



## Request for Council Action

**TO:** Mayor and City Council

**THROUGH:** Planning Commission  
Tim Murray, City Administrator

**FROM:** Deanna Kuennen, Com & Econ Dev Director

**MEETING DATE:** January 26, 2021

**SUBJECT:** Resolution 2021-022 Approve Agreements Related to Hofmeister Third Addition

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### Background:

The City Subdivision Regulations require developers to enter into a Development Agreement with the City to address and articulate responsibilities for requirements specified in City Codes and State Statutes. The Development Agreement addresses requirements for wetland protection, stormwater management, parkland dedication fees, escrow requirements, platting requirements, title insurance, reimbursement of City costs associated with the subdivision application, and indemnification. No public improvements are proposed with the Hofmeister Third Addition and therefore are not included in the Development Agreement.

The key aspects of the Development Agreement are as follows:

- Payment of City Costs. The Developers have provided an escrow to reimburse the City for legal costs incurred in preparing/reviewing the plat and agreements.
- Parkland Dedication Fees. The Developers have paid the parkland dedication fee balances from the prior subdivision of the property as required by ordinances and as provided in prior agreements with the City. The principal amount of the parkland fees required for this subdivision have thereby been paid in full. The Agreement waives any interest or penalties that may have resulted from an error causing a delay in payment to the City.
- Wetlands. The site has designated wetlands area on the northeast portion. The Agreement acknowledges prior wetlands credits the Developers paid in 2013 and provides for the manner in which the wetlands setback and buffer requirements will be administered for future development on the site.

- Stormwater Management. The Development Agreement requires a Stormwater Maintenance Agreement to address City access and ongoing maintenance to stormwater facilities required for development.

The Developers have reviewed the Agreement and agree with the terms identified. The City Council is asked to approve the Development Agreement along with the required Stormwater Maintenance Agreement for the Hofmeister Third Addition.

**Recommendations:**

Adopt Resolution 2021-022 to Approve Agreements Related to Hofmeister Third Addition

**Attachments:**

- Resolution 2021-022
- Development Agreement
- Stormwater Maintenance Agreement

## **CITY OF FARIBAULT**

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### **RESOLUTION #2021-022**

#### **APPROVE AGREEMENTS RELATED TO HOFMEISTER THIRD ADDITION**

**WHEREAS**, the Faribault City Council, on January 26, 2021 approved Resolution 2021-021 for the approval of the Preliminary Plat and Final Plat of Hofmeister Third Addition; and

**WHEREAS**, as a condition of approval of said preliminary plat and final plat, Resolution 2021-021 requires Hofmeister Family Limited Partnership, a Minnesota Partnership, and A.M.H., LLC, a Minnesota Limited Liability Corporation and the 2000 Ruth A. Hofmeister Revocable Trust dated May 6, 2000 (collectively as the "Developer") to enter into a Development Agreement with the City; and

**WHEREAS**, as a condition of the aforementioned Development Agreement, the Developer is required to enter into a Stormwater Maintenance Agreement with the City; and

**WHEREAS**, the City in consultation with the Developer prepared the following draft agreements included in the following exhibits attached to this Resolution

1. Exhibit A: Hofmeister Third Addition Development Agreement,
2. Exhibit B: Stormwater Maintenance Agreement; and

**WHEREAS**, the Faribault City Council acknowledges that said Agreements are in a draft form that may require limited revisions before the execution and recording of said Agreements.

**NOW, THEREFORE BE IT RESOLVED**, that Faribault City Council hereby approves the draft Agreements included in both 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:** January 26, 2021

**Faribault City Council**

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**Kevin F. Voracek, Mayor**

**ATTEST:**

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**Timothy C. Murray, City Administrator**

**HOFMEISTER THIRD ADDITION  
DEVELOPMENT AGREEMENT**

THIS AGREEMENT is made this \_\_\_\_ of \_\_\_\_\_, 2021 by and between the CITY OF FARIBAULT, a Minnesota municipal corporation, the "City", and HOFMEISTER FAMILY LIMITED PARTNERSHIP, a Minnesota Partnership, and A.M.H., LLC, a Minnesota Limited Liability Corporation and THE 2000 RUTH A. HOFMEISTER REVOCABLE TRUST DATED MAY 6, 2000 (collectively as the "Developer").

**Recitals**

**WHEREAS**, the Developer is the fee owner of certain real property located in the City of Faribault, Rice County, Minnesota, (the "**Property**"), legally described in **Exhibit A**.

**WHEREAS**, the Developer shall plat the Property consistent with the preliminary and final plat of HOFMEISTER THIRD ADDITION (the "**Plat**"), approved by the City Council in Resolution No. 2021-021 (the "**Authorizing Resolution**") on January 26, 2021 which is set forth in **Exhibit B** and incorporated by reference to this Agreement as if fully set forth herein, subject to the conditions and requirements contained in the Authorizing Resolution, the Faribault City Code, this Agreement and state statutes.

**NOW, THEREFORE**, in consideration of the covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Terms of the Agreement**

ARTICLE ONE  
GENERAL PROVISIONS

1.01. 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  
REPRESENTATIONS AND WARRANTIES

2.01. 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.

2.02. Developer Representations and Warranties. The Developer makes the following representations as the basis for the undertakings on its part contained herein:

A. The Developer consists of a Minnesota Partnership, Trust and LLC.

B. The Developer has the right, power, and authority to execute, deliver, and perform its obligations under this Agreement. The Developer assures the City that the individuals who execute this Agreement on behalf of the Developer are duly authorized to sign on behalf of the Developer and to bind the Developer thereto.

C. The Developer is not in default under any lease, contract, or agreement to which it is a party or by which it is bound which would affect its performance under this Agreement. The Developer 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 Developer or prohibit any of the transactions provided for in this Agreement.

D. The Developer has 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 Developer is not aware of any pending or threatened claim of any such violation. Without limitation of the foregoing, the Developer expressly acknowledges and agrees that it 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 Developer or the Property. The Developer is 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 Developer or made in any exhibit hereto or memorandum or writing furnished or to be furnished by the Developer or on its behalf contains or will contain any untrue statement of material fact or omits any material fact, the omission of which would be misleading.

### ARTICLE THREE CONSTRUCTION OF IMPROVEMENTS

3.01. Public Improvements. There are no proposed Public Improvements.

The Developer shall obtain all necessary approvals from the City of Faribault for all construction in the Frederksen Drive and Airport Drive W right-of-way.

The Property is served by public sanitary sewer and watermain. No changes or improvements regarding public utilities are proposed as part of the Plat.

3.02. Site Improvements. Although no development is proposed with the approval of Hofmeister Third Addition plat, future development on site will be subject to the provisions of City Ordinances. The Developer shall obtain all necessary approvals and permits from the City of Faribault related to site improvements, including but not limited to, grading and building permits.

#### ARTICLE FOUR ADDITIONAL PROVISIONS

4.01. Platting Requirements. The Developer shall plat the Property consistent with the preliminary and final plat of HOFMEISTER THIRD ADDITION, approved by the City Council in Resolution No. 2021-021, on January 26, 2021, subject to the conditions and requirements contained in the Authorizing Resolution, the Faribault City Code, the City Attorney's plat opinion, this Agreement, and state statutes. Subject to the conditions and requirements contained in the Authorizing Resolution, the Faribault City Code, the City Attorney's plat opinion, this Agreement, and state statutes, the Developer shall finalize the plat of HOFMEISTER THIRD ADDITION and shall cause the final plat of HOFMEISTER THIRD ADDITION to be recorded with the Rice County Recorder/Registrar of Titles and provide the City with a reproducible Mylar copy of said plat and a digital copy of said plat in a format suitable to the City Engineer.

4.02. Payment of City Costs. The Developer, on June 30, 2020, (Receipt No. 00744840) provided a cash escrow in the amount of \$3000.00 to be used to reimburse the City its actual costs regarding: (i) preparing and administering this Agreement and all other documents, permits, and applications related to construction of the Improvements; (ii) processing the plat of Hofmeister Third Addition and subdivision approvals relating to the Property; and (iii) preparing and reviewing an environmental assessment worksheet (EAW) and environmental impact statement (EIS), if required. In addition to and without limitation of the foregoing, the costs to be reimbursed by the Developer to the City shall include, but not be limited to, attorneys fees, engineering fees, inspection fees, and the costs and fees of other technical and professional assistance (including but not limited to the cost of City staff time) incurred or expended by the City on activities arising out of this Agreement, the Improvements, and other undertakings related thereto. If such costs exceed the amount of the established escrow, the Developer shall, upon demand by the City, pay such additional costs to the City within ten (10) days of such demand, and provided further that the amount by which this deposit exceeds the City's actual costs, if any, shall be returned to the Developer.

In the event the City does not recover its costs under the provisions of this section, as an additional remedy, City may, at its option, assess the Property in the manner provided by Minnesota Statutes, Chapter 429, and Developer hereby consents to the levy of such special assessments without notice or hearing and waives its rights to appeal such assessments pursuant to Minnesota Statutes, Section 429.081, provided the amount levied, together with the funds deposited with the City under this paragraph, does not exceed the expenses actually incurred by the City. Further, the City may, at its option, as an additional remedy, recover expenses actually incurred by the City, in the manner provided by Minnesota Statutes, Section 415.01, 366.011 and

366.012, and the Developer hereby consents to the levy of such assessments without notice or hearing and waives its rights to appeal such assessments pursuant to such Minnesota Statutes, provided the amount levied, together with the funds deposited with the City under this section, does not exceed the expenses actually incurred by the City pursuant to this Agreement.

4.03. Attorney Fees. If the City employs attorneys for the enforcement of any obligation on the part of the Developer under this Agreement, and the City prevails in the action, the Developer agrees that it will pay to the City the reasonable fees of the attorneys so incurred by the City.

4.04. Amendment. Any amendment to this Agreement must be in writing and signed by both parties.

4.05. Assignment. The Developer may not assign any of its obligations under this Agreement without the prior written consent of the City.

4.06. Agreement to Run with Land. 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 Developer and its assigns or successors in interest. Notwithstanding the foregoing, no conveyance of the Property or any part thereof shall relieve the Developer of its liability for full performance of this Agreement unless the City expressly so releases the Developer in writing.

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

4.08. 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 developer: Dorothy E. Hofmeister  
Hofmeister Family Limited Partnership  
2345 West Old Shakopee Road  
Bloomington, MN 55431

Ann M. Hofmeister  
A.M.H., LLC  
2704 West Airport Drive  
Faribault, MN 55021

Ruth Ann Hofmeister  
The 2000 Ruth A. Hofmeister Revocable Trust  
Dated May 6, 2000  
511 Klineharts Alley  
Frederick, MD 21701

b) as to the City: Timothy C. Murray  
City Administrator  
City of Faribault  
208 NW 1<sup>st</sup> Avenue  
Faribault, MN 55021

with a copy to: Scott J. Riggs, City Attorney  
Kennedy & Graven, Chartered  
150 South Fifth Street, Suite 700  
Minneapolis, MN 55402

4.09. Park Dedications/Fees/Dedications. Parkland Dedication fee in lieu of land for this site was addressed in the Hofmeister Addition subdivision approval resolution and subdivision agreement in the amount of \$22,000.00. It is acknowledged that although the approval resolution and development agreement for the Hofmeister Second Addition plat indicated that Parkland Dedication fees were paid with the first addition, City Finance Department records indicated that a 24-month payment plan was established but not completed for payment of Parkland Dedication fees at that time. The first of three payments were received, but the City does not have record of receiving the two remaining payments which had a principal amount of \$7,333.33 each. The outstanding principal balance therefore is \$14,666.66. To address this matter, the City agrees to waive any interest costs and penalty fees for the balance of the parkland dedication fees remaining and the Developer agrees to pay the balance due in the amount of \$14,666.66 prior to recording the final plat for HOFMEISTER THIRD ADDITION.

4.10. Easement Dedication. The Developer expressly acknowledges and agrees that all easements and other rights in the Property necessary and related to the City's control over the public dedications (all of which shall be described in the plat required by the City's subdivision regulations), shall inure to the City upon the Developer's compliance with this Agreement and approval and recording of a final plat as set forth in the City's subdivision regulations.

4.11. Wetlands. A wetland delineation was conducted on the Property on September 16, 2020, by ISG. The wetland delineation report, wetland boundaries, and wetland types were approved by the Local Government Unit (Rice County Soil and Water Conservation District) on \_\_\_\_\_, 2020. A Minnesota Routine Assessment Method (MNRAM) shall not be required by the City in this case due to the prior mitigation of wetlands on the site. The City has determined the wetlands on the Property shall be regulated as "low quality" for the purpose of determining development buffers and setback standards. Pursuant to City of Faribault Code of Ordinances, Section 28-231, and Appendix B, Unified Development Regulations, Section 6-160, a fifteen (15) foot wetland

buffer strip and a fifteen (15) foot development setback from the outer edge of the wetland buffer strip apply. As required by the City Code of Ordinances and this Agreement, the Developer shall provide a conservation easement over the wetlands and wetland buffer strip in favor of the City. The Developer shall furnish and install, at the Developer's expense, conservation easement markers as per the City Code of Ordinances. The Developer is responsible for complying with all pertinent wetland regulations. Nothing herein shall prevent the Developer from seeking variances or further wetland mitigation should future development on the site require such applications.

4.12. Conservation Easement. The Developer shall establish a conservation easement (the "Conservation Easement") for the Property in the general form of **Exhibit C**, attached hereto and incorporated herein by reference, with the Conservation Easement affecting the area described and depicted in the Conservation Easement.

4.13. Parking and Storage. The Developer agrees to provide adequate parking and storage area for workers, equipment, construction materials, or other items associated with the improvements. The Developer shall submit a plan to the City that adequately depicts and defines contractor parking and all construction staging areas. All construction staging areas shall be further delineated on site with appropriate construction fencing.

4.14. City's Access. The Developer 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 said development.

4.15. Stormwater Operation and Maintenance Agreement.

A. The Developer shall construct stormwater facilities in conjunction with future improvements in compliance with all City requirements regarding such improvements in effect at the time of the future improvements. The stormwater facilities include, but are not limited to the ponds and all other improvements necessary to meet stormwater management regulatory requirements in effect at the time of the improvements.

B. Unless specifically noted otherwise, the future stormwater facilities serving the Plat will be private and will be maintained by the Developer at its sole expense. The Developer 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 Developer agrees to enter into a Stormwater Maintenance Agreement with the City in the general form attached hereto as **Exhibit D**. The purpose of the Stormwater Maintenance Agreement is to ensure that the Developer maintains the stormwater facilities and to give the City the right, but not the obligation to do so if the Developer fails in its obligations. The Stormwater Maintenance Agreement will be recorded against the land within the Plat and will run with the land. The Developer acknowledges that i) the future 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 Developer will have responsibility for such work; iii) maintenance work shall be considered routine and shall be 100% the responsibility of

the Developer; iv) when non-routine maintenance work is proposed, the Developer 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 Developer 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 Developer agrees 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 future stormwater facilities and that the Developer 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 Developer 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.

4.16. Disclaimer of Relationships. The Developer acknowledges that nothing contained in this Agreement nor any act by the City or the Developer shall be deemed or construed by the Developer 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 Developer.

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

4.18. 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.

4.19. 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 Developer, the Developer's successors or assigns, the Developer's 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. The Developer, and the Developer's 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 shall survive termination of this Agreement and shall be binding on the Developer regardless of the enforceability of any other provision of this Agreement.

4.20. Developer's Default. In the event of default by the Developer as to any work or undertaking required by this Agreement, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City. This Agreement is a license for the City to act, and it shall not be necessary for the City to seek an order from any court for permission to enter the Property for such purposes. If the City does any such work, the City may, in addition to its other remedies, levy special assessments against the lots within the subdivision to recover the costs thereof. For this purpose, the Developer, for itself and its successors and assigns, expressly waives any and all procedural and substantive objections to the special assessments, including, but not limited to, hearing requirements and any claim that the assessments exceed the benefit to the land so assessed. The Developer, for itself and its successors and assigns, also waives any appeal rights otherwise available pursuant to Minnesota Statutes Section 429.081, provided the amount levied does not exceed the expenses actually incurred by the City. Further, the City may, at its option, as an additional remedy, recover expenses actually incurred by the City, in the manner provided by Minnesota Statutes, Section 415.01, 366.011 and 366.012, and the Developer hereby consents to the levy of such assessments without notice or hearing and waives its rights to appeal such assessments pursuant to such Minnesota Statutes, provided the amount levied does not exceed the expenses actually incurred by the City pursuant to this Agreement.

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

4.22. Building Permits. Approval of the Plat does not include approval of a building permit for any structures on the Property. The Developer 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 Plat. The Developer 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.

4.23. City Attorney Review; Title Work/Title Commitment. Prior to recording the Plat with Rice County, the Developer 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 Developer's compliance with this provision. The Developer 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 Developer provides the City with an Owner's Policy of Title Insurance, the Developer'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 Developer has provided the City with the Owner's Policy of Title Insurance to the satisfaction of the City Attorney. Further, the Developer 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.

4.24. Plat Modifications and Revisions. The Parties acknowledge that various potential modifications and revision issues associated with the Plat may need to occur. The Developer agrees to undertake, assist with, and resolve such issues as directed by the City. The Developer 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.

4.25. Property Monumentation. The Developer agrees 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.

4.26. Miscellaneous Provisions.

A. The Developer represents to the City that the subdivision and the Plat comply with all city, county, state, and federal laws and regulations including, but not limited to: subdivision ordinances and zoning ordinances. If the City determines that the subdivision or the Plat does not comply, the City may, at its option, refuse to allow construction or development work on the Property until the subdivision or the Plat does comply. Upon the City's demand, the Developer shall cease work until there is compliance. Upon the City's demand, the Developer shall correct any and all errors contained in the Plat, including but not limited to legal descriptions, names of parties in interest, depictions, etc., solely at the cost of the Developer; further, the Developer shall take all necessary actions such that the Plat will be in compliance with existing laws, ordinances, pertinent regulations, standards, and specifications of the City, solely at the cost of the Developer.

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

C. Breach of the terms of this Agreement by the Developer 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. 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.

F. 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.

G. 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.

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

I. Upon the Developer's compliance with the Agreement and recording of the Plat, the City agrees to execute and record a Certificate of Completion in the form attached hereto as **Exhibit E**.

*[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 \_\_\_\_\_, 2021, 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 City.

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

**DEVELOPER -1**  
Hofmeister Family Limited Partnership

By: \_\_\_\_\_  
Dorothy E. Hofmeister  
Its: General Partner

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by Dorothy E. Hofmeister, General Partner, Hofmeister Family Limited Partnership as the Developer, pursuant to this Agreement.

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

**Developer -2**  
A.M.H., LLC

By; \_\_\_\_\_  
Ann M. Hofmeister  
Its: Chief Manager

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by Ann M. Hofmeister, Chief Manager of A.M.H., LLC a Minnesota Limited Liability Corporation, pursuant to this Agreement.

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

**Developer - 3**

The 2000 Ruth A. Hofmeister Revocable Trust

Dated May 6, 2020

By; \_\_\_\_\_

Ruth Ann Hofmeister

Its: Trustee

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by Ruth Ann Hofmeister, Trustee, of The 2000 Ruth A. Hofmeister Revocable Trust dated May 6, 2000, pursuant to this Agreement.

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

This document drafted by:

Planning Division (P JW)  
City of Faribault  
208 NW 1<sup>st</sup> Avenue  
Faribault, MN 55021  
507-334-0374

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

Parcel 1:

Lot 2, Block 1, Hofmeister Second Addition. Rice County, Minnesota.

Parcel 2:

Lot 3, Block 1, Hofmeister Second Addition, Rice County, Minnesota.

Parcel 3:

Outlot A, Hofmeister Second Addition, Rice County, Minnesota.

**EXHIBIT B**  
**RESOLUTION 2021-021**

**[Insert Resolution]**

**EXHIBIT C**

**FORM OF CONSERVATION EASEMENT**

**[Insert Form of Conservation Easement]**

**EXHIBIT D**

**FORM OF STORWATER MAINTENANCE AGREEMENT**

**[Insert Form of Stormwater Maintenance Agreement]**

**EXHIBIT E**

**FORM OF CERTIFICATE OF COMPLETION**

Certificate of Completion

The undersigned hereby certifies that HOFFMEISTER FAMILY LIMITED PARTNERSHIP, a Minnesota Partnership, and A.M.H., LLC, Minnesota Limited Liability Corporation and THE 2000 RUTH A. HOFMEISTER REVOCABLE TRUST DATED May 6, 2000 (collectively, the “Developer”), has fully complied with its obligations under the Development Agreement dated \_\_\_\_\_, 2020 (the “Agreement”) with the City of Faribault, which was recorded with the County Recorder of Rice County, Minnesota on \_\_\_\_\_, 2021 as Document Number \_\_\_\_\_.

Dated: \_\_\_\_\_, 20\_\_.

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 \_\_\_\_\_, 202\_\_, 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 City.

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

**EXAMPLE**

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**STORMWATER MAINTENANCE AGREEMENT**

**THIS AGREEMENT** (the “Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by and between the City of Faribault, a Minnesota municipal corporation (the “City”) and [REDACTED] under the laws of the state of Minnesota (the “Owner”).

**WITNESSETH:**

**WHEREAS**, the Owner is the fee owner of certain real property located in Rice County, Minnesota, which parcels are legally described on Exhibit A attached hereto (collectively, the “Property”); and

**WHEREAS**, the Owner has agreed to construct and maintain certain stormwater facilities (the “Stormwater Improvements”) for the benefit of the Property; and

**WHEREAS**, the Stormwater Improvements which are the subject of this Agreement include, but are not limited to a stormwater basin, stormwater drainage structures, vegetated swales, and accompanying structures. The location of the Stormwater Improvements are shown on final approved plans dated [REDACTED] as on file with the City of Faribault and last revision date [REDACTED] and as shown on Exhibit B attached hereto; and

**WHEREAS**, the City requires permanent provisions for handling of stormwater runoff, including terms and conditions for operation and maintenance of all Stormwater Improvements, and requires such provisions to be set forth in an agreement to be recorded against the Property; and

**WHEREAS**, the City and the Owner intend to comply with certain conditions, including entering into this Agreement regarding the operation and ongoing maintenance of the Stormwater Improvements.

**NOW, THEREFORE**, in consideration of the mutual covenants of the parties set forth herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Maintenance of the Stormwater Improvements. The Owner, for itself and its

successor or assigns, agrees to maintain the Stormwater Improvements to retain the design performance capacity and observe all drainage laws governing the operation and maintenance of the Stormwater Improvements. The Owner shall make periodic inspection and perform maintenance of the Stormwater Improvements as described in Exhibit C attached hereto. The Owner shall make all such scheduled inspections and maintenance, keep record of all inspections and maintenance activities, and submit such records annually to the City. The cost of all inspections and maintenance, including debris removal and vegetation restoration of the Stormwater Improvements, shall be the obligation of the Owner and its successors or assigns as the fee owner of the Property.

2. City's Maintenance Rights. The City may, but shall not be obligated to, maintain the Stormwater Improvements, as provided in this paragraph, if the City reasonably believes that the Owner or its successors or assigns has failed to maintain the Stormwater Improvements such that the Stormwater Improvements are not operating as designed in accordance with applicable drainage laws and other requirements and such failure continues for 30 days after the City gives the Owner written notice of such failure or, if such tasks cannot be completed within 30 days, after such time period as may be reasonably required to complete the required tasks provided that Owner is making a good faith effort to complete said task. The City's notice shall specifically state which maintenance tasks are to be performed. If Owner does not complete the maintenance tasks within the required time period after such notice is given by the City, the City shall have the right to enter upon such portions of the Property as may reasonably be necessary to gain access to perform such maintenance tasks. In such case, the City shall send an invoice of its reasonable maintenance costs to the Owner or its successors or assigns, which shall include all reasonable staff time, engineering and legal and other reasonable costs and expenses incurred by the City. If the Owner or its successors or assigns fails to reimburse the City for its costs and expenses in maintaining the Stormwater Improvements within 30 days of receipt of an invoice for such costs, the City shall have the right to assess the full cost thereof against the Property. The Owner, on behalf of itself and its successors and assigns, acknowledges that the maintenance work performed by the City regarding the Stormwater Improvements benefits the Property in an amount which exceeds the assessment and hereby waives any right to hearing or notice and the right to appeal the assessments otherwise provided by Minnesota Statutes, Chapter 429. The Owner hereby consents to the levy of such special assessments without notice or hearing and waives its rights to appeal such assessments pursuant to Minnesota Statutes, Section 429.081, provided the amount levied, does not exceed the expenses actually incurred by the City. Further, the City may, at its option, as an additional remedy, recover expenses actually incurred by the City as service charges, in the manner provided by Minnesota Statutes, Section 415.01, 366.011 and 366.012, and the Owner hereby consents to the levy of such assessments without notice or hearing and waives its rights to appeal such assessments pursuant to such Minnesota Statutes, provided the amount levied, does not exceed the expenses actually incurred by the City pursuant to this Agreement. Notwithstanding the foregoing, in the event of an emergency, as determined by the city engineer, the 30-day notice requirement to the Owner for failure to perform maintenance tasks shall be and hereby is waived in its entirety by the Owner, and the Owner shall reimburse the City and be subject to assessment for any expense so incurred by the City in the same manner as if written notice as described above has been given.

3. Hold Harmless. The Owner hereby agrees to indemnify and hold harmless the City and its agents and employees against any and all claims, demands, losses, damages, and expenses (including reasonable attorneys' fees) arising out of or resulting from the Owner's, or the Owner's

agents' or employees' negligent or intentional acts, or any violation of any safety law, regulation or code in the performance of this Agreement, without regard to any inspection or review made or not made by the City, its agents or employees or failure by the City, its agents or employees to take any other prudent precautions. In the event the City, upon the failure of the Owner to comply with any conditions of this Agreement, performs said conditions pursuant to its authority in this Agreement, the Owner shall indemnify and hold harmless the City, its employees, agents and representatives for its own negligent acts in the performance of the Owner's required work under this Agreement, but this indemnification shall not extend to intentional or grossly negligent acts of the City, its employees, agents and representatives.

4. Costs of Enforcement. The Owner agrees to reimburse the City for all costs prudently incurred by the City in the enforcement of this Agreement, or any portion thereof, including court costs and reasonable attorneys' fees.

5. Rights Not Exclusive. No right of the City under this Agreement shall be deemed to be exclusive and the City shall retain all rights and powers it may have under Minnesota Statutes, sections 444.16 to 444.21 to acquire, construct, reconstruct, extend, maintain and otherwise improve the Stormwater Improvements.

6. Notice. All notices required under this Agreement shall either be personally delivered or be sent by United States certified or registered mail, postage prepaid, and addressed as follows:

a) as to Owner:

b) as to City: City of Faribault  
208 NW First Avenue  
Faribault, MN 55021-5105  
Attn: City Administrator

with a copy to: Scott J. Riggs  
Kennedy & Graven  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

or at such other address as either party may from time to time notify the other in writing in accordance with this paragraph.

7. Successors and Assigns. All duties and obligations of Owner under this Agreement shall also be duties and obligations of Owner's successors and assigns. The terms and conditions of this Agreement shall run with the Property.

8. Effective Date. This Agreement shall be binding and effective as of the date first written above.



**CITY OF FARIBAULT**

By: \_\_\_\_\_  
          , Mayor

By: \_\_\_\_\_  
          , City Administrator

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF RICE         )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_, the mayor and the city administrator, respectively, of the City of Faribault, a Minnesota municipal corporation, by and on behalf of the municipal corporation.

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

This instrument drafted by:

City of Faribault Engineering Department  
1200 Belview Trail  
Faribault, MN 55021

*(Remainder of page left intentionally blank)*

**EXAMPLE**

**EXHIBIT A TO  
STORMWATER MAINTENANCE AGREEMENT**

**Legal Description of the Property**

**PID**

**Legal Description**

**EXAMPLE**

**EXHIBIT B TO  
STORMWATER MAINTENANCE AGREEMENT  
Depiction of Location of Stormwater Improvements**

**EXAMPLE**

**EXHIBIT C TO  
STORMWATER MAINTENANCE AGREEMENT**

**Inspection and Maintenance Schedule**

Inspection and maintenance shall be made consistent with the inspection schedule and checklist below, or with the most recent version of the Minnesota Stormwater Manual or other subsequent manual(s) as dictated by the City.