

DRAFTED BY AND WHEN RECORDED
RETURN TO:

City Administrator
City of Northfield, MN
801 Washington Street
Northfield, Minnesota 55057

DECLARATION OF RESTRICTIVE COVENANT

This Declaration of Restrictive Covenant (“**Declaration**”) is executed as of this ____ day of _____, 2020 (the “**Effective Date**”), by 5th STREET LOFTS, LLC, a Minnesota limited liability company (“**Owner**”).

RECITALS

- A. Owner is buying that certain parcel of land located in the County of Rice, State of Minnesota, which is more fully described on **Exhibit A** hereto (the “**Property**”).
- B. The City of Northfield (the “**City**”) has created the 5th and Washington Tax Increment Financing District, qualified as a redevelopment tax increment financing district (the “**TIF District**”); has adopted a tax increment financing plan approved by the City Council of the City on October 1, 2019 (“**TIF Plan**”); and has entered into a TIF Assistance Agreement with the Owner, dated October 1, 2019 (“**TIF Agreement**”) which provides for the use of tax increment financing in connection with development of the Property.
- C. In connection with the City’s approval of the TIF Plan, the City requires that a portion of the units within the multifamily housing facility to be constructed on the Property to be known as 5th Street Lofts (the “**Project**”) are leased to tenants who meet certain occupancy requirements and to restrict the rents payable in those units, as more particularly set forth in this Declaration (the “**Affordability Restrictions**”).
- D. Owner has agreed to operate the Project in compliance with the Affordability Restrictions and other terms and conditions of this Declaration.

NOW THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner declares as follows:

Affordability Restrictions.

- (a) ***Occupancy Restrictions:*** Commencing on the date that the first Certificate of Occupancy is issued for the Project and continuing until the twelfth (12th) anniversary of such date (“**Affordability Period**”), ten percent (10%) of the total units of the Project (the “**Affordable Units**”), may only be occupied by households with incomes that are sixty percent (60%) or less of the area-wide median family income for the standard metropolitan statistical area which includes the City as that figure is determined and announced from time to time by U.S. Department of Housing and Urban Development, as adjusted for family size (“**AMI**”).
- (b) ***Rent Restrictions:*** Throughout the Affordability Period, the Affordable Units shall bear rents not greater than thirty percent (30%) of the adjusted income of a family whose annual income equals sixty percent (60%) of AMI, with adjustments for number of bedrooms in the unit.

2. Enforcement. In the event of a breach of this Declaration, the City shall be entitled to institute proceedings in equity for relief from the consequences of said breach including seeking injunctive relief to prevent a violation of the Affordability Restrictions and specific performance to enforce compliance with the Affordability Restrictions. If the City prevails in any such action, it shall be awarded its costs and expenses, including reasonable attorneys’ fees, which shall be deemed to have accrued on the commencement of such action and shall be awarded whether or not such action is prosecuted to judgment. In addition, Section 4.6 of the TIF Agreement shall apply to any expenses incurred by the City in the enforcement of this Declaration.

3. Subordination. This Declaration and the Affordability Restrictions shall at all times be subordinate and subject to the lien or charge of any mortgage hereafter made affecting the Property or any part thereof, including any improvements now or hereafter placed thereon, and shall automatically terminate upon a foreclosure or deed in lieu of foreclosure with respect to any such mortgage.

4. Declaration Binding on Successors. This Declaration and the covenants set forth herein restricting the use and occupancy of the Project shall be and are covenants running with, touching, and encumbering the Property, binding upon the Owner and all successors in interest or title, transferees, vendees, lessees, and assigns, except as provided in Section 3 hereof.

5. Miscellaneous.

- (a) Headings. The headings in this Declaration are for convenience only and do not in any way limit or affect the terms and provisions hereof.
- (b) Unenforceability. If any provision of this Declaration is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remainder of such provision or any other provisions hereof.
- (c) Governing Law. This Declaration shall be construed and enforced in accordance with the laws of Minnesota.

- (d) Amendments. This Declaration may not be amended or terminated without a written instrument executed by Owner, its successors or assigns, and the City.
- (e) Entire Agreement. This Declaration and the TIF Agreement constitute the entire agreement between the Owner and the City with respect to the subject matter hereof and this Declaration and the TIF Agreement, collectively, supersede all prior negotiations or discussions, whether oral or written, with respect thereto.

EXHIBIT A

Certificate of Title No(s): 6424.0 (Parcel B)
Rice County, State of Minnesota

Parcel A: (Abstract)

Lot 3, Block 48, in the Original Town (now City) of Northfield, Rice County, Minnesota.

Parcel B: (Torrens)

The W 1/2 of Lots 4 & 5, Block 48, in the Original Town (now City) of Northfield, Rice County, Minnesota.

Parcel C: (Abstract)

The East 1/2 of Lot 4, Block 48, in the Original Town (now City) of Northfield, Rice County, Minnesota.

Parcel D: (Abstract)

The East 1/2 of Lot 5, Block 48, in the Original Town (now City) of Northfield, Rice County, Minnesota.

Abstract/Torrens Property