Agenda
Minnetonka City Council
Regular Meeting, Monday, April 10, 2017
6:30 P.M.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Bergstedt-Wagner-Ellingson-Allendorf-Acomb-Wiersum-Schneider
4. Approval of Agenda
5. Approval of Minutes: None
6. Special Matters:
   A. Proclamation declaring April 22, 2017 as Earth Day
   B. Proclamation declaring April 28, 2017 as Arbor Day
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 2017 Crosby Road Rehabilitation Project
      Recommendation: Award the contract and amend the CIP (5 votes)
   B. Bids for Storage Building Project
      Recommendation: Reject all bids (majority vote)
   C. Bids for diseased and miscellaneous tree maintenance and removal
      Recommendation: Award contract to Davey Tree Expert Company, dba S&S Tree and Horticultural Specialists, Inc. (majority vote)
10. Consent Agenda - Items Requiring a Majority Vote:
    A. Agreements for Metropolitan Council Local Housing Incentive Account funds for Homes Within Reach

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Replays of this meeting can be seen during the following days and times: Mondays, 6:30 p.m., Wednesdays, 6:30 p.m., Fridays, 12 p.m., Saturdays, 12 p.m. The city’s website also offers video streaming of the council meeting.
For more information, please call 952.939.8200 or visit eminnetonka.com
B. Resolution supporting local decision-making authority

11. Consent Agenda - Items Requiring Five Votes:
   
   A. Change orders to contract for Trunk Forcemain Lining Project – Phase III and amendment to 2016 Capital Improvement Plan
      
      Recommendation: Approve the change orders and amend the CIP (5 votes)

12. Introduction of Ordinances: None

13. Public Hearings:
   
   A. Temporary on-sale liquor license for ResourceWest, for use at 14600 Minnetonka Boulevard
      
      Recommendation: Hold the public hearing and grant the license (5 votes)

14. Other Business:
   
   A. Resolution amending loan documents executed in connection with the multifamily housing revenue obligations issued for the benefit of CHC Minnetonka Affordable Housing LLC; and authorizing the execution and delivery of an amendment document in connection with the request
      
      Recommendation: Adopt the resolution (4 votes)

   B. Preliminary and final plats, with front yard setback variances, and waiving the McMansion Policy, for THE ENCLAVE AT REGAL OAK at 3639 Shady Oak Road and 3627 Regal Oak Lane
      
      Recommendation: Adopt the resolution approving the plats, with front yard setback variances, and waiving the McMansion Policy (5 votes)

   C. Approval of a new outdoor attraction at The Big Thrill Factory at 17501 State Highway 7
      
      Recommendation: Approve the outdoor attraction (4 votes)

   D. Resolution approving the subordination of a Contract for Private Redevelopment to HUD
      
      Recommendation: Adopt the resolution (4 votes)

15. Appointments and Reappointments: None

16. Adjournment
City of Minnetonka
Proclamation
Earth Day
Saturday, April 22, 2017

WHEREAS, the global community now faces extraordinary challenges, such as global health issues, food and water shortages, and economic struggles; and

WHEREAS, all people, regardless of race, gender, income, or geography, have a moral right to a healthy, sustainable environment with economic growth; and

WHEREAS, it is understood that the citizens of the global community must step forward and take action to create a green economy to combat the aforementioned global challenges; and

WHEREAS, a green economy can be achieved on the individual level through educational efforts, public policy, and consumer activism campaigns; and

WHEREAS, it is necessary to broaden and diversify this global movement to achieve maximum success; and

WHEREAS, Earth Day is the beginning of a new year for environmental stewardship commitments, to implement sustainability efforts and commit to an Earth Day proclamation; and

FURTHERMORE, let it be known that the Minnetonka City Council hereby encourages its residents, businesses and institutions to use EARTH DAY to celebrate the Earth and commit to building a sustainable and green economy;

NOW THEREFORE LET IT BE PROCLAIMED, the Minnetonka City Council hereby pledges this Earth Day, April 22, 2017, to support green economy initiatives in Minnetonka, MN and to encourage others to undertake similar actions.

Terry Schneider, Mayor

April 10, 2017
WHEREAS, trees and forests brighten Minnetonka’s future by creating jobs, providing recreational settings, increasing property values, and making cities more livable; and

WHEREAS, trees and forests brighten society by building strong community ties, reducing crime, and providing common meeting places; and

WHEREAS, trees and forests brighten our lives by providing lumber for building homes, fiber for producing paper, foliage for decorating, and food for eating; and

WHEREAS, trees and forests brighten the environment by moderating climate, improving air and water quality, conserving water and energy, and sheltering wildlife; and

WHEREAS, each year, on the last Friday in April, and throughout the month of May, Minnetonka residents pay special tribute to the trees and all the natural resources they represent, and dedicate themselves to the continued health of our state’s community and rural forests.

NOW THEREFORE BE IT RESOLVED that the Minnetonka City Council hereby proclaims Friday, April 28, as “Arbor Day” in the city of Minnetonka.

Terry Schneider, Mayor

April 10, 2017
Brief Description: Bids for the 2017 Crosby Road Rehabilitation Project

Recommended Action: Award the contract and amend the CIP

Background

On October 24, 2016, the city council adopted a resolution authorizing the preparation of plans and specifications for the 2017 Street Reconstruction, Crosby Road area. This project is located on Crosby Road from McGinty Road north to the city of Wayzata.

The project includes full roadway replacement with new concrete curb and gutter as well as water main and storm sewer replacement, and isolated repair of the sanitary sewer. The project also includes the burial of overhead utility lines along Crosby Road.

An existing 8-foot wide bituminous trail is proposed to be replaced between McGinty Road and Portico Drive and a new 6-foot wide concrete sidewalk will then be extended, adjacent to the back of the curb, north from Portico Drive to Ringer Road. At this location, pedestrians must cross Crosby Road to the west side where the new sidewalk will connect to the existing sidewalk in Wayzata.

Bid Opening

Bids were opened for the project on March 20, 2017. Five bids were received in response to the call for bids, and the results are as follows:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Total Bids</th>
</tr>
</thead>
<tbody>
<tr>
<td>GMH Asphalt Corporation</td>
<td>$1,486,480.51</td>
</tr>
<tr>
<td>Eureka Construction, Inc.</td>
<td>$1,519,039.20</td>
</tr>
<tr>
<td>Park Construction Company</td>
<td>$1,524,067.65</td>
</tr>
<tr>
<td>Northwest Asphalt, Inc.</td>
<td>$1,528,797.48</td>
</tr>
<tr>
<td>C.S. McCrossan Construction, Inc.</td>
<td>$1,940,431.85</td>
</tr>
</tbody>
</table>

The low bidder, GMH Asphalt Corporation, has satisfactorily completed projects in Minnetonka.
Estimated Project Costs and Funding

The total estimated construction cost, including engineering, administration, and contingency is $2,900,000. The budget amount for the project is shown below and is included in the 2017 – 2021 Capital Improvements Program (CIP).

<table>
<thead>
<tr>
<th></th>
<th>Budget Amount</th>
<th>Proposed Funding</th>
<th>Expense</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Costs</td>
<td></td>
<td>$1,500,000</td>
<td></td>
</tr>
<tr>
<td>Contingencies – 15%</td>
<td></td>
<td>$300,000</td>
<td></td>
</tr>
<tr>
<td>Engineering, Administration, and Indirect Costs</td>
<td></td>
<td>$500,000</td>
<td></td>
</tr>
<tr>
<td>Overhead Power Burial</td>
<td></td>
<td>$500,000</td>
<td></td>
</tr>
<tr>
<td>Easements</td>
<td></td>
<td>$100,000</td>
<td></td>
</tr>
<tr>
<td>Street Improvement Fund</td>
<td>$1,000,000</td>
<td>$1,250,000</td>
<td></td>
</tr>
<tr>
<td>Utility Fund</td>
<td>$450,000</td>
<td>$750,000</td>
<td></td>
</tr>
<tr>
<td>Storm Sewer Fund</td>
<td>$600,000</td>
<td>$400,000</td>
<td></td>
</tr>
<tr>
<td>Electric Franchise Fund</td>
<td>$500,000</td>
<td>$500,000</td>
<td></td>
</tr>
<tr>
<td><strong>Total Budget</strong></td>
<td><strong>$2,550,000</strong></td>
<td><strong>$2,900,000</strong></td>
<td><strong>$2,900,000</strong></td>
</tr>
</tbody>
</table>

At this time, staff is requesting an amendment to the CIP to cover the higher costs and other expenses related to street and utility work for this project. Fund balances in the street improvement and utility fund can support the additional costs. The electric franchise fund budget was amended from $400,000 to $500,000 on January 9, 2017.

Schedule

If the recommended actions are approved by council, construction will likely begin in late April or early May.

Recommendation

Award the contract for the Crosby Road Rehabilitation Project No. 17401 to GMH Asphalt Corporation in the amount of $1,486,480.51 and amend the CIP.

Submitted through:
   Geralyn Barone, City Manager
   Will Manchester, P.E., Director of Engineering

Originated by:
    Phil Olson, P.E., Assistant City Engineer
Legend

- Proposed Project Area
- Proposed Sidewalk
- Replace Existing Trail

This map is for illustrative purposes only.
## 2017 Street Rehabilitation Funding Summary

<table>
<thead>
<tr>
<th>Funding Sources</th>
<th>2017 CIP</th>
<th>2016 Carryover</th>
<th>Estimated Funding</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street Improvement Fund - Local Street Rehab</td>
<td>$1,000,000</td>
<td>$250,000</td>
<td>$1,250,000</td>
<td>-</td>
</tr>
<tr>
<td>Storm Sewer Fund</td>
<td>$600,000</td>
<td>-</td>
<td>$400,000</td>
<td>$200,000</td>
</tr>
<tr>
<td>Utility Fund</td>
<td>$2,100,000</td>
<td>-</td>
<td>$750,000</td>
<td>$1,350,000</td>
</tr>
<tr>
<td>Electric Franchise Fund</td>
<td>$500,000</td>
<td>-</td>
<td>$500,000</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total Project Cost</strong></td>
<td>$4,200,000</td>
<td>$250,000</td>
<td>$2,900,000</td>
<td>$1,550,000</td>
</tr>
</tbody>
</table>

1 Estimated Project Savings from 2016 Pavement Rehabilitation Project.
City Council Agenda Item #9B  
Meeting of April 10, 2017

Brief Description: Bids for Storage Building Project

Recommended Action: Reject all bids

Background

Prior to the construction of the current public works facility in 2003, a cold storage building was on site to store equipment and materials. The building was dismantled in order to construct the new public works facility. Currently, there are a number of pieces of equipment attachments, water supplies, and materials that are stored outside that need to be stored under cover to stop environmental damage. The new building will be able to protect hydraulic hoses and polycarbonate tanks from deterioration due to exposure to the sun; plows and other metal equipment from rust; and materials such as topsoil and ballfield surfacing from being damaged by the weather.

Bids

On March 28th bids were received for the building project. The bid specifications called for a base bid along with one bid alternate for consideration. The base bid provided for furnishing only the building materials. Alternate #1 provided pricing for labor to erect the building. The request for bids was split into materials and labor to give the city flexibility of selecting only the furnishing of materials from the lowest qualified building supplier yet select a separate contractor to erect the building for the lowest total construction cost. The bids are tabulated as follows:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Base Bid</th>
<th>Alt #1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bison Steel Buildings</td>
<td>$189,648.00</td>
<td>Not bid</td>
</tr>
<tr>
<td>Ram General Contracting, Inc.</td>
<td>$254,700.00</td>
<td>$93,085.00</td>
</tr>
<tr>
<td>Metro Building Systems, Inc.</td>
<td>$272,000.00</td>
<td>$100,000.00</td>
</tr>
<tr>
<td>Greystone Construction, Inc.</td>
<td>$270,850.00</td>
<td>$110,325.00</td>
</tr>
<tr>
<td>American Liberty Construction, Inc.</td>
<td>$289,000.00</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>Architect’s Estimate</td>
<td>$210,000.00</td>
<td>$95,000.00</td>
</tr>
</tbody>
</table>

The low bidder for the base bid made an error when submitting the bid and did not furnish the required 5% bid bond with the bid. The remaining bidders furnished the required bid bond. The city attorney has advised that acceptance of the low-bid without the bid bond disqualifies the bid.

This project was funded in the 2014-2018 Capital Improvement Program with a budget of $545,000.00 from the Utility Fund. The difference in material pricing between the first and second bidder is 12% of the project budget. Given the significant project savings, staff recommends rejecting all bids and re-bidding the project. Re-bidding the project
will not significantly delay the summer construction schedule based on material availability.

**Recommendation**

Based on the bid results, staff recommends rejecting all bids.

Submitted through:
  - Geralyn Barone, City Manager
  - Merrill King, Finance Director

Originated by:
  - Brian Wagstrom, Public Works Director
  - Darin Ellingson, Public Works Street and Park Operations Manager
City Council Agenda Item #9C
Meeting of April 10, 2017

**Brief Description:** Bids for diseased and miscellaneous tree maintenance and removal

**Recommended Action:** Award contract to Davey Tree Expert Company dba S&S Tree and Horticultural Specialists Inc.

**Background**

Since the 1970’s the City of Minnetonka has taken bids for the removal of trees primarily for the city’s diseased tree program. This contract also provides for the removal of public trees that are damaged and beyond the capabilities of public works staff. In 2016 the city identified 359 trees that were removed under the contract. This includes diseased elms and oaks on city owned properties and in right-of-ways (which are cost shared), hazardous trees that pose a safety risk and ash trees that are being removed prior to Emerald Ash Borer arrival that display poor health or structure.

**2017 Contract**

The 2017 bid specifications provided for 22 size/bid classifications measured at 4 ½ feet above the ground. The first classification is 0 to 6.0 inches and each succeeding classification is increased by 2.0 inches. The last classification is any tree that is 46.0 inches in diameter or larger. Most trees removed are 20.0 inches in diameter or smaller. Based on a decrease of diseased and hazardous trees over the past few years, it is anticipated that 260 park and outlot trees and 131 boulevard trees will be removed in 2017, with an additional 50 ash trees to be removed as part of the city’s emerald ash borer preparedness program.

These bid prices are for public trees only. Residents are required to pay for their own removal costs for trees on private property. For those properties that require a forced removal, staff solicits specific removal pricing for that property.

Funding for city tree removal is through the Natural Resources operating budget and Capital Improvement Program (CIP), Emerald Ash Borer Program, which are both administered by the Natural Resources Division of the Public Works Department.

If approved by council the Public Works Director has the ability to renew the contract for a maximum of two additional one-year terms that may include a cost-of-living adjustment to account for fuel prices.
On March 28, 2017, bids were received for this year’s tree removal and maintenance needs. The bids are tabulated as follows:

Davey Tree Expert Company dba S&S Tree and Horticultural Specialists, Inc. $124,187.70
Nature’s Tree Inc. dba St Croix SavA Tree $141,494.02

Budgeted amounts:
Natural Resources – General Fund $112,200.00
2017 CIP – EAB Forestry Fund $154,000.00*

*Note – Remainder of budget for other costs associated with the EAB program.

Recommendation

Based on the bid results and contractor references, staff recommends awarding the tree removal contract to Davey Tree Expert Company dba S&S Tree and Horticultural Specialists, Inc. in the amount of $124,187.70.

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

Originated by:
Brian Wagstrom, Public Works Director
Jo Colleran, Natural Resources Manager
Hannibal Hayes, City Forester
City Council Agenda Item #10A  
Meeting of April 10, 2017

**Brief Description:** Agreements for Metropolitan Council Local Housing Incentives Account (LHIA) funds for Homes Within Reach

**Recommendation:** Approve the agreement

**Background**

The Metropolitan Council solicits applications annually for the Livable Communities Act Local Housing Incentives Programs, which provides grants to cities. One of these grant programs, the Local Housing Incentives Account (LHIA) awards funding to communities for projects that create or preserve affordable owner-occupied or rental units.

In June 2016, West Hennepin Affordable Housing Land Trust, dba Homes Within Reach (HWR), submitted a grant application through the consolidated Single Family Request for Proposal managed by Minnesota Housing, in partnership with Greater Minnesota Housing Fund, Metropolitan Council, Minnesota Department of Corrections, Department of Employment and Economic Development and the United States Department of Agriculture Rural Development.

The HWR application included the request to acquire and rehab seven single-family homes in Minnetonka and other western Hennepin County communities, using Metropolitan Council LHIA Funds. The grant was awarded for $335,000 in December 2016 as a multi-community grant. The funds became available on January 1, 2017 and will expire on December 31, 2019.

While this is a multi-community grant, Minnetonka is identified as the grantee; therefore, the grant agreement with the Metropolitan Council must be executed with the city rather than Homes Within Reach or another community. Prior to receiving the funds from the Metropolitan Council, the funds must be matched. Homes Within Reach will match the funds to be used in Minnetonka with their 2017 city grant funds, and the Met Council grant monies will flow through the city’s Livable Communities Fund. Funds used outside of Minnetonka will be matched with other funding sources specific to that city.

Homes Within Reach has acquired 55 houses in Minnetonka and a total of 125 homes throughout western Hennepin County. In addition to the funds received by the Met Council and the city, Homes Within Reach has leveraged these dollars by also receiving funds from Minnesota Housing, Hennepin County HOME funds and other sources.

**Recommendation**

Staff recommends the city council approve the sub-recipient agreement with Homes Within Reach.
Submitted through:
  Geralyn Barone, City Manager
  Julie Wischnack, AICP, Community Development Director
  Alisha Gray, Economic Development and Housing Manager

Originated by:
  Celeste McDermott, Community Development Specialist
SUB-RECIPIENT FUNDING AGREEMENT BETWEEN  
CITY OF MINNETONKA  
AND  
WEST HENNEPIN AFFORDABLE HOUSING LAND TRUST  
(D/B/A HOMES WITHIN REACH)  
FOR THE  
METROPOLITAN COUNCIL  
METROPOLITAN LIVABLE COMMUNITIES FUND  
LOCAL HOUSING INCENTIVES GRANT PROGRAM  
(Scattered Sites Acquisition and Rehabilitation)  

THIS CONTRACT, is entered into this ___ day of April, 2017, by and between the CITY OF MINNETONKA, a Minnesota municipal corporation (the "City"), and WEST HENNEPIN AFFORDABLE HOUSING LAND TRUST, d/b/a Homes Within Reach, a Minnesota non-profit corporation (the "Grantee").

WHEREAS, in cooperation with Grantee, the City applied to and received approval for funds in the amount of $335,000 from the Metropolitan Council ("Council") under its Metropolitan Livable Communities Fund, Local Housing Incentives grant program (the "Housing Grant"); and

WHEREAS, the City desires to award proceeds of the Housing Grant in the amount of $335,000 (the "Subgrant") to Grantee, to assist Grantee with the acquisition and rehabilitation of seven scattered sites in western Hennepin County (the "Housing Program").

NOW, THEREFORE, the parties agree to the following terms:

1. **AWARD.** The City awards the Subgrant to Grantee for the acquisition and rehabilitation of seven scattered sites as are described in Grant Agreement No. SG21555 between the City and the Council attached to this Contract as Exhibit A (the "Housing Grant Agreement") and the Application to the Council, attached to this Contract as Exhibit B, both of which are incorporated into this Contract (the "Project"). The Subgrant must be used exclusively to pay or reimburse only expenses authorized under the Housing Grant Agreement. Administration costs incurred by the Grantee are not eligible for reimbursement via this Contract. Notwithstanding anything to the contrary, the Grantee understands and agrees that any reduction or termination of the Housing Grant may result in a like reduction or termination of the Subgrant, and that any material change in the timeline or scope of the Project in the Housing Grant Agreement must be approved in writing by the City and the Council.

2. **PERFORMANCE.** The Grantee must comply with all requirements applicable to the City in the Housing Grant Agreement. Grantee’s default under the Housing Grant Agreement will constitute noncompliance with this Contract. If the City finds that there has been a failure to comply with the provisions of this Contract or that reasonable progress on the Project has not been or will not be made, the City may take action to protect its interests, including refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed. If action to correct substandard performance is not taken by the Grantee within 60 calendar days (or such longer period specified by the City) after written notice by the City, the City may terminate this Contract.

3. **TIME OF PERFORMANCE.** Grantee must start the Project upon execution of this Contract and complete the Project and the Housing Program on or before December 31, 2019. The City is not
obligated to pay for any Project costs incurred after that date or any earlier termination, whichever occurs first.

4. **CONDITIONS PRECEDENT TO DISBURSEMENT.** The following requirements are conditions precedent to the City's disbursement of any of the Subgrant proceeds.

   A. The Grantee must have provided evidence satisfactory to the City showing that Grantee has title in fee simple and site control of the property acquired.

   B. The Grantee must have provided the City with evidence of compliance with the insurance requirements of Section 7(E) herein.

   C. The Grantee must have provided to the City such evidence of compliance with all of the provisions of this Contract as the City may reasonably request.

5. **DISBURSEMENT.** It is expressly agreed and understood that the total amount to be paid by the City under this Contract will not exceed $335,000. The City will make disbursements only upon receipt of a written disbursement request in the form provided by the Council (the "Disbursement Request") from Grantee acceptable to the City and the Council. Payment requests may be made no more than once per month and must be accompanied by supporting invoices that relate to Project costs. The City will, upon its approval of the Disbursement Request, forward the Disbursement Request to the Council for approval. Upon Council approval of the Disbursement Request and disbursement of the approved amounts of Housing Grant funds, the City will disburse the approved amount of Subgrant funds in accordance with the information provided in the Disbursement Request.

6. **NOTICES.** Communication and details concerning this Contract must be directed to the following Contract representatives:

   **City:**
   City of Minnetonka  
   Community Development Department  
   14600 Minnetonka Blvd.  
   Minnetonka, MN 55345  
   Attn: Alisha Gray  
   Phone: (952) 939-8285

   **Grantee:**
   West Hennepin Affordable Housing Land Trust  
   5101 Thimsen Ave, Suite 200  
   Minnetonka, MN 55345  
   Attn: Executive Director
7. **GENERAL CONDITIONS.**

A. **General Compliance.** The Grantee agrees to comply with all applicable federal, state and local laws and regulations governing the Project and funds provided under this Contract.

B. **Subcontracts.**

   1. *Selection Process.* The Grantee must undertake to ensure that all contracts and subcontracts let in the performance of this Contract are awarded on a fair and open competition basis. Executed copies of all contracts and subcontracts along with documentation concerning the selection process must be forwarded to the City upon request.

   2. *Monitoring.* The City may monitor contracted and subcontracted services on a regular basis to ensure contract compliance. Results of monitoring efforts will be summarized in written reports and provided to the Grantee. The Grantee must provide documented evidence of follow-up actions taken to correct areas of noncompliance noted in the monitoring reports.

   3. *OSHA.* Grantee must require that contractors performing work being paid with the Subgrant funds be in compliance with all applicable OSHA regulations.

C. **Anti-discrimination.** The Grantee agrees during the life of this Contract not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin. The Grantee must include a similar provision in all contracts and subcontracts entered into for the performance of this Contract. This Contract may be cancelled or terminated by the City, and all money due or to become due under the Contract may be forfeited for a second or subsequent violation of the terms or conditions of this paragraph.

D. **Equal Opportunity.** The Grantee recognizes the City is an equal opportunity employer and agrees during the life of this Contract to take affirmative action to provide equal employment opportunities without regard to race, color, sex, creed, national origin, religion, disability, age, marital status, sexual preference, or status with regard to public assistance.

E. **Independent Contractor.** Nothing contained in this Contract is intended to, or may be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Grantee will at all times remain an independent contractor with respect to the services to be performed under this Contract. The City is exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance because the Grantee is an independent contractor.

F. **Indemnification and Hold Harmless.** The Grantee must hold harmless, defend and indemnify the City and the Council from any and all liability, claims, actions, suits, charges, damages, losses, costs, expenses, and judgments whatsoever, including
reasonable attorney's fees, that arise directly or indirectly out of the Grantee's, its contractors or subcontractors' performance or nonperformance of the services or subject matter called for in this Contract. This clause may not be construed to bar any legal remedies Grantee may have for the City's or the Council’s failure to fulfill its obligations pursuant to this Contract.

Claims included in this indemnification include any claims asserted pursuant to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes, Chapter 115B, the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) as amended, United States Code, title 42, Sections 9601 et. seq., and the Federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, United States Code, title 42, Sections 6901 et. seq. This indemnification cannot be construed as a waiver on the part of either the City or the Council of any immunities or limits on liability provided by Minnesota Statutes Chapter 466 or other applicable state or federal law.

8. Administrative Requirements.

A. Accounting Standards. The Grantee agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices to properly account for expenses incurred under this Contract.

B. Records.

1. Retention. The Grantee must retain all records pertinent to expenditures incurred under this Contract until conclusion of the latest of (a) six years after the Grantee has completed the Housing Program; (b) six years after the Grantee has expended all proceeds of the Subgrant; (c) six years after the resolution of all audit findings; or (d) six years after Housing Grant Agreement termination or cancellation. Records for nonexpendable property acquired with funds under this Contract must be retained for six years after final disposition of such property.

2. Inspections. All Grantee records with respect to any matters covered by this Contract must be made available to the City, the Council or their designees at any time during normal business hours, as often as the City or the Council deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

3. Audits. If requested by the City, the Grantee must have an annual financial compliance audit conducted in accordance with the City's requirements. The Grantee must submit two copies of such audit report to the City. Any deficiencies noted in such an audit report or an audit/monitoring report issued by the City or its designees must be fully resolved by the Grantee within a reasonable time period after a written request from the City. Failure of the Grantee to comply with the provisions of this paragraph will constitute a
violation of this Contract and may result in the withholding of future payments or the requirement for Grantee to return all or part of the funds already disbursed.


5. **Close-Outs.** The Grantee's obligation to the City does not end until all close-out requirements are completed. Activities during this close-out period include: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City), determining the custodianship of records and resolving audit findings.

C. **Payments.** The City will pay to the Grantee funds available under this Contract based upon information submitted by the Grantee and consistent with any approved budget and City policy concerning payments. Payments may be adjusted at the option of the City in accordance with advance funds and program income balances available in Grantee accounts.

D. **Procurement.** The Grantee must maintain an inventory record of all nonexpendable personal property procured with funds provided under this Contract. All unexpended program income must revert to the City upon termination of this Contract.

9. **Miscellaneous.**

A. **Assignability.** The Grantee may not assign or transfer any interest in this Contract (whether by assignment or novation) without the prior written consent of the City; provided, however, that claims for money due or to become due to the Grantee from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer must be furnished promptly to the City.

B. **Religious Organization.** The Grantee agrees that funds provided under this Contract will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization.

C. **Governing Law.** This Contract will be governed by, and construed in accordance with, the laws of the State of Minnesota.

D. **Counterparts.** This Contract may be executed in two or more counterparts, each of which is deemed an original, but all of which taken together constitute one and the same agreement.
CITY OF MINNETONKA

By ________________________________
   Its Mayor

And ________________________________
   Its City Manager

WEST HENNEPIN AFFORDABLE HOUSING LAND TRUST

By ________________________________
   Its President

And ________________________________
   Its Executive Director
Exhibit A

Housing Grant Agreement
Exhibit B

Application to the Council for Housing Grant
LOCAL HOUSING INCENTIVES ACCOUNT

GRANTEE: City of Minnetonka

PROJECT: Homes Within Reach

GRANT AMOUNT: $335,000

FUNDING CYCLE: 2016

COUNCIL ACTION: December 14, 2016

EXPIRATION DATE: December 31, 2019

METROPOLITAN LIVABLE COMMUNITIES ACT
GRANT AGREEMENT

THIS GRANT AGREEMENT (“Agreement”) is made and entered into by the Metropolitan Council (“Council”) and the Municipality or Development Authority identified above as “Grantee.”

WHEREAS, Minnesota Statutes section 473.251 creates the Metropolitan Livable Communities Fund, the uses of which fund must be consistent with and promote the purposes of the Metropolitan Livable Communities Act (“LCA”) and the policies of the Council’s Metropolitan Development Guide; and

WHEREAS, Minnesota Statutes sections 473.251 and 473.254 establish within the Metropolitan Livable Communities Fund a Local Housing Incentives Account and require the Council to annually distribute funds in the account to Participating Municipalities that have not met their affordable and life-cycle housing goals and are actively funding projects designed to help meet the goals, or to Development Authorities for projects located in eligible Municipalities; and

WHEREAS, the Grantee is a Municipality that has negotiated affordable and life-cycle housing goals pursuant to Minnesota Statutes section 473.254, subdivision 2 and has elected to participate in the Local Housing Incentives Account program, or is a Development Authority; and

WHEREAS, the Grantee seeks funding in connection with an application for Local Housing Incentives Account funds submitted in response to a Request for Proposals issued by the Metropolitan Housing Implementation Group for the “Funding Cycle” identified above and will use the grant funds made available under this Agreement to help fund the “Project” identified in the application; and

WHEREAS, the Council awarded Local Housing Incentives Account funds to the Grantee subject to any terms, conditions and clarifications stated in its Council Action, and with the understanding that the Project identified in the application will proceed to completion in a timely manner, all grant funds will be expended prior to the “Expiration Date” identified above and Project construction will have “commenced” before the Expiration Date.
LOCAL HOUSING INCENTIVES ACCOUNT

NOW THEREFORE, in reliance on the above statements and in consideration of the mutual promises and covenants contained in this Agreement, the Grantee and the Council agree as follows:

I. DEFINITIONS

1.01. Definition of Terms. The terms defined in this section have the meanings given them in this section unless otherwise provided or indicated by the context.

(a) Commenced. For the purposes of Sections 2.09 and 4.03, “commenced” means significant physical improvements have occurred in furtherance of the Project (e.g., a foundation is being constructed or other tangible work on a structure has been initiated). In the absence of significant physical improvements, visible staking, engineering, land surveying, soil testing, cleanup site investigation, or pollution cleanup activities are not evidence of Project commencement for the purposes of this Agreement.

(b) Council Action. “Council Action” means the action or decision of the governing body of the Metropolitan Council, on the meeting date identified at Page 1 of this Agreement, by which the Grantee was awarded Local Housing Incentives Account funds.

(c) Development Authority. “Development Authority” means a housing and redevelopment authority, economic development authority, or port authority.

(d) Municipality. “Municipality” means a statutory or home rule charter city or town in the seven-county metropolitan area defined by Minnesota Statutes section 473.121, subdivision 2.

(e) Participating Municipality. “Participating Municipality” means a Municipality electing to participate in the Local Housing Incentives Account program under Minnesota Statutes section 473.254.

(f) Project. Unless clearly indicated otherwise by the context of a specific provision of this Agreement, “Project” means the development or redevelopment project identified in the application for Local Housing Incentives Account funds for which grant funds were requested. Grant-funded activities typically are components of the Project.

II. GRANT FUNDS

2.01. Source of Funds. The grant funds made available to the Grantee under this Agreement are from the Local Housing Incentives Account of the Metropolitan Livable Communities Fund. The grant funds are derived from property taxes authorized by Minnesota Statutes sections 473.249, 473.253 and 473.254, subdivision 15 and are not from federal sources.

2.02 Total Grant Amount. The Council will grant to the Grantee the “Grant Amount” identified at Page 1 of this Agreement. Notwithstanding any other provision of this Agreement, the Grantee understands and agrees that any reduction or termination of Local Housing Incentives Account funds made available to the Council, or any reduction or termination of the
dollar-for-dollar match amount required under Section 2.03, may result in a like reduction in the Grant Amount made available to the Grantee.

2.03. **Match Requirement.** Pursuant to Minnesota Statutes section 473.254, subdivision 6, the Grantee shall match on a dollar-for-dollar basis the total Grant Amount received from the Council under Section 2.02. The source and amount of the dollar-for-dollar match shall be identified by the Grantee in the application for grant funds.

2.04. **Authorized Use of Grant Funds.** The Grant Amount made available to the Grantee under this Agreement shall be used only for the purposes and Project activities described in the application for Local Housing Incentives Account funds. A Project summary that identifies eligible uses of the grant funds as approved by the Council is attached to and incorporated into this Agreement as Attachment A. Grant funds must be used for purposes consistent with Minnesota Statutes section 473.25(a), in a Participating Municipality.

2.05. **Ineligible Uses.** Grant funds must be used for costs directly associated with the specific proposed Project activities and shall not be used for “soft costs” such as: administrative overhead; travel expenses; legal fees; insurance; bonds; permits, licenses or authorization fees; costs associated with preparing other grant proposals; operating expenses; planning costs, including comprehensive planning costs; and prorated lease and salary costs. Grant funds may not be used for costs of Project activities that occurred prior to the grant award. A detailed list of ineligible and eligible costs is available from the Council’s Livable Communities program office. Grant funds also shall not be used by the Grantee or others to supplant or replace: (a) grant or loan funds obtained for the Project from other sources; (b) Grantee contributions to the Project, including financial assistance, real property or other resources of the Grantee; or (c) funding or budgetary commitments made by the Grantee or others prior to the Council Action, unless specifically authorized by the Council. The Council shall bear no responsibility for cost overruns which may be incurred by the Grantee or others in the implementation or performance of the Project activities. The Grantee agrees to comply with any “business subsidy” requirements of Minnesota Statutes sections 116J.993 to 116J.995 that apply to the Grantee’s expenditures or uses of the grant funds.

2.06. **Loans for Low-Income Housing Tax Credit Projects.** If consistent with the application and the Project activities described or identified in Attachment A, or if requested in writing by the Grantee, the Grantee may structure the grant assistance to the Project as a loan so the Project Owner can take advantage of federal and state low-income housing tax credit programs. The Grantee may use the grant funds as a loan for a low-income housing tax credit Project, subject to the terms and conditions stated in Sections 2.04 and 2.05 and the following additional terms and conditions:

(a) The Grantee covenants and represents to the Council that the Project is a rental housing project that received or will receive an award of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, and the low-income housing tax credit program administered by the Minnesota Housing Finance Agency.
(b) The Grantee will execute a loan agreement with the Project Owner. Prior to disbursing any grant funds for the Project, the Grantee will provide to the Council a copy of the loan agreement between the Grantee and the Project Owner.

(c) The Grantee will submit annual written reports to the Council that certify: (1) the grant funds continue to be used for the Project for which the grant funds were awarded; and (2) the Project is a “qualified low-income housing project” under Section 42 of the Internal Revenue Code of 1986, as amended. This annual reporting requirement is in addition to the reporting requirements stated in Section 3.03. Notwithstanding the Expiration Date identified at Page 1 of this Agreement and referenced in Section 4.01, the Grantee will submit the annual certification reports during the initial “compliance period” and any “extended use period,” or until such time as the Council terminates this annual reporting requirement by written notice to the Grantee.

(d) The grant funds made available to the Grantee and disbursed to the Project Owner by the Grantee in the form of a loan may be used only for the grant-eligible activities and Project components for which the Grantee was awarded the grant funds. For the purposes of this Agreement, the term “Project Owner” means the current Project Owner and any Project Owner successor(s).

(e) Pursuant to Section 2.05, the grant funds made available to the Grantee and disbursed to the Project Owner in the form of a loan shall not be used by the Grantee, the Project Owner or others to supplant or replace: (1) grant or loan funds obtained for the Project from other sources; (2) Grantee contributions to the Project, including financial assistance, real property or other resources of the Grantee; or (3) funding or budgetary commitments made by the Grantee or others prior to the Council Action, unless specifically authorized by the Council. The Council will not make the grant funds available to the Grantee in a lump sum payment, but will disburse the grant funds to the Grantee on a reimbursement basis pursuant to Section 2.11.

(f) By executing this Agreement, the Grantee: (1) acknowledges that the Council expects the loan will be repaid so the grant funds may be used to help fund other activities consistent with the requirements of the Metropolitan Livable Communities Act; (2) covenants, represents and warrants to the Council that the Grantee’s loan to the Project Owner will meet all applicable low-income housing tax credit program requirements under Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”), and the low-income housing tax credit program administered by the Minnesota Housing Finance Agency; and (3) agrees to administer its loan to the Project Owner consistent with federal and state low-income housing tax credit program requirements.

(g) The Grantee will, at its own expense, use diligent efforts to recover loan proceeds: (1) when the Project Owner becomes obligated to repay the Grantee’s loan or defaults on the Grantee’s loan; (2) when the initial thirty-year “compliance period” expires, unless the Council agrees in writing that the Grantee may make the grant funds available as a loan to the Project Owner for an “extended use period”; and (3) if noncompliance with low-income housing tax credit program requirements or some other event triggers the
LOCAL HOUSING INCENTIVES ACCOUNT

Project Owner’s repayment obligations under its loan agreement with the Grantee. The Grantee must repay to the Council all loan repayment amounts the Grantee receives from the Project Owner. The Grantee shall not be obligated to repay the grant funds to the Council except to the extent the Project Owner repays its loan to the Grantee, provided the Grantee has exercised the reasonable degree of diligence and used administrative and legal remedies a reasonable and prudent housing finance agency would use to obtain payment on a loan, taking into consideration (if applicable) the subordinated nature of the loan. At its discretion, the Council may: (1) permit the Grantee to use the loan repayment from the Project Owner to continue supporting affordable housing components of the Project; or (2) require the Grantee to remit the grant funds to the Council.

(h) If the Grantee earns any interest or other income from its loan agreement with the Project Owner, the Grantee will: (1) use the interest earnings or income only for the purposes of implementing the Project activities for which the grant was awarded; or (2) remit the interest earnings or income to the Council. The Grantee is not obligated to earn any interest or other income from its loan agreement with the Project Owner, except to the extent required by any applicable law.

2.07. Revolving or Deferred Loans. If consistent with the application and the Project summary or if requested in writing by the Grantee, the Grantee may use the grant funds to make deferred loans (loans made without interest or periodic payments), revolving loans (loans made with interest and periodic payments) or otherwise make the grant funds available on a “revolving” basis for the purposes of implementing the Project activities described or identified in Attachment A. The Grantee will submit annual written reports to the Council that report on the uses of the grant funds. The Council will determine the form and content of the report. This annual reporting requirement is in addition to the reporting requirements stated in Section 3.03. Notwithstanding the Expiration Date identified at Page 1 of this Agreement and referenced in Section 4.01, the Grantee will submit the annual reports until the deferred or revolving loan programs terminate, or until the Council terminates this annual reporting requirement by written notice from the Council. At its discretion, the Council may: (1) permit the Grantee to use loan repayments to continue supporting affordable housing components of the Project; or (2) require the Grantee to remit the grant funds to the Council.

2.08. Restrictions on Grants and Loans by Subrecipients. The Grantee shall not permit any subgrantee or subrecipient to use the grant funds for grants or loans to any subgrantee or subrecipient at any tier unless the Grantee obtains the prior written consent of the Council. The requirements of this Section 2.08 shall be included in all subgrant and subrecipient agreements.

2.09. Project Commencement and Changes. The Project for which grant funds were requested must be “commenced” prior to the Expiration Date. The Grantee must promptly inform the Council in writing of any significant changes to the Project for which the grant funds were awarded, as well as any potential changes to the grant-funded activities described or identified in Attachment A. Failure to inform the Council of any significant changes to the Project or significant changes to grant-funded components of the Project, and use of grant funds for ineligible or unauthorized purposes, will jeopardize the Grantee’s eligibility for future LCA
awards. Grant funds will not be disbursed prior to Council approval of significant changes to either the Project or grant-funded activities described or identified in Attachment A.

2.10. Loss of Grant Funds. The Grantee agrees to remit to the Council in a prompt manner: any unspent grant funds, including any grant funds that are not expended prior to the Expiration Date identified at Page 1 of this Agreement; any grant funds that are not used for the authorized purposes; any grant funds that are not matched on a dollar-for-dollar basis as required by Section 2.03; and any interest earnings described in Section 2.12 that are not used for the purposes of implementing the grant-funded Project activities described or identified in Attachment A. For the purposes of this Agreement, grant funds are “expended” prior to the Expiration Date if the Grantee pays or is obligated to pay for expenses of eligible grant-funded Project activities that occurred prior to the Expiration Date and the eligible expenses were incurred prior to the Expiration Date. Unspent or unused grant funds and other funds remitted to the Council shall revert to the Council’s Local Housing Incentives Account for distribution through application processes in future Funding Cycles or as otherwise permitted by law.

2.11. Payment Request Forms, Documentation, and Disbursements. The Council will disburse grant funds in response to written payment requests submitted by the Grantee and reviewed and approved by the Council’s authorized agent. Written payment requests shall be made using payment request forms, the form and content of which will be determined by the Council. Payment request and other reporting forms will be provided to the Grantee by the Council. Payment requests must include the following documentation:

Consultant/contractor invoices showing the time period covered by the invoice; the specific grant-funded Project activities conducted or completed during the authorized time period within which eligible costs may be incurred; and documentation supporting expenses including subcontractor and consultant invoices showing unit rates, quantities, and a description of the good or services provided. Subcontractor markups shall not exceed ten percent (10%).

The Council will disburse grant funds on a reimbursement basis or a “cost incurred” basis. The Grantee must provide with its written payment requests documentation that shows grant-funded Project activities have been completed. Subject to verification of each payment request form (and the required documentation) and approval for consistency with this Agreement, the Council will disburse a requested amount to the Grantee within two (2) weeks after receipt of a properly completed and verified payment request form.

2.12. Interest Earnings. If the Grantee earns any interest or other income from the grant funds received from the Council under this Agreement, the Grantee will use the interest earnings or income only for the purposes of implementing the Project activities described or identified in Attachment A.

2.13. Effect of Grant. Issuance of this grant neither implies any Council responsibility for contamination, if any, at the Project site nor imposes any obligation on the Council to participate in any pollution cleanup of the Project site if such cleanup is undertaken or required.
2.14. Resale Limitations. The Grantee must impose resale limitations regarding the disposition of any equity realized by the purchasers of “affordable” units if grant funds received from the Council under this Agreement are used for homeownership affordability gap financing in the Project described or identified in Attachment A. The intent of this resale limitation is to protect the public investment in the Project and ensure that a proportion of the affordability gap provided by the public investment in the form of grant funds received from the Council is recaptured for reuse in conjunction with other affordable housing efforts and does not become a windfall for any purchaser who might sell the home prior to expiration of a predetermined resale limitation period. If a purchaser sells the “affordable” home prior to expiration of the resale limitation time period, an equitable proportion of the affordability gap filled by grant funds received from the Council under this Agreement must be recaptured by the Grantee within twenty-four (24) months of the triggering resale event and applied to a similar affordable housing project within the Participating Municipality, or returned to the Council. Unless otherwise agreed to by the Council and the Grantee, the length of the resale limitation time period and the proportion of the affordability gap to be recovered will be consistent with resale limitation time periods and repayment schedules stated in the Project application. These resale limitations do not apply when the grant funds are used for homeownership value gap financing.

2.15. Affordability Term. The Grantee shall, through written instruments or otherwise, ensure the affordable units acquired or developed with grant funds made available under this Agreement will remain affordable for a minimum period of fifteen (15) years. The Grantee’s obligation under this section may be satisfied if other Project funding sources (e.g., the Minnesota Housing Finance Agency or the U.S. Department of Housing and Urban Development (“HUD”)) or state or federal laws (e.g., low-income housing tax credit programs) require an affordability term of at least fifteen (15) years. For the purposes of this section, “affordable housing unit” means a unit that is affordable to households at 80 percent (80%) or less of the Area Median Income (“AMI”), as established by HUD, unless the Grantee’s application stated an affordability standard lower than 80 percent (80%) of AMI, in which case the Grantee’s lower affordability standard shall apply. The affordability requirements of this section shall survive the expiration or termination of this Agreement.

2.16. Affirmative Fair Housing Marketing Plans. The Grantee shall, through written instruments or otherwise, ensure the Project owner (and any subsequent owner(s)) adopts and implements an affirmative fair housing marketing plan for all Project housing units (whether market rate or affordable). For the purposes of this section, “affirmative fair housing marketing plan” means an affirmative fair housing marketing plan that substantially conforms to affirmative fair housing marketing plans published by HUD. The affirmative fair housing marketing plan requirement under this section shall continue for the minimum affordability term specified in Section 2.15 and shall survive the expiration or termination of this Agreement.
III. ACCOUNTING, AUDIT, AND REPORT REQUIREMENTS

3.01. Accounting and Records. The Grantee agrees to establish and maintain accurate and complete accounts and records relating to the receipt and expenditure of all grant funds received from the Council. Notwithstanding the expiration and termination provisions of Sections 4.01 and 4.02, such accounts and records shall be kept and maintained by the Grantee for a period of six (6) years following the completion of the Project activities described or identified in Attachment A or six (6) years following the expenditure of the grant funds, whichever occurs earlier. For all expenditures of grant funds received pursuant to this Agreement, the Grantee will keep proper financial records and other appropriate documentation sufficient to evidence the nature and expenditure of the dollar-for-dollar match funds required under Section 2.03. Accounting methods shall be in accordance with generally accepted accounting principles.

3.02. Audits. The above accounts and records of the Grantee shall be audited in the same manner as all other accounts and records of the Grantee are audited and may be audited or inspected on the Grantee’s premises or otherwise by individuals or organizations designated and authorized by the Council at any time, following reasonable notification to the Grantee, for a period of six (6) years following the completion of the Project activities or six (6) years following the expenditure of the grant funds, whichever occurs earlier. Pursuant to Minnesota Statutes section 16C.05, subdivision 5, the books, records, documents and accounting procedures and practices of the Grantee that are relevant to this Agreement are subject to examination by the Council and either the Legislative Auditor or the State Auditor, as appropriate, for a minimum of six (6) years.

3.03. Reporting and Continuing Requirements. The Grantee will report to the Council on the status of the Project activities described or identified in Attachment A, the expenditures of the grant funds, and the source and expenditure of the dollar-for-dollar match funds required under Section 2.03. Submission of properly completed payment request forms (with proper documentation) required under Section 2.11 will constitute periodic status reports. The Grantee also must complete and submit to the Council a grant activity closeout report. The closeout report form must be submitted within 120 days after the expiration or termination of this Agreement, whichever occurs earlier. Within 120 days after the Expiration Date, the Grantee must complete and submit to the Council a certification of expenditures of funds form signed by the Grantee’s chief financial officer or finance director. The Council will determine the form and content of the closeout report and certification form. These reporting requirements and the reporting requirements of Sections 2.06 and 2.07 shall survive the expiration or termination of this Agreement.

3.04. Environmental Site Assessment. The Grantee represents that a Phase I Environmental Site Assessment or other environmental review has been or will be carried out, if such environmental assessment or review is appropriate for the scope and nature of the Project activities funded by this grant, and that any environmental issues have been or will be adequately addressed.
IV. AGREEMENT TERM

4.01. Term. This Agreement is effective upon execution of the Agreement by the Council. Unless terminated pursuant to Section 4.02, this Agreement expires on the Expiration Date identified at Page 1 of this Agreement. ALL GRANT FUNDS NOT EXPENDED BY THE GRANTEE PRIOR TO THE EXPIRATION DATE SHALL REVERT TO THE COUNCIL.

4.02. Termination. This Agreement may be terminated by the Council for cause at any time upon fourteen (14) calendar days’ written notice to the Grantee. Cause shall mean a material breach of this Agreement and any amendments of this Agreement. If this Agreement is terminated prior to the Expiration Date, the Grantee shall receive payment on a pro rata basis for eligible Project activities described or identified in Attachment A that have been completed prior to the termination. Termination of this Agreement does not alter the Council’s authority to recover grant funds on the basis of a later audit or other review, and does not alter the Grantee’s obligation to return any grant funds due to the Council as a result of later audits or corrections. If the Council determines the Grantee has failed to comply with the terms and conditions of this Agreement and the applicable provisions of the Metropolitan Livable Communities Act, the Council may take any action to protect the Council’s interests and may refuse to disburse additional grant funds and may require the Grantee to return all or part of the grant funds already disbursed.

4.03. Amendments and Extension. The Council and the Grantee may amend this Agreement by mutual agreement. Amendments or an extension of this Agreement shall be effective only on the execution of written amendments signed by authorized representatives of the Council and the Grantee. If the Grantee needs additional time within which to complete grant-funded activities and commence the Project, the Grantee must submit to the Council AT LEAST NINETY (90) CALENDAR DAYS PRIOR TO THE EXPIRATION DATE, a resolution of the Grantee’s governing body requesting the extension and a written extension request. THE EXPIRATION DATE MAY BE EXTENDED, BUT THE PERIOD OF ANY EXTENSION(S) SHALL NOT EXCEED TWO (2) YEARS BEYOND THE ORIGINAL EXPIRATION DATE IDENTIFIED AT PAGE 1 OF THIS AGREEMENT.

V. GENERAL PROVISIONS

5.01. Equal Opportunity. The Grantee agrees it will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability, sexual orientation or age and will take affirmative action to insure applicants and employees are treated equally with respect to all aspects of employment, rates of pay and other forms of compensation, and selection for training.

5.02. Conflict of Interest. The members, officers and employees of the Grantee shall comply with all applicable state statutory and regulatory conflict of interest laws and provisions.
5.03. Liability. Subject to the limitations provided in Minnesota Statutes chapter 466, to the fullest extent permitted by law, the Grantee shall defend, indemnify and hold harmless the Council and its members, employees and agents from and against all claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from the conduct or implementation of the Project activities funded by this grant, except to the extent the claims, damages, losses and expenses arise from the Council’s own negligence. Claims included in this indemnification include, without limitation, any claims asserted pursuant to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes chapter 115B, the federal Comprehensive Environ-mental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended, United States Code, Title 42, sections 9601 et seq., and the federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, United States Code, title 42, sections 6901 et seq. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which otherwise would exist between the Council and the Grantee. The provisions of this section shall survive the expiration or termination of this Agreement. This indemnification shall not be construed as a waiver on the part of either the Grantee or the Council of any immunities or limits on liability provided by Minnesota Statutes chapter 466, or other applicable state or federal law.

5.04. Acknowledgments and Signage. The Grantee will acknowledge the financial assistance provided by the Council in promotional materials, press releases, reports and publications relating to the Project. The acknowledgment will contain the following or comparable language:

Financing for this project was provided by the Metropolitan Council Metropolitan Livable Communities Fund.

Until the Project is completed, the Grantee shall ensure the above acknowledgment language, or alternative language approved by the Council’s authorized agent, is included on all signs (if any) located at Project or construction sites that identify Project funding partners or entities providing financial support for the Project. The acknowledgment and signage should refer to the “Metropolitan Council” (not “Met Council” or “Metro Council”).

5.05. Permits, Bonds, and Approvals. The Council assumes no responsibility for obtaining any applicable local, state or federal licenses, permits, bonds, authorizations, or approvals necessary to perform or complete the Project activities described or identified in Attachment A. The Grantee and its developer(s), if any, must comply with all applicable licensing, permitting, bonding, authorization, and approval requirements of federal, state and local governmental and regulatory agencies, including conservation districts.

5.06. Subgrantees, Contractors and Subcontractors. The Grantee shall include in any subgrant, contract or subcontract for Project activities appropriate provisions to ensure subgrantee, contractor and subcontractor compliance with all applicable state and federal laws and this Agreement. Along with such provisions, the Grantee shall require that contractors and subcontractors performing work covered by this grant comply with all applicable state and federal Occupational Safety and Health Act regulations. The Grantee’s subgrant agreement(s) shall expressly include the affordability and affirmative fair housing marketing plan requirements of Sections 2.15 and 2.16.

Page 10 of 12 Pages
5.07. **Stormwater Discharge and Water Management Plan Requirements.** If any grant funds are used for urban site redevelopment, the Grantee shall at such redevelopment site meet or require to be met all applicable requirements of:

(a) Federal and state laws relating to stormwater discharges including, without limitation, any applicable requirements of Code of Federal Regulations, title 40, parts 122 and 123; and

(b) The Council’s *2040 Water Resources Policy Plan* and the local water management plan for the jurisdiction within which the redevelopment site is located.

5.08. **Authorized Agent.** Payment request forms, written reports and correspondence submitted to the Council pursuant to this Agreement shall be directed to:

Metroplitan Council  
Attn: LCA Grants Administration  
390 Robert Street North  
Saint Paul, Minnesota 55101-1805

5.09. **Non-Assignment.** Minnesota Statutes section 473.254, subdivision 6 requires the Council to distribute the grant funds to eligible “municipalities” or “development authorities” for projects in municipalities participating in the Local Housing Incentives Account program. Accordingly, this Agreement is not assignable and shall not be assigned by the Grantee.

5.10. **Authorization to Reproduce Images.** The Grantee certifies that the Grantee: (a) is the owner of any renderings, images, perspectives, sections, diagrams, photographs or other copyrightable materials (collectively, “copyrightable materials”) that are in the Grantee’s application or are submitted to the Council as part of the grant application review process or after grant award, or that the Grantee is fully authorized to grant permissions regarding the copyrightable materials; and (b) the copyrightable materials do not infringe upon the copyrights of others. The Grantee agrees the Council has a nonexclusive royalty-free license and all necessary permissions to reproduce and publish the copyrightable materials for noncommercial purposes, including but not limited to press releases, presentations, reports, and on the internet. The Grantee also agrees the Grantee will not hold the Council responsible for the unauthorized use of the copyrightable materials by third parties.

5.11. **Warranty of Legal Capacity.** The individuals signing this Agreement on behalf of the Grantee and on behalf of the Council represent and warrant on the Grantee’s and the Council’s behalf respectively that the individuals are duly authorized to execute this Agreement on the Grantee’s and the Council’s behalf respectively and that this Agreement constitutes the Grantee’s and the Council’s valid, binding, and enforceable agreements.
LOCAL HOUSING INCENTIVES ACCOUNT

IN WITNESS WHEREOF, the Grantee and the Council have caused this Agreement to be executed by their duly authorized representatives. This Agreement is effective on the date of final execution by the Council.

GRANTEE

By:  
Title:  Mayor  
Date:  2/8/17

METROPOLITAN COUNCIL

By:  
Title:  Mayor  
Date:  2/7/17

By:  
Title:  City Manager  
Date:  2-1-17

By:  
Title:  
Date:  

Beth Reetz, Director
Community Development Division

Page 12 of 12 Pages
ATTACHMENT A

PROJECT SUMMARY

This attachment comprises this page and the succeeding page(s) which contain(s) a summary of the Project identified in the application for Local Housing Incentives Account grant funds submitted in response to a Request for Proposals issued by the Metropolitan Housing Implementation Group for the Funding Cycle identified at Page 1 of this Agreement. The summary reflects the proposed Project for which the Grantee was awarded grant funds by the Council Action, and may reflect changes in Project funding sources, changes in funding amounts, or minor changes in the proposed Project that occurred subsequent to application submission. The application is incorporated into this Agreement by reference and is made a part of this Agreement as follows. If the application or any provision in the application conflicts with or is inconsistent with the Council Action, other provisions of this Agreement, or the Project summary contained in this Attachment A, the terms, descriptions, and dollar amounts reflected in the Council Action or contained in this Agreement and the Project summary shall prevail. For the purposes of resolving conflicts or inconsistencies, the order of precedence is: (1) the Council Action; (2) this Agreement; (3) the Project summary; and (4) the grant application.
Project Summary

Grant # SG-21555
Type: Local Housing Incentives Account
Applicant City of Minnetonka on behalf of West Hennepin Affordable Housing Land Trust (WHAHLT)
Project Name Homes Within Reach
Project Location Suburban Hennepin County
Council Districts
1 – Katie Rodriguez
2 – Lona Schreiber
3 – Jennifer Munt
5 – Steve Elkins
6 – Gail Dorfman

<table>
<thead>
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<th>Project Detail</th>
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<tr>
<td>Development summary of project to commence by 12/31/2019</td>
<td>West Hennepin Affordable Housing Land Trust (WHAHLT) through its Homes Within Reach (HWR) program proposes to acquire, rehabilitate, and resell nine single family, detached units in western Hennepin County to increase the affordable housing stock available through the land trust. During the past 13 years, HRW has served 11 communities (Brooklyn Park, Deephaven, Edina, Eden Prairie, Golden Valley, Maple Grove, Minnetonka, New Hope, Richfield, St. Louis Park and Wayzata), and is working to implement the program in Bloomington and Crystal. Homes selected will be located in well-established neighborhoods, are typically between 30-60 years old, have 3 or 4 bedrooms, and have at least a single-car garage.</td>
</tr>
<tr>
<td>Total housing units</td>
<td>9 (7 directly supported with LHIA funds)</td>
</tr>
<tr>
<td>Affordable units</td>
<td>9 @ up to 80% AMI</td>
</tr>
<tr>
<td>Est. total development cost</td>
<td>$2.8 million</td>
</tr>
<tr>
<td>Est. private funds leveraged</td>
<td>$5,000</td>
</tr>
<tr>
<td>Est. other public funds</td>
<td>$1.5 million</td>
</tr>
</tbody>
</table>

| Funding |
|-----------------|----------------------------------|
| LHIA Funding Match | Hennepin County HOME |
| Other LCA funding | $1,022,000 – Eight prior LHIA awards |
| Recommended Funding |  |
| $335,000 | LHIA |
| $115,000 | Minnesota Housing |

<table>
<thead>
<tr>
<th>Other Funding Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>$5,000</td>
</tr>
<tr>
<td>$461,888</td>
</tr>
<tr>
<td>$289,000</td>
</tr>
<tr>
<td>$608,235</td>
</tr>
<tr>
<td>$1,814,123</td>
</tr>
</tbody>
</table>
City Council Agenda Item # 10B
Meeting of April 10, 2017

Brief Description: Resolution supporting local decision-making authority

Recommended Action: Adopt the resolution

Background

A significant number of bills are advancing through the Minnesota Legislature this session that would inhibit local control in a variety of policy areas. Attached is a list of bills that would restrict local decision-making. Among the bills are proposals that would:

- Constrain local law enforcement authority
- Restrict a city’s ability to set local ordinances
- Allow certain businesses unfettered access to public rights of way while eliminating a city’s ability to manage them
- Restrict a city’s ability to use allowed fee structures
- Restrict a city’s ability to study a light rail transit project
- Greatly expand the amount of data a city is required to retain

Among the city’s legislative priorities shared with our area legislators last month was to “continue to support local autonomy and accountability by not imposing unfunded mandates and artificial restrictions, like levy limits.”

The attached resolution expresses support for local decision-making authority and opposes legislation that removes the ability of local elected officials to respond to the needs of its constituents. If adopted, staff will provide a copy to our local legislators as well as the League of Minnesota Cities.

Recommendation

Adopt the resolution.

Submitted through:
   Geralyn Barone, City Manager
   Perry Vetter, Assistant City Manager

Originated by:
   David Maeda, City Clerk
## 2017 Bills to Restrict Municipal Authority (Updated 4-5-17)

<table>
<thead>
<tr>
<th>ISSUE</th>
<th>HF</th>
<th>SF</th>
<th>CURRENT STATUS</th>
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</thead>
<tbody>
<tr>
<td>Local Government Finance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eliminates LGA for cities that meet definition of “sanctuary city”</td>
<td>1664</td>
<td>n/a</td>
<td>House: Referred to Gov Ops; amended into HF 754 during Property Tax Division, laid over for possible inclusion, No Senate version</td>
</tr>
<tr>
<td>Eliminates LGA for cities that enact “sanctuary ordinances”</td>
<td>n/a</td>
<td>881</td>
<td>No House version, Senate: Introduced, referred to Taxes</td>
</tr>
<tr>
<td>Reduces LGA for cities that contribute to a World Fair, eliminates LGA for cities that are sanctuary cities, and reduces aid to cities and counties operating unauthorized driver diversion programs</td>
<td>754</td>
<td>n/a</td>
<td>House: World Fair and diversion provisions included in HF 4 (omnibus tax bill), No Senate version</td>
</tr>
<tr>
<td>Eliminates LGA for cities with sick time laws and other local labor regulations</td>
<td>2107</td>
<td>2157</td>
<td>House: Heard in Property Tax Division, laid over for possible inclusion, Senate: Referred to Taxes</td>
</tr>
<tr>
<td>Reduces LGA for lobbying expenses of local units of government</td>
<td>2187</td>
<td>2155</td>
<td>House: Heard in Property Tax Division, laid over for possible inclusion, Senate: Referred to Taxes</td>
</tr>
<tr>
<td>Requires reverse referendum every five years to authorize municipality to impose franchise fees to raise revenue</td>
<td>1146</td>
<td>2092</td>
<td>House: Included as provision in HF 4 (omnibus tax bill), Senate: Heard in Local Gov, referred to Taxes</td>
</tr>
<tr>
<td>Requires a reverse referendum for lease purchase of public buildings</td>
<td>112</td>
<td>1849</td>
<td>House: Included as provision in HF 4 (omnibus tax bill), Senate: Referred to Taxes</td>
</tr>
<tr>
<td>Provides a delayed reverse referendum requirement on a general city (over 500) or county levy increase</td>
<td>654</td>
<td>1590</td>
<td>House: Included as provision in HF 4 (omnibus tax bill), Senate: Referred to Taxes</td>
</tr>
<tr>
<td>ISSUE</td>
<td>HF</td>
<td>SF</td>
<td>CURRENT STATUS</td>
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</table>
| Creates special tax district to finance operating costs of light rail and bus rapid transit lines, and prohibits TIF districts from being created in the special taxing district for fixed guideway lines in operation or for which a locally preferred alternative has been designated, and no abatement of the incremental tax for the special taxing district may be made | 1315 | 1825 | House: Heard in Transportation Policy, referred to Transportation Finance  
Senate: Referred to Transportation Finance and Policy |
| Repeals city authority to establish special service districts | 2412 | n/a | House: Referred by Tax chair to Property Tax Division  
No Senate version |
| **Public Safety** | | | |
| Prohibits law enforcement agencies from using unmanned aerial cameras to gather evidence in certain circumstances | 1200 | 1529 | House: Referred to Public Safety  
Senate: Referred to Public Safety |
| Prohibits political subdivisions (and the State Building and Fire Code) from requiring installation of fire sprinklers in certain dwelling units | 681 | 579 | House: Included as provision in House version of SF 780 (omnibus agriculture finance bill; companion is HF 895)  
Senate: Included as provision in SF 780 (omnibus agriculture and housing appropriations bill) |
| Requires law enforcement agencies to comply with federal immigration detainers | 26 | n/a | House: Referred to Public Safety  
No Senate version |
| **Worker Benefits** | | | |
| Prohibits cities from enacting local employer benefit or minimum wage requirements | 600 | 580 | House: Passed by House 76-53  
Senate: On General Orders |
| Prohibits local governments including cities, towns, counties, etc., from enacting their own minimum wage requirements | 180 | n/a | House: Initially referred to Commerce, was re-referred to Jobs  
No Senate version |
<table>
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<tr>
<th>ISSUE</th>
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<tbody>
<tr>
<td>Administrative Issues</td>
<td></td>
<td></td>
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</tbody>
</table>
| Imposes new restrictions on interim ordinances related to housing | 330 | 201 | **House**: Passed by House 87-44; included in House version of SF 1937 (omnibus jobs, commerce, energy, labor and industry, and employment and economic development appropriations bill; companion is HF 2209)  
**Senate**: On General Orders |
| Requires cities and counties to notify potentially impacted businesses of an ordinance that impacts a business licensed in the jurisdiction, including if the ordinance changes the location or availability of a product or service provided by the business | 1242 | 1224 | **House**: On General Register  
**Senate**: On General Orders |
| Requires a minimum three-year data retention period for “correspondence”, and defines correspondence in government record retention law | 1185 | 1719 | **House**: Heard in Gov Ops, Civil Law, now in State Gov  
**Senate**: Referred to Judiciary |
| Requires a local government's data retention schedules provides for at least 18 months of retention for electronic records from the date the record is created | 70 | 123 | **House**: Referred to Gov Ops  
**Senate**: Heard informationally in Judiciary |
| Adds new notification requirements on counties and cities related to written procedures across the local governmental enterprise | 61 | n/a | **House**: Referred to Gov Ops  
**No Senate version** |
| Transportation | | | |
| Prohibits cities, counties, special taxing districts, and others from spending money on studying feasibility, planning, designing, engineering, etc. the development or operation of intercity or interregional passenger rail facilities or operations between the City of Rochester | 465 | 254 | **House**: Included as provision in HF 4 (omnibus tax bill)  
**Senate**: Heard in Transportation, laid over for possible inclusion |
<table>
<thead>
<tr>
<th>ISSUE</th>
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<tbody>
<tr>
<td>or locations in the metro area, and any location in the metro area</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Prohibits regional rail authorities and metro counties and cities from spending any money to study, plan, design, or construct a light rail line, or expand an existing line, unless the legislature explicitly authorizes it</td>
<td>418 &amp; 1866</td>
<td>150</td>
<td>House: Included as a provision in HF 861 (omnibus transportation bill)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Senate: Heard in Local Gov, Transportation Finance and Policy, referred to Finance</td>
</tr>
<tr>
<td>Prohibits political subdivisions from expending public sources of funds for a guideway project, whether for a new or extending line, including study, alternatives analysis, design, engineering, environmental analysis, land acquisition, purchasing rolling stock and other equipment, and construction</td>
<td>1630</td>
<td>n/a</td>
<td>House: Part of bill is included as a provision in HF 861 (omnibus transportation bill)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>No Senate version</td>
</tr>
<tr>
<td>Prohibits road authorities including cities from using funds that increase the cost for any aesthetic enhancements that increase the cost of a project on a highway or bridge, including monuments, markers, memorials, sculptures, statues, decorative fixtures, alternative materials, specialty signage and other treatments designed to impact the perceived beauty or visual appeal of the infrastructure</td>
<td>1062</td>
<td>n/a</td>
<td>House: Referred to Transportation Policy</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>No Senate version</td>
</tr>
<tr>
<td>Housing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Requires legislative approval of local housing goals that are currently negotiated between cities and the Metropolitan Council for the purpose of regional grant program funding</td>
<td>1037</td>
<td>n/a</td>
<td>House: Included as a provision in House version of SF 1937 (omnibus jobs, commerce, energy, labor and industry, and employment and economic development appropriations bill; companion is HF 2209)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>No Senate version</td>
</tr>
<tr>
<td>Solid Waste and Recycling</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adds more requirements which erode a local government's ability to manage solid waste collection.</td>
<td>1976</td>
<td>1755</td>
<td>House: Referred to Gov Ops</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Senate: Referred to Local Gov</td>
</tr>
<tr>
<td>ISSUE</td>
<td>HF</td>
<td>SF</td>
<td>CURRENT STATUS</td>
</tr>
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</tr>
<tr>
<td>Prohibits local government from banning or taxing plastic bags.</td>
<td>1504</td>
<td>1195</td>
<td><strong>House</strong>: Tax provision included in HF 4 (omnibus tax bill); policy language included as provision in House version of SF 1937 (omnibus jobs, commerce, energy, labor and industry, and employment and economic development appropriations bill; companion is HF 2209)  <strong>Senate</strong>: Included as provision in Senate version of HF 888 (omnibus environment and natural resources finance; companion is SF 723)</td>
</tr>
<tr>
<td>Regulatory Issues</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prohibits cities from imposing municipal planning fees to review or investigate a permitted use for compliance with any official control, which are ordinances or regulations that control the physical development of a city etc., including ordinances establishing zoning, subdivision controls, site plan regulations, sanitary codes, building codes, and official maps</td>
<td>957</td>
<td>n/a</td>
<td><strong>House</strong>: Included as a provision in HF 4 (omnibus tax bill)  <strong>No Senate version</strong></td>
</tr>
<tr>
<td>Allows for profit entities unregulated access to public right-of-way for installation of &quot;small cell wireless&quot; equipment, and supersedes many zoning ordinances and comprehensive plans in place</td>
<td>739</td>
<td>561</td>
<td><strong>House</strong>: Heard in Commerce, Gov Ops, Jobs, laid over for possible inclusion  <strong>Senate</strong>: Heard in Energy, referred to Local Gov</td>
</tr>
</tbody>
</table>
Resolution No. 2017-

Resolution supporting local decision-making authority

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

Section 1. Background.

1.01. More than two dozen bills have been introduced at the Minnesota Legislature this session that would restrict local decision-making.

1.02. Local elected officials are in the best position to determine what health, safety and welfare regulations best serve their constituents.

1.03. Local elected officials, just like members of the Minnesota House of Representatives and Minnesota Senate, are held accountable through our state’s robust election process.

1.04. Ordinances at the local level are enacted only after a comprehensive, legal and open process.

1.05 Cities are often laboratories for determining public policy approaches to the challenges that face residents and businesses.

Section 2. Council Action.

2.01. By adopting this resolution the council states its support for local decision-making authority and opposition to legislation that removes the ability of local elected officials to respond to the needs of its constituents.

Adopted by the City Council of the City of Minnetonka, Minnesota, on April 10, 2017.

______________________________
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 April 10, 2017.

__________________________________
David E. Maeda, City Clerk
City Council Agenda Item #11A
Meeting of April 10, 2017

Brief Description: Change orders to contract for Trunk Forcemain Lining Project – Phase III and amendment to the 2016 Capital Improvement Plan

Recommended Action: Approve the change orders and amend CIP

Background

On April 25, 2016, the city council awarded a contract for Phase III of the trunk forcemain lining project to Visu-Sewer, Inc. The contract amount was $1,290,312, which was below the $1,650,000 that the council budgeted in the 2016 Capital Improvement Plan.

During construction, the contractor encountered conditions that were not anticipated by the plans and specifications and, as a result, the contractor was entitled to additional compensation for the changed conditions. The contractor submitted two separate change orders. The first change order, in the amount of $213,822.50, was primarily due to an unanticipated high water table that significantly increased costs for de-watering of the access pits to the forcemain. It also included costs for installing two manholes that city records incorrectly showed as existing but were not there. The second change order, in the amount of $145,369.95, included costs for constructing a cast-in-place concrete structure needed to effectuate a turn for the forcemain as it crossed under Minnetonka Boulevard, as well as repairs to a failing watermain that was discovered in the same area. The public works director and consultant engineer have reviewed the change orders and determined them to be reasonable and necessary.

As a result of the change orders, the project is expected to exceed the 2016 CIP budget by $100,000. Staff recommends that the 2016 CIP be amended by increasing the budgeted amount for the forcemain lining project to $1,750,000, which continues to fit within the city’s financing plan for the utility system. Staff also requests that the council ratify the approval of the two change orders to the contract with Visu-Sewer, Inc., in the total amount of $359,192.45.

Recommendation

By motion, amend the 2016 CIP to $1,750,000 for the trunk forcemain lining project and ratify the two change orders to the Visu-Sewer, Inc. contract, in the total amount of $359,192.45.

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

Originated by:
Brian Wagstrom, Public Works Director
City Council Agenda Item #13A  
Meeting of April 10, 2017

**Brief Description**  
Temporary on-sale liquor license for ResourceWest, for use at 14600 Minnetonka Boulevard

**Recommendation**  
Hold the public hearing and grant the license

**Background**

The city has received an application for a temporary on-sale liquor license from ResourceWest for a fundraiser event to be held at 14600 Minnetonka Boulevard. The proceeds from the event will help them continue to provide residents of Minnetonka and surrounding communities service including: Information & Referral, Social Services, Community Technology Center, Back to School supplies, Winter Warm Wear, and Toy Chest. In addition, the proceeds help ResourceWest to continue to host a number of other agencies at their location: Prepare+Prosper, Hennepin County Economic Outreach, Relate Mental Health Counseling, PORTICO and Children's Dental Services.

The ResourceWest event will be held on Friday, April 28, from 6:00 p.m. to 10:00 pm, at the Minnetonka Community Center, 14600 Minnetonka Boulevard. The evening will consist of appetizers and a dinner buffet with wine and beer, silent/live auctions, and live music. Tickets are sold for the full evening. Board members will be checking identifications at the door, and volunteers will be checking at the open bar to ensure no one under the age of 21 is served liquor. Also, use of the community center requires that a police officer be on-duty.

ResourceWest has sponsored an event of this type since 2005, and each year has included a temporary on-sale liquor license. There have been no reported issues associated with the past events, from either the community center staff or the police department.

City liquor ordinances allow temporary on-sale liquor licenses to be issued to clubs and other charitable, religious, or not-for-profit organizations, subject to application, public hearing, and approval by the city council. ResourceWest has completed the license application, paid the administrative fee, and provided proof of insurance. They are a non-profit charitable organization, and are therefore eligible for a temporary liquor license.

Staff does not anticipate any difficulties in connection with serving wine and beer at the event held on April 28, 2017. The fundraiser will be held on one evening only, and only adults over the age of 21 will be allowed to be served a glass of wine or beer.
Recommendation

Staff recommends the council hold the public hearing and grant the license.

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

Originated by:
  Kathy Leervig, Community Development Coordinator
ResourceWest

SPRINGFEST

Boldly going where no non-profit has gone before. Join us for an out-of-this-world experience.

Josh Barnd will be spinning from here on earth
Complimentary beer and wine from local vendors
Heavenly appetizers and dinner buffet
Silent and live auctions
Chance to win $1000, $500, or $250 (with $20 raffle ticket)

Friday, April 28, 2017 6:00 – 10:00 pm
Minnetonka Community Center
14600 Minnetonka Blvd.

$50 per person – or reserve a table for 8!

Purchase tickets at ResourceWest.org
or call (952) 933-3860

We are grateful to our Event Gold Sponsor
City Council Agenda Item #14A
Meeting of April 10, 2017

Brief Description
Resolution amending loan documents executed in connection with the multifamily housing revenue obligations issued for the benefit of CHC Minnetonka Affordable Housing LLC; and authorizing the execution and delivery of an amendment document in connection with the request

Recommendation
Adopt the resolution

Background
On May 18, 2015, the EDA approved a Contract for Private Development with CHC Minnetonka Affordable Housing LLC (the “Borrower”), and Community Housing Corporation of America, Inc. related to the Music Barn Apartment project, which consists of the construction of 27 affordable apartment units and underground parking.

In addition to the Music Barn Project, the Borrower is also rehabilitating 46 existing affordable townhome units at 5400 Smetana Drive and rehabilitating 8 affordable townhome units at two locations in Golden Valley.

On May 9, 2016, the Borrower requested and received approval from the city council for the city to issue multifamily housing revenue bonds, in one or more series, as taxable or tax-exempt obligations in the estimated aggregate principal amount not to exceed $11,500,000. Following this approval, the Borrower obtained allocation for affordable housing bonds from the State of Minnesota. The allocation was required to be used within 120 days of the receipt of the award of allocation.

Following the meeting in May, the Borrower requested issuance of a temporary note because the HUD financing was taking longer than expected. On August 8, the council adopted Resolution 2016-063, which authorized the issuance of the city’s multifamily housing revenue note to provide short-term financing for the project. The note was issued on August 18 and sold to Bridgewater Bank. The Borrower, CHC Minnetonka Affordable Housing LLC, intended to refund the note with the proceeds of permanent obligations issued by the city.

On October 24, 2016 the city council adopted a resolution approving the issuance of revenue bonds to refund the note and to provide permanent financing for the project. At the time, the borrower continued to work towards finalizing the terms of the permanent financing and requested that the purchaser extend the mandatory redemption date of the short-term financing. The purchaser has agreed to those terms.
On December 19, 2016, the council approved a resolution extending the mandatory redemption date of the short-term financing and authorized city officials to enter into a Master Amendment Agreement, which would amend the Loan Agreement, Pledge Agreement, and Regulatory Agreements executed in connection with the issuance of the Note. The Master Amendment Agreement provided the consent of the purchaser required under the terms of the note.

The borrower continues to work on finalizing the terms of the permanent financing and is now requesting that the city council consider extending the mandatory redemption date until December 31, 2017. The attached letter from the city’s bond counsel further explains the request to extend the redemption date. In addition, Jay Jensen of Shelter Corporation provided the attached letter explaining the current tax credit market and status of the project. If the council fails to approve the extension, the project will not go forward.

Recommendation

Staff recommends the city council adopt the attached resolution authorizing the execution of related documents that include:

- Second Master Amendment Agreement

Submitted through:

Geralyn Barone, City Manager
Julie Wischnack, Community Development Director

Originated by:

Alisha Gray, Economic Development and Housing Manager

Supplemental Information:

December 19, 2016 City Council Report
October 24, 2016 City Council Report
May 9, 2016 City Council Report
May 18, 2015 EDA Report
March 28, 2017

Julie Wischnack  
Community Development Director  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, MN  55345-1502

Re: Resolution relating to the approval of additional amendments to loan documents in connection with the Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016

Dear Julie,

As you know, CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), is working with the City of Minnetonka (the “City”) and the City of Golden Valley, Minnesota (“Golden Valley”) to (i) finance the acquisition, construction, and equipping of approximately twenty-seven (27) new affordable apartment units to be located at 5750 Shady Oak Road in the City (the “Music Barn Apartments”); (ii) finance the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive in the City (the “Elmbrooke Apartments”); and (iii) finance the acquisition and substantial rehabilitation of six (6) existing affordable townhome units located at 2100 Douglas Drive North and two (2) existing affordable townhome units located at 3354 Lilac Drive North in Golden Valley (the “Golden Valley Townhomes,” and collectively with the Music Barn Apartments and the Elmbrooke Apartments, the “Project”).

On August 18, 2016, the City issued its Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Note”), in the original aggregate principal amount of $11,500,000, as short-term financing for the Project. The Note was sold to Bridgewater Bank (the “Purchaser”). Pursuant to the terms of the Note, the Note is subject to extraordinary mandatory redemption on December 31, 2016, unless the Purchaser consents to the extension of such date. On October 24, 2016, the City Council adopted a resolution approving the issuance of revenue bonds to refund the Note and to provide permanent financing for the Project. In order to provide more time to the Borrower to obtain permanent financing the Project, the Purchaser agreed to extend the extraordinary mandatory redemption date to May 31, 2017, which is authorized under the terms of the Note. The City Council adopted a resolution on December 19, 2016, approving the extension of the extraordinary mandatory redemption date and authorizing the execution of an amendment document to amend the Note, the Loan Agreement, the Pledge Agreement, and the Regulatory Agreements executed in connection with the issuance of the Note (collectively, the “Loan Documents”). The City, the Borrower, and the Purchaser executed the
Master Amendment Agreement, dated as of December 1, 2016, to amend the Loan Documents in order to memorialize the extension of the extraordinary mandatory redemption date to May 31, 2017.

The Borrower, however, is still working on finalizing the terms of the permanent financing and has subsequently requested that the Purchaser further extend the extraordinary mandatory redemption date to December 31, 2017, which the Purchaser has agreed to do.

Enclosed is a resolution for consideration by the City Council at its meeting on April 10, 2017. This resolution approves the additional extension of the extraordinary mandatory redemption date and authorizes City officials to enter into a Second Master Amendment Agreement, which would further amend the Loan Documents. The Second Master Amendment Agreement will provide the consent of the Purchaser required under the terms of the Note.

I will attend the City Council meeting on April 10, 2017 and can answer any questions that may arise during the meeting. Please contact me with any questions you may have prior to the City Council meeting.

Sincerely,

Julie A. Eddington
Alisha,

Since the last Presidential election day, the housing tax credit market has been in turmoil nationally. The basic reason for this relates to the potential significant reduction in the federal Corporate Income Tax rate from it’s current 35% to potentially as low as 15 to 20%. A reduction of this magnitude has a huge impact on corporations need to purchase housing tax credits to offset their federal income taxes.

Prior to the election, we received the housing tax credit pricing of $1.04 with our current pricing from US Bank at $.89. In addition, most tax credit purchasers are either waiting to see what the new Corporate Income Tax rate will be or pricing in the low $.80 range. We are fortunate to have an existing relationship with US Bank. The lower tax credit pricing results in almost a $500,000 reduction in the tax credit proceeds. This shortfall will be mainly made up by the non-profit General Partner, Community Housing Corporation, investing more money into the project bringing their total investment to approximately $2 million.

It will take approximately four to six months to complete this transaction so the parked tax-exempt bonds will need to be extended beyond their current May date.

Thank you for your cooperation. I will be at the April 10th City Council meeting to answer any questions.

Jay Jensen
Resolution No. 2017-____

Resolution amending loan documents executed in connection with the multifamily housing revenue obligations issued for the benefit of CHC Minnetonka Affordable Housing LLC; and authorizing the execution and delivery of an amendment document in connection therewith

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

Section 1. Recitals.

1.01. The City is a home rule city duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota.

1.02. On May 9, 2016, following a duly noticed public hearing, the Council adopted Resolution No. 2016-037 (the “Initial Resolution”), which authorized the issuance of one or more series of multifamily housing revenue bonds, in the maximum principal amount of $11,500,000, to be issued pursuant to Minnesota Statutes, Chapters 462C and 474A, as amended, and Sections 471.59 and 471.656, as amended, for the benefit of CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), the managing member of which is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company.

1.03. On August 8, 2016, following a duly noticed public hearing, the Council adopted Resolution No. 2016-063 (the “Note Resolution”), which authorized the issuance of the City’s Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Note”), in the original aggregate principal amount of $11,500,000, to provide short-term financing for the following: (i) the acquisition, construction, and equipping of approximately twenty-seven (27) new affordable apartment units to be located at 5750 Shady Oak Road in the City (the “Music Barn Apartments”); (ii) the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive in the City (the “Elmbrooke Apartments”); and (iii) the acquisition and substantial rehabilitation of six (6) existing affordable townhome units at 2100 Douglas Drive North and two (2) existing affordable townhome units at 3354 Lilac Drive North, Golden Valley, Minnesota (the “Golden Valley Townhomes,” and collectively with the Music Barn Apartments and the Elmbrooke Apartments, the “Project”).
1.04. The Note was issued on August 18, 2016 and was sold to Bridgewater Bank, a Minnesota banking corporation (the “Note Purchaser”). The City loaned the proceeds of the Note to the Borrower pursuant to a Loan Agreement, dated as of August 1, 2016 (the “Loan Agreement”), between the City and the Borrower. The City assigned its interest in the Loan Agreement (except for certain unassigned rights set forth in the Loan Agreement) to the Note Purchaser pursuant to a Pledge Agreement, dated as of August 1, 2016 (the “Pledge Agreement”), between the City and the Note Purchaser. To secure the Borrower’s obligations under the Loan Agreement, Community Housing Corporation of America, Inc., a Delaware nonprofit corporation, executed and delivered a Guaranty Agreement, dated as of August 1, 2016, to the Note Purchaser. The City, the Borrower, and the Note Purchaser executed a Regulatory Agreement with respect to each of the Music Barn Apartments, the Elmbrooke Apartments, and the Golden Valley Townhomes, each dated August 18, 2016 (collectively, the “Regulatory Agreements”), to ensure compliance with certain rental and occupancy restrictions imposed by the Act and Section 142(d) of the Internal Revenue Code of 1986, as amended, and to ensure compliance with certain restrictions imposed by the City.

1.05. The Borrower intended to refund the Note with the proceeds of permanent obligations to be issued by the City. The Note was subject to extraordinary mandatory redemption or purchase in lieu of redemption on December 31, 2016, unless extended as provided by the terms of the Note and with the consent of the Note Purchaser.

1.06. On December 19, 2016, the Council adopted Resolution No. 2016-140, approving the extension of the extraordinary mandatory redemption date to May 31, 2017.

1.07. In order to memorialize the extension of the mandatory redemption date, the City, the Borrower, and the Note Purchaser entered into a Master Amendment Agreement, dated as of December 1, 2016, which amended the Loan Agreement, the Pledge Agreement, the Regulatory Agreements, and the Note to incorporate the extension of the extraordinary mandatory redemption date to May 31, 2017.

1.08. The Borrower has requested that the Note Purchaser further extend the extraordinary mandatory redemption date, and the Note Purchaser has agreed to extend the extraordinary mandatory redemption date to December 31, 2017.

1.09. There has been presented before the Council a form of Second Master Amendment Agreement (the “Second Master Amendment Agreement”) proposed to be entered into between the City, the Borrower, and the Note Purchaser.
Purchaser, which further amends the Loan Agreement, the Pledge Agreement, and the Regulatory Agreements to incorporate the extension of the extraordinary mandatory redemption date to December 31, 2017.

Section 2. Amendments Approved.

2.01. The Mayor and the City Manager are hereby authorized and directed to execute and deliver the Second Master Amendment Agreement. All of the provisions of the Second Master Amendment 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 Second Master Amendment 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, and 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 determinations.

2.02. The Mayor and the City Manager are authorized to execute and deliver any additional documents or certificates deemed necessary to carry out the intention of this resolution and the Second Master Amendment Agreement.

2.03. The Council hereby affirms its findings in the Initial Resolution and the Note Resolution.

Section 3. Effective Date. This resolution shall be in full force and effect from and after its approval. The approvals contained in the resolution are effective for one year after the date hereof.
Adopted by the City Council of the City of Minnetonka, Minnesota this 10th day of April, 2017.

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 meeting held on April 10, 2017.

David E. Maeda, City Clerk
SECOND MASTER AMENDMENT AGREEMENT

between

CITY OF MINNETONKA, MINNESOTA,
as Issuer

CHC MINNETONKA AFFORDABLE HOUSING LLC,
as Borrower

and

BRIDGEWATER BANK,
as Purchaser

Dated as of April 1, 2017

Relating to:

$11,500,000
City of Minnetonka, Minnesota
Multifamily Housing Revenue Note
(Minnetonka Affordable Housing Project)
Series 2016

This instrument drafted by:
Kennedy & Graven, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
SECOND MASTER AMENDMENT AGREEMENT

THIS SECOND MASTER AMENDMENT AGREEMENT is entered into as of April 1, 2017 (the “Second Master Amendment Agreement”), between the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “Issuer”), CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company (the “Borrower”), and BRIDGEWATER BANK, a Minnesota banking corporation (the “Purchaser”).

RECITALS

WHEREAS, on August 18, 2016, the Issuer issued its Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Note”), in the original aggregate principal amount of $11,500,000, pursuant to Minnesota Statutes, Chapters 462C and 474A, as amended, Minnesota Statutes, Sections 471.59 and 471.656, as amended, and resolutions adopted by the City Council of the Issuer on May 9, 2016 and August 8, 2016; and

WHEREAS, the Note was issued for the benefit of the Borrower, whose managing member is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, for the purpose of providing short-term financing for all or a portion of (i) the acquisition, construction, and equipping of approximately twenty-seven (27) new affordable apartment units to be located at 5750 Shady Oak Road, Minnetonka, Minnesota (the “Music Barn Apartments”); (ii) the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive, Minnetonka, Minnesota (the “Elmbrooke Apartments”); and (iii) the acquisition and substantial rehabilitation of six (6) existing affordable townhome units at 2100 Douglas Drive North and two (2) existing affordable townhome units at 3354 Lilac Drive North, Golden Valley, Minnesota (the “Golden Valley Townhomes”); and

WHEREAS, the Issuer sold the Note to the Purchaser and loaned the proceeds thereof to the Borrower pursuant to a Loan Agreement, dated as of August 1, 2016 (the “Loan Agreement”), between the Issuer and the Borrower; and

WHEREAS, the Issuer assigned its interest in the Loan Agreement (except for certain unassigned rights set forth therein) to the Purchaser pursuant to a Pledge Agreement, dated as of August 1, 2016; and

WHEREAS, to ensure compliance with certain rental and occupancy restrictions imposed by the Act and Section 142(d) of the Internal Revenue Code of 1986, as amended (the “Code”), and to ensure compliance with certain restrictions imposed by the Issuer, the Issuer, the Borrower, and the Purchaser entered into a separate Regulatory Agreement with respect to each of the Music Barn Apartments, the Elmbrooke Apartments, and the Golden Valley Townhomes, each dated August 18, 2016 (collectively, the “Regulatory Agreements”); and

WHEREAS, to secure the obligations of the Borrower under the Loan Agreement, Community Housing Corporation of America, Inc., a Delaware nonprofit corporation (the “Guarantor”), executed and delivered to the Purchaser a Guaranty Agreement, dated as of August 1, 2016; and

WHEREAS, pursuant to the terms of the Note, the Note is subject to extraordinary mandatory redemption or purchase in lieu of redemption on December 31, 2016, but this date may be extended one or more times, with the consent of the Purchaser, to a date no later than December 31, 2019; and
WHEREAS, in order to allow the Borrower more time to obtain permanent financing for the
Project, the Purchaser agreed to extend the mandatory redemption date of the Note to May 31, 2017; and

WHEREAS, the Issuer, the Borrower, and the Purchaser executed a Master Amendment
Agreement, dated as of December 1, 2016, which amended the Note, the Loan Agreement, the Pledge
Agreement, and the Regulatory Agreements to extend the mandatory redemption date of the Note to
May 31, 2017; and

WHEREAS, the Borrower has requested additional time to obtain permanent financing for the
Project, and the Purchaser has agreed to make another extension of the extraordinary mandatory
redemption date of the Note to December 31, 2017; and

WHEREAS, the parties hereto are entering into this Second Master Amendment Agreement to
extend the extraordinary mandatory redemption date of the Note in accordance with the terms of the Note;
and

WHEREAS, the Guarantor has agreed to acknowledge and consent to this Second Master
Amendment Agreement to ensure that the Guaranty remains in full force and effect until the Note matures
or is redeemed; and

NOW THEREFORE, the Issuer, the Borrower, and the Purchaser each in consideration of the
representations, covenants and agreements of the other as set forth herein, mutually represent, covenant
and agree as follows:

ARTICLE I

AMENDMENTS

Section 1.1 Amendment to the Note. Section 8 of the Note is hereby deleted and replaced
with the following:

8. The Note is subject to extraordinary mandatory redemption or purchase in lieu of
redemption in whole but not in part, at a redemption price equal to the Principal Balance of the
Note plus accrued interest thereon, without premium, without notice, on the earlier of
(i) December 31, 2017 or (ii) the date the Purchaser transfers this Note to another person through
assignment or purchase, unless such date is extended as provided below, if the Refunding (as
defined in the Loan Agreement) of the Note has not occurred on or before such date. The
extraordinary mandatory redemption date shall be extended one or more times to a date not later
than December 31, 2019 with the consent of the Purchaser and upon delivery to the Purchaser of
an opinion of Bond Counsel to the effect that such extension will not adversely affect the
tax-exempt status of interest paid on the Note.

Section 1.2 Amendment to Section 4.4 of the Loan Agreement. Subsection (e) of Section 4.4
of the Loan Agreement is hereby deleted and replaced with the following:

(e) In order to qualify the Note and this Loan Agreement under the “governmental
program” provisions of Section 1.148-2(d)(2)(iii) of the Treasury Regulations, the Borrower (and
any “related person” thereto) shall take no action the effect of which would be to disqualify this
Loan Agreement as a “program investment” under Section 1.148-1(b), including but not limited
to entering into any arrangement, formal or informal, for the Borrower or any related person to
purchase any obligations that finance the program in an amount related to the amount of the
Agreement. Notwithstanding the foregoing, the Issuer understands that the Borrower has an obligation to repurchase the Note from the Purchaser on or before December 31, 2017 (the “Mandatory Purchase Date”), unless extended, and if the Borrower is unable to find replacement financing, the Borrower may be the holder of the Note for a period of time after the Mandatory Purchase Date.

Section 1.3 Amendments to the Pledge Agreement and the Regulatory Agreements. The Pledge Agreement and the Regulatory Agreements are hereby amended, in general, to incorporate the extension of the extraordinary mandatory redemption date of the Note to December 31, 2017, which may be further extended in accordance with the provisions of the Note.

ARTICLE II

MISCELLANEOUS

Section 2.1 Effective Date. The amendments made to the Loan Agreement, the Pledge Agreement, and the Regulatory Agreements, as set forth in this Second Master Amendment Agreement, shall be effective as of April 10, 2017.

Section 2.2 Consent. By executing this Second Master Amendment Agreement, the Purchaser hereby provides its consent to the extension of the extraordinary mandatory redemption date, as required by Section 8 of the Note.

Section 2.3 Certain Defined Terms. Terms used in this Second Master Amendment Agreement and not defined herein shall have the meanings given in the Loan Agreement.

Section 2.4 Confirmation of Agreements. Except as specifically amended by this Second Master Amendment Agreement, the Loan Agreement, the Pledge Agreement, and the Regulatory Agreements are hereby ratified and confirmed and remain in full force and effect.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Issuer, the Borrower, and the Purchaser have caused this Second Master Amendment Agreement to be executed in their respective names all as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By ________________________________
Its Mayor

By ________________________________
Its City Manager
Execution page of the Borrower to the Second Master Amendment Agreement, dated as of the date and year first written above.

CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company

By: CHC Minnetonka Affordable Housing MM LLC
Its: Managing Member

By: ____________________________
Name: Richard Martin
Title: Administrative Manager
Execution page of the Purchaser to the Second Master Amendment Agreement, dated as of the date and
year first written above.

BRIDGEWATER BANK

By

Nicholas Place

Its Senior Vice President and Chief Lending Officer
The undersigned, as guarantor under the Guaranty Agreement, dated as of August 1, 2016 (the “Guaranty”), hereby acknowledges and consents to this Second Master Amendment Agreement, dated as of the date and year first written above, and also confirms that the Guaranty shall remain in full force and effect until the Note matures or is redeemed.

COMMUNITY HOUSING CORPORATION OF AMERICA, INC.

By

______________________________
Its Secretary
City Council Agenda Item #14B
Meeting of April 10, 2017

Brief Description
Preliminary and final plats, with front yard setback variances, and waiving the McMansion Policy, for THE ENCLAVE AT REGAL OAK at 3639 Shady Oak Road and 3627 Regal Oak Lane

Recommendation
Adopt the resolution approving the plats, with front yard setback variances, and waiving the McMansion Policy

Background

July 2016. The city conducted a concept plan review for subdivision of the existing residential properties at 3639 Shady Oak Road and 3627 Regal Oak Lane. The plan contemplated division of the properties into six, single-family lots ranging in size from 8,600 square feet to 29,000 square feet. The council generally expressed that the proposed number of lots was too high.

August 2016. Airborne Construction One, LLC submitted formal plans for subdivision of the two properties. The plan proposed division into five, single-family lots ranging in size from 15,020 square feet to 46,110 square feet. The home at 3639 Shady Oak Road would be removed, the home at 3627 Regal Oak would remain, and four new homes would be constructed. The proposal required approval of: (1) rezoning from R-1, low-density residential, to PUD, planned unit development; (2) a master development plan; and (3) preliminary and final plats.

October 2016. The planning commission considered the proposed five-lot subdivision. The commission concurred with staff recommendation and recommended the council deny the subdivision for three reasons:

1. The proposed subdivision would not result in a significant public benefit warranting use of PUD zoning. Rather, it would simply result in creation of five lots on an area where four lots could otherwise be achieved.

2. The city is legally obligated to allow reasonable use of a property; it is not obligated to allow maximum use. As currently configured, there are two residential lots on the east side of Regal Oak each containing a single-family home. This constitutes reasonable use of the site. In the event that a subdivision were proposed that met existing R-1 zoning standards, as well as the provisions of the tree protection ordinance, that too would constitute reasonable use of the properties.

3. The proposal would result in removal of, or significant impact to, 55 percent of the high-priority trees located outside of the sites’ woodland preservation area (WPA). This would exceed the 35 percent allowed under the tree protection ordinance.
This proposal was not considered by the council. Rather, the applicant chose to reevaluate the specifics of the plan.

**November 2016.** The applicant submitted revised information and plans, including: (1) imposition of design and size restrictions on new homes within the subdivision; and (2) revised grading. Staff evaluated the plans and still found that they would result in a significant impact to natural topography and trees. Staff then commissioned an engineering firm—different than that being used by the applicant—to take a “fresh” look at the proposed subdivision and offer general plan improvements (at the applicant’s expense). The general plan provided by the city’s consultant increased preservation of significant trees and an existing wooded area east of the proposed home sites, but would not necessarily increase preservation of high-priority trees. Staff presented the general plan to the applicant, who was amenable to making the changes suggested by the plan.

**January 2017.** The city council considered the November 2016 plans and consultant-drafted general grading plan. Staff continued to be of the opinion that the proposal did not warrant the use of PUD zoning. The council concurred with staff’s opinion. However, rather than denying the requests, the proposal was tabled to allow for further plan revisions.

**Current Proposal**

Airborne Construction One, LLC has now submitted applications for a subdivision consistent with the properties’ current R-1 zoning. As proposed, the properties at 3639 Shady Oak Road and 3627 Regal Oak would be divided into four lots. The home at 3639 Shady Oak Road would be removed, the home at 3627 Regal Oak would remain, and three new homes would be constructed.

**Planning Commission Hearing and Recommendation**

The planning commission considered the request on March 23, 2017. The commission report and associated plans are attached. Staff recommended approval of the plats, with setback variances, and waiving the McMansion Policy noting that:

1. The proposed lots would meet all minimum size and dimension standards as required by city code.

2. Though the amount of grading and tree impact would still be visually significant, the anticipated impact to high-priority trees would be as allowed by the tree protection ordinance.

3. While the homes could be constructed meeting the required 35-foot front yard setback, such location would likely result in more grading and associated tree loss along the eastern portion of the site. Though there are few high-priority trees along the property line outside of the WPA, the trees that do exist in the area create a wooded “feel.”
4. The requested front yard setback variances, with commensurate rear yard setback increases, would not impact the buildable area of any of the proposed lots. Rather, the variances would simply shift the buildable area with the intent of minimizing grading and associated trees loss.

At the meeting, a public hearing was opened to take comment. Three area residents addressed the commission. One expressed concern that while the original proposal was for smaller homes, the current proposal include no home size restrictions. The second resident requested that required tree mitigation be generally located along the east property line. The final speaker noted concerns about existing and possible drainage through the WPA. The commission asked questions and discussed the proposal, with particular emphasis on the McMansion Policy. The commission asked what maximum floor area ratio (FAR) and resulting home size could be if the policy were applied. Staff noted the following:

<table>
<thead>
<tr>
<th></th>
<th>0.16 FAR max. for existing homes on Regal Oak</th>
<th>0.22 FAR max. per McMansion Policy review area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot 1</td>
<td>22,410 sq.ft.</td>
<td>4,930 sq.ft.</td>
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<tr>
<td>Lot 2</td>
<td>22,000 sq.ft.</td>
<td>4,840 sq.ft.</td>
</tr>
<tr>
<td>Lot 3</td>
<td>23,100 sq.ft.</td>
<td>5,080 sq.ft.</td>
</tr>
</tbody>
</table>

* area following 7-ft ROW dedication

By policy and city code definition, floor area includes the sum 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.

Ultimately, the commission indicated it was comfortable with the proposed lots and requested setback variances, but was not inclined to waive the McMansion Policy. On a 5-0 vote, the commission recommend the city council approve the preliminary and final plats, with setback variances, but enforce the McMansion Policy at a maximum FAR of 0.22. Meeting minutes are attached. There have been no changes to the proposal since the hearing.

**Staff Recommendation**

Staff understands, but does not necessarily agree with, the planning commission’s position regarding the enforcement of the McMansion Policy.

As previously noted, the applicant’s proposal would result in a significant amount of grading and disturbance to the wooded area on the site. However, this disturbance and removal would not be over allowable thresholds outlined by city code. Given this, and the fact that no rezoning is requested, the city has little discretion related to grading and disturbance. In fact, the city’s only “leverage” is to allow a reduced front yard setback and
require an increased rear yard setback. If the city chooses to enforce the McMansion Policy, the applicant could choose to remove the front yard setback variance request, and therefore the required increased rear yard setback, and push the homes closer to the east property line. The front yard setback variances, and commensurate rear yard setback increases, were not requested in order to “get” larger homes than could otherwise be constructed on site. They were suggested by staff in an effort to reduced site impact. From staff’s perspective, retaining some wooded area, even a relatively small amount, is worth allowing waiving the McMansion Policy in this instance.

Staff recommends the city council adopt the resolution approving preliminary and final plats, with front yard setback variances, and waiving the McMansion Policy, for THE ENCLAVE AT REGAL OAK at 3639 Shady Oak Road and 3627 Regal Oak Lane.

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

Originator: Susan Thomas, Assistant City Planner
Brief Description
Preliminary and final plats, with front yard setback variances, and waiving the McMansion Policy, for THE ENCLAVE AT REGAL OAK at 3639 Shady Oak Road and 3627 Regal Oak Lane.

Recommendation
Recommend the city council adopt the resolution approving the plats.

Background

July 2016. The city conducted a concept plan review for subdivision of the existing residential properties at 3639 Shady Oak Road and 3627 Regal Oak Lane. The plan contemplated division of the properties into six, single-family lots ranging in size from 8,600 square feet to 29,000 square feet. The council generally expressed that the proposed number of lots was too high.

August 2016. Airborne Construction One, LLC submitted formal plans for subdivision of the two properties. The plan proposed division into five, single-family lots ranging in size from 15,020 square feet to 46,110 square feet. The home at 3639 Shady Oak Road would be removed, the home at 3627 Regal Oak would remain, and four new homes would be constructed. The proposal required approval of: (1) rezoning from R-1, low-density residential, to PUD, planned unit development; (2) a master development plan; and (3) preliminary and final plats.

October 2016. The planning commission considered the proposed five-lot subdivision. The commission concurred with staff recommendation and recommended the council deny the subdivision for three reasons:

1. The proposed subdivision would not result in a significant public benefit warranting use of PUD zoning. Rather, it would simply result in creation of five lots on an area where four lots could otherwise be achieved.

2. The city is legally obligated to allow reasonable use of a property; it is not obligated to allow maximum use. As currently configured, there are two residential lots on the east side of Regal Oak each containing a single-family home. This constitutes reasonable use of the site. In the event that a subdivision were proposed that met existing R-1 zoning standards, as well as the provisions of the tree protection ordinance, that too would constitute reasonable use of the properties.

3. The proposal would result in removal of, or significant impact to, 55 percent of the high-priority trees located outside of the sites' woodland preservation area. This would exceed the 35 percent allowed under the tree protection ordinance.
This proposal was not considered by the council. Rather, the applicant chose to reevaluate the specifics of the plan.

November 2016. The applicant submitted revised information and plans, including: (1) imposition of design and size restrictions on new homes within the subdivision; and (2) revised grading. Staff evaluated the plans and still found that they would result in a significant impact to natural topography and trees. Staff then commissioned an engineering firm – different than that being used by the applicant – to take a “fresh” look at the proposed subdivision and offer general plan improvements. The general plan provided by the city’s consultant increased preservation of significant trees and an existing wooded area east of the proposed home sites, but would not necessarily increase preservation of high-priority trees. Staff presented the general plan to the applicant, who was amenable to making the changes suggested by the plan.

January 2017. The city council considered the November 2016 plans and consultant-drafted general grading plan. Staff continued to be of the opinion that the proposal did not warrant the use of PUD zoning. The council concurred with staff’s opinion. However, rather than denying the requests, the proposal was tabled to allow for further plan revisions.

Current Proposal

Airborne Construction One, LLC has now submitted applications for a subdivision consistent with the properties’ current R-1 zoning. As proposed, the properties at 3639 Shady Oak Road and 3627 Regal Oak would be divided into four lots. The home at 3639 Shady Oak Road would be removed, the home at 3627 Regal Oak would remain, and three new homes would be constructed.

Current Proposal Summary

The following is intended to summarize the applicant’s proposal. Additional information associated with the proposal can be found in the “Supporting Information” section of this report.

- Existing Site Conditions. The subject properties are located near the northeast corner of the Shady Oak Road/Regal Oak intersection. The 3639 Shady Oak Road property is roughly 2.2 acres in size. The existing home, constructed in 1960, is located near the highest point of the lot. Grade falls in all directions from this point; there is a 50-foot change in elevation from the highest to lowest point on the property. The 3627 Regal Oak property, on which a home was constructed in 1986, is 0.4 acres in size. It too contains a 50-foot change in elevation, with grade falling from south to north. In addition to mature oak, elm, and boxelder trees, both properties contain a mesic oak forest woodland preservation area (WPA).
• **Proposed Lots.** The applicant proposes to divide the two existing properties into four residential lots, ranging in size from 22,000 square feet to over 46,000 square feet.

• **Site impacts.** Significant grading would occur to accommodate construction on the proposed lots and installation of required utilities and stormwater management facilities.

**Primary Questions and Analysis**

A land use proposal is comprised of many details. In evaluating a proposal, staff first reviews these details and then aggregates them into a few primary questions or issues. The following outlines both the primary questions associated with the proposed subdivision and staff’s findings.

• **Are the proposed lots reasonable?**

  Yes. The proposed lots would meet all minimum size and dimension standards as required by city code.

<table>
<thead>
<tr>
<th>Area</th>
<th>Width</th>
<th>Average Depth</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Buildable</td>
</tr>
<tr>
<td>Required</td>
<td>22,000 sq.ft.</td>
<td>3,500 sq.ft.</td>
</tr>
<tr>
<td>Lot 1</td>
<td>23,410 sq.ft.</td>
<td>8,295 sq.ft.</td>
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<tr>
<td>Lot 2</td>
<td>22,000 sq.ft.</td>
<td>8,615 sq.ft.</td>
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<tr>
<td>Lot 3</td>
<td>23,100 sq.ft.</td>
<td>9,870 sq.ft.</td>
</tr>
<tr>
<td>Lot 4</td>
<td>46,110 sq.ft.</td>
<td>10,065 sq.ft.*</td>
</tr>
</tbody>
</table>

  All numbers rounded down to nearest 5 ft. or 5 sq. ft.

  * outside of proposed conservation easement

• **Are the proposed site impacts reasonable?**

  Yes. The proposed subdivision has been evaluated for conformance with the city’s natural resource ordinances, including the tree protection and steep slope ordinances. These ordinances attempt to balance the community benefit of preserving natural resources with private development rights.

  **Trees.** Under the tree ordinance, no more than 35% of a site’s high-priority trees may be removed or impacted during development. The subject property contains 31 high-priority trees and 92 significant trees. The proposed subdivision and resulting construction would result in removal of, or substantial damage to, 10 high-priority trees. This level of removal/damage would meet the standards of the tree protection ordinance.
### Steep Slope.

By code definition, a “steep slope” is one that: (1) rises at least 25 feet; (2) has an average grade change of at least 20%; and (3) has a width of at least 100 feet. There are several areas within the proposed subdivision that are visually steep and that meet one or two of the “steep slope” criteria. However, there is no area that meets all three criteria. Therefore, there is no code-defined “steep slope” on the site.

### Is the requested front yard setback variance reasonable?

Yes. The general plans submitted by the applicant illustrate homes generally located 25 feet from the front property lines adjacent to Regal Oak. While the homes could certainly be constructed meeting the required 35-foot front yard setback, such location would likely result in more grading and associated tree loss along the eastern portion of the site. Though there are few high-priority trees along the property line outside of the WPA, the trees that do exist in the area create a wooded “feel.”

In order to minimize grading and maximize tree protection during the initial construction phase, staff supports the requested 10-foot reduction in front yard setback with a commensurate 10-foot increase in rear yard setback. With a lesser front yard setback offset by greater rear yard setback, the allowable buildable area on each lot would not increase. Rather, it would simply shift to the west. Further, the proposed 25-foot front yard setback is consistent with the setback of other existing homes along the Regal Oak cul-de-sac. In 1979 when the properties were originally platted, front yard setback variances from 35 feet to 25 feet were granted for four of the five lots.

### Should the McMansion Policy be waived?

Yes. From staff’s perspective, the intent of the McMansion Policy is twofold: (1) to ensure that homes requiring variances – either due to non-conformance with lot standards or setback standards – have a visual mass similar to that of existing homes within a neighborhood; and (2) to ensure there is some connection between the buildable area of a property and the mass of the home constructed on it.

The requested front yard setback variances, with commensurate rear yard setback increases, would not impact the buildable area of any of the proposed lots. Rather, the variances would simply shift the buildable area with the intent of minimizing

<table>
<thead>
<tr>
<th>Trees</th>
<th>Existing</th>
<th>Impacted or Removed</th>
</tr>
</thead>
<tbody>
<tr>
<td>High-Priority</td>
<td>31</td>
<td>10 trees or 32%</td>
</tr>
<tr>
<td>Significant</td>
<td>92</td>
<td>54 trees or 57%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>123</td>
<td>64 trees or 52%</td>
</tr>
</tbody>
</table>
grading and associated trees loss. Given that the variance would not allow for larger homes to be constructed on the lots than would otherwise be allowed, staff supports waiving the McMansion Policy.

**Staff Recommendation**

Recommend the city council adopt the resolution approving preliminary and final plats, with front yard setback variances, and waiving the McMansion Policy, for THE ENCLAVE AT REGAL OAK at 3639 Shady Oak Road and 3627 Regal Oak Lane.

Originator: Susan Thomas, AICP, Assistant City Planner
Through: Loren Gordon, AICP, City Planner
Supporting Information

**Surrounding Uses**  
The subject properties are surrounded by single-family residential lots.

**Surrounding Lots**  
The properties within 400 feet of the subject properties and 1000 feet along Shady Oak Road have a mean average size of 27,635 square feet and a median average size of 23,079 square feet.

**Planning**  
Guide Plan designation: low-density residential  
Existing Zoning: R-1, low-density residential

**Grading**  
Significant grading would occur to accommodate the proposed home sites and installation of utilities and stormwater management practices. Generally, excavation would occur on the southerly portion of the development and fill in the northerly portion. For example, on proposed Lot 1 two to nine feet of excavation would be required, while on Lot 3 six to eight feet of fill may occur.

**Stormwater**  
Under the city’s stormwater rule, stormwater management must be provided for each individual home. Stormwater facilities, such as rain gardens, must control for runoff rate, volume and quality. Under the general plans submitted, runoff from new impervious surface would be directed to one of two raingardens that would be constructed adjacent to Regal Oak. As a condition of approval, specific stormwater plans must be submitted for staff review and approval in conjunction with building permit applications for each lot.

**Utilities**  
Public water, sanitary, and storm sewer facilities are available to the site from both Shady Oak Road and Regal Oak.

**Variance Standard**  
A variance may be granted from the requirements of the zoning ordinance when: (1) it is in harmony with the general purposes and intent of the ordinance; (2) it is consistent with the comprehensive plan; and (3) when an applicant establishes that there are practical difficulties in complying with the ordinance. Practical difficulties mean that the applicant proposes to use a property in a reasonable manner not permitted by the ordinance, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and, the variance if granted, would not alter the essential character of the locality. (City Code §300.07)
**Purpose and Intent.** The intent of the front yard setback requirement is twofold: (1) to ensure adequate separation between structures and the traveled portion of streets; and (2) to establish consistent building lines with a neighborhood. The proposed setback would meet this intent:

1. A standard parking stall is 18 feet in length, as such the 25-foot setback would allow vehicles to be parked on driveways without encroaching on public right-of-way.

2. The setback would be consistent with other variances approved for the Regal Oak neighborhood.

**Comprehensive Plan.** The guiding principles in the comprehensive plan provide for maintaining, preserving, and enhancing existing single-family neighborhoods. The requested setback variances are not contrary to these principles. Rather, they could allow for construction at a building line consistent with that approved for the larger area.

**Practical Difficulties.**

1. Reasonableness. With a commensurate increase in rear yard setback, the requested decrease in front yard setback would not increase the buildable area of any lot. Rather, it would simply shift the buildable area to the west.

2. Unique Circumstance and Neighborhood Character. The proposed 25-foot setback would be consistent with the 25-foot setback also established by variance for other homes along Regal Oak.

**McMansion Policy**

The McMansion Policy is a tool the city can utilize to ensure new homes or additions requiring variances are consistent with the character of the existing homes within the neighborhood. By policy, the floor area ratio (FAR) of the subject property cannot be greater than the largest FAR of properties within 1,000 feet on the same street, and a distance of 400 feet from the subject property. The highest FAR on Regal Oak is 0.16.

**Tree Removal**

The tree protection ordinance establishes specific thresholds for tree removal and impact during subdivision and during the construction of new homes, additions, or accessory buildings. Two years after issuance of a certificate of occupancy for a home, and outside of construction activity, the protection standards no longer apply.
In other words, but for trees located within a conservation easement, a private property owner may choose to remove a tree on his or her property two years following issuance of a certificate of occupancy. In this way, the tree protection ordinance attempts to balance the potential impact of development and construction with the private property rights.

**Natural Resources**
Best management practices must be followed during the course of site preparation and construction activities. This would include installation and maintenance erosion control fencing.

**Outside Agencies**
The applicant’s proposal has been submitted to various outside agencies for review, including Hennepin County and Minnehaha Creek Watershed District.

**Pyramid of Discretion**

**Motion Options**
The planning commission has several options:

1. Approve as presented by staff. In this case, a motion should be made recommending the city council adopt the resolution approving the plats, with setback variances, and waiving the McMansion Policy.

2. Approve the plats, without setback variances. In this case, a motion should be made to recommend the city council approve the plats, but deny the front yard setback variances. This motion should include a statement as to why the denial is recommended.

3. Approve the plats with setback variances, but enforce the McMansion Policy. In this case, a motion should be made recommending the city council adopt the resolution approving the plats, with setback variances, and enforce the floor area ratio regulations as established by the McMansion Policy.
4. Deny the plats. In this case, a motion should be made to recommend the city council deny the plats. This motion should include a statement as to why the denial is recommended.

5. Table the request. In this case, a motion should be made to table the item. The motion should include a statement as to why the request is being tabled with direction to staff, the applicant, or both.

**Voting Requirement**

The planning commission will make a recommendation to the city council. A recommendation for approval requires an affirmative vote of five members, due to the setback variances. The city council’s final approval requires an affirmative vote of five members, again due to the setback variances.

**Neighborhood Comments**

The city sent notice to 116 area property owners and has no written comments to date.

**Deadline for Action**

120-day statutory deadline has been waived.
Location Map

Project: Enclave at Regal Oak
Applicant: Airborne Construction One LLC
Address: 3639 Shady Oak Rd
Project No. 16007.16b
1. A resolution approving a conditional use permit for a restaurant and outdoor eating area, with variances, at 13008 Minnetonka Boulevard (see pages A35-A40).

2. A resolution approving final site and building plans, with variances, for site and building changes at 13008 Minnetonka Boulevard (see pages A41-A49).

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

9. Other Business

A. Concept plan review for The Enclave at Regal Oak, 3639 Shady Oak Road.

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

Thomas reported. Staff recommends the planning commission provide comments and feedback to assist the applicant with future direction that may lead to the preparation of more detailed development plans.

Roger Anderson, applicant, thanked staff and commissioners for their input and feedback on the proposal. He has enjoyed working with staff and thinks it will be great going forward. He is the developer and civil engineer on the project. He stated that:

- The plat makes sense to him. It has a nice flow. The drainage and utilities layout nicely.
- Jo Colleran did a good job of delineating the old-growth woods. A survey was done. There is a conservation easement on the north side of the property. He entered into discussions with the neighbor to join the conservation easement. A stormwater pond may be added.
- He wants to include a rain garden on each lot to treat and minimize stormwater impact.

Mike Haley stated that he is working with Mr. Anderson on the home designs. He stated that:

- The concept is simple. He wants to build 5 homes that are geared to empty nesters. He provided an illustration of a model with one level and 1,500 square feet on the main floor.
• The average homeowner is 65 years of age in Minnetonka. Most want to downsize, but stay in the community. The houses would be priced in the $600,000, but are considered affordable new construction in Minnetonka.

• Three of the 5 houses would have geothermal systems including the model.

• The houses would not be mcmansions. Three of the 5 would have master bedrooms on the main floor.

• The build out would be finished in 12 to 15 months since it is a high-demand product. It is scheduled to begin construction this fall.

• There would be a simple homeowner’s association to take care of the grass and snow.

• The houses would be built custom to each homeowner’s choice.

O’Connell thinks the concept is great and that it would work. He noted that there are similar developments being done. Mr. Haley emphasized that the location is what makes the proposed homes in great demand. Mr. Anderson said that the homes would be one-floor living with basements, so there would be rooms when the kids and grandchildren visit. There would be high-end finishes.

Acting Chair Odland asked how many bedrooms would be on the first floor. Mr. Haley said the houses would have a great-room concept where the kitchen, dining, and great room flow together. There would be two full baths on the main floor and a large walk-in closet. Sod and large trees would be planted and sprinklers would be installed immediately. A big impact can be made with landscaping on a small lot.

Calvert asked where the rain gardens would be located in relation to the gully. Mr. Anderson pointed out the area for a pond and the rain gardens. It would look like a rock garden area. The roof gutters would direct the runoff to the rain garden. Each house would take care of its own runoff. It would work well. This is the first year in 40 years where house sizes became smaller instead of bigger.

Calvert asked how much parking would be available. Mr. Anderson explained that Regal Oak would meet city street requirements and be 24-feet wide. Each of the houses would have a 2-vehicle garage. There would be room for 2 more vehicles in the driveway. That is generally enough parking.

Calvert asked if the entire area would be graded flat. Mr. Anderson said that it would not be flat. Colleran identified the significant trees and they are marked on the survey. It turned out that the majority of significant trees are in the
conservation easement. He would attempt to save the few in other areas, but many of them would be removed and replaced by other trees.

Powers liked the product and presentation.

Calvert asked why all of the houses would not have geothermal systems. Mr. Haley stated due to the cost. It would be included in the model and the buyer would be encouraged to include one, but it would be the homebuyer’s option. Mr. Haley stated that a back-up system would still have to be included. The increase in cost is $25,000. The loop system virtually lasts forever.

The audience was invited to provide input.

Ron Hanson, 12215 Mari Lane, stated that the area is wooded and the oak trees are large.

Cheryl Smith, 3624 Arbor Lane, stated that:

- She was concerned that the houses in the examples are larger than 15,000 square feet.
- She was concerned with tree mitigation. She loves the wildlife. The proposal would change it.
- The lots would be smaller and density increased compared to what is on the street now.

Hyde Thompson, 3616 Arbor Lane, requested that street lighting point downward. He liked the idea of the rain gardens and healing the gully.

Calvin Lee, 3636 Regal Oak, stated that:

- His view is currently of trees. He met with Mr. Haley and thinks that things seem copasetic. He wants to make sure that the trees and landscaping prevent a stark change.
- He was concerned with the safety of his kids riding bikes on the street during construction, where the construction vehicles would park, and the noise created by construction workers during the 12 to 18 months.
- There are two rental houses on the court.
- It would be nice if the houses would stay in tune with the existing houses. The proposed houses look too modern for the neighborhood.
He and his wife have not decided if they like the project yet or not. He asked if there would be another step where the public would comment.

He asked if all of the houses would be one story.

Annette Lee, 3636 Regal Oak, stated that:

- Parking for construction vehicles could be located where the existing home is on Shady Oak Road.
- She is concerned with the damage to her property during the construction.
- Her driveway is already used as a u-turn.
- She is concerned too many houses are being added to the area.

Vanessa Green, 3632 Arbor Lane, stated that:

- She is completely opposed to the proposal. This would destroy the large lot sizes and mature trees. This would be completely out of character with the neighborhood.
- The forest would be leveled. There are nesting hawks, owls, and woodpeckers. She is appalled.
- The density makes her uncomfortable.

O'Connell stated that this type of project has been reviewed by the commission before and they have been found generally favorable with some design tuques approved by staff along the way. He did not see this project to be any different.

Powers appreciates the neighbors’ input. He had a similar situation happen in his neighborhood. He agreed that issues can be worked out over time. Seniors in Minnetonka are looking to stay in the area in smaller houses. Small lots are a preferred reality going forward.

Calvert asked if approval of the proposal would set a precedent. Thomas explained the difference between legal and fairness precedents. Applications must be considered individually. After the concept plan review, the applicant may submit an application with plans that would be reviewed by the planning commission and city council with a public hearing being held at the planning commission. The planning commission would provide a recommendation to the city council.

Hanson agreed with O'Connell that the commission has seen this type of project a lot. He will support the proposal once slight changes have been made. The
existing road makes the proposal less forced. He liked the inclusion of the conservation easement. Four lots might be more comfortable for the neighborhood. The conservation easement does provide a long-term benefit for the house on Regal Oak. The proposal would preserve the neighborhood character. Trees would be preserved and some would be replaced. There would be nice landscaping and quality construction. He could not see denying this proposal when compared to others that have been approved.

Acting Chair Odland would be curious how four lots would fit.

Calvert applauded the developer for protecting the environment. There are advantages to the geothermal. She encouraged planting large trees to decrease the visual impact and impact to wildlife. Dead trees do provide habitat. She would like natural resources staff to address the steep gully, runoff, and wild life. The city does not have adequate housing stock in this type of housing.

B. Concept plan for a 75-unit apartment building at 2828 and 2800 Jordan Avenue.

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

Cauley reported. Staff recommends the planning commission provide comments and feedback to assist the applicant with future direction that may lead to the preparation of more detailed development plans.

John Ferrier of CSM Corporation, applicant, stated that:

- He appreciated the planning commission reviewing the concept plan.
- He agreed that a traffic study is warranted. His company owns additional properties in the area. He wants to make sure the amount of traffic would be appropriate.
- Staff found a previous plan not viable due to a steep slope on the site. The multi-family housing market is on fire right now. The building would be located in an appropriate area to deal with the topography.
- There is a berm on the west side. That is not a naturally occurring slope. It was created when an adjacent site was graded. He explained the grading of the site. There would be tuck-under parking utilizing the topography. The slope preservation ordinance criteria would be followed.
- A lot of the trees are not quality. As many of the trees as possible would be preserved.
Larry Barenbaum, a partner at Big Top Liquors in Ridge Square, clarified that the business pays rent on over 8,500 square feet, not 5,000 as the previous speaker mentioned. Total Wine has changed the scope of the business for the better. The consumer benefits by the incredible operation that he has witnessed. There have been improvements over the years to address safety concerns caused by traffic. America provides a competitive retail world. Haskell’s is a good retailer in this city and knows how to compete to make it better for their customers. He has a high level of regard for everyone he has dealt with at Total Wine.

The public hearing was closed.

Wiersum moved, Bergstedt seconded a motion to continue the public hearing to September 12, 2016. All voted “yes.” Motion carried.

14. Other Business:

A. Concept plan review for The Enclave at Regal Oak, 3639 Shady Oak Road

City Planner Loren Gordon provided the staff report.

In response to Wagner’s question, Gordon answered that the surrounding lot sizes are generally the same as the standard for an R-1 single-family lot.

Roger Anderson, owner of Anderson Engineering representing the applicant, stated that he likes the site because it has a flow to it. The utilities are there, it is a nice street, and the drainage would work. The product is one that buyers want. Residents love to stay here. Housing to allow downsizing is needed for empty nesters and those who travel south for the winter. The basements would generally be lookouts with a bedroom for the grandchildren. There would be a snow and mow association. The grading and storm water on individual sites would be done to allow capture of roof drainage and minimize the size of the pond. There is an existing gully that could route runoff to a pond to control erosion.

Michael Halley, builder for the applicant, stated that the proposed houses would be from 1,400 square feet to 1,700 square feet on the main floor. The average buyer would be in their 70s and have lived in the city 30 years. Three of the five houses would be geothermal. Large trees would be planted to provide privacy. He has met with neighbors who live on Regal Oak. If the property would be divided into three lots, then the amount of square footage created would be equal to what would be created by the proposal of five smaller houses. There are not a lot of
options in the city to provide this product that would be affordably priced around $650,000.

Schneider disclosed that he previously worked with Anderson Engineering on projects.

Allendorf’s first reaction was that the proposal would not fit. Then he considered the need for diversity of housing types. The proposal would provide needed housing.

Bergstedt had a reaction similar to Allendorf’s reaction. Councilmembers and planning commissioners felt the original proposal’s 10 lots would be too dense. There is a need for this type of housing and diversification. He still has a problem with five lots. He would be more comfortable with four lots so that the subdivision would fit in better with the surrounding area and provide diversified housing.

Wagner acknowledged that the one-level housing type is needed. An 11,000-square-foot lot would make him pause. The concept is good. The conservation easement and storm water management would be great.

Ellingson thought that a floor-area ratio (FAR) requirement might be appropriate. Providing housing for young families is a priority. A house priced at $650,000 seemed high to be considered affordable. He did not see a real justification for a planned unit development. Five lots would not fit in the neighborhood.

Schneider sees a need for single-floor living for seniors. The conservation easement reduces the overall size of the lots. An 8,600-square-foot lot is probably pushing too hard to make the proposal work. He could see four lots. The lot to the northwest would be significantly larger than the rest. The five-lot proposal would be a hard sell.

Allendorf heard from seniors who want single-story living in Minnetonka. It is a needed housing type.

Cheryl Smith, 3624 Arbor Lane, stated that the size of the lots would be out of character with the neighborhood. She moved here because she loves the wildlife. There are currently a lot of water issues. There is a hill between Lots three and four. Her lot is downhill of the proposal and has a drainage pipe. The houses on her side of the street sell for $350,000. She requested councilmembers consider the proposal carefully.
Hanson identified that commissioners must decide the best location for the driveway.

Powers agreed. He stated that there would be no dramatic difference between the proposed drive and every other drive on Copperfield Place. The proposed lots meet all ordinance requirements. He agrees with staff's recommendation.

Chair Kirk noted that the only variance has to do with the driveway. He feels like he must support the proposal. A motion needs to be made to provide a recommendation to the city council.

**Powers moved, second by Hanson, to recommend that the city council adopt the resolution approving the preliminary plat of Mayfair at Copperfield, a three-lot residential subdivision with lot access variance, at 14700 Copperfield Place (see pages A14-A26).**

**Powers, Hanson, and Knight voted yes. Odland, Calvert, and Kirk voted no. O’Connell was absent. Motion failed.**

This item is scheduled to be reviewed by the city council October 24, 2016.

C. **Items concerning The Enclave of Regal Oak at 3639 Shady Oak Road and 3627 Regal Oak Lane.**

Chair Kirk introduced the proposal and called for the staff report.

Thomas reported. She recommended denial of the application based on the findings listed in the staff report.

Chair Kirk clarified that the proposal would make two lots into five lots with one existing house that would remain.

Odland confirmed with Thomas that the item could be tabled. Chair Kirk added that the applicant could revise the proposal before it will be reviewed by the city council. Thomas stated that feedback from commissioners would be beneficial.

Thomas reviewed the suggestions provided by the applicant.
Roger Anderson, engineer representing the applicant, stated that:

- The six-lot concept laid out nicely.
- Councilmembers stated that they would prefer four lots.
• The proposal would meet R-1A requirements, but that would not work because the proposal does not include building a street as required by R-1A.
• Three R-1 lots could meet ordinance requirements, but the idea is to make the houses provide one-floor living.
• The floor area ratio (FAR) would comply with R-1A requirements and the applicant is happy with that size. It would restrict the size of the houses somewhat and keep the price point around $600,000.
• He compared the proposal to Cherrywood Pointe. The public benefit of the proposal would be providing a home for seniors. It is harder to see the public benefit for a 4-unit proposal than 99-unit proposal.
• The proposed type of housing is unavailable in Minnetonka right now. Large lots would support large houses. The proposed houses with floor area restrictions with 1,800-square-foot to 2,000-square-foot main floors and no second floors. That would provide a public benefit.
• Almost two thirds of an acre would be dedicated in a conservation easement.
• A pipe that directs water to the proposed property would be fixed, rain gardens would be installed, and geothermal would be used. The impact to the environment would be the same for four R-1A houses or three R-1 houses. The amount of grading would be approximately the same.
• The best plan is the proposed PUD for ramblers with walkouts and lookouts. The proposal would provide a public benefit by providing new, single-level living houses.

Hanson asked if the existing house on Lot 5 was included in a previous review of the proposal. Mr. Anderson explained that the property owner is a joint applicant who reached an agreement with the original applicant.

Powers asked for the size and price of houses that would be built with R-1 zoning. Mr. Anderson answered that he has received inquiries from buyers who want to build a 6,000-square-foot house.

The public hearing was opened.
Cheryl Smith, 3625 Arbor Lane, thanked Thomas for her responses to her emails. She stated that:

• She did not support the proposal.
• She saw a pileated woodpecker and owls on the site.
• She was concerned with stormwater drainage and the city having access to the retention pond to keep it clean.
• The land would be decimated and the woods would no longer soak up water.

Grace Sheely, 14325 Grenier Road, thought this would be a great opportunity to utilize R-1A zoning. She encouraged thinking long term. She was concerned that there would be a tax base loss due to the next generation not wanting to purchase the current houses. R-1A zoning may be able to save some of the woods, but she did not know. She suggested more stormwater drainage improvements to help the residents downhill.

Vanessa Green, 3632 Arbor Lane, stated that:
• She agreed with the other speakers.
• A river would form in her backyard when she was a kid when it rained. She was concerned that cutting down the trees would cause huge runoff.
• She was concerned with the extensive grading.
• Her neighborhood is all single-level living houses. One of those could be renovated.

Greg Bartholomew, 3653 Shady Oak Road, stated that:
• He had concerns with lot size and density.
• He was concerned with the target market.
• There are ramblers in the neighborhood.
• He asked if landscaping and tree replacement would be required.
• There is a steep grade.
• It would be helpful to see a rendering of what the site would look like. The change in the view would be dramatic.

No additional testimony was submitted and the hearing was closed.

Chair Kirk asked staff to compare PUD and R-1A zoning for the site. Thomas explained that rezoning to R-1A would not require the public benefit, which was necessary when rezoning from R-1 to a PUD. R-1A zoning standards have no control over house design, but there would be some control over house size. The tree ordinance applies to every type of zoning classification. In order to be zoned R-1A, 60 percent of the lots in the area must be less than 22,000 square feet in size or a new public street must be created. Neither of those applies to this proposal.
Dietrich explained the stormwater management requirements which are usually worked out at the time of the grading permit.

Colleran pointed out where grading and tree loss would occur.

In response to Chair Kirk’s question, Thomas estimated that tree loss would be similar whether the site would be zoned PUD, R-1A, or R-1. The grading permit would only be issued if all requirements would be met.

Powers noted the steepness and was concerned with the runoff. Mr. Anderson stated that a grading plan, stormwater management plan, and stormwater calculations have been submitted. The proposal meets all requirements. A pond would be built where a neighbor requested a pond to be built. Right now, there is no control of the stormwater. The proposal would pay to manage the stormwater and meet city requirements. A stormwater management system takes up room and causes more grading. The proposal would place a conservation easement over most of the significant trees. The grading plan would fix a three-foot gully to make it function properly. A maintenance agreement would be made with the city to service the pond and stormwater management system.

In response to Knight’s question, Mr. Anderson explained that a 3:1 slope is similar to the slope from the front of yard to the back yard of a house with a walk-out basement. Lawn mowers can be ridden on the slope just fine. The maintenance agreements would be recorded on each title.

Calvert agreed that diversified housing stock is needed. She opposed the proposal because it would result in too much tree loss.

Powers liked the developer’s ability to present the proposal. He favored three lots instead of four. He is less concerned about the overall size of the houses. He is not concerned with homeowners wanting to downsize to a single level. The overall feeling of the area is better suited for fewer houses.

Odland agreed. Fewer houses would have less impact on the wildlife.

Hanson recalled commissioners asking the applicant to reduce the number of houses from five to four at the concept plan review. He commended the applicant for doing that. Fine tuning needs to be done with the stormwater management. Four new houses could fit the site, but the details need to be more thought out.
Chair Kirk noted that new housing is lacking in Minnetonka. He agreed that the proposal is not ready for approval. The character of the neighborhood should also be taken into consideration.

Calvert appreciated Mr. Anderson’s presentation. She did not think the proposal was ready.

*Odland moved, second by Calvert, to recommend that the city council adopt the resolution denying the requested rezoning, master development plan, and preliminary and final plats (see pages A18-A21 of the staff report).*

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

This item is scheduled to be reviewed by the city council October 24, 2016.

D. **Conditional use permit, with variances, for a microbrewery and taproom with outdoor seating area at 14625 Excelsior Boulevard.**

Chair Kirk introduced the proposal and called for the staff report.

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

In response to Chair Kirk’s question, Gordon explained that the animal hospital is a separate building that uses the west end of the Glen Lake Center parking lot. The lot would need to be restriped to add three stalls.

J.D. Park, 3941 Brown Lane, stated that he and his wife, Megan, are founders of Unmapped Brewing Company. Mr. Park stated that they are excited and proud at the prospect of opening their business in the community that they live. They want Unmapped to be a positive force in the Glen Lake community and city. They want to work with their neighbors to achieve this goal. He looks forward to the discussion.

Chair Kirk asked for the number of seats. Mr. Park explained that there would be tables, informal seating, and standing room. Seating would flow into the patio area.

Chair Kirk asked for the applicant’s idea for a “family taproom.” Mr. Park answered that alcohol would not be the only beverage available. He would encourage patrons to bring in food. It would not be structured like a restaurant. Patrons would be able to explore and see interesting things. There would be
Wischnack gave the staff report.

Wiersum moved, Wagner seconded a motion to approve the Cooperative Agreement with Hennepin County for future projects related to the goals of the Corridor Investment Framework and authorize the mayor and city manager to execute the agreement, including subsequent non-material changes as approved by the city manager and community development director in a form acceptable to the city attorney. All voted “yes.” Motion carried.

C. Items concerning THE ENCLAVE AT REGAL OAK, at 3639 Shady Oak Road and 3627 Regal Oak Lane:

1) Ordinance rezoning the properties from R-1 to PUD;
2) Master development plan; and
3) Preliminary and final plats

Gordon gave the staff report.

Roger Anderson, civil engineer and agent for the owner, 13605 1st Avenue North, Plymouth, said he and the owner looked at the property to determine what type of housing to bring forth. The smaller homes, single level living, rambler style with some walkouts was the market they wanted to focus in on. When they first started laying out the plan it looked like there could be five or six new lots. After discussing the concept plan with the council, it was determined to move forward with four lots. The plan being shown to the council was refined to reduce the impact areas. The layouts soften the impacts. The tree preservation ordinance could be met. Stormwater management could be managed. He said it really comes down to the public benefit requirement of the planned unit development (PUD). The use of a PUD was landed upon almost accidentally because the thinking would be to use R1-A zoning. However the requirements of R1-A necessitated using PUD instead. The feeling is there really is a strong market in the city for this type of housing. There are a lot of ramblers in the city but generally they are older housing stock. Renovating those likely would require tearing them down and rebuilding.

Vanessa Greene, 3632 Arbor Lane, said the planning commission and city council both had denied the request for rezoning and now the developer was returning with essentially the same proposal to rezone. The changes were not that significant. Only seven trees have been added. There would be significant grading that could kill more trees. The density was still too high and was out of character of the neighborhood. City staff had indicated there was no significant public benefit. She was still concerned with
stormwater issues. She was also concerned that the city ran a campaign last year called Imagine Minnetonka, to get input from residents about what they wanted for the city. She and a lot of others commented what they loved about the city were the large lots and wooded areas with mature trees. She questioned why the input was asked for if it wasn’t going to be listened to.

Cheryl Smith, 3624 Arbor Lane, said her main concern was the requirement for public benefit. The neighbors all talk about the wildlife that live in the woods. Every house that is added reduces the number of trees and animals that live in the woods. She didn’t see how retaining walls could be built without destroying the trees. She asked the council to consider the public benefit for the entire neighborhood and not just these four proposed houses.

Ron Hanson, 12215 Mari Lane, said he was 68 years old and his family moved into the area when he was 10 years old. As far as he knew the woods had been there for a long time. The area had been untouched for at least 58 years. A lot of the aesthetic would be lost with this development.

Schneider asked Anderson if he would prefer the item be tabled to allow him to reevaluate the plan if the council indicated a preference for three lots. Anderson said that would be his preference, and it was likely three conforming lots could be created.

Wagner noted it was a long process and the council felt the concept plan was too intense. It was also thought at one point R-1A zoning was a possibility until the cul-de-sac was looked at. The idea behind the R1-A ordinance was the city wanted and understood the need to have a variety of housing stock but it needed to fit in with the neighborhood. He was more in favor of traditional R1 zoning in this area. He didn’t see a public benefit to the $600,000 price point.

Wiersum agreed with Wagner. He didn’t think this rose to the level of public benefit that would make a PUD make sense. The council in the past had talked a lot about the concern of small lot creep. He believed the city would be looking at greater density. He believed the developer when he said the market he is looking at exists. These would be great houses in the right spot. Requiring a PUD in this location makes it not the right spot. He supported R1 for this location.

Acomb said she really appreciated a lot of what the developer wanted to include in the development. She believed single level living was a need in the community. She appreciated the geothermal and some of the other
nontraditional aspects as well. However, she didn't think they rose to the public benefit level. She would love to see them used in a three lot development.

Ellingson said he agreed with the other council members’ comments and thought the applicant should be allowed to come back with a revised plan rather than have the council reject the plan altogether. Schneider agreed.

**Wagner moved, Acomb seconded a motion to table the item to a date to be determined. All voted “yes.” Motion carried.**

15. **Appointments and Reappointments:**

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

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

16. **Adjournment**

   Wiersum moved, Wagner seconded a motion to adjourn the meeting at 7:50 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
CURRENT PLAN
ITEM 8A – Enclave at Regal Oak

The attached email was received after the packet was produced.

The applicant recently submitted the attached plan illustrating removal/impact to high-priority trees. Please make the following change to pages 5 and 6 of the resolution to reflect this plan:

Page 5:

2. Subject to staff approval, THE ENCLAVE AT REGAL OAK must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:
   • Site plan, dated February 15, 2017
   • Grading plan, dated February 15, 2017 and as amended by the tree removal plan received March 20, 2017
   • Roadway and Utility plan, dated February 15, 2017

Page 6:

5) Final grading and tree preservation plan for the lot. The plan must be in substantial conformance with Grading Plan dated February 15, 2017 and as amended by the tree removal plan received March 20, 2017. No more than 10 high-priority trees may be removed from the combined site.
To Whom It May Concern,

We wanted to write in about the proposed subdivision of 3639 Shady Oak Road and 3627 Regal Oak. We want to first say that we understand our cities necessity to accommodate population growth, however, NOT at the expense of the incredible natural habitat that exists in our neighborhood. This habitat is rapidly disappearing. Woods are such a treasure for our city. Once gone, it’s gone. Over the years we have watched fox, coyote, turkey, and deer travel through our woods and through the woods of the proposed development. You will push them away by taking their space. This is going to be a major disruption in our cities wildlife throughway. We are all for updating current homes and conservative growth, but not in the form of multi home developments. Just in the past year we have watched a two acre lot on Shady Oak completely cleared and loaded up with five houses. The only trees left (save one) belong to the lot next door. On the other side of my neighborhood, we now on walks, have to look at a massive development of apartments on Minnetonka Boulevard as opposed to trees. Now there is this proposal which will essentially clear out the other side of my neighborhood. Again we understand our cities desire for growth but why not growth to a smaller scale. All the homes in this neighborhood have beautiful yards and green space. Why a total of four homes on two acres? We believe this new development could be perhaps smaller in scale. Keep the yards reasonable and keep the trees. We are concerned the erosion and water runoff from a cleared lot could affect our property being at the bottom of the hill. Please, we urge you to try to keep some of Minnetonka as it is. Beautiful and wooded with character and charm.

Concerned Homeowners,

Wesley and Lindsay Dunham

Some of the wildlife that will be missed:
The development that took the view from the other side of my neighborhood and the development that left one tree standing:
Adopted a resolution approving a conditional use permit for an over-sized accessory structure and a second curb cut on Avondale Street.

Adopted a resolution approving a replat of the Seville property. The nuisance conditions were rectified before the city council’s review of the proposal.

Reviewed a concept plan for an apartment building with 240 units for Newport Midwest.

The next planning commission meeting will be April 6, 2017.

There will be a neighborhood meeting on March 30, 2017 at 7 p.m. at the Hopkins High School to review plans to improve baseball and soccer fields at Hopkins High School.

There will be a neighborhood meeting on April 6, 2017 from 5:30 p.m. to 6:30 p.m. at the fire station to review plans for improvements to the civic center campus and lighting of a soccer field north of Ice Arena B.

There will be another neighborhood meeting on April 6, 2017 from 4:30 p.m. to 6:30 p.m. in the Minnehaha Room to review revised concepts for the Shady Oak Road redevelopment project.

6. Report from Planning Commission Members: None

7. Public Hearings: Consent Agenda: None

8. Public Hearings

A. Preliminary and final plats with front setback variances and waiving of the McMansion Policy for The Enclave at Regal Oak at 3639 Shady Oak Road and 3627 Regal Oak Lane.

Chair Kirk 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.

Powers asked if decreasing the house size would save more trees. Thomas explained that reducing the size of the houses would not be sufficient to save additional trees because the topography the site makes the proposed amount of grading necessary. Colleran agreed.
In response to Chair Kirk’s question, Thomas clarified that the buildable area would not be made larger by shifting the front and rear setbacks forward. According to R-1 ordinance requirements, the size of a single-family residence is not restricted as long as it meets setback requirements. The FAR in the report is based on Regal Oak. The Mcmansion Policy looks at properties within 400 feet and 1,000 feet on the same road. The highest FAR on Regal Oak is 0.16, within 400 feet 0.18, and up and down Shady Oak Road 1,000 feet 0.22.

Michael Halley, representing Airborne Construction One, applicant, stated that he supports everything in the staff report. The goal is to build three custom houses. He and the project’s engineer were available for questions.

In response to Chair Kirk’s question, Mr. Halley stated that the proposed lots are conventional, R-1 lots, so the Mcmansion Policy should not apply.

Chair Kirk asked for the size of the proposed houses. Mr. Halley said that the houses would be custom built for each buyer. He did not anticipate that the houses would be as large as the buildable area.

Calvert said that the slope is very steep. Mr. Halley answered that the driveways would have a modest elevation change of three or four percent grade angled up from the street to the garage. There would be some fill added.

Mr. Holley explained that shifting the front and rear setbacks forward would reduce the amount of fill and decrease the driveways' amount of impervious surface. The front setbacks would be consistent with the rest of the houses in Regal Oak.

Chair Kirk confirmed with Colleran that the required tree mitigation for the proposal would be determined at the time of the building permit review. Colleran explained that under no circumstance could more than 10 of the high-priority trees be able to be impacted.

Thomas explained how FAR is calculated. Based on the Mcmansion Policy, Lot 1 would be allowed to have a house up to 4,900 square feet, Lot 2 up to 4,800 square feet, and Lot 3 up to 5,100 square feet in size. Mr. Halley felt that was a reasonable estimate of the sizes of the proposed houses. He stated that the builder and buyer want to preserve as many trees as possible. Building custom homes would allow as much tree preservation as possible.

Powers asked if he had an idea of the price. Mr. Halley estimated in the $800,000s.
The public hearing was opened.

Vanessa Greene, 3632 Arbor Lane, thought this felt like a bait and switch because she has been told that there is a need for single-level, senior living, but the proposed houses would be huge and trees would be removed. It was shocking to her. She wanted the Mcmansion Policy enforced so that the houses would fit with the character of the neighborhood.

Cheryl Smith, 3624 Arbor Lane, thanked Thomas for keeping her informed throughout the process. She would appreciate tree mitigation on the east side of the site.

Ron Hanson, 12215 Mari Lane, pointed out a slope and pond. There is a concern of erosion and water running off the hill. A two-story house would be visible from Arbor Lane.

No additional testimony was submitted and the hearing was closed.

Calvert said that the developer has worked very hard. She shared the neighbors’ sentiments regarding tree loss. All of the lots would meet ordinance requirements and the Mcmansion Policy would not be applied if the building pads would not be shifted forward 10 feet in order to preserve more green space and decrease fill. The shifting of the front and rear setbacks would not allow a larger house to be built. She encouraged staff to work closely with the developer during the grading and building permit review process to enforce the tree ordinance.

Chair Kirk stated that the lots would meet all R-1 ordinance requirements and the Mcmansion Policy would not be applied without the variance to decrease the front setback.

Schack noted that the other lots in the area have 25-foot front setbacks, but the houses are smaller than the proposed houses. She felt that not waiving the Mcmansion Policy would keep with the spirit of the policy by restricting the size of the houses if the setback would be decreased.

In response to Powers’ question, Colleran stated that removal of a tree that should have been saved would cost $500 per inch of diameter with a maximum of $5,000 per tree. A stop work order would be issued for the site until the issue would be resolved.
Chair Kirk noted that neighbors have enjoyed the view of 2.8 acres with one house for many years. The property owner has paid substantial property taxes and has rights to develop the site in accordance with ordinance requirements.

Sewall said that the setback variance seems to be a win-win situation and would not cause the loss of additional trees.

Calvert encouraged the developer to be mindful of the neighbors. It would disrupt the character of the neighborhood to have houses two times larger than the existing houses.

Thomas explained the stormwater management for the site. Dietrich explained that the rate of runoff would be controlled to maintain or reduce the existing conditions. There would be a slight reduction across the board for all of the rain events modeled. Raingardens would be moved to the west, off of Regal Oak, and receive drainage from all three lots. The proposal would reduce the rate of runoff and meet all stormwater requirements while reducing the steep-slope area.

Chair Kirk thanked the neighbors for attending the meetings. He supports the setback. He would like the Mcmansion Policy applied. The final plat makes sense.

**Calvert moved, second by Schack, to recommend that the city council adopt the resolution approving preliminary and final plats with front yard setback variances and enforcing the Mcmansion Policy for The Enclave at Regal Oak at 3639 Shady Oak Road and 3627 Regal Oak Lane.**

**Powers, Schack, Sewell, Calvert, Knight, and Kirk voted yes. O'Connell was absent. Motion carried.**

9. Adjournment

**Knight moved, second by Sewall, to adjourn the meeting at 7:40 p.m. Motion carried unanimously.**

By: __________________________

Lois T. Mason
Planning Secretary
Resolution No. 2017-

Resolution approving the preliminary and final plats, with front yard setback variances, and waiving the McMansion Policy, for THE ENCLAVE AT REGAL OAK at 3639 Shady Oak Road and 3627 Regal Oak

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

Section 1. Background.

1.01 Airborne Construction One, LLC has proposed subdivision of the properties at 3639 Shady Oak Road and 3627 Regal Oak. The home at 3639 Shady Oak Road would be removed, the home at 3627 Regal Oak would remain, and three new homes would be constructed. The properties are legally described on EXHIBIT A of this resolution.

1.02 The applicant has further requested front yard setback variances from 35 feet to 25 feet for proposed Lots 1, 2, and 3.

1.03 Minnesota Statute §462.357 Subd. 6, and City Code §300.07 authorizes the planning commission to grant variances.

1.04 On March 23, 2017, the planning commission held a hearing on the proposed plat. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council approve the preliminary and final plats with front yard setback variances. The commission recommended the council enforce the McMansion Policy.

Section 2. General Standards.
2.01 City Code §400.030 outlines general design requirements for residential subdivisions. These standards are incorporated by reference into this resolution.

2.02 By City Code §300.07 Subd. 1, a variance may be granted from the requirements of the zoning ordinance when: (1) the variance is in harmony with the general purposes and intent of this ordinance; (2) when the variance is consistent with the comprehensive plan; and (3) when the applicant establishes that there are practical difficulties in complying with the ordinance. Practical difficulties means: (1) The proposed use is reasonable; (2) the need for a variance is caused by circumstances unique to the property, not created by the property owner, and not solely based on economic considerations; and (3) the proposed use would not alter the essential character of the surrounding area.

2.03 The McMansion Policy is a tool the city can use to ensure new homes requiring variances are consistent with the character of the existing homes within the neighborhood. By policy, the floor area ratio (FAR) of the subject property cannot be greater than the largest FAR of properties within 1,000 feet on the same street, and a distance of 400 feet from the subject property.

Section 3. Findings.

3.01 The proposed preliminary and final plats would meet the design requirements as outlined in City Code §400.030.

3.02 The requested front yard setback variances would meet the variance standard outlined in City Code §300.07 Subd. 1(a):

1. Purpose and Intent. The intent of the front yard setback requirement is twofold: (1) to ensure adequate separation between structures and the traveled portion of streets; and (2) to establish consistent building lines with a neighborhood. The proposed setback would meet this intent:
   a) A standard parking stall is 18 feet in length. As such, the 25-foot setback would allow vehicles to be parked on driveways without encroaching on public right-of-way.
   b) The 25-foot setback would be consistent with other variances approved for the Regal Oak neighborhood.

2. Comprehensive Plan. The guiding principles in the comprehensive plan provide for maintaining, preserving, and enhancing existing
single-family neighborhoods. The requested setback variances are not contrary to these principles. Rather, they could allow for construction at a building line consistent with that approved for the larger area.

3. Practical Difficulties.

a) Reasonableness.

1) While a typical home could be constructed meeting the required 35-foot front yard setback, such location would likely result in more grading and associated tree loss along the eastern portion of the site. Though there are few high-priority trees along the property line outside of the woodland preservation area, the trees that do exist in the area create a wooded “feel.” For construction of a typical home, a reduced front yard setback and commensurately increased rear yard setback would minimize grading and maximize tree protection during the initial construction phase.

2) With a commensurate 10-foot increase in rear yard setback, which is a condition of this resolution, the requested decrease in front yard setback would not increase the buildable area of any lot. Rather, it would simply shift the buildable area to the west.

b) Unique Circumstance and Neighborhood Character. The proposed 25-foot setback would be consistent with the 25-foot setbacks also established by variance for other homes along Regal Oak.

3.03 The intent of the McMansion Policy is twofold: (1) to ensure that homes requiring variances – either due to non-conformance with lot standards or setback standards – have a visual mass similar to that of existing homes within a neighborhood; and (2) to ensure there is some connection between the buildable area of a property and the mass of the home constructed on it. The requested front yard setback variances, with commensurate rear yard setback increases, would not impact the buildable area of any of the proposed lots or allow larger homes to be constructed than would otherwise be allowed. Rather, the variances would simply shift the buildable area with the intent of minimizing grading and associated trees loss.

4.01 The above-described preliminary and final plat, with front yard setback variance is hereby approved. Approval is based on the findings outlined in Section 3 of this resolution.

4.02 The McMansion Policy related to the requested setback variances is hereby waived. This waiver is based on the findings outlined in Section 3 of this resolution.

4.03 Approval and waiver are subject the following conditions:

1. Prior to release of the final plat for recording, submit the following:
   a) A revised final plat drawing that clearly illustrates the following:
      1) Dedication of seven feet of right-of-way adjacent to Shady Oak Road.
      2) Minimum 10-foot wide drainage and utility easements adjacent to the public right-of-way(s) and minimum 7-foot wide drainage and utility easements along all other lot lines.
   b) Documents for the city attorney’s review and approval. These documents must be prepared by an attorney knowledgeable in the area of real estate.
      1) Title evidence that is current within thirty days before release of the final plat.
      2) Conservation easement over the woodland preservation area as depicted on the plan set dated February 15, 2017.
      3) Minimum 10-foot wide easement trail and retaining wall purposes adjacent to the Shady Oak Road right-of-way.
   c) Two sets of mylars for city signatures.
   d) An electronic CAD file of the plat in microstation or DXF.
   e) Park dedication fee of $10,000.
2. Subject to staff approval, THE ENCLAVE AT REGAL OAK must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:

- Site plan, dated February 15, 2017
- Grading plan, dated February 15, 2017 and as amended by the tree removal plan received March 20, 2017 and attached as Exhibit B of this resolution.
- Roadway and Utility plan, dated February 15, 2017

3. Prior to issuance of a building permit for the first new house within the development, submit a letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.

4. Prior to issuance of a building permit for any of the lots within the development:

   a) Submit the following items for staff review and approval:

       1) Stormwater narrative and calculations illustrating conformance with the following stormwater rule:

           a. Volume Control. One inch of retention over the site’s impervious surface must be retained on-site.

           b. Rate Control. Peak flow rates must be limited to that of existing conditions at all points where stormwater leaves the site.

           c. Water Quality. 60% total phosphorus and 90% total suspended solids must be removed.

       2) A stormwater easement agreement over any raingarden on the property.

       3) A stormwater maintenance agreement.

       4) Final grading and tree preservation plan for the lot. The plan must be in substantial conformance with Grading Plan dated February 15, 2017 and as amended by the
tree removal plan received March 20, 2017 and attached as Exhibit B.

a. No more than 10 high-priority trees may be removed from the combined site.

b. High-priority trees shown to be preserved must be protected during all grading and construction activity.

c. Tree protection fencing and erosion control must be installed and inspected prior to issuance of the permit.

5) A code compliant tree mitigation plan with species and sizes.

6) An appropriate seed mix/plants list for the rain gardens.

7) Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:

- The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and

- If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.

b) Install a temporary rock driveway, erosion control and tree protection fencing and any other measures identified on the SWPPP for staff inspection. These items must be maintained throughout the course of construction.

c) Install heavy duty fencing, which may include chain-link fencing, as determined by city staff to protect the critical root zones of the trees. This fencing must be maintained throughout the course of construction.
d) Submit all required hook-up fees.

e) Unless specifically authorized by city staff, no site work or tree removal may occur until issuance of the building permit for each lot.

5. All lots and structures within the development are subject to all R-1 zoning standards. In addition:

a) Principal structure setbacks are required as follows:

<table>
<thead>
<tr>
<th>Lot</th>
<th>Front Yard</th>
<th>Side Yard</th>
<th>Rear Yard</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>25 ft from Regal Oak</td>
<td>Aggregate 30 feet and no one side less than 10 feet</td>
<td>38 ft</td>
</tr>
<tr>
<td></td>
<td>40 ft from Shady Oak Rd</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>25 feet</td>
<td>38 ft</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>25 feet</td>
<td>50 ft</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>25 feet*</td>
<td>N/A</td>
<td></td>
</tr>
</tbody>
</table>

* approved by variance in 1979

b) If a new home cannot be encompassed by 150 feet of fire hose coverage, either: (1) the home must be protected by a 13D automatic fire sprinkler system or an approved alternative system; or (2) the driveway must be 20 feet wide of paved surface at less than 10% grade.

6. The city may require installation and maintenance of signs which delineate the edge of any required conservation easement. This signage is subject to the review and approval of city staff.

7. During construction, the streets must be kept free of debris and sediment.

8. Street disturbances must be minimized. If street cuts are made in close proximity to each other, one contiguous repair may be required to ensure no gap between patches.

9. Permits may be required from other outside agencies including, Hennepin County, the Minnehaha Creek Watershed District, and the MPCA. It is the applicant’s and/or property owner’s responsibility to obtain any necessary permits.

10. Any work within Hennepin County right-of-way will require a specific permit from the County. Proof of such permit must be submitted to the city prior to work in the right-of-way.
11. This approval will be void on April 10, 2018 if: (1) the final plat has not been recorded with the county; and (2) the city has not received and approved a written application for a time extension.

Adopted by the City Council of the City of Minnetonka, Minnesota, on April 10, 2017.

________________________________________
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 April 10, 2017.

________________________________________
David E. Maeda, City Clerk
EXHIBIT A

Lot 5, Block 1, REGAL OAK 2\textsuperscript{ND} ADDITION according to the recorded plat thereof, Hennepin County, Minnesota. (Abstract)

AND

That part of the Southeast Quarter of the Southwest Quarter of Section 14, Township 117 North, Range 22 west of the 5\textsuperscript{th} Principal Meridian, Hennepin County, lying west of the plat of REGAL OAK as monumented, east of the plat of REGAL OAK 2\textsuperscript{nd} ADDITION and north of the northerly right-of-way line of County Road 61.
City Council Agenda Item #14C  
Meeting of April 10, 2017

**Brief Description**  
Approval of a new outdoor attraction at The Big Thrill Factory at 17501 State Highway 7

**Recommendation**  
Approve the outdoor attraction

**Background**

*October 2012.* The city council approved an interim use permit for outdoor entertainment at The Big Thrill Factory. The outdoor attractions proposed were an 18-hole miniature golf course, ten 1-person trampolines, and a climbing wall with inflatable slide. As a condition of the interim use permit, the outdoor attractions could be changed upon the review and approval of the city council.

*June 2014.* The city council approved a request to extend the outdoor attractions hours to 11:00 p.m. on Friday and Saturday evenings. The extended hours would correspond to The Big Thrill Factory’s indoor hours of operation. As a condition of approval, the interim use permit was to be reviewed in June 2015 for compliance with noise and nuisance regulations.

*June 2015.* The city council reviewed operation of The Big Thrill Factory. No complaints regarding noise or other nuisance issues related to the operations of the facility had been made since approval of the extended hours. The council made no changes to the interim use permit.

**Current Proposal**

The Big Thrill Factory is proposing to remove some outdoor seating/dining areas and install a new outdoor attraction, The Wipeout Trampoline. The attraction is a trampoline with slowly rotating center mechanism/bar, which is powered by an electric motor. The applicant indicates that the motor, which simply “plugs in,” would not generate any noise. Participants must jump over the bar (see attached).

**Staff Comment**

Staff supports The Big Thrill Factories request for two primary reasons:

1. The business has a good record of compliance with noise and nuisance ordinance;
2. The new attraction is unlikely to result in additional trips to the site or additional parking demand. Rather, it would simply add to the variety of activities available to patrons.
Staff Recommendation

Staff recommends the city council approve a new outdoor attraction at The Big Thrill Factory at 17501 State Highway 7. This approval may be made by simple motion; no resolution is required.

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

Originator: Susan Thomas, Assistant City Planner
Location Map

Project: Big Thrill Factory
Address: 17585 Hwy 7
Project No. 11014.17a

This map is for illustrative purposes only.
PROPOSED

SEATING AREA REMOVED, WIPE OUT TRAMPOLINE INSTALLED

OVERALL COURSE LAYOUT

Scale: 1/8" = 1'-0"

Sketch for new Wipeout
Trampoline BTF Minnetonka

3.3.2017 LDS
Resolution No. 2014-051

Resolution amending and replacing Resolution 2012-106 for an interim use permit for outdoor entertainment at 17501 State Highway 7

BE IT RESOLVED by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. BACKGROUND.

1.01 On October 8, 2012, the city council approved in interim use permit for outdoor entertainment at The Big Thrill Factory.

1.02 The property is located at 17501 State Highway 7. The property is legally described as:

See Exhibit A

1.03 The October 8, 2012 approval includes the condition: “no outdoor entertainment use is allowed between the hours of 10:00 p.m. and 7:00 a.m.”

1.04 Barry Zelickson, owner of The Big Thrill Factory, has requested an amendment to an existing interim use permit. The amendment would allow the outdoor hours of operation to correspond to the indoor hours of operation:

- Sunday through Thursday: 10:00 a.m. to 9:00 p.m.
- Friday: 10:00 a.m. to 11:00 p.m.
- Saturday: 9:00 a.m. to 11:00 p.m.

Section 2. Standards.

2.01 City Code 300.05 Subd.5 outlines the general interim use standards. Those standards are inserted here by reference.
2.02 City Code §300.18 Subd.7 outlines the specific interim use permit standards for outdoor entertainment. Those standards are inserted here by reference. One of these standards is that outdoor use must not occur between the hours of 10:00 p.m. and 7:00 a.m.

2.03 By City Code §300.07 Subd. 1, a variance, may be granted from the requirements of the zoning ordinance when: (1) the variance is in harmony with the general purposes and intent of this ordinance; (2) when the variance is consistent with the comprehensive plan; and (3) when the applicant establishes that there are practical difficulties in complying with the ordinance. Practical difficulties means: (1) The proposed use is reasonable; (2) the need for a variance is caused by circumstances unique to the property, not created by the property owner, and not solely based on economic considerations; and (3) the proposed use would not alter the essential character of the surrounding area.

Section 3. Findings.

3.01 The requested amendment to Resolution 2012-106 is reasonable:

1. The proposal meets the general interim use permit standards for transient sales outlined in City Code §300.05 Subd. 5.

2. Apart from the hours of operation, the proposal meets the specific interim use permit standards for transient sales outlined in City Code §300.18 Subd. 7.

3. The requested amendment meets the variance standard outlined in City Code §300.07 Subd.1

a) Purpose and Intent of Ordinance: The purpose of the hour operation restriction is to ensure outdoor entertainment area comply with the city's noise ordinance. By City Code §850.015.1 "a person must not engage in, permit, or allow ... activities resulting in unreasonably loud or disturbing noise for a person of ordinary sensitivity at any time other than between 7:00 a.m. and 10:00 p.m." The proposed hours of operation would meet the intent.

1) In one year of operation, the city has received just one complaint of unreasonably loud or disturbing noises emanating from the outdoor entertainment area. This complaint was received at 8:30 p.m.,
2) The proposed hours of operation could result in 13 hours of outdoor activity. This is less than the 15 hours allowed during the "permitted" hours of 7:00 a.m. to 10:00 p.m.

b) **Consistency with Comprehensive Plan:** The requested variance is consistent with the comprehensive plan. The site is part of the Highway 7/County Road 101 village center. The village center concept provides for a vibrant mix of uses that are consistent with the surrounding neighborhood. The outdoor entertainment area contributes to the vibrant mix of uses.

c) **Practical Difficulties:** There are practical difficulties in complying with the ordinance:

1) **Reasonableness and Character of Locality:** The proposed hours are reasonable and would not negatively impact the character of the surrounding area:

   a. In one year of operation, the city has received just one complaint of unreasonably loud or disturbing noises emanating from the outdoor entertainment area. This complaint was received at 8:30 p.m., during the "permitted" hours of 7:00 a.m. to 10:00 p.m.

   b. The proposed hours of operation could result in 13 hours of outdoor activity. This is less than the 15 hours allowed during the "permitted" hours of 7:00 a.m. to 10:00 p.m.

   c. Were the outdoor area used for dining rather than entertainment, the code would not restrict the hours of operation.

   d) **Unique Circumstance:** The outdoor area is located over 330 feet from the nearest residential structure. Aside from the linear distance, the area is also separated from residences by:
• a public trail;
• Purgatory Creek;
• existing chainlink fence;
• proposed decorative iron fence;
• nearly 100 feet of existing vegetation; and
• landscaping.

The separation from residences is unique; it is not common to all other public gathering places in the community.

Section 4. CITY COUNCIL ACTION.

4.01 Resolution 2012-106 is hereby amended and replaced by this resolution, subject to the following conditions:

1. Site and Attractions

a) Subject to staff approval, the outdoor entertainment, or outdoor "attractions", must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:

• Floor plan dated August 23, 2012
• Exterior elevations plan dated August 23, 2012

b) The outdoor entertainment, or outdoor "attractions", may be changed by the owner/operator upon the review and approval of the city council.

2. Noise

a) Public address systems, speakers, or other audio equipment which is audible anywhere on a residential lot that is within 400 feet is prohibited.

b) The outdoor entertainment must not create noise that is unreasonably disturbing to a reasonable person of ordinary sensitivity anywhere on a residential lot that is within 400 feet. The distance will be measured from the property lines of the source and receiving properties that are closest to each other. Whether the sound is unreasonably disturbing to a reasonable person will be determined under section 850.005.
3. Additional Conditions

a) City staff may conduct an annual review of complaints regarding the outdoor entertainment use. If staff finds that excessive complaints have been received, excessive public safety responses have been made, or that the outdoor entertainment has imposed unreasonable costs to the public in money or time, staff may require that interim use permit be reviewed by city council. Based on its review, the city council may impose additional conditions or revoke part or all of the interim use permit.

b) This interim use permit is valid until such time that redevelopment of the subject property occurs. For purposes of this permit, redevelopment means razing of more than 50 percent of the existing building.

4. Violation of any of the interim use standards outlined in City Code §300.18 Subd.7 or any condition placed upon the interim use permit will result in immediate revocation of the permit.

Adopted by the City Council of the City of Minnetonka, Minnesota, on May 19, 2014.

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Terry Schneider

ATTEST:

David E. Maeda, City Clerk
ACTION ON THIS RESOLUTION:

Motion for adoption: Wagner
Seconded by: Wiersum
Voted in favor of: Wiersum, Bergstedt, Wagner, Ellingson, Acomb, Schneider
Voted against:
Abstained:
Absent: Allendorf
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 May 19, 2014.

David E. Maeda, City Clerk

SEAL
EXHIBIT A

Par 2: That part of the North 1/2 of the Northwest Quarter of the Southwest Quarter of Section 29, Township 117, Range 22, lying West of a line described as follows: Commencing at a point on the North line of said North 1/2 of the Northwest Quarter of the Southwest Quarter, 743 feet East of the Northwest corner thereof; thence running South 12 degrees and 3 minutes East 213 feet; thence South 16 degrees and 40 minutes West 182.7 feet; thence South 35 degrees and 23 minutes West 208.1 feet; thence South 10 degrees and 37 minutes West 107.0 feet to the South line of said North 1/2 of the Northwest Quarter of the Southwest Quarter of said Section 29, except the South 125.00 feet of the West 183.00 feet of the North Half of the Northwest Quarter of the Southwest Quarter of said Section 29.
City Council Agenda Item #14D  
Meeting of April 10, 2017

**Brief Description**
Resolution approving the subordination of a Contract for Private Redevelopment to HUD

**Recommendation**
Adopt the resolution

**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 contract for private development over the years including: number of affordable housing units, types of units (condominiums to rental) and various time extensions.

The subdeveloper of the Glen Lake Housing and Development and Redevelopment project, Glen Lake Senior Housing, LLC, is in the process of proceeding through the HUD (Housing and Urban Development) process to finalize financing for the project. As a condition of the providing financing, HUD is requesting that the city and Economic Development Authority (EDA) subordinate its interests in the restrictive covenants by executing a subordination agreements for the contract for private development and the declaration of restrictive covenants. The subordination agreements include the following language:

- Subordination of the City and the EDA’s interests in the contract for private development and declaration of restrictive covenants to HUD’s mortgage;
- Limits the City and the EDA’s ability to make claims against the project;
- Requires HUD approval to amend contract and declaration – we’ve tried to limit this language to amendments impacting this phase of the project;
- The City and EDA can still enforce the terms of the contract and declaration as long as the terms of the contract being enforced do not conflict with the National Housing Act.
- Both the contract and the declaration would terminate if there was a foreclosure.

A memo from the city’s EDA counsel, Julie Eddington, further explains the subordination request. Ms. Eddington will be in attendance at the meeting to answer any questions.
**Recommendation**

Staff has reviewed the documents and recommend approval of the Resolution approving the Subordination of Contract for Private Redevelopment and subordination of a Declaration of Restrictive Covenants to HUD between Glen Lake Senior Housing, LLC; the Minnetonka Economic Development Authority; and the City of Minnetonka. Both the EDA and city council are required to take action on this item.

Submitted through:
- Geralyn Barone, City Manager
- Julie Wischnack, Community Development Director

Originated by:
- Alisha Gray, Economic Development and Housing Manager
March 28, 2017

Alisha Gray
Economic Development and Housing Manager
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN 55345-1502

Re: Subordination Agreements related to the Glenhaven Tax Increment Financing District within the Glen Lake Housing Development and Redevelopment Project

Dear Alisha,

As you know, the City of Minnetonka (the “City”) and the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”) have undertaken the creation of the Glenhaven Tax Increment Financing District (the “TIF District”) within the Glen Lake Housing Development and Redevelopment Project to finance certain housing development and redevelopment projects. The Authority and the City entered into a Second Amended and Restated Contract for Private Redevelopment, dated January 4, 2010, which has subsequently been amended (collectively, the “Contract”), with Glen Lake Redevelopment LLC, a Minnesota limited liability company (the “Redeveloper”), which provides the terms and conditions of the housing and commercial redevelopment project constructed in three phases within the TIF District.

Pursuant to an Assignment and Assumption, dated September 1, 2010, the Redeveloper provided a partial assignment of the Contract to Glen Lake Senior Housing, LLC, a Minnesota limited liability company (the “Subdeveloper”), to finance The Glenn Minnetonka located within the TIF District at 5300 Woodhill Road in the City (“The Glenn Minnetonka”), which is part of the second phase of the project. Additionally, the Authority and the Subdeveloper executed a Declaration of Restrictive Covenants – Phase II, dated September 1, 2010 (the “Restrictive Covenants”), with respect to The Glenn Minnetonka.

In order to finance costs related to The Glenn Minnetonka, the Subdeveloper has secured United States Department of Housing and Urban Development (“HUD”) insured financing through Dougherty Mortgage LLC. As a condition to providing the financing, HUD requires that the City and the Authority subordinate their interests in the Contract to the lien of the mortgage loan provided by HUD. Additionally, HUD requires that the Authority subordinate its interests in the Restrictive Covenants to the lien, covenants, and enforcement of the mortgage loan provided by HUD. To carry out these subordinations, the City and the Authority are being asked to execute a Subordination Agreement – Contract for Private Redevelopment (the “Contract Subordination”), and the Authority is being asked to execute a Subordination Agreement – Declaration of Restrictive Covenants – Phase II (the “Restrictive Covenants Subordination”).
The Contract Subordination and the Restrictive Covenants Subordination essentially subordinate the City’s interest in the Contract and the Authority’s interests in the Contract and the Restrictive Covenants to HUD’s mortgage. Both subordination agreements limit the ability of the City and the EDA to make claims against The Glenn Minnetonka. The Contract Subordination and the Restrictive Covenants Subordination also require the approval of HUD to amend the Contract and/or the Restrictive Covenants as they relate to The Glenn Minnetonka. The City and the Authority will still be able to enforce the terms of the Contract and the Restrictive Covenants as long as the terms of the Contract being enforced do not conflict with the statutory provisions of National Housing Act of 1934, as amended, or the regulations related thereto. Finally, the two subordination agreements provide that, in the event of a foreclosure or deed in lieu of foreclosure with respect to The Glenn Minnetonka, the Contract and the Restrictive Covenants will automatically terminate. The HUD financing is expected to take place on April 15, 2017.

The City Council and the Board of Commissioners of the Authority are being asked to adopt resolutions approving the execution and delivery of the Contract Subordination and the Restrictive Covenants Subordination at their respective meetings on April 10, 2017. Please contact me with any questions you may have prior to the meetings.

Sincerely,

Julie A. Eddington
Resolution No. 2017-_____

Resolution approving subordination of Contract for Private Redevelopment to HUD

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 the 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.” 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, the Fourth Amendment to Second Amended and Restated Contract for Private Redevelopment, and the Fifth Amendment to Second Amended and Restated Contract for Private Development. The Second Amended Contract, as amended, is referred to herein as the “Contract.”

1.03. The City Council previously consented to the Redeveloper’s partial assignment of the Contract to Glen Lake Senior Housing, LLC (the “Subdeveloper”), as permitted under Section 8.2 of the Contract, by that certain Assignment and Assumption, dated September 1, 2010.
1.04. The Subdeveloper has secured United States Department of Housing and Urban Development ("HUD") insured financing through Dougherty Mortgage LLC for its project.

1.05. HUD requires the execution of a subordination agreement subordinating the Contract, as it affects the Subdeveloper's portion of the Project, to the HUD insured loan and related financing documents, including a mortgage and a regulatory agreement.

1.06. There has been presented to the City Council a Subordination Agreement Contract for Private Redevelopment (the “Subordination Agreement”).

Section 2. Council Action.

2.01. The Subordination Agreement 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.

2.02. The Mayor and City Manager are authorized and directed to execute the Subordination Agreement, and any other documents or certificates necessary to carry out the transactions described therein.
Adopted by the City Council of the City of Minnetonka, Minnesota, on April 10, 2017.

__________________________
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 meeting held on April 10, 2017.

__________________________
David E. Maeda, City Clerk
SUBORDINATION AGREEMENT

CONTRACT FOR PRIVATE REDEVELOPMENT

This SUBORDINATION AGREEMENT ("Agreement") is made as of April __, 2017, by and among GLEN LAKE SENIOR HOUSING, LLC ("Borrower"), DOUGHERTY MORTGAGE LLC, ("Lender") the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA ("Authority"), and the CITY OF MINNETONKA, MINNESOTA ("City").

WHEREAS, Borrower has obtained financing from Lender for the benefit of the project known as The Glenn located at 5300 Woodhill Rd, Minnetonka, MN 55345 ("Project"), which is secured by a Healthcare Mortgage, Assignment of Leases, Rents and Revenue, and Security Agreement (Minnesota) ("Security Instrument") dated as of April __, 2017, and recorded in the Office of the Registrar of Titles for Hennepin County, Minnesota ("Records") on __________, 2017 as Document Number __________, and is insured by the United States Department of Housing and Urban Development ("HUD") as FHA Project No. 092-43117;

WHEREAS, the Project is part of a larger redevelopment project located in the City of Minnetonka and which is subject to that certain Second Amended and Restated Contract for Private Redevelopment dated January 4, 2010, recorded in the Records on September 16, 2010, as Document No. T4787935, as amended by the First Amendment to Second Amended and Restated Contract for Private Redevelopment, dated May 13, 2013, recorded in the Records on ___________ 2017, as Document No. T__________, as amended by the Second Amendment to Second Amended and Restated Contract for Private Redevelopment, dated June 23, 2014, recorded in the Records on _____________ 2017, as Document No. T__________, as amended by the Third Amendment to Second Amended and Restated Contract for Private Redevelopment, dated January 26, 2015, recorded in the Records on ____________ 2017, as Document No. T__________, as amended by the Fourth Amendment to Second Amended and Restated Contract for Private Redevelopment, dated November 6, 2015, recorded in the Records on ____________ 2017, as Document No. T__________, and as further amended by the Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment, dated February 29, 2016, recorded in the Records...
on ______________ 2017, as Document No. T____________, (collectively, the “Redevelopment Contract”);

WHEREAS, Glen Lake Redevelopment LLC and Borrower entered into that certain Assignment and Assumption, dated September 1, 2010 and filed September 16, 2010 as Document No. T4787941, regarding certain obligations under the Redevelopment Contract, which Borrower assigned to Lender by that certain Assignment of Contract for Private Redevelopment, dated September 1, 2010 and filed September 16, 2010 as Document No. T4787948;

WHEREAS, HUD requires, as a condition of its insuring Lender’s financing to the Project, that the lien and covenants of the Redevelopment Contract be subordinated to the lien covenants and enforcement of the Security Instrument; and

WHEREAS, the Authority and City have agreed to subordinate the Redevelopment Contract to the lien of the Mortgage Loan in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Redevelopment Contract and any provision contained in this Agreement, the provision contained in this Agreement shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:


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

“HUD Regulatory Agreement” means the Healthcare Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“Lender” means Dougherty Mortgage LLC, its successors and assigns.

“Mortgage Loan” means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

“National Housing Act” means the National Housing Act of 1934, as amended.

“Program Obligations” has the meaning set forth in the Security Instrument.
“Residual Receipts” has the meaning specified in the HUD Regulatory Agreement.

“Security Instrument” means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Redevelopment Contract to the contrary, the provisions of the Redevelopment Contract are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or the Redevelopment Contract. In the event of any conflict between the provisions of the Redevelopment Contract and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Authority’s or the City’s ability to enforce the terms of the Redevelopment Contract, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower’s knowledge, the Redevelopment Contract imposes no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure), the Redevelopment Contract (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

(e) Borrower, the City and the Authority acknowledge that Borrower’s failure to comply with the covenants provided in the Redevelopment Contract does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for any reporting requirements, in enforcing the Redevelopment Contract, neither the City nor the Authority will file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

   i. Available surplus cash, if the Borrower is a for-profit entity;
   ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
   iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit entity.

(g) For so long as the Mortgage Loan is outstanding, Borrower, the City, and the Authority shall not further amend the provisions of the Redevelopment Contract related to the
Project or the Borrower’s rights under the Redevelopment Contract, except clerical errors or administrative correction of non-substantive matters, without HUD’s prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Authority or the City may require the Borrower to indemnify and hold the City or the Authority harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against the City or the Authority relating to the subordination and covenants set forth in the Redevelopment Contract, provided, however, that Borrower’s obligation to indemnify and hold the City or the Authority harmless shall be limited to available surplus cash and/or residual receipts of the Borrower. Notwithstanding the foregoing, the indemnification obligations contained herein shall not apply to HUD under any circumstances.

(i) Intentionally Deleted.

[The remainder of this page is intentionally left blank.]
ECONOMIC DEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF MINNETONKA,
MINNESOTA

By: ____________________________
Name: __________________________
Its: President

By: ____________________________
Name: __________________________
Its: Executive Director

STATE OF MINNESOTA  )
) SS.
COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this ___ day of ________,
2017, by __________, 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 ________,
2017, by __________, 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
CITY OF MINNETONKA, MINNESOTA

By: ________________________________
Name: ________________________________
Its: Mayor

By: ________________________________
Name: ________________________________
Its: City Manager

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) SS.

The foregoing instrument was acknowledged before me this ___ day of ____________, 2017, by _________________, the Mayor of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the City.

________________________________________
Notary Public

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) SS.

The foregoing instrument was acknowledged before me this ___ day of ____________, 2017, by _________________, the City Manager of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the City.

________________________________________
Notary Public
GLEN LAKE SENIOR HOUSING, LLC

By: ________________________________
Name: ________________________________
Its: Chief Manager

STATE OF MINNESOTA )
COUNTY OF HENNENPIN ) SS.

The foregoing instrument was acknowledged before me this ___ day of ____________, 2017, by ______________________, the Chief Manager of Glen Lake Senior Housing, LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public

DOUGHERTY MORTGAGE LLC
a Delaware limited liability company

By: ____________________________________
      Timothy M. Larkin
      Senior Vice President

STATE OF MINNESOTA )
COUNTY OF HENNENPIN ) SS.

The foregoing instrument was acknowledged before me this ___ day of ____________, 2017, by Timothy M. Larkin, the Senior Vice President of Dougherty Mortgage LLC, a Delaware limited liability company, on behalf of the company.

Notary Public

This Document Drafted By:
Fredrikson & Byron P.A. (SDS)
200 S. 6th Street, Suite 4000
Minneapolis, MN  55402

60972960_3.docx
Exhibit A - Legal Description

Lot 2, Block 1, Glen Haven Shopping Center, City of Minnetonka, Hennepin County, Minnesota.
Addenda
Minnetonka City Council
Meeting of April 10, 2017

14B - Preliminary and final plats, with front yard setback variances, and waiving the McMansion Policy, for THE ENCLAVE AT REGAL OAK at 3639 Shady Oak Road and 3627 Regal Oak Lane

Attached is a letter that was received from the applicant after the council packet was distributed.
April 6, 2017

City of Minnetonka – City Council Members
14600 Minnetonka Blvd
Minnetonka, MN 55345

RE: The Enclave at Regal Oak at 3639 Shady Oak Road
AEMN# 14300

Dear City of Minnetonka City Council,

We would like to submit the following for your consideration:

Our revised plat was reviewed by the City Planning Commission on March 23, 2017. As denoted by the City Council, we revised the Enclave at Regal Oak plat, and resubmitted for P&Z review and final review by the City Council. The plat was changed from five new lots with small homes, to four new lots with small homes, and then three new conforming R1 lots. We sent back to the P&Z and it was suggested we reduce the front yard setback from 35’ to 25’ to save on tree removals and reduce grading. The rear yard setback was also increased, moving the house pads forward.

The planning commission recommended that the McMansion policy rules with a prescribed FAR be applied to the plat because of the setback change. We feel the restriction should not be applied for the following reasons:

1. The lots are conforming R1 lots.
2. The reduced front yard setback was suggested by the City to minimize impacts. We agreed to the change.
3. The building pad areas are the same as with the allowed R1 layout, but we moved closer towards the street to lessen impacts.
4. The 25’ front setback matches the adjoining lots.
5. During our three City staff reviews significant input and discussions took place, resulting in the reduced setback, and the conforming plat with three new R1 lots. The Planning Committee was not directly involved in these discussions, and therefore could have been missing some of the rationale and justification for the reduced setback.

We ask that you please consider approving the plat as submitted, with three (3) conforming R1 lots, with the variance for setbacks as contained in the staff report.

Thank you,
Airborne Construction One