

JOINT RESOLUTION AMENDING THE JOINT RESOLUTION AS TO
ORDERLY ANNEXATION BETWEEN THE CITY OF ST. CLOUD AND
THE TOWN OF ST. AUGUSTA.

WHEREAS, the Town of St. Augusta ("Town") and City of St. Cloud ("City") have adopted a Joint Resolution as to orderly annexation dated August 19, 1974 ("Orderly Annexation Resolution") which calls for the orderly annexation of certain areas of the Town by the City, which area includes the following described property ("Subject Property"):

(i) Parcel 1: That part of the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ of NW $\frac{1}{4}$), Section One (1), Township One Hundred Twenty-three (123) North, Range Twenty-eight (28) West, Stearns County, Minnesota, described as follows:

Commencing at the southeast corner of said Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ of NW $\frac{1}{4}$); thence North 89 degrees 05 minutes 19 seconds West on an assumed bearing along the south line of said Southeast Quarter of the Northwest Quarter (SW $\frac{1}{4}$ of NW $\frac{1}{4}$) 49.18 feet to its intersection with the right-of-way line drawn from monument B8 to monument B9 of State Highway Right of Way Plat No. 73-31, according to the recorded plat thereof for the point of beginning of the land to be described; thence continuing North 89 degrees 05 minutes 19 seconds West, along said south line 530.79 feet, more or less to its intersection with the right-of-way line drawn from monument B12 to monument B13 of said plat; thence North 29 degrees 17 minutes 19 seconds West, along said right-of-way line 87.98 feet, more or less to said monument B12; thence North 13 degrees 40 minutes 12 seconds East, along said right-of-way line 573.02 feet to its intersection with the southeasterly line of Parcel 49 of said plat; thence North 63 degrees 18 minutes 41 seconds East, along said southeasterly line 109.03 feet to the most easterly corner of said Parcel 49; thence North 26 degrees 41 minutes 19 seconds West, along the northeasterly line of said Parcel 49, a distance of 65.01 feet, more or less to its intersection with the right-of-way line drawn from monument B11 to monument B10 of said plat; thence North 68 degrees 52 minutes 20 seconds East, along said right-of-way line 59.93 feet, more or less to said monument B10; thence southeasterly and southerly 765.58 feet, along said right-of-way line and along a non-tangential curve concave to the southwest, having a radius of 768.51 feet and a central angle of 57 degrees 04 minutes 38 seconds, the chord of said curve bears South 25 degrees 47 minutes 26 seconds East, to monument B9 of said plat; thence South 02 degrees 44 minutes 53 seconds West 109.58 feet to the point of beginning. Subject to easements of record. Containing 7.30 acres (317,943 square feet); and

(ii) Parcel 2: That part of the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ of NW $\frac{1}{4}$) and of the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ of NW $\frac{1}{4}$) and of Government Lot One (1) and of Government Lot Two (2), Section One (1), Township One Hundred Twenty-three (123) North, Range Twenty-eight (28) West, Stearns County, Minnesota, described as follows:

Commencing at the north quarter corner of said Section One (1); thence North 88 degrees 59 minutes 12 seconds West on an assumed bearing along the north line of said Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ of NW $\frac{1}{4}$) 1131.72 feet to the northeast corner of Parcel 257 of State Highway Right of Way Plat No. 73-31, according to the recorded plat thereof; thence South 25 degrees 41 minutes 03 seconds East, along the easterly right-of-way line of said State Highway Right of Way Plat No. 73-31, a distance of 1015.13 feet to the point of beginning of the land to be described; thence continue South 25 degrees 41 minutes 03 seconds East, along said easterly right-of-way line 42.00 feet to monument B1 of said plat; thence South 12 degrees 30 minutes 22 seconds East, along said easterly right-of-way line 381.25 feet to monument B2 of said plat; thence South 03 degrees 12 minutes 14 seconds East, along said easterly right-of-way line 523.07 feet to monument B3 of said plat; thence southeasterly and southerly 1003.14 feet, along said easterly right-of-way line and along a non-tangential curve concave to the southwest, having a radius of 868.51 feet and a central angle of 66 degrees 10 minutes 38 seconds, the chord of said curve bears South 30 degrees 20 minutes 26 seconds East, to monument B5 of said plat; thence South 02 degrees 44 minutes 53 seconds West, along said easterly right-of-way line 91.37 feet to its intersection with a line 15.00 feet North of as measured at a right angle to and parallel with the south line of said Government Lot Two (2); thence east, along said parallel line to its intersection with the east line of said Government Lot Two (2); thence North, along the east line of said Government Lot Two (2) to the shoreline of the Mississippi River; thence northwesterly, northerly, northeasterly, northerly, and northwesterly, along said shoreline to its intersection with a line bearing South 89 degrees 05 minutes 19 seconds East from the point of beginning; thence North 89 degrees 05 minutes 19 seconds West 1743 feet, more or less to the point of beginning. Subject to easements of record. Containing 60.0 acres, more or less;

WHEREAS, the Orderly Annexation Resolution provides for the annexation of areas within the specified area of the Town through adoption of a Joint Resolution amending the Orderly Annexation

Resolution to allow annexation of portions of the area designated in the Orderly Annexation Resolution to the City;

WHEREAS, the Town and City have been presented with a request for annexation of the Subject Property to the City so that the Subject Property may be provided certain municipal services unavailable in the Town which will allow it to more fully develop and enhance the general welfare of the residents of the City and the Town;

WHEREAS, the Subject Property is about to become urban or suburban in character and the Town and the City are capable of providing municipal services thereto;

WHEREAS, the Town and the City find that it is in the public interest to allow annexation of the Subject Property to the City in accordance with the terms and conditions contained in a Joint Powers Agreement, a copy of which is attached hereto as Exhibit "A";

NOW, THEREFORE, be it resolved jointly by the Town Board of Supervisors for the Town of St. Augusta, Minnesota, and the City Council for the City of St. Cloud, Minnesota, as follows:

1. The Orderly Annexation Resolution is hereby amended to provide for annexation of the Subject Property to the City conditioned upon the City and Town approving and entering into the Joint Powers Agreement, a copy of which agreement is attached hereto as Exhibit "A." No consideration by the Minnesota Municipal Board as to annexation of the Subject Property is necessary, and upon receipt of this Resolution and a fully executed copy of the Joint Powers Agreement, the Minnesota Municipal Board is hereby authorized to review and comment but shall, within thirty (30) days, order the annexation of the Subject Property.

2. The Town and City do hereby approve the Joint Powers Agreement in the form attached hereto as Exhibit "A" and authorize the Chairman and Town Clerk to execute the agreement on behalf of the Town and the Mayor and City Clerk to execute the agreement on behalf of the City.

3. The Orderly Annexation Resolution, as amended hereby, shall remain in full force and effect except to the extent it is inconsistent with the terms of this Resolution.

4. The Town Clerk and City Clerk are hereby authorized and directed to file a fully executed copy of this Resolution, each with the other, and, upon execution by the City and Town and approval by third parties as specified therein of the Joint Powers Agreement and approval of the zoning and plat for the Subject Property by the City as provided therein, are hereby authorized and, upon submission of evidence satisfactory to the Town and City that all contingencies to the purchase of the Subject Property from the First American National Bank as Trustee of the Frank A. Laudenbach Trust by Hospitality Development Corporation have been removed, are directed to file a copy of this Resolution with the Minnesota Municipal Board.

This Resolution adopted by the Town Board of Supervisors this 15 day of Sept, 1987.

Attested:

TOWN OF ST. AUGUSTA, MINNESOTA

By L. Roy Ramacher
Town Clerk

By Albert Keppers
Chairman, Board of Supervisors

This Resolution adopted by the City Council this 21st day of September, 1987.

Attested:

CITY OF ST. CLOUD, MINNESOTA

By [Signature]
City Clerk

By [Signature]
Its Mayor

EXHIBIT A

JOINT POWERS AGREEMENT

This Agreement is made and entered into as of the ____ day of _____, 1987, by and between the CITY OF ST. CLOUD, a Municipal Corporation organized and existing pursuant to the laws of the State of Minnesota ("City"), and the TOWN OF ST. AUGUSTA, an organized township organized and existing pursuant to the laws of the State of Minnesota ("Town").

RECITALS:

A. The City and Town are public bodies, corporate and politic, organized and existing pursuant to the laws of the State of Minnesota which are authorized pursuant to Minnesota Statutes Section 471.59 to enter into joint powers agreements for the purposes of cooperating in the undertaking of certain activities which promote the general welfare of their respective jurisdictions;

B. First American National Bank as Trustee of the Frank Laudenbach Trust and Hospitality Development Corporation, a Minnesota Business Corporation ("hereinafter collectively referred to as "HDC") has approached the Town and City concerning the annexation of the following described property ("Subject Property") into the City:

(i) Parcel 1: That part of the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ of NW $\frac{1}{4}$), Section One (1), Township One Hundred Twenty-three (123) North, Range Twenty-eight (28) West, Stearns County, Minnesota, described as follows:

Commencing at the southeast corner of said Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ of NW $\frac{1}{4}$); thence North 89 degrees 05 minutes 19 seconds West on an assumed bearing along the south line of said Southeast Quarter of the Northwest Quarter (SW $\frac{1}{4}$ of NW $\frac{1}{4}$) 49.18 feet to its intersection with the right-of-way line drawn from monument B8 to monument B9 of State Highway Right of Way Plat No. 73-31, according to the recorded plat thereof for the point of beginning of the land to be described; thence continuing North 89 degrees 05 minutes 19 seconds West, along said south line 530.79 feet, more

or less to its intersection with the right-of-way line drawn from monument B12 to monument B13 of said plat; thence North 29 degrees 17 minutes 19 seconds West, along said right-of-way line 87.98 feet, more or less to said monument B12; thence North 13 degrees 40 minutes 12 seconds East, along said right-of-way line 573.02 feet to its intersection with the southeasterly line of Parcel 49 of said plat; thence North 63 degrees 18 minutes 41 seconds East, along said southeasterly line 109.03 feet to the most easterly corner of said Parcel 49; thence North 26 degrees 41 minutes 19 seconds West, along the northeasterly line of said Parcel 49, a distance of 65.01 feet, more or less to its intersection with the right-of-way line drawn from monument B11 to monument B10 of said plat; thence North 68 degrees 52 minutes 20 seconds East, along said right-of-way line 59.93 feet, more or less to said monument B10; thence southeasterly and southerly 765.58 feet, along said right-of-way line and along a non-tangential curve concave to the southwest, having a radius of 768.51 feet and a central angle of 57 degrees 04 minutes 38 seconds, the chord of said curve bears South 25 degrees 47 minutes 26 seconds East, to monument B9 of said plat; thence South 02 degrees 44 minutes 53 seconds West 109.58 feet to the point of beginning. Subject to easements of record. Containing 7.30 acres (317,943 square feet); and

(ii) Parcel 2: That part of the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ of NW $\frac{1}{4}$) and of the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ of NW $\frac{1}{4}$) and of Government Lot One (1) and of Government Lot Two (2), Section One (1), Township One Hundred Twenty-three (123) North, Range Twenty-eight (28) West, Stearns County, Minnesota, described as follows:

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30 degrees 20 minutes 26 seconds East, to monument B5 of said plat; thence South 02 degrees 44 minutes 53 seconds West, along said easterly right-of-way line 91.37 feet to its intersection with a line 15.00 feet North of as measured at a right angle to and parallel with the south line of said Government Lot Two (2); thence east, along said parallel line to its intersection with the east line of said Government Lot Two (2); thence North, along the east line of said Government Lot Two (2) to the shoreline of the Mississippi River; thence northwesterly, northerly, northeasterly, northerly, and northwesterly, along said shoreline to its intersection with a line bearing South 89 degrees 05 minutes 19 seconds East from the point of beginning; thence North 89 degrees 05 minutes 19 seconds West 1743 feet, more or less to the point of beginning. Subject to easements of record. Containing 60.0 acres, more or less;

C. The Subject Property is included in an area governed by an Orderly Annexation Resolution between the City and the Town dated August 19, 1974, ("Orderly Annexation Resolution") which limits annexation of certain areas of the Town including the Subject Property prior to August 19, 1994;

D. The Subject Property is about to become urban or suburban in character and the Town and the City are capable of providing municipal services thereto.

E. The City and Town have determined that it will enhance and promote the general welfare of the Town and the City if the Subject Property is annexed to the City on the terms and conditions contained herein.

In consideration of the mutual covenants herein set forth, the City and Town agree as follows:

1. Purpose. The purpose of this Agreement is to provide for the public health, safety, and general welfare through cooperation in the annexation of the Subject Property to the City in a manner which provides for adequate provision of municipal services to the area while

protecting the residents of the Town residing in or near the Subject Property.

2. Annexation. Subject to the conditions precedent hereinafter provided, the Town agrees that it shall waive all opposition it may have to the annexation of the Subject Property by the City and shall allow the City to annex the Subject Property to the City by amendment to the Orderly Annexation Resolution. In the event the Joint Resolution of the City and Town amending the Orderly Annexation Resolution is not filed with Minnesota Municipal Board due to failure of any contingency contained therein, this Agreement shall be null, void, and of no further effect.

3. Zoning. The City agrees that it shall adopt an ordinance, effective as of the date the Minnesota Municipal Board orders the annexation, zoning the Subject Property as a planned unit development ("PUD") with commercial zoning classification. The City also agrees to adopt, effective as of the date the Minnesota Municipal Board orders the annexation, a final plat for the Subject Property. During the review of the general development plan for the PUD and the proposed plat, the City shall cooperate with the Town in the review and shall allow the Town such input into the review process as to assure that the general development plan and proposed plat address Town concerns which shall include but not be limited to, (i) providing a drainage plan for the Subject Property, when developed, which will not increase the quantity or velocity of storm water drainage from the Subject Property onto adjoining areas of the Town and, (ii) providing that the setback and screening requirements imposed by the Town Zoning Ordinance be

incorporated into the general development plan and plat where the Subject Property abuts the Town.

4. Municipal Services. Prior to December 31, 1996, the Town shall provide to the Subject Property those municipal services which it customarily provides Town residents. These services shall include road maintenance and repair, police protection, and fire protection. It is understood that the level of these services shall be that level normally and customarily provided by the Town to its residents unless prior arrangements have been made between the Town, City and HDC. It is specifically understood by and between the parties, that in the event the Town is unable to provide fire protection to the Subject Property for any reason, this service will be provided by the City.

5. Reimbursement. During the period that the Town provides municipal services to the Subject Property, the City agrees to pay to the Town annually a sum equal to sixty-two and twenty-five one hundredths (62.25%) percent of the total tax receipts received by the City from taxes levied by the City against the Subject Property. In the event the Town is unable to provide fire protection to the City, the amount paid annually shall be reduced to an amount equal to fifty-five (55%) percent of the total tax revenues received by the City from taxes levied by the City against the Subject Property. Payments shall be due and payable to the Town each year on June 30, of the year in which the tax revenues are received by the City.

6. Shortfalls. It is understood by the City and the Town that development on the Subject Property will be undertaken at a rate which may require municipal services to be provided to the Subject Property prior to the time in which tax revenues will be generated to cover the

costs incurred by the Town in provided these services. The City and Town agree that prior to the date when the reimbursements provided above are sufficient to cover the actual costs of the services provided, the Town shall be reimbursed by HDC for the difference between actual costs incurred to provide the municipal services and the amount received from the City. In order to facilitate payment of these costs, the Town may make such arrangements with HDC as it deems appropriate and may, at its discretion, request HDC to provide such financial guarantees as the Town deems necessary to secure payment. During period when HDC is reimbursing the Town for its actual expenses, the Town agrees to work with HDC to establish the level of services which HDC requires for the Subject Property during the various stages of development. By its approval of this Agreement, HDC accepts the terms of this paragraph.

7. Future Annexation. In the area designated in the Orderly Annexation Resolution, after August 19, 1994, and prior to January 1, 2010, the City shall not initiate any annexation of Town land without having first provided the Town with a minimum of two (2) years notice of the City's intention to initiate such annexation. This shall not affect the right of individual property owners to petition for annexation in accordance with the terms of the Orderly Annexation Resolution and, thereafter, in accordance with Minnesota law.

8. Future Sewer Connection. On November 19, 1984, the City adopted Resolution No. 1984-11-193 establishing a policy on providing City services outside the corporate limits of the City. The policy presently prohibits extension of services including sewer to unincorporated areas outside of the corporate limits of the City. Should the

policy be changed so as to permit towns to enter into agreements for the provision of sewer service by the City without prior annexation of the area to be served, the City agrees to negotiate any sewer use agreement with the Town under terms similar to those negotiated under then existing agreements between the City and other municipalities.

9. Term. This Agreement shall take effect upon execution and shall remain in full force and effect until all the conditions contained herein and agreements made by the parties have been fulfilled.

10. Liability. In all activities under this Agreement, the City and Town shall be deemed to be exercising their governmental functions so that each shall not be liable to any other person, firm, partnership, or other entity for any negligence of its officers, employees, or agents.

11. Default. In the event either the City or Town is in default under the terms of this Agreement, in addition to any other remedies available to it at law or equity, the non-defaulting party may bring an action for specific performance to compel the performance of this Agreement in accordance with its terms. In the event the party bringing an action to enforce any provision of this Agreement prevails, it shall be entitled to all its costs, disbursements, expenses, and attorneys' fees incurred as a result of such action.

12. Modification of Agreement. This Agreement may be modified or amended at any time by written agreement of the parties approved and executed in the same manner provided for adoption of this Agreement. No amendment or modification of this Agreement shall be effective as to HDC, however, unless express written approval of such modification or

amendment has been given by HDC, which is and shall remain a third party beneficiary to this Agreement between the City and Town.

13. Severability. In the event any portion of this Agreement is found to be void, unenforceable, or unconstitutional, or any combination of these, by a court of competent jurisdiction, the remaining portions of this Agreement shall remain in full force and effect.

14. Statutory Authority. This Agreement is made between the City and Town pursuant to the powers of each under the Joint Exercise of Powers Act as codified in Minn. Stat. § 471.59.

15. Adoption of Agreement. This Agreement shall not be binding upon either party until the City Council for the City and the Town Board of Supervisors for the Town shall have regularly adopted this Agreement by resolution, shall have entered such resolution in its records and procedures, and shall have certified a true copy to the Town Clerk or City Clerk, whichever the case may be.

The Town and City have set their hands to this Agreement as of the day and year first above written.

Attested:

By 
City Clerk

Approved as to form:

By 
City Attorney

Attested:

By _____
Town Clerk

CITY OF ST. CLOUD, Stearns County,
Minnesota

By 
Its Mayor

TOWN OF ST. AUGUSTA, Stearns
County, Minnesota

By _____
Its Chairman

Approved as to form:

By _____
Town Attorney

APPROVAL

Hospitality Development Corporation, a Minnesota corporation, and First American National Bank, a national banking association, as Trustee of the Frank A. Laudenbach Trust, do hereby accept the terms contained in this Agreement and consent to said terms as if it were a party hereto.

FIRST AMERICAN NATIONAL BANK AS
TRUSTEE OF THE FRANK A. LAUDENBACH
TRUST

By _____
Douglas A. Holzkamp

By _____
Jerome H. Johnson

HOSPITALITY DEVELOPMENT
CORPORATION

By _____
Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF STEARNS)

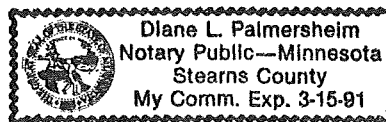
The foregoing instrument was acknowledged before me this _____ day of _____, 1987, by _____ and _____, the Chairman and Clerk of the TOWN OF ST. AUGUSTA, Minnesota, on behalf of the Town.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF STEARNS)

The foregoing instrument was acknowledged before me this 24th day of September, 1987, by R. J. Huston and R. M. Grasslin, the Mayor and Clerk of the CITY OF ST. CLOUD, Minnesota, on behalf of the City.

Diane Palmersheim
Notary Public



STATE OF MINNESOTA)
) ss.
COUNTY OF)

On this _____ day of _____, 1987, before me, a Notary Public within and for said County, personally appeared _____, to me known, who, being by me duly sworn, each did say that he is respectively the _____ of HOSPITALITY DEVELOPMENT CORPORATION, the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said _____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF)

On this _____ day of _____, 1987, before me, a Notary Public within and for said County, personally appeared DOUGLAS A. HOLZKAMP and JEROME H. JOHNSON, to me known, who, being by me duly sworn, each did say that he is respectively the _____ and _____ of FIRST AMERICAN NATIONAL BANK AS TRUSTEE OF THE FRANK A. LAUDENBACH TRUST, the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said _____ and _____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

THIS INSTRUMENT DRAFTED BY:

HALL, BYERS, HANSON, STEIL & WEINBERGER, P.A.

By: Stanley J. Weinberger, Jr.

921 First Street North

P.O. Box 966

St. Cloud, MN 56302

(612) 252-4414

CITY OF ST. CLOUD

REC'D BY
MME MAR 21 1988

Orderly
Annexation Area

SHERBURNE COUNTY
STEARNS COUNTY
MISSISSIPPI RIVER

Town of St. Cloud
TWP 124 N R 30 W
ST AUGUST TWP 123 N
Town of St. Augusta

Travel
Plaza
Site

Orderly Annexation Area

T.H. 194

ST. CLOUD
WASTE
WATER
TREATMENT