



## Request for Council Action

**TO:** Mayor and City Council  
**THROUGH:** Tim Murray, City Administrator  
Deanna Kuennen, C&ED Director  
**FROM:** Sam Markman, Economic Dev Coordinator  
**MEETING DATE:** October 27, 2020  
**SUBJECT:** Resolution 2020-173 Approve Agreements for a  
Minor Subdivision and Public Utility and Drainage  
Easement related to Lot 1, Block 1, MCD Addition  
at 2300 Airtech Drive

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### **Background:**

On October 6, 2020, the Development Review Committee approved the Minor Subdivision Request from applicant Ronald G. McDonough and Jean M. McDonough for the site located at 2300 Airtech Drive. As a condition of approval, the City and the Developer must execute the following agreements:

1. Minor Subdivision Agreement,
2. Public Utility and Drainage Easement

The City has prepared the above agreements. The attached Resolution 2020-173 approves the agreements and authorizes City Staff to make any necessary final revisions to the agreements. It also authorizes the Mayor and City Administrator to sign the final agreements. The agreements are attached as exhibits to Resolution 2020-173.

### **Recommendation:**

Adopt Resolution 2020-173 Approving Agreements Related to Minor Subdivision at 2300 Airtech Drive

### **Attachments:**

- Resolution 2020-173 (with Exhibits A & B)

## **CITY OF FARIBAULT**

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### **RESOLUTION #2020-173**

#### **APPROVE AGREEMENTS FOR A MINOR SUBDIVISION AND PUBLIC UTILITY AND DRAINAGE EASEMENT RELATED TO LOT 1, BLOCK 1, MCD ADDITION AT 2300 AIRTECH DRIVE**

**WHEREAS**, the Development Review Committee, on October 6, 2020 approved the Minor Subdivision request from applicant Ronald G. McDonough and Jean M. McDonough for the site located at 2300 Airtech Drive; and

**WHEREAS**, a condition of approval requires that the City of Faribault (the "City") and Ronald G. McDonough and Jean M. McDonough (the "Owners") execute the following agreements:

1. Minor Subdivision Agreement
2. Public Utility and Drainage Easement; and

**WHEREAS**, the City, in consultation with the Owners, prepared the following draft Agreements included in the following exhibits attached to this Resolution:

1. Exhibit A: MCD Addition Minor Subdivision Agreement
2. Exhibit B: Public Utility and Drainage Easement; and

**NOW, THEREFORE BE IT RESOLVED**, that Faribault City Council hereby approves the draft Agreements included in Exhibit A and Exhibit B of this Resolution and hereby authorizes City Staff and the City's Consultants to make limited revisions to the Agreement as may be necessary to finalize the Agreements.

**ALSO, BE IT RESOLVED**, that the Faribault City Council hereby authorizes the Mayor and City Administrator to execute and record said final Agreements.

**Date Adopted:** October 27, 2020

**Faribault City Council**

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**Kevin F. Voracek, Mayor**

**ATTEST:**

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**Timothy C. Murray, City Administrator**

## MINOR SUBDIVISION AGREEMENT

THIS MINOR SUBDIVISION AGREEMENT (the “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the CITY OF FARIBAULT, a Minnesota municipal corporation (the “City”), and Ronald G. McDonough and Jean M. McDonough, married to each other (the “Owners”).

### Recitals

A. The Owners are the fee owner of certain real estate located in the city of Faribault, Rice County, Minnesota, which is legally described as:

See Exhibit A

(hereinafter referred to as the “Property”).

B. On \_\_\_\_\_, 2020, the City Administrator, after a review by the Development Review Committee, granted administrative approval of a minor subdivision of the Property, pursuant to City Code of Ordinances, Appendix B, Chapter 15, Article 2, Section 15-60 (the “Subdivision Regulations”). The applicable sections of the Subdivision Regulations are attached hereto as Exhibit C and incorporated into this Agreement as if fully set forth herein.

C. The Owners shall record the approved depiction of the minor subdivision that divides the Property consistent with the certificate of survey dated September 20, 2020, for the Property (the “Plat) attached as Exhibit B, approved by the City Planner and reviewed by the Development Review Committee subject to the conditions and requirements contained in the Faribault City Code, this Agreement, and all applicable laws.

## Agreement

In consideration of each party's promises as set forth in this Agreement, it is mutually agreed as follows:

### ARTICLE ONE REPRESENTATIONS AND WARRANTIES

**1.01. Notice to Proceed.** The Owners shall not be undertaking any activities under this Agreement until it has been issued a notice to proceed ("Notice to Proceed") by the City. The City shall not issue such Notice to Proceed until the Owners have completed the following:

- A. The Plat has been recorded with Rice County;
- B. This Agreement has been executed by the Owners and the City and recorded with Rice County;

**1.02. City Representations and Warranties.** The City makes the following representations as the basis for the undertakings on its part contained herein:

- A. The City is a municipal corporation under the laws of Minnesota.
- B. The City has the right, power and authority to execute, deliver and perform its obligations under this Agreement.

**1.03. Owners Representations and Warranties.** The Owners makes the following representations as the basis for the undertakings on their part contained herein:

- A. The Owners are a married couple.
- B. The Owners have the right, power and authority to execute, deliver and perform their obligations under this Agreement.
- C. The Owners are not in default under any lease, mortgage, contract, or agreement to which they are a party or by which they are bound, which would affect their performance under this Agreement. The Owners is not a party to or bound by any mortgage, lien, lease, agreement, instrument, order, judgment, or decree, which would prohibit the execution or performance of this Agreement by the Owners or prohibit any of the transactions provided for in this Agreement.
- D. The Owners have complied with and will continue to comply with all applicable federal, state and local statutes, laws, ordinances and regulations including, without limitation, any permits, licenses and applicable zoning, environmental, or other laws, ordinances, or regulations affecting the Property. The Owners are not aware of any pending or threatened claim of any such violation. Without limitation of the foregoing, the Owners expressly acknowledges and agrees that he has and shall at all times comply with each and every provision of the City's subdivision, zoning, and other related municipal code regulations.

E. There is no suit, action, arbitration or legal, administrative or other proceeding or governmental investigation pending or threatened against or affecting the Owners or the Property. The Owners are not in default with respect to any order, writ, injunction or decree of any federal, state, local or foreign court, department, agency or instrumentality.

F. None of the representations and warranties made by the Owners or made in any exhibit hereto or memorandum or writing furnished or to be furnished by the Owners or on his behalf contains or will contain any untrue statement of material fact or omits any material fact, the omission of which would be misleading.

**1.04. Incorporation of Recitals and Exhibits.** The Recitals set forth in the preamble to this Agreement and the Exhibits attached to this Agreement are incorporated into this Agreement as if fully set forth herein.

## ARTICLE TWO CONDITIONS OF MINOR SUBDIVISION APPROVAL

**2.01. Authority to Require Conditions of Approval.** The conditions of approval listed in this Agreement are authorized by Faribault Code of Ordinances, Appendix B Unified Development Regulations, Chapter 15 Subdivision Regulations, Section 15-80 Minor Subdivision Conditions of Approval.

**2.02. Conditions of Approval.** The following conditions shall be applicable to the minor subdivision approval as follows:

(1) The Owners shall provide drainage and utility easements for utility access and stormwater management as determined by the City Engineer and described in the associated drainage and utility easement document to be sufficient for placement and maintenance of public utility lines, associated apparatus and equipment.

(2) The Owners shall complete all outstanding work from the MCD Addition Development Agreement as recorded in the Office of the Rice County Recorder on December 28, 2018 as document number A713098 including but not limited to:

- Installation of Wetland Buffer Signage
- Provide documentation that all property monumentation has been installed
- Install a commercial/industrial driveway entrance as shown on the approved plans

(3) The Owners agree to amend or enter into a revised storm water operations and maintenance agreement for the proposed storm water management system improvements.

(4) The previously constructed ten (10) inch sanitary sewer main and manhole extended across Airtech Drive to serve Lot 1, Block 1 MCD Addition, shall be hereby be deemed a public utility. A minimum eight (8) inch public sanitary sewer shall be extended to the north boundary line of said Lot 1 at one hundred percent (100%) the expense of the property owner(s). Said sewer line shall be designed by a competent professional engineer registered in the state of Minnesota and shall be constructed per City standards as approved by the City Engineer. Owner's shall be responsible for obtaining all necessary permits including but not limited to a Sanitary Sewer Extension Permit from the Minnesota Pollution Control Agency and a Work in the Right of Way Permit from the City of Faribault.

(5) The Owners shall enter into this Minor Subdivision Agreement prior to recording the Minor Subdivision survey.

**ARTICLE THREE  
ADDITIONAL PROVISIONS**

**3.01. Recording Requirements.** The Owners shall file the subdivision survey including the required easements and legal descriptions with the Rice County Recorder's office.

**3.02. Property Monuments.** The Owners agree to install all permanent subdivision monumentation within six (6) months from the date of recording of this Agreement and shall submit to the City written certification by a licensed land surveyor that the required monuments have been installed throughout the plat. All monuments shall be marked with a steel or fiberglass post to allow for easy location following their installation.

**3.03. Attorneys' Fees. [Intentionally omitted.]**

**3.04. Amendment.** Any amendment to this Agreement must be in writing and signed by all parties to this Agreement.

**3.05. Assignment.** The Owners may not assign any of their obligations under this Agreement without the prior written consent of the City.

**3.06. Agreement to Run with Land; Successors and Assigns.** This Agreement shall be recorded among the land records of Rice County, Minnesota. The provisions of this Agreement shall run with the Property and be binding upon the Owners and his assigns or successors in interest. Notwithstanding the foregoing, no conveyance of the Property or any part thereof shall relieve the Owners or his successors and assigns of their liability for full performance of this Agreement unless the City expressly so releases the Owners in writing.

**3.07. Representatives Not Individually Liable.** No officer, agent or employee of the City shall be personally liable to the Owners, or any successor in interest, in the event of any default or breach by the City on any obligation or term of this Agreement.

**3.08. Notices and Demands.** Any notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally:

(a) as to the Owners: Ronald G. McDonough  
Jean M. McDonough  
14280 Fairwoods Avenue  
Lonsdale, MN 55046

- (b) as to the City: City of Faribault  
Attn: City Administrator  
208 NW First Avenue  
Faribault, MN 55021-5105
- (c) with a copy to: Scott J. Riggs  
Kennedy & Graven, Chartered  
470 U.S. Bank Plaza  
220 South Sixth Street  
Minneapolis, MN 55402

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section 3.08.

**3.09. Park Dedications/Fees/Dedications.** Park dedication and/or cash in lieu of land was previously provided by the Owners in 2015 and, accordingly, no additional park dedication is required.

**3.10. Building Permits.** Nothing herein shall constitute approval of any building permit for the Property. The Owners must submit and the City must approve building plans prior to an application for a building permit for a structure on any lot within the subdivision. The Owners or the parties applying for the building permit shall be responsible for payment of the customary fees associated with the building permits and other deferred fees as specified in this Agreement.

**3.11. Access/Street Address.** The Owners agree that public access to the site shall only be provided via Airtech Drive and, as such, the street addresses for Lot 1 shall remain 2300 Airtech Drive (trucking company site) and the North 10 Acres of Lot 1 shall be 2400 Airtech Drive (development site). Accordingly, none of the buildings or lots may have direct access to Bagley Avenue (C.S.A.H. 46). All site access shall be in accordance with City Ordinances subject to proper permits which may be required by the City.

**3.12. Parking and Storage.** The Owners agree to provide adequate parking and storage area for workers, equipment, construction materials, or other items associated with the Private Improvements. Existing public roadways or rights-of-way shall not be utilized for these purposes except as specifically allowed by the City.

**3.13. Existing Structure.** The three buildings currently located on Lot 1 may remain as a lawful non-conformity prior to construction of new principal building on the Lot. Any other accessory structure must conform to unified development ordinance requirements at the time of construction of a new principal building.

**3.14. City's Access.** The Owners hereby grants the City, its agents, employees, officers and contractors a non-revocable license to enter the Property to perform all work and inspections deemed appropriate by the City related to the Private Improvements.



**3.15. Disclaimer of Relationships.** The Owners acknowledges that nothing contained in this Agreement nor any act by the City or the Owners shall be deemed or construed by the Owners or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between the City and the Owners.

**3.16. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

**3.17. Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

**3.18. Indemnification.** Notwithstanding anything to the contrary in this Agreement, the City, its officials, agents, and employees shall not be liable or responsible in any manner to the Owners, the Owners' successors or assigns, the Owners' contractors or subcontractors, material suppliers, laborers, or to any other person or persons for any claim, demand, damage, or cause of action of any kind or character arising out of or by reason of the execution of this Agreement or the performance of this Agreement or the performance and completion of the Private Improvements. The Owners, and the Owners' successors or assigns, agree to protect, defend and save the City, and its officials, agents, and employees, harmless from all such claims, demands, damages, and causes of action and the costs, disbursements, and expenses of defending the same, including but not limited to, attorneys' fees, consulting engineering services, and other technical, administrative, or professional assistance. Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which the City is entitled under Minnesota Statutes, Chapter 466 or otherwise.

This Section 3.18 shall survive termination of this Agreement and shall be binding on the Owners regardless of the enforceability of any other provision of this Agreement.

**3.19. Compliance with Existing Laws.** The Owners warrants that all work performed pursuant to this Agreement shall be in compliance with existing laws, ordinances, pertinent regulations, standards, and specifications of the City.

**3.20. Miscellaneous Provisions.**

A. The Owners represent to the City that the development of the Property and the minor subdivision comply with all city, county, state and federal laws and regulations including, but not limited to: subdivision ordinances, zoning ordinances and environmental regulations. If the City determines that the subdivision or the Plat or the development of the Property does not comply, the City may, at its option, refuse to allow construction or development work on the Property until the Owners does comply. Upon the City's demand, the Owners shall cease work until there is compliance.

B. Third parties shall have no recourse against the City under this Agreement.

C. Breach of the terms of this Agreement by the Owners shall be grounds for denial of building permits, including lots sold to third parties.

D. Wherever possible, each provision of this Agreement and each related document shall be interpreted so that it is valid under applicable law. If any provision of this Agreement or any related document is to any extent found invalid by a court or other governmental entity of competent jurisdiction, that provision shall be ineffective only to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any other related document.

E. If building permits are issued prior to the completion and acceptance of public improvements, if any, the Owners assumes all liability and costs resulting in delays in completion of public improvements and damage to public improvements caused by the City, Owners, its contractors, subcontractors, material men, employees, agents or third parties.

F. No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach of any other covenant, agreement, term, or condition, nor does it imply that such covenant, agreement, term or condition may be waived again. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in writing and signed by the parties. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.

G. Each right, power or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to the City, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.

H. This Agreement, together with the exhibits hereto, which are incorporated by reference, constitutes the complete and exclusive statement of all mutual understandings between the parties with respect to this Agreement, superseding all prior or contemporaneous proposals, communications, and understandings, whether oral or written, pertaining to the subject matter of this Agreement.

I. Data provided to the Owners or received from the Owners under this Agreement shall be administered in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.

**3.21. Other Development Agreements.** Any other development agreements affecting the Property are incorporated herein by reference as necessary as if fully set forth herein. In the case of any inconsistencies between such development agreements and this Agreement, the language of this Agreement shall control.

**3.22. City Attorney Review; Title Work/Title Commitment.** Prior to recording the Plat with Rice County, the Owners agrees to provide the City with current title work and Title Commitment for the Property identifying any other entity with a legal interest in the Property, including but not limited to any entity with a mortgage interest, easement interest, etc. The City's approval of the Plat and this Agreement are subject to the Owners' compliance with this provision. The Owners shall provide an Owner's Policy of Title Insurance naming the City as the insured, showing the party recording the plat and dedicating the easements as the fee simple owner, and insuring against loss or damage of all covered risks in the policy in the event that the party filing the Plat and dedicating the easements did not own the property. The City shall have the ability to make a claim on the policy in the event the party filing the Plat and dedicating the easements did not own the property.

The above-mentioned evidence of title shall be subject to the review and approval of the City Attorney to determine what entities must execute the final Plat and other documents to be recorded against the Property. In the event the Owners provide the City with an Owner's Policy of Title Insurance, the Owner's Policy of Title Insurance shall be consistent with the requirements of the City Attorney and with an effective date on which the final Plat is recorded. The City will not issue any building permits or certificates of occupancy until the Owners have provided the City with the Owner's Policy of Title Insurance to the satisfaction of the City Attorney. Further, the Owners shall provide the City with evidence, which sufficiency shall be determined by the City, that all documents required to be recorded are recorded and all conditions for release of the final Plat have been met prior to the City processing or approving any building permits or other permits applicable to the development of the Property.

**3.23. Plat Modifications and Revisions.** The Parties acknowledge that various potential modifications and revision issues associated with the Plat may need to occur. The Owners agree to undertake, assist with, and resolve such issues as directed by the City. The Owners and the City agree to cooperate with each other and their representatives regarding any reasonable requests made subsequent to the execution of this Agreement to revise or correct any errors in the Plat and to provide any and all additional documentation deemed necessary by either party to effectuate such revisions or corrections to the Plat.

**3.24. Easement Dedication.** The Owners expressly acknowledge and agree that all easements and other rights in the Property necessary and related to the City's control over the public dedications, shall inure to the City upon the Owners' compliance with this Agreement and approval and recording of the Plat as set forth in the City's subdivision regulations.

**3.25. Stormwater Operation and Maintenance Agreement.**

A. The Owners shall construct stormwater facilities in accordance with the Plans and in compliance with all City requirements regarding such improvements. The stormwater facilities include, but are not limited to, the ponds and all other improvements shown on the Plans.

B. Unless specifically noted otherwise, the stormwater facilities serving the Plat will be private and will be maintained by the Owners at their sole expense. The Owners shall be responsible for the maintenance, repair or replacement of all stormwater facilities serving the Property. The City does not intend to accept the stormwater facilities as public and does not intend to maintain them.

The Owners agree to enter into a Stormwater Maintenance Agreement with the City in the form attached hereto as **Exhibit D**. The purpose of the Stormwater Maintenance Agreement is to ensure that the Owners maintain the stormwater facilities and to give the City the right, but not the obligation to do so if the Owners fail in their obligations. The Stormwater Maintenance Agreement will be recorded against the land within the Plat and will run with the land. The Owners acknowledge that i) the stormwater facilities will not be owned by the City; ii) the City does not plan to maintain or pay for routine maintenance, repair or replacement of the stormwater facilities and that the Owners will have responsibility for such work; iii) maintenance work shall be considered routine and shall be 100% the responsibility of the Owners; iv) when non-routine maintenance work is proposed, the Owners shall review the proposed work with the City Engineer or the City Engineer's representative for approval; v) the City has the right, but not the obligation to perform necessary work upon the failure or refusal by the Owners to do so; and vi) if the City performs any work on the stormwater facilities, the City has the right to specially assess or otherwise recover the cost of such work against the Property within the Plat.

C. The Owners agree to inform purchasers within the Plat that i) the City does not plan to maintain or pay for routine maintenance, repair or replacement of the stormwater facilities and that the Owners will have primary responsibility for such work; ii) the City has the right, but not the obligation to perform necessary work upon the failure or refusal by the Owners to do so; and iii) if the City performs any work on the stormwater facilities, the City intends to recover the cost of such work from the owners of any lots within the Plat.

*[The remainder of this page to remain intentionally blank].*

IN WITNESS OF THE ABOVE, the parties have caused this Agreement to be executed on the date and year written above.

CITY OF FARIBAULT

By: \_\_\_\_\_  
Kevin F. Voracek  
Mayor

By: \_\_\_\_\_  
Timothy C. Murray  
City Administrator

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF RICE         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by Kevin F. Voracek and Timothy C. Murray, the Mayor and City Administrator, respectively, of the City of Faribault, a Minnesota municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

THE OWNERS

By: \_\_\_\_\_  
Ronald G. McDonough

By: \_\_\_\_\_  
Jean M. McDonough

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by Ronald G. McDonough and Jean M. McDonough, married to each other.

\_\_\_\_\_  
Notary Public

This document drafted by:  
CITY OF FARIBAULT  
Department of Community & Economic Development  
208 NW 1<sup>st</sup> Avenue  
Faribault, MN 55021  
(507) 334-0100

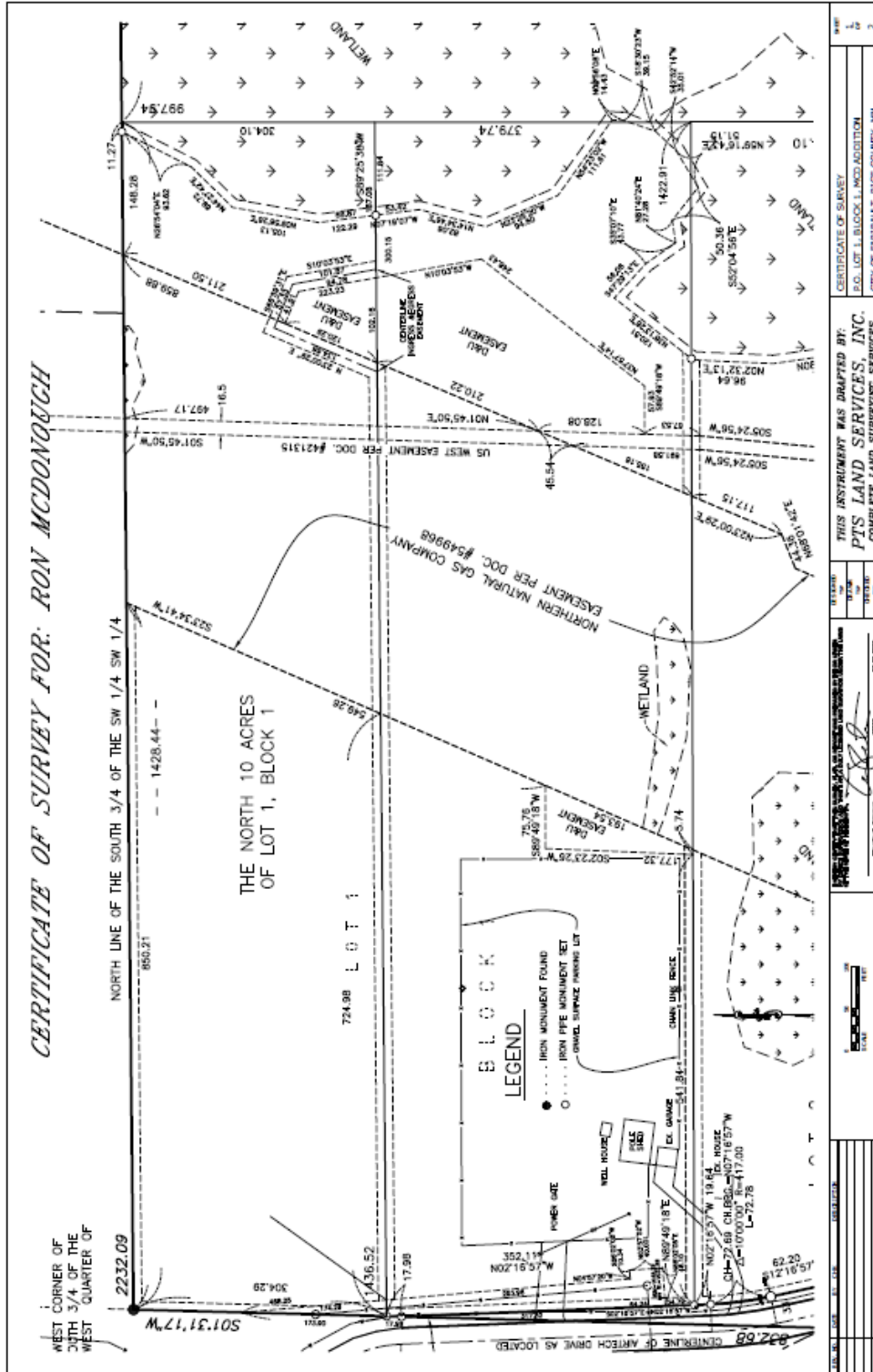
**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

***Lot 1, Block 1 MCD Addition, in the City of Faribault, Rice County, Minnesota***

PID # 18.13.3.51.001  
2300 Airtech Drive

**EXHIBIT B**  
**Minor Subdivision Survey**



|   |                     |
|---|---------------------|
| CERTIFICATE OF SURVEY<br>FIG. LOT 1, BLOCK 1, MOD. ADDITION<br>CITY OF PARIBAUT, RICE COUNTY, MN      |                     |
| THIS INSTRUMENT WAS DRAFTED BY:<br><b>PTS LAND SERVICES, INC.</b><br>COMPLETE LAND SURVEYING SERVICES | SHEET NO. 1<br>OF 2 |



# CERTIFICATE OF SURVEY FOR: RON MCDONOUGH

## LEGEND

- . . . . . IRON MONUMENT FOUND
- . . . . . IRON PIPE MONUMENT SET

### LEGAL DESCRIPTION

The North 10 acres of Lot 1, Block 1, MCD ADDITION, in the City of Faribault, Rice County, Minnesota, described as follows: Beginning at the Northwest corner of said Lot 1; thence South 01° 31' 17" West along the West line of said Lot 1 a distance of 304.29 feet; thence North 25° 25' 38" East a distance of 1436.52 feet to a point in the East line of said Lot 1; thence North 00° 00' 00" West along the East line of said Lot 1 a distance of 304.10 feet to the Northeast corner of said Lot 1; thence South 89° 25' 38" West along the North line of said Lot 1 a distance of 1428.64 feet to the point of beginning and there to begin.

Subject to an easement for drainage and utility purposes over a portion of Lot 1, Block 1, MCD ADDITION described as follows: Commencing at the Northeast corner of said Lot 1, a distance of 304.10 feet; thence South 89° 25' 38" West a distance of 187.08 feet to a point of beginning; thence South 89° 25' 38" West along the South line of said Lot 1 a distance of 102.10 feet; thence North 23° 00' 29" East a distance of 220.29 feet; thence South 00° 39' 31" East a distance of 41.91 feet; thence South 10° 03' 53" West a distance of 94.78 feet to the point of beginning and there terminating.

Also Subject to an easement for drainage and utility purposes distant 10 feet each side and parallel to the South line of the above described parcel.

Also Subject to an easement for ingress and egress appurtenant over a portion of Lot 1, Block 1, MCD ADDITION being 20 feet wide offset 10 feet each side from the following described centerline: Commencing at the Northeast corner of said Lot 1; thence South 00° 00' 00" West along the East line of said Lot 1 a distance of 304.10 feet; thence South 89° 25' 38" West a distance of 300.15 feet to the point of beginning; thence North 23° 00' 29" East a distance of 134.66 feet; thence South 68° 59' 31" East a distance of 57.33 feet; thence South 10° 03' 53" West a distance of 101.87 feet and there terminating.

Also Subject to an easement in favor of Northern Natural Gas Company per Document No. 5489568 as shown on survey.

Also Subject to an easement in favor of US West per Document No. 421315 as shown on survey.

A HERETOFOR UNKNOWN UTILITY PIPELINES, OVER, UNDER AND ACROSS THAT PART OF LOT 1, BLOCK 1, MCD ADDITION IN THE CITY OF FARIBAULT, RICE COUNTY, MINNESOTA, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 02°16'57" WEST ALONG THE WEST LINE OF SAID LOT 1 A DISTANCE OF 54.78 FEET TO THE POINT OF BEGINNING; THENCE NORTH 88°02'08" WEST A DISTANCE OF 10.34 FEET; THENCE NORTH 04°57'20" WEST A DISTANCE OF 293.96 FEET TO A POINT IN THE SOUTH LINE OF THE NORTH TEN ACRES OF SAID LOT 1; THENCE CONTINUING NORTH 04°57'20" WEST A DISTANCE OF 174.29 FEET TO A POINT IN THE WEST LINE OF THE NORTH TEN ACRES OF SAID LOT 1; THENCE SOUTH 01°31'17" WEST ALONG THE WEST LINE OF THE NORTH TEN ACRES OF SAID LOT 1 A DISTANCE OF 173.90 FEET TO THE SOUTHWEST CORNER OF THE NORTH TEN ACRES OF SAID LOT 1; THENCE CONTINUING SOUTH 01°31'17" WEST ALONG THE WEST LINE OF SAID LOT 1 A DISTANCE OF 17.93 FEET; THENCE SOUTH 02°16'57" EAST ALONG THE WEST LINE OF SAID LOT 1 A DISTANCE OF 317.32 FEET TO THE POINT OF BEGINNING AND THERE TERMINATING.



| REV. | NO. | DATE     | BY  | CHK. | DESCRIPTION                 |
|------|-----|----------|-----|------|-----------------------------|
| 1    | 1   | 10-24-20 | TRP | SKN  | ISSUED FOR RECORDATION      |
| 2    | 1   | 11-12-20 | TRP | SKN  | REVISIONS TO CORRECT ERRORS |

I, **PTL**, CERTIFY THAT THIS SURVEY WAS MADE IN ACCORDANCE WITH THE PROVISIONS OF THE SURVEYING ACTS OF THE STATE OF MINNESOTA.

DATE: **10-24-2020**

BY: **PTL**

|          |          |
|----------|----------|
| RECORDED | FILED    |
| 10/24/20 | 10/24/20 |

THIS INSTRUMENT WAS DRAFTED BY:  
**PTS LAND SERVICES, INC.**  
 COMPLETE LAND SURVEYING SERVICES

|                                    |       |
|------------------------------------|-------|
| CERTIFICATE OF SURVEY              | SHEET |
| P.O. LOT 1, BLOCK 1, MCD ADDITION  | 2     |
| CITY OF FARIBAULT, RICE COUNTY, MN | 2     |

**EXHIBIT C**  
**Applicable Sections of Subdivision Regulations**

**CHAPTER 15. SUBDIVISION REGULATIONS**

**ARTICLE 2. MINOR SUBDIVISIONS**

**Sec. 15-40. Purpose.**

This section is established to provide for administrative approval of subdivisions that meet specified criteria and for the waiver of standard platting requirements specified elsewhere in this chapter. It is intended largely to facilitate the further division of previously platted lots, the combination of previously platted lots into fewer lots, or for the adjustment of a lot line by relocation of a common boundary.

**Sec. 15-50. Application for minor subdivision.**

Any person having a legal or equitable interest in a property may file an application for minor subdivision. An application for minor subdivision shall be filed with the City Planner on an approved form and shall be accompanied by an accurate boundary survey and legal description of the parent parcel and a survey and legal description identifying the resulting parcels after subdivision.

**Sec. 15-60. Review of minor subdivision.**

The City Planner shall review all applications for minor subdivision to determine compliance with the standards identified in this section and all other pertinent requirements of this ordinance. Upon written approval of the request by the City Administrator, the applicant shall be responsible for filing the subdivision survey with the Rice County Recorder's office. Should the request be denied, the City Planner shall notify the applicant, in writing, of the reasons for such denial. Any appeal of staff's decision shall be made to the Planning Commission as specified in Sections 2-110 through 2-130.

**Sec. 15-70. Findings required for minor subdivision approval.**

In order for the City Planner to grant administrative approval for a proposed minor subdivision, each of the provisions shown below must be met:

- (1) The proposed subdivision of land will not result in more than three (3) lots.
- (2) All necessary utility and drainage easements are provided for.
- (3) All lots to be created by the subdivision conform to lot area and width requirements established for the zoning district in which the property is located.
- (4) The subdivision does not require dedication of public right-of-way for the purpose of gaining access to the property.
- (5) The property has not been divided through the provisions of this section within the previous five (5) years.
- (6) The subdivision meets all design standards as specified elsewhere in this chapter.

**Sec. 15-80. Minor subdivision conditions of approval.**

Staff may impose such conditions on any proposed minor subdivision that are deemed reasonable and necessary to protect the public interest and to ensure compliance with the provisions of this ordinance including, but not limited to, the following:

- (1) The applicant shall provide required utility and drainage easements for all newly created lots and be responsible for the cost of filing and recording written easements with the Rice County Recorder's Office; and
- (2) The applicant shall pay parkland dedication fees for each lot created beyond the original number of lots existing prior to subdivision, except when such fees have been applied to the property as part of a previous subdivision.

**EXHIBIT D**

**FORM OF STORMWATER MAINTENANCE AGREEMENT**

**[Insert stormwater Maintenance Agreement]**

**DRAINAGE AND UTILITY EASEMENT**

**THIS INSTRUMENT** is made by Ronald G. McDonough and Jean M. McDonough, husband and wife, (collectively the “**Grantors**”) in favor of the City of Faribault, a Minnesota municipal corporation (the “**Grantee**” or the “**City**”).

**Recitals**

- A. Grantors are the fee owners of certain real property legally described on **Exhibit A** attached hereto (the “**Property**”); and
- B. Grantors wish to grant to Grantee the certain easement as hereinafter described in, over, across, beneath, and above the Property which is legally described on **Exhibit B**, attached hereto, and further depicted on **Exhibit C**, attached hereto, (the “**Easement Area**”) according to the terms and conditions contained herein (the “**Easement**”).

**Terms of Easement**

- 1. Recitals. The recitals above are hereby incorporated herein and made part of the Easement.
- 2. Grant of Easement. For good and valuable consideration, receipt of which is hereby acknowledged by the Grantors, the Grantors grant and convey to the City an easement for drainage and utility purposes in, over, across, beneath, and above the Easement Area.
- 3. Scope of Easement. The perpetual, non-exclusive drainage and utility easement granted herein includes the right of the City, its contractors, agents, and employees to enter the premises at all reasonable times for the purpose of locating, constructing, reconstructing, operating, maintaining, inspecting, altering and repairing the utilities, drainage ways and stormwater facilities in, over, across, beneath and above the Easement Area.

The easement granted herein also includes the right to cut, trim, or remove from the Easement Area such improvements, trees, shrubs, or other vegetation, and to prohibit obstructions and grading alterations as in the City’s judgment unreasonably interfere with the Easement or the

function of the facilities located therein.

3. Warranty of Title. Grantors warrant they are the owners of the Property and have the right, title, and capacity to convey to the City the easement herein.

4. Environmental Matters. The City shall not be responsible for any costs, expenses, damages, demands, obligations, including penalties and reasonable attorneys' fees, or losses resulting from any claims, actions, suits or proceedings based upon a release or threat of release of any hazardous substances, pollutants, or contaminants which may have existed on, or which relate to, the Easement Area or the Property prior to the date of this instrument.

5. Binding Effect. The terms and conditions of this instrument shall run with the land and be binding on the Grantors, their successors and assigns.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020.

**GRANTORS:**

By: \_\_\_\_\_  
Ronald G. McDonough

By: \_\_\_\_\_  
Jean M. McDonough

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF RICE )

The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, 2020 by Ronald G. McDonough and Jean M. McDonough, husband and wife, Grantor.

\_\_\_\_\_  
Notary Public

NOTARY STAMP OR SEAL

THIS INSTRUMENT DRAFTED BY:  
Kennedy & Graven, Chartered  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402  
(612) 337-9300

**EXHIBIT A**  
Legal Description of the Property

***Lot 1, Block 1 MCD Addition, in the City of Faribault, Rice County, Minnesota***

PID # 18.13.3.51.001

2300 Airtech Drive

**EXHIBIT B**Legal Description of the Easement Area

A PERPETUAL EASEMENT FOR DRAINAGE AND UTILITY PURPOSES, OVER, UNDER AND ACROSS THAT PART OF LOT 1, BLOCK 1, MCD ADDITION IN THE CITY OF FARIBAULT, RICE COUNTY, MINNESOTA, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 02°16'57" WEST ALONG THE WEST LINE OF SAID LOT 1 A DISTANCE OF 34.79 FEET TO THE POINT OF BEGINNING; THENCE NORTH 86°02'08" EAST A DISTANCE OF 46.10 FEET; THENCE NORTH 03°57'52" WEST A DISTANCE OF 40.00 FEET; THENCE SOUTH 86°02'08" WEST A DISTANCE OF 10.34 FEET; THENCE NORTH 04°57'20" WEST A DISTANCE OF 293.96 FEET TO A POINT IN THE SOUTH LINE OF THE NORTH TEN ACRES OF SAID LOT 1; THENCE CONTINUING NORTH 04°57'20" WEST A DISTANCE OF 174.29 FEET TO A POINT IN THE WEST LINE OF THE NORTH TEN ACRES OF SAID LOT 1; THENCE SOUTH 01°31'17" WEST ALONG THE WEST LINE OF THE NORTH TEN ACRES OF SAID LOT 1 A DISTANCE OF 173.90 FEET TO THE SOUTHWEST CORNER OF THE NORTH TEN ACRES OF SAID LOT 1; THENCE CONTINUING SOUTH 01°31'17" WEST ALONG THE WEST LINE OF SAID LOT 1 A DISTANCE OF 17.93 FEET; THENCE SOUTH 02°16'57" EAST ALONG THE WEST LINE OF SAID LOT 1 A DISTANCE OF 317.32 FEET TO THE POINT OF BEGINNING AND THERE TERMINATING.

AND ALSO

A PERPETUAL EASEMENT FOR DRAINAGE AND UTILITY PURPOSES DISTANT 10 FEET EACH SIDE AND PARALLEL TO THE SOUTH LINE OF THE FOLLOWING DESCRIBED PARCEL: THE NORTH 10 ACRES OF LOT 1, BLOCK 1, MCD ADDITION, IN THE CITY OF FARIBAULT, RICE COUNTY, MINNESOTA, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE SOUTH 01° 31' 17" WEST ALONG THE WEST LINE OF SAID LOT 1 A DISTANCE OF 304.29 FEET; THENCE NORTH 89° 25' 38" EAST A DISTANCE OF 1436.52 FEET TO A POINT IN THE EAST LINE OF SAID LOT 1; THENCE NORTH 00° 00' 00" WEST ALONG THE EAST LINE OF SAID LOT 1 A DISTANCE OF 304.10 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 89° 25' 38" WEST ALONG THE NORTH LINE OF SAID LOT 1 A DISTANCE OF 1428.44 FEET TO THE POINT OF BEGINNING AND THERE TERMINATING.

AND ALSO

SUBJECT TO AN EASEMENT FOR DRAINAGE AND UTILITY PURPOSES OVER A PORTION OF LOT 1, BLOCK 1, MCD ADDITION DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 00° 00' 00" WEST ALONG THE EAST LINE OF SAID LOT 1 A DISTANCE OF 304.10 FEET; THENCE SOUTH 89° 25' 38" WEST A DISTANCE OF 187.08 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89° 25' 38" WEST ALONG THE SOUTH LINE OF SAID LOT 1 A DISTANCE OF 102.16 FEET; THENCE NORTH 23° 00' 29" EAST A DISTANCE OF 120.29 FEET; THENCE SOUTH 66° 59' 31" EAST A DISTANCE OF 41.91 FEET; THENCE SOUTH 10° 03' 53" WEST A DISTANCE OF 94.78 FEET TO THE POINT OF BEGINNING AND THERE TERMINATING.





*CERTIFICATE OF SURVEY FOR: RON MCDONOUGH*

**LEGEND**

- . . . . . IRON MONUMENT FOUND
- . . . . . IRON PIPE MONUMENT SET

**LEGAL DESCRIPTION**

The North 10 acres of Lot 1, Block 1, MCD ADDITION, in the City of Faribault, Rice County, Minnesota, described as follows: Beginning at the Northwest corner of said Lot 1; thence South 01° 31' 17" West along the West line of said Lot 1 a distance of 304.29 feet; thence North 89° 25' 38" East a distance of 1436.52 feet to a point in the East line of said Lot 1; thence North 00° 00' 00" West along the East line of said Lot 1 a distance of 304.10 feet to the Northeast corner of said Lot 1; thence South 89° 25' 38" West along the North line of said Lot 1 a distance of 1428.44 feet to the point of beginning and there terminating.

Subject to an easement for drainage purposes over a portion of Lot 1, Block 1, MCD ADDITION described as follows: Commencing at the Northeast corner of said Lot 1; thence South 00° 00' 00" West along the East line of said Lot 1 a distance of 304.10 feet; thence South 89° 25' 38" East a distance of 1436.52 feet to the point of beginning; thence continuing South 89° 25' 38" West along the South line of said Lot 1 a distance of 102.16 feet; thence North 25° 00' 29" East a distance of 120.29 feet; thence South 66° 59' 31" East a distance of 41.81 feet; thence South 10° 03' 53" West a distance of 94.70 feet to the point of beginning and there terminating.

Also subject to an easement for drainage and utility purposes distant 10 feet each side and parallel to the South line of the above described parcel.

Also subject to an easement for ingress and egress purposes over a portion of Lot 1, Block 1, MCD ADDITION being 20 feet wide offset 10 feet each side from the following described centerline. Commencing at the Northeast corner of said Lot 1; thence South 00° 00' 00" West along the East line of said Lot 1 a distance of 300.15 feet to the point of beginning; thence North 25° 00' 29" East a distance of 134.66 feet; thence South 66° 59' 31" East a distance of 51.33 feet; thence South 10° 03' 53" West a distance of 101.87 feet and there terminating.

Also Subject to an easement in favor of Northern Natural Gas Company per Document No. 548968 as shown on survey.

Also Subject to an easement in favor of US West per Document No. 421312 as shown on survey.

A PERPETUAL EASEMENT FOR UTILITY PURPOSES, OVER, UNDER AND ACROSS THAT PART OF LOT 1, BLOCK 1, MCD ADDITION IN THE CITY OF FARIBAULT, RICE COUNTY, MINNESOTA, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 04° 57' 20" WEST A DISTANCE OF 10.34 FEET; THENCE NORTH 04° 57' 20" WEST A DISTANCE OF 283.96 FEET TO A POINT IN THE SOUTH LINE OF THE NORTH TEN ACRES OF SAID LOT 1; THENCE CONTINUING NORTH 04° 57' 20" WEST A DISTANCE OF 124.50 FEET TO A POINT IN THE WEST LINE OF THE NORTH TEN ACRES OF SAID LOT 1; THENCE SOUTH 01° 31' 17" WEST ALONG THE WEST LINE OF THE NORTH TEN ACRES OF SAID LOT 1 A DISTANCE OF 173.90 FEET TO THE SOUTHWEST CORNER OF THE NORTH TEN ACRES OF SAID LOT 1; THENCE CONTINUING SOUTH 01° 31' 17" WEST ALONG THE WEST LINE OF SAID LOT 1 A DISTANCE OF 17.93 FEET; THENCE SOUTH 02° 16' 57" EAST ALONG THE WEST LINE OF BEGINNING AND THERE TERMINATING.



|   |             |           |                                      |                             |                                |
|---|-------------|-----------|--------------------------------------|-----------------------------|--------------------------------|
| <b>REVISION</b>   | <b>DATE</b> | <b>BY</b> | <b>DESCRIPTION</b>                   |                             |                                |
| 1   | 10-20-20    | TRP       | EXAMINED AND CORRECTED               |                             |                                |
| 2   | 11-12-20    | TRP       | REVISIONS MADE TO REFLECT FIELD DATA |                             |                                |
|   |             |           |                                      |                             |                                |
| I, <b>PT S LAND SERVICES, INC.</b> , a Minnesota limited liability company, do hereby certify that the above is a true and correct copy of the original as shown on file in the office of the Surveyor of the State of Minnesota, at St. Paul, Minnesota, on this <b>11th</b> day of <b>November</b> , 20 <b>20</b> . |             |           |                                      |                             | Matthew S. Johnson<br>Surveyor |
| THIS INSTRUMENT WAS DRAFTED BY:<br><b>PT S LAND SERVICES, INC.</b><br>COMPLETE LAND SURVEYING SERVICES  |             |           |                                      | DESIGNED<br>TRP<br>10/20/20 | CHECKED<br>TRP<br>11/12/20     |
| CERTIFICATE OF SURVEY:<br>P.O. LOT 1, BLOCK 1, MCD ADDITION<br>CITY OF FARIBAULT, RICE COUNTY, MN   |             |           |                                      | SHEET<br><b>2</b>           | OF<br><b>2</b>                 |