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**DECLARATION OF RESTRICTIONS AND COVENANTS
AND AFFIDAVIT CONCERNING REAL PROPERTY CONTAMINATED WITH
HAZARDOUS SUBSTANCES**

THIS DECLARATION AND AFFIDAVIT is made by City of Minneapolis Parking Services. The facts stated herein are stated under oath by Michael W. Sachi, P.E., Skyway and Parking Systems Engineer, on behalf of City of Minneapolis Parking Services, and are intended to fulfill the disclosure requirements of Minn. Stat. § 115B.16, subd. 2 (2004).

WITNESSETH:

WHEREAS, City of Minneapolis Parking Services is the fee owner of certain real property located in Hennepin County, Minnesota, as described herein (the "Property"); and

WHEREAS, the Property, the Riverfront (Guthrie) Municipal Parking Ramp is located at 212 9th Avenue South (Tract B, Lot 2, Block 1, Mill Quarter Addition of Hennepin County, Minnesota) on the block bounded by 2nd Street South on the northeast, 9th Avenue South to the southeast, Washington Avenue to the southwest and Chicago Avenue South to the northwest as well as the full 90 foot wide right-of-way for the new 9th Avenue and Chicago Avenue extending from 2nd Street to Washington Avenue; and

WHEREAS, Michael W. Sachi, P.E. is the Parking & Skyway Systems Engineer of City of Minneapolis Parking Services, and is stating the facts herein solely in his capacity as Parking & Skyway Systems Engineer; and

WHEREAS, a portion of the Property was the site of releases of certain hazardous substances or pollutants and contaminants; and

WHEREAS, from approximately 1870 to 1980 the Property was used as part of a railway depot and marshalling yard, resulting in the presence of a dark “clinker-impacted” layer likely due to the use of coal by the railroad. The ‘clinker-impacted” layer contained elevated levels of benzene, trichloroethylene and arsenic, as well as large debris fragments of brick, concrete, wood and metal resulting from railroad construction; and

WHEREAS, from approximately 1980 to October 6, 2003, the Property had been owned by the Hennepin County Regional Rail Authority (HCRRA), and on October 6, 2003, HCRRA sold the Property to the City of Minneapolis Public Works Department (Parking Services) for construction of a municipal parking ramp and extensions of 9th Avenue and Chicago Avenue; and

WHEREAS, on February 26, 2003, City of Minneapolis Parking Services submitted an application to the Minnesota Pollution Control Agency (“MPCA”) Voluntary Investigation and Cleanup (“VIC”) Program for technical assistance and regulatory oversight of the site excavation; and

WHEREAS, on April 7, 2004, pursuant to the Minnesota Environmental Response and Liability Act, Minn. Stat. §§ 115B.01-.24 (2004), the MPCA VIC Program staff approved a Proposed Response Action Plan and Construction Contingency Plan concerning the Property; and

WHEREAS, Braun Intertec Corporation (“Braun”), on behalf of City of Minneapolis Parking Services conducted numerous soil borings at the Property and collected soil and groundwater samples. The presence of a “clinker impacted layer” was detected, which was likely caused by the use of coal by the railroad previously occupying the site. The “clinker layer” existed continuously across the site ranging from 6 inches to 2.5 feet thick at depths not exceeding three feet below surface. Testing conducted by Braun showed the presence of volatile organic compounds (VOC), polynuclear aromatic hydrocarbons (PAHs) and certain metals above MPCA Tier 1 Soil Leaching Values. These results were confirmed by Earth Tech, on behalf of Hennepin County, in its testing conducted on the right of way construction areas of 9th Avenue and Chicago Avenue; and

WHEREAS, Glenn Rehbein Co., a subcontractor in the employ of ramp general contractor McGough Co., excavated and removed from the Property all potentially contaminated surface fill in the ramp construction zone totaling 30,182.38 tons. In addition, Glenn Rehbein Co. disposed of 29,868.72 tons of contaminated soils as daily cover at the SKB Rosemount facility and the remaining 313.66 tons as waste at the SKB Rosemount facility. During excavation for the Chicago Avenue right of way, approximately 650 tons of soil were excavated and segregated around test boring locations showing elevated VOC, PAH and metal contamination, and 3700 tons of clinker impacted soil were excavated for street and stormwater tank construction. Approximately 1950 tons of this potentially contaminated soil was used for backfill around the new stormwater collection tank under the new Chicago Avenue. The remaining 2400 tons of potentially contaminated soil, including that from surface grading excavation of the new 9th Avenue, was disposed of as surface cover at the Pine Bend landfill. Property verification of

excavated soils was performed by Braun throughout ramp construction, and Earth Tech throughout construction of 9th Avenue and Chicago Avenue; and

WHEREAS, all contamination was removed from the Property with the following two exceptions: 1800 cubic yards (2400 tons) was reused as backfill around the new stormwater collection tank located approximately 5 feet under the new 8 inch concrete and 4 inch sub-base of Chicago Avenue at its highest point running almost the full length of the new street. During construction of the new 9th Avenue surface, fill contaminated soil was only removed as necessary to achieve the grade necessary for construction with about 800 of the 2200 cubic yards of potentially contaminated soils being removed with the remainder under the new 8 inch concrete and 4 inch sub-base street; and

WHEREAS, residual contamination at Chicago Avenue is backfilled around the new stormwater collection tank and is buried at depths ranging from 5 feet below to 20 feet below the street subgrade and covered over by the new 8 inch concrete and 4 inch sub-base of Chicago Avenue. Residual surface clinker is contained under new 8 inch concrete and 4 inch sub-base of 9th Avenue as per the MPCA approved site RAP plan; therefore, no further monitoring was required; and

WHEREAS, all construction at the Property was completed by October 2005 with the parking ramp certificate of occupancy issued and ramp open for business on November 1, 2005. Both Chicago Avenue and 9th Avenue were completed and open for traffic in September 2005; and

WHEREAS, the MPCA VIC Program issued a RAP Implementation Approval letter dated February 17, 2006; and

WHEREAS, under the requirements proscribed by the MPCA VIC Program letter dated February 17, 2006, the City of Minneapolis Parking Services has agreed to place a Restrictive Covenant on the Riverfront Municipal Ramp site at 212 9th Avenue South (**Tract B, Lot 2, Block 1 of Mill Quarter Addition of Hennepin County Minnesota**) as well as the adjoining public right of way extensions of 9th Avenue South and Chicago Avenue extending from Washington Ave to 2nd Street for the purpose of protecting public health or welfare or the environment as specified in the aforementioned letter.

NOW, THEREFORE, City of Minneapolis Parking Services makes the following declarations as to limitations, restrictions and uses to which the Property may be put, and specifies that such declarations shall constitute covenants to run with the Property as provided by law and shall be binding on City of Minneapolis Parking Services, its successors or assigns, all present or future owners of the Property, and all parties who now or hereafter have or hold any right, title or interest in the Property:

1. Definitions.

[a.] As used herein, "Owner" means City of Minneapolis Parking Services, which is the grantor of the rights and covenants created in this Declaration, and includes City of Minneapolis Parking Services' successors and assigns, and all present and future owners of the Property:

[b.] As used herein, "Property" means the real property owned by City of Minneapolis Parking Services located at 212 9th Avenue South (**Tract B, Lot 2, Block 1 of Mill Quarter Addition, Hennepin County Minnesota**) as well as adjoining extensions of 9th Ave South and Chicago Avenue from Washington Avenue to 2nd Street in Hennepin County, Minnesota, shown

on Exhibit 1 attached hereto and herein incorporated by reference and legally described as follows:

Riverfront (Guthrie) Municipal Parking Ramp located at 212 9th Avenue South (**Tract B, Lot 2, Block 1 of Mill Quarter Addition, Hennepin County Minnesota**) on the block bounded by 2nd Street South on the northeast, 9th Avenue South to the southeast, Washington Avenue to the southwest and Chicago Avenue South to the northwest as well as the full 90 foot wide right-of-way for the new 9th Avenue and Chicago Avenue extending from 2nd Street to Washington Avenue

[c.] As used herein, "Restricted Area" means those areas of the Property depicted and identified on the General Site Plan attached hereto as Exhibit 2 and made a part hereof by reference, as follows:

Entire length of newly constructed 9th Avenue South encompassing the 90 foot wide right of way around centerline of new street from 2nd Street South to Washington Avenue as well as the entire length of newly constructed Chicago Avenue encompassing the 90 foot right of way around centerline of new street from 2nd Street South to Washington Avenue.

2. Use Restrictions.

Subject to the terms and conditions of this Declaration and the reservation and covenants contained herein, City of Minneapolis Parking Services hereby declares and imposes the following restrictions ("Restrictions") on the Restricted Area:

No disturbance or alteration of any nature whatsoever, specifically including, but not limited to, grading, excavation, boring, drilling or construction, shall occur on, above, beneath or adjacent to the Restricted Area.

Any activity on or alteration of the Restricted Area prohibited by the Restrictions shall not occur without the prior written approval of the Commissioner of the MPCA or her successor (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 by MPCA of a contingency plan for the activity or alteration, and such approval shall not be unreasonably withheld. The Restrictions do

not apply to, and no prior approval of the Commissioner shall be required for, activities related to the Riverfront Municipal Ramp at 212 9th Ave South including maintenance or repair of existing buildings, structures, underground sewer, water, electrical or telephone services, or installation of fencing and signage, when such activities are not expected to or are not reasonably likely to result in disturbance of or intrusion into soils and groundwater.

Within 60 days after receipt of a written request for approval to engage in any activities subject to the Restrictions, 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.

3. Covenants.

City of Minneapolis Parking Services hereby covenants that the Property shall not be held, transferred, sold, conveyed, occupied, altered, or used in violation of the Restrictions set forth in Section 2 of this Declaration.

4. Reservations.

Nothing contained in this Declaration shall in any way prohibit, restrict or limit Owner, from fully conveying, transferring, occupying or using the Property for all purposes not inconsistent with the Restrictions.

5. Duration; Amendment.

In accordance with Minn. Stat. § 115B.17, subd. 15 and Minn. Stat. § 84C.02(c), this Declaration and the covenants, grants and Restrictions herein are unlimited in duration unless terminated, released and/or amended with the written consent of the Commissioner or her successor, such consent not to be unreasonably withheld. Notwithstanding the foregoing, this

Declaration and the covenants, grants and Restrictions set forth herein may be terminated, released and/or amended upon the occurrence and satisfaction of the following conditions:

a. Soils and groundwater sampling is conducted on the Restricted Area with prior written notice to and in accordance with a plan approved by the MPCA, such approval not to be unreasonably withheld; and

b. based on such samples the MPCA determines that contaminants in the soils and groundwater located within the Restricted Area no longer pose a potential threat to human health or welfare or the environment.

This Declaration and the covenants, grants and Restrictions herein may be amended if the MPCA finds that the conditions set forth in Section 2 or 3 of this Declaration are inadequate to protect public health or welfare or the environment.

If Owner and the Commissioner agree to amend this Declaration, or if the Commissioner decides to terminate or release this Declaration, the Commissioner shall, within 60 days after receipt of written request from the owner of the Property, execute and deliver to Owner an instrument in recordable form, amending, terminating, or releasing this Declaration.

6. Grant and Conveyance to MPCA: Right of Entry.

Subject to the terms and conditions of this Declaration, City of Minneapolis Parking Services grants and conveys to the MPCA and its successors such rights and interest in the Property as are necessary and convenient to enforce the Restrictions set forth in section 2 of this Declaration, including the right of the MPCA, its employees, its agents, contractors and subcontractors, upon reasonable notice to the then-current owner and at reasonable times, to enter from time to time upon the Property to inspect the Restricted Area and verify compliance with the Restrictions. The Restrictions declared and the rights and interest granted under this

Declaration of Restrictions shall run with the Property and bind City of Minneapolis Parking Services, its successors or assigns, all present or future owners of the Property, and all parties who now or hereafter have or hold any right, title or interest in or to the Property.

7. Emergency Procedures.

City of Minneapolis Parking Services covenants that the procedures set forth below shall be followed when an emergency requires immediate excavation of contaminated soil in the Restricted Area to repair utility lines or other infrastructure on the Property, or to respond to other types of emergencies (e.g., fires, floods):

a. notify the Minnesota Duty Officer immediately of obtaining knowledge of such emergency conditions; the current phone numbers for the Duty Officer are 1-800-422-0798 (Greater Minnesota only); (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.

b. limit disturbance of contaminated media to the minimum reasonably necessary to adequately respond to the emergency;

c. 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

d. prepare and implement a plan to restore the Property to a level that protects public health and the environment. Submit to the MPCA a copy of such a plan for review and approval prior to implementation of the plan. Submit a follow-up report after the plan is implemented so that the MPCA can determine whether protection of the public health and the environment has been restored.

9. Disclosures.

The Restrictions set forth in Section 2 of this Declaration 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).

