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## PERMANENT ACCESS, DRAINAGE AND TRAIL EASEMENT

This Easement Agreement ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2024, between \_\_\_\_\_ [NewCo], LLC, a limited liability company organized under the laws of the State of Minnesota, 110 3rd Street East, Suite A, Northfield, MN 55057 ("Grantor") and the City of Northfield, Minnesota, a municipal corporation organized under the laws of the State of Minnesota, 801 Washington Street, Northfield, MN 55057 ("Grantee" and collectively with Grantor, the "Parties").

WHEREAS, Grantor is the fee owner of that certain real property described on Exhibit A attached hereto (the "Grantor Property").

### AGREEMENT

For and in consideration of the sum of One Dollar and No/100ths Dollars (\$1.00) and other good and valuable consideration, paid this date by Grantee to Grantor, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Grant of Easement.** Grantor hereby grants and conveys to Grantee a permanent limited, non-exclusive easement for those stated purposes specified in Section 2 below, over, under and across that portion of the Grantor Property that is legally described on Exhibit B attached hereto and incorporated herein, and depicted on Exhibit C attached hereto and incorporated herein (the "Easement Area").
2. **Purpose of Easement.** The Easement Area shall be used by Grantee solely for: (a) emergency vehicle access, (b) stormwater drainage, and (c) public pedestrian and bicycle trail purposes. No other uses of the Easement Area are permitted under this Agreement, and all other right, title and interest in and to the Grantor Property and the Easement Area is reserved to Grantor, provided the same do not interfere with the rights and uses herein granted to Grantee.
3. **Term and Termination.** The easement granted herein with respect to the Grantor Property shall commence on the date hereto and shall continue forever in perpetuity, except as provided below. If Grantor determines that Grantee has abandoned the use of the Easement Area based upon Grantee's (or other permitted users of the Easement Area) non-use of the Easement Area for a continuous period of more than one year, Grantor may make a written request to Grantee pursuant to Northfield City Charter, Section 15.6, to vacate the easement through adoption of the required ordinance and recording a notice of completion. Upon completion of the vacation process and recording a notice of completion by Grantee, the easement shall be vacated and this agreement terminated effective the date of recording the notice of completion. Within 90 days of the termination of this Agreement for any reason, Grantee shall at its expense, timely clean up the Easement Area in a workmanlike manner and

remove all Improvements and materials it has placed thereon or thereunder, and restore the Easement Area to substantially the same condition as it was immediately prior to commencing its use of the Easement Area. Grantor acknowledges and agrees that the Easement Area is now and may continue to be used by Grantee for passive stormwater runoff from the Grantor Property, and adjacent public-right-of-way and other properties, and that Grantor's exercise of its rights under this Section 3 are expressly subject to such use. The restoration obligations of the parties hereunder shall survive the termination of this Agreement.

4. **Grantor Covenants.** Grantor covenants that Grantor: (a) is the lawful owner of the Easement Area, (b) has good and lawful right to grant the easement described herein; and (c) shall not erect, construct or locate in the Easement Area any new structure or object that was not in existence on the date of this Permanent Easement, which would prevent Grantee's reasonable access to the Easement Area or prevent Grantee's or public's full enjoyment of the rights granted hereunder, without the written consent of Grantee.
5. **Improvements.** Grantee shall have the right at its sole cost and expense, to (a) construct, excavate, grade, inspect, install, remove, demolish, operate, maintain, place, replace, reconstruct, improve, enlarge, and repair, as Grantee may find reasonably necessary, facilities and improvements in the Easement Area, to enable Grantee to use the Easement Area for the purposes set forth in Section 2 (collectively, "Improvements"); and (b) conduct activities in the Easement Area that are consistent with Grantee's use and work for the purposes permitted by Section 2. Grantee and its employees, agents, permittees and licensees shall have the right of ingress and egress over and through the Easement Area, including but not limited to ingress and egress in the Easement Area for equipment, materials, supplies and vehicles by such route as shall occasion the least practical damage and inconvenience to Grantor. Grantee at its sole cost and expense, shall be responsible for all costs and expenses related to the repair, operation and maintenance of any and all Improvements located in the Easement Area. Grantee has complete and sole ownership and control of the Improvements constructed in the Easement Area in accordance with the grant of rights conveyed herein.
6. **Maintenance.** Grantee shall have the right to trim, remove and keep the Easement Area clear of all objects, structures, roots, shrubbery, trees, bushes, undergrowth and similar obstructions that may interfere with or endanger Grantee's exercise of any of its rights pursuant to this Agreement. All Improvements installed by Grantee shall be operated and maintained at Grantee's sole cost, in accordance with: (a) all applicable laws, rules, and regulations, and (b) the commonly accepted best practices of the industry. If any damage or disruption shall occur on any portion of the Grantor Property that is not included within the Easement Area, or the Improvements located on or under the Easement Area a result of Grantee's activities thereon, then Grantee shall at its cost and expense, immediately restore the damaged parcel and improvements located thereon to the same condition as they existed immediately prior to commencing such work. Grantee shall restore, at Grantees' expense, disturbed areas within the Easement Area back to as close to original condition, or the condition as altered for the purposes provided herein, as in Grantee's judgment is reasonably practicable given the rights granted hereunder following any Grantee work or construction of Improvements within the Easement Area. Grantee shall give all necessary notices and obtain all required permits, licenses, and approvals and shall comply and ensure that all of its employees, agents, contractors, subcontractors, invitees, and suppliers comply with all applicable federal, state and local laws, ordinances, governmental rules and regulations relative to the Improvements.
7. **Notification; Timely Repairs.** Prior to Grantee commencing any work requiring excavation or grading in the Easement Area, Grantee shall provide Grantor with advance written notice of such proposed work, except in the case of emergencies. Grantee will: (i) consult with Grantor to coordinate the performance of such work in a manner that minimizes inconvenience to Grantor and minimizes

interruption of Grantor's business; (ii) promptly perform the work in a timely and efficient manner consistent with Grantor's reasonable coordination requests specified in part (i) above; and (iii) after completion of said work, as soon as reasonably practicable, but in no event longer than 5 days, return all portions of the Easement Area affected by such work to the same condition that existed prior to such work by Grantee or to the altered condition of the Easement Area for permitted Improvements.

8. **Default and Remedies.** The following shall constitute an event of default under this Agreement: a Party defaults in any manner under this Agreement and fails to cure such default within ten (10) days after receiving written notice of the default from the other Party, except that this ten day period shall be extended for a reasonable period of time if the alleged default is not reasonably capable of cure within said ten day period and the defaulting Party: (i) proceeds to diligently cure the default, and (ii) keeps the non-defaulting Party informed of the progress in curing the default. If the defaulting Party fails to cure the default within such 10 day period or extended cure period, the non-defaulting party may exercise one or more of the following remedies: (iii) cure the default and charge the cost thereof to the defaulting Party, and all such costs shall be payable upon demand; and / or (iv) institute an action for specific enforcement, injunctive relief, damages, or any other remedy available at law or in equity. Any action seeking one or more forms of relief shall not be a bar to an action at the same or subsequent time seeking other forms of relief. Any delay in realizing, or failure to realize, on any remedy herein for a default hereunder shall not be deemed a waiver of that default or any subsequent default of a similar or different kind, and no waiver of any right or remedy hereunder shall be effective unless in writing and signed by the person against whom the waiver is claimed.

9. **Liens and Encumbrances.** Grantee shall keep the Easement Area free of all liens and encumbrances, including mechanic's liens, arising out of Grantee's interest in or activities on the Easement Area, and shall indemnify, defend, and hold Grantor harmless from the same.

10. **Indemnification and Hold Harmless.**

- a. Definitions. As used in this Agreement, the term: (i) "Claims" means: (1) losses, liabilities, and expenses of any sort, including attorneys' fees; (2) fines and penalties; (3) environmental costs, including but not limited to, investigation, removal, remedial, and restoration costs, and consultant and other fees and expenses; and (4) any and all other costs or expenses; and (ii) "Injury" means: (1) death, personal injury, or property damage; (2) loss of profits or other economic injury; (3) disease or actual or threatened health effect; and (4) any consequential or other damages.
- b. By Grantee. Grantee covenants and agrees to at all times release, protect, indemnify, defend, and hold harmless Grantor, its directors, officers, agents, employees, successors, assigns, subsidiaries, and affiliates from and against any and all Claims arising from, alleged to arise from, or related to any Injury allegedly or actually occurring, imposed as a result of, arising from, or related to: (i) Grantee's use of the Easement Area; or (ii) the existence, maintenance, operation, repair, inspection, removal, replacement, or relocation of the Improvements, whether by Grantee or its employees or contractors. Notwithstanding the foregoing, Grantee shall have no indemnification obligation to Grantor when such Injury or Claim is caused by: (1) the negligent acts or intentional misconduct of Grantor, its officers, employees, contractors, or subcontractors, or (2) any other non-exclusive easement holder. Nothing in this Agreement shall be construed to waive any immunities or limitations to which Grantee is entitled under Minn. Stat. Chapter 466 or otherwise.
- c. Survival. This Section 10 shall survive termination of the Agreement for four years following the date of termination.

11. **Binding on Successors.** The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto, and all covenants shall apply to and run with the land.
12. **Hazardous Materials.** Grantee shall not bring (or permit the bringing) onto the Easement Area or the Grantor Property any hazardous or toxic substance or material regulated by the State of Minnesota, the United States government, or any other government authority with applicable jurisdiction ("Hazardous Materials"), except as reasonably necessary for Grantee to exercise the rights permitted herein, including but not limited to operation, maintenance, repair and replacement of the Improvements. If Grantee brings (or permits the bringing) Hazardous Materials onto the Easement Area or the Grantor Property (with or without permission of Grantor), Grantee shall: (i) comply with all applicable laws, ordinances, and regulations of federal, state, and local governmental agencies related to such Hazardous Materials; (ii) remove such Hazardous Materials from the Easement Area immediately upon request of Grantor; and (iii) bear all costs and expenses related to environmental investigation, cleanup, removal, or restoration of any water, air, groundwater, natural resources, soil, or land, including but not limited to, the Easement Area and the Grantor Property, incurred as a result of the presence of such Hazardous Materials on the Easement Area or the Grantor Property, or arising out of the acts or omissions of Grantee, its employees, Grantee's agents, contractors, subcontractors, invitees, suppliers and other agents of Grantee.
13. **Notices.** Any notice or other communication required or permitted under this instrument must be in writing and may be given by: (a) personal delivery, or (b) deposit with any nationally recognized overnight carrier that routinely issues receipts, addressed to the Party for whom it is intended at its address set forth above. Any such notice shall be deemed delivered upon (but not until) receipt or refusal of receipt. Either Party may change its address for notices by giving 10 days prior written notice of such change to the other Party in a manner set forth above.
14. **General Provisions.** This Agreement: (a) may be amended only by a written amendment signed by both parties; (b) shall be construed in accordance with and governed by the laws of the State of Minnesota; and (c) may be executed in two original counterparts, each of which shall be deemed an original of this instrument. Nothing in this Agreement shall be interpreted or construed as a partnership or joint venture between Grantor and Grantee. The section headings herein are inserted only for convenience and reference and shall in no way define, limit, or prescribe the scope or intent of any provisions of this Agreement. Time is of the essence in this Agreement.
15. **Recording.** This Agreement shall be recorded as soon as practicable following its full execution with the understanding that if at the time of or following recording there is a mistake discovered regarding an exhibit hereto, including any mistakes or discrepancies revealed by an accurate survey of the Easement Area, then Grantor and Grantee agree to accordingly correct and replace the applicable erroneous exhibit.

*[Remainder of page intentionally left blank]*

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**GRANTEE:**

CITY OF NORTHFIELD, MINNESOTA

By: \_\_\_\_\_  
Rhonda Pownell, Its Mayor

**ATTEST:**

By: \_\_\_\_\_  
Lynette Peterson, Its City Clerk

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF RICE         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024, by Rhonda Pownell, as Mayor, and Lynette Peterson, as City Clerk, on behalf of the City of Northfield, a municipal corporation organized under the laws of the State of Minnesota, Grantee.

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

**THIS INSTRUMENT WAS DRAFTED BY:**

FLAHERTY & HOOD, P.A.  
525 Park Street, Suite 470  
St. Paul, MN 55103  
(651) 225-8840

**EXHIBIT A**

**LEGAL DESCRIPTION OF GRANTOR PROPERTY**

The real property referenced in this Permanent Easement is legally described as follows:

**LEGAL DESCRIPTION:**

*[Legal description of the Grantor Property to be determined and inserted following subdivision of the Grantor Property.]*

**EXHIBIT B**

**LEGAL DESCRIPTION OF PERMANENT EASEMENT**

**LEGAL DESCRIPTION:**

*[Legal description of a 20 foot wide easement over the northern 20 feet of the Grantor Property will be determined and inserted following subdivision of the Grantor Property.]*



**EXHIBIT C**

**DEPICTION OF PERMANENT EASEMENT**

*[Depiction of a 20 foot wide easement over the northern 20 feet of the Grantor Property will be drawn and inserted following subdivision of the Grantor Property.]*