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Doc Name: Declaration

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1327592

RETURN TO: *bx104*
First American Title Insurance Co, NCS
1900 Midwest Plaza
801 Nicollet Mall
Minneapolis, MN 55402

1327592

MUS DECLARATION OF RESTRICTIVE COVENANTS

The City of Minneapolis, a Minnesota municipal corporation (the "City"), as owner of the real property situated in Hennepin County, Minnesota, legally described as follows:

That part of Lot 1, Block 1, Mill Quarter Second Addition, Hennepin County, Minnesota, which lies below, but not above, a horizontal plane having an elevation of 790 feet above sea level according to the National Geodetic Vertical Datum 1929 Adjustment;

(the "Burdened Property"), and in connection with the conveyance of the real property situated in Hennepin County, Minnesota, legally described as follows:

That part of Lot 1, Block 1, Mill Quarter Second Addition, Hennepin County, Minnesota, which lies above, but not below, a horizontal plane having an elevation of 790 feet above sea level according to the National Geodetic Vertical Datum 1929 Adjustment;

(the "Benefited Property"), hereby declares that the Burdened Property shall be held and conveyed subject to the restrictive covenant and easement for the exclusive benefit of the Benefited Property as described below:

Section 1. Use and Enjoyment, Easement. The City hereby declares the Burdened Property to be subject to: (a) the restriction that the Burdened Property shall not be used or occupied in a manner which materially adversely affects the use, occupancy and peaceful enjoyment of the Benefited Property as such property may be used and occupied from time to time as determined by the then current owner of the Benefited Property and any improvements now or hereafter located on the Benefited Property; and (b) the restriction that in no event will any materials be excavated or otherwise removed from an elevation higher than the bottom of the Platteville Limestone at approximately 775 feet above sea level according to the National Geodetic Vertical Datum 1929 Adjustment except for minor adjustments to the bottom of the limestone layer as may be reasonably necessary in removing the underlying shale or otherwise approved by the Benefited Owner in its sole discretion; and (c) perpetual easements for the benefit of the Benefited Property for (i) support of all of the Benefited Property and any improvements now or hereafter located on the Benefited Property, and (ii) the drainage and percolation over and into such portions of the Burdened Property as are necessary to permit and to facilitate the flow of water (including storm water runoff) from the Benefited Property to and through the Burdened Property; provided, however, that such time as the improvements are proposed for the Burdened Property, upon request the Benefited Owner shall reasonably confine and specify the portion of the Burdened Property subject to such easements, if possible, and the Benefited Owner shall execute a recordable instrument releasing the remainder of the Burdened Property from such easements. The Burdened Owner shall pay all out-of-pocket costs incurred by the Benefited Owner arising out of or related to

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any request to confine such easements and the Burdened Owner shall be responsible for any costs incurred in recording any instrument releasing the Burdened Property from such easements. Furthermore, the City hereby expressly disclaims any easements, express or implied, for access to the Burdened Property over or through the Benefited Property.

Section 2. Construction Plans, Certifications, Insurance.

- (a) Not less than 60 days prior to the commencement of excavation, construction or alteration of the Burdened Property, the owner of the Burdened Property (the "Burdened Owner"), shall provide to the owner of the Benefited Property (the "Benefited Owner") final construction plans and specifications relating to such proposed excavation, construction or alteration for review and approval by the Benefited Owner. Such final construction plans and specification shall be as detailed as those plans required to be submitted to the City for the issuance of any permits required for completion of such proposed excavation, construction or alteration or such greater detail as may be necessary for the Benefited Owner to verify the adequacy of the support and the ability of the excavation, construction and alteration to meet the obligations of the Burdened Owner under this Declaration, and shall be certified by a structural and civil engineer firm of national reputation, licensed to practice in the State of Minnesota, as having been prepared in accordance with good engineering practice.
- (b) Simultaneously with delivery of the plans and specifications described in (a) above, the Burdened Owner shall cause to be delivered to the Benefited Owner a certification of said structural and civil engineer addressed to the Benefited Owner to the effect that the proposed construction, excavation or alteration as described in said plans and specifications will not adversely affect the structural integrity of the Benefited Property or of any improvements located on the Benefited Property or otherwise materially adversely affect the use, occupancy and peaceful enjoyment of the Benefited Property and any improvements then located on or contemplated for the Benefited Property.
- (c) Not less than ten (10) business days prior to commencement of any excavation, construction or alteration of the Burdened Property, and not less than ten (10) business days prior to the expiration or termination of any such insurance, the Burdened Owner shall deliver to the Benefited Owner a certificate of insurance issued by an insurance company approved by the Benefited Owner evidencing commercial general liability insurance with a combined single limit of coverage of not less than Five Million and 00/100 Dollars (\$5,000,000.00) or such greater amount as shall reasonably be required by the Benefited Owner, which insurance shall include a contractual liability endorsement covering the indemnity obligation of the Burdened Owner set forth in Section 5 hereof. Such insurance shall be maintained in full force and effect from and after the commencement of such excavation, construction or alteration, and shall include the agreement of the insurer to give the Benefited Owner not less than ten (10) days' prior written notice of the expiration or termination of such coverage. In the event that the Burdened Owner fails to comply with the provisions of this Section, the Benefited Owner shall have the right to obtain such insurance at the sole cost and expense of the Burdened Owner; provided, however, that nothing herein shall be construed as requiring the Benefited Owner to obtain any such insurance.

- (d) Upon completion of excavation, construction or alteration of the Burdened Property in accordance with the plans and specifications described in (a) above, as certified by an inspecting architect, and written notification thereof to the Benefited Owner, the Benefited Owner shall deliver to the Burdened Owner a certificate that such excavation, construction or alteration has been undertaken in accordance with the requirements of this declaration, which certificate shall not be unreasonably withheld or delayed. Such certification shall constitute a waiver of the Benefited Owner's right under Section 4 hereof to seek injunctive relief with respect to such excavation, construction or alteration, but shall not constitute a waiver of or release the Burdened Owner from any claim for damages for a breach by the Burdened Owner of its obligations hereunder.

Section 3. Limited Restriction. The Burdened Property and any excavations thereof or improvements therein (including any portions used for support of the Benefited Property and any improvements located on the Benefited Property) shall be kept and maintained at Burdened Owner's sole cost in first class order and condition and in a manner which will not interfere with the use and occupancy of the Benefited Property and any improvements located on the Benefited Property. Burdened Owner shall not occupy or use the Burdened Property or permit the Burdened Property to be occupied or used in a manner which is unlawful, disreputable, or creates any nuisance, fire hazard, or explosion hazard, or which would invalidate or increase the rate for insurance coverage on the Benefited Property or the improvements located on the Benefited Property, or would unreasonably interfere with, annoy or disturb any occupant of the Benefited Property or any improvements located on the Benefited Property. Burdened Owner will not cause or permit the storage, use, generation or disposal of any explosives, radioactive materials, asbestos, urea formaldehyde, polychlorinated biphenyl, petroleum products, or other dangerous, toxic or hazardous substances in or about the Burdened Property or any improvements therein except with the approval of the Benefited Owner and in accordance with any requirements of the Benefited Owner. Burdened Owner will not cause or permit any odor, noise or vibrations in the Burdened Property or the improvements located therein which may affect the Benefited Property or the improvements located on the Benefited Property or the occupants thereof. Burdened Owner will not cause or permit any device to be operated in the Burdened Property or any improvements therein which emit electrical or magnetic waves which may impair human health or interfere with computer equipment, radio or television broadcasting or reception, or other facilities or equipment. Benefited Owner will have the right during reasonable hours to inspect the Burdened Property and the improvements therein to assess the condition of the support by testing or otherwise and to assure compliance with these obligations. If Burdened Owner's failure to abide by these obligations poses an imminent danger to persons or property or use of the Benefited Property, Benefited Owner may enter the Burdened Property and the improvements located therein and perform any work as may be necessary or appropriate to cure such default without liability to the Burdened Owner or the occupants of the Burdened Property or the improvements located therein for any loss or damage that may result therefrom. Except in an emergency, prior to entering the Burdened Property or the improvements therein to cure such default Benefited Owner will give Burdened Owner written notice specifying such default and the Burdened Owner will have 30 days thereafter to cure such default (or such shorter period as may be reasonable under the circumstances) or, if such default cannot reasonably be cured within such 30 day period, such longer period as may reasonably be required to cure such default so long as the Burdened Owner is

undertaking the cure with all due diligence. If Benefited Owner performs such work, the Burdened Owner will pay the Benefited Owner the cost of such work plus 10% for Benefited Owner's overhead and coordination and Benefited Owner will have the right to claim a mechanic's lien against the Burdened Property for any such amount. This declaration of restrictive covenant is not intended to restrict the use by the Burdened Owner of the Burdened Property except to the extent that such use violates the provisions herein.

Section 4. Remedies. The Burdened Owner acknowledges that in the event of a breach of the obligations of the Burdened Owner under this declaration remedies available to the Benefited Owner at law may be inadequate, and agrees that in the event of such a breach the Benefited Owner may seek, in addition to any other remedies available at law, injunctive relief before a court of competent jurisdiction. The foregoing sentence shall not constitute a waiver of or in any way adversely affect the rights of the City under Minnesota Statutes, Chapter 562, or any other rights of the City relating to the requirement of a surety bond in connection with an action in which the Benefited Owner seeks an injunction.

Section 5. Indemnity. In the event the Benefited Property and/or any improvements or personal property existing thereon are damaged or otherwise adversely affected, or in the event any claim for bodily injury or property damage is made by or against the Benefited Property or the Benefited Owner, and any such damage, effect, or claim is caused by the excavation, construction, alteration, use or occupancy of the Burdened Property or any condition of the Burdened Property relating thereto, or from any use of the Burdened Property in violation of the restrictive covenant herein made or contrary to the rights of the Benefited Owner created by the easements herein granted, or by the failure of the Burdened Owner to keep and maintain the Burdened Property in accordance with the terms of this Declaration, or by the negligence or misconduct of the Burdened Owner or any of its officers, agents, employees, contractors, lessees or invitees, then the Responsible Party (hereinafter defined) shall indemnify, hold harmless and defend the Benefited Property and the Benefited Owner and its officers, agents and employees against all loss, damage, cost, expense and liability (including reasonable attorneys' fees) which are the result of such damage, effect or claim.

Section 6. Successors and Assigns; Binding Effect. The restrictive covenant and the easements herein made and contained shall be a covenant and easements beneficial and appurtenant to the Benefited Property, shall run with title to the Benefited Property, and shall inure to the benefit of the Benefited Owner and be binding upon the Burdened Owner, and their respective successors and assigns as to matters accruing during their respective period of ownership. Notwithstanding the foregoing, with respect to the indemnity set forth in Section 5 hereof, the Responsible Party shall be (a) the City until such time as the City shall have conveyed fee title to the Burdened Property to a person or company having, at the time of such conveyance, a net worth of not less than \$25,000,000 (which amount shall be adjusted annually after 1990 to the extent of changes in the Consumer Price Index [All Urban Consumers - Minneapolis-St. Paul, Minnesota, All Items] published by the Bureau of Labor Statistics of the U.S. Department of Labor or, if such index is no longer published a substitute index reasonably selected by the Benefited Owner subject to reasonable approval of the Burdened Owner, providing a comparable measurement of changes in the cost of goods and services); and (b) the owner of the Burdened Property at the time that such damage, effect or claim arises and any party thereafter acquiring the Burdened Property, and each of such parties shall be

jointly and severally liable. Following conveyance by the City of fee title to the Burdened Property to a person or company described in (a) above, the City shall have no further liability hereunder, except to the extent the City is then the Responsible Party by reason of the definition at (b) above.

Section 7. Estoppel Certificate. Within twenty (20) business days after the written request by either the Burdened Owner, the Benefited Owner and, if different from the forgoing, the Responsible Party, the party hereto receiving such request shall deliver to the requesting party that it is not in default of its obligations under this declaration, or, if such is not the case, stating the nature of such default and of any action taken by the responding party to enforce any of its rights thereunder with respect thereto.

(Signature page follows.)

(Signature page to MUS Declaration of Restrictive Covenants)

IN WITNESS WHEREOF, the City has caused this declaration of restrictive covenant to be executed in its name and on its behalf by its Finance Officer and has caused its corporate seal to be hereunto affixed this 21/21 day of December 2010.

AS OF

CITY OF MINNEAPOLIS

By [Signature]
Its _____ Finance Officer, Patrick Born

Department Head Responsible
For Monitoring Contract:

[Signature]
Deputy Director, CPED

Approved as to form:

[Signature]
Assistant City Attorney

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 16 day of December 2010 by Patrick Born, the _____ Finance Officer of the City of Minneapolis, a Minnesota municipal corporation, on behalf of the municipal corporation.

[Signature]
Notary Public



This instrument was drafted by:
Minneapolis City Attorney's Office (NMN)
105 Fifth Avenue South, Suite 405
Minneapolis, Minnesota 55401-2534