Agenda

Minnetonka City Council

Regular Meeting, Monday, February 29, 2016

6:30 P.M.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Acomb-Wiersum-Bergstedt-Wagner-Ellingson-Allendorf-Schneider
4. Approval of Agenda
5. Approval of Minutes: February 8, 2016 council regular meeting
6. Special Matters: None
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters Not on the Agenda
9. Bids and Purchases:
   A. Bids for the Public Works Building Expansion Project
      Recommendation: Award contract to Marge Magnuson Construction Co., Inc. and amend the Capital Improvements Program (majority vote)
10. Consent Agenda - Items Requiring a Majority Vote:
    A. Ordinance amending City Code Section 300.02, regarding zoning ordinance definitions
    B. Ordinance amending City Code 300.37, regarding lot width in the R-1A zoning district
11. Consent Agenda - Items Requiring Five Votes: None
12. Introduction of Ordinances: None
13. Public Hearings:
   A. Resolution consenting to and approving the issuance of a revenue note by the city of Deephaven for the benefit of Minnetonka Youth Hockey Association
      Recommendation: Hold the public hearing, adopt the resolution and approve the agreement

14. Other Business:
   A. Resolution approving city support for Shelter Corporation’s application to Hennepin County for Transit Oriented Development Funds
      Recommendation: Adopt the resolution
   B. Concept plan review for a 350-unit apartment building at 10101 Bren Road East
      Recommendation: Provide comments, feedback, and direction
   C. Resolution amending the Glen Lake contract
      Recommendation: Adopt the resolution approving the time extension

15. Appointments and Reappointments:
   A. Appointment of Advisors for the 2016 Local Board of Appeal and Equalization
      Recommendation: Approve appointment of the Advisors

16. Closed session to consider offers or counteroffers for the sale of real property at 14900 State Highway 7 and for the purchase of real property at 12117 Pioneer Road and 4622 Nelson Drive

17. Adjournment
Minutes
Minnetonka City Council
Monday, February 8, 2016

1. Call to Order
Schneider called the meeting to order at 6:30 p.m.

2. Pledge of Allegiance
All joined in the Pledge of Allegiance.

3. Roll Call
Council Members Dick Allendorf, Patty Acomb, Brad Wiersum Tim Bergstedt, Bob Ellingson, and Terry Schneider were present. Tony Wagner was excused.

4. Approval of Agenda
Wiersum moved, Bergstedt seconded a motion to accept the agenda, with addenda to items 13C, 14A, and 14B. All voted “yes.” Motion carried.

5. Approval of Minutes: January 25, 2016 regular meeting
Allendorf moved, Acomb seconded a motion to approve the minutes of the January 25, 2016 regular meeting, as presented. Allendorf, Acomb, Wiersum, Ellingson, and Schneider voted “yes.” Bergstedt abstained. Motion carried.

6. Special Matters: None

7. Reports from City Manager & Council Members
City Manager Geralyn Barone reported on upcoming meeting and events.

8. Citizens Wishing to Discuss Matters not on the Agenda

9. Bids and Purchases: None

10. Consent Agenda – Items Requiring a Majority Vote:

   A. Competitive Franchise Agreement with Qwest Broadband Services, Inc., d/b/a Century Link

      Allendorf moved, Acomb seconded a motion to adopt ordinance 2016-04 granting a Cable Television Franchise to Qwest Broadband Services, Inc. d/b/a CenturyLink. All voted “yes.” Motion carried.
B. Resolution for the 2016 Street Rehabilitation project for the Libb’s Lake area

Wiersum asked that the item be pulled from the consent agenda. He said he was fully supportive of the project but because it was a major project that would involve quite a bit of reconstruction and disruption, he asked staff to provide more information.

City Engineer Will Manchester provided a staff report.

Wiersum asked if there would be times when people would have to park away from their homes and then walk. Manchester said it was anticipated there would be some times when driveway access and requiring people to park away from their homes would occur. The plan was to make sure that people could get out every morning before 7 a.m. and back to their homes in the evening. The main time when access would be limited would be when the curb and gutter was installed.

Schneider noted there had been follow up issues with the utilities and recent efforts had been made working with them better to address issues in a timely manner. He asked if staff was optimistic that things would improve. Manchester said he was optimistic due to Hennepin County’s effort in getting the utilities, cities and the county working better together. The city has already met with a couple of the utilities about the issues.

Wiersum said this was a challenging part of the city in terms of road layout and the scope of the project. The end result of the project would be much better streets. He encouraged residents to keep the big picture in mind while the city did everything it could to minimize the disruption.

Bergstedt said the city was having more and more of these challenging and difficult reconstruction projects. There were some things the city could control and others that the city has no control over. He said the city had made great strides in being proactive in meeting with neighbors ahead of time to provide information about the process, and most importantly who to contact if issues arise.

Wiersum moved, Allendorf seconded a motion to adopt resolution 2016-010 accepting plans and specifications and authorizing the advertisement for bids for the 2016 Street Rehabilitation Project No. 16401. All voted “yes.” Motion carried.
C. Resolution approving a Joint Powers Agreement with city of Hopkins for 4th Street North

Allendorf moved, Acomb seconded a motion to adopt resolution 2016-009 approving the Joint Powers agreement with the city of Hopkins for 4th Street North, included in the city of Hopkins 2016 Street and Utility Improvement Project. All voted “yes.” Motion carried.

D. Items concerning a licensed day care facility at 10401 Bren Road East:

1) A conditional use permit; and
2) Final site and building plans

Allendorf moved, Acomb seconded a motion to adopt resolution 2016-015 approving a conditional use permit and final site and building plans for a licensed daycare at 10401 Bren Road East. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes: None

12. Introduction of Ordinances: None

13. Public Hearings:

A. Resolutions vacating public right-of-way at 5835 Louis Avenue

Manchester gave the staff report.

Schneider opened the public hearing at 6:53 p.m. No one spoke. He closed the public hearing at 6:53 p.m.

Allendorf asked what the difference was between what the property owners were requesting, and what the staff recommendation was. Manchester said the property owners had asked for the vacation. City Attorney Corrine Heine said the alternative would have been a variance from setback requirements but that also would involve a public hearing process. The vacation would provide the property owner more land that could be put toward their own use. From a valuation standpoint, the land should have greater value.

Schneider said in many cases when there was an area that was platted in sections where there was a temporary cul-de-sac, the cul-de-sacs were taken as temporary right-of-way easements rather than having a formal plat. Once the road was connected it didn't require a formal process to
remove it. He asked if the city had a policy related to doing a formal plat for a temporary easement. Heine said if the city knew a road would be extended in the future and that a cul-de-sac was temporary, the bulb would not be platted but instead a temporary easement would be obtained. Schneider said he was glad that was the case because it was the way most cities operated.

Acomb moved, Wiersum seconded a motion to adopt resolution 2016-011 vacating the right-of-way, reserving a permanent drainage and utility easement over the entire area to be vacated; and reserving a temporary snow storage easement over the westerly 10 feet of the area of vacated right-of-way. The snow storage easement will terminate when the cul-de-sac bulb pavement is removed in the future. All voted “yes.” Motion carried.

B. On-sale wine and on-sale 3.2 percent malt beverage liquor licenses for Urbank Coffee LLC (Dunn Bros Coffee), 14525 State Highway 7

Barone gave the staff report.

Schneider opened the public hearing at 6:58 p.m.

Richard Gunderson, 12009 Urbank Circle NE, Blaine, said he was a 50 percent owner of Urbank Coffee. The plan was for a small six stool bar along with a private conference room seating 8-10 people. Dunn Brothers would seat around 40 people. Tap beer would be served and wine served by the bottle. He provided information about the training that would be provided to the employees. He and his wife would obtain bar certification licenses as well. The goal was to begin construction work in two to three weeks and the opening would be in May.

Wiersum asked for clarification about selling wine by the bottle. Gunderson said the wine would be served out of a bottle as opposed to wine served out of a tap. The wine would be served by the glass. Wiersum encouraged Gunderson to participate in the city’s best practices program.

Bergstedt moved, Acomb seconded a motion to continue the public hearing to March 14, 2016. All voted “yes.” Motion carried.

C. On-sale liquor licenses for RS Sports Grill, 12501 Ridgedale Drive

Barone gave the staff report. She noted the addenda to the agenda included a letter from an attorney representing the property owners expressing some concerns. She said staff would work with the applicant to address the concerns before the item returns to the council on March 14.
Schneider opened the public hearing at 7:03 p.m. No one spoke.

Wiersum moved, Allendorf seconded a motion to continue the public hearing to March 14, 2016. All voted “yes.” Motion carried.

D. Resolution vacating drainage and utility easements and approving preliminary and final plat for Wilson Ridge 5th Addition, 4329 Wilson Street

City Planner Loren Gordon gave the staff report.

Schneider opened the public hearing at 7:09 p.m.

Jeff Detloff indicated he lived just north of the property. He said he welcomed the development but his main concern was with the drainage. When he purchased his property the city was adamant about having a swale on the property to help with drainage. He said his concern was there would be a pretty significant hard cover area and he questioned if there was enough open area to the north to hold the water. Schneider indicated staff would run the calculations to make sure the drainage requirements were met.

Lori Detloff encouraged the council members to come look at the site if they had not already done so. She said the little pond would not stop the drainage from running into her basement. Schneider said ponds were setup to control the rate of runoff. If the pond becomes full the water would run downhill. He said the engineering aspect would be looked at by city staff to ensure that the rate of runoff from the hard cover surface would be comparable to what it was prior to the development.

Michele Caron, 4335 Wilson Street, said in general she was OK with the preliminary plans. She noted one of the planning commissioners made a comment about pushing the buildings closer to the street. She preferred the buildings not be any further toward the street than her house is. She did not want to see a huge house in front or in back of her house. She asked to be notified when the building plans were submitted to give her comfort about the drainage.

Schneider closed the public hearing at 7:14 p.m.

Schneider said the development might be an ideal candidate to encourage use of impervious pavers in addition to the rain gardens.
Wiersum moved, Bergstedt seconded a motion to adopt resolution 2016-012 approving preliminary and final plats for WILSON RIDGE 5TH ADDITION. All voted “yes.” Motion carried.

Wiersum moved, Bergstedt seconded a motion to adopt resolution 2016-013 vacating existing drainage and utility easements on Lot 1, Block 1 Swallow Hollow. All voted “yes.” Motion carried.

14. Other Business:

A. Concept plan for Highview Villas, a residential development of properties at 4301 Highview Place and an adjacent, unaddressed parcel

Gordon gave the staff report.

Tim Whitten with Whitten Associates said his group listened to the comments made at the planning commission and council meetings about the 10 lot concept plan. One area of that was reworked involved the northern portion of lots where comments were made about the lots being too close together. A lot was removed from that section. The new configuration allowed for quite a bit of space between the homes and also gaining more space between the homes on the cul-de-sac. He said he went to the Hennepin County website to look at the lots surrounding the area. Many of the lots were of similar size to this plan. There were a lot of things restricting what could be done on the site including sewer depth, the topography that falls to the east and to the south, and attempting to protect the trees along the perimeter. He said there was enough land on the site to support R1A zoning but some of the lots would be a little narrow because of the restrictions of the site. One benefit in using a PUD was the size of the homes could be fixed. Another benefit would be storm water management could be done as well as protecting the perimeter trees.

Rob Eldridge with Ridge Creek Custom Homes said the cul-de-sac was driving whether R1A could be met. He said he would love to be able to get the three lots on the east side to fit under R1A. They match all the criteria except for the width. Making the cul-de-sac longer would require all the homes along the cul-de-sac to have a lift station in the basement. He said each development was unique and it was really up to the eye of the beholder to look at the general scope of the neighborhood to try to find a product that fits as best as possible. This plan would fit in with the majority of the surrounding area. He thought putting six homes on the property that would sell in the range $850,000 to $950,000 in today’s economy might kill the project.
Bob Anderson, 4316 Highview Place, asked if the lot with the existing home at 4301 Highview Place would remain zoned R1 or if it would be rolled into a PUD or a R1A. Gordon said it was undetermined at this point. Anderson said a report from the city indicated prior use of PUD had only been used for multiple unit dwellings or attached homes. Staff response included in the addendum to the agenda indicated PUD had been used for single family homes as well. He asked where that information could be found. He was concerned if someone decided to have a party or gathering with cars parked on both sides of the access road, it would be difficult for a fire truck to get through. He indicated over the weekend there was a Super Bowl party with cars parked on both sides of Maple Lane. His wife came home and said she could barely get her car through. The zoning question would be easily resolved by leaving it R1 and building six homes.

Marquise Watts, 4233 Maple Lane, said he did not mind that there was going to be a development but having nine or ten smaller homes on the little lots didn’t fit the character of the neighborhood. His biggest concern was Maple Lane like many streets in the city, was very narrow. In the wintertime it is difficult to try to get up and down the street with cars parked on both sides. He questioned where plowed snow would be placed.

Greg Carson, 4222 Maple Lane, asked the council not to divide the neighborhood with different rules. He was concerned with the unknown that happens with change. If all goes well the development could be great but there was a chance something could go wrong that was not expected. He said he could not know the unknown. He could not articulate how the current open spaces feels. He could not state the difference in impact between six and nine homes. He said he did know the difference with a third of an acre versus a half acre. He knew the difference of a home 25 feet from the street with one 30 feet from the street. He knew the difference between 20 feet between the homes and 30 feet between the homes. He said the city’s zoning rules were developed to help define things and ensure consistency. He was ecstatic with the six home plan because it would fit in with the neighborhood. He was against R1A zoning because of the one-third acre lots. This was not the Minnetonka he moved into. The difficult thing was defining the scope of the neighborhood. The planning commission asked the developer to be creative. Carson said he didn’t think going from a 10 house plan to a nine house plan was creative. He questioned the need for a cul-de-sac. Five to seven homes could be built without the need for a cul-de-sac. Another option that was not looked at was shared driveways. He said he was not concerned with the number of homes but rather his concern was changing the rules.
Gordon said the PUD information Anderson provided was only for attached multi-family product or commercial PUDs. The change memo provided by staff indicated there were 611 single family detached housing where a PUD was used. He said the cul-de-sac would meet the city’s standard and would be adequate for fire and emergency vehicles. Maple Lane was also within the city’s standards for width.

Wiersum asked if the proposed cul-de-sac would be the same width as Maple Lane. Gordon said that was not known yet. A 26 foot width would be the starting point and could be narrowed for good cause.

Schneider said the snow storage issue was dealt with for all the other cul-de-sacs in the city. It was not easy but it was always worked out.

Allendorf said the council had previous discussions about what really constituted a neighborhood and what should be counted to meet the R1A standard or counted as part of the character of the neighborhood. He said looking at the drawings the Kings Drive area on the south side did not appear to be part of the neighborhood being discussed. Looking at the lot sizes on Maple Lane and Lake Street Extension he questioned why there were nine proposed houses in the plan. If one of the houses was removed on the north side of the proposed development, it would make the lots for the three homes at least 20,000 square feet. This would be more consistent with the neighborhood to the west. An eight unit development would look more normal with the rest of the neighborhood going up Maple Lane to the property. He didn’t think there was a significant difference in the nine lot plan from the previous ten lot plan. He said as far as the parking issue it didn’t matter how many homes were built, if someone was having a Super Bowl party there might be issues. That issue could be addressed with signage.

Acomb said it was the lot width that made the plan not compatible with the Queens Way lots. She said she agreed with Allendorf’s statement about an overall development of eight houses being more consistent with the overall neighborhood. She didn’t see a lot of change between the 10 lot plan and the nine lot plan. She would be more comfortable with eight houses.

Wiersum said the council had grappled with the issue of defining what a neighborhood was and he had used the term “small lot creep” in discussions about what was an appropriate area for smaller lots. He said the map being discussed showed two neighborhoods. The question was about the appropriate lot size and configuration of the one neighborhood. The applicant had done a good job discussing the differences between the 10 lot plan and the nine lot plan and clearly the nine lot plan was more
spacious. Wiersum said the location created an opportunity for some more creative thinking. For the product being discussed, this was a nice location. He agreed with other comments about preferring eight lots as opposed to nine. He thought the idea of shared driveways was interesting because it would reduce the amount of hard surface.

Bergstedt said when the plan first came before the council in 2014 he was excited because it was a six lot plan that met all the R1 standards. This was not typical as many times proposals come in way that are way too dense and have to be scaled back. Over time because of a number of factors the plan came back with 10 lots. For many this was way too dense. He said if there were eight lots, it was likely they would all meet R1A standards. He wasn't sure if eight lots was the magic number. He didn't think the city needed to approve a major change to the area just to make the price points work for the developer. He could possibly support an eight lot plan, especially if there was some creativity, but would have difficulty with a nine lot plan.

Ellingson said for the Woods of Fairview project the proposal was for seven lots. The city approved five lots. The homes got built and the sale price was for $700,000 to $900,000. He said it was not a $900,000 neighborhood but more like a $300,000 neighborhood. He thought the developer and builder’s concern was legitimate that six lots with large homes would not work. He noted the sign for the Groveland Pond development said the homes were starting at $750,000 even before the council approved the project. He understood the neighbors’ preference to have half acre lots. Unfortunately what has happened in the city was that prices have gotten out of hand. He understood the need to have a few more lots in an effort to have smaller homes and lower prices.

Schneider said every area and every neighborhood in the city was different. The things that made an area unique had to be considered when a plan came before the council. He said in this case there was the proximity to I494 and Highway 7, a major off ramp, and all kinds of noise impacts. The decision for him was about what made the most sense in terms of a housing and diversity of housing type for the particular character of the property not that the neighbors thought the lots had to be the same as their lots. This generally wasn’t the way these types of areas develop. They develop based on the market demand and the need. He noted one of the comments was there were no rules with a PUD but in fact the opposite was true. With a PUD the city had the ability to say what was in the plan was exactly what had to be built. With R1A zoning there were setback and some lot size requirements but there was little control over the exact home that could be built. He was concerned that by continuing to ask the developer to reduce the number of lots, at some point it would
just get platted to move forward. The lots might just sit there because a builder would not take the chance of building million dollar homes. Eventually a home might get built on one lot with nothing happening on the other lots for a number of years. Then another builder could come in who doesn’t think about things like tree cover or drainage.

Schneider said he would prefer determining the right setback between the northerly homes. Having 25 feet between the homes was not that different than any other half acre lot neighborhood but would restrict the size of the homes. The tradeoff was having a single builder doing the entire development and reducing the development by one lot and risk having the development never happen or occur over a number of years with no control over the size of the homes. He said when he saw the plan his initial reaction was not favorable but when he saw the elevations, the distance between the homes, the attractive, good quality homes in a price range that’s needed in the city, he changed his mind. He would be inclined to gamble on allowing nine lots rather than having the area platted and seeing what happens over time.

Wiersum said assuming there were nine $250,000 lots it would total $2,250,000 in property. Dividing that total by eight would equal $281,250 per lot. This would mean the house costs would likely be around $50,000 more. He said the notion that the homes would have to be $200,000 more if a lot was removed didn’t seem quite right. He agreed keeping the homes within the desired price point was important.

Michael Halley, 14801 Minnehaha Place, said he was under contract to purchase the Swanson’s existing home. The plat indicated there was around 30,000 square feet. He was willing to commit to a covenant on the property that would stipulate it would not be subdivided. He said the home was a mostly one level home that sits in the center of the lot and has a swimming pool. He and his wife have been looking for a home they felt comfortable with. He said Ridge Creek Homes’ valued the lots around $150,000 to $175,000 to deliberately hit a price range around $550,000. Halley said he had concerns with the proximity of the freeway but being in the proximity of new homes in that price range gave him comfort. He asked that if he committed to the covenant to not subdivide, that it be credited toward Ridge Creek’s development.

B. Concept plan review for Villa West at 16913 State Highway 7

Gordon gave the staff report.

Allendorf asked if there were three properties, the Nelson’s, the Anderson’s, and the Carlson’s involved in the original plan. Gordon
confirmed that was correct. Allendorf noted the proposed development was on one of the properties. There was a potential development on the second property. He asked how the third property fit in with an expansion of the idea. Gordon said there was not a roadway connection that one might expect with a development. He said all the properties need city utilities. The current sewer and water was at the northwest corner of one of the properties. The likely scenario would be to extend that east to serve all the properties when redevelopment occurs. This was the connecting piece between all the properties.

Allendorf asked if the Nelson property would need its own access to Highway 7. Gordon said under this plan that would be the case. Allendorf noted in the original plan there was a one way street and two access points to Highway 7. MNDOT would not want too many access points from a safety standpoint. He questioned if this plan for the two properties would harm development of the third property. Gordon said one of the things the city would have to look at if plans started coming in for the individual properties was how best to coordinate access.

David Carlson, 2249 Portico Green, indicated he was not related to the owner of the property. He said when he first got involved with the project and knowing the builder, he was concerned with the amount of money that would be spent on the site with beautiful lots on the south side of the property but with lots along Highway 7 that would be difficult to sell. He said he had previous developments in other suburbs for one level empty nester townhomes and thought that product would fit in well in this area. The price point would start at $489,900. Adding a sun room and loft would increase the purchase price to $589,900. He said he presented an offer to buy the Anderson property but Anderson declined. There was a neighborhood meeting that went well. The idea of adding space without increasing the height of the building was well liked.

Wiersum asked Carlson if he was comfortable going forward with the stand alone plan without the Anderson property being involved. Carlson said he would go ahead with the plan without the Anderson property.

Acomb asked if Carlson had discussions with the property owners on the other side. Carlson said those property owners had a similar position to Anderson. The loss of property value from the last recession made it difficult for people to decide to sell. To connect to the property to the east would be challenging due to the wetland.

Allendorf noted the original concept plan connected all three properties. He asked how that plan dealt with the wetland. Carlson said the connection in the original plan would take out two of the houses he was
proposing. He didn't think the numbers would work if those houses were removed. Allendorf said the land use plan showed the whole area as being developed in a consistent manner. Gordon said the comp plan would like nice orderly development and it would be a goal for that to happen. Allendorf said the preference would be not having three streets go out to Highway 7 and instead somehow internally connect.

Schneider said ideally one of the lots off of Clear Spring Drive would be picked up so direct access to Highway 7 would not be needed. This was not likely. He asked what MNDOT feedback was about the access. If the properties were redeveloped into higher density was there an obligation to allow the continued access with five times the amount of traffic. Gordon said it was a difficult question to answer because of the timing issue. With five owners for the six properties that are all single family homes that seemingly will redevelop sooner rather than later, the ideal number of access points would have to be determined. The goal was zero access points but if the properties were redeveloped at different times the opportunity to meet that goal might go away. City Engineer Will Manchester agreed the goal would be zero access points. He believed MNDOT had a requirement for individual lots. Schneider asked if it was feasible if MNDOT determined it needed ponding for the area, one of the homes on Clear Spring Drive would be purchased for that and to provide access. Gordon said it was possible this could occur.

Wiersum said from a product standpoint the proposal was attractive. The negative issue was what was going to happen with the other properties. He said his guess was if this plan was approved and built as is, it would impact what would happen with the other properties. His preference was for the property owners to agree on something.

Dr. John Eiden, 16821 State Highway 7, said he bought his property about 10 years ago as an investment opportunity. He started out thinking the highest and best use was for open land. He thought Carlson’s ideas looked good but didn't make sense. Eiden said the properties should be developed as one piece. Four of the property owners wanted to do something as one. He said he was not going to give away his property nor would he be pressured into selling. He was against spot zoning. He and Anderson were going to remain holdouts until something came along that made sense.

Beth Frost, 4914 Clear Spring Road, said she was a real estate agent who knows there was a huge demand for this type of housing. In a perfect world the whole plan would be done with the lots all the way down Highway 7.
Schneider said he would seriously question any senior housing project for any of the properties. Even though many seniors do not drive, there would be traffic from visitors, emergency and delivery vehicles. A town home product or something similar was probably the right thing to do.

Acomb said she liked the product and the fact the houses would not be too tall. The piece meal aspect concerned her.

Bergstedt noted the properties were in his ward. He said no one liked the previous plan with the 30 homes and one way street. A lot of the neighbors on Clear Spring were concerned about stormwater issues. A number of the residents wanted the city to purchase the properties to keep as open space. This likely was not going to ever happen. He said the worst thing would be to develop the properties piece meal but if the property owners could not come together to do something that was coordinated there was nothing the city could do to prevent any of the parcels from being developed. He thought the type of housing was good. Another concern from the residents on Clear Spring was the possibility of MNDOT closing the access on and off of Highway 7 and creating a new access back to Clear Spring. Whatever happens with the parcels, he hoped the bike and pedestrian trail would remain, and depending on the volume of traffic, creative things are done with signage and other things for the safety of the trail users.

Allendorf said he liked the product in isolation. If this property and the Anderson property could be developed together he wondered if there could be a shared entry on to Highway 7. This would give him some comfort about some of the piece meal aspects of the development.

Schneider said he had similar thoughts about the access to Highway 7. He wasn’t sure where the best location for the one access point would be. The concept of having 12 or 13 homes rather than six along with one access point was a better alternative.

Wiersum said there seemed to be agreement that the product was a good product. There also seemed to be agreement that a development involving multiple properties was significantly more desirable than developing the one property. The economics was the issue in getting that to happen. He questioned if there was a way to make the properties more valuable for the property owners. One way was adding density.

Allendorf said it would be nice if the access point for the Carlson property could be placed where the Anderson property could hook up to it when it was developed.
Carlson said he pointed out to Anderson that if the Carlson plan was developed it would limit what Anderson could develop on his own property because of the setbacks.

Allendorf asked if the Carlson property was developed and then later on the Anderson property was purchased by the Carlson property owner, if the lots could then be combined. Gordon said that could occur. The zoning classification would come in to play.

C. Resolution supporting the DEED Job Creation Fund Application by Freudenberg North America LP

Wischnack gave the staff report.

Acomb moved, Allendorf seconded a motion to adopt resolution 2016-014 expressing support of the project proposed by the Company and its application for an award from the DEED Job Creation Fund.

15. Appointments and Reappointments:

A. Appointment of representatives to various advisory boards, commissions and committees

Bergstedt moved, Wiersum seconded a motion to approve the appointments to the various advisory boards, commissions and committees. All voted “yes.” Motion carried.

16. Adjournment

Wiersum moved, Bergstedt seconded a motion to adjourn the meeting at 8:56 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
City Council Agenda Item #9A
Meeting of February 29, 2016

Brief Description: Bids for the Public Works Building Expansion Project

Recommended Action: Award contract to Marge Magnuson Construction Co., Inc. and amend the Capital Improvements Program

Background

In 2003, the city completed construction of the new public works facility located at 11522 Minnetonka Boulevard. Since then, staffing changes in the natural resource, forestry and facilities maintenance staffing have resulted in the addition of seven staff needing work space that the original building design was not able to provide. In order to accommodate staff, a building expansion project was designed that added approximately 1,000 square feet of space to the southeast corner of the administrative area of the current building.

In May of last year, the expansion project was bid and six bids were received. The low bid exceeded the budget by $272,500. As a result, the bids were rejected and the bid specifications were modified to reduce cost and the project was put on hold in order to provide additional funding for the expansion.

Bids

On January 26th the building expansion project was re-bid. The bid specifications called for a base bid along with three bid alternates for consideration. Alternate #1 provided pricing for the removal of the flooring and grinding/finishing of the concrete for the lunchroom hallway. Alternate #2 provided pricing for the grinding/finishing of the lunch room floor. Alternate #3 provided pricing for the replacement of two rooftop heating, ventilating and air conditioning (HVAC) units that have reached the end of their useful lives. Alternates #2 and #3 have been rejected due to costs which can be done more cost effectively as stand-alone projects. The bids are tabulated as follows:

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<thead>
<tr>
<th>Bidder</th>
<th>Base Bid</th>
<th>Alt #1</th>
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<tbody>
<tr>
<td>Derau Construction</td>
<td>withdraw bid</td>
<td></td>
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<tr>
<td>Parkos Construction</td>
<td>withdraw bid</td>
<td></td>
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<tr>
<td>Marge Magnuson Construction Co., Inc.</td>
<td>$493,253.00</td>
<td>$6,052.00</td>
</tr>
<tr>
<td>Ebert Construction</td>
<td>$508,200.00</td>
<td>$3,446.00</td>
</tr>
<tr>
<td>Karkela Construction</td>
<td>$516,000.00</td>
<td>$4,800.00</td>
</tr>
<tr>
<td>Brennan Construction of MN</td>
<td>$527,000.00</td>
<td>$8,000.00</td>
</tr>
<tr>
<td>James Steele Construction</td>
<td>$528,600.00</td>
<td>$6,650.00</td>
</tr>
<tr>
<td>Webber Inc.</td>
<td>$539,000.00</td>
<td>$5,800.00</td>
</tr>
<tr>
<td>Jorgenson Construction Co., Inc.</td>
<td>$579,500.00</td>
<td>$4,800.00</td>
</tr>
<tr>
<td>Architect’s Estimate</td>
<td>$515,000.00</td>
<td>$6,500.00</td>
</tr>
</tbody>
</table>
The two low-bidders have withdrawn their bids as a result of errors made regarding the controls for the expanded HVAC system. These bidders assumed that the controls for the new space would be done by the city as part of the current upgrade of the HVAC control system which is underway in other city buildings. The bid specifications were clear that the bidders were responsible for the inclusion of these controls. As a result, the contractors have notified the city of their desire to withdraw their bids. This request was reviewed and approved by the city attorney.

Funding for this project will require an amendment to the Capital Improvement Program in order to provide the necessary resources to complete the project. The currently adopted CIP includes previous funding for two major equipment items (snow blower and plow truck) that were delayed from 2015 in order to secure $350,000 from the Capital Replacement Fund for this project. Total costs for the project, including architectural design and preliminary engineering work will now total $560,000. Staff is recommending that the remainder of the funding needed, $210,000, be appropriately taken from balances in the Forestry Fund.

**Recommendation**

Based on the recommendation of the architect and an interview with representatives of the low-bidder, staff recommends project award (base bid and alternate #1) go to Marge Magnuson Construction Company, Inc. and amend the Capital Improvements Program to provide the necessary project funding.

Submitted through:
Geralyn Barone, City Manager
Merrill King, Finance Director
Corrine Heine, City Attorney

Originated by:
Brian Wagstrom, Public Works Director
City Council Agenda Item #10A  
Meeting of February 29, 2016

**Brief Description**  
Ordinance amending city code section 300.02, regarding zoning ordinance definitions.

**Recommendation**  
Adopt the ordinance

**Proposed Ordinance**

The definition section of the zoning ordinance was originally drafted in 1986. Over the last 30 years, definitions have been periodically added to the definition section in conjunction with other ordinance revisions. The section currently contains 168 definitions, defining everything from “lot” to “electromagnetic field.”

Staff is proposing a full scale amendment to the definition section. The amendment would:

- Establish consistency between the definitions in the zoning ordinance and those in state statute, the comprehensive guide plan, and the subdivision ordinance;
- Clarify and simplify definitions; and
- Remove words that do not exist in the remainder of the ordinance.

The ordinance amendment would not change any code requirements or standards.

**Council Introduction**

The ordinance was introduced at the city council’s January 25, 2016 meeting. (See page A24.) The council asked questions regarding the definitions of Accessory Apartment and Lot Area:

**Accessory Apartment**

Under the proposed definition, an accessory apartment is “located within a principal dwelling.” The council wondered whether: (1) this was a significant change; and (2) whether detached accessory apartments would be allowed.

Under the existing definition, accessory apartments are “units of housing ... located within the confines of an existing single-family house.” While the wording would be changed under the proposed definition, the requirement that accessory apartments be contained in a larger dwelling would not. In the past, the city has reviewed and, under certain unique circumstances, approved variances for detached accessory apartments. In the future, the city may wish to allow smaller, detached, accessory
dwelling units – in planning parlance, ADUs. However, this would require further study and changes to other sections of the zoning ordinance.

**Lot Area –**

Under the proposed definition, lot area excludes “any area located below the ordinary high water level of a lake or creek.” The council wondered why this area would now be excluded and how/if this would impact existing properties.

The existing definition of “lot” states that “for the purpose of determining lot area, setbacks, lot coverage, and floor area, a lot must not include any land below the high water level of a lake or creek.” Rather than having this “lot area” caveat in the “lot” definition, staff felt it more appropriately placed in the actual “lot area” definition. In other words, the proposed definition would not change how the city calculates lot area and, as such, would not impact existing properties.

<table>
<thead>
<tr>
<th>Existing</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>“Lot”</strong></td>
<td>A designated parcel of land established by plat or subdivision adequate for occupancy by a use permitted in this ordinance and providing sufficient area required for minimum open space and appurtenant facilities as required by this ordinance. For the purpose of determining lot area, setback, lot coverage, and floor area, a lot must not include any land below the ordinary high water level of a lake or a creek.</td>
</tr>
<tr>
<td><strong>“Lot Area”</strong></td>
<td>Total area within the lot lines excluding dedicated public right-of-way.</td>
</tr>
</tbody>
</table>

The proposed ordinance also places the “excluding any area located below the ordinary high water level of a lake or creek” caveat in the definition of “lot coverage” and “floor area.”

**Recreational Vehicle –**

Prior to the introduction of the ordinance, a question was asked about the regulation of recreational vehicles. The proposed definition of “recreational vehicle” remains
unchanged as proposed. The city does however regulate the parking of recreational vehicles through the nuisance code.

Planning Commission Recommendation

The ordinance was reviewed by the planning commission on February 4, 2016. The commission requested clarification on a variety of natural resources related definitions, with one commissioner expressing concern that the revised definitions may weaken natural resource protection. Staff indicated that natural resources staff was involved in drafting the ordinance. Staff is comfortable that the revised definitions would not diminish natural resources protection standards. On a 6-0 vote the commission recommended the council adopt the ordinance. (See page A25.)

Staff Recommendation

Adopt the ordinance amending city code section 300.02, regarding zoning ordinance definitions. (See pages A1–A23.)

Submitted through:
   Geralyn Barone, City Manager
   Julie Wischnack, AICP, Community Development Director
   Loren Gordon, AICP, City Planner

Originated by:
   Susan Thomas, AICP, Assistant City Planner
Ordinance No. 2016-

An ordinance amending city code section 300.02, regarding zoning ordinance definitions

The City Of Minnetonka Ordains:

Section 1. Section 300.02, under Zoning Regulations is amended as follows:

For the purpose of this ordinance, certain terms and words are defined as follows:

1. “Abandon” - the cessation of a specific use of a property for a period of 12 or more months.

2. “Abut” - to border upon a parcel of land which shares all or part of a common property line with another parcel of land, to make direct contact with or immediately border.

3. “Access aisle or aisle” - the traveled way by which vehicles enter and depart parking spaces.

4. “Accessory apartment” - a self-contained unit of housing located within the confines of an existing single family house and used as a separate housekeeping unit. The term shall also include instances in which one of the units lacks complete kitchen or bathroom facilities or in which there is internal physical access between the units or in which the units share common space or facilities, unless the persons residing in both portions of the building live as a single housekeeping unit, a smaller secondary dwelling unit, located within a principal dwelling unit, that includes provisions for sleeping, cooking, and sanitation independent of the principal dwelling unit. This definition includes secondary dwelling units that have exterior entrances separate from the principal dwelling unit and secondary dwelling units that are accessed only through the principal dwelling unit.

The stricken language is deleted; the single-underlined language is inserted.
5. “Accessory structure” - an uninhabited subordinate building or other subordinate structure, including garages, sheds or storage buildings over 120 square feet except as modified in section 300.24, swimming pools, spas, sport courts, and tennis courts located on the same lot as a principal building, the use of which is clearly subordinate to the use of the principal building.

6. “Accessory use” - a subordinate use which is subordinate to and associated with a principal building or use and which is located on the same lot as the principal building or use.

75. “Alteration, structural” - any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders or rooflines, or any enlargement of a building or structure whether horizontal or vertical.

86. “Alteration, use” - changing the any change to the use or occupancy of a building or parcel from one type of land use to another. Changes in use or occupancy include office to retail, warehouse to assembly, retail to restaurant or similar changes which result in a different intensity of use.

97. “Apartment” - one or more rooms with private bath and kitchen facilities designed, intended or used as a residence for an individual or family, a dwelling unit, generally rented, located within a larger building.

108. “Basement” - an area of a building structure, having its floor or base below ground level on all four sides, regardless of the depth of excavation below ground level.

119. “Basement floor elevation (minimum)” - the lowest floor of a building.

1210. “Berm” - a landscaped mound of earth used for aesthetic or buffer purposes.

1311. “Bluff” - a steep slope as defined in this ordinance.

1412. “Bluff impact zone” - land within a bluff and land within 20 feet from the top of a bluff.

1513. “Boarding or lodging house” - a dwelling unit or part of a dwelling unit in which meals, sleeping accommodations, or meals and sleeping accommodations are provided for compensation to no more than five persons who do not function as a single housekeeping unit.

16. “Boathouse” - an uninhabited accessory structure built and occupied solely for the storage of marine vehicles and equipment.

The stricken language is deleted; the single-underlined language is inserted.
4714. “Buffer” - the use of land, topography, open space or landscaping to visibly separate and filter a use of property from another adjacent or nearby use.

4815. “Buildable area” - a contiguous portion of a lot that is suitable for the location of the primary structure and that excludes all existing and proposed easements, setback areas for principal structures, wetlands, floodplains, the neck portion of any neck or flag lot, steep slopes that are unbuildable under this ordinance, and other unbuildable areas. Certain easements may be included in the buildable area at the discretion of the city if their inclusion is consistent with the intent of this code.

4916. “Building” - any structure having a roof supported by columns, walls or other means of support for the shelter or enclosure of persons or property.

2017. “Building height” - the vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. The reference datum shall be selected by either of the following, whichever yields a greater building height:

a) the elevation of the highest adjoining sidewalk or ground surface within a five foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than 10 feet above lowest grade.

b) an elevation 10 feet higher than the lowest grade when the sidewalk or ground surface described in item 1 above is more than 10 feet above lowest grade.

The height of a stepped or terraced building is the maximum height of any segment of the building.

the vertical distance between the ground elevation abutting a building and the midpoint elevation of the highest gable of a pitched or hipped roof, the deck line of a mansard roof, or the highest point of a flat roof or a parapet wall. The ground elevation used to measure building height will be selected from one of the following, whichever results in the greater height:

a) When the change in grade within the footprint of the building is equal to or less than 10 feet, the highest ground elevation abutting the building will be used.

a)b) When the change in grade within the footprint of the building is greater than 10 feet, an elevation 10 feet higher than the lowest ground elevation abutting the building will be used.

The stricken language is deleted; the single-underlined language is inserted.
21. “Caliper” - the diameter of a tree trunk measured at 4.5 feet above finished grade level.

22. “City” - the city of Minnetonka, a municipal corporation, along with its duly authorized boards, commissions or representatives.

19. “City Planner” - for purposes of this ordinance, the person holding said position or a designated representative.

23. “Commercial use” - activity carried out for financial gain.

24. “Common area, residential” - land, structures, or both, that are owned and maintained by a homeowners’ association or similar organization and used for the mutual benefit of the residents or tenants of the association or organization.

25. “Common space, commercial” - enclosed areas located within a commercial structure that are utilized for the mutual benefit of building tenants. Hallways and entrance vestibules do not constitute common space under this definition.

26. “Community based residential care facility” - any facility similar to but not included within the definition of licensed residential care facility. These may include public or private facilities which provide one or more persons with up to 24 hour care, training, education, rehabilitation, treatment or other support services.

27. “Comprehensive plan” - the document entitled comprehensive guide plan for the city of Minnetonka with associated guide plan map, adopted May 10, 1999, as amended, or as hereafter revised or superseded by new comprehensive plans. The comprehensive municipal plan, as defined in Minnesota Statues section 462.352, in effect at the time of the final action on an application, except as otherwise required by Minnesota Statutes section 462.357.

28. “Conditional use” - a use permitted in a particular zoning district only upon showing that such use in a specified location will comply with all standards of this ordinance for the location or operation of such use. The city may impose additional conditions in specific instances to protect the public health, safety or welfare.

29. “Conditional use permit” - a permit to allow a conditional use duly authorized by the appropriate authority as described in sections 300.16 or 300.21 of this ordinance. A conditional use permit may be subject to periodic review upon determination by the city.

30. “Conservation easement” - a recordable document in recordable form acceptable to the city attorney, which prohibits construction, grading, vegetation removal, or

The stricken language is deleted; the single-underlined language is inserted.
other alteration of property except in accordance with city-approved environmental management practices, but which does not grant the public the right to use the property.

3426. “Crawl space” - an enclosure designed to internally flood, which is completely above grade on at least one side and usable solely for building access or storage.

32-27 “Cul-de-sac” - a street with a single means of ingress/egress and having a turnaround at the end. A turnaround may be in the form of a circular “bubble” of pavement or an internal “looped” street. a street with a single means of ingress and egress and having a turnaround at its end for safe and convenient reversal of traffic.

28. “Cul-de-sac bulb” - a turnaround at the end of a cul-de-sac.

3329. “Deck” - a structure without a roof and with flooring, an unenclosed, platform structure composed of boards made of synthetic or natural materials. A deck is considered attached if any part of it is within ten feet of the principal structure; a deck is considered detached if no part of it is within ten feet of the principal structure. A detached deck is considered an accessory structure in the wetlands, floodplain, and shoreland districts.

3430. “Density” - the number of dwelling units per acre of land, excluding areas zoned as wetland, floodplain, or below the ordinary high water level of a public water, as regulated by the comprehensive plan. All property zoned as wetlands or floodplain and all property below the ordinary high water level of a public water must be excluded from the calculations, and no density credit will be given.

35. “Director of planning” - for the purpose of this ordinance, director of planning shall refer to the individual holding said position or a designated representative.

36-31. “Distribution line” - an overhead or underground facility consisting of utility poles, lines, underground conduit, and related devices used to carry electricity from a substation to the ultimate user, with a nominal voltage equal to or less than 35 kilovolts, or to carry communications.

3732. “Dock” - a structure that extends past the ordinary high water level of a water body and is intended to provide access to the water. a platform that provides access to a water resource.

3833. “Dwelling” - a building or portion thereof designed or used exclusively for residential occupancy.

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The stricken language is deleted; the single-underlined language is inserted.
3934. “Dwelling, attached” - a dwelling attached to one or more dwellings by common walls or floors.

4035. “Dwelling, detached” - a building designed or intended for occupancy exclusively by one family dwelling that is not attached to any other dwelling.

41. “Dwelling, single-family detached housing (within the planned unit development district)” - housing located on individual lots, physically unconnected with any adjacent homes and built in compliance with ordinance mandated setback and lot area requirements.

42. “Dwelling, single-family detached cluster housing” - housing located on individual lots which is designed as an element of an overall site plan and where the subdivision permits a reduction in lot area and other ordinance requirements as defined in section 300.22, subd. 4A of this ordinance.

36. “Dwelling, single-family” - a building designed or intended for occupancy by one family.

4337. “Dwelling, two-family” - a building designed with two separate dwelling units or intended for occupancy by two families. Each dwelling unit to be totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common stairwell exterior to both dwelling units. This definition includes duplex and double bungalow terms. A principal dwelling unit that contains an accessory apartment is not considered a two-family dwelling.

4438. “Dwelling, multiple-family” - a building designed with three or more dwelling units or intended for occupancy by three or more families.

45. “Dwelling, single-family detached housing (within the planned unit development district)” - housing located on individual lots, physically unconnected with any adjacent homes and built in compliance with ordinance mandated setback and lot area requirements.

4639. “Dwelling unit” - one or more rooms with facilities for sleeping, cooking, and sanitation designed or intended for residential occupancy, as a single living unit, with sanitary, culinary and sleeping facilities separate from those of other living units and intended for the exclusive use of a single family.

The stricken language is deleted; the single-underlined language is inserted.
4740. “Educational institution or facility” - a public or private school, elementary, middle, secondary, post-secondary or vocational school having that has a course of instruction meeting the compulsory education requirements of the Minnesota board of education.

48. “Electromagnetic field (EMF)” - a field with two components, one electrical and the other magnetic, arising from the conduction of electricity through a medium of transmission.

4941. “Excavation” - the removal, relocation or recovery by any means of soil, rock, minerals, debris or organic substances other than vegetation from a parcel of land.

5042. “Expansion” - an increase in the floor or land area or volume of an existing building, any increase in dimension, size, area, volume, or height, any increase in the area of use, any placement of a structure or part thereof where none existed before, any addition of a site feature such as a deck, patio, fence, driveway, parking area, or swimming pool, any improvement that would allow the land to be more intensely developed, any move of operation to a new location on the property, or any increase in intensity of use based on a review of the original nature, function or purpose of a non-conforming use, the hours of operation, traffic, parking, noise, exterior storage, signs, exterior lighting, types of operations, types of goods or services offered, odors, area of operation, number of employees, and other factors deemed relevant by the city. Expansion is synonymous with “enlargement” and “intensification.”

5143. “Family” - any number of individuals living together on the premises as a single housekeeping unit as distinguished from a group occupying a boarding or lodging house, licensed residential care facility, licensed day care facility or community based residential facility.

5244. “FEMA” - the United States federal emergency management agency or its successor.

5345. “Filling” - sand, gravel, earth or other materials of any composition placed on a parcel of land.

5446. “Flood” - a temporary increase in the flow or stage of a stream or in the stage of a wetland, pond, watercourse, or lake that results in the inundation of normally dry areas.

5547. “Flood elevation” - the water level achieved by a 100-year flood as defined by the city water resources management plan, the federal emergency management agency, or other studies accepted by the city, whichever is more restrictive. A 100-year flood is synonymous with the terms one-percent chance flood, base flood, and regional flood.

The stricken language is deleted; the single-underlined language is inserted.
5648. “Flood obstruction” - a dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation (except for creation of compensatory flood storage), channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure, or matter in, along, across, or projecting into any channel, watercourse, or regulatory floodplain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.

5749. “Flood proofing” - a combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.

5850. “Flood way” - the bed of a wetland, pond, or lake, or the channel of a watercourse, and those portions of the adjoining floodplain that are reasonably required to carry, store or discharge the 100-year flood event.

5951. “Floodplain” - the area adjoining a wetland, pond, lake or water course including the floodway, subject to periodic inundation by a 100-year flood as designated on the official city floodplain district map.

6052. “Floor area” - the sum of the gross horizontal areas of the several floors of a building measured from the exterior walls excluding interior parking spaces, vehicular circulation, loading areas, accessory parking decks or ramps, basements, and one-half the floor area of any partially exposed level, such as a walk-out or look-out level. However, attached garage area must be included in the floor area when used to calculate floor area ratios for lots behind lots. In any structure having a floor with a height in excess of 15 feet, an additional floor will be assumed for every full 15 feet of interior building height. For single-family and two-family dwellings, the sum of the following as measured from exterior walls: the fully exposed gross horizontal area of a building, including attached garage space and enclosed porch areas, and one-half the gross horizontal area of any partially exposed level such as a walkout or lookout level. For multiple family dwellings and non-residential buildings, the sum of the following as measured from exterior walls: the fully exposed gross horizontal area of a building and one-half of the gross horizontal area of any partially exposed level such as a walkout or lookout level, excluding interior parking spaces and vehicular circulation areas. For all buildings, if a floor has a height in excess of 15 feet, an additional floor will be assumed for every full 15 feet of interior building height.

6153. “Floor area ratio (FAR)” - the gross floor area of all buildings on a lot divided by the lot area. The floodplain or wetland area, or both within a lot shall be the floor area of a building as defined by this ordinance, divided by area of the lot on which the building is located. Area zoned as wetland, floodplain, or below the ordinary high water level of a public water is excluded from the lot area for purposes of the floor area ratio calculation.

The stricken language is deleted; the single-underlined language is inserted.
unless it can be demonstrated that there will be minimal hydrologic, aesthetic and ecological impacts to the relevant area as determined by the city.

6254. “Garage” - a detached or attached accessory structure designed or used for the parking and storage of vehicles owned and operated by residents of a principal structure on the same lot.

6355. “Grade” - the elevation of the ground.

6456. “Grading” - excavating, filling or other land-disturbing activity.

6557. “Heliport” - any area on the ground or on a structure approved by the city for the landing and takeoff of helicopters.

6658. “Home occupation” - an occupation that is clearly secondary to the principal residential use and does not change the nature of the principal residential use.

6759. “Housekeeping unit” - all persons residing within a dwelling unit whose relationship includes a substantial amount of social interaction, including the sharing of housekeeping responsibilities or expenses and the taking of meals together.

6860. “Impervious surface” - a material providing a hardsurface which prevents normal absorption infiltration of water into the ground into land.

6961. “Intensity of development” - a measure of the magnitude and impact of a land use on the environment and neighboring land uses. Variables include, but are not limited to, the levels of traffic that are generated, degree of lot coverage, volume of noise or odor emitted and similar factors.

7062. “Intensive vegetative clearing” - the complete removal of trees and shrubs, or grasses and forbs, in a contiguous patch, strip, row, or block except the removal of invasive species as approved by the city.

7163. “Level of service” - the traffic capacity of an intersection as established by the Institute of Traffic Engineers.

7264. “Licensed day care facility” - any facility required to be licensed by a governmental agency, public or private, which for gain or otherwise regularly provides one or more persons with care, training, supervision, habilitation, rehabilitation or developmental guidance on a regular basis, for periods of less than 24 hours per day, in a place other than the person’s own home. Licensed day care facilities include, but are not limited to,
family day care homes, group family day care homes, day care centers, day nurseries, nursery schools, developmental achievement centers, day treatment programs, adult day care centers and day services.

7365. “Licensed residential care facility” - any facility required to be licensed by a governmental agency, public or private, which for gain or otherwise regularly provides one or more persons with a 24 hour per day substitute for care, food, lodging, training, education, supervision, habilitation, rehabilitation and treatment they need, but which for any reason cannot be furnished in the person's own home. Residential facilities include, but are not limited to, state institutions under the control of the commissioner of human services, foster homes, residential treatment centers, maternity shelters, group homes, residential programs, supportive living residences for functionally impaired adults or schools for handicapped children.

7466. “Loading space” - that portion of a property lot or parcel of land designed to serve the purpose of loading or unloading all types of vehicles.

7567. “Lot” - a designated parcel of land established by plat or subdivision adequate for occupancy by a use permitted in this ordinance and providing sufficient area required for minimum open space and appurtenant facilities as required by this ordinance. For the purpose of determining lot area, setbacks, lot coverage, and floor area, a lot must not include any land below the ordinary high water level of a lake or creek, a measured parcel of contiguous land having fixed boundaries and recorded with the appropriate government authority or office.

7668. “Lot area” - the total area within the bounded by lot lines excluding dedicated public road rights-of-way and any area located below the ordinary high water level of a lake or creek.

7769. “Lot-behind-a-lot”

a) a lot with substandard or no frontage on a public road right-of-way, where access to public road right-of-way is over the substandard lot frontage or by a private easement, commonly called a "flag" or "neck" lot, or

b) a lot with standard frontage on a public street, where the only buildable area is directly behind an existing or potential house pad that fronts on a public street.

7870. “Lot, corner” - a lot situated at the junction of and fronting on two or more intersecting streets, a lot abutting, and located at the intersection of, two or more public road rights-of-way.
7971. “Lot coverage” - that portion of a lot, excluding any area located below the ordinary high water level of a lake or creek, that is covered by buildings, driveways, parking areas and any other impervious surface.

8072. “Lot depth” - the mean average horizontal distance between the front and rear lot lines. In order to allow flexibility in determining lot depth for parcels of unusual configuration, lot depth can be measured by averaging side property lines or by measuring a straight line extending from the front lot line to the rear lot line and passing through the building buildable area or existing principal structure, subject to determination by the director of planning.

8473. “Lot, double frontage” - a lot having frontage on two non-intersecting streets abutting two, non-intersecting public road rights-of-way.

74. “Lot, riparian” - a lot abutting a public water, excluding wetlands.

8275. “Lot line” - a line that defines the legal boundary of a lot, of record bounding a lot which divides one lot from another lot, a public or private street or any other public or private space.

8376. “Lot line, front” - a lot line abutting a dedicated public road right-of-way. In the case of a lot-behind-lot, the front lot line will be determined by the city planner based upon characteristics of the lot and the surrounding neighborhood.

8477. “Lot line, rear” - the lot line opposite and most distant from the front lot line. In the case of a corner lots, the rear lot line shall will be determined by the director of planning city planner based upon characteristics of the surrounding neighborhood.

8578. “Lot line, side” - any lot line other than a front or rear lot line.

8679. “Lot of record” - a parcel of land lot whose legal description was established in the Hennepin county property records by plat, subdivision or as otherwise permitted by law prior to February 12, 1966, and which contains identical lot lines as were present on February 12, 1966.

8780. “Lot width at right-of-way” - the width of a lot between side lot lines at the front lot line adjacent to the public street, the horizontal distance between side lot lines as measured at the public road right-of-way.

8881. “Lot width at setback” - the width of a lot between side lot lines at the setback line, measured at right angles to lot depth the horizontal distance between side lot lines as measured at the required front yard setback established by this ordinance.

The stricken language is deleted; the single-underlined language is inserted.
8982. “Lowest floor” - the lowest floor of the lowest enclosed area of a building, including a basement. An unfinished or flood resistant enclosure used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building’s lowest floor.

9083. “Manufactured or mobile home” - a structure, transportable in one or more sections, that is built on a permanent chassis, and is designed for use with or without a permanent foundation, and may be used as a dwelling unit when attached to the required utilities. The term does not include a recreational vehicle.

9184. “Marina” - a facility for storing, servicing, fueling, berthing and securing of pleasure boats and which may include eating, sleeping and retail facilities for owners, crews, and guests.

9285. “Master development plan” - description or illustration of development usually comprised of a series of plans that generally show: location of trees and water resources, streets, utilities, stormwater improvements, buildings, and parking areas; proposed site grading and tree removal and landscaping; and building elevations and signs; and landscaping.

9386. “Medical clinic” - a freestanding structure or, in the case of multiple tenant buildings, a total occupied space of 2,000 square feet or greater used for patient examination and treatment by physicians, dentists, optometrists, psychologists or other health care professionals and where patients are not lodged overnight.

9487. “Microbrewery” - a facility that manufactures and distributes malt liquor or wine in total quantity not to exceed 250,000 barrels per year, which may include space dedicated as a taproom to distribute on-sale and off-sale alcohol.

9588. “Mixed use development” - the development of a parcel of land with two or more different uses such as residential, commercial, or manufacturing or with residential uses of different densities as permitted by this ordinance.

9689. “Non-PUD development” - a development that is not a PUD and which complies with all applicable subdivision and zoning regulations.

9790. “Occupancy” - the purpose for which a building or part thereof is used or intended to be used.

9891. “Ordinary high water level or OHWL” - the boundary of public waters at an elevation delineating the highest water level as defined by the department of natural resources which has been maintained for a sufficient period of time to leave evidence upon the

The stricken language is deleted; the single-underlined language is inserted.
landscape; commonly that point where the vegetation changes from predominantly aquatic to predominately terrestrial. For tributary rivers creeks, the ordinary high water level is the elevation of the top of the bank of the channel as approved by the city's engineer.

9992. “Original zoning classification” - the zoning classification a property had immediately prior to being rezoned.

40093. “Outdoor entertainment” - any type of entertainment or recreation activity that does not occur within an enclosed building.

401. “Parking access” - the area of a parking lot that allows motor vehicle ingress and egress from the street.

40294. “Parking deck or ramp” - a structure built for the temporary storage of motor vehicles.

40395. “Parking lot” - an off-street, ground level area, without a roof, surfaced and improved for the temporary storage of motor vehicles.

40496. “Parking space” - an improved temporary motor vehicle storage area of dimensions specified in the parking and loading standards contained in section 300.28 of this ordinance and directly accessible to an access aisle an area within a parking deck, ramp or lot intended for the storage of an individual motor vehicle and that complies with the standards outlined in section 300.28 of this ordinance. This term is identical to the term parking stall.

40597. “Patio” - a horizontal structure without a roof, and with flooring composed of any material other than boards, such as concrete, flagstones, bricks or pavers. A patio is considered attached if any part of it is within ten feet of the principal structure; a patio is considered detached if no part of it is within ten feet of the principal structure. A detached patio is considered an accessory structure in the wetlands, floodplain, and shoreland districts.

40698. “Performance standards” - specified criteria and limitations provided in section 300.28 which are intended to protect the public health, safety or welfare.

40799. “Person(s)” - an individual, firm, partnership, corporation, company, association, society, joint stock association or body politic including any trustee, receiver, assignee or other representative thereof.

The stricken language is deleted; the single-underlined language is inserted.
408100. “Planned unit development (PUD)” - a zoning classification and development type in which the city grants flexibility from certain subdivision and zoning regulations to achieve a public benefit that would not otherwise be achieved through a non-PUD development.

409101. “Porch” - a structure that is designed for home residential occupancy that includes a floor and roof, and may include walls, but is not designed for winter use. A porch may be attached to, or detached from, a principal structure. A detached porch (for example, a gazebo) is classified as an accessory structure. A porch is considered attached if any part of it is within ten feet of the principal structure; a porch is considered detached if no part of it is within ten feet of the principal structure.

440102. “Premises” - a lot together with all buildings and structures located on it.

441103. “Public building” - a structure sheltering or enclosing a government activity or use a building owned and occupied by a municipal, school district, regional, state or other governmental unit.

442104. “Public water” - any water defined in Minnesota statutes, section 103G.005, or as amended. These waters include lakes, wetlands, and watercourses.

443105. “Recreational vehicle” - a vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towed by a light duty truck, and is designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

444106. “Restaurant” - an establishment in which food and drink is offered or prepared and served for public consumption and is served to customers at tables by employees. Restaurants may include incidental take-out service.

445107. “Restaurant, fast food” - a restaurant whose business is the sale of rapidly prepared, or pre-prepared or take-out food or drink directly to customers without table service and which may include drive-up order and delivery systems. This definition does not include establishments within community or neighborhood shopping centers that do not have a customer dining area and offer food only as take-out or by delivery.

446108. “Restoration” - a reestablishment of previously existing conditions or uses or reconstruction of previously existing building features.

447109. “Retaining wall” - a wall that separates and retains two areas of earth that have different elevations.

The stricken language is deleted; the single-underlined language is inserted.
448110. “Right-of-way” - a strip of land intended to be used for streets, highways, crosswalks, sidewalks, trails, railroads or utility purposes.

111. “Riparian” - of, on, or relating to the banks of a natural water body excluding wetlands.

119112. “Roof” --the outside top covering of a building the exterior surface forming the upper covering of a building.

120. “Roof line” - for buildings with a flat roof, the roof line is the horizontal plane at the top of the roof. For other buildings with any type of pitched or sloping roof, the roof line is the lowest point of the roof.

121. “Screen” - a visual shield between uses accomplished by the use of berms, landscaping, walls or other aesthetic means.

122113. “Setback” --the minimum distance from any lot line that an improvement may be placed, measured perpendicularly from the lot line to the closest point of the improvement the minimum horizontal distance that must be maintained between a property line, delineated wetland edge, floodplain elevation, ordinary high water level, or top of bluff and a building or structure. A setback is measured perpendicularly from the lot line, delineated wetland edge, floodplain elevation, ordinary high water level, or top of bluff to the closest point of the building or structure, excluding building or structure eaves.

123114. “Setback line” - a line which is the specified setback distance from and parallel to any lot line, or other specified line, such as the ordinary high water level, edge of wetland, floodplain, or top of bluff, a line located at the required setback from a property line, delineated wetland edge, floodplain elevation, ordinary high water level, or top of bluff.

115. “Shopping center” – a group of retail and other commercial establishments that is planned, developed, owned, or managed as a single property.

124116. “Shopping center, community” - a business center intended to provide a wide range of goods or services primarily to residents of the city, a general merchandise and convenience-oriented shopping center, generally including a large tenant such as a discount store or supermarket, providing goods and services to residents of the larger community. Examples of community shopping centers in the city include Ridgehaven Mall and the Seven-Hi commercial area.

125117. “Shopping center, neighborhood” - a business center of limited commercial nature which provides convenience goods or services to nearby neighborhoods.
convenience-oriented shopping center primarily providing goods and services to residents of the adjacent area. Generally, the smallest type of shopping center. Examples of neighborhood shopping centers in the city include retail buildings in the Glen Lake and Cedar Lake Road areas.

426118. “Shopping center, regional” - a business center intended to provide a comprehensive array of goods or services to residents of the metropolitan area. a shopping center providing a wide range of goods and services to residents of the metropolitan region. Ridgedale Mall is the only regional shopping center in the city.

427119. "Shore impact zone" - land located between the ordinary high water level of a public water including a tributary creek, and a line parallel to it at a setback of 25 feet for general development lakes and tributary creeks, and 37.5 feet for recreational development lakes.

428120. “Shorelands” - land located within the shoreland district as defined in section 300.25.

429. “Sign” - a name, identification, description, display, illustration or device which is affixed to or represented directly or indirectly upon a building, structure or land in view of the general public, and which directs attention to a product, place, activity, person, institution or business.

121. “Sign” - any writing, pictorial presentation, number, illustration or decoration, flag, banner or other device that is used to announce, direct attention to, identify, advertise, or otherwise make anything known. The term “sign” does not include the terms “building” or “landscaping,” or any architectural embellishment of a building not intended to communicate information.

430122. “Sign, advertising” - a sign which directs attention to a business, commodity, service, activity or entertainment not necessarily conducted, sold or offered upon the premises where such sign is located.

431123. “Sign, business” - a sign which directs attention to a business or profession or to a commodity, service or entertainment sold or offered upon the premises where such a sign is located.

432124. “Sign, flashing” - any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use.

433125. “Sign, illuminated” - any sign which has characters, letters, figures, designs or outlines illuminated by electric lights or luminous tubes as part of the sign.

The stricken language is deleted; the single-underlined language is inserted.
134. “Sign, name plate” - any sign which states the name or address of the business or occupant of the lot where the sign is placed.

135. “Sign, projecting” - a sign, other than a wall sign, which projects from and is supported by a wall of a building or structure.

136. “Sign, pylon” - a free standing sign erected upon a single pylon or post which is in excess of 10 feet in height with a sign mounted on top thereof.

137. “Sign, rotating” - a sign which revolves or rotates on its axis by mechanical means.

138. “Sign, surface area of” - the entire area within a single continuous perimeter enclosing the extreme limits of the actual sign surface. It does not include any structural elements outside the limits of such sign and not forming an integral part of the display.

139. “Sign, wall - flat” - a sign affixed directly to an exterior wall and confined within the limits thereof of any building and which projects from that surface less than 18 inches at all points.

140. “Site and building plan” - a development plan for a lot or lots on which is shown the existing and proposed conditions of the lot, including topography, vegetation, floodplain, wetlands, open spaces, means of ingress/egress, parking, grading, drainage, utilities, landscaping, structures, signs, lighting, screening, building elevations and other information which reasonably may be required in order that an informed decision can be made by the city.

141. “Site and building plans” - plans that specifically illustrate: location of trees and water resources, streets, utilities, stormwater improvements, buildings, and parking areas; proposed site grading, and tree removal, and landscaping; building elevations and signs; and landscaping, and other information as may be reasonably required by the city.

142. “Slope” - the inclination of the natural surface of the land from the horizontal, commonly described as a percentage derived from the height divided by the length.

143. “Slope, toe of” - the lower point of a 50-foot segment with an average slope of at least 20 percent.

144. “Slope, top of” - the higher point of a 50-foot segment with an average slope of at least 20 percent.

The stricken language is deleted; the single-underlined language is inserted.
“Steep slope” - a slope that has an average grade of 20 percent or more, that covers an area at least 100 feet in width (side to side), except that the 100 feet width does not apply in the shoreland zoning district, and that rises at least 25 feet above the toe of the slope. The average grade of a steep slope will be measured between the toe and the top of the slope.

“Storage” - goods, materials or equipment placed or left in a location on a premises.

“Story” - the portion of a building included between the upper surface of any floor and the upper surface of the next floor above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than six feet above grade as defined herein for more than 50 percent of the total perimeter or is more than 12 feet above grade at any point, such usable or unused under-floor space shall be considered as a story.

“Street” - a vehicular way further defined as local, collector, minor arterial, intermediate arterial or principal arterial in the comprehensive plan and lying within a dedicated public right-of-way or road easement, a vehicular way located within road right-of-way, as defined and designated in the subdivision ordinance and comprehensive guide plan.

“Structure” - anything placed, poured, constructed, or erected, the use of which requires location on the ground or attachment to something having a location on the ground. Examples include, but are not limited to: buildings, parking ramps, sport courts, patios, and pools.

“Structure, accessory” - On non-riparian lots, an uninhabited structure over 200 square feet in area, located on the same lot, subordinate to, and associated with the principal structure. On riparian lots and lots within the shoreland, floodplain, and wetland zoning districts, the same definition, but including structures over 120 square feet in area and as modified by sections 300.23, 300.24, and 300.25 of this ordinance.

The stricken language is deleted; the single-underlined language is inserted.
142. “Structure, enclosed” – a structure that is surrounded by a roof and walls composed of any type of material.

143. “Structure, unenclosed” – a structure that is not surrounded by a roof and walls composed of any type of material.

144. “Structure, principal” – the building in which is conducted the primary use of the lot on which the building is located. The structure in which the primary use of the lot occurs.

145. “Substantial compliance” - relative to an approved master development plan, or approved final site and building plans, or approved preliminary plat:

   a) streets, utilities, stormwater improvements, buildings, and parking areas, and landscaping are in generally the same location;

   b) the number of residential units has not changed by more than 5 percent;

   c) the gross floor area of non-residential buildings has not been changed by more than 5 percent or the gross floor area of any individual building has not been changed by more than 10 percent;

   d) The number of stories of any building has not increased;

   e) The square-footage of grading on any individual lot has not increased by more than 1,000 square feet;

   f) the amount of open space has not decreased by more than 5 percent or been altered in such a way as to change its original design or intended use;

   g) all special conditions attached to the approval are met.

146. “Substantial damage” - damage of any origin sustained by a structure when the cost of restoring the structure to its undamaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

147. “Substantial improvement” - reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition, or other improvement of a structure, within a consecutive 365-day period, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes an improvement to a structure that has incurred substantial damage, regardless of the actual repair work performed. The term does not include either:

The stricken language is deleted; the single-underlined language is inserted.
a) improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and that are the minimum necessary to assure safe living conditions; or

b) an alteration of an historic structure as defined in 44 code of federal regulations, part 59.1, provided that the alteration will not preclude the structure's continued designation as an historic structure.

454148. “Transient sales” - use of a structure or lot for the temporary sale of goods, wares or merchandise. Transient sales shall do not include the sale of food products of a farm or garden occupied and cultivated by the seller.

455149. “Transitional area” - an area in the process of changing from one use to another or an area which functions as a buffer between land uses of different types or intensity.

456150. “Transmission line” - an overhead or underground facility consisting of utility poles, lines, underground conduit, and related devices used to carry electricity generally to a location other than the ultimate user, with a nominal voltage greater than 35 kilovolts.

457151. “Tributary creek” - a water course mapped on the public water inventory including the Minnehaha Creek, Nine Mile Creek, and Purgatory Creek (including both branches), and the public water course that flows out of Glen Lake. These waters include those defined as tributary rivers by the Minnesota department of natural resources.

458152. “Use” - the purpose or activity for which a premises is designed, arranged or intended or for which it is or may be occupied or maintained.

153. Use, Accessory - a use that is subordinate to, associated with, and located on the same property as the principal use.

154. Use, Commercial - a use that involves the sale of goods or services.

155. Use, Conditional - a use that is permitted in a particular zoning district when certain and specific standards and conditions outlined in the ordinance are met. The city may impose conditions beyond those outlined in ordinance when necessary to protect public health, safety, and welfare.

156. Use, Permitted – a use that is allowed by right when ordinance standards are met.

The stricken language is deleted; the single-underlined language is inserted.
157. Use, Primary – a use for which a premises is designed, arranged, or intended or for which it is or may be occupied.

459158. “Utility pole” - a structure which is owned by a governmental agency or utility company and which is used to support illumination devices or lines and other equipment carrying electricity or communications.

460159. “Variance” - a modification from the literal requirements of this ordinance as specified in section 300.07 of this ordinance.

464160. “Water oriented accessory structure” - a detached, above ground small building or structure that does not exceed 120 square feet in size or 10 feet in height, exclusive of safety rails, that's use is directly related to the surface water. Examples include sheds, gazebos, screen porches and detached decks. Stairways, fences, retaining walls and docks are not considered water oriented accessory structures. Boat houses are not water oriented accessory structures.

161. Water Resource – for purposes of this ordinance, a lake, creek, wetland, stormwater pond, ditch, or other similar natural feature.


163. “Wetlands” - poorly drained environmentally sensitive lands classified by type in section 300.23 of this ordinance and designated on official city floodplain and wetland maps. a low area where the water table is usually at or near the surface, or where the land is covered by shallow water. Wetlands must: (1) have hydric soils; (2) be inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation; and (3) under normal circumstances support a prevalence of hydrophytic vegetation.

164. “Wind energy conversion system (WECS) or windmill” - an apparatus capable of converting wind energy into electricity.

165. “Yard” - an open space unobstructed from the ground upward with the exception of landscape materials and minor fixtures of non-structural nature commonly found in a yard.

466165. “Yard, front” - the area between the front lot line and the front setback line principal structure.

The stricken language is deleted; the single-underlined language is inserted.
Section 2. The city clerk is directed to revise Chapter 3 of the Minnetonka City Code by substituting the term “city planner” for “director of planning” wherever the latter term appears.

Section 3. This ordinance is effective upon adoption.

Adopted by the city council of the City of Minnetonka, Minnesota, on February 29, 2016.

Terry Schneider, Mayor
Attest:

David E. Maeda, City Clerk

**Action on this ordinance:**

Date of introduction: January 25, 2016
Date of adoption:
Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Ordinance adopted.

Date of publication:
I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on February 29, 2016.

David E. Maeda, City Clerk

The stricken language is deleted; the single-underlined language is inserted.
B. Ordinance regarding dangerous and potentially danger animals

Allendorf moved, Acomb seconded a motion to adopt ordinance 2016-03 regarding dangerous and potentially danger animals. All voted “yes.” Motion carried.

C. Agreement with Intermediate School District #287 for police liaison services for 2016

Allendorf moved, Acomb seconded a motion to approve the agreement and authorize the mayor and city manager to enter into an agreement with Intermediate School District #287 for police liaison services for 2016. All voted “yes.” Motion carried.

D. 2016 Pay Equity Implementation Report

Allendorf moved, Acomb seconded a motion to approve the Pay Equity Implementation Report and authorize staff to submit to the Pay Equity Office at Minnesota Management and Budget to comply with Minnesota State Statute. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes: None

12. Introduction of Ordinances:

A. Ordinance amending City Code Section 300.02, regarding zoning ordinance definitions

Gordon gave the staff report.

Allendorf commended staff for the review work that was done.

Wagner said he thought the city allowed accessory apartments that were not necessarily in the same physical dwelling. Wischnack indicated that was not correct.

Wiersum said going through the definitions was informative.

Wiersum moved, Allendorf seconded a motion to introduce the ordinance and refer it to the planning commission. All voted “yes.” Motion carried.

B. Ordinance amending the City Code Section 300.37 regarding the lot width in the R1-A zoning district

Gordon gave the staff report.
8. Public Hearings

B. Ordinance amending City Code Section 300.02 regarding zoning ordinance definitions.

Acting Chair Odland introduced the proposal and called for the staff report.

Thomas reported. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Calvert asked why the term “electro-magnetic field” was removed. Thomas explained that the terms removed do not appear anywhere in the zoning ordinance. The definitions that were made longer were changed to provide consistency with legal documents or statutes.

In response to Calvert's question, Thomas agreed that the retaining wall definition could be changed to state that a retaining wall separates and retains two areas of earth that have different elevations.

Calvert was concerned that the simplified definitions lost some of their meaning and made it easier to build in certain areas. Gordon explained that a great deal of time was spent considering the natural resources definitions because they are tailored according to how the zoning code is administered. Density is calculated based on the usable lot area.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Knight moved, second by Powers, to recommend that the city council adopt the ordinance on pages A1-A23 of the staff report.

Calvert, Hanson, Knight, O'Connell, Powers, and Odland voted yes. Kirk was absent. Motion carried.
City Council Agenda Item #10B
Meeting of February 29, 2016

Brief Description
Ordinance amending city code section 300.37, regarding lot width in the R-1A zoning district

Recommendation
Adopt the ordinance

Background

In 2014, the city adopted the R-1A zoning ordinance. The intent of the R-1A ordinance is to provide a smaller lot single-family development option.

In 2015, the city reviewed its first R-1A development, Saville West. During that review, staff noted an oversight in the R-1A development standards. As written, the R-1A ordinance includes just one minimum lot width standard: 75 feet. The R-1 zoning classification includes different lot width standards at setback, at right-of-way, and at cul-de-sac right-of-way. It was staff’s intention that the same ratios be applied in the R-1A district, as follows:

<table>
<thead>
<tr>
<th>LOT WIDTH (minimum)</th>
<th>R-1</th>
<th>R-1A</th>
</tr>
</thead>
<tbody>
<tr>
<td>AT SETBACK</td>
<td>110 FT</td>
<td>75 FT</td>
</tr>
<tr>
<td>AT ROW</td>
<td>80 FT</td>
<td>55 FT</td>
</tr>
<tr>
<td>AT CUL-DE-SAC ROW</td>
<td>65 FT</td>
<td>45 FT</td>
</tr>
</tbody>
</table>

Proposed Ordinance

Staff is proposing an ordinance amendment outlining the varying lot width requirements within the R-1A district. The amendment would not impact minimum lot size or any other standard of the ordinance nor would it impact any existing lots in the community. (See pages A1–A2.)

Council Introduction

The ordinance was introduced at the city council’s January 25, 2016 meeting. The council asked if the Saville West project met the proposed lot width minimums. Staff answered in the affirmative. There were no other comments or questions.

Planning Commission Recommendation

The ordinance was reviewed by the planning commission on February 4, 2016. The commission had no questions and on a 6-0 vote recommended the council adopt the ordinance. (See page A3.)
Staff Recommendation

Adopt the ordinance amending city code section 300.37, regarding lot width in the R-1A zoning district. (See pages A1–A2.)

Submitted through:
- Geralyn Barone, City Manager
- Julie Wischnack, AICP, Community Development Director
- Loren Gordon, AICP, City Planner

Originated by:
- Susan Thomas, AICP, Assistant City Planner
Ordinance No. 2016-

An ordinance amending city code section 300.37, regarding lot width in the R-1A zoning district

The City Of Minnetonka Ordains:

Section 1. Section 300.37 Subdivision 6(a) under R-1A, Residential Alternative, District is amended as follows:

a) Lots must meet all of the following minimum standards:

1) Lot area: 15,000 square feet
2) Lot width at front yard setback: 75 feet
3) Lot width at right-of-way: 75-55 feet, except that lots abutting a cul-de-sac bulb may have a lot width at right-of-way of 45 feet.
4) Lot depth: 125 feet
5) Buildable area: 2,400 square feet
6) Buildable area dimensions: minimum of four sides with 30 feet per side

Section 2. This ordinance is effective upon adoption.

Adopted by the city council of the City of Minnetonka, Minnesota, on February 29, 2016.

Terry Schneider, Mayor

The stricken language is deleted; the single-underlined language is inserted.
Attest:

David E. Maeda, City Clerk

**Action on this ordinance:**

Date of introduction: January 25, 2016  
Date of adoption:  
Motion for adoption:  
Seconded by:  
Voted in favor of:  
Voted against:  
Abstained:  
Absent:  
Ordinance adopted.

Date of publication:

I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on February 29, 2016.

David E. Maeda, City Clerk
8. Public Hearings

A. Ordinance amending City Code 300.37 regarding lot width in the R-1A zoning district.

Acting Chair Odland introduced the proposal and called for the staff report.

Thomas reported. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Powers moved, second by Hanson, to recommend that the city council adopt the ordinance on pages A1-A2 of the staff report.

Calvert, Hanson, Knight, O'Connell, Powers, and Odland voted yes. Kirk was absent. Motion carried.
City Council Agenda Item #13A  
Meeting of February 29, 2016

**Brief Description**  
Resolution consenting to and approving the issuance of a revenue note by the City of Deephaven for the benefit of Minnetonka Youth Hockey Association

**Recommendation**  
Hold the public hearing, adopt the resolution and approve the agreement

**Background**

The Minnetonka Youth Hockey Association received land use approvals from the city of Minnetonka in November 2015. The project is now in the final stages of planning and the group is working on financing. The requested transaction is called a tax exempt private activity bond. This bond is for no more than $5 million and is being issued through the city of Deephaven. The city of Minnetonka is required to provide “host” approval, which simply means the project is within the jurisdiction of the city and will cooperate with the city of Deephaven.

Enclosed is a memorandum from Julie Eddington of Kennedy and Graven (page A1) explaining specifics of the project financing.

**Recommendation**

Staff recommends the city council hold the public hearing, adopt the resolution (pages A2-A4) and approve the agreement (see pages A5-A7).

Submitted through:  
Geralyn Barone, City Manager

Originated by:  
Julie Wischnack, AICP, Community Development Director
February 24, 2016

Julie Wischnack  
Community Development Director  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345  

Re: Host City Approval for the Financing of a Project for the Benefit of the Minnetonka Youth Hockey Association  

Dear Julie,  

The Minnetonka Youth Hockey Association, a Minnesota nonprofit corporation (the “Borrower”), has requested that the City Council of the City of Minnetonka (the “City”) grant “host approval” for the issuance of a tax-exempt private activity bond (the “Note”) in the maximum principal amount of $5,000,000 by the City of Deephaven (the “City of Deephaven”) to finance the acquisition, construction, and equipping of an addition to the Borrower’s ice rink facilities located at 18313 Highway 7 in the City, including an additional full-size rink and off-ice training facilities (the “Project”). The host approval is required by state law.  

Following the public hearing to be conducted by the City on Monday, February 29, 2016, the City Council will be asked to adopt the enclosed resolution, which consents to the issuance of the Note by the City of Deephaven to finance the Project, which is located in the City, and authorizes the execution of a cooperative agreement with the City of Deephaven.  

If the City Council of the City provides host approval for the issuance of the Note, the Note will be issued as a revenue obligation of the City of Deephaven and will not be an obligation of the City. The principal of and interest on the Note will be payable solely from revenues derived from the Project. The Note will not constitute a general or moral obligation of the City and will not be secured by the full faith and credit or taxing powers of the City. In the event the Project encounters financial difficulties, no assets or revenues of the City will be available to pay the principal of or interest on the Note. Because the City of Deephaven will be the issuer of the Note, the City will be able to issue up to $10,000,000 in “bank-qualified bonds” in calendar year 2016.  

Please contact me with any questions. Thank you for your assistance in this matter.

KENNEDY & GRAVEN, CHARTERED

Julie Eddington
Resolution No. 2016-

Resolution consenting to and approving the issuance of a revenue note by the City of Deephaven for Minnetonka Youth Hockey Association; Approving and authorizing the execution of a cooperative agreement; and taking other actions related thereto

Be it resolved by the City Council (the “Council”) of the City of Minnetonka (the “City”) as follows:

Section 1. Recitals.

1.01. The City is authorized by Minnesota Statutes, Sections 469.152 through 469.1655, as amended (the “Act”), to issue revenue bonds to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment or extension of a project, defined in the Act as any properties, real or personal, used or useful in connection with a revenue producing enterprise.

1.02. Minnesota Statutes, Section 471.656, as amended, authorizes a municipality to issue obligations to finance the acquisition or improvement of property located outside of the corporate boundaries of such municipality if the obligations are issued under a joint powers agreement between the municipality issuing the obligations and the municipality in which the property to be acquired or improved is located.

1.03. Pursuant to Minnesota Statutes, Section 471.59, as amended, by the terms of a joint powers agreement entered into through action of their governing bodies, two or more municipalities may jointly or cooperatively exercise any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised and the joint powers agreement may provide for the exercise of such powers by one or more of the participating governmental units on behalf of the other participating units.

1.04. The Minnetonka Youth Hockey Association, a Minnesota nonprofit corporation (the “Borrower”), has proposed to acquire, construct, and equip an addition to the Borrower’s ice rink facilities located at 18313 Highway 7 in the City, including an additional full-size rink and off-ice training facilities (the “Project”). The Project will be owned and operated by the Borrower.

1.05. The Borrower has requested that the City of Deephaven, Minnesota (the “City of Deephaven”) issue a revenue obligation, in one or more series (the “Note”), in an estimated principal amount not to exceed $5,000,000, and loan the proceeds of the Note to the Borrower to (i) finance the Project; (ii) fund required reserves for the Note, if any; (iii) finance interest on the Note during the construction of the Project; and (iv) pay the costs of issuing the Note.
1.06. The City and the City of Deephaven are proposing to enter into a Cooperative Agreement, to be dated on or after March 1, 2016 (the “Cooperative Agreement”), pursuant to which the City will consent to the issuance of the Note by the City of Deephaven to finance the Project, and the City of Deephaven will agree to issue the Note for such purpose.

1.07. On the date hereof, the City Council of the City conducted a duly noticed public hearing in accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), and the Act with respect to the financing of the Project and the issuance of the Note.

Section 2. Findings; Approvals.

2.01. The City has determined that it is desirable, feasible, and consistent with the objectives and purposes of the Act, and it is in the best interest of the City, to approve the issuance of the Note by the City of Deephaven, and the City hereby approves and authorizes the issuance of the Note by the City of Deephaven to finance the Project.

2.02. The Note is to be issued pursuant to authority conferred by the Act. The Note will constitute a special, limited obligation of the City of Deephaven secured solely by revenues derived from the operation of the Project and other security provided by the Borrower, including a leasehold mortgage. The Note will neither constitute a general or moral obligation of the City or the City of Deephaven nor be secured by any taxing power of the City or the City of Deephaven.

2.03. The Mayor and the City Manager are hereby authorized and directed to execute and deliver the Cooperative Agreement on behalf of the City. All of the provisions of the Cooperative Agreement, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Cooperative Agreement shall be substantially in the form on file with the City which is hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the Mayor and the City Manager, in their discretion, shall determine, and the execution thereof by the Mayor and the City Manager shall be conclusive evidence of such determination.

2.04. Officials and staff of the City and other officers, employees, and agents of the City are hereby authorized and directed to prepare and furnish to Kennedy & Graven, Chartered, as bond counsel to the City of Deephaven (“Bond Counsel”), certified copies of all proceedings and records of the City relating to the approval of the issuance of the Note, including a certification of this resolution. Such officers, employees, and agents are hereby authorized to execute and deliver, on behalf of the City, all other certificates, instruments, and other written documents.
that may be requested by Bond Counsel or other persons or entities in conjunction with the issuance of the Notes.

2.05. The Borrower shall pay to the City any and all costs paid or incurred by the City in connection with the Note or the financing of the Project, whether or not the financing is carried to completion and whether or not the Note or operative instruments are executed and delivered.

2.06. This resolution shall be in full force and effect from and after its adoption.

Adopted by the City Council of the City of Minnetonka, Minnesota this 29th day of February, 2016.

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

Action on this resolution:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held February 29, 2016.

City Clerk
COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT, dated as of March 1, 2016 (the “Cooperative Agreement”), is made and entered into between the CITY OF MINNETONKA, MINNESOTA, a home rule charter city and political subdivision of the State of Minnesota, as host city (the “Host City”), and the CITY OF DEEPHAVEN, MINNESOTA, a statutory city and political subdivision of the State of Minnesota, as issuer city (the “Issuer City”).

RECITALS

WHEREAS, the Minnetonka Youth Hockey Association, a Minnesota nonprofit corporation (the “Borrower”), has proposed to acquire, construct, and equip an addition to the Borrower’s ice rink facilities located at 18313 Highway 7, Minnetonka, Minnesota, including an additional full-size rink and off-ice training facilities (the “Project”); and

WHEREAS, pursuant to Minnesota Statutes, Section 471.656, as amended, a city may issue obligations to finance the acquisition or improvement of property located outside of the corporate boundaries of such city if the obligations are issued under a joint powers agreement in which one or more of the parties to the joint powers agreement issue such obligations and the property is located entirely within the boundaries of one or more of the parties to the joint powers agreement; and

WHEREAS, pursuant to Minnesota Statutes, Section 471.59, as amended, by the terms of a joint powers agreement entered into through action of their governing bodies, two or more cities may jointly or cooperatively exercise any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised, and the joint powers agreement may provide for the exercise of such powers by one or more of the participating cities on behalf of the other participating cities; and

WHEREAS, the Host City and the Issuer City are authorized by Minnesota Statutes, Sections 469.152 through 469.1655, as amended (the “Act”), to issue revenue obligations to finance the cost of the acquisition, construction, reconstruction, improvement, betterment or extension of a project, defined in the Act as any properties, real or personal, used or useful in connection with a revenue producing enterprise; and

WHEREAS, the Host City and the Issuer City are proposing to enter into this Cooperative Agreement pursuant to which the Host City will consent to the issuance of such revenue obligations and the financing of the Project by the Issuer City, and the Issuer City will agree to issue such revenue obligations to finance the Project; and

WHEREAS, the revenue obligations proposed to be issued by the Issuer City for the benefit of the Borrower shall not constitute general or moral obligations of, or pledge the full faith and credit or taxing powers of, the Host City, the Issuer City, the State of Minnesota, or any other agency or political subdivision thereof, but shall be payable solely from the revenues pledged and assigned thereto pursuant to one or more agreements between the Issuer City and the Borrower; and
WHEREAS, the governing bodies of the Host City and the Issuer City have authorized the execution and delivery of this Cooperative Agreement; and

NOW, THEREFORE, the Host City and the Issuer City hereby agree as follows:

1. The Issuer City shall issue its Sports Facilities Revenue Note (Minnetonka Youth Hockey Association Project), Series 2016 (the “Note”), in the original aggregate principal amount of $5,000,000. Proceeds of the Note will be used to (i) finance the Project; (ii) fund required reserves for the Note, if any; (iii) finance interest on the Note during the construction of the Project; and (iv) pay the costs of issuing the Note.

2. The governing bodies of the Issuer City and the Host City have conducted public hearings with respect to the financing of the Project.

3. The governing bodies of the Host City and the Issuer City have each adopted a resolution approving this Cooperative Agreement and authorizing its execution and delivery.

4. The Host City hereby consents to and approves: (a) the issuance of the Note by the Issuer City; and (b) the financing of the Project by the Issuer City with the proceeds of the Note to be issued by the Issuer City.

5. Except to the extent specifically provided herein, the Host City and the Issuer City shall not incur any obligations or liabilities to each other as a result of the issuance of the Note. The Note shall be a special, limited obligation of the Issuer City payable solely from proceeds, revenues, and other amounts specifically pledged to the payment of the Note. The Note and the interest thereon shall not constitute or give rise to a pecuniary liability, general or moral obligation, or a pledge of the full faith and credit or taxing powers of the Host City, the Issuer City, the State of Minnesota, or any political subdivision of the above, within the meaning of any constitutional or statutory provisions.

6. All costs incurred by the Host City and the Issuer City in the authorization, execution, delivery, and performance of this Cooperative Agreement and all related transactions shall be paid by the Borrower.

7. This Cooperative Agreement may not be terminated by any party so long as the Note is outstanding.

8. This Cooperative Agreement may be amended by the Host City and the Issuer City at any time with the consent of all parties to this Cooperative Agreement. No amendment may impair the rights of the Borrower or the holder of the Note.

9. This Cooperative Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, duly authorized officers of the Host City and the Issuer City have executed this Cooperative Agreement as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA,
as Host City

By
______________________________
Its Mayor

By
______________________________
Its City Manager
Execution page of the Issuer City to the Cooperative Agreement, dated as of the date and year first written above.

CITY OF DEEPHAVEN, MINNESOTA,
as Issuer City

By _________________________________
Its Mayor

By _________________________________
Its City Administrator-Clerk/Treasurer
City Council Agenda Item #14A
Meeting of February 29, 2016

Brief Description
Resolution approving city support for Shelter Corporation’s application to Hennepin County for Transit Oriented Development Funds

Action Requested
Adopt the resolution

Background
Shelter Corporation received approval for a 27 unit apartment building on the former “Music Barn” property at 5740 and 5750 Shady Oak Road. The project continues to work with various funding partners and has applied for funds from Hennepin County. The project has also requested additional funds from the city’s TIF pooling fund. The EDAC is currently reviewing that request (see link at http://tinyurl.com/February-Agenda-Packet starting on page 8 for more information).

Hennepin County TOD Funds

The Hennepin County Board of Commissioners established the transit oriented development (TOD) program in 2003 to support both redevelopment and new construction that enhances transit usage. Funds have assisted projects along key Hennepin County transit corridors such as Hiawatha, Central Corridor, Southwest, Bottineau, and other high frequency and express bus routes. The County Board has authorized approximately $2 million per year in the capital budget for TOD projects.

Staff Recommendation

Adopt the resolution (pages A1-A2) approving city support for Shelter Corporation’s application to Hennepin County for Transit Oriented Development Funds.

Through: Geralyn Barone, City Manager
Originator: Julie Wischnack, AICP, Community Development Director
Resolution No. 2016-

Resolution approving city support for Shelter Corporation’s application to Hennepin County for Transit Oriented Development Funds

Be it resolved by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

1.01 The city approved a 27 unit apartment project at 5740 and 5750 Shady Oak Road.

1.02 The city approved the use of Tax Increment Pooling dollars to assist with the project’s long term affordability (30 years).

1.03 The property is located near a trail and near the proposed light rail’s Opus Station (Green Line Extension)

Section 2. Findings.

2.01 The project helps the city meet its affordable housing goals.

2.02 The project is connected to parks, trail, and future light rail.

2.03 The project supports housing diversity in the city.

Section 3. Council Action.

3.01 Based on the findings, the city supports Shelter Corporation’s application to Hennepin County for Transit Oriented Development Funds.

Adopted by the City Council of the City of Minnetonka, Minnesota, on February 29, 2016.
Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

Action on this resolution:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on February 29, 2016.

David E. Maeda, City Clerk
City Council Agenda Item #14B
Meeting of February 29, 2016

**Brief Description**
Concept plan review for a 350-unit apartment building at 10101 Bren Road East

**Action Requested**
Provide comments, feedback, and direction.

**Site**
The property at 10101 Bren Road East is just under 8 acres in size. The east side of the property is improved with a vacant 98,000-square foot industrial building, the west side with a large surface parking lot. These improved spaces are bisected by a public trail and surrounding green space. While the property is currently zoned I-1, industrial, it has a mixed-use designation in the 2030 Comprehensive Guide Plan. (See page A1.)

**Previous Concept**
In 2015, Roers Investments submitted a concept plan for redevelopment of the property. The plan contemplated construction of a 274-unit, five-story apartment building. During review of the concept, the planning commission generally commented that the residential use would be appropriate, but expressed some concern regarding parking, stormwater, and building height. The council concurred that high-density residential would be a good land use. However, council members commented that the concept lacked an interesting design. They indicated they would like to see a taller building(s) with more “pizzazz” and a more exciting “vibe.” Roers is no longer pursuing the property. (See pages A1–A13.)

**Current Concept**
Lecesse Development Corp. has now submitted a concept plan for redevelopment of the site. This concept plan contemplates construction of a seven-story building, comprised of two levels of parking and five levels of luxury apartments. Conceptually, the 350-unit building would have a more “urban” than “suburban” design and would include both ground level and rooftop recreational amenities. (See pages A15–A16.)

**Key Issues**
City staff has identified the following considerations for any development of the subject property:

- **Land Use:** Evaluation of a residential use relative to existing uses, anticipated uses, and expected traffic generation will be important.

- **Access:** The site is currently accessed from two points: (1) a private access to Blue Circle Drive; and (2) a shared access to Bren Road East. A clear
understanding of the shared access, including the rights conveyed by existing easements, will be necessary.

- **Site Design.** Utility access, tree preservation, grading and drainage must all be carefully evaluated. More information and analysis will be needed for a formal development application regarding the engineering and natural resource details.

- **Transformation.** The concept plan represents a significant conversion of industrial use to place for residential living. Introduction of residential uses at/near the Opus Station are consistent with comprehensive planning for Opus and station area planning principles. Formal development submittals will need to address how this project can integrate with future evolution within Opus and the more immediate station area.

Links to LRT information can be found in the “Additional Information” section of this report.

**Review Process**

Staff has outlined the following review process for the concept. At this time, a formal application has not been submitted.

- **Neighborhood Meeting.** The developer held a neighborhood meeting on February 18, 2016 immediately prior to the planning commission meeting. No invitees attended.

- **Planning Commission Concept Plan Review.** The planning commission conducted a review of the concept plan on February 18, 2016. The commission generally indicated support for the high-density residential land use and the “more urban” building design. However, the commission noted that any formal application for redevelopment of the site should give careful consideration to: maintaining natural open spaces, preservation of the integrity of the existing public trail, provision of amenities in appropriate locations, and incorporation of green technologies. Meeting minutes may be found on pages A17–A20.

- **City Council Concept Plan Review.** The city council Concept Plan Review is intended as a follow-up to the planning commission meeting and would follow the same format as the planning commission Concept Plan Review. No staff recommendations are provided, the public is invited to offer comments, and council members are afforded the opportunity to ask questions and provide feedback without any formal motions or votes.
Staff Recommendation

Provide comments, feedback, and direction that may lead to the preparation of more detailed development plans.

Submitted through:
   Geralyn Barone, City Manager
   Julie Wischnack, AICP, Community Development Director
   Loren Gordon, AICP, City Planner

Originated by:
   Susan Thomas, AICP, Assistant City Planner
ADDITIONAL INFORMATION

Southwest LRT

Over the last several years the council has reviewed aspects of the Southwest Light Rail Project – the Green Line Extension – at numerous study sessions and regular meetings. On June 23, 2014 the city granted municipal consent to project. The council: (1) adopted a resolution approving the physical design component of the preliminary design plans; (2) approved a memorandum of understanding for the route through the city; and (3) accepted the Southwest Corridor Investment Framework. On September 14, 2015, the city again approved municipal consent to the project, approving revised preliminary design plans.

Additional Southwest LRT information can be found:

Southwest Housing Gaps Analysis:  
http://tinyurl.com/Housing-Gaps-Analysis

Southwest Corridor Wide Housing Inventory:  
http://tinyurl.com/Housing-Inventory

OPUS Station Area Planning:  
http://tinyurl.com/OPUS-Station-Area-Planning

OPUS Transitional Station Area Plan:  
http://tinyurl.com/OPUS-Transitional-Station-Area

Opus Area Transportation Study

In conjunction with light rail planning, a detailed analysis of the Opus transportation network was conducted in 2012/2013. The study identified a variety of potential improvements. Improvement cost would be addressed within the city’s Capital Improvement Plan:

- Roadway Improvements. Improvements include changing the direction/flow of traffic on Red Circle Drive, Yellow Circle Drive, and Green Oak Drive.

- Trail Improvements. Improvement and new trail construction would be necessary: (1) the light rail line will serve several existing, important links; and (2) new trails would provide for better connectivity from sites to the new light rail station.

- Utility Improvements. In Opus, utilities are generally located within trail corridors. During the trail improvement project, an analysis will be done to determine if any utility improvements are necessary.
• Bridge improvements would be needed at a variety of locations to accommodate roadway and trail improvements.

Next Steps

• **Formal Application.** If the developer chooses to file a formal application, notification of the application would be mailed to area property owners. Property owners are encouraged to view plans and provide feedback via the city’s website. Through recent website updates: (1) staff can provide residents with ongoing project updates, (2) residents can “follow” projects they are particularly interested in by signing up for automatic notification of project updates; (3) residents may provide project feedback on project; and (4) staff can review resident comments.

• **Neighborhood Meeting.** Prior to the planning commission meeting and official public hearing, an additional public meeting may be held with neighbors to discuss specific engineering, architectural and other details of the project, and to solicit feedback. This extends the timing that has historically been provided in advance of the planning commission review to allow more public consideration of the project specifics.

• **Council Introduction.** The proposal would be introduced at a city council meeting. At that time, the council would be provided another opportunity to review the issues identified during the initial concept plan review meeting, and to provide direction about any refinements or additional issues they wish to be researched, and for which staff recommendations should be prepared.

• **Planning Commission Review.** The planning commission would hold an official public hearing for the development review and would subsequently recommend action to the city council.

• **City Council Action.** Based on input from the planning commission, professional staff and general public, the city council would take final action.

Roles and Responsibilities

• **Applicants.** Applicants are responsible for providing clear, complete and timely information throughout the review process. They are expected to be accessible to both the city and to the public, and to respect the integrity of the public process.

• **Public.** Neighbors and the general public will be encouraged and enabled to participate in the review process to the extent they are interested. However, effective public participation involves shared responsibilities. While the city has an
obligation to provide information and feedback opportunities, interested residents are expected to accept the responsibility to educate themselves about the project and review process, to provide constructive, timely and germane feedback, and to stay informed and involved throughout the entire process.

- **Planning Commission.** The planning commission hosts the primary forum for public input and provides clear and definitive recommendations to the city council. To serve in that role, the commission identifies and attempts to resolve development issues and concerns prior to the council’s consideration by carefully balancing the interests of applicants, neighbors, and the general public.

- **City Council.** As the ultimate decision maker, the city council must be in a position to equitably and consistently weigh all input from their staff, the general public, planning commissioners, applicants and other advisors. Accordingly, council members traditionally keep an open mind until all the facts are received. The council ensures that residents have an opportunity to effectively participate in the process.

- **City Staff.** City staff is neither an advocate for the public nor the applicant. Rather, staff provides professional advice and recommendations to all interested parties, including the city council, planning commission, applicant and residents. Staff advocates for its professional position, not a project. Staff recommendations consider neighborhood concerns, but necessarily reflect professional standards, legal requirements and broader community interests.
Location Map

Project: Lecesse Apartments
Applicant: Lecesse Development
Address: 10101 Bren Road E
PREVIOUS CONCEPT PLAN
Magney moved, second by Odland, to recommend that the city council adopt the resolution on pages A18-A24 of the staff report approving a conditional use permit and final site and building plans for a licensed daycare facility at 14730 Excelsior Boulevard.

**Knight, Magney, O’Connell, Odland, Calvert, and Kirk voted yes. Motion carried.**

The city council is tentatively scheduled to review this item at its meeting on September 14, 2015.

9. Other Business

A. Concept plan review for redevelopment of the property located at 10101 Bren Road East.

Staff recommends that commissioners provide feedback to assist the applicant with direction that may lead to the preparation of more detailed development plans.

Durbin reported.

David Higgins, vice president of development with Roers Investments, co-applicant with CPM Companies of Minneapolis, stated that:

- He appreciated the opportunity to address the commission and receive feedback.
- The project would consist of rental, market-rate apartments.
- This location has a high number of jobs in the area. The infrastructure improvements in the area would be validated by this type of use. There is a demand for new housing opportunities in the suburban market place in the west metro.
- The goal for the area is to diversify the uses and become a mixed-use park.
- The applicant would like to start construction in the spring. It would last approximately 14 to 18 months and open at the end of 2017.
- He was available for questions.

Calvert asked for the sizes of the 274 units. Mr. Higgins said that there would be a mix of 10 percent studio, 50 percent one-bedroom plus a den, and 35 percent two-bedroom apartments.
In response to O'Connell’s question, Mr. Higgins stated that the applicant also owns the adjacent site that is being considered for a hotel use.

O'Connell asked if the applicant has a similar project already completed. Mr. Higgins stated that the CPM Group is well known for its work around uptown and the university. Roers Investment Group has done work in North Dakota. It has completed $140 million worth of projects over 20 projects to date. In 2015, there will be $150 million worth of projects in 4 states. He did not have visuals of the projects. The proposal is envisioned to be of similar quality to an uptown rental unit. There continues to be a significant number of renters who do not want to live downtown, but would like that quality of housing opportunity. There are a lot of empty nesters or early retirees who have had enough of mowing the lawn and would rather have a full-service experience. Lots of people who would buy a house 10 years ago would never qualify today.

Chair Kirk asked how much of the project has been driven by the location of the light rail station. Mr. Higgins stated that the project would be done without it, unquestionably, but that the opportunity for light rail would be a significant benefit to the proposal. It would be a walkable distance from the site to light rail.

Chair Kirk visited the site because he was concerned with traffic congestion. He asked how traffic would flow in and out of the site. Mr. Higgins anticipated the traffic would access Highway 169. More unique drivers would travel the Shady Oak Road route. A driver can get anywhere from this location.

Chair Kirk noted the amenities including the pool and outdoor patio that would be built on the site. Mr. Higgins said that the building would be configured to create a sense of place and an enveloped landscaped amenity area in the back to provide a level of privacy.

Chair Kirk asked about guest parking. Mr. Higgins stated that visitor parking on the surface level is a work in progress. The original number was 8 and has been updated to 14 stalls. There would be landscaped areas that could be made into parking areas if there would be a need. Balancing adequate parking to prevent poaching from surrounding uses with reducing surface runoff is the challenge. There is a shared maintenance and parking agreement with the property to the east. The area is predominantly a business-hour-type operation. Visitors to the apartments would happen on nights and weekends. In a downtown setting, not less than 2 percent of the units must have guest parking. That would be more than doubled with 14 stalls. He is committed to working with the neighbors and city staff to get the right number.
Chair Kirk invited Stout to address surface runoff. Stout stated that the city’s and the Nine Mile Creek Watershed District’s stormwater management requirements would apply. The surrounding infrastructure would be looked at to make sure that the discharge rate would not be increased.

Chair Kirk asked if Opus was developed prior to the adoption of stormwater management practices. Stout said that there are a number of regional ponds throughout the Opus area, however, they do not meet the current water quality treatment requirements. A specific amount of phosphorous removal would now be required.

Calvert noted that a forest on the north would be removed. She wondered why development had to go so far north. Mr. Higgins stated that the path does not get interrupted by the layout. The goal is to retain as much of the existing growth as possible. Looking at the entire site, the greatest concentration would be located where the existing improvements are located. The vegetation on the north has been determined more unfavorable. The area that buffers the trail would continue to be green space. The east-west trail would be untouched.

Calvert asked how the pending year-long closure of Highway 169 would impact the proposal. Mr. Higgins said that the proposal is planned for the long term. Calvert noted that it could impact marketability. Mr. Higgins explained that the quality of the project is not available in this area. He suggested driving down Blue Circle Drive on a Friday afternoon when everyone is commuting. It is completely silent. It is an unusually enclosed place near infrastructure that would get a driver to another place quickly. Defining when the improvements to Highway 169 would be done is a little uncertain. The applicant feels that it would not cause a major problem.

Calvert asked for the average rent. Mr. Higgins estimated $2 a foot. An average 2-bedroom is 1,200 square feet. The proposal would provide a unique experience.

Chair Kirk noted that the proposal would be 5 stories. The adjacent hotel is 10 stories. The land use, access, and site design are focal points.

Chair Kirk invited residents to provide comments.

Jack Schuth, employee of Annex Medical which is part of the Opus II Condominium Association, 6018 Blue Circle Drive, stated that:
• Construction vehicles would travel on the shared driveway and create a serious concern for the business owners.
• The water table is 6 inches below the ground. Underground parking would be a concern or the building would be increased one story.
• The parking lot of the condominium business association would become the sneak through to get to Blue Circle Drive.
• Trespassing has been an issue with UHG employees coming over to smoke.
• The residents of the proposed apartment building would be living right up against the road.
• A promise was verbally made at the last meeting that there would be 8 visitor parking stalls and that there would be more in the future. It is a month later and he would like to see more serious proposals about where parking would be located.

Jim Burns, 10201 Bren Road East, asked if the change in use status or increase in the number of trips would cause an additional fee that would need to be paid by the landowner to help pay for the project. The bridge in front of his building to get to County Road 101 is going to be under construction in 2016 and 2017. It will be closed and cause massive rerouting of traffic. Interstate 169 would be shut down for one year. Traffic goes the wrong way all of the time over the bridge and around the corner. There needs to be some thought to make drivers aware that there is no left turn. He is concerned a little that the building would be five stories. He asked if it would require approval to exceed the number of people per square footage of space allowed by the city. UHG was proposed as a two-stage project, but phase two started right after phase one was completed. The guest parking is a big question mark. Downtown parking is not relevant. There is no street parking in Opus. It seems like a precarious space for an apartment building to be located in the middle of Opus. He thought something on the Shady Oak side or Smetana at the entrance would be easier to find.

Wischnack said that Mr. Burns was correct regarding trip generation. That would be studied once plans have been submitted. There is an allowance of the number of trips a site may generate without cost, but there may be a payment required to help fund the improvements to Highway 169.

Chair Kirk stated that more details would be provided at the next public hearing once plans and an application have been submitted.

Calvert did not see building up as a bad thing, necessarily. It would be a large building, but it would leave less of a footprint than the current building.
Odland was concerned with the water table level and what potential negative changes would occur to provide underground parking. A location closer to light rail might make more sense. There are issues that need to be looked at.

Magney felt multi-family housing would be a good choice for the location. A little smaller scale of three or four stories may be preferable. He was not concerned with the groundwater issue. The engineers would work out those details. It might impact the whole project, but the engineers would determine that. There should be more guest parking. In the big picture, multi-family housing would be just fine.

O’Connell concurred that the density of housing would be a good fit for the area with an office park so close to jobs. It fits the long-term vision of using existing infrastructure. The issues raised would have to be addressed. He supports the proposal.

Knight agrees with Magney and O’Connell. The proposal would be an appropriate use of the property. The area has a lot of employment. Right now, employees are driving in from outside the area. If some of the workers lived in the apartment building, then that would be a good thing. The area is not residential where neighbors would be concerned about what could be seen out the window. It would not bother him if a five-story building was constructed next to the building he works in. The size of the building does not bother him at all.

Chair Kirk recapped that more than five stories would be an issue for the commission. Transportation issues need to be addressed because of current problems, but the proposal is not being rejected. He would appreciate more of a clear, long-range vision in the comprehensive guide plan for the Opus area. He did not object to the proposal, but he was worried how the greater Opus area associations and trip counts fit in with each other. Wischnack stated that the city council will look at comprehensive guide plan studies done on the Opus area.

B. Concept plan review for Villa West on State Highway 7.

Staff recommends that commissioners provide feedback to assist the applicant with direction that may lead to the preparation of more detailed development plans.

Bob Schmidt, president of RTS Development, applicant, stated that:

- Thomson did a good job explaining the proposal.
- The property owner of the site used to fix his boat props. It was a unique piece of property located off a gravel road on Highway 7.
Bergstedt said he attended a neighborhood meeting at the beginning of the process. There were a lot of questions about the concept review process. He noted staff had not seen any type of detailed plans. The area had been planned for medium density since the 1970's so he didn’t think anyone should be concerned with a medium density proposal. He said some of the neighbors inquired about the city purchasing the property for park land or open space. This would not happen and he thought the property should be developed but developed sensibly. Along with the existing Carlyle Place townhouses there were six single family parcels, four were under control. Whatever plan that comes forward involving the four parcels should be looked at more broadly to determine how the final two parcels would be integrated in an orderly way. He thought the detached villa townhomes would be very popular but looking at the plan it seemed to be very dense.

Pam Scherling, 4925 West End Lane, said the townhomes were not double the density of the proposed new development. The proposal was for six per acre and the townhomes were nine per acre. She said the proposal had one street while the townhomes had four. The four streets were curved so the townhomes looked like a neighborhood. Because of the amount of open space between the buildings there were mature trees that were able to thrive. This was also where guests parked. One of the association’s challenges was the guest parking because many of the residents own boats and sometimes the boat takes up the entire garage space. She said the trees would have to be clear cut in order to get to the proposed density. She questioned who would move into the proposed houses given the pricing.

David Devins, 17100 Sandy Lane, said when he exits his driveway and enters Highway 7, traffic does not yield and he was concerned about an exit on the neighboring property with traffic going out at the same time. He said the density was way out of line. He noted there were serious water and drainage issues when Carlyle Place was built.

D. Concept plan review for redevelopment of the property located at 10101 Bren Road E

Thomas gave the staff report.

Wagner said as the council had discussed the area, the discussion was that it was going to change to a higher density. He thought there was agreement it would be a combination of businesses and residential. It was more logical that the Merchandise Mart area might have more residential, and he had argued for residential on the Datacard site as well but the
council decided otherwise. He said he was fine with the concept but it lacked pizzazz at this point. As the council discussed other recent developments it was clear that one big, long, five story, and unattractive apartment building was not something the council would look favorably upon. Some character was important. He noted that for the second phase with the hotel site, the area starved for more higher end hotels. With the area being a jobs center and only the Marriott in the area, he guaranteed every business would starve for the competition.

Acomb said the plan didn’t have much of a neighborhood feel. She felt residential was appropriate but wanted it to feel at least a little welcoming. Earlier in the day she asked for information about where the parks and trails were within Opus. The map she was sent was helpful because it showed trails going right through this property.

Wagner said he thought about the multiple proposals that were looked for what now is Tonka on the Creek/Overlook. He said you can tell that development will have a good feel and vibe with the rooftop patio and green features. He encouraged the developers to be as creative with this development.

Schneider said a residential use within walking distance of the proposed light rail station made good sense. The challenge was the look was more what one would expect with a traditional sprawled out rental apartment building. If there was any place in the city that would allow a taller building this was the space. He would be a lot more excited with a plan for two six to eight story buildings with a lot of surrounding green space. He said it was a good use but wasn’t very imaginative.

Wiersum said the term “vibe” sounded right. There were two very interesting apartment buildings being built in the city right now – the Overlook and the island property being done by Carlson. He wanted to approve something in Opus that would bring some excitement and drive further development of the sort that would take advantage of the existing amenities as well as light rail. An apartment building that looks like it belongs along I494 was not it. He thought there was an opportunity for mixed use residential with other components. Schneider said the caveat to getting that type of development was it usually required greater density.

Allendorf noted he worked in the Opus area for three years and he was having a difficult time envisioning what type of apartment building this would be in terms of who it might attract. On one side of Opus was the Marriott and on the other side was the budget hotel. He didn’t know what type of hotel might fit on this property. It might be something in between a
budget hotel and an upper scale hotel, similar to a Hampton Inn. He was not adverse to residential but he wasn’t sure how it would fit in the area.

Schneider said a portion of the 6,000-8,000 United Health employees might be a built in audience for the apartments.

Wagner said there were a lot of non-full service types of hotels with a bar and limited food service all in the lobby area, which have a good vibe. This might fit in the area. Allendorf said the Garden Inn in Eden Prairie was that type of hotel and it had a good feel to it. He said perhaps that was the type of hotel that could go on the site.

Wiersum said the challenge was the desire to build a building that is not for what’s there now but what will be there in the future. This required envisioning what the future of the Opus area was and what would be appropriate on this site. There was the potential for millennials who wanted to live in the suburbs and could take the light rail to downtown for a ballgame without having to use a car.

Schneider said although he didn’t think Minnetonka would ever do it, Bloomington had many areas that have a minimum density requirement. He said the council could encourage this for developments in certain areas.

E. Items related to the 2016 preliminary tax levy:
   1) Resolution setting a preliminary tax levy, collectible in 2016, and preliminary 2016 budget
   2) Resolution setting a preliminary tax levy, collectible in 2016, for the Bassett Creek Watershed Management Tax District

Barone gave the presentation.

Wagner moved, Wiersum seconded a motion to:
   1) adopt resolution 2015-084 setting a preliminary tax levy, collectible in 2016, and preliminary 2016 budget
   2) adopt resolution 2015-085 setting a preliminary tax levy, collectible in 2016, for the Bassett Creek Watershed Management Tax District.

All voted “yes.” Motion carried.

15. Appointments and Reappointments: None

16. Adjournment
Bergstedt moved, Wiersum seconded a motion to adjourn the meeting at 9:53 p.m. All voted "yes." Motion carried.

Respectfully submitted,

[Signature]

David E. Maeda
City Clerk
CURRENT CONCEPT PLAN
liked the proposal and agreed with the PUD zoning. She was a little concerned with the timeline. She liked the concept.

Powers said that including the second small lot made sense to him. Solving the problem so drivers would not have to back onto Williston Road is significant.

Acting Chair Odland gave Mr. Fretham kudos for responding to the feedback.

**Calvert moved, second by Powers, to recommend that the city council adopt the following with an address correction provided in the change memo dated February 18, 2016:**

1) **Ordinance rezoning the property from R-1 to PUD and adopting a master development plan for Williston Woods West (see pages A38-A41 of the staff report).**

2) **Resolution approving a preliminary plat of Williston Woods West (see pages A42-A46 of the staff report).**

3) **Resolution approving final site and building plans for Williston Woods West (see pages A47-A57 off the staff report).**

Knight, O'Connell, Powers, Calvert, Hanson, and Odland voted yes. Kirk was absent. Motion carried.

9. Other Business

A. Concept plan review for a 350-unit apartment building at 10101 Bren Road East.

Acting Chair Odland introduced the proposal and called for the staff report.

Thomas and Cauley reported. They requested commissioners provide comments, feedback, and direction that may lead to the preparation of more detailed development plans.

O'Connell asked if the green space is being incorporated into the project. Thomas explained that it is part of the large lot.

Tom Hayden, development director for LeCesse Development, applicant, introduced the civil engineer, Nick Mannel, and the architect, Martin Cook, for the project. Mr. Hayden stated that:
• The proposal is for 350 luxury apartments.
• The plan addresses concerns regarding height, mass, and green space.
• The building would be 5 stories tall.
• He would appreciate feedback to create a design that would work for everyone.
• The proposal is not comparable to the project in Maple Grove. This design would be more urban.

Wischnack clarified that residential development is exempt from the trip generation ordinance because it does not create peak-hour traffic.

O’Connell confirmed with Mr. Hayden that the cost would be $1.75 per square foot. He asked what the market study showed in relation to the location. Mr. Hayden stated that the number and mix of units was determined by the market study. The demographic would be a young, millennial office worker.

Wischnack stated that the SWLRT housing gaps analysis found no housing product in the rental category that is over 80 percent AMI in the area. There will be a presentation next month with all of the details which are also available on the SWLRT website.

Powers thought more than seven stories would be suitable for the site. He asked what would make the units qualify to be luxury. Mr. Cook explained that the construction costs would raise dramatically if the project would go higher than 5 stories. The upgrades in each unit and an amenity package that includes roof-top amenities with an outdoor pool, 24-hour fitness area, coffee bar, golf simulator, and dog-washing station would make the apartment building on the luxury level. The trend is to decrease the size of the unit and increase the amount of amenities.

Hanson asked what would happen with the green space on the west side. Mr. Hayden answered that has not been determined.

Calvert asked for the square footage of a proposed apartment. Mr. Hayden estimated 900 to 1,000 square-feet. A studio would be 650 square feet with a sliding wall. The small, one-bedroom units are the first to go in an urban setting like this. Forty percent of the units would have two bedrooms. The remainder would be studio or one bedroom units.

O’Connell asked if the proposal would work without the SWLRT. Mr. Hayden is appreciative of the light rail, but the demographics in the area would support the project without the light rail.
Calvert asked what the building would look like. Mr. Cook explained that the massing plan shows the mass, but does not represent the architecture. The first rendering would work in this area. As the proposal moves forward, he would work closely with staff to create the direction of the aesthetics, massing, and design of the materials and so on.

Calvert asked why the courtyard would be closed off rather than having an open view. Mr. Hayden found that residents enjoy enclosed, quite, courtyards with amenities. Mass would be located as high as possible and spread out. The plan would be to relocate the path to a location that would work for everyone.

Hanson likes the courtyard and pool. He would look for privacy. He asked if the pool would be in shade. Mr. Hayden stated that would be a good thing to consider.

Calvert asked if the water table level would cause a problem for the two underground levels of parking. Mr. Mannel stated that soil borings did not find water down to 21 feet. The groundwater table should not be an issue.

Hanson asked if there could be a green area in the courtyard that would collect water from the roofs. Mr. Mannel stated that the city and watershed district stormwater requirements would be met. There would probably be underground stormwater collection features. The deck in the courtyard would be located over the parking.

Acting Chair Odland asked how the urban building would be made to fit in with the city's value of natural surroundings. Mr. Hayden stated that there would be a natural buffer from Bren Road to the entrance. The mass would go up and the building would use as little green space as possible. There would be landscaping and open, green space. He was open to suggestions regarding how to create more natural features.

Hanson suggested using colors that would blend in.

Calvert asked what amenities would be located on the roof. Mr. Cook answered soft-seating areas, landscaping, and fire pits.

Powers likes the roof-top amenities very much. There are areas for groups to gather all around the property. He asked if the applicant has built a similar project. Mr. Hayden agreed that residents would need to drive to a grocery store and movie theater. That is not unusual. As the light rail is operational, the surrounding office park may transform to include retail and restaurants.
Wischnack noted that there is 789 units of housing in the area already. The 1970 Opus plan includes mixed uses and residential housing.

O’Connell asked how fast the leasing went for the Carlson Project. Wischnack said that the market is strong and vacancies are still very low, less than two percent.

Calvert favored keeping the green space and keeping the natural setting running along the path.

Acting Chair Odland asked what green features would be incorporated. Mr. Hayden said that he would work with staff to create an energy-efficient building that would include green elements.

Knight liked what he saw. He is a fan of rooftop amenities. He asked if a raingarden could be located on a roof. Mr. Hayden said that would be very difficult. There are systems that use plastic containers that link together. A raingarden would add a tremendous amount of weight and the price would increase to a point where it would not be feasible.

Knight noted that there are a lot of single-family houses that were not surrounded by amenities and many existing homes within a short walk from the site. He did not think it would be a problem. He likes the proposal.

Calvert likes the proposal. She supports it being a green building.

Powers likes the idea overall. He appreciates his questions being answered so well.

Hanson agreed with saving trees and keeping the path.

10. Adjournment

Calvert moved, second by Powers, to adjourn the meeting at 8:10 p.m. Motion carried unanimously.

By: ___________________________________

Lois T. Mason
Planning Secretary
Brief Description  Resolution amending the Glen Lake contract

Recommendation  Adopt the resolution approving the time extension

Background

The city of Minnetonka originally approved the Glen Lake Redevelopment contract in 2006. The original development had three parts: the Exchange Building (now the Oaks Apartment building with commercial space on the ground floor); the northern portion of the grocery store property (now St. Therese/The Glenn) and Kinsel Point on Stewart Lane (now Zvago). The city has processed various changes to the development contract over the years including: number of affordable housing units, types of units (condominiums to rental) and various time extensions.

The developer and builder of the Zvago project are proceeding through the HUD (Housing and Urban Development) financing for the project. The developer has also applied for a building permit for the project. HUD has requested various changes to the document including:

- Assignment of the contract to the new entity.
- Waiving of the city’s right to purchase the property. This essentially occurred when the city approved the Zvago project, but for clarity, the requirement is being stricken from the contract.
- Replatting of the property can also be met by tax combining the two existing properties that comprise the Kinsel site.

If the project does not proceed by the date identified in the contract, March 31, 2016, the contract would be considered in default. Remedies for default are noted in the contract and remedies include withholding tax increment. The original contract noted that if construction commenced, albeit with several revised dates, the option to purchase the property terminated.

Staff Recommendation

Staff has reviewed the changes and recommends approval of the Resolution for the Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment Between the Economic Development Authority in And For The City Of Minnetonka, The City Of Minnetonka, And Glen Lake Redevelopment LLC on pages A1-A3.

Both the EDA and city council are required to take action on this item.

Submitted through:  
  Geralyn Barone, City Manager

Originated by:  
  Julie Wischnack, AICP, Community Development Director
Resolution No. 2016-xx

Resolution approving a fifth amendment to second amended and restated contract for private redevelopment between the Economic Development Authority in and for the City of Minnetonka, the City of Minnetonka, and Glen Lake Redevelopment LLC

Be it resolved by the City Council (the “Council”) of the City of Minnetonka, Minnesota (the “City”) as follows:

Section 1. Background.

1.01. The City and the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”) have approved the creation of the Glenhaven Tax Increment Financing District (the “TIF District”) within the housing development and redevelopment project known as the Glen Lake Housing Development and Redevelopment Project (the “Project”), and have adopted a tax increment financing plan for the purpose of financing certain improvements within the Project.

1.02. The Authority and City entered into an Amended and Restated Contract for Private Redevelopment, dated May 15, 2007 (the “Original Contract”), with Glen Lake Redevelopment LLC, a Minnesota limited liability company (the “Redeveloper”), which set forth the terms and conditions of the housing and commercial redevelopment project to be constructed by the Redeveloper within the TIF District in three separate phases designated as “Phase I,” “Phase II,” and “Phase III.”

1.03. To address changes in the housing market, timing of construction, and other development details, the Authority, the City, and the Redeveloper modified the Original Contract and entered into a Second Amended and Restated Contract for Private Redevelopment, dated January 4, 2010 (the “Second Amended Contract”). The Second Amended Contract has been subsequently amended by the First Amendment to Second Amended and Restated Contract for Private Redevelopment, the Second Amendment to Second Amended and Restated Contract for Private Redevelopment, the Third Amendment to Second Amended and Restated Contract for Private Redevelopment, and the Fourth Amendment to Second Amended and Restated Contract for Private Redevelopment.

1.04. The Redeveloper has requested that the Second Amended Contract related to Phase III of the redevelopment project be further amended to remove the Authority’s option to purchase the property on which the Phase III of the project is located (the “Phase III Property”) in the event that the Redeveloper does not commence construction by March 31, 2016, as set forth in the Fourth Amendment to Amended and Restated Contract for Private Redevelopment.

1.05. The Redeveloper has informed the City that it will assign its obligations with respect to Phase III of the redevelopment project to Zvago Cooperative at Glen Lake, a
Minneapolis cooperative (the “Cooperative”), which will construct and own the senior housing cooperative, all as permitted under Section 8.2 of the Second Amended Contract, as heretofore amended.

1.06. There has been presented to this Council a Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment (the “Fifth Amendment to Second Amended Contract”), which removes the Authority’s option to purchase the Phase III Property in the event of a default by the Redeveloper.

1.07. There has been presented to this Council an Assignment and Assumption Agreement (the “Assignment and Assumption”) between the Redeveloper and the Cooperative setting forth the assignment and assumption of the obligations by the Cooperative with respect to Phase III of the redevelopment project.

1.08. The Council has reviewed the Fifth Amendment to Second Amended Contract, and finds that the execution thereof by the City and performance of the City’s obligations thereunder are in the best interest of the City and its residents.

Section 2. Council Action.

2.01. The Fifth Amendment to Second Amended Contract is approved in substantially the form on file in City Hall, subject to modifications that do not alter the substance of the transaction and are approved by the Mayor and City Manager; provided that execution of the document will be conclusive evidence of their approval.

2.02. The Assignment and Assumption to the Cooperative is hereby approved in substantially the form on file in City Hall, subject to modifications that do not alter the substance of the transaction and are approved by the Mayor and City Manager; provided that execution of the document will be conclusive evidence of their approval.

2.03. The Mayor and City Manager are authorized and directed to execute the Fifth Amendment to Second Amended Contract, the Assignment and Assumption, and any other documents or certificates necessary to carry out the transactions described therein, including estoppel certificates requested by the Cooperative’s lender.
Adopted by the City Council of the City of Minnetonka, Minnesota this 29th day of February, 2016.

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

Action on this resolution:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held February 29, 2016.

City Clerk
FIFTH AMENDMENT TO
SECOND AMENDED AND RESTATED
CONTRACT FOR PRIVATE REDEVELOPMENT

THIS FIFTH AMENDMENT TO SECOND AMENDED AND RESTATED CONTRACT FOR PRIVATE REDEVELOPMENT, made on or as of the 29 day of February, 2016 (the “Fifth Amendment to Agreement”), is by and between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, a public body corporate and politic (the “Authority”), established pursuant to Minnesota Statutes, Sections 469.090 to 469.1081 (hereinafter referred to as the “Act”), the CITY OF MINNETONKA, a Minnesota municipal corporation (the “City”) and GLEN LAKE REDEVELOPMENT LLC, a Minnesota limited liability company (the “Redeveloper”), and consented to by The Exchange Development LLC, a Minnesota limited liability company (“The Exchange Development”), Kinsel Point Development LLC, a Minnesota limited liability company (“Kinsel Point Development”), Glen Lake Senior Housing, LLC, a Minnesota limited liability company, and Zvago Cooperative at Glen Lake, a Minnesota cooperative, all as permitted assignees hereunder.

WITNESSETH:

WHEREAS, the Authority, the City, and the Redeveloper previously entered into that certain Second Amended and Restated Contract for Private Redevelopment, dated January 4, 2010 (the “Original Agreement”), which amended and restated a Contract for Private Redevelopment, dated January 31, 2006, between the Authority, the City, and the Redeveloper, as amended and restated by the Amended and Restated Contract for Private Redevelopment, dated May 15, 2007, which was partially assigned to The Exchange Development and Kinsel Point Development; and

WHEREAS, pursuant to the Original Agreement, the Redeveloper agreed to develop the real property in the City legally described in EXHIBIT A attached hereto (the “Redevelopment Property”) in three separate phases designated as “Phase I,” “Phase II,” and “Phase III”; and

WHEREAS, the Original Agreement was previously amended by the First Amendment to Second Amended and Restated Contract for Private Redevelopment (the “First Amendment”) to extend the time period in which Phase III of the redevelopment could occur; and

WHEREAS, the Original Agreement was previously amended by the Second Amendment to Second Amended and Restated Contract for Private Redevelopment (the “Second Amendment”) to further extend the time period in which Phase III of the redevelopment could occur; and

WHEREAS, the Original Agreement was previously amended by the Third Amendment to Second Amended and Restated Contract for Private Redevelopment (the “Third Amendment”) to modify the terms of the Phase III portion of the Minimum Improvements to replace the construction of for-sale condominium housing units with the construction of a residential senior cooperative building with approximately 54 dwelling units and to further extend the time period in which Phase III of redevelopment could occur; and
WHEREAS, the Original Agreement was previously amended by the Fourth Amendment to Second Amended and Restated Contract for Private Redevelopment (the “Fourth Amendment”) to further extend the time period in which Phase III of the redevelopment could occur; and

WHEREAS, the Original Agreement, as amended by the First Amendment, Second Amendment, Third Amendment, and Fourth Amendment, shall be referred to herein as the “Agreement”; and

WHEREAS, pursuant to the terms of an Assignment and Assumption Agreement of even date herewith (the “Assignment and Assumption”), the Redeveloper will assign its obligations with respect to Phase III under the Original Agreement, as amended, to Zvago Cooperative at Glen Lake, a Minnesota cooperative (the “Cooperative”), which will construct and own the senior housing cooperative; and

WHEREAS, the Authority has agreed to waive its option to purchase the Phase III Property in the event that the Redeveloper fails to commence construction of Phase III by the date required in the Original Agreement, as amended; and

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

Section 1. Amendment to Section 7.1(d) of the Original Agreement. Section 7.1(d) of the Original Agreement is deleted in its entirety and replaced with the following:

(d) In order to facilitate the securing of other financing, the Authority agrees to subordinate its rights under this Agreement provided that such subordination shall be subject to such reasonable terms and conditions as the Authority and Holder mutually agree in writing. The Authority shall waive its option to purchase the Phase II Property pursuant to Section 9.5 upon the earlier of (i) receipt of evidence reasonably acceptable to the Authority that the Redeveloper or Phase II Subdeveloper has commenced construction (as defined in Section 9.5) of the Phase II Minimum Improvements, or (ii) receipt of a written evidence that Redeveloper or Phase II Subdeveloper will finance the Phase II Minimum Improvements in part through a loan from HUD and HUD requires such waiver in order to proceed with such financing, in which case the waiver will be in a form acceptable to HUD. Any subordination agreement shall include the provision described in Section 7.1(c).

Section 2. Amendment to Section 9.6 of the Original Agreement. Section 9.6 of the Original Agreement is deleted in its entirety and replaced with the following:

Section 9.6. Phase III (Kinsel) Default. If the Redeveloper or Phase III Subdeveloper fails to commence the Minimum Improvements on the Phase III Property (which shall mean pouring cement for the building foundation, or placing footings in the ground, for the first building in Phase III) on or prior to March 31, 2016, the Authority may exercise any remedies available to the Authority pursuant to Section 9.2 hereof.
Section 3. **Platting of Phase III Property.** Replatting or the combination of the two tax parcels that comprise the Phase III Property is not required pursuant to Section 3.4(a) of the Original Agreement.

Section 4. **Building Permit.** The Phase III Subdeveloper will take all actions necessary to obtain a building permit for Phase III.

Section 5. **Phase III Pro Forma.** Pursuant to Section 3.7(d), the City and the Authority must review and approve the Phase III Redeveloper’s pro forma for the Phase III Minimum Improvements.

Section 5.6. **Previous Amendments to Original Agreement.** The First Amendment, Second Amendment, Third Amendment, and Fourth Amendment to the Original Agreement are set forth in EXHIBIT B attached hereto and are incorporated herein by reference.

Section 6.7. **Effective Date.** The amendments and supplements made to the Original Agreement, as amended and supplemented by this Fifth Amendment to Agreement, shall be effective as of February 29, 2016.

Section 7.8. **Certain Defined Terms.** Terms used in this Fifth Amendment to Agreement and not defined herein shall have the meanings given in the Agreement.

Section 8.9. **Confirmation of Agreement.** Except as specifically amended by this Fifth Amendment to Agreement, the Agreement is hereby ratified and confirmed and remains in full force and effect.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Authority, the City, and the Redeveloper have caused this Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment to be duly executed in their respective names and behalf as of the date and year first written above.

ECONOMIC DEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF MINNETONKA, MINNESOTA

By ________________________________
Its President

By ________________________________
Its Executive Director

STATE OF MINNESOTA )
           ) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ___ day of ________February, 2016, by Terry Schneider, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body politic and corporate, on behalf of the Authority.

_____________________________________________
Notary Public

STATE OF MINNESOTA )
           ) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ___ day of ________February, 2016, by Geralyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body politic and corporate, on behalf of the Authority.

_____________________________________________
Notary Public

This document was drafted by:
KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota  55402
Telephone:  (612) 337-9300
Execution page of the City to the Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment, dated as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By __________________________________________
Its Mayor

By __________________________________________
Its City Manager

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ____ day of ________February, 2016, by Terry Schneider, the Mayor of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the City.

__________________________________________
Notary Public

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ____ day of ________February, 2016, by Geralyn Barone, the City Manager of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the City.

__________________________________________
Notary Public
Execution page of the Redeveloper to the Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment, dated as of the date and year first written above.

GLEN LAKE REDEVELOPMENT LLC

By ________________________________
Its Chief Manager

STATE OF MINNESOTA  )
COUNTY OF HENNEPIN ) SS.

The foregoing instrument was acknowledged before me this ____ day of __________, 2016, by Thomas Wartman, the Chief Manager of Glen Lake Redevelopment LLC, a Minnesota limited liability company, on behalf of the Redeveloper.

________________________________________
Notary Public
This Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment, dated as of the date and year first written above, is acknowledged and consented to by the undersigned as a permitted assignee under the Original Agreement.

THE EXCHANGE DEVELOPMENT LLC

By ________________________________
Its Chief Manager

STATE OF MINNESOTA  )
  ) SS.
COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this ___ day of ________, 2016, by Thomas Wartman, the Chief Manager of The Exchange Development LLC, a Minnesota limited liability company, on behalf of the company.

____________________________________
Notary Public
This Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment, dated as of the date and year first written above, is acknowledged and consented to by the undersigned as a permitted assignee under the Original Agreement.

KINSEL POINT DEVELOPMENT LLC

By _________________________________
Its Chief Manager

STATE OF MINNESOTA    )
COUNTY OF HENNEPIN    ) SS.

The foregoing instrument was acknowledged before me this ___ day of ________, 2016, by Thomas Wartman, the Chief Manager of Kinsel Point Development LLC, a Minnesota limited liability company, on behalf of the company.

_______________________________
Notary Public
This Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment, dated as of the date and year first written above, is acknowledged and consented to by the undersigned as a permitted assignee under the Original Agreement and owner of the Phase II Property.

GLEN LAKE SENIOR HOUSING, LLC

By ________________________________
Its Chief Manager

STATE OF MINNESOTA  )
COUNTY OF HENNEPIN  ) SS.

The foregoing instrument was acknowledged before me this ___ day of __________, 2016, by Michael Pagh, the Chief Manager of Glen Lake Senior Housing, LLC, a Minnesota limited liability company, on behalf of the company.

__________________________________
Notary Public
This Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment, dated as of the date and year first written above, is acknowledged and consented to by the undersigned as a permitted assignee under the Original Agreement and future owner of the Phase III Property.

ZVAGO COOPERATIVE AT GLEN LAKE, a Minnesota cooperative

By: ________________________________
Its: ________________________________

STATE OF MINNESOTA  )
    ) ss.
COUNTY OF HENNEPIN   )

The foregoing instrument was acknowledged before me this _____ day of February, 2016, by ___________________________, the _____________________ of Zvago Cooperative at Glen Lake, a Minnesota cooperative, on behalf of the cooperative.

__________________________________________
Notary Public
EXHIBIT A

DESCRIPTION OF REDEVELOPMENT PROPERTY

Phase I (Exchange) Property
Lot 1, Block 1, The Exchange, according to the recorded plat thereof, Hennepin County, Minnesota.

Phase II Property
Lot 2, Block 1, Glen Haven Shopping Center, according to the recorded plat thereof, Hennepin County, Minnesota.

Phase III (Kinsel) Property
Lot 1, “Glen Lake Park”, except the East 570 feet of Lot 1, according to the recorded plat thereof, Hennepin County, Minnesota.
EXHIBIT B

PRIOR AMENDMENTS TO ORIGINAL AGREEMENT
ASSIGNMENT AND ASSUMPTION

THIS ASSIGNMENT AND ASSUMPTION (this “Assignment”) is executed and delivered by and between Glen Lake Redevelopment LLC, a Minnesota limited liability company (“Assignor” or “Redeveloper”), and Zvago Cooperative at Glen Lake, a Minnesota cooperative (“Assignee” or “Phase III Subdeveloper”), as of February 1, 2016. Assignor and Assignee are referred to collectively in this Assignment as the “Parties.” All capitalized terms not defined herein shall have the meaning given such term in the Contract (as defined herein).

RECITALS

A. Assignor, together with the Economic Development Authority in and for the City of Minnetonka, Minnesota, a Minnesota public body corporate and politic (the “EDA”) and the City of Minnetonka, Minnesota, a Minnesota municipal corporation (the “City”), entered into that certain Second Amended and Restated Contract for Private Redevelopment dated January 4, 2010, recorded in the office of the County Recorder, Hennepin County, Minnesota, on September 16, 2010, as Document No. A9560087, as amended by the First Amendment to Second Amended and Restated Contract for Private Redevelopment, dated May 13, 2013, as amended by the Second Amendment to Second Amended and Restated Contract for Private Redevelopment, dated __________, June 23, 2014, as amended by the Third Amendment to Second Amended and Restated Contract for Private Redevelopment, dated __________, January 26, 2015, as amended by the Fourth Amendment to Second Amended and Restated Contract for Private Redevelopment, dated November 6, 2015, and as further amended by the Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment, dated February 29, 2016, to be recorded in the office of the County Recorder, Hennepin County, Minnesota (collectively, the “Contract”), in connection with the redevelopment of certain real property located in the City further defined therein (the “Redevelopment Property”). Unless otherwise provided in this Assignment, all capitalized terms used herein shall have the meaning assigned to them in the Contract.

B. Under the Contract, Assignor is obligated to undertake certain redevelopment activities in connection with the Redevelopment Property (including, without limitation, the construction of certain Minimum Improvements thereon). Pursuant to Article VIII of the Contract, Assignor is permitted to transfer (or permit the transfer of) portions of the Redevelopment Property to a Subdeveloper, to assign certain rights and obligations of the
Redeveloper under the Contract to a Subdeveloper, and be released from the assigned obligations, all upon the written approval of the EDA.

C. The terms of this Assignment are effective on the date of closing on conveyance of the Phase III Property by the Phase III Property Owners to Assignee (the “Effective Date”).

D. Assignor possesses all right, title and interest in and to the Contract and now desires to sell, assign and transfer to Assignee the following rights and obligations under the Contract in connection with Phase III and the Phase III Property (the “Transferred Obligations”):

1. Sections 2.1 and 2.2, to the extent such representations and warranties relate to Phase III and the Phase III Property.

2. The Parties acknowledge that replatting or the combination of the two tax parcels that comprise the Phase III Property is not required pursuant to Section 3.4(a) of the Original Agreement.

3. Section 3.4(c), to the extent such covenants relate to Phase III and the Phase III Property. The parties agree and understand that the park dedication fee allocated to Phase III is $________, and that SAC and WAC charges and any other Phase III City fees will be the obligation of the Assignee.

4. Section 3.5, to the extent such covenants relate to the Phase III Property.

5. Section 3.7(b), to the extent such section relates to the Phase III Property.

6. Section 3.7(d).

7. Section 3.9, to the extent Authority Costs are incurred: (1) in connection with this Agreement; (2) in connection with revisions to the Contract requested by Assignee between ________ 1, 2016 and the date of this Agreement; and (iii) in connection with Phase III from and after the date of this Agreement.

8. Sections 4.1 through 4.4, to the extent such sections relate to Phase III; Section 4.10 to the extent Assignee holds records that relate to Phase III.

9. Article V, to the extent such insurance covenants relate to Phase III.

10. Sections 6.1 through 6.4, to the extent such covenants relate to Phase III and the Phase III Property.

11. Article VII, to the extent such financing covenants relate to Phase III and the Phase III Property.

12. Sections 8.1 and 8.2, to the extent such sections relate to Phase III and the Phase III Property.
12. Section 8.3, to the extent such covenants relate to Phase III and the Phase III Property.

13. Sections 9.1 through 9.4, to the extent they relate to an Event of Default by the Phase III Subdeveloper in connection with any Transferred Obligations.


15. Article X, to the extent such covenants relate to Phase III and the Phase III Property; and provided that the notice address for the Assignee for purposes of Section 10.6 is as follows:

Zvago Cooperative at Glen Lake
3530 Lexington Avenue North #100
Shoreview, MN 55126
Attn: Julie Murray

E. Assignee desires to assume the Transferred Obligations under the terms and conditions hereinafter set forth.

F. Assignee will take all action necessary to obtain a building permit for Phase III.

G. The EDA and the City have consented to the transfer of the Phase III Property and the assignment and assumption of the Transferred Obligations by Assignor to Assignee.

(The remainder of this page is intentionally left blank.)
ASSIGNMENT AND ASSUMPTION

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Assignment.** Assignor does hereby sell, assign, transfer, convey, set over and deliver the Transferred Obligations to Assignee, effective as of the Effective Date.

2. **Assumption.** Assignee hereby accepts the foregoing assignment and transfer of the Transferred Obligations and promises and agrees to assume all liabilities of the Transferred Obligations, and faithfully perform all covenants, stipulations, agreements and commitments thereto appertaining, effective as of the Effective Date.

3. **Release of Assignor.** As of the Effective Date, Assignor shall be released of the Transferred Obligations.

4. **Status of Contract / Amendment to Prevail.** The Contract remains in full force and effect, and is not modified except as expressly provided in this Assignment.

5. **Binding Effect; Governing Law.** This Assignment shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns. This Assignment shall be governed by, construed and enforced under the laws of the State of Minnesota. This Assignment shall only be effective and shall be contingent upon the consent of the EDA, in writing below. The Parties shall execute and deliver such further and additional instruments, agreements and other documents as may be reasonably necessary to evidence or carry out the provisions of this Assignment.

6. **Governing Law.** This Agreement is made and executed in the State of Minnesota and shall be governed by the laws of said State.

7. **Counterparts.** This Assignment may be executed in any number of counterparts, each of which when so executed and delivered shall constitute an original, but together shall constitute one and the same instrument.

[Signature pages follow]
ASSIGNOR’S SIGNATURE PAGE
FOR
ASSIGNMENT AND ASSUMPTION

IN WITNESS WHEREOF, the Parties hereto have executed this Assignment as of the date first above written.

ASSIGNOR:
GLEN LAKE REDEVELOPMENT LLC, a Minnesota limited liability company

By: ________________________________
   Its Chief Manager

STATE OF MINNESOTA    )
                      ) ss.
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this _____ day of February, 2016, by Thomas Wartman, the Chief Manager of Glen Lake Redevelopment LLC, a Minnesota limited liability company, on behalf of the company.

________________________________________
Notary Public

Drafted by:
KENNEDY & GRAVEN, CHARTERED (JAE)
200 South Sixth Street, Suite 470
Minneapolis, MN 55402
Telephone: 612-337-9300
ASSIGNEE’S SIGNATURE PAGE
FOR
ASSIGNMENT AND ASSUMPTION

IN WITNESS WHEREOF, the Parties hereto have executed this Assignment as of the date first above written.

ASSIGNEE:
ZVAGO COOPERATIVE AT GLEN LAKE, a Minnesota cooperative

By: ________________________________
Its: _______________________________

STATE OF MINNESOTA )
) ss.
COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me this _____ day of February, 2016, by ___________________________, the _____________________ of Zvago Cooperative at Glen Lake, a Minnesota cooperative, on behalf of the cooperative.

________________________________
Notary Public
CONSENT OF EDA

The EDA hereby consents to the foregoing Assignment on the terms set forth above, including without limitation the modification to the Contract as it applies to the Assignee and the Phase III Property as described therein. This consent shall not be construed as a consent to any future assignment of all or any portion of the interests and obligations of the Assignor under the Contract, whether to Assignee or any other Subdeveloper.

Dated: February ____, 2016

ECONOMIC DEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF MINNETONKA,
MINNESOTA, a Minnesota public body corporate
and politic

By: ________________________________
   Terry Schneider
   Its:   President

By: ________________________________
   Geralyn Barone
   Its:   Executive Director

STATE OF MINNESOTA )
 ) ss.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____ day of February, 2016, by Terry Schneider and Geralyn Barone, the President and Executive Director, respectively, of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body politic and corporate, on behalf of the Authority.

__________________________________
Notary Public
CONSENT OF CITY

The City of Minnetonka hereby consents to the foregoing Assignment on the terms set forth above including without limitation the modification to the Contract as it applies to the Assignee and the Phase III Property as described therein. This consent shall not be construed as a consent to any future assignment of all or any portion of the interests and obligations of the Assignor under the Contract, whether to Assignee or any other Subdeveloper.

Dated: February _____, 2016

CITY OF MINNETONKA, MINNESOTA, a
Minnesota public body corporate and politic

By: ________________________________
    Terry Schneider
Its:  Mayor

By: ________________________________
    Geralyn Barone
Its:  City Manager

STATE OF MINNESOTA  )
) ss.
COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this _____ day of February, 2016, by Terry Schneider and Geralyn Barone, the Mayor and City Manager, respectively, of the City of Minnetonka, Minnesota, a public body politic and corporate, on behalf of the City.

__________________________________
Notary Public
EXHIBIT A

Legal Description of Phase III Property

Lot 1, “Glen Lake Park”, except the East 570 feet of Lot 1, according to the recorded plat thereof, Hennepin County, Minnesota.
SECOND AMENDED AND RESTATED

CONTRACT

FOR

PRIVATE REDEVELOPMENT

By and Between

THE ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR
THE CITY OF MINNETONKA

and

CITY OF MINNETONKA, MINNESOTA

and

GLEN LAKE REDEVELOPMENT LLC

Dated as of: January 4, 2010

This document was drafted by:
KENNEDY & GRAVEN, Chartered
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota 55402
Telephone: (612) 337-9300
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SECOND AMENDED AND RESTATED PRIVATE REDEVELOPMENT

THIS AGREEMENT, made on or as of the 4th day of January, 2010, by and between THE ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, a public body corporate and politic (the “Authority”), established pursuant to Minnesota Statutes, Sections 469.090 to 469.1081 (hereinafter referred to as the “Act”), the CITY OF MINNETONKA, a Minnesota municipal corporation (the “City”) and GLEN LAKE REDEVELOPMENT LLC, a Minnesota limited liability corporation (the “Redeveloper”), and consented to by The Exchange Development LLC, a Minnesota limited liability corporation, and Kinsel Point Development LLC, a Minnesota limited liability corporation (as permitted assignees hereunder).

WITNESSETH:

WHEREAS, the Authority was created pursuant to the Act and was authorized to transact business and exercise its powers by a resolution of the City Council of the City; and

WHEREAS, the City and the Authority have undertaken a program to promote redevelopment of land that is characterized by blight and blighting factors within the City, and in this connection the Authority administers a redevelopment project known as the Glen Lake Station Housing Development and Redevelopment Project (“Redevelopment Project”) pursuant to Minnesota Statutes, Sections 469.001 to 469.047 (the “HRA Act”); and

WHEREAS, the City has also determined to undertake certain public improvements in the area of the Redevelopment Project, including street and park improvements; and

WHEREAS, pursuant to the Act and the HRA Act, the Authority is authorized to acquire real property, or interests therein, and to undertake certain activities to facilitate the redevelopment of real property by private enterprise; and

WHEREAS, pursuant to the Act and the HRA Act, the Authority is authorized to acquire real property, or interests therein, and to undertake certain activities to construct street, park, and other public improvements thereon; and

WHEREAS, the City and the Authority have established within the Redevelopment Project a renewal and renovation tax increment financing district ("TIF District") and adopted a financing plan ("TIF Plan") for the TIF District in order to facilitate redevelopment of certain property in the Redevelopment Project; and

WHEREAS, the Redeveloper has proposed a development within such Redevelopment Project which the Authority believes will promote and carry out the objectives for which redevelopment is undertaken, will be in the vital best interests of the City, will promote the health, safety, morals, and welfare of its residents and will be in accord with the public purposes and provisions of the applicable state and local laws and requirements under which activities within the Redevelopment Project have been undertaken and are being assisted; and
WHEREAS, the Redeveloper has purchased property within the Redevelopment Project ("Redevelopment Property") and has agreed to develop the Redevelopment Property for and in accordance with this Agreement; and

WHEREAS, the Redeveloper is willing to dedicate certain public improvements to the City or to cooperate with the City in the construction of such public improvements in accordance with this Agreement; and

WHEREAS, the Authority believes that the redevelopment of the Redevelopment Property pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the Redevelopment Project has been undertaken and is being assisted; and

WHEREAS, consistent with the TIF Plan, the Authority is willing to provide financial assistance related to Public Redevelopment Costs (as defined herein) in accordance with the provisions of this Agreement; and

WHEREAS, the Authority and the City previously entered into a Contract for Private Redevelopment, dated January 31, 2006, between the Authority, the City, and the Redeveloper, which was amended and restated by the Amended and Restated Contract for Private Redevelopment, dated May 15, 2007, between the Authority, the City and the Redeveloper, and due to a change in circumstance, the parties have agreed to further amend the terms and restate such contract in its entirety; and

WHEREAS, the Authority has approved the assignment of certain the rights and obligations hereunder to the assignees identified in this Agreement, which assignees enter into this Agreement to evidence their acceptance of such obligations.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

[Remainder of page intentionally left blank.]
ARTICLE I
Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context:

“Act” means the Economic Development Authority Act, Minnesota Statutes, Sections 469.090 to 469.108, as amended.

“Affiliate” means with respect to the Redeveloper (a) any corporation, partnership, corporation or other business entity or person controlling, controlled by or under common control with the Redeveloper, and (b) any successor to such party by merger, acquisition, reorganization or similar transaction involving all or substantially all of the assets of such party (or such Affiliate). For the purpose hereof the words “controlling”, “controlled by” and “under common control with” shall mean, with respect to any corporation, partnership, corporation or other business entity, the ownership of fifty percent or more of the voting interests in such entity, possession, directly or indirectly, of the power to direct or cause the direction of management policies of such entity, whether ownership of voting securities or by contract or otherwise.

“Agreement” means this Agreement, as the same may be from time to time modified, amended, or supplemented.

“Authority” means the Economic Development Authority in and for the City of Minnetonka, Minnesota, or any successor or assign.

“Authority Costs” has the meaning provided in Section 3.9.

“Authority Representative” means the Executive Director of the Authority, or any person designated by the Executive Director to act as the Authority Representative for the purposes of this Agreement.

“Authorizing Resolution” means the resolution of the Authority, substantially in the form of attached Schedule D to authorize the issuance of the Initial Notes.

“Available Tax Increment” means, on any payment date on any Initial Note or Refinancing Note, 95 percent of the Tax Increment from the relevant Phase or Phases received by the Authority in the six-month period before such payment date.

“Business Day” means any day except a Saturday, Sunday, legal holiday, a day on which the City is closed for business, or a day on which banking institutions in the City are authorized by law or executive order to close.

“Certificate of Completion” means the certification provided to the Redeveloper, or the purchaser of any part, parcel or unit of the Redevelopment Property, pursuant to Section 4.4 of this Agreement.

“City” means the City of Minnetonka, Minnesota.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed by the Redeveloper on the Redevelopment Property which a) shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the appropriate building officials of the City, and (b) shall include at least the following for each building: (1) site plan; (2) foundation plan; (3) basement plans; (4) floor plan for each floor; (5) cross sections of each (length and width); (6) elevations (all sides); (7) landscape plan; and (8) such other plans or supplements to the foregoing plans as the Authority may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

“County” means the County of Hennepin, Minnesota.

“Development Budget” means the Development Budget attached as Schedule H.

“Exchange” means the development on the Phase I Property.

“Exchange/Kinsel Initial Note” has the meaning provided in Section 3.6(b).

“Event of Default” means an action by a party described in Section 9.1 of this Agreement.

“HRA Act” means Minnesota Statutes, Sections 469.001 to 469.047.

“Holder” means the owner or mortgagee of a Mortgage.

“HUD” means the United States Department of Housing and Urban Development.

"Initial Note” or “Initial Notes” means Taxable Tax Increment Revenue Notes, substantially in the form contained in the Authorizing Resolution, to be delivered by the Authority to the Redeveloper in accordance with Section 3.6.

“Interfund Loan Resolution” has the meaning provided in Section 4.11(b).

“Kinsel” means the development to be constructed on the Phase III Property.

“Leasehold Interests” means the interests of tenants in leases that encumbered portions of the Redevelopment Property prior to the date of this Agreement.

“Master Site Plan” means the plan for development of the Redevelopment Property,
attached as Schedule C, as it may be revised from time to time under Section 4.2.

"Minimum Improvements" means the construction on the Phase I Property of approximately 52 units of Rental Housing Units, and approximately 20,500 square feet of commercial facilities (together, "Phase I" or "Exchange"); the construction on the Phase II Property of approximately 145 to 150 units of senior rental housing units, with 65 to 70 independent living units and 80 to 85 assisted living units and memory care units ("Phase II"); and the construction on the Phase III Property of approximately 45 units of for-sale condominiums housing units ("Phase III" or "Kinsel").

"MURA" means the Minnesota Uniform Relocation Act, Minnesota Statutes, Sections 117.50 to 117.56, as amended.

"Mortgage" means any mortgage made by the Redeveloper which is secured, in whole or in part, with the Redevelopment Property, and which is a permitted encumbrance pursuant to the provisions of Article VIII of this Agreement.

"Parcel" means any parcel of the Redevelopment Property, and each individual parcel as described in Schedule A.

"Phase I," "Phase II," and "Phase III" have the meaning provided in the definition of Minimum Improvements.

"Phase I (Commercial)" means the commercial and retail portion of the Minimum Improvements to be constructed on the Phase I Property.

"Phase I Property," "Phase II Property," and "Phase III Property" mean the respective portions of the Redevelopment Property so designated in the Schedule A attached and in the Master Site Plan.

"Phase I Rental Housing Units" means the residential Rental portion of Phase I.

"Phase II Available Tax Increment" has the meaning provided in Section 3.6(c) hereof.

"Phase II Note" has the meaning provided in Section 3.6(c).

"Phase II Property Owners" means Christopher J. and Gail M. Bollis.

"Phase II Subdeveloper" has the meaning provided in Section 8.2(f) hereof.

"Public Improvements" means the public improvements constructed by the City described in Section 4.11(a).

"Public Redevelopment Costs" means the costs described in Schedule G.
“Public Trail” means the public trail running though the Redevelopment Property, as shown on the Master Site Plan and located on Parcel J and Parcel K, as described in Schedule A.

“Redeveloper” means Glen Lake Redevelopment LLC or its permitted successors and assigns.

“Redevelopment Project” means the Authority’s Glen Lake Station Housing Development and Redevelopment Project.

“Redevelopment Property” means the property described on Schedule A.

“Redevelopment Plan” means the Authority’s Redevelopment Plan for the Redevelopment Project, as amended.

“Refinancing Available Tax Increment” has the meaning provided in Section 3.8(a).

“Refinancing Notes” has the meaning provided in Section 3.8(a).

“Rental Housing Units” means the rental housing units constructed as part of the Phase I and Phase II Minimum Improvements.

“Subdeveloper” has the meaning provided in Section 8.2(a).

“State” means the State of Minnesota.

“Tax Increment” means that portion of the real property taxes which is paid with respect to the Redevelopment Property and which is remitted to the Authority as tax increment pursuant to the Tax Increment Act. The market value of the Redevelopment Property and resulting original tax capacity will be allocated to specific parcels on a square footage basis. The term Tax Increment does not include any amounts retained by or payable to the State auditor under Section 469.177, Subd. 11 of the Tax Increment Act, or any amounts described in Section 469.174, Subd. 25, clauses (2) through (4) of the Tax Increment Act.

“Tax Increment Act” or “TIF Act” means the Tax Increment Financing Act, Minnesota Statutes, Sections 469.174 to 469.1799, as amended.

“Tax Increment District” or “TIF District” means the Authority’s Glen Haven Tax Increment Financing District.

“Tax Increment Plan” or “TIF Plan” means the Authority’s Tax Increment Financing Plan for the TIF District, as approved by the Authority on January 17, 2006, and the City on January 23, 2006, and as it may be amended from time to time.

“Tax Official” means any County assessor; County auditor; County or State board of equalization, the commissioner of revenue of the State, or any State or federal court including the tax court of the State.
“Termination Date” means the date the Authority receives the last installment of Tax Increment from the County.

“2008 Public Improvements” has the meaning provided in Section 4.11(a).

“Transfer” has the meaning set forth in Section 8.2(a).

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of war, terrorism, strikes, other labor troubles, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the Authority in exercising its rights under this Agreement) which directly result in delays. Unavoidable Delays shall not include delays in the Redeveloper’s obtaining of permits or governmental approvals necessary to enable construction of the Minimum Improvements by the dates such construction is required under Section 4.3 of this Agreement, unless (a) Redeveloper has timely filed any application and materials required by the City for such permit or approvals, and (b) the delay is beyond the reasonable control of the Redeveloper.
ARTICLE II

Representations and Warranties

Section 2.1. Representations and Covenants by the Authority and City. (a) The Authority is an economic development authority duly organized and existing under the laws of the State. Under the provisions of the Act and the HRA Act, the Authority has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The Authority and City will use their best efforts to facilitate development of the Minimum Improvements, including but not limited to cooperating with the Redeveloper in obtaining necessary administrative and land use approvals and construction and/or permanent financing pursuant to Section 7.1.

(c) The activities of the Authority are undertaken for the purpose of fostering the redevelopment of certain real property that is or was occupied primarily by substandard and obsolete buildings, which will revitalize this portion of the Redevelopment Project, increase tax base, and increase housing and employment opportunities.

(d) The City is a home rule charter city duly organized and existing under the laws of the State, and is a state public body under Section 469.041 of the HRA Act. Under the provisions of its charter and the HRA Act, the City has the power to enter into this Agreement and carry out its obligations hereunder.

(e) The City and Authority have taken all actions necessary to establish the TIF District as a renewal and renovation district, as defined in the TIF Act.

(f) The City and Authority will take no action, nor omit to take any action, regarding the TIF District that materially impairs the collection or payment of Tax Increment.

(g) As of the date of this Agreement, the Minimum Improvements constructed in accordance with the Master Site Plan are allowed uses under the City zoning ordinance and are consistent with the City comprehensive Plan.

(h) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of charter or statutory limitation or any indebtedness, agreement or instrument of whatever nature to which the City or Authority is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(i) The Authority shall promptly advise the City and Redeveloper in writing of all litigation or claims affecting any part of the Minimum Improvements.
Section 2.2. **Representations and Warranties by the Redeveloper.** The Redeveloper represents and warrants that:

(a) The Redeveloper is a limited liability company organized and in good standing under the laws of the State of Minnesota, is not in violation of any provisions of its bylaws, its operating agreement or the laws of the State, is duly authorized to transact business within the State, has power to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action of its members.

(b) The Redeveloper will construct, operate and maintain the Minimum Improvements in accordance with the terms of this Agreement, the Redevelopment Plan and all applicable local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations).

(c) The Redeveloper will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

(d) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any partnership or company restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Redeveloper is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(e) The Redeveloper shall promptly advise City and Authority in writing of all litigation or claims affecting any part of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the Minimum Improvements or materially affecting the Redeveloper or its business, which may delay or require changes in construction of the Minimum Improvements.

(f) The proposed redevelopment by the Redeveloper hereunder would not occur but for the tax increment financing assistance being provided by the Authority hereunder.

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ARTICLE III

Property Acquisition, Conveyance; Public Redevelopment Cost Financing

Section 3.1. Status of the Property. (a) As of the date of this Agreement, the Redeveloper has purchased all of the Parcels that make up the Redevelopment Property at prices the Authority determined to be reasonable. Redeveloper subsequently transferred ownership of the Phase I Property to The Exchange Development, LLC, transferred the Phase II Property to the Phase II Owners, and transferred the Phase III Property to Kinsel Point Development LLC, all without relieving Redeveloper from its obligations under this Agreement regarding Phases I, II and III, respectively.

(b) The Redeveloper has negotiated the termination of the Leasehold Interests described in Schedule B and made payments with respect to those terminations. The Redeveloper and the Authority are currently reviewing the appropriate amount of the voluntary termination payments with respect to the remaining Leasehold Interests that are subject to reimbursement as a Public Redevelopment Cost in accordance with Section 3.6.

(c) Except as otherwise described in paragraph (b) of this Section and in Section 3.2(c), the Redeveloper has paid all costs to acquire Parcels and Leasehold Interests by voluntary purchase, and all carrying costs on such Parcels and Leasehold Interests. Upon approval by the Authority, all such costs are subject to reimbursement as a Public Redevelopment Cost in accordance with Section 3.6, provided that interest costs will be reimbursable only to the extent such cost represents interest on any valid evidence of indebtedness under general federal income tax principles.

(d) The Redeveloper acquired the Phase II Property from its Affiliate for a price of $3,180,000, which the Redeveloper and Authority agree represents the Parcel’s fair market value and is incorporated into the Development Budget used to calculate Redeveloper’s net return on costs as described in Section 3.7.

(e) The City has conveyed marketable title to the parking lot property in the Phase I Property to the Redeveloper at a price equal to the total cost of acquisition of the property, including the costs of acquiring or ensuring marketable title, paid by the City. Costs under this paragraph shall be costs of acquisition of a Parcel and subject to reimbursement as a Public Redevelopment Cost in accordance with Section 3.6.

(f) The Redeveloper shall not permit the Transfer of any portion of the Phase I Property or Phase III Property to any Subdeveloper (or to itself or an Affiliate for any Phase or portion thereof retained and constructed by the Redeveloper) at a price less than the following:

- $750,000 for all Phase I (Exchange) Rental Housing Units (52 units)
- $500,000 for the commercial portion of Phase I
- $42,500 per Phase III (Kinsel) condominium housing unit for 45 of such units

The above amounts are payable at closing on any such Transfer. If any portion of the Phase I Property or Phase III Property is transferred for more than the prices listed above, or if the Phase II
Property is transferred for more than the agreed-upon fair market value referenced in Section 3.1(d), then the amount of the Initial Notes will be decreased in size pursuant to Section 3.7(b)(ii). Redeveloper expressly acknowledges that, while there is no minimum sale price for transfer of the Phase II Property, any reduction in overall revenues cause by such reduced price will not change the amount of tax increment assistance provided under this Agreement.

Section 3.2. Authority Parcels and Leasehold Interests. (a) After commercially reasonable but unsuccessful efforts to acquire Parcels B, C, E, and I (now part of the Phase I Property and referred to as the “Alano Parcels”), and Parcel K (now part of the Phase III Property and referred to as the “Kinsel Parcel”) voluntarily, the Redeveloper requested that the Authority and the City proceed to acquire all such Parcels through the exercise of its powers of eminent domain to the extent permissible under law. Following the Redeveloper’s request, the Authority commenced proceedings to acquire the Alano Parcels and the Kinsel Parcel (collectively, the “Authority Parcels”) through condemnation proceedings and subsequently acquired such parcels through negotiation.

(b) The Authority subsequently conveyed the Authority Parcels it acquired to the Redeveloper. The City also acquired a portion of the Kinsel Parcel for Public Trail purposes and conveyed the Parcel to the Redeveloper subject to a perpetual easement for the Public Trail.

(c) In connection with the conveyance of the Authority Parcels, the Redeveloper has paid the Authority the actual cost of acquisition of such Parcels, together with some of the relocation costs of certain tenants and all attorney fees incurred by the Authority. The Redeveloper and the Authority are currently negotiating the remaining amount of relocation costs (or lease termination payments, as the case may be) to be paid by the Redeveloper with respect to the holders of two remaining Leasehold Interests.

(d) In coordination with the Redeveloper’s efforts to acquire the Alano Parcels, the City and the Authority worked directly with the land owner with respect to identification and acquisition of a relocation site for its business, which was outside the TIF District but within the Redevelopment Project. To the extent the costs of such activity are eligible costs reimbursable under the TIF Act, the City may use a portion of Available Tax Increments to reimburse itself for the costs of such activities. The Authority and the City have approved an interfund loan in accordance with Section 469.178, Subdivision 7 of the TIF Act. The pledge of Available Tax Increment to any interfund loan shall be subordinate to the Initial Notes and the Refinancing Notes and certain other subordinate debt as described in Section 4.12. Any such costs shall not be an obligation of the Redeveloper hereunder.

Section 3.3. Relocation. (a) With the exception of the costs of acquiring a relocation site for the land owner of the Alano Parcels, which the City and the Authority have agreed to assume pursuant to Section 3.2(d), the Redeveloper has paid or shall pay all relocation costs (unless properly waived as described in paragraph (b) below) in accordance with MURA, arising from acquisition of all Parcels and Leasehold Interests of the Redevelopment Property, whether acquired voluntarily or by condemnation. The Authority and the Redeveloper previously retained SRF Consulting Group, Inc. (formerly known as Conworth, Inc.) (“Relocation Consultant”) as a relocation consultant regarding the MURA relocation benefits and payments to be provided to
owners and tenants of the Redevelopment Property. The Redeveloper and Authority agree and understand that they will continue to work with the Relocation Consultant (or any successor appointed by the Authority) regarding the unresolved relocation matters under this Agreement. Any relocation costs paid by the Redeveloper pursuant to this Section 3.3(a) are a reimbursable Public Redevelopment Cost in accordance with Section 3.6.

(b) For each Parcel and Leasehold Interest the Redeveloper acquired by voluntary acquisition or termination, before closing or termination, the Redeveloper is obligated to deliver to the Authority either (i) certification from the Relocation Consultant describing in detail the relocation services, payments and benefits to be provided; or (ii) a written relocation waiver agreement, in a form approved by the Authority and which includes the Authority as an express third-party beneficiary, specifically describing the type and amounts of relocation assistance services, payments and benefits for which eligible, separately listing those services being waived. In addition, the Redeveloper is obligated to furnish to the Authority a written certification from the Relocation Consultant that prior to execution of any relocation waiver agreement, the Relocation Consultant explained any applicable rights to the owner-occupant or tenant. Notwithstanding anything to the contrary in this Section, the waiver option under clause (ii) may not be used for tenants of any Parcel (unless the tenant is also an owner of the Parcel); instead, the Redeveloper must comply with the provisions of clause (i).

(c) Without limiting the Redeveloper's obligations under Section 8.3, the Redeveloper will indemnify, defend, and hold harmless the Authority, the City, and their governing body members, employees, agents, and contractors from any and all claims for benefits or payments arising out of the relocation or displacement of any person from the Redevelopment Property (whether from any Authority Parcel, Leasehold Interest, or otherwise) as a result of the implementation of this Agreement.

Section 3.4. Platting. (a) The plat for Phase I and Phase II has been approved by the City. Before commencing construction of Phase III, and where required under applicable ordinances and procedures, the Redeveloper shall prepare and obtain City approval of a plat of the relevant portion of the Redevelopment Property at the Redeveloper's cost and subject to all City ordinances and procedures. The plat must be consistent with the Master Site Plan, provided that nothing in this Agreement is intended to limit the City's authority in reviewing any preliminary or final plat, or to preclude revisions requested or required by the City. The City and Authority will cooperate in all replatting. The relationship between the Master Site Plan and the plat is further described in Section 4.2(a). The City has retained a public easement for public access to the Public Trail. The Redeveloper shall also dedicate or convey to the City any necessary utility easements related to the Public Trail, at no cost, in a form satisfactory to the City.

(b) The City will vacate existing streets and rights of way as needed to effectuate each plat. The Redeveloper will cooperate with the City in this effort, including without limitation filing any requests or consents required under City ordinances or State law.

(c) The Redeveloper shall pay all water and sewer hook-up fees, SAC and WAC fees, and park dedication fees in accordance with applicable City policies and ordinances. The Redeveloper will owe park dedication fees in the total net amount of $100,000, based on credits for
the cost incurred by the Redeveloper in constructing the Public Trail, the cost incurred by the Redeveloper for the land upon which the Public Trail will be constructed, and affordable housing the Redeveloper has agreed to provide in the area. The park dedication fees are allocated to Phase I, Phase II and Phase III, respectively, in accordance with the terms of the plat approval for Phase I. The park dedication fees to be paid by the Redeveloper will be used by the City to renovate the Glen Lake Station park area on Excelsior Boulevard and pay for adjacent trail and sidewalk improvements as part of the Phase II of the Minimum Improvements. As of the date of this Agreement, the parties acknowledge that Redeveloper has granted to the City, at no cost to the City, a temporary easement for public trail purposes on a portion of the Phase III Property.

Section 3.5. Environmental Conditions. (a) The Redeveloper acknowledges that the Authority makes no representations or warranties as to the condition of the soils on the Redevelopment Property or the fitness of the Redevelopment Property for construction of the Minimum Improvements or any other purpose for which the Redeveloper may make use of such property, and that the assistance provided to the Redeveloper under this Agreement neither implies any responsibility by the Authority or the City for any contamination of the Redevelopment Property or poor soil conditions, nor imposes any obligation on such parties to participate in any cleanup of the Redevelopment Property or correction of any soil problems (other than the financing described in this agreement). Notwithstanding the foregoing, the City and the Authority sought and received certain grants from Hennepin County for environmental investigation of the Redevelopment Property. The proceeds of such grants were provided to the Redeveloper, without any reduction or offset against other public assistance hereunder, and the Redeveloper promised to comply with the grant requirements. In the event the environmental investigation identifies any material contamination, in excess of what the Redeveloper has projected in its Pro Forma in Schedule I, requiring remediation, without in any way limiting the obligation of Redeveloper hereunder, the Authority or City agrees to use reasonable efforts to obtain grants from the County, the Metropolitan Council or the State for such costs and to provide such grants to the Redeveloper in accordance with the terms of the grants, without any reduction or offset against other public assistance under this Agreement.

(b) Without limiting its obligations under Section 8.3 of this Agreement the Redeveloper further agrees that it will indemnify, defend, and hold harmless the Authority, the City, and their governing body members, officers, and employees, from any claims or actions arising out of the presence, if any, of hazardous wastes or pollutants on the Redevelopment Property as a result of the actions or omissions of the Redeveloper, unless and to the extent that such hazardous wastes or pollutants are present as a result of the actions or omissions of the indemnitees. Nothing in this section will be construed to limit or affect any limitations on liability of the City or Authority under State or federal law, including without limitation Minnesota Statutes Sections 466.04 and 604.02.

Section 3.6. Issuance of Initial Notes. (a) Generally. In order to make development of the Minimum Improvements financially feasible, the Authority will reimburse the Redeveloper for Public Redevelopment Costs incurred by the Redeveloper through issuance of Initial Notes in the aggregate maximum principal amount of $3,754,500, all in accordance with the terms of this Section.
(b) Exchange/Kinsel Initial Note. On September 29, 2008, the Authority issued an Initial Note to the Redeveloper in the principal amount of $2,478,237.28 (the "Exchange/Kinsel Initial Note"), to reimburse the Redeveloper for Public Redevelopment Costs related to the Phase I (Exchange) and Phase III (Kinsel) developments (the Kinsel development was originally planned to be the second phase of the redevelopment project and is referred to as Phase II in the Initial Note dated September 29, 2008; the Kinsel development is now planned to be the third phase of the redevelopment project and is referred to herein as Phase III). The Exchange/Kinsel Initial Note is secured by the Available Tax Increment from the Phase I (Exchange) Property and the Phase III (Kinsel) Property of the Redevelopment Property.

(c) Phase II Note. The Authority will issue a further Initial Note to Redeveloper (the "Phase II Note") secured by 80% of the Tax Increment from Phase II received by the Authority in the six-month period before each payment date (the "Phase II Available Tax Increment"); provided that solely for purposes of the Phase II Note and for no other purpose under this Agreement, the terms "Phase II" and "Phase II Property" include Lots 1 and 2, Block 1, Glen Haven Shopping Center, such that Phase II Available Tax Increment includes Tax Increment from both the senior housing development that constitutes Phase II and Tax Increment from the adjacent parcel in the Glen Haven Shopping Center plat. The Phase II Note will be issued in the principal amount of $1,276,263, which represents the aggregate maximum principal amount of Initial Notes, less the principal amount of the Exchange/Kinsel Note. The Authority will issue a Refinancing Note with respect to the Phase II Note issued under this clause, in accordance with the terms described in Section 3.8 hereof.

(1) Terms. The Phase II Note will bear interest at a rate of 6.75 percent annum and will be paid in semi-annual installments on each February 1 and August 1, commencing with the first August 1 after Phase II Available Tax Increment is anticipated to be received from Phase II and concluding no later than February 1 of the year following the last calendar year in which the Authority receives Tax Increment from the TIF District. Interest on the Phase II Note will accrue from the date of delivery of the Phase II Note.

(2) Certification of Public Redevelopment Costs. The Phase II Note will be issued in consideration of payment by the Redeveloper of Public Redevelopment Costs incurred by the Redeveloper and not paid with any other public financing source under this Agreement. Before issuance of the Phase II Note pursuant to Section 3.6(c), the Redeveloper must submit to the Authority one or more certificates, signed by the Redeveloper’s duly authorized representative, containing the following: (i) a statement that each cost identified in the certificate is a Public Redevelopment Cost as defined in this Agreement and that no part of such cost has been included in any previous certification or any disbursement from any other public financing source described in Article VII, (ii) evidence that each identified Public Redevelopment Cost has been paid or incurred by or on behalf of the Redeveloper, and (iii) a statement that no uncured Event of Default by the Redeveloper has occurred and is continuing under the Agreement. The Redeveloper may apply Public Redevelopment Costs incurred anywhere within the Redevelopment Property toward the principal amount of any Initial Note.

(3) Authorization and Delivery. The Phase II Note will be issued as a single note substantially the form set forth in the Authorizing Resolution attached as Schedule D, to be
approved by the Board of the Authority and the City Council of the City simultaneously with the approval of the Phase II Subdeveloper in accordance with Section 8.2 hereof. The obligation to deliver the Phase II Note is conditioned upon (i) the Redeveloper (and all assignees) having delivered to the Authority an investment letter for the Phase II Note in a form reasonably satisfactory to the Authority; and (ii) there being no uncured Event of Default by the Redeveloper under this Agreement with respect to Phase II. Notwithstanding anything to the contrary in this Agreement, as provided in Section 469.1763, Subdivision 3 of the TIF Act, the Phase II Note will be issued only in the amount of Public Redevelopment Costs that were duly spent and certified to the Authority (under clause 4 of this paragraph (b) within eight years after the date of certification of the TIF District by the County.

(4) **Surplus Available Tax Increment.** All Phase II Available Tax Increment shall be applied first to accrued interest and second to principal as described in the Phase II Note (attached as Schedule D hereto), such that Available Tax Increment is automatically applied to prepayment of that Initial Note.

(e) **No representations.** The Redeveloper understands and acknowledges that the Authority makes no representations or warranties regarding the amount of Available Tax Increment or Phase II Available Tax Increment, or that revenues pledged to any Initial Note will be sufficient to pay the principal and interest on such Initial Note. Any estimates of Tax Increment prepared by the Authority or its financial advisors in connection with the TIF District or this Agreement are for the benefit of the Authority, and are not intended as representations on which the Redeveloper may rely. If the Public Redevelopment Costs exceed the principal amount of the Initial Notes, such excess is the sole responsibility of the Redeveloper.

Section 3.7 **TIF Lookback.** (a) **Generally.** The financial assistance to the Redeveloper under this Agreement is based on certain assumptions regarding likely costs and expenses associated with constructing the Minimum Improvements, proceeds to be derived by the Redeveloper from the sale of the Phase II Property, proceeds to be derived by the Redeveloper from the sale of condominium units to be constructed as part of the Phase III (Kinsel) Minimum Improvements, and the potential proceeds of a sale of the Rental Housing Units and commercial space to be constructed as part of Phase I. Specifically, the maximum aggregate principal amount of the Initial Notes has been determined based on the amount of assistance needed to make redevelopment of the entire Redevelopment Property financially feasible, including an allowance for Redeveloper profit in the amount of $167,000, all as shown in the current Development Budget attached as Schedule H. The Authority and the Redeveloper agree that those assumptions will be reviewed at the times described in this Section, and that the amount of Tax Increment assistance provided under Section 3.6 will be adjusted accordingly.

(b) **Phase I, Phase II, and Phase III Redeveloper as Master Developer.** (i) Within thirty days after the later of the sale of the last condominium unit to be sold in Phase III (Kinsel) or sale of the Phase II Property by Redeveloper (or Phase II Property Owners") to a third party, the Redeveloper shall submit a certified cost and revenue analysis for all portions of the Redevelopment Property to the Authority's financial advisor in the form of the Development Budget and prepared in accordance with generally accepted accounting principles. As shown in Schedule H, the Development
Budget shall include developer profit of $167,000 and a contingency for increases in cost of $265,000 and savings in any category may be used to offset overruns in any other category, but any other cost changes shall be handled in accordance with subsection (ii) of this paragraph (b). The Redeveloper agrees to provide to the Authority’s consultant any background documentation related to the financial data, upon request. The Authority may retain an accountant to audit the submitted Development Budget, at the Redeveloper’s cost.

(ii) At the time of the review under clause (i) of this subsection (b), the Authority will determine whether the aggregate actual costs are lower than projected in Schedule H, and whether any land sale proceeds exceed the minimum amounts specified in Section 3.1(f) hereof. If the actual costs (excluding any costs paid by grants or other sources of public financing) are lower than shown in Schedule H, or if the land sale proceeds are higher, the amount of the difference between actual costs and the costs projected in Schedule H plus the amount of any higher land sale proceeds, will be applied: (i) if all the Initial Notes have not been issued, to reduce the principal amount of the final Initial Note; and (ii) if the Initial Notes have been issued to the Redeveloper under 3.6, as a prepayment of the outstanding principal amount of any outstanding Initial Note. The lookback obligation under this clause is subject to the qualifications described in Section 3.8(f)(2).

(c) **Phase I (Exchange) Redeveloper as Constructor.** (i) **Sale of Rental Housing Units.** Within 60 days before any Transfer of all of the Phase I Rental Housing Units, (excluding any Transfer to an Affiliate or the offer for sale of all of the units for the purpose of conversion to condominiums by the Redeveloper or an Affiliate as described below in Section 3.7(c)(iii)) that occurs within fifteen years after the date of issuance of the Certificate of Completion for Phase I, the Redeveloper must deliver to the Authority evidence of its annualized cumulative internal rate of return from the Phase I Rental Housing Units (the “IRR”), calculated as of the date of closing on the Transfer. The IRR shall be calculated with equity, revenues and expenses all determined in accordance with generally accepted accounting principles. When calculating IRR, (i) the amount of Redeveloper’s equity must exclude the principal amount of any outstanding Initial Notes and any outstanding Refinancing Notes and any developer’s fee in excess of $500,000; and (ii) any capital costs incurred within the two years prior to conversion to improve the Phase I Rental Housing Units in anticipation of conversion to condominium units as contemplated by Section 4.9 must be excluded when calculating construction costs of the Phase I Rental Housing Units. The Redeveloper agrees to provide to the Authority’s consultant any background documentation related to the calculation of its IRR upon request. The Authority may retain an accountant or financial consultant to audit the submitted IRR calculation, at the Redeveloper’s cost.

(ii) **Conversion of Rental Housing to Condominiums.** Within sixty (60) days before any Transfer of all the Phase I Rental Housing Units for the purpose of conversion to condominiums by the Redeveloper or an Affiliate that occurs within fifteen years after the date of issuance of the Certificate of Completion for Phase I, the Redeveloper must notify the Authority of the decision to proceed with a conversion to condominiums and the
Authority and the Redeveloper shall, utilizing the same calculation method established in Section 3.7(c)(i) above, determine the IRR as of the date of Transfer. In making such calculation, the sale price of the Phase I Rental Housing Units used for the calculation (regardless of the actual sale price) shall be determined as follows: the net operating income of the Phase I Rental Housing Units for the twelve calendar months immediately prior to the month of Transfer, determined in accordance with generally accepted accounting principals, shall be derived by a capitalization rate appropriate for rental housing that is desirable to be converted to condominiums at the time of Transfer. The Authority and the Redeveloper shall agree on the capitalization rate, or such rate shall be established by an MAI appraiser selected jointed by the Authority and the Redeveloper.

(iii) Calculation of Participation Amount. The amount by which the IRR exceeds twelve percent (12%) is a percentage referred to as “Excess Percentage.” The Excess Percentage, multiplied by Redeveloper’s equity (as calculated for purposes of determining the IRR), is the “Participation Amount.” The Redeveloper must pay fifty percent (50%) of the Participation Amount to the Authority upon closing on the Transfer. The lookback obligation under this clause is subject to the qualifications described in Section 3.8(f)(2).

(iv) Termination of Lookback. If the Redeveloper does not effect a Transfer of Phase I Rental Housing Units within the fifteen-year period referenced in Section 3.7(c)(i), the Redeveloper’s obligation under this Section is deemed terminated.

(iv) Phase I (Commercial Excluded). The Phase I (Commercial) was not sold by the Redeveloper to a nonaffiliated entity within 60 days after substantial completion of the Phase I Minimum Improvements, and therefore, pursuant to previous agreement between the parties, the costs of the Phase I (Commercial) shall not be included in the Redeveloper Pro Forma and shall not be considered when calculating net profit for Phase I.

(d) Phase III Redeveloper as Constructor. Where the Redeveloper constructs Phase III, before commencement of construction, the Authority and the Redeveloper shall mutually agree in writing on a development pro forma for that Phase or portion thereof allowing for 12 percent net profit to the Redeveloper. The pro forma must be in substantially the form of the prototype Redeveloper Pro Formas attached as Schedule I, and net profit will be calculated substantially as described in that schedule. Within 60 days after substantial completion of the relevant Minimum Improvements for Phase III, the Redeveloper shall submit certified cost and revenue analysis to the Authority’s financial advisor in the form of the final Redeveloper Pro Forma and prepared in accordance with generally accepted accounting principles. The Redeveloper agrees to provide to the Authority’s consultant any background documentation related to the financial data, upon request. The Authority may retain an accountant to audit the submitted Redeveloper Pro Forma, at the Redeveloper’s cost.

At the time of review under this paragraph for Phase III, the Authority will determine whether the net profit for the subject Phase is higher or lower than 12 percent. If the net profits exceed 12 percent for that Phase, then 25 percent of the excess profit will be applied (i) if all the Initial Note have not been issued, to reduce the principal amount of the final Initial Note; and (ii)
if all the Initial Notes have been issued to the Redevolver under 3.6, as a prepayment of the outstanding principal amount of any outstanding Initial Note (pro rata based on the outstanding principal amount of all Initial Notes. Any prepayment or reduction under this paragraph is in addition to the prepayment and reduction described in paragraph (b). The lookback obligation under this clause is subject to the qualifications described in Section 3.8(f)(2).

(e) Phase II, Assignee as Constructor. If Redevolver assigns the obligations to construct Phase II to the Phase II Subdeveloper, then Redevolver shall cause the Phase II Subdeveloper to accept the limitations in this paragraph (in addition to all terms described in Article VIII hereof). As a condition of Transfer of Phase II by Redevolver (and Phase II Property Owners) to the Phase II Subdeveloper, the Phase II Subdeveloper must deliver to the Authority a written affidavit certifying that it has no present intent to Transfer Phase II to an unrelated party within five years after substantial completion of Phase II (as defined in Section 4.4 hereof). Any subsequent Transfer of Phase II by the Phase II Subdeveloper is subject to the obligation described in this paragraph (e) (referred to as the “Phase II Lookback”). The Phase II Lookback will apply if the Phase II Subdeveloper seeks to effect a Transfer (other than a Transfer to a Holder of a Mortgage by foreclosure or deed in lieu of foreclosure or to a purchaser at foreclosure sale): (i) within five years after substantial completion of Phase II, if at all times during that five-year period the financing for acquisition and construction of Phase II (the “Project Financing”) is primarily provided by a loan made or insured by HUD (which may include refinancing with loan made or insured by HUD); or (ii) within fifteen years after substantial completion of Phase II, if at any time during the five years after substantial completion of Phase II the Project Financing is neither made nor insured by HUD (including any case where HUD made or insured the initial loan for Project Financing and, within five years after substantial completion of Phase II that loan is replaced with Project Financing that is neither made nor insured by HUD).

If an applicable Transfer occurs within the five year period described in clause (i) or the fifteen year period described in clause (ii), as the case may be, the Phase II Subdeveloper will be liable for the Phase II Lookback described as follows. At least 60 days before closing on such Transfer, the Phase II Subdeveloper shall submit evidence reasonably satisfactory to the Authority and prepared in accordance with generally accepted accounting principles, showing the total cost of Phase II, including land acquisition, construction, fixtures, furnishing and equipment and all related soft costs (the “Phase II Cost”). The Redevolver agrees to provide to the Authority’s consultant any background documentation related to the financial data, upon request. The Authority may retain an accountant to audit the submitted cost data, at the Phase II Redevolver’s cost. If the total Purchase Price (defined below) paid by the buyer for the Transfer of Phase II exceeds the Phase II Cost, the Phase II Subdeveloper shall pay to the Authority an amount equal to 10 percent of such difference. For the purpose of this clause, the term “Purchase Price” means the purchase price stated in the certificate of real estate value (“CRV”) to be filed with the Minnesota Department of Revenue in connection with the Transfer, together with the price paid for all furnishings, fixtures and equipment (if such items are not included in the sale price stated in the CRV). The Phase II Lookback obligation under this clause is subject to the conditions described in Section 3.8(f)(2).

After expiration of the five-year period or fifteen-year period (as the case may be), the Phase II Subdeveloper may effect a Transfer without approval by the Authority, provided that
any transferee shall remain bound by any remaining obligations of the Redeveloper under this Agreement with respect to Phase II.

(f) **Phase II, Redeveloper as Constructor.** If Redeveloper does not assign Phase II to any Phase II Subdeveloper but instead constructs Phase II itself, Phase II will be subject to the same lookback terms and conditions as provided for Phase I under Section 3.7(c).

Section 3.8. **Authority Refinancing of Initial Notes.** (a) *Generally.* Upon the Redeveloper’s request, the Authority will refinance (in whole or in part) the outstanding principal amount of the Exchange/Kinsel Initial Note, the Phase II Note, or both, by issuing one or more tax-exempt tax increment revenue notes or bonds (the "Refinancing Notes") to one or more third parties, subject to the terms and conditions contained herein. The Refinancing Notes may be issued in one or more series, or in series over time. Refinancing Notes will be secured solely by “Refinancing Available Tax Increment,” which means, on any Refinancing Notes payment date, 95 percent of the Tax Increment from such Phase or Phases received by the Authority in the six-month period before such payment date. The parties agree and understand that, while a Phase II Note issued to Redeveloper is secured by a pledge of 80 percent of Tax Increment (as described in Section 3.6(c) hereof), a Refinancing Note that refinances such Phase II Note is secured by 95 percent of the Tax Increment from Phase II as described in this paragraph. The Redeveloper and the Authority will reasonably and timely cooperate with the refinancing efforts, including providing requested information and attorney opinions and signing documents. The Redeveloper shall be solely responsible for securing buyer(s) for the Refinancing Notes, subject to the terms of this Section 3.8.

(b) **Principal Amount, Terms.** Issuance of any Refinancing Note is subject to the following terms and conditions:

1. No Refinancing Notes shall be issued unless the Redeveloper is in compliance with the provisions of Section 4.3;

2. The revenue stream for Refinancing Notes will be based on estimates of Refinancing Available Tax Increment from the relevant Minimum Improvements for the duration of the TIF District based on the actual estimated market value (as determined by the County Assessor's Office) of the relevant portion of the Minimum Improvements constructed thereon;

3. Estimates of Refinancing Available Tax Increment (reviewed and approved by the Authority) must provide at least 120 percent debt service coverage on the Refinancing Notes from the applicable Phase or Phases for the Initial Notes or portion thereof to be refinanced, subject to adjustment if market conditions permit less and the Authority approves;

4. The Authority must approve all underwriter(s) and underwriting terms and assumptions, provided that (i) Available Tax Increment from the applicable Phase or Phases pledged to the Refinancing Note, in excess of the amount needed to pay debt service on the Refinancing Notes on each payment date, must be available to the Authority for other obligations based on the priority of subordinate debt described in
Section 4.12; (ii) the Authority will make every effort to maximize the amount of the Refinancing Notes in order to minimize subordinate debt on the part of the Redeveloper; and (iii) the Authority’s consent to the underwriter(s) and underwriting terms and assumptions will not be unreasonably withheld;

(5) No Refinancing Note will be issued later than 18 months after the later of (i) the date the expenditures for Public Redevelopment Costs allocated to the relevant Initial Note were paid, or (ii) the date the facilities financed by the Initial Note are placed in service but no later than 3 years after the date of the original expenditure of the Public Redevelopment Costs related to that Initial Note. However, if a Refinancing Note is eligible for the small-issuer rebate exception under Section 148(f)(f)(D) of the Internal Revenue Code of 1986 as amended, the “18 month” limitation above is changed to “3 years” and the “3-year” maximum period in clause (ii) is disregarded. This paragraph does not apply if (1) the Refinancing Note is issued on a taxable basis, or (2) the Authority receives an opinion of a nationally-recognized bond counsel selected by the Authority to the effect that the Refinancing Note represents refunding of an “obligation” as defined in Treasury Regulations 1.150-1(b);

(6) Issuance of any Refinancing Note is subject to market, legal and timing constraints described in paragraph (c) below and the qualifications described in paragraph (f) below;

(7) The principal amount of the Refinancing Note may be reduced because of a default on the part of the Redeveloper in the completion of Phase III (Kinsel), as described in Section 9.5; and

(8) Refinancing Notes may be sold only to “accredited investors” as defined in Rule 501(a) of Regulation D under the Securities Act of 1933, as amended, in denominations of at least $100,000.

(9) The principal amount of the Refinancing Notes in the aggregate shall not exceed an amount such that (a) Refinancing Available Tax Increment is projected to be sufficient to pay all principal and interest on the Refinancing Notes; and (b) Tax Increment remaining for the term of the TIF District after payment of principal and interest on the Refinancing Notes is projected to be sufficient repay to the City the cost of the 2008 Public Improvements together with interest thereon in accordance with Section 4.12 hereof.

(c) Timing. Notwithstanding the foregoing, the Authority shall have the option to delay issuance of any Refinancing Note temporarily or for as long as the following conditions exist:

(1) The Authority is prohibited from issuing any Refinancing Note pursuant to changes in federal law enacted after the date of this Agreement;

(2) Substantial adverse changes in the market conditions have occurred that make it infeasible to refinance a Initial Note on a reasonable basis, as confirmed by a
bond underwriter to the Redeveloper and the Authority in writing; or

(3) Delay is necessary to ensure that either the Authority or City will issue less than $10,000,000 of "qualified exempt obligations" (as defined in Section 265(b)(3) of the Internal Revenue Code of 1986, as amended) in the year of issuance of the Refinancing Notes; provided that (i) as provided in the American Recovery and Reinvestment Act of 2009, for any Refinancing Notes issued in 2009 and 2010, "30,000,000" is substituted for "10,000,000" in this sentence; (ii) if the $30,000,000 allowance under Section 265(b)(3) for calendar years 2009 and 2010 is extended or otherwise revised by future federal legislation, any such revised limit will apply for the purposes of this section; and (iii) the Authority may not delay issuance under this clause if such delay would extend issuance past the time required for issuance of a Refinancing Note under Section 3.8(b)(5).

(d) Redeveloper Responsibility Upon Refinancing. If the Authority determines that the net proceeds of a series of Refinancing Notes will be insufficient to prepay the entire principal amount of the relevant outstanding Initial Note or that the Refinancing Notes cannot be issued, the Redeveloper shall:

(1) upon issuance of the Refinancing Notes and application of proceeds to pay the outstanding balance of the relevant Initial Note to the extent possible, return the relevant Initial Note to the Authority along with an unconditional release from the Redeveloper and any assignee owner of the Initial Note, which terminates the Authority's obligations with respect to the unpaid principal of and accrued interest on the Initial Note;

(2) provide written assurances to the Authority, deemed acceptable to the Authority, that the Redeveloper will deliver to the Authority on or before the date of issuance of the Refinancing Notes an amount which, along with the net proceeds of the Refinancing Notes, will be sufficient to prepay the relevant outstanding Initial Note (the "Cash Requirement"); and deliver the Cash Requirement to the Authority, in immediately available funds, no later than fifteen (15) days prior to the issuance of the Refinancing Notes, in which event the Authority will issue and the Redeveloper will accept a subordinate tax increment revenue note (the "Subordinate Redeveloper Note") in the amount of the Cash Requirement, secured by Available Tax Increment subordinate to the outstanding Initial Notes and the Refinancing Notes; the Subordinate Redeveloper Note shall also be subject to the priority of subordinate debt as described in Section 4.12;

(4) provide a written notice to the Authority that the Redeveloper waives its right to request issuance of the relevant Refinancing Notes, at that time, in which event the relevant Initial Note will not be prepaid but will remain in full force and effect.

(e) Redeveloper Representations. The Redeveloper makes the following representations to the Authority with respect to the Refinancing Notes:
(1) The Redeveloper will take no action, and will not fail to take an action, the effect of which will be to cause any Refinancing Note to be determined to be a "private activity bond" (as such term is defined in Section 141 of the Internal Revenue Code of 1986, as amended (the "Code") and in applicable Treasury Regulations promulgated pursuant to applicable provisions of the Code (the "Regulations")

(2) The Redeveloper will take no action, and will not fail to take an action, the effect of which will be to cause the "private security or payment test" (as such term is defined in Section 141 of the Code and in applicable Regulations) or the "private loan financing test" (as such term is defined in Section 141 of the Code and in applicable Regulations) to be satisfied with respect to the Refinancing Notes.

(3) The Redeveloper will take no action, and will not fail to take an action, the effect of which will be to cause any Refinancing Note to be determined to be an "arbitrage bond" (as such term is defined in Section 148 of the Code and in applicable Regulations).

(4) The Redeveloper will take no action, and will not fail to take an action, the effect of which will be to cause interest on any Refinancing Note to be includable in gross income for federal income tax purposes.

(f) Other Qualifications. (1) Notwithstanding anything to the contrary in this Agreement, from and after the date of issuance of any Refinancing Note, the Authority shall have no right to enforce, and the Redeveloper shall have no obligations under Sections 6.1 and 8.3 of this Agreement, unless and to the extent that the Authority shall have received an opinion of a nationally-recognized bond counsel selected by the Authority to the effect that the receipt by the Authority of such payment will not cause the interest on the Refinancing Notes to become includable in gross income of the holder thereof for purposes of federal income taxation.

(2) If bond counsel determines that the existence of any of the lookback obligations under Section 3.7 would impair the tax-exempt status of any Refinancing Note issued or to be issued, the Authority shall, in its sole discretion, make one or more (in any combination) of the following adjustments in order to preserve the tax-exempt status of the relevant Refinancing Note:

   (i) Limit collection of the relevant lookback payment to an amount that does not meet the private payment or security test under Section 141(b) of the Code and applicable Regulations with respect to the relevant Refinancing Note;

   (ii) Revise the relevant lookback such that, in lieu of a payment by Redeveloper or Phase II Subdeveloper (as the case may be), the Authority will reduce the Tax Increment payable from one or more Phases with respect to any outstanding Initial Note or Refinancing Note specified by the Authority, such reduction being in the amount that would otherwise be payable as a lookback payment under Section 3.7;

   (iii) In the case of a Refinancing Note issued to refinance the Phase II Note, issue the subject Refinancing Note as a qualified 501(c)(3) bond within the meaning of Section 145 of the Code, to the extent bond counsel determines such issuance is legally permissible and subject to
receipt of an opinion of counsel for the Phase II Subdeveloper (at Redeveloper’s cost) that is customarily provided to bond counsel in connection with qualified 501(c)(3) bonds; or

(iv) Make any other adjustments (whether herein specified or not) determined by bond counsel to be necessary in order to maintain the tax-exempt status of any Refinancing Note issued or to be issued.

(g) Partial Refinancing of Exchange/Kinsel Initial Note. Notwithstanding anything to the contrary herein, the parties agree and understand that Redeveloper may request a partial refinancing of the Exchange/Kinsel Initial Note, through issuance by the Authority of a Refinancing Note secured only by the Refinancing Available Tax Increment from Phase I. In that event, the Authority will issue a replacement note secured by Available Tax Increment from Phase III, in the principal amount of the balance remaining after the partial refinancing of the Exchange/Kinsel Note. Such replacement note will be treated as an Initial Note as that term is used in this Agreement. Redeveloper retains the right to refinance such replacement Initial Note in the future, subject to all the terms and conditions of Section 3.8 (a) through (f).

Section 3.9. Payment of Authority Costs. (a) The Redeveloper is responsible to pay “Authority Costs,” which term means out-of-pocket costs incurred by the City or Authority after September 15, 2005 for: (i) the Authority’s financial advisor in connection with the Authority’s financial participation in redevelopment of the Redevelopment Property, including without limitation all costs related to establishment of any development or tax increment financing districts, except as otherwise provided in Section 3.14 hereof, (ii) the City or Authority’s legal counsel in connection with negotiation and drafting of this Agreement and any related agreements or documents, and any legal services related to the Authority’s financial participation in redevelopment of the Property, including without limitation costs related to issuance of all Initial Notes and Refinancing Notes to the extent not paid from the proceeds of such notes; (iii) any consultants retained in connection with analysis of the Redevelopment Property for eligibility for designation as a redevelopment project or as a renewal and renovation tax increment financing district; and (iv) consultants retained by the City and Authority for planning, environmental review, and engineering for the Redevelopment, including the zoning and land use approvals and Public Improvements feasibility studies and approvals and applications for any additional grant funding.

(b) At any time, but not more often than monthly, the City or Authority may request payment of Authority Costs, and the Redeveloper agrees to pay all Authority Costs (in excess of the initial deposit made under the Preliminary Development Agreement), within ten days of the City or Authority’s written request, supported by suitable billings, receipts or other evidence of the amount and nature of Authority Costs incurred. At the Redeveloper’s request, but no more often than monthly, the Authority will provide Redeveloper with a written report on current and anticipated expenditures for Authority Costs, including invoices or other comparable evidence. Any Authority Costs paid by the Redeveloper are a Public Redevelopment Cost reimbursable under Section 3.6 to the extent permitted by law.

Section 3.10. Exemption from Business Subsidy Act Requirements. (a) The Redeveloper warrants and represents that, at the time the business subsidy described in this Agreement was originally granted, the Redeveloper’s investment in the purchase of the Redevelopment Property and in site preparation on such property (net of any portion of such
costs reimbursed with Tax Increment) equaled at least 70% of the County assessor’s estimated market value of the Redevelopment Property for the 2005 assessment year, calculated as follows:

\[
\begin{align*}
\text{Redevelopment Property cost} & \quad $8,420,000 \\
\text{Plus Estimated cost of Redevelopment Property site preparation} & \quad $475,000 \\
\text{Equals land cost and site preparation} & \quad $8,895,000 \\
\text{2005 Assessor's Estimated Fair Market Value of Redevelopment Property} & \quad $3,387,100
\end{align*}
\]

$8,895,000 (acquisition and site preparation cost) less $4,087,500 (net principal amount of Notes) equals $4,807,500 which is 141.94% of $3,387,100 (assessor’s current estimated fair market value)

(b) Notwithstanding anything to the contrary in Section 8.3, the Redeveloper releases from and covenants and agrees that the Authority and the City and the governing body members, officers, agents, servants and employees thereof shall not be liable for and agrees to indemnify and hold harmless the Authority and the City and the governing body members, officers, agents, servants and employees thereof against any claim arising from application of the Business Subsidy Act to this Agreement, including without limitation any claim from any person or entity that the Authority or the City failed to comply with the Business Subsidy Act with respect to this Agreement.

Section 3.11. Other Grants. The Authority, the City and the Redeveloper will cooperate to obtain other grants to fund costs of the redevelopment described in this Agreement, including without limitation a Hennepin County Transit Grant and a Hennepin County Environmental Grant.

Section 3.12. Previous Agreements Superseded. This Agreement supersedes the Letter of Intent, dated October 24, 2005, between the Authority and the Redeveloper, the Contract for Private Redevelopment, dated January 31, 2006, between the Authority, the City, and the Redeveloper, the Amended and Restated Contract for Private Redevelopment, dated May 15, 2007, between the Authority, the City, and the Redeveloper, the Agreement Regarding Relocation of the Gold Nugget Restaurant, dated May 15, 2007, between the City and the Redeveloper, and the Agreement entered into in Conjunction with the Amended and Restated Contract for Private Redevelopment, dated September 29, 2008, between the Authority, the City, and the Redeveloper.

Section 3.13. Gold Nugget Agreement. The parties agree and understand that, as the date of this Agreement, Redeveloper has relocated the Gold Nugget restaurant in the Phase I (Commercial) portion of the Minimum Improvements, has obtained a certificate of occupancy for the new restaurant space from the City, and has opened the restaurant for public business.

Section 3.14. TIF District Duration Extension. The parties acknowledge that under 2009
Laws, Chapter 5, Section 15 (the “Special Law”), the City and Authority were authorized to extend the duration of the TIF District by seven years (through 2029), subject to certain terms and conditions. As of the date of this Agreement, the City and Authority have taken all actions necessary to make the Special Law effective, including obtaining the approvals of the City, County and Independent School District No. 270, filing evidence of such approvals with the Secretary of State, and approving a modification of the TIF Plan to extend the duration of the TIF District through 2029. Each party shall be responsible to pay its own third-party or internal costs in incurred in connection with enactment and securing necessary approvals of the Special Law.

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ARTICLE IV

Construction of Minimum Improvements and Public Improvements

Section 4.1. Construction of Minimum Improvements. The Redeveloper agrees that it will construct or cause (through a Subdeveloper as provided herein or otherwise) construction of the Minimum Improvements on the Redevelopment Property, in accordance with approved Construction Plans and at all times while the Redeveloper owns the Redevelopment Property, will operate, maintain, preserve and keep the respective components of the Minimum Improvements or cause such components to be operated, maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition.

Section 4.2. Master Site Plan and Construction Plans. (a) Master Site Plan. The initial Master Site Plan for the Redevelopment Property is attached hereto as Schedule C. The parties agree and understand that the Master Site Plan may be refined and modified as part of the review and approval process for each plat, subject to approval by the Authority.

(b) Construction Plans. Before commencing construction of each Phase, the Redeveloper shall submit to the Authority Construction Plans for the subject Phase. The City’s chief building official and community development director will review and approve all Construction Plans on behalf of the Authority, and for the purposes of this Section the term “Authority” means those named officials. The Construction Plans shall provide for the construction of the subject Phase and shall be in conformity with this Agreement, the Master Site Plan as it may be revised, the Design Guidelines, the TIF Plan, and all applicable State and local laws and regulations. The Authority will approve the Construction Plans in writing or by issuance of a permit if: (i) the Construction Plans conform to all terms and conditions of the Master Site Plan, the Design Guidelines, this Agreement, the final plat for the relevant Phase; (ii) the Construction Plans conform to the goals and objectives of the TIF Plan; (iii) the Construction Plans conform to all applicable federal, state and local laws, ordinances, rules and regulations; (iv) the Construction Plans are adequate to provide for construction of the subject Phase; and (v) there is no unsecured Event of Default. No approval by the Authority shall relieve the Redeveloper of the obligation to comply with the terms of this Agreement, applicable federal, state and local laws, ordinances, rules and regulations, or to construct the subject Phase in accordance therewith. No approval by the Authority shall constitute a waiver of an Event of Default, or waiver of any State or City building or other code requirements that may apply. Within 30 days after receipt of complete Construction Plans and permit applications for a building within any Phase, the Authority will deliver to the Redeveloper an initial review letter describing any comments or changes requested by Authority staff. Thereafter, the parties shall negotiate in good faith regarding final approval of Construction Plans for that building. The Authority’s approval shall not be unreasonably withheld or delayed. Said approval shall constitute a conclusive determination that the Construction Plans (and the subject Phase, constructed in accordance with said plans) comply to the Authority’s satisfaction with the provisions of this Agreement relating thereto.

The Redeveloper hereby waives any and all claims and causes of action whatsoever resulting from the review of the Construction Plans by the Authority and/or any changes in the
Construction Plans requested by the Authority, except for any failure by Authority to perform its obligations under this Section. Neither the Authority, the City, nor any employee or official of the Authority or City shall be responsible in any manner whatsoever for any defect in the Construction Plans or in any work done pursuant to the Construction Plans, including changes requested by the Authority.

(c) **Construction Plan Changes.** If the Redeveloper desires to make any material change in the Construction Plans or any component thereof after their approval by the Authority, the Redeveloper shall submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 of this Agreement with respect to such previously approved Construction Plans, the Authority shall approve the proposed change and notify the Redeveloper in writing of its approval. Such change in the Construction Plans shall, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to the Redeveloper, setting forth in detail the reasons therefor. Such rejection shall be made as soon as reasonably practicable but in any event within 30 days after receipt of the notice of such change. The Authority’s approval of any such change in the Construction Plans will not be unreasonably withheld.

Section 4.3. **Completion of Construction.** (a) Subject to Unavoidable Delays and the provisions of paragraphs (b) and (c) below, the Minimum Improvements must be constructed in accordance with the following schedule:

**Phase I (Exchange):** Approximately 20,500 sq. ft. of retail and restaurant space and 52 Rental Housing Units on Phase I Property commenced not later than 120 days after land assembly, if condemnation is required, or June 30, 2007, whichever is later, and completed within 18 months thereafter. Phase I construction was completed on April 23, 2008.

**Phase II:** Approximately 145 to 150 senior rental units on Phase II Property commenced not later than August 31, 2012, and completed no later than June 30, 2014. The Redeveloper has completed the demolition of all buildings and structures on the Phase II Property.

**Phase III (Kinsel):** Approximately 45 condominiums on Phase III Property commenced not later than June 30, 2013 and completed by no later than June 30, 2014.

(b) All work with respect to the Minimum Improvements to be constructed or provided by the Redeveloper on the Redevelopment Property shall be in substantial conformity with the Construction Plans as submitted by the Redeveloper and approved by the Authority. If the Redeveloper is making substantial progress with respect to the redevelopment project, and is unable to meet one or more of the above-referenced deadlines, the Authority and the Redeveloper shall negotiate in good faith for a reasonable period to extend the time in which
necessary action(s) must be taken or occur, the lapse of which time would otherwise constitute a default under this Agreement.

The Redeveloper agrees for itself, its successors and assigns, and every successor in interest to the Redevelopment Property, or any part thereof, that the Redeveloper, and such successors and assigns, shall promptly begin and diligently prosecute to completion the redevelopment of the Redevelopment Property through the construction of the Minimum Improvements thereon, and that such construction shall in any event be commenced and completed within the period specified in this Section 4.3 of this Agreement. Upon an approved assignment to a Subdeveloper pursuant to Section 8.2, it is understood that the obligation of the Redeveloper as regards any portion of the Redevelopment Project so assigned shall be limited or terminated in accordance with the approved assignment. Subsequent to conveyance of the Redevelopment Property, or any part thereof, to the Redeveloper, and until construction of the Minimum Improvements has been completed, the Redeveloper shall make reports, in such detail and at such times as may reasonably be requested by the Authority, as to the actual progress of the Redeveloper with respect to such construction.

Section 4.4. Certificate of Completion. (a) Promptly after substantial completion of the Minimum Improvements (and each Phase thereof) in accordance with those provisions of the Agreement relating solely to the obligations of the Redeveloper to construct the Minimum Improvements (including the dates for completion thereof), the Authority will furnish the Redeveloper with a Certificate of Completion in substantially the form attached as Schedule E. Such certification by the Authority shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the Agreement and in any deed with respect to the obligations of the Redeveloper, and its successors and assigns, to construct the relevant Phase of the Minimum Improvements and the dates for the completion thereof. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Redeveloper to any Holder of a Mortgage, or any insurer of a Mortgage, securing money loaned to finance the Minimum Improvements, or any part thereof.

(b) Upon the Redeveloper’s request, the Authority shall furnish to the Redeveloper a Certificate of Completion for each housing unit upon substantial completion of such unit, as evidenced by issuance of a certificate of occupancy therefor by the responsible inspecting authority.

(c) Each Certificate of Completion provided for in this Section 4.4 of this Agreement shall be in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Redevelopment Property. If the Authority shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.4 of this Agreement, the Authority shall, within thirty (30) days after written request by the Redeveloper, provide the Redeveloper with a written statement, indicating in adequate detail in what respects the Redeveloper has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Authority, for the Redeveloper to take or perform in order to obtain such certification.
(d) The construction of the Minimum Improvements or any Phase thereof shall be deemed to be substantially complete for the purposes of this Agreement when the Redeveloper has received a certificate of occupancy from the City for the required number of housing units specified in Section 4.3(a) for that Phase, and the specified site improvements for that Phase have been substantially completed as reasonably determined by the Authority Representative. In the case of Phase I, the certificate of occupancy for commercial improvements may exclude tenant build-outs. In the case of Phase II, a further condition of issuance of the Certificate of Completion shall be compliance with Section 4.7(e) hereof (regarding filing of a plan for additional affordability assistance in Phase II).

Section 4.5. (Intentionally Omitted).

Section 4.6. Affordable Housing Covenants – Phase I (Exchange) Rental Housing Units. (a) The Redeveloper covenants to make at least 13 of the Rental Housing Units constructed on the Phase I Redevelopment Property “affordable,” and those Rental Housing Units will comply with the following affordability covenants:

(i) For at least fifteen years following the completion of construction of the Phase I Minimum Improvements, 13 Rental Housing Units in Phase I must be occupied by or held vacant and available for occupancy by individuals or families of low or moderate income. Occupants of a unit are considered individuals or families of “low or moderate income” only if their combined adjusted income does not exceed sixty percent (60%) of the Minneapolis-St. Paul metropolitan statistical area (the “Metro Area”) median income for the applicable calendar year. The determination of whether an individual or family is of low or moderate income shall be made at the time the tenancy commences and on an ongoing basis thereafter, determined at least annually. The rent charged for each 13 affordable Rental Housing Units shall not exceed the maximum rent that is determined by the Minnesota Housing Finance Agency (or any successor entity) to be affordable to persons who meet the income restrictions in this Section 4.6(a). Eleven of the affordable Rental Housing Units in Phase I will have at least one bedroom and will be at least 795 square feet in size. Two of the affordable Rental Housing Units in Phase I will be studio apartments and will be at least 540 square feet in size.

(ii) The Authority and its representatives shall have the right at all reasonable times while the covenants in this Section are in effect, after reasonable notice to inspect, examine and copy all books and records of the Redeveloper and its successors and assigns relating to the covenants described in this Section 4.6(a).

(iii) Prior to the commencement of construction of the Phase I Minimum Improvements, the Redeveloper entered into an agreement with the Authority that reflects the covenants set forth in this Section, which will remain in effect for fifteen years (the “Affordable Rental Housing Agreement”). If the Redeveloper fails to comply with this Section 4.6(a) or with the covenants of the Affordable Rental Housing Agreement, the Redeveloper will reimburse the City or the Authority for any reasonable attorney fees incurred by the City or the Authority in an effort to gain the Redeveloper’s compliance with this Section 4.6 or with the covenants of the Affordable Rental Housing Agreement.
(b) In addition to the 13 affordable Rental Housing Units discussed above, the Redeveloper covenants that the initial rents charged for the remaining 6 studio apartments to be constructed as part of the Phase I Rental Housing Units (exclusive of the 2 affordable studio apartments described in 4.6(a) above) will meet the rent restrictions set out in Section 4.6(a)(i). Upon the initial occupancy of each of the remaining 6 studio apartments constructed as part of the Phase I Rental Housing Units, the Redeveloper will provide the Authority with a certification of the initial rents charged for the studio units, in a form satisfactory to the Authority.

Section 4.7. Affordable Housing Covenants – Phase II. (a) Generally. The Redeveloper covenants to make at least 30 of the Rental Housing Units constructed on the Phase II Redevelopment Property “affordable” under the terms and conditions described in this Section. Of the total 30 units, at least 20 units must be senior independent living units that include 14 units with one bedroom and 6 units with one bedroom plus den (the “Affordable Independent Living Units”); and 10 units must be assisted living units with one bedroom (the “Affordable Assisted Living Units”). The covenants in this Section commence on the date when at least 15 Rental Housing Units (i.e., 50 percent of the total affordable units of both types) are leased to income-qualified tenants, and terminate on the 15th anniversary of such commencement date.

(b) Income Limits. All Rental Housing Units subject to the affordability covenants in this section must be occupied by or held vacant and available for occupancy by individuals or families of low or moderate income during the fifteen-year period described in paragraph (a) of this Section. Occupants of a unit are considered individuals or families of “low or moderate income” only if their combined adjusted income does not exceed sixty percent (60%) of the Minneapolis-St. Paul metropolitan statistical area (the “Metro Area”) median income for the applicable calendar year. The determination of whether an individual or family is of low or moderate income shall be made at the time the tenancy commences and on an ongoing basis thereafter, determined at least annually.

(c) Rent Limits—Affordable Independent Living Units. The rent charged for each of the Affordable Independent Living Units shall not exceed the maximum rent that is determined by the Minnesota Housing Finance Agency (or any successor entity) to be affordable to persons who meet the income restrictions in Section 4.7(b). For the purposes of calculating rent payable with respect to the 20 Affordable Independent Living Units, the rent does not include the cost of (i) bundled services associated with the independent living housing model, including without limitation transportation, community activities, on-site medical response services, security, reception, and community facilities, and (ii) the cost of additional services that are optionally available to tenants including meals and individual medical support. Redeveloper shall cause all reports of rent to include a breakdown showing (for the relevant reporting period) actual rent, the cost of bundled services described in clause (i), and the cost of optional services described in clause (ii).

(d) Rent Limits—Affordable Assisted Living Units. The rent charged for each of the affordable senior assisted living Rental Housing Units shall not exceed the maximum rent for an efficiency that is determined by the Minnesota Housing Finance Agency (or any successor entity) to be affordable to persons who meet the income restrictions in Section 4.7(b). For purposes of calculating rent payable with respect to the 10 Affordable Assisted Living Units, the
rent does not include the cost of the care package chosen by the tenant that must be purchased to live in the assisted living unit. In addition, the operator of the Phase II Minimum Improvements will make reasonable efforts to participate in available financial assistance programs to make the care packages required for these 10 Affordable Assisted Living Units affordable to the tenants of these units.

(e) 

Additional Assistance. In addition to the specific affordability covenants described in this Section, during the fifteen-year period described in Section 4.7(a) Redeveloper shall apply approximately $415 per month (or $4,980 per calendar year) to reduce the cost of services or rent or any combination thereof for any Rental Housing Units in Phase II. Prior to issuance of the Certificate of Completion for Phase II, the Redeveloper shall submit to the Authority Representative for approval a plan for application of this additional assistance and a method for periodic adjustment of the dollar amount required to spent each year. The Authority Representative’s approval of the plan will not be unreasonably withheld. Thereafter, Redeveloper shall file annual reports on or before each January 15 describing the amount of assistance under this paragraph in the prior calendar year and how the funds were applied.

(f) 

Inspection. The Authority and its representatives shall have the right at all reasonable times while the covenants in this Section are in effect, after reasonable notice to inspect, examine and copy all books and records of the Redeveloper and its successors and assigns relating to the covenants described in this Section 4.7.

(g) 

Restrictive Covenants. Prior to the commencement of construction of the Phase II Minimum Improvements, the Redeveloper (or the Phase II Subdeveloper) shall enter into an agreement with the Authority that reflects the covenants set forth in this Section, which will remain in effect for the fifteen-year period described in Section 4.7(a). If the Redeveloper fails to comply with this Section 4.7 or with the covenants of the Affordable Senior Rental Housing Agreement, the Redeveloper will reimburse the City or the Authority for any reasonable attorney fees incurred by the City or the Authority in an effort to gain the Redeveloper’s compliance with this Section 4.7 or with the covenants of the Affordable Senior Rental Housing Agreement. The Authority further acknowledges that an agreement titled Declaration of Restrictive Covenants—For Sale Units, dated May 15, 2007 (the “Prior Declaration”), was executed by Redeveloper and Authority and filed of record against the Phase II Property, which Prior Declaration evidenced affordability covenants under a prior version of this Agreement that has now been superseded (i.e., the change from for-sale housing to senior rental housing on what is now called the Phase II Property). Accordingly, at the request of the Phase II Subdeveloper or Redeveloper, the Authority will execute a document in recordable form that releases and terminates the Prior Declaration.

(h) 

Marketing to City Residents. Prior to issuance of the Certificate of Completion for Phase II, the Redeveloper (or Phase II Subdeveloper) shall file with the Authority a plan for marketing of units in Phase II to current residents in the City for at least 90 days before marketing to the broader community. Further, within six months after the date by which at least 90 percent of the units in Phase II have been leased, or within one year after completion of Phase II (whichever comes first), the Redeveloper (or Phase II Subdeveloper) shall file a written report with the Authority describing, to the best of its ability, the number of residents who moved from existing single family homes in the City, and the demographic characteristics of the persons or families who
purchased the home of the residents who moved into Phase II, including range of ages, family size, and residency prior to buying the home.

Section 4.8. Association Covenants. (a) Upon approval of the condominium plat for Phase III (Kinsel), the Authority shall be entitled to review and approve the initial articles, bylaws and declaration of restrictive covenants for the condominium association (the “Association”) to be created (collectively, the “Housing Association Documents”).

(b) The Housing Association Documents shall include at least the following provisions, unless and to the extent any provisions are prohibited by rules of federal agencies, quasi-federal agencies or similar nationally recognized entities providing financing or guarantees for construction or purchase of the Minimum Improvements:

(i) a requirement that each unit owner be a member of the Association;
(ii) a requirement that the Association have the authority to assess unit owners;
(iii) a requirement that the Association establish a maintenance fund for exteriors, common areas and utilities including an annual assessment per unit reasonably acceptable to the Authority; and
(iv) a long-term plan providing for maintenance and replacement reasonably acceptable to the Authority, describing the timing, cost and monthly assessment needed to pay such costs.

Section 4.9. Conversion Option. At anytime following the construction of the Phase I (Exchange) Minimum Improvements, the Redeveloper may convert the Rental Housing Units in Phase I to for-sale condominium units. Upon conversion of the Phase I Rental Housing Units to for-sale condominium units, the following shall apply, provided if the Redeveloper does not effect a conversion to for-sale condominium units prior to the expiration of the Affordable Housing Covenants under Section 4.6(i), all obligations under this section shall be terminated:

(a) 13 condominium units in Phase I must be initially sold to owner-occupants with household income not to exceed 115% of the Minneapolis-St. Paul metropolitan statistical area (the “Metro Area”) median income for the calendar year in which the Redeveloper receives a certificate of occupancy of the Phase I Minimum Improvements, for a purchase price no more than the maximum “livable communities” sale price for owner-occupied dwellings established by the Metropolitan Council for the calendar year in which the Redeveloper receives a certificate of occupancy of the Phase I Minimum Improvements (the “Met Council Price”). Further, the purchase price of such units upon any resale, for a period of 30 years after the date of such initial sale, may not exceed the Met Council Price adjusted by 50 percent of the average annual increase in purchase price of owner-occupied residences in the Metro Area from the date of each prior sale, plus an additional 6 percent of such adjusted amount applied at the time of each sale but not compounded as part of the adjustment in sale price for any subsequent sale. The 13 affordable condominium housing units in Phase I will consist of (i) 11 housing units with at least one bedroom and at least 795 square feet in size and (ii) 2 housing units will be studio apartments and at least 540 square feet in size;
(b) The Authority and its representatives shall have the right at all reasonable times while the covenants in this Section are in effect, after reasonable notice to inspect, examine and copy all books and records of the Redeveloper and its successors and assigns relating to the covenants described in this Section 4.9.

(c) Prior to the conversion, the Redeveloper shall execute with the Authority an agreement in recordable form and satisfactory to the Authority, that substantially reflects the covenants set forth in this Section which will remain in effect for thirty years (the “Affordable For-Sale Housing Agreement”). The Affordable For-Sale Housing Agreement shall be recorded by the Redeveloper, at its cost, against the appropriate portion of the Redevelopment Property on which the subject affordable condominium housing units are to be constructed. Failure to enter into or record any Affordable For-Sale Housing Agreement in accordance with this Section shall be an Event of Default under Section 9.1(a) hereof. If the Redeveloper fails to comply with this Article IV or with the covenants of the Affordable For-Sale Housing Agreement, the Redeveloper will reimburse the City or the Authority for any reasonable attorney fees incurred by the City or the Authority in an effort to gain the Redeveloper’s compliance with this Article IV or with the covenants of the Affordable For-Sale Housing Agreement. Notwithstanding anything to the contrary contained herein or in the Affordable For-Sale Housing Agreement, after execution of the Affordable For-Sale Housing Agreement and the initial sale of an affordable condominium housing unit, the Redeveloper shall have no responsibility to enforce the affordability covenants of this Section or the Affordable For-Sale Housing Agreement with respect to such unit, and a failure by an owner of an affordable condominium housing unit to comply with the affordability covenants shall not constitute an Event of Default under this Agreement.

Notwithstanding anything to the contrary herein, the Affordable For-Sale Housing Agreement shall provide that, in the event that the owner of an affordable condominium housing unit secures a mortgage from a commercial lender that is sold to a secondary market investor such as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation or secures a mortgage insured by the United States Department of Housing and Urban Development, the restrictions under the Affordable For-Sale Housing Agreement as to the affordable condominium housing unit shall terminate with respect to the mortgagee and any subsequent purchaser of such property if title to the affordable condominium housing unit is transferred by foreclosure, or deed in lieu of foreclosure, or to the mortgagee if the mortgage is assigned to the Secretary of the United States Department of Housing and Urban Development, all in accordance with federal regulations, 24 CFR Section 203.41(c)(2).

Section 4.10. Records. The Authority, the Legislative Auditor, and the State Auditor’s office, through any authorized representatives, shall have the right after reasonable notice to inspect, examine and copy all books and records of the Redeveloper relating to the Public Redevelopment Costs and the Minimum Improvements. The Redeveloper shall also use reasonable efforts to cause the contractor or contractors, all sub-contractors and their agents and lenders to make their books and records relating to the Public Redevelopment Costs available to the Authority, upon reasonable notice, for inspection, examination and audit. The Redeveloper shall maintain such records and provide such rights of inspection for a period of six years after issuance of the Certificate of Completion for the Minimum Improvements.
Section 4.11. **Construction of Public Improvements.** (a) *Generally.* The parties agree and understand that the City has constructed various improvements adjacent to and benefiting the Redevelopment Property, including streetlights, sidewalks, streetscaping, and pedestrian and traffic safety improvements (together, the “Public Improvements”). The City, in its discretion, may construct additional Public Improvements, including without limitation a traffic signal at Excelsior Boulevard and Woodhill Road, but the City will only construct the traffic signal if Hennepin County authorizes and approves such traffic signal. Public Improvements in the amount of $500,000 were constructed primarily in 2008 and are referred to herein as the “2008 Public Improvements.”

(b) **Financing of Public Improvements.** The Authority will reimburse the City for the cost of the Public Improvements from Available Tax Increment through an interfund loan in accordance with Section 469.178, Subdivision 7 of the TIF Act, as further described in Authority Resolution No. 2006-03 approved January 17, 2006 (the “Interfund Loan Resolution”). As described in the Interfund Loan Resolution, interest accrues on the interfund loan at the maximum rate in each calendar year permitted under Section 469.178, Subdivision 7 of the TIF Act, from the date of actual expenditure. The pledge of Available Tax Increment to pay the interfund loan for the 2008 Public Improvements and any other Public Improvements is subject to the priority of subordinate debt as described in Section 4.12.

Section 4.12. **Priority of Subordinate Debt.** Available Tax Increment is pledged to the various notes and obligations described in this Agreement in the following manner and priority.

(a) **Available Tax Increment from Phases I and III:** Available Tax Increment received in each calendar year from Phases I and III shall be applied on each August 1 and February 1 payment date under the relevant note or obligation:

First, to pay principal and interest then due on the Exchange/Kinsel Initial Note, or if that Initial Note has been refinanced under Section 3.8, to pay principal and interest then due on the outstanding Refinancing Note;

Second, after payment or provision for payment of the amounts due on August 1 and next following February 1 on the Exchange/Kinsel Note or the relevant Refinancing Note (as the case may be), to pay principal and interest then due on the interfund loan for the 2008 Public Improvements, taking into account any amounts of Tax Increment from Phase II applied for such purposes as described in paragraph (b) of this Section;

Third, to pay principal and interest then due on any outstanding Subordinate Redeveloper Note; and

Fourth, after any outstanding Subordinate Redeveloper Note has been paid in full, defeased, or redeemed in accordance with its terms, to pay principal and interest then due on any additional costs of the Authority or City that were advanced but not yet paid under the Interfund Loan Resolution, including without limitation the cost of any additional Public Improvements (not reimbursed as part of the 2008 Public Improvements), and the City’s costs related to relocation of the land owner of Parcel F (the “Alano Parcel”) to the extent such costs are reimbursable from Tax Increment pursuant to the TIF Act.
(b) Tax Increment from Phase II: Tax Increment received in each calendar year from Phase II shall be applied on each August 1 and February 1 payment date under the relevant note or obligation:

First, 80 percent of the Tax Increment received in the six months before each payment date (e.g., the Phase II Available Tax Increment) shall be first applied to the Phase II Note; and 20 percent of the Tax Increment shall be first applied to the interfund loan for the 2008 Public Improvements as described in the Second priority below; and (ii) if the Phase II Note has been refinanced under Section 3.8, 95 percent of Tax Increment shall be first applied to pay principal and interest then due on the relevant outstanding Refinancing Note and any amounts in excess of the principal and interest then due shall be applied to the interfund loan for the 2008 Public Improvements as described in the Second priority below;

Second, (except as otherwise described under the First priority above) after the Phase II Note (and any Refinancing Note issued to refund the Phase II Note) has been paid, redeemed or defeased in accordance with its terms, Available Tax Increment shall be applied to pay principal and interest then due on the interfund loan for the 2008 Public Improvements, taking into account any reduction in principal amount of such loan because of any amounts of Available Tax Increment from Phases I and II applied for such purposes as described in paragraph (b) of this Section.

Third, to pay principal and interest then due on any outstanding Subordinate Redeveloper Note; and

Fourth, after any outstanding Subordinate Redeveloper Note described in the prior paragraph has been paid in full, defeased, or redeemed in accordance with its terms, to pay principal and interest then due on any additional costs of the Authority or City that were advanced but not yet paid under the Interfund Loan Resolution, including without limitation the cost of any additional Public Improvements (not reimbursed as part of the 2008 Public Improvements), the City’s costs related to relocation of the land owner of Parcel F (the “Alano Parcel”) to the extent such costs are reimbursable from Tax Increment pursuant to the TIF Act, and any other costs incurred to assist affordable housing within the Redevelopment Project to the extent permissible under the TIF Act.
ARTICLE V

Insurance

Section 5.1. Insurance. (a) The Redeveloper will provide and maintain at all times during the process of constructing the Minimum Improvements an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the Authority, furnish the Authority with proof of payment of premiums on policies covering the following:

(i) Builder’s risk insurance, written on the so-called “Builder’s Risk – Completed Value Basis,” in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called “all risk” form of policy. The interest of the Authority shall be protected in accordance with a clause in form and content satisfactory to the Authority;

(ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner’s Contractor’s Policy with limits against bodily injury and property damage of not less than $2,000,000 for each occurrence, and shall be endorsed to show the City and Authority as additional insured (to accomplish the above-required limits, an umbrella excess liability policy may be used); and

(iii) Workers’ compensation insurance, with statutory coverage.

(b) Upon completion of construction of the Minimum Improvements and prior to the Termination Date, the Redeveloper shall maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the Authority shall furnish proof of the payment of premiums on, insurance as follows:

(i) Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses.

(ii) Comprehensive general public liability insurance, including personal injury liability (with employee exclusion deleted), against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of $2,000,000 and shall be endorsed to show the City and Authority as additional insureds.

(iii) Such other insurance, including workers’ compensation insurance respecting all employees of the Redeveloper, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Redeveloper may be self-insured with respect to all or any part of its liability for workers’ compensation.
(c) All insurance required in Article V of this Agreement shall be taken out and maintained in responsible insurance companies selected by the Redeveloper that are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Redeveloper will deposit annually with the Authority a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V of this Agreement each policy shall contain a provision that the insurer shall not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Redeveloper and the Authority at least 30 days before the cancellation or modification becomes effective. In lieu of separate policies, the Redeveloper may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Redeveloper shall deposit with the Authority a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements. Any insurance required under this Article may be provided separately by Phase or building.

(d) The Redeveloper agrees to notify the Authority immediately in the case of damage exceeding $100,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In such event the Redeveloper will forthwith repair, reconstruct, and restore the Minimum Improvements to substantially the same or an improved condition or value as it existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction, and restoration, the Redeveloper will apply the net proceeds of any insurance relating to such damage received by the Redeveloper to the payment or reimbursement of the costs thereof.

The Redeveloper shall complete the repair, reconstruction and restoration of the Minimum Improvements, regardless of whether the net proceeds of insurance received by the Redeveloper for such purposes are sufficient to pay for the same. Any net proceeds remaining after completion of such repairs, construction, and restoration shall be the property of the Redeveloper.

Section 5.2. Subordination. Notwithstanding anything to the contrary herein, the rights of the Authority with respect to the receipt and application of any insurance proceeds shall, in all respects, be subordinate and subject to the rights of any Holder under a Mortgage allowed pursuant to Article VII of this Agreement.

Section 5.3. Qualifications. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that:

(a) The provisions of Section 5.1 shall not apply to a housing unit from and after the date that such unit is substantially completed and sold to an owner of the housing unit.

(b) Upon transfer of the Redevelopment Property or portion thereof to another person or entity except for sales to owners of a housing unit, the Redeveloper will remain obligated under Section 5.1 relating to such portion transferred, unless the Redeveloper is released from such obligations in accordance with the terms and conditions of Section 8.2(b) or 8.3.

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ARTICLE VI

Tax Increment; Taxes; Special Service District

Section 6.1. Right to Collect Delinquent Taxes. The Redeveloper acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment described in this Agreement, in part through issuance of the Note. The Redeveloper understands that the Tax Increments pledged to payment of the Note are derived from real estate taxes on the Minimum Improvements, which taxes must be promptly and timely paid. To that end, the Redeveloper agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Redevelopment Property and the Minimum Improvements. The Redeveloper acknowledges that this obligation creates a contractual right on behalf of the Authority through the Termination Date to sue the Redeveloper or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the county auditor. In any such suit, the Authority shall also be entitled to recover its costs, expenses and reasonable attorney fees.

Section 6.2. Review of Taxes. The Redeveloper agrees that prior to the Termination Date, it will not cause a reduction in the real property taxes paid in respect of the Redevelopment Property through: (A) willful destruction of the Redevelopment Property or any part thereof; or (B) willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 of this Agreement. The Redeveloper also agrees that it will not, prior to the Termination Date, apply for a deferral of property tax on the Redevelopment Property pursuant to any law, or transfer or permit transfer of the Redevelopment Property to any entity whose ownership or operation of the property would result in the Redevelopment Property being exempt from real estate taxes under State law (other than any portion thereof dedicated or conveyed to the City or Authority in accordance with this Agreement).

Section 6.3. Qualifications. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that:

(a) The provisions of Sections 6.1 and 6.2 shall not apply to a housing unit from and after the date that such unit is substantially completed and sold to an owner of the housing unit.

(b) Upon transfer of the Redevelopment Property or portion thereof to another person or entity except for sales to owners of a housing unit, the Redeveloper will remain obligated under Sections 6.1 and 6.2 relating to such portion transferred, unless the Redeveloper is released from such obligations in accordance with the terms and conditions of Section 8.2(b) or 8.3.

Section 6.4. Special Service District. Upon request of the City, the Redeveloper will file any petition required under Minnesota Statutes, Chapter 428A in order to establish a special service district encompassing the Redevelopment Property, and to levy a special service charge for ongoing maintenance of the streetscaping on the Redevelopment Property. The detailed special services and service charges to be assessed will be determined by mutual agreement of
the parties upon establishment of such a district, provided that the Redeveloper must negotiate in good faith regarding such matters. In accordance with Minnesota Statutes, Chapter 428A, special services will not include any service that is ordinarily provided throughout the City from general fund revenues except to the extent an increased level of service is provided in the special service district.

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ARTICLE VII

Financing

Section 7.1. Mortgage Financing. (a) Before commencement of construction of any Phase, the Redeveloper shall submit to the Authority evidence of one or more commitments for financing which, together with committed equity for such construction, is sufficient for payment of the Minimum Improvements. Such commitments may be submitted as short term financing, long term mortgage financing, a bridge loan with a long term take-out financing commitment, or any combination of the foregoing.

(b) If the Authority finds that the financing is sufficiently committed and adequate in amount to pay the costs specified in paragraph (a) then the Authority shall notify the Redeveloper in writing of its approval. Such approval shall not be unreasonably withheld and either approval or rejection shall be given within twenty (20) days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to such evidence of financing shall be deemed to constitute an approval hereunder. If the Authority rejects the evidence of financing as inadequate, it shall do so in writing specifying the basis for the rejection. In any event the Redeveloper shall submit adequate evidence of financing within ten (10) days after such rejection.

(c) In the event that there occurs a default under any Mortgage authorized pursuant to Section 7.1 of this Agreement, the Redeveloper shall cause the Authority to receive copies of any notice of default received by the Redeveloper from the holder of such Mortgage. Thereafter, the Authority shall have the right, but not the obligation, to cure any such default on behalf of the Redeveloper within such cure periods as are available to the Redeveloper under the Mortgage documents. In the event there is an event of default under this Agreement, the Authority will transmit to the Holder of any Mortgage a copy of any notice of default given by the Authority pursuant to Article IX of this Agreement.

(d) In order to facilitate the securing of other financing, the Authority agrees to subordinate its rights under this Agreement provided that such subordination shall be subject to such reasonable terms and conditions as the Authority and Holder mutually agree in writing. The Authority shall waive its option to purchase the Phase II Property pursuant to Section 9.5 upon the earlier of (i) receipt of evidence reasonably acceptable to the Authority that the Redeveloper or Phase II Subdeveloper has commenced construction (as defined in Section 9.5) of the Phase II Minimum Improvements, or (ii) receipt of a written evidence that Redeveloper or Phase II Subdeveloper will finance the Phase II Minimum Improvements in part through a loan from HUD and HUD requires such waiver in order to proceed with such financing, in which case the waiver will be in a form acceptable to HUD. Notwithstanding anything to the contrary herein, the Authority shall not subordinate its option to purchase the Phase III Property pursuant to Section 9.6 but shall waive its option to purchase the Phase III Property upon receipt of evidence reasonably acceptable to the Authority that the Redeveloper has commenced construction (as that term is defined in Section 9.6) of the Phase III Minimum Improvements. Any subordination agreement shall include the provision described in Section 7.1(c).
ARTICLE VIII

Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Representation as to Redevelopment. The Redeveloper represents and agrees that its purchase of the Redevelopment Property, and its other undertakings pursuant to the Agreement, are, and will be used, for the purpose of redevelopment of the Redevelopment Property and not for speculation in land holding.

Section 8.2. Prohibition Against Redeveloper's Transfer of Property and Assignment of Agreement. The Redeveloper represents and agrees that until the Termination Date:

(a) Except as specifically described in this Agreement, the Redeveloper has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Redevelopment Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, to any person or entity (collectively, a "Transfer"), without the prior written approval of the Authority's Board of Commissioners. The term "Transfer" does not include (i) encumbrances made or granted by way of security for, and only for, the purpose of obtaining construction, interim or permanent financing necessary to enable the Redeveloper or any successor in interest to the Redevelopment Property or to construct the Minimum Improvements or component thereof; and (ii) any lease, license, easement or similar arrangement entered into in the ordinary course of business related to operation of the Minimum Improvements. The parties agree and understand that the Redeveloper intends to Transfer certain portions of the Redevelopment Property, along with certain rights and obligations of the Redeveloper under this Agreement, to one or more third party developers ("Subdevelopers") who will construct portions of the Minimum Improvements. Any such Transfer is subject to the provisions of this Section. Further, the Redeveloper may effect a Transfer to an Affiliate without approval by the Authority provided that the Redeveloper submit to the Authority an assignment and assumption executed by the Affiliate in accordance with Section 8.2(b)(2).

(b) If the Redeveloper seeks to effect a Transfer, the Authority shall be entitled to require as conditions to such Transfer that:

(1) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Redeveloper as to the portion of the Redevelopment Property to be transferred; and

(2) Any proposed transferee, by instrument in writing satisfactory to the Authority and in form recordable in the public land records of Hennepin County,
Minnesota, shall, for itself and its successors and assigns, and expressly for the benefit of the Authority, have expressly assumed all of the obligations of the Redeveloper under this Agreement as to the portion of the Redevelopment Property to be transferred and agreed to be subject to all the conditions and restrictions to which the Redeveloper is subject as to such portion; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Redevelopment Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority) deprive the Authority of any rights or remedies or controls with respect to the Redevelopment Property, the Minimum Improvements or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Redevelopment Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally, or practically, to deprive or limit the Authority of or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Redevelopment Property that the Authority would have had, had there been no such transfer or change. In the absence of specific written agreement by the Authority to the contrary, no such transfer or approval by the Authority thereof shall be deemed to relieve the Redeveloper, or any other party bound in any way by this Agreement or otherwise with respect to the Redevelopment Property, from any of its obligations with respect thereto.

(3) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Redevelopment Property governed by this Article VIII, shall be in a form reasonably satisfactory to the Authority.

(c) If the conditions described in paragraph (b) are satisfied, then the Transfer will be approved and the Redeveloper shall be released from its obligation under this Agreement, as to the portion of the Redevelopment Property that is transferred, assigned, or otherwise conveyed, unless the parties mutually agree otherwise. The Authority will review and respond to a request for Transfer within 45 days after receipt of a written request. Notwithstanding anything to the contrary herein, any Transfer that releases the Redeveloper from its obligations under this Agreement (or any portion thereof) shall be approved by the Authority’s Board of Commissioners. If the Redeveloper remains fully bound under this Agreement notwithstanding the Transfer, as documented in the transfer instrument, the Transfer may be approved by the Authority Representative. The Authority may also consider the waiver of the look back provisions of Section 3.7(c) upon the Transfer of the Redevelopment Property under this Section. Any such waiver must be approved by the Authority’s Board of Commissioners. The provisions of this paragraph (c) apply to all subsequent transfers.

(d) Nothing in this Article VIII will be construed to require, as a condition for release of the Redeveloper hereunder or otherwise, that purchasers of any condominium housing unit assume any obligations of the Redeveloper. Upon sale of any condominium housing unit to an
initial owner, the Authority will provide to Redeveloper or the buyer a certificate in recordable form releasing the unit from all encumbrances of this Agreement.

(e) Notwithstanding anything to the contrary in this Agreement: if a Phase is transferred under this Section in part but not in whole, and the Redeveloper will be, upon such transfer, released from its obligations as to the portion transferred, as a condition to approval of the Transfer the Authority may designate the portion of Minimum Improvements for that Phase that are allocated to the transferred Parcel, such that the transferee is bound by all the terms of this Agreement as to the allocated number of housing units (or the amount of commercial improvements in the case of Phase I).

(f) The Redeveloper, the City and the Authority acknowledge and understand that the Redeveloper intends that the Phase II Property Owners will sell the Phase II Property to an entity that will construct Phase II (the “Phase II Subdeveloper”), and that the rights and duties under this agreement with respect to Phase II will be assigned by Redeveloper and assumed by the Phase II Subdeveloper, all subject to the terms and conditions of this Section 8.2, including without limitation the approvals required in paragraphs (b) and (c). Any subsequent Transfer of Phase II by the Phase II Subdeveloper is subject to the additional terms described in Section 3.7(e) hereof.

Section 8.3. Release and Indemnification Covenants. (a) The Redeveloper releases from and covenants and agrees that the Authority and the City and the governing body members, officers, agents, servants and employees thereof shall not be liable for and agrees to indemnify and hold harmless the Authority and the City and the governing body members, officers, agents, servants and employees thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements.

(b) Except for willful or negligent misrepresentation, misconduct or negligence of the Indemnified Parties (as hereafter defined), and except for any breach by any of the Indemnified Parties of their obligations under this Agreement, the Redeveloper agrees to protect and defend the Authority and the City and the governing body members, officers, agents, servants and employees thereof (the “Indemnified Parties”), now or forever, and further agrees to hold the Indemnified Parties harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Minimum Improvements.

(c) Except for any negligence of the Indemnified Parties (as defined in clause (b) above), and except for any breach by any of the Indemnified Parties of their obligations under this Agreement, the Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Redeveloper or its officers, agents, servants or employees or any other person who may be about the Minimum Improvements due to any act of negligence of any person.

(d) All covenants, stipulations, promises, agreements and obligations of the Authority contained herein shall be deemed to be the covenants, stipulations, promises, agreements and
obligations of the Authority and not of any governing body member, officer, agent, servant or employee of the Authority in the individual capacity thereof.

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ARTICLE IX

Events of Default

Section 9.1. Events of Default Defined. The following shall be “Events of Default” under this Agreement and the term “Event of Default” shall mean, whenever it is used in this Agreement, any one or more of the following events, after the non-defaulting party provides 30 days written notice to the defaulting party of the event, but only if the event has not been cured within said 30 days or, if the event is by its nature incurable within 30 days, the defaulting party does not, within such 30-day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

(a) Failure by the Redeveloper or the Authority to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement;

(b) The Redeveloper:

(i) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law;

(ii) makes an assignment for benefit of its creditors;

(iii) admits in writing its inability to pay its debts generally as they become due; or

(iv) is adjudicated as bankrupt or insolvent.

Section 9.2. Remedies on Default. (a) Whenever any Event of Default referred to in Section 9.1 of this Agreement occurs, the non-defaulting party may exercise its rights under this Section 9.2 after providing thirty days written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty days or, if the Event of Default is by its nature incurable within thirty days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible.

(b) Upon an Event of Default by the Redeveloper, the Authority may withhold payments under any Initial Note in accordance with its terms, which withheld amount is payable, without interest thereon, on the first payment date after the default is cured. Upon default under this Agreement with respect to any Phase (or any Parcel of a Phase transferred to a Subdeveloper), the Authority may withhold Available Tax Increment attributable only to the defaulting Phase or Subdeveloper’s Parcel, but may not withhold Available Tax Increment attributable to any Phase or Parcel thereof for which there is no uncured default as of the relevant payment date.
(c) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

Section 9.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or the Redeveloper is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article IX.

Section 9.4. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.5. Phase II Default. If the Redeveloper (or a Phase II Subdeveloper, as assignee thereof) fails to commence the Minimum Improvements on the Phase II Property (which shall mean pouring cement for the building foundation or placing footings in the ground) on or prior to August 31, 2012, in addition to any remedies available to the Authority pursuant to this Article IX, the Authority has the option to purchase from the Phase II Property Owners or Phase II Subdeveloper, (as the case may be) all the Phase II Property at the price paid by the Phase II Subdeveloper upon acquisition from the Phase II Property Owners. The Authority may exercise its option or assign its option to another entity. The Authority’s option to purchase the Phase II Property commences as of September 1, 2012 (if Phase II construction has not been commenced) and expires on August 31, 2014, and must be exercised by written notice to Redeveloper (or assignee) within that period. The Authority’s option rights granted hereunder shall automatically terminate upon commencement of construction of the Minimum Improvements on the Phase II Property, even if such construction commences after September 1, 2014. The Redeveloper and any assignee will (i) cooperate with the Authority in any subdivision necessary to convey the specified property, (ii) allow the Authority access to the property to conduct any analysis of soils or environmental conditions and provide available environmental reports, surveys, and soil condition information to the Authority, (iii) convey marketable title to the specified property by limited warranty deed, and (iv) pay all costs of the Authority in connection with exercise of its option, including without limitation all appraisal, title examination, environmental and soil examination, attorney and recording fees, state deed tax, and costs to cure any title objections raised by the Authority. If the Authority raises environmental or soil objections, the Redeveloper or its assignee must pay all costs to cure such objections and proceed to closing on such parcel. The closing on conveyance shall occur within 60 days after receipt by Redeveloper or its assignee of the Authority’s notice of intent to exercise the option, or such other date as the parties agree.
Section 9.6. Phase III (Kinsel) Default. If the Redeveloper fails to commence the Minimum Improvements on the Phase III Property (which shall mean pouring cement for the building foundation, or placing footings in the ground, for the first building in Phase III) on or prior to June 30, 2013, in addition to any remedies available to the Authority pursuant to this Article IX, the Authority may, within 60 days after such required commencement date, deliver written notice to Redeveloper declaring the Authority's intent to negotiate an agreement for purchase of the Phase III Property. For a period of 60 days after receipt of such notice, Redeveloper shall negotiate in good faith, exclusively with the Authority, regarding such purchase. The Authority may exercise its right of negotiation under this paragraph, or may assign such right to another entity.

[Remainder of page intentionally left blank.]
ARTICLE X

Additional Provisions

Section 10.1. Conflict of Interests: Authority Representatives Not Individually Liable. The Authority and the Redeveloper, to the best of their respective knowledge, represent and agree that no member, official, or employee of the Authority shall have any personal interest, direct or indirect, in the Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the Authority shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Authority or County or for any amount which may become due to the Redeveloper or successor or on any obligations under the terms of the Agreement.

Section 10.2. Equal Employment Opportunity. The Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in the Agreement it will comply with all applicable federal, state and local equal employment and non-discrimination laws and regulations.

Section 10.3. Restrictions on Use. The Redeveloper agrees that until the Termination Date, the Redeveloper, and such successors and assigns, shall devote the Redevelopment Property to, the operation of the Minimum Improvements for uses described in the definition of such term in this Agreement, and shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Redevelopment Property or any improvements erected or to be erected thereon, or any part thereof.

Section 10.4. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Redevelopment Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 10.5. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 10.6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the 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, overnight mail, or delivered personally; and

(a) in the case of the Redeveloper, is addressed to or delivered personally to the Redeveloper at Glen Lake Redevelopment LLC, 28120 Boulder Bridge Drive, Excelsior, Minnesota, 55331, Attention: Tom Wartman, with a copy to any permitted assignee pursuant to an approved Transfer, at the address indicated in the Transfer approval; and as regards Kinsel Point
Development LLC and The Exchange Development LLC, notices shall be given to the same address as the Redeveloper, with a copy to Norman Bjornes, 401 Groveland Ave., Minneapolis, MN 55403; and

(b) in the case of the Authority or City, is addressed to or delivered personally at 14600 Minnetonka Blvd, Minnetonka, Minnesota 55345-1502, Attn: Executive Director/City Manager;

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.

Section 10.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 10.8. Recording. The Authority may record this Agreement and any amendments thereto with the Hennepin County recorder. The Redeveloper shall pay all costs for recording.

Section 10.9. Amendment. This Agreement may be amended only by written agreement approved by the Authority and the Redeveloper.

Section 10.10. Authority or City Approvals. Unless otherwise specified, any approval required by the Authority under this Agreement may be given by the Authority Representative.

Section 10.11. Termination. This Agreement terminates on the Termination Date, except that termination of the Agreement does not terminate, limit or affect the rights of any party that arise before the Termination Date.

[Remainder of page intentionally left blank.]
IN WITNESS WHEREOF, the Authority has caused this Agreement to be duly executed in its name and behalf and its seal to be hereunto duly affixed and the Redeveloper has caused this Agreement to be duly executed in its name and behalf on or as of the date first above written.

THE ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA

By
Its President

By
Its Executive Director

STATE OF MINNESOTA  )
SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this 4th day of January, 2010, by Peter St. Peter and John Gunyou, the President and Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body politic and corporate, on behalf of the Authority.

JEANNE M. WITCZEK
NOTARY PUBLIC-MINNESOTA

[Signature]
Notary Public
CITY OF MINNETONKA

By

Terry Schneider
Its Mayor

By

Jollin
Its City Manager

STATE OF MINNESOTA  )
 ) SS.
COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this 6th day of January, 2010, by Terry Schneider and John Gunyou, the Mayor and City Manager of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the City.

Notary Public

PATRICIA J. SAUER
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2010
GLEN LAKE REDEVELOPMENT LLC

By

Its Chief Manager

STATE OF MINNESOTA    )
) SS.
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this 44th day of January, 2010 by Thomas Wartman, the Chief Manager of Glen Lake Redevelopment LLC, a Minnesota limited liability corporation, on behalf of the corporation.

Notary Public
This Agreement is acknowledged and consented to by the undersigned as a permitted Assignee:

THE EXCHANGE DEVELOPMENT LLC

By

Its Chief Manager

STATE OF MINNESOTA  )
COUNTY OF HENNEPIN  ) SS.

The foregoing instrument was acknowledged before me this 20th day of January, 2010 by Thomas Wartman, the Chief Manager of The Exchange Development LLC, a Minnesota limited liability corporation, on behalf of the corporation.

Notary Public

ANGELA KATHRYN CARL
NOTARY PUBLIC - MINNESOTA
This Agreement is acknowledged and consented to by the undersigned as a permitted Assignee:

KINSEL POINT DEVELOPMENT LLC

By ____________________________
Its Chief Manager

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) SS.

The foregoing instrument was acknowledged before me this ___th day of January, 2010
by Thomas Wartman, the Chief Manager of Kinsel Point Development LLC, a Minnesota
limited liability corporation, on behalf of the corporation.

______________________________
Notary Public

[Notary seal]

ANGELA KATHRYN CARL
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan 31, 2011
This Agreement is acknowledged and consented to by the undersigned as owner of the Phase II Property defined therein:

PHASE II PROPERTY OWNERS

By

Christopher J. Bollis

By

Gail M. Bollis

STATE OF MINNESOTA   )
COUNTY OF HENNEPIN  ) SS.

The foregoing instrument was acknowledged before me this 10th day of January, 2010 by Christopher J. and Gail M. Bollis, husband and wife.

Angela Carl
Notary Public

Angela Kathryn Carl
Notary Public - Minnesota
SCHEDULE A

DESCRIPTION OF REDEVELOPMENT PROPERTY

Phase I (Exchange) Property
Lot 1, Block 1, The Exchange, according to the recorded plat thereof, Hennepin County, Minnesota

Phase II Property
Lot 2, Block 1, Glen Haven Shopping Center, according to the recorded plat thereof, Hennepin County, Minnesota.

Phase III (Kinsel) Property
Lot 1, “Glen Lake Park”, except the East 570 feet of Lot 1, according to the recorded plat thereof, Hennepin County, Minnesota.
SCHEDULE B

DESCRIPTION OF LEASEHOLD INTERESTS ACQUIRED

Leasehold Interest located on Phase I (Exchange) Property:

- Gold Nugget
- O'Hearn Company
- Glen Lake Barber Shop
- Denmar Auto Body
- Midwest Window
- Luloff

Leasehold Interests located on Phase II Property

- Annie’s Nails
- Coffee Expresso, Inc.
- Curves for Women
- Dance Factory/Dance Studio
- Dragon Jade Restaurant
- Glen Lake Dental
- Gunstop Shop
- Hair Proz Salon
- Stonehaven Massage
- Comcast (cable line relocation)
SCHEDULE C

MASTER SITE PLAN
SCHEDULE D

AUTHORIZING RESOLUTION

Authorizing Resolution

ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF
MINNETONKA, MINNESOTA

RESOLUTION NO. _____

RESOLUTION AWARDING THE SALE OF, AND PROVIDING THE FORM, TERMS,
COVENANTS AND DIRECTIONS FOR THE ISSUANCE OF ITS $1,276,263 TAXABLE
TAX INCREMENT REVENUE NOTE

BE IT RESOLVED BY the Board of Commissioners ("Board") of the Economic
Development Authority in and for the City of Minnetonka, Minnesota (the "Authority") as
follows:

Section 1. Authorization: Award of Sale.

1.01. Authorization. The Authority and the City of Minnetonka have heretofore
approved the establishment of the Glenhaven Tax Increment Financing District (the "TIF
District") within the Glen Lake Station Housing Development and Redevelopment Project (the
"Project"), and have adopted a tax increment financing plan for the purpose of financing certain
improvements within the Project. In connection with the TIF District, the Authority and City
have approved a Second Amended and Restated Contract for Private Redevelopment (the
"Agreement") between the Authority, the City, and Glen Lake Redevelopment LLC.

Pursuant to Minnesota Statutes, Section 469.178, the Authority is authorized to issue and
sell its bonds for the purpose of financing a portion of the public development costs of the
Project. Such bonds are payable from all or any portion of revenues derived from the TIF
District and pledged to the payment of the bonds. The Authority hereby finds and determines that
it is in the best interests of the Authority that it issue and sell its Taxable Tax Increment Revenue
Note in the maximum principal amount of $1,276,263 (the "Note") for the purpose of financing
certain public redevelopment costs of the Project.

1.02. Issuance, Sale, and Terms of the Note. The Authority hereby delegates to the
Executive Director the determination of the date on which the Note is to be delivered, in
accordance with Section 3.6(c) of the Agreement. The Note shall be issued to Glen Lake
Redevelopment LLC ("Owner"). The Note shall be dated as of the date of delivery, shall mature
no later than February 1, 2030 and shall bear interest at the rate of 6.75 percent per annum from
the date of the Note to the earlier of maturity or prepayment. The Note is issued in accordance
with Section 3.6(c) of the Agreement.
Section 2. Form of Note. The Note shall be in substantially the following form, with the blanks to be properly filled in and the principal amount and payment schedule adjusted as of the date of issue:

UNITED STATE OF AMERICA
STATE OF MINNESOTA
COUNTY OF HENNEPIN
ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA

No. R-1 $1,276,263

TAXABLE TAX INCREMENT REVENUE NOTE
SERIES 20__

Rate Date of Original Issue
6.75% __________, 20__

The Economic Development Authority in and for the City of Minnetonka ("Authority") for value received, certifies that it is indebted and hereby promises to pay to Glen Lake Redevelopment LLC or registered assigns (the "Owner"), solely from the sources and in the manner hereinafter provided, the principal sum of $1,276,263 (the "Principal Amount"), as provided in the Agreement defined hereafter, together with interest on the unpaid balance thereof accrued from the date of original issue hereof at the rate of 6.75 percent per annum (the "Stated Rate"). This Note is given in accordance with that certain Second Amended and Restated Private Redevelopment between the Issuer, the City of Minnetonka and Glen Lake Redevelopment LLC, dated as of __________, 2010 (the "Agreement") and the authorizing resolution (the "Resolution") duly adopted by the Authority on November 30, 2009. Capitalized terms used and not otherwise defined herein have the meaning provided for such terms in the Agreement unless the context clearly requires otherwise.

1. Payments. Principal and interest ("Payments") shall be paid on August 1, 2012 and each February 1 and August 1 thereafter to and including February 1, 2030 ("Payment Dates") payable solely from the sources set forth in Section 3 herein. Payments shall be applied first to accrued interest, and then to unpaid principal. Interest accruing from the date of issue through February 1, 2012 shall be compounded on each February 1 and August 1 and added to principal.

Payments are payable by mail to the address of the Owner or such other address as the Owner may designate upon 30 days written notice to the Authority. Payments on this Note are payable in any coin or currency of the United States of America which, on the Payment Date, is legal tender for the payment of public and private debts.
2. **Interest.** Interest shall be computed on the basis of a year of 360 days and twelve 30-day months.

3. **Available Tax Increment.** All payments on this Note are payable on each Payment Date solely from and in the amount of the “Available Tax Increment,” which means, on each Payment Date, 80 percent of the Tax Increment attributable to the Phase II Property as defined in the Agreement that is paid to the Authority by Hennepin County in the six months preceding the Payment Date. The Authority shall have no obligation to pay principal of and interest on this Note on each Payment Date from any source other than Available Tax Increment.

4. **Default.** Upon an Event of Default by the Redeveloper under the Agreement, the Authority may exercise the remedies with respect to this Note described in Article IX of the Agreement, the terms of which are incorporated herein by reference.

5. **Prepayment.** (a) The principal sum and all accrued interest payable under this Note is prepayable in whole or in part at any time by and at the option of the Authority without premium or penalty. If the Authority prepays the Note in part, the prepayment will be applied first to accrued interest and then to the outstanding principal amount of the Note in inverse order of principal installments due. Ten days’ prior notice of any such prepayment shall be given by first-call mail by the Registrar to the registered owner of the Note. No partial prepayment shall affect the amount or timing of any other regular Payment otherwise required to be made under this Note.

   (b) The Note may be deemed prepaid in whole or in part in accordance with Section 3.7 of the Agreement. Upon any such prepayment, the Authority will deliver to the Owner a statement of the amount applied to prepayment under Section 3.7 and the outstanding principal balance of the Note after application of the deemed prepayment. Any deemed prepayment under this paragraph will be applied under the same procedures described in paragraph (a) above.

6. **Nature of Obligation.** This Note is one of an issue in the total principal amount of $1,276,263 issued to aid in financing certain public redevelopment costs and administrative costs of a Redevelopment Project undertaken by the Authority pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended and is issued pursuant to the Resolution, and pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 to 469.1799, as amended. This Note is a limited obligation of the Authority which is payable solely from the revenues pledged to the payment hereof under the Resolution. This Note and the interest hereon shall not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the Authority. Neither the State of Minnesota, nor any political subdivision thereof shall be obligated to pay the principal of or interest on this Note or other costs incident hereto except from and to the extent of the revenues pledged hereto, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this Note or other costs incident hereto.

7. **Estimated Tax Increment Payments.** Any estimates of Tax Increment prepared by the Authority or its financial advisors in connection with the TIF District or the Agreement are for the benefit of the Authority, and are not intended as representations on which the
Redeveloper may rely. Actual Tax Increment collected from the TIF District may be less than originally estimated.

8. **Registration and Transfer.** This Note is issuable only as a fully registered note without coupons. As provided in the Resolution, and subject to certain limitations set forth therein, this Note is transferable upon the books of the Authority kept for that purpose at the principal office of the City Finance Director, by the Owner hereof in person or by such Owner’s attorney duly authorized in writing, upon surrender of this Note together with a written instrument of transfer satisfactory to the Authority, duly executed by the Owner. Upon such transfer or exchange and the payment by the Owner of any tax, fee, or governmental charge required to be paid by the Authority with respect to such transfer or exchange, there will be issued in the name of the transferee a new Note of the same aggregate principal amount, bearing interest at the same rate and maturing on the same dates.

This Note shall not be transferred to any person unless the Authority has been provided with an opinion of counsel or a certificate of the transferor, in a form satisfactory to the Authority, that such transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws.

**IT IS HEREBY CERTIFIED AND RECITED** that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen, and to be performed in order to make this Note a valid and binding limited obligation of the Authority according to its terms, have been done, do exist, have happened, and have been performed in due form, time and manner as so required.

IN WITNESS WHEREOF, the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka have caused this Note to be executed with the manual signatures of its President and Executive Director, all as of the Date of Original Issue specified above.

**ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA**

_________________________  _______________________
Executive Director            President

**REGISTRATION PROVISIONS**

The ownership of the unpaid balance of the within Note is registered in the bond register of the City Finance Director, in the name of the person last listed below.

<table>
<thead>
<tr>
<th>Date of Registration</th>
<th>Registered Owner</th>
<th>Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>___________</td>
<td>______________</td>
<td>__________</td>
</tr>
</tbody>
</table>

City Finance Director
Section 3. **Terms, Execution and Delivery.**

3.01. **Denomination, Payment.** The Note shall be issued as a single typewritten note numbered R-1.

The Note shall be issuable only in fully registered form. Principal of and interest on the Note shall be payable by check or draft issued by the Registrar described herein.

3.02. **Dates; Interest Payment Dates.** Principal of and interest on the Note shall be payable by mail to the owner of record thereof as of the close of business on the fifteenth day of the month preceding the Payment Date, whether or not such day is a business day.

3.03. **Registration.** The Authority hereby appoints the City Finance Director to perform the functions of registrar, transfer agent and paying agent (the “Registrar”). The effect of registration and the rights and duties of the Authority and the Registrar with respect thereto shall be as follows:

(a) **Register.** The Registrar shall keep at its office a bond register in which the Registrar shall provide for the registration of ownership of the Note and the registration of transfers and exchanges of the Note.

(b) **Transfer of Note.** Upon surrender for transfer of the Note duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form reasonably satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, a new Note of a like aggregate principal amount and maturity, as requested by the transferor. Notwithstanding the foregoing, the Note shall not be transferred to any person unless the Authority has been provided with an opinion of counsel or a certificate of the transferor, in a form satisfactory to the Authority, that such transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws. The Registrar may close the books for registration of any transfer after the fifteenth day of the month preceding each Payment Date and until such Payment Date.

(c) **Cancellation.** The Note surrendered upon any transfer shall be promptly cancelled by the Registrar and thereafter disposed of as directed by the Authority.

(d) **Improper or Unauthorized Transfer.** When the Note is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Note or separate instrument of transfer is legally authorized. The Registrar shall incur no liability for its refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.
(e) **Persons Deemed Owners.** The Authority and the Registrar may treat the person in whose name the Note is at any time registered in the bond register as the absolute owner of the Note, whether the Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Note and for all other purposes, and all such payments so made to any such registered owner or upon the owner’s order shall be valid and effectual to satisfy and discharge the liability of the Authority upon such Note to the extent of the sum or sums so paid.

(f) **Taxes, Fees and Charges.** For every transfer or exchange of the Note, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee, or other governmental charge required to be paid with respect to such transfer or exchange.

(g) **Mutilated, Lost, Stolen or Destroyed Note.** In case any Note shall become mutilated or be lost, stolen, or destroyed, the Registrar shall deliver a new Note of like amount, maturity dates and tenor in exchange and substitution for and upon cancellation of such mutilated Note or in lieu of and in substitution for such Note lost, stolen, or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case the Note lost, stolen, or destroyed, upon filing with the Registrar of evidence satisfactory to it that such Note was lost, stolen, or destroyed, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance, and amount satisfactory to it, in which both the Authority and the Registrar shall be named as obliges. The Note so surrendered to the Registrar shall be cancelled by it and evidence of such cancellation shall be given to the Authority. If the mutilated, lost, stolen, or destroyed Note has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new Note prior to payment.

3.04. **Preparation and Delivery.** The Note shall be prepared under the direction of the Executive Director and shall be executed on behalf of the Authority by the signatures of its President and Executive Director. In case any officer whose signature shall appear on the Note shall cease to be such officer before the delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. When the Note has been so executed, it shall be delivered by the Executive Director to the Owner thereof in accordance with the Agreement.

**Section 4. Security Provisions.**

4.01. **Pledge.** The Authority hereby pledges to the payment of the principal of and interest on the Note Available Tax Increment under the terms and as defined in the Note. Available Tax Increment shall be applied to payment of the principal of and interest on the Note in accordance with the terms of the form of Note set forth in Section 2 of this resolution.

4.02. **Bond Fund.** Until the date the Note is no longer outstanding and no principal thereof or interest thereon (to the extent required to be paid pursuant to this resolution) remains unpaid, the Authority shall maintain a separate and special “Bond Fund” to be used for no purpose other than the payment of the principal of and interest on the Note. The Authority
irrevocably agrees to appropriate to the Bond Fund in each year Available Tax Increment in the amount necessary to pay principal and interest when due on the Note. Any Available Tax Increment remaining in the Bond Fund shall be transferred to the Authority’s account for the TIF District upon termination of the Note in accordance with its terms.

4.03. Additional Bonds. If the Authority issues any bonds or notes secured by Available Tax Increment, such additional bonds or notes are subordinate to the Note in all respects.

Section 5. Certification of Proceedings.

5.01. Certification of Proceedings. The officers of the Authority are hereby authorized and directed to prepare and furnish to the Owner of the Note certified copies of all proceedings and records of the Authority, and such other affidavits, certificates, and information as may be required to show the facts relating to the legality and marketability of the Note as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates, and affidavits, including any heretofore furnished, shall be deemed representations of the Authority as to the facts recited therein.

Section 6. Effective Date. This resolution shall be effective upon execution in full of the Agreement.

Adopted this 30th day of November 2009.

____________________________
President

____________________________
Executive Director
SCHEDULE E

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that Glen Lake Redevelopment LLC (the "Redeveloper") has fully complied with its obligations under Articles III and IV of that document titled "Second Amended and Restated Contract for Private Development" dated January 4, 2010 by and between the Economic Development Authority of and for the City of Minnetonka, the City of Minnetonka, and the Redeveloper, with respect to construction of the [Phase I, Phase II or Phase III] Minimum Improvements in accordance with the Construction Plans, and that the Redeveloper is released and forever discharged from its obligations to construct the [Phase I, Phase II or Phase III] Minimum Improvements under Articles III and IV.
Dated: ______________, 20__.  

ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA

By ____________________________  
Its President

By ____________________________  
Its Executive Director

STATE OF MINNESOTA  
) ss.  
COUNTY OF HENNEPIN  

On this ___ day of __________, 20___, before me, a Notary Public within and for said County, personally appeared ____________________, to me personally known, who, being by me duly sworn, did say that (s)he is the President of the Authority named in the foregoing instrument; that the seal affixed to said instrument is the seal of said Authority; that said instrument was signed and sealed in behalf of said Authority by authority of its governing body; and said __________ acknowledged said instrument to be the free act and deed of said Authority.

______________________________  
Notary Public

STATE OF MINNESOTA  
) ss.  
COUNTY OF HENNEPIN  

On this ___ day of __________, 20___, before me, a Notary Public within and for said County, personally appeared ____________________, to me personally known, who, being by me duly sworn, did say that (s)he is the Executive Director of the Authority named in the foregoing instrument; that the seal affixed to said instrument is the seal of said Authority; that said instrument was signed and sealed in behalf of said Authority by authority of its governing body; and said __________ acknowledged said instrument to be the free act and deed of said Authority.

______________________________  
Notary Public
SCHEDULE F

[Intentionally Omitted]
SCHEDULE G

PUBLIC REDEVELOPMENT COSTS

Relocation Costs which are approved by the relocation consultant (including relocation consultant)
Demolition
Environmental Costs (not funded by grants)
Pedestrian and Streetscaping Improvements
Utility Line Relocation
Authority Costs paid under Section 3.9
Land Acquisition
Interest costs on above items to the extent such cost represents interest on any valid evidence of indebtedness under federal income tax principles.
SCHEDULE H
DEVELOPMENT BUDGET
<table>
<thead>
<tr>
<th>Land Acquisition Costs</th>
<th>Developer Reimbursement</th>
<th>City Reimbursement</th>
<th>Totals</th>
</tr>
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<tbody>
<tr>
<td>Total</td>
<td>$7,250,000</td>
<td>$500,000</td>
<td>$7,750,000</td>
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<tr>
<td>Less Sale Revenue</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Phase I</td>
<td>($1,250,000)</td>
<td>($1,250,000)</td>
<td></td>
</tr>
<tr>
<td>Phase II</td>
<td>($1,912,500)</td>
<td>($1,912,500)</td>
<td></td>
</tr>
<tr>
<td>Phase III</td>
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H-1

A99
## SCHEDULE I
FORM OF REDEVELOPER PRO FORMA

### CITY OF MINNETONKA
Glen Lake Exchange Apartments
32 Units

#### SCHEDULE I
Phase I - Site B
Rental Housing Developer Proforma

### SOURCES
<table>
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<th>% OF FINANCE</th>
<th>TOTALS</th>
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### TOTAL SOURCES
100.00% 4,796,000

### USES
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<td>General Requirements</td>
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<td>Lo/Development Bank</td>
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### TOTAL USES
100.00% 4,796,000

---

Prepared By Ehlers
Rental Development Analysis 2 6 07.14
## Project Revenue Assumptions

<table>
<thead>
<tr>
<th>Revenue Type</th>
<th>Monthly Charge</th>
<th>Annual Revenue</th>
<th>Rent Paid</th>
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<td>Net Income</td>
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<tr>
<td>Total Rental Income</td>
<td></td>
<td><strong>$247,024</strong></td>
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</table>

### Other Income
- Parking: $31,000
- Utilities: $31,441
- Other Income: $2,623
- **Total Other Income**: $65,064

### Grand Total
- **Total Income**: $312,088

## Project Debt Assumptions

### Private Debt:
- **Developer Financing Series A**: $3,003,369
- **Developer Financing Series B**: $0

### Inflation Assumptions

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<th>Year</th>
<th>Rental Revenue</th>
<th>Operating Expenses</th>
<th>Vacancy</th>
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<td>2.00%</td>
<td>2.00%</td>
<td>2.00%</td>
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<tr>
<td>2019</td>
<td>2.00%</td>
<td>2.00%</td>
<td>2.00%</td>
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<tr>
<td>2020</td>
<td>2.00%</td>
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### Operating Income
- **Year 2022**: $72,000
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<td>Units</td>
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Prepared By: Elmore
Rental Development Analyst 2.0 07.Apr

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A102
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<th>CASH FLOW - EXPENSES AND DEBT</th>
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<th>2019</th>
<th>2020</th>
<th>2021</th>
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**Prepared By:**

Rental Development Analysis 2-6-2016

**I-4**

A103
## Annual Equity Requirement

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount of Equity</th>
<th>Minimum Rate of Return - Percent</th>
<th>Minimum Rate of Return - Amount</th>
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## Sale Analysis

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<th>Net Operating Income - Rev 2017</th>
<th>Divided by Cap Rate</th>
<th>Gross Yr Price</th>
<th>Minor Debt - Rent - Rev 2017</th>
<th>Net Sale Amount</th>
<th>Developer</th>
<th>Sales Expense</th>
<th>Profit Amount</th>
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<tr>
<td>2007</td>
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## Internal Rate of Return Analysis - Equity Partners

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<th>Years</th>
<th>Year</th>
<th>Initial Investment</th>
<th>Cash Flow</th>
<th>Sale Residual</th>
<th>Total Cash Flow</th>
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<td>($2,760,000)</td>
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<td>2008</td>
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<td>2014</td>
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<td>2015</td>
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<td>12,904</td>
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<td>13,971</td>
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<td>2017</td>
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<td>1,387,203</td>
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<td>1,821,700</td>
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<td>Total</td>
<td></td>
<td>($2,760,000)</td>
<td>($55,814)</td>
<td>1,821,700</td>
<td>($200,000)</td>
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Prepared By: Biens

Rental Development Analysis: 3.0 07.16

I-5

A104
Phase III - Site C
For Sale Housing Developer Pro Forma

<table>
<thead>
<tr>
<th>Phase III - Glen Lake Condominiums - 86 Units</th>
<th>Amount</th>
<th>Percent</th>
<th>Per Unit</th>
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<tr>
<td>Land Acquisition</td>
<td>$2,037,000</td>
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<td>$40,740.00</td>
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<td>Site Development Costs</td>
<td>$30,000</td>
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<td>Total Acquisition</td>
<td>$2,067,000</td>
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<td>Base Building Construction</td>
<td>$13,741,450</td>
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<td>Common Area Construction</td>
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<td>Contingency</td>
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<td>Site Work &amp; Other General Conditions</td>
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<td>Permits</td>
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<td>Testing &amp; Special Inspections</td>
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<td>SACWAC</td>
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<td>Construction Mgmt</td>
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<td>Admin/Overhead</td>
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<td>Project Supervision</td>
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<td>Builders Risk</td>
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<td>Construction Fee</td>
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<td>Total Construction Costs</td>
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<td>Architectural &amp; Engineering</td>
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<td>Engineering</td>
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<td>Soil Studies</td>
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<td>Surveys</td>
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<td>Sales Commission</td>
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<td>Advertising/Promotional Events</td>
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<td>Customer Satisfaction</td>
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<td>Sales Model</td>
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<td>Total marketing/settlements</td>
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<td>Legal Operations</td>
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<td>Final Deeds &amp; Closing Costs</td>
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<td>Real Estate Taxes</td>
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<td>Soft Cost Contingency</td>
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<tr>
<td>Construction Interest and Fees</td>
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<tr>
<td>Total Carrying Costs</td>
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<td>Market Study</td>
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<td>Traffic Study</td>
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<td>Total Special Consultants</td>
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<td>Title Insurance</td>
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<td>Mortgage Registration</td>
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<td>Loan Disbursement Fees</td>
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<td>Total Title and Recording</td>
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<td>Total Project Cost</td>
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<td>100.00%</td>
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<table>
<thead>
<tr>
<th>Building Description</th>
<th>Units</th>
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<tr>
<td>S.F.</td>
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<tr>
<td>Gross Building Area</td>
<td>110,757</td>
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<tr>
<td>Net Building Area</td>
<td>85,000</td>
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<tr>
<td>Residential Unit</td>
<td>50</td>
</tr>
<tr>
<td>Average Unit</td>
<td>1,700</td>
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<tr>
<td>Cost per Square Foot</td>
<td>$265</td>
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</table>

<table>
<thead>
<tr>
<th>Income Statement</th>
<th>Total Per Unit</th>
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</thead>
<tbody>
<tr>
<td>Total Sales</td>
<td>$25,200,000</td>
</tr>
<tr>
<td>Total Proceeds</td>
<td>$25,200,000</td>
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<tr>
<td>Project Cost</td>
<td>$22,518,060</td>
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<tr>
<td>Net Profit(Gap)</td>
<td>$2,681,950</td>
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</tbody>
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Footnotes:
1. Proforma analysis excludes all tax increment financing costs and revenues.
2. Administrative overhead is capped at 1.5% of construction costs.
Brief Description: Appointment of Advisors for the 2016 Local Board of Appeal and Equalization

Recommended Action: Approve Appointment of the Advisors

Background

The first meeting of the 2016 Minnetonka Local Board of Appeal and Equalization is scheduled for April 11, 2016. Prior to the first meeting, the council appoints advisors to assist in the review of the market value appeals as provided by the City Charter. These advisors review each appeal, physically visit each property and offer their independent opinion of market value as of January 2, 2016. The advisors’ recommendations will be presented at the reconvened meeting on April 25, 2016.

This year staff recommends the appointment of four advisors. All four advisors have served previously.

John Powers: Mr. Powers has been an agent since 1989 and has worked for Coldwell Banker Burnet since 1990. He has been a resident of Minnetonka since 1995. This will be his sixth year as an advisor.

Lowell Johnson: Mr. Johnson is an agent with Edina Realty. He has been a realtor since 1965. He has worked for Edina Realty since 1986. He has been a resident of Minnetonka since 1976. This will be Mr. Johnson’s sixth year as an advisor.

Larry Kriedberg: Mr. Kriedberg is an agent with Coldwell Banker Burnet and has worked there for 16 years. He has lived in Minnetonka nearly 21 years. This will be Mr. Kriedberg’s seventh year as an advisor. This is his second year back after taking a three-year hiatus.

Susan Miller: Ms. Miller has been an agent for 4 years, all with Coldwell Banker Burnet. She has lived in Minnetonka for 22 years and this will be her second year as an advisor.

Recommendation

Staff recommends Mr. Powers, Mr. Johnson, Mr. Kriedberg and Ms. Miller be appointed as advisors for the 2016 Minnetonka Local Board of Appeal and Equalization.

Submitted through:
Geralyn Barone, City Manager
Merrill King, Finance Director

Originated by:
Colin Schmidt, SAMA, City Assessor
Addendum
Minnetonka City Council
Meeting of February 29, 2016

14C Resolution amending the Glen Lake contract

Attached is a change memo from the community development director clarifying the staff recommendation.
Memorandum

To: City Council

From: Julie Wischnack, AICP, Community Development Director

Date: February 29, 2016

Subject: Change Memo for February 29, 2016

14C – Resolution amending the Glen Lake contract

The recommendation in the staff report should read:

Adopt the resolution approving contract changes