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**STORM DRAIN EASEMENT AND
EASEMENT RESTRICTION AGREEMENT
AMONG
AMERICAN IRON & STEEL COMPANY,
ATLAS LAND CO., AND
THE CITY OF MINNEAPOLIS**

THIS STORM DRAIN EASEMENT AND EASEMENT RESTRICTION AGREEMENT (the "**Agreement**") is made and entered into as of _____, 2007, by and among AMERICAN IRON & STEEL COMPANY, d/b/a American Iron & Supply Company, a Minnesota corporation ("**American Iron**"), ATLAS LAND CO., a Minnesota corporation ("**Atlas Land**"), and THE CITY OF MINNEAPOLIS, a Minnesota municipal corporation ("**City**").

RECITALS

- A. Atlas Land is the owner in fee simple of the land legally described on Exhibit A, which has the street addresses of 2800, 3016, and 3018 Pacific Street North, Minneapolis, Minnesota 55411-1698 (collectively the "**Pacific Street Yard**" or "**Yard**").

- B. American Iron operates a scrap metal recycling facility on the Pacific Street Yard. American Iron intends to install at the Yard a metal recycling mill, a building to house the mill, infeed and outfeed areas, storm water management improvements, railroad track improvements and realignments, and other related improvements (the “**Project**”).
- C. In August 2001, American Iron submitted to the City a *Consolidated City Approvals Application For American Iron & Supply Company’s Metal Recycling Mill Project at 2800 Pacific Street North* (“**Consolidated Approvals Application**”). Attached to the Consolidated Approvals Application was Exhibit 1B – Site Plan: Grading, Sewerage, And Storm Water, which showed a City storm drain with an interior diameter of 42 inches that crosses from west to east under the Pacific Street Yard from a manhole at the intersection of 30th Avenue North and Pacific Street North to an outfall on the bank of the Mississippi River (“**City Storm Drain**”). No easement for the City Storm Drain could be found in City or Hennepin County property records.
- D. In November 2001, after public hearings and an appeal, the Minneapolis City Council granted the requested approvals. As a condition of approval, the City required that Atlas Land grant the City a 20-foot wide easement centered over the City Storm Drain. The City has since requested a 30-foot wide easement.
- E. Atlas Land desires to grant a storm drain easement for the City Storm Drain to the City. The City Storm Drain, however, underlies active areas of the Pacific Street Yard and a railroad track that serves the Yard. The City Storm Drain outfall into the Mississippi River lies between the two docks for barges that serve the Pacific Street Yard. American Iron will shortly reconstruct these docks to create a single dock, which necessitates bringing the City Storm Drain through the dock structure to outfall in the new dock face. American Iron and Atlas Land are concerned that (1) continuing use of the City Storm Drain, (2) City work to inspect, maintain, reconstruct, repair, or replace the City Storm Drain, (3) improper design of such work, or (4) poor construction of the work could significantly disrupt operations at the Pacific Street Yard. Therefore, Atlas Land and American Iron desire to attach certain reasonable conditions to the requested storm drain easement to protect operations at the Pacific Street Yard.
- F. The City is prepared to accept a storm drain easement for the City Storm Drain subject to reasonable conditions.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants contained in this Agreement and other good and valuable consideration, the mutual receipt and sufficiency of which is hereby acknowledged, American Iron, Atlas Land, and the City agree as follows.

1. **Grant Of Easement.** Atlas Land hereby grants and conveys to the City, and American Iron agrees to be bound by, a permanent, perpetual, and non-exclusive easement (“**Storm Drain Easement**”), located on the Pacific Street Yard in the area legally described on Exhibit B and shown on Exhibit C (“**Storm Drain Easement Area**”) for the following purposes: (a) to convey storm water through the City Storm Drain (“**Use Right**”); (b) to inspect, maintain, reconstruct, repair, and replace the City Storm Drain (“**Maintenance Rights**”); and (c) for reasonable ingress to and egress from the City Storm Drain for persons and equipment reasonably necessary to exercise the Maintenance Rights (“**Access Rights**”); all subject to the provisions set forth in this Agreement. The Use Right, Maintenance Rights, and Access Rights are collectively referred to herein as the “**Easement Rights.**”

2. **Restrictions In Favor Of The City**

2.1 ***No Building To Be Placed On Storm Drain Easement Area.*** Neither American Iron nor Atlas Land will place a building on the Storm Drain Easement Area. However, this will not prevent American Iron from placing other improvements over the Storm Drain Easement Area including but not limited to the dock, pavement, paved roadway, railroad tracks, and conveyor systems.

2.2 ***No Other Utility To Be Placed in Storm Drain Easement Area.*** Neither American Iron nor Atlas Land will grant an easement to any other utility to use the Storm Drain Easement Area or the City’s improvements in the Storm Drain Easement Area. However this will not prevent American Iron from placing its own private utility lines in the Storm Drain Easement Area in a manner that crosses but does not parallel the storm drain pipe and does not interfere with, and is not inside, the City’s improvements.

3. **Restrictions On Easement Activities Involving Work On The Yard**

The City – its agents, contractors, employees, invitees, officers, representatives and all others related to the City (collectively “**City Agents**”) – must conduct activities permitted by the Easement Rights (the “**Easement Activities**”) in conformance with the terms of this Section 3.

3.1 ***Regular Inspection And Maintenance.*** The City and City Agents may enter the Pacific Street Yard to perform regular inspection and maintenance of the City Storm Drain after the City gives 48 hours telephone or other notice to American

Iron of the work to be performed and the access needed. Regular inspection and maintenance includes activities that require access to City Storm Drain manholes inside the Yard but does not include activities that involve cutting, removing, or otherwise disturbing the Storm Drain Easement Area or portions of it, placing equipment on the Storm Drain Easement Area surface for more than one day, or substantially interfering with business activities in the Yard.

3.2 City To Accomplish Other Work In Conformance With Approved Work Plans And Work Plan Changes. When undertaking Easement Activities other than regular inspection and maintenance, the City and City Agents must conduct these activities in conformance with Work Plans prepared in accordance with Section 3.2A and any Work Plan changes prepared in accordance with Section 3.2B.

A. Submission And Approval Of Work Plans

- (1) *Submission of Work Plans.* At least 30 days before exercising its Maintenance Rights or its Access Rights for activities other than regular inspection and maintenance, the City must submit plans to American Iron and Atlas Land showing the work to be accomplished, a schedule for the work, a plan for ingress and egress, and a narrative description of the reasonable efforts to be taken to minimize interference with operations at the Pacific Street Yard, with rail access to the Yard, and with use of the dock (collectively the “**Work Plans**”).
- (2) *Approval or objection to Work Plans.* Within 15 days after receipt of the Work Plans, American Iron and Atlas Land will either:
 - (a) Give notice that each has no objection to the Work Plans, in which case the City may implement the Work Plans; or
 - (b) Give notice of objections to the Work Plans accompanied by specific comments on the modifications required to eliminate the objections.
- (3) *Modification and resubmittal process.* In the event either American Iron or Atlas Land objects to the Work Plans, the City will make reasonable efforts to modify the Work Plans to address the objections raised by American Iron and Atlas Land and resubmit the modified Work Plans to American Iron and Atlas Land. Within 5 days after resubmittal, the City and City Agents may implement the modified Work Plans. Or if the City decides that no modification is reasonable, then it must so notify

American Iron and Atlas Land. Within 5 days after notice, the City and City Agents may implement the Work Plans.

- (4) *Failure to respond.* If both American Iron and Atlas Land fail to respond to the submission of the Work Plans within the time period in Section 3.2A(2), their failure to respond will be deemed an approval of the Work Plans.

B. Submission And Approval Of Work Plan Changes

- (1) *Approval or objection to Work Plan changes.* If the City desires to make a significant change to a Work Plan after completion of the submission process required by Section 3.2A, it must give notice of the proposed change to American Iron and Atlas Land. Within 3 working days after receipt of the proposed change, American Iron and Atlas Land must either:
 - (a) Give notice by personal delivery that each has no objection to the proposed change to the Work Plans, in which case the proposed change becomes part of the Work Plans and may be implemented;
or
 - (b) Give notice by personal delivery of objections to the proposed change to the Work Plans accompanied by specific comments on the modifications required to eliminate the objections.
- (2) *Modification and resubmittal process.* In the event either American Iron or Atlas Land objects to the proposed change, the City will make reasonable efforts to modify the proposed change to address the objections and resubmit the modified change by personal delivery to American Iron and Atlas Land. Within 2 working days after resubmittal, the modified change becomes part of the Work Plans and may be implemented. Or if the City decides that no modification is reasonable, then it must so notify American Iron and Atlas Land by personal delivery. Within 2 days after notice, the City and City Agents may implement the proposed change.
- (3) *Failure To Respond.* If both American Iron or Atlas Land fail to respond to submission of a proposed change within the time period in Section 3.2B(1), their failure to respond will be deemed an approval of the proposed change.

- 3.3 Review Of Work Plans Not To Relieve City Of Responsibility.** The City is responsible to American Iron and Atlas Land for the Work Plans, changes to the Work Plans, performance of the work, any Easement Activities related to the work, and the consequences of the work. Notwithstanding anything contained herein to the contrary, American Iron and Atlas Land's review of and objection to the Work Plans or changes to the Work Plans:
- A. Do not in any way make American Iron or Atlas Land responsible or liable for the Work Plans, changes to the Work Plans, performance of the work, any Easement Activities related to the work, or the consequences of the work; and
 - B. Do not relieve the City of any responsibility or liability for the Work Plans, changes to the Work Plans performance of the work, any Easement Activities related to the work, or the consequences of the work.
- 3.4 Emergency Work.** If the City must exercise its Maintenance Rights or its Access Rights on an emergency basis ("**Emergency Work**"), the City must deliver notice personally to both American Iron and Atlas Land at the address provided in Section 14.2 of the nature of the emergency and the Emergency Work necessitated thereby as soon as practicable. The City and City Agents must conduct Emergency Work using reasonable practices, given the emergency circumstances, to minimize interference with the Pacific Street Yard, rail access to the Yard, use of the dock, and the use and enjoyment of the Yard by Atlas Land, American Iron, and others lawfully present thereon.
- 4. Restoration Of Pacific Street Yard.** Upon completion of any Easement Activity pursuant to Section 3 or if any damage results from any Easement Activity, the City will comply with the following conditions.
- 4.1 Restore Ground Surface.** The City at its expense will fill any excavations and restore the ground surface of the Storm Drain Easement Area to its level and condition prior to commencement of any work, or to its final level and condition as shown in the Work Plans if that differs from the prior condition. This will not include restoration of improvements in the Storm Drain Easement Area, except as provided in Section 4.2.
 - 4.2 Restore Paving And Other Improvements.** During the first five years after execution of this Agreement, the City will restore any improvement, including but not limited to the dock, pavement, paved roadway, railroad tracks, and conveyor systems, in the Storm Drain Easement Area affected by Easement Activity to its condition prior to commencement of the work, or to its final condition as shown in the Work Plans if that differs from the prior condition. In

the first year after execution of this Agreement, the City will pay 75% of all restoration costs; in the second year – 70%; in the third year – 65%; in the fourth year 60%; and in the fifth year – 55%. American Iron will pay the remainder of these costs in each year, and, after the fifth year, the restoration of these improvements will be the sole responsibility of American Iron. To avoid any misunderstanding under this Section 4.2, the rest of this Agreement, or any other circumstances, the parties agree that the storm drain pipe and outfall in the dock face belong to the City and are and will remain City improvements, and the sheet piling and other dock structure around the storm drain outfall belong to American Iron and are and will remain American Iron improvements.

- 4.3 Clear Easement Area.** The City will clear the Storm Drain Easement Area of all debris, equipment, machinery, materials, supplies, tools, vehicles, waste, and all other articles used by or related to the City and City Agents.
- 5. Compliance With Laws.** The City and City Agents must conduct all Easement Activities at the Pacific Street Yard in compliance with all applicable federal, state, regional, county, and local rules, laws, orders, regulations, rules, standards, and statutes (the “Laws”), including without limitation the Laws relating to erosion control, storm water discharges, and requirements to post a bond or other financial assurance.
- 6. Hazardous Substances Forbidden.** The City or City Agents must not store, generate, or treat hazardous wastes or substances, or petroleum products in the Storm Drain Easement Area or the Pacific Street Yard or any portion thereof. However, this prohibition will not prevent the City from using hazardous materials and substances, and petroleum products, when exercising its Access Rights and Maintenance Rights.
- 7. City To Obtain Approvals And Permits.** The City, at no cost or expense to American Iron or Atlas Land, must obtain all governmental approvals, guarantees, licenses, and permits that may be necessary for the City to conduct Easement Activities under this Agreement and in compliance with the Laws. American Iron and Atlas Land agree to cooperate with the City to obtain all necessary government permits and permissions if cooperation does not result in any out of pocket cost or expense to American Iron or Atlas Land.
- 8. Limitation On Surface Structures.** The City or City Agents must not construct, place, or maintain any permanent building, structure, fence, or other improvement on the surface of the Storm Drain Easement Area, except for manholes installed level with the surface of the Pacific Street Yard and the storm drain and outfall in the dock face. The City or City Agents must not construct, place, or maintain any temporary building, structure, fence, or other improvement on the surface of the Storm Drain Easement Area, except as provided in the Work Plans.

9. **City Duties.** Except as provided in Section 4.2 as to costs, the City and City Agents must perform all Easement Activities at the City's sole cost and expense and with reasonable care. The City and City Agents also must perform all Easement Activities using reasonable efforts to minimize interference with the Pacific Street Yard, rail access to the Yard, use of the dock, and the use and enjoyment of the Yard by Atlas Land, American Iron, and others lawfully present thereon.
10. **Remediation Responsibility.** If under the Laws, soil or groundwater remediation to address hazardous material or petroleum product contamination must be conducted in the Storm Water Easement Area and the Yard, the party who caused the release or from whose improvements or equipment the release occurred will be responsible for all remediation costs, including but not limited to: investigating and characterizing the release; planning, obtaining approval for, and undertaking the remediation; obtaining appropriate assurances that the remediation is complete; and restoration of the Storm Water Easement Area, the Yard, and any affected improvements to their condition prior to commencement of any work.
11. **Liens And Similar Claims.** The City must not permit any mechanics', materialmen's, or other similar liens or claims to stand against the Pacific Street Yard for labor or material furnished in connection with this Agreement. Upon reasonable and timely notice of any such lien or claim delivered to the City by American Iron or Atlas Land, the City may bond and contest the validity and the amount of such lien, but the City must immediately pay any judgment rendered, must pay all proper costs and charges, and must have the lien or claim released at its sole expense. If after notice the City fails to have the lien or claim released, American Iron or Atlas Land may proceed to remove the lien or claim, and the City must reimburse American Iron or Atlas Land, as applicable, for all costs associated with such removal, including but not limited to court costs, penalties, reasonable attorneys' fees and costs, and experts' and witnesses' fees and costs. The provisions of this Section 11 survive any termination of this Agreement.
12. **Recording And Subordination.** A counterpart of this Agreement will be recorded in the Office of the County Recorder of the County of Hennepin, State of Minnesota, or in such other office as may at the time be provided by law as the proper place for its recordation. This Agreement is subject and subordinate to all matters affecting the Pacific Street Yard as of the date of recording. The City agrees to comply with the terms of existing covenants, easements, and restrictions affecting the Pacific Street Yard.
13. **Default.** If a party defaults in any of its respective obligations under this Agreement (a "Default"), a non-defaulting party must give the defaulting party notice of a Default specifying the nature of the Default. If within 10 days after notice, the defaulting party

has not cured the Default, a non-defaulting party may, at its election, cure such Default on behalf of the defaulting party or may use any remedy at law or equity, including without limitation injunctive relief and specific performance, to enforce the terms of this Agreement. The 10-day cure period does not apply (a) in the case of an emergency that requires an immediate cure, or (b) where a Default cannot be cured within 10 days and the defaulting party begins to cure the Default within the 10 day period and diligently prosecutes the same thereafter. No consent to or waiver of a Default, express or implied, by any party may be deemed or construed to be a consent to or waiver of the same or any other Default by the defaulting party or any other party. Failure on the part of any party to complain about or give notice of a Default, irrespective of how long such failure continues, does not constitute a waiver by such party of its rights under this Agreement.

14. Notices

14.1 Telephone Notice. If the City chooses to give notice by telephone as allowed in Section 3.1, notice must be given as follows:

- A. *During Business Hours.* During business hours the City must call American Iron at (612) 529-9221 and speak to the Director of Environmental Health and Safety, or in his or her absence, the Pacific Street Yard manager.
- B. *After Business Hours.* After business hours, notice must be given by calling American Iron at either (612) 363-8404 and speaking to the Director of Environmental Health and Safety or (612) 590-4856 and speaking to the President & CEO.

14.2 Written Notice Required. Except as provided in Section 3.1, any notice, demand, or request permitted, required, or desired to be given in connection with this Agreement (collectively “**Notices**”) must be given in writing and directed to American Iron, Atlas Land, or the City, as the case may be, as follows:

If to American Iron: American Iron & Steel Company
Attn: President & CEO
2800 Pacific Street North
Minneapolis, MN 55411-1698

If to Atlas Land: Atlas Land Co.
Attn: President
2800 Pacific Street North
Minneapolis, MN 55411-1698

If to the City: The City of Minneapolis
Attn: Director of Public Works
Department of Public Works
City Hall, Room 203
350 South Fifth Street
Minneapolis, MN 55415-1315

With copies to: The City of Minneapolis
Attn: Operations Manager
Sewers and Storm Drains
Department of Public Works
1901 East 26th Street
Minneapolis, MN 55404

And to: The City of Minneapolis
Attn: Zoning Administrator
Department of Community Planning and
Economic Development
250 South Fourth Street – Room 300
Minneapolis, MN 55415-1316

14.3 How Notices May Be Delivered. Except as otherwise specifically provided in this Agreement, Notices may be: (a) delivered personally; (b) sent by telephone facsimile and confirmed by delivering an original copy of the notice on the same day to a nationally recognized overnight courier for delivery to the addressees on the next business day; (c) sent by nationally recognized overnight courier; or (d) sent by certified mail, return receipt requested, postage prepaid.

14.4 When Notices Are Effective. Notices are effective: (a) on receipt if delivered personally; (b) on receipt if sent by telephone facsimile and confirmed as required in Section 14.3; (c) on the next business day if sent by overnight courier; or (d) on the date shown on the receipt if mailed, unless delivery is refused or delayed by the addressee, in which event they are deemed delivered on the third business day following deposit in the U.S. Mail.

14.5 Changing Notice. Each party has the right to change its address to any other address in the United States of America by giving 10 days prior notice thereof in accordance with this Section 14.

15. Running Of Benefits And Burdens; Assignment. All provisions of this Agreement, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the assigns and successors of the parties to this Agreement. The City, however, may not assign or otherwise transfer, voluntarily or involuntarily, by

operation of law or otherwise, this Agreement without American Iron's and Atlas Land's prior written consent, which may not be unreasonably withheld. Each of the parties and each successor owner or holder of the Pacific Street Yard or any portion thereof or interest therein, is liable under this Agreement for only those obligations in this Agreement (a) that are relative to its property or portion thereof or interest therein and (b) that arise during the period the party or successor owns or holds the property, portion or interest.

16. Termination Of Covenant Or Liability. Whenever a transfer of ownership of the Pacific Street Yard or any portion thereof or interest therein occurs in accordance with Section 15 of this Agreement, liability of the transferor for breach of any covenants occurring after the transfer automatically terminates. However, the transferor remains responsible for liabilities incurred prior to the transfer.

17. Miscellaneous

17.1 Construction. The rule of strict construction does not apply to this Agreement. No provision of this Agreement will be construed for or against, or be interpreted to the advantage or disadvantage of, a party by any court or other governmental or judicial authority because the party structured or dictated the provision or is deemed to have done so.

17.2 Counterparts. This Agreement may be executed in any number of counterparts each of which is deemed an original but all of which constitutes one and the same instrument.

17.3 Governing Law. This Agreement is governed by and must be construed in accordance with the laws of the State of Minnesota.

17.4 Headings. The subject headings of the sections and subsections of this Agreement are included for purposes of convenience only and do not affect the construction or interpretation of any of its provisions.

17.5 No Partnership Or Joint Venture. No express or implied term, provision, or condition of this Agreement constitutes the parties as partners or joint venturers.

17.6 No Public Rights. Notwithstanding any provisions of this Agreement to the contrary, the public has no rights under this Agreement, including any right to enforce this Agreement or to enter upon or use the Pacific Street Yard or the Storm Drain Easement.

17.7 No Third Party Beneficiaries. Except as otherwise specifically provided in this Agreement, no rights, privileges, or immunities of any party under this

Agreement inure to the benefit of any third-party, nor is any third-party a beneficiary of any provision contained in this Agreement.

17.8 Whole Agreement, Amendment, And Waiver. This Agreement represents the whole agreement among the parties and replaces any prior agreements, representations, statements, and understandings, oral and written with respect to the Storm Drain Easement. The parties may by mutual written agreement amend this Agreement in any respect. No term of this Agreement is waived unless done so in writing by the party against which such waiver is asserted.

Authorized representatives of the parties have executed this Agreement to be effective as of the date first written above.

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Exhibit A

Legal Description Of Pacific Street Yard

Exhibit B

Legal Description Of Storm Drain Easement

Exhibit C

Depiction Of Storm Drain Easement