otherwise, in connection with such removal; furthermore, all removal, replacement or modification costs for such encroachment will be borne solely by the encroaching party.

If at any time the City needs access to the Easement Area and there is landscaping or amenities reasonably preventing the City from gaining access, Grantor shall, upon reasonable prior written notice from Grantee, not to be less than ten (10) business days, remove or relocate the encroachment at their own expense. If said removal or relocation doesn't happen within ten (10) business days, for non-emergency situations, the City reserves the right to remove/relocate the encroachment and bill the Grantor and/or Other Utility Provider(s), as applicable, for the work.

7. Permits and Fees. Any and all permits, fees, and fines applicable to Other Utilities within ROW will apply to the use of the Permanent Drainage and Utility Easement unless expressly waived in writing or modified by this Agreement.
8. Signs. Any and all traffic controlling signs must be submitted for review and approval by the City in accordance with City ordinances.
9. Reservations. The City reserves and retains all its governmental authority. The City reserves and retains any and all other property and use rights held by the City in the Permanent Drainage and Utility Easement, subject to the terms hereof.
10. Insurance. Each Other Utility Provider must, at its sole cost and expense, obtain and continuously maintain insurance coverage at or above the tort liability cap as set forth in the Minnesota Statutes Chapter 466, as amended, with respect to its O&M in the Easement Area for so long as: (i) the Other Utility, or its successor or assigns, has a possessory or use interest in the Permanent Drainage and Utility Easement; or, (ii) any portion of the Permanent Drainage and Utility Easement is within the control of the Other Utility. From time to time, at the reasonable request of the City, the Other Utility will furnish proof to the City that such insurance is in effect.
11. Release and Indemnification. Each Other Utility Provider, by use of the rights granted hereunder or by entering the Redevelopment Area, agrees that it shall release, defend, indemnify, and hold harmless Grantor and the City and each of their respective body members, officials, officers, servants and employees, and agents, contractors, consultants, and legal counsel (collectively, the **"Indemnified Parties"**) from and against any claims or demands for damages of any kind (including property or injury, death, loss, costs, fines, charges, and attorneys' fees and costs) occurring at, about or in connection with any improvements constructed on the Redevelopment Area or Easement Area by the indemnifying party, or any acts or omissions of the applicable indemnifying party (including its contractors, subcontractors of any tier, and any party for which the foregoing are responsible) on or about the Redevelopment Area or Easement Area, except to the extent such loss or damage is caused solely by the improvements owned by, or the negligence or willful misconduct of, one or more of the Indemnified Parties.

12. No Waiver. The failure of any party to enforce any of the terms or conditions in this Agreement will not be deemed a waiver of any rights or remedies and any such right or remedy may be exercised from time to time and as often as may be deemed expedient or necessary. No waiver of the provisions of this Agreement shall be effective unless in writing, executed by the party to be charged with such waiver. No waiver shall be deemed a continuing waiver or waiver in respect of any subsequent breach or default, either of similar or different nature, unless expressly stated in writing. No remedy reserved to the Parties is intended to be exclusive of any other available remedy or remedies unless otherwise expressly stated, but each and every such remedy will be cumulative and is in addition to every other remedy hereafter existing at law or in equity or by statute. In order to entitle the Parties to exercise any remedy reserved to them, it will not be necessary to give notice, other than such notice as may be required in Section 13.
13. Notices. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other will be sufficiently given or delivered if it is (a) dispatched by registered or certified mail, postage prepaid, return receipt requested, (b) sent by recognized overnight courier (such as Federal Express), or (c) delivered personally, as follows:

If to Grantor:	Habitat Heights LLC c/o Twin Cities Habitat for Humanity, Inc. 1954 University Avenue West Saint Paul, MN 55104 Attn: Chief Real Estate Officer
If to the City:	City of Saint Paul (Public Works Department) 1500 City Hall Annex 25 West 4th Street Saint Paul, MN 55102 Attn: Director of Public Works
	City of Saint Paul (Public Works Department) 700 City Hall Annex 25 West 4th Street Saint Paul, MN 55102 Attn: Right of Way Engineer
With a copy to:	Office of the City Attorney 400 City Hall 15 West Kellogg Blvd. Saint Paul, MN 55102 Attn: Public Works Asst. City Attorney
And a copy to:	City of Saint Paul Office of Financial Services 700 City Hall

15 West Kellogg Blvd.
Saint Paul, MN 55102
Attn: Finance Director

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other, as provided in this Section. If a future assignee of Grantor has not otherwise provided a notice address in accordance with this Section, notice may be given by delivery to the address of record for real property tax assessment notices with respect to the applicable portion of the Easement Area.

14. Other Utility Rights. All utilities with a franchise agreement with the City and in good standing have Other Utility use rights under and subject to the terms of this Agreement. Any person who has located a utility service line within the Easement Area, by that action, is deemed to have accepted and, without exception, is subject to each and every obligation, covenant, representation, and term and condition of this Agreement. Notwithstanding the foregoing, no party shall have any right to use any portion of the Easement Area until a duly authorized and issued permit from the City has been issued to such party for any proposed use of the Easement Area.
15. Not a Public Dedication. Except for the rights specifically granted in this Agreement with respect to the Permanent Drainage and Utility Easement, nothing in this Agreement will be deemed to be a gift or dedication of any portion of the property described herein to the general public, or for any public use or purpose whatsoever.
16. Easement to Run with Land. Promptly upon the full execution of this Agreement, Grantor shall record this Agreement with the Registrar of Titles for Ramsey County, Minnesota. This Agreement will run with the land and burden the real property legally described as Lot 1, Block 3 and Lot 1, Block 4 of The Heights Plat and the entirety of the real property covered by the Townhomes of Hillcrest Heights Plat and will be binding upon and inure to the benefit of the Parties hereto, and their successors and assigns.
17. Enforcement of Agreement. Without limiting the remedies of the Parties, this Agreement may be enforced by proceedings in equity to restrain any violation or compel specific performance.
18. Amendment. Except as otherwise provided herein, the provisions of this Agreement will not be amended, terminated or deleted, except by an instrument in writing duly executed by the City and Grantor (or the successor(s)-in-interest of Grantor) on whose portion of the real property the amendment pertains.
19. Governing Law, Jurisdiction, Venue and Waiver of Trial by Jury. All matters, whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement will be controlled by, interpreted and determined in accordance with the laws of the state of Minnesota without regard to its conflict and choice of law provisions. Any litigation arising out of this Agreement will be venued exclusively in Ramsey County District Court, Second Judicial District, state of Minnesota and will not be removed therefrom to any other federal or state court. The Parties hereby consent to personal jurisdiction and venue in the foregoing court. The Parties hereby waive trial by jury for any litigation arising out of this Agreement.

20. No Waiver of Governmental Immunity and Limitations on Liability. Nothing in this Agreement will in any way affect or impair the City's immunity or the immunity of the City's employees, consultants and contractors, whether on account of official immunity, legislative immunity, statutory immunity, discretionary immunity or otherwise. Nothing in this Agreement will in any way affect or impair the limitations on the City's liability or the liability of their employees, consultants and independent contractors. By entering into this Agreement, the City do not waive any rights, protections, or limitations as provided under law and equity for the City or of their respective employees, consultants and contractors.
21. Regulatory Authority and Data Practices Act. Nothing in this Agreement will be construed to limit or modify the City's or SPRWS's regulatory authority. All data created, collected, received, stored, used, and maintained by the City are subject to the requirements of Minnesota Statutes Chapter 13, as amended.
22. Severability. If any provisions hereof will be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions will not in any way be affected or impaired.
23. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
24. Construction. This Agreement will be given a reasonable interpretation so that the intention of the parties to confer reasonably usable benefits and reasonably enforceable obligations is carried out. Th paragraph headings or captions appearing in this Agreement are for convenience only, are not part of this Agreement and are not to be considered in interpreting this Agreement.
25. Representation and Warranty. Subject to all covenants, easements, and restrictions of record, Grantor covenants with Grantee that Grantor has the sole right to grant and convey the easement and other rights described in this Agreement and that, to Grantor's current actual knowledge, there are no unrecorded interests in the Easement Area that would materially and adversely affect the rights granted hereunder.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed on or as of the date first above written.

[The remainder of this page intentionally left blank; signature pages to follow]

CITY OF SAINT PAUL

By: _____
Its Mayor or Designee

By: _____
Its City Clerk

By: _____
Its Director, Office of Financial Services

By: _____
Its Director, Department of Public Works

APPROVED AS TO FORM

Assistant City Attorney

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by Melvin Carter / Jamie Tincher, the Mayor or Deputy Mayor of the City of Saint Paul on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by Shari Moore, the City Clerk of the City of Saint Paul on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025 by Laura Logsdon, the Interim Director, Office of Financial Services of the City of Saint Paul on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025 by Sean Kershaw, the Director of the Department of Public Works of the City of Saint Paul, on behalf of the City.

Notary Public

Habitat Heights LLC,
a Minnesota limited liability company

By: _____

Name: _____

Title: _____

STATE OF MINNESOTA)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, the _____ of Habitat Heights LLC, a Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

This Instrument Drafted By:
Office of the City Attorney
400 City Hall
15 West Kellogg Blvd.
Saint Paul, MN 55102
Attn: Public Works Asst. City Attorney

Exhibit A

The Heights Plat

Exhibit B

The Townhomes of Hillcrest Heights Plat

Exhibit C

Encroachment Maps for Outlot B and Outlot D

