Agenda
Minnetonka City Council
Regular Meeting, Monday, Nov. 26, 2018
6:30 p.m.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Bergstedt-Ellingson-Acomb-Happe-Schack-Calvert-Wiersum
4. Approval of Agenda
5. Approval of Minutes: Sept. 17 and Oct. 8, 2018 regular council meetings
6. Special Matters: None
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters Not on the Agenda
9. Bids and Purchases: None
10. Consent Agenda - Items Requiring a Majority Vote: None
11. Consent Agenda - Items Requiring Five Votes: None
12. Introduction of Ordinances:
   A. Items concerning the Glen Lake Apartments at 14317 Excelsior Blvd.:
      1) Comprehensive Guide Plan amendment from commercial to high-density residential;
      2) Rezoning from R-1, low-density residential, to PUD, planned unit development;
      3) Master development plan;
      4) Site and building plan review; and
      5) Right-of-way vacation.

      Recommendation: Introduce the ordinance and refer it to the planning commission (4 votes)
13. Public Hearings: None

Minnetonka City Council meetings are broadcast live on Comcast: channel 16 (SD), channel 859 (HD); CenturyLink Prism: 238 (SD), 1238 (HD).
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
14. Other Business:

   A. Items concerning The Mariner, a multi-family residential development at 10400, 10500 and 15500 Bren Road East:

      1) Ordinance rezoning the property from B-2, limited business, to PUD, planned unit development; master development plan; final site and building plans; and preliminary and final plats

      2) Resolution approving contract for private development with the City of Minnetonka and Mariner Affordable Apartments Limited Partnership

   Recommendation: 1) Adopt the ordinance and resolutions approving the rezoning, master development plan, final site and building plans, and plats; and 2) adopt the resolution approving the contract for private development with the City of Minnetonka and Mariner Affordable Apartments Limited Partnership and authorize city officials to approve non-substantive changes to the contract for private development. (4 votes)

   B. Council policy regarding fair housing

   Recommendation: Adopt the resolution (4 votes)

15. Appointments and Reappointments: None

16. Adjournment
1. **Call to Order**

Wiersum called the meeting to order at 6:30 p.m.

2. **Pledge of Allegiance**

All joined in the Pledge of Allegiance.

3. **Roll Call**

Council Members Rebecca Schack, Patty Acomb, Mike Happe, Tim Bergstedt, Bob Ellingson, and Brad Wiersum were present. Deb Calvert was excused.

4. **Approval of Agenda**

Happe moved, Acomb seconded a motion to accept the agenda with addenda to items 13A, 14A, 14B, and 14D. All voted “yes.” Motion carried.

5. **Approval of Minutes: None**

6. **Special Matters: None**

7. **Reports from City Manager & Council Members**

   City Manager Geralyn Barone reported on upcoming city events and council meetings.

   Wiersum had attended the League of Minnesota Cities Board retreat. He shared that it was good interaction among board members, who are elected officials, and staff. He learned a lot about mining and the issues that greater Minnesota faced.

8. **Citizens Wishing to Discuss Matters not on the Agenda**

9. **Bids and Purchases: None**

10. **Consent Agenda – Items Requiring a Majority Vote:**

    A. Resolution concerning a multi-family residential development by Dominium, at 11001 Bren Road East
Ellingson moved, Schack seconded a motion to adopt resolution 2018-115 authorizing the issuance of tax-exempt multifamily housing revenue notes and bonds for the benefit of Minnetonka Leased Housing Associates II, LLLP; and authorizing city officials to approve non-substantive changes to the related documents. All voted “yes.” Motion carried.

11. **Consent Agenda – Items requiring Five Votes:**

   A. **Conditional use permit, with variances, for a restaurant with on-sale liquor at 14725 Excelsior Blvd.**

   Ellingson moved, Happe seconded a motion to adopt resolution 2018-116 approving the conditional use permit, with variances for DelSur, a restaurant with on-sale liquor, at 14725 Excelsior Blvd. All voted “yes.” Motion carried.

12. **Introduction of Ordinances: None**

13. **Public Hearings:**

   A. **Resolutions for special assessment of 2017-2018 projects**

   Barone gave the staff report.

   Wiersum opened the public hearing at 6:40 p.m. No one spoke. Wiersum closed the public hearing at 6:41 p.m.

   Happe moved, Bergstedt seconded a motion to adopt

   Resolution 2018-117 adopting special assessments for 2018 Nuisance Abatement Project No. 4894, one-year assessment term.

   Resolution 2018-118 adopting special assessments for 2018 Nuisance Abatement Project No. 4894, three-year assessment term.

   Resolution 2018-119 adopting special assessments for 2018 Nuisance Abatement Project No. 4894, five-year assessment term.

   Resolution 2018-120 adopting special assessments for 2018 Diseased Trees Project No. 4902, one-year assessment term.
Resolution 2018-122 adopting special assessments for 2018 Diseased Trees Project No. 4902, three-year assessment term.

Resolution 2018-123 adopting special assessments for 2018 Diseased Trees Project No. 4902, five-year assessment term.


Resolution 2018-125 adopting special assessments for 2018 City Court Fines Project No. 1020, one-year assessment term.

Resolution 2018-126 adopting special assessments for Connection Charge, 3535 Orchard Lane Project No. 5110, ten-year assessment term.

Resolution 2018-127 adopting special assessments for the “Copper Cow” Fire Sprinkler Project, 5445 Eden Prairie Road, Project No. 4874, ten-year assessment term.

Resolution 2018-128 canceling and reassessing special assessment of Housing Improvement Area Fee for 10211 Cedar Lake Road, Unit 205, Project No. 4318, 9-year assessment term.

All voted “yes.” Motion carried.

14. Other Business:

A. Ordinances related to tobacco-related products

Community Development Director Julie Wischnack gave the staff report.

Tom Madden, owner E-Cig POD, thanked the council for the changes made to the sampling. He invited everyone to come visit the store and see how it could help.

Kerri Gordon, 12031 Arbor Circle, talked about seeing the issue from three perspectives: as a mother of two boys, as a leader from Allina Health, and as a sister who had watched her brother struggle for decades trying to break the habit. She had also learned that local governments made a difference and supported the ordinances.

Rachel Mirviss, 2324 Vernon Circle, Hopkins, shared that she was a Senior at Breck School and was involved in sports and theater. She supported the T21 ordinance.
Bryan Rause, 5850 Red Cherry Lane, talked about being a cancer survivor and a volunteer for the American Cancer Society Action Network. He started chewing tobacco when he played hockey in high school. He shared that one third of cancers were caused by tobacco.

Trudy Schnorr, 3727 Larchwood Drive, was a teacher for 32 years and a volunteer for the American Cancer Society Action Network. She shared that she was in support of the ordinance and that it was very important to her as a teacher because the tobacco industry spends millions of dollars marketing to young people.

Marcella Reese, Hopkins High School, was in support of the ordinance. She shared that the tobacco industry targets young people and spent $9.5 billion to promote tobacco in the United States.

Katelyn Ziegler, 146 15th Avenue N, Hopkins, attended Hopkins High School and was in support of the ordinance to raise the tobacco sales age to 21. She shared that she was a member of the student wellness community and one of its big projects was to raise awareness of the prevalence of vaping.

Jen Dohse, 13100 April Lane, Hopkins, was a sophomore at Hopkins High School and shared that vaping was affecting even kids in Junior High.

Steve Rush, on behalf of Holiday Stationstores, stated that Holiday had an exemplary record of preventing underage sales in the 40 plus years that it had been doing business in the city. He discussed how this should be done at the state level in order to level the playing field for all businesses. Rush asked the city to push the ban to February 1, 2019.

Acomb thanked everyone who came out to support T21 and shared that she supported the ordinance.

Happe stated that he was in support of T21. He said that originally, he was unsure about e-cigarettes, but had since learned more and was supportive of including them. He discussed the flavor ban and how it would be banning flavors for people over 21.

Wischnack clarified that if an establishment post signs that only persons over 21 could enter then it could continue selling those flavors.

Bergstedt talked about being a dentist in Minnetonka for four decades and dealing with oral cancer from oral tobacco. He shared that this would be the easiest yes vote of his entire career on the council.
Schack was completely in favor of T21 and was thankful that the dialogue from both sides had been so respectful. She shared concerns about the flavor ban and its lack of parity.

Ellingson asked a question about some wording in ordinance section 625.040 that still said 18 years old. Wischnack answered that it would be changed depending on how the council voted. Ellingson said that the ordinance was important and that he would like to see it adopted state wide.

Barone shared feedback from Calvert, who was absent, stating that while she was still conflicted over a few issues she supported the ordinance.

Wiersum said that the council was considering one of the most important ordinance changes in terms of the health of our youth and the city. He was proud to be identified with making this change.

Acomb was hopeful that it would have an impact on a state-wide change in the near future. She discussed the flavor ban and shared that she would prefer it to be in shops where young people have no access.

Wiersum talked about the flavor ban and was concerned about reaching too far as a city council. He felt that T21 solved the problem and that the flavor ban added complexity for businesses.

Bergstedt clarified that the T21 ordinance would ban all tobacco products until age 21. He agreed that adding an additional flavor ban for persons over 21 was an overreach.

Acomb noted that the flavors would still be available in tobacco shops.

Acomb moved, Bergstedt seconded a motion to adopt ordinance 2018-13 amending sections 625.040 and 625.045 of the Minnetonka City Code, relating to the minimum age for sales of tobacco-related products and ordinance 2018-14 amending sections 625.010, 625.015, 625.025, and 625.040 of the Minnetonka City Code, relating to tobacco-related products – general changes. All voted “yes.” Motion carried.

Acomb moved, Ellingson seconded a motion to adopt an ordinance amending sections 625.005 and 625.040 of the Minnetonka City Code, relating to flavored tobacco-related products. Acomb and Ellingson voted “yes.” Happe, Bergstedt, Schack, and Wiersum voted “no.” Motion failed.
B.  Concept plan review for redevelopment of the property at 1809 Plymouth Road

City Planner Loren Gordon gave the staff report.

Drew Johnson, Vice President of Development for Oppidan Investment Company, read a letter from Wells Fargo, a client of Oppidan. Oppidan planned to update the current office building and build a smaller onsite building for the bank. Johnson talked about incremental improvements and the consolidation of parcel owners to give more flexibility for future meaningful redevelopment. In the mean time it would add storm water best management practices, trails, landscaping, and improved circulation of the site.

Ellingson asked about tearing down the entire building like TCF Bank had done. Johnson answered that it was not feasible.

Acomb asked a question concerning the easement on Ring Road. Johnson answered that consent was needed from three different parties, but there had been conversations.

Schack said that this concept plan was inconsistent with the Ridgedale plan and seemed like a missed opportunity.

Acomb said that the proposal doesn’t really fit long term vision for this parcel or regional area. She added that she understood that it was privately held.

Bergstedt noted that banks were consolidating and downsizing. He also said that this didn’t seem to be a long-term plan.

Happe agreed with Bergstedt’s comments.

Barone shared that Calvert had some concerns and echoed the planning commission chair’s comments.

Wiersum said that it was not consistent with the council’s vision for that area, but offices were a challenge. Vision Minnetonka said that one of the cities challenges would be what to do with under utilized offices. He asked the developer to think bigger and work harder.

C.  Concept plan review for Hennepin County Medical Examiner’s Office at 14300 Co. Rd. 62

Gordon gave the staff report.
Wiersum asked about the total acres and buildable acres. Gordon confirmed that the buildable area was around half of the total acreage.

John Rode, Hennepin County facility services, showed a map and discussed the history of the site. He discussed the 100-year flood plain, bog, and wetlands of the area. There was not a master plan, but it was being zoned according to how the site would be used over time. Rode explained that a lot of the maintenance was being deferred because of a joint program with Ramsey County. He discussed the five different possible sites and the one that had been settled on. He also talked about access and parking.

Acomb asked about the wetland bank. Rode answered that Hennepin County was working on it, but it was on hold until a decision was made as to where the building was going.

Ellingson asked about access to the remaining buildable site highlighted in yellow. Rode talked about the different options.

Wiersum asked what types of trees were in the pine grove. Rode answered scots and red pines planted in strict rows.

Schack asked the distance of the access road. The civil engineer, answered that it was about 800 feet from the connection near the wetland to staff parking. Schack asked if there was concern about disrupting the wetland. He answered that there was a retainer wall that would help protect it.

Bergstedt said that this was a 161-acre site and this would take 10 acres. He had some concerns about building without a master development plan and the proposed access road.

Acomb shared that she was glad the wetland bank was still on the agenda and thought the concept plan was a fine use of the area. She did share the concern about the access road.

Ellingson said that area was guided in the comprehensive guide plan as institutional so continued use by the county was consistent. He wanted to know if he and his wife would be able to continue cross-country skiing there.

Wiersum thought this was a good use of the county owned property. He noted that the biggest challenge was the access road.
D. Ordinances related to franchise fees

Barone gave the staff report.

Acomb asked staff to correlate a 9.5% levy increase to a dollar amount for a median income household. Barone answered $113.

Luann Tolliver, 14801 Wychewood Road, shared that she had lived in Minnetonka for over 38 years. She was against the ordinance to increase franchise fees to fund the construction of new trails. She believed the franchise fee was a regressive tax that would adversely affect senior citizens on fixed budgets and low-income individuals. She asked the council to honor their campaign vows.

Craig Eiler, Sussex Drive, said that utility franchise fees was just another way of disguising a tax whether it was legal or illegal. He asked what trails and sidewalks have to do with utilities. He noted that utilities were very high and this would only increase the tax burden especially for senior citizens.

Maureen Hackett, 4919 Arlington Drive, Hopkins, talked about the sudden need for $70 million dollars because of Imagine Minnetonka. She said that she was concerned with the speed at which this was happening and thought the council should take projects one at a time.

Nancy Bresnahan, 14319 Stewart Lane, marveled at the work the council did and thank them. She said she wished there was another option, but that there was not so she supported the franchise fees,

Jim Zamastil, 13103 Melody Lane, said that he had never paid attention to fees on his utility bills. He accused governments of chickening out and asked the council to put it on the tax levy and face the consequences of voters.

Cliff Giese, 12017 Fairview Lane, Hopkins, agreed 100% with trails and sidewalks, but disagreed with putting it on utility bills. He preferred it to be on his taxes so that he could deduct it on his federal return.

Luke Vansanten, 2148 Sheridan Hills Road, Wayzata, talked about the numerous benefits from improving Minnetonka’s bike and walking trail network. He acknowledged concern of the regressive nature of franchise fees, but demographic data indicated that approximately 12% of households were persons older than 65 and living alone. Data also showed that the median income for households over 65 was just under $70,000. The total fees of $66 per year was less than one-tenth of one
percent of median income. The staff presentation clearly demonstrated it had done significant work determining the best way forward. He asked the council to not let perfect be the enemy of good and to support the ordinances.

David Haeg, 17045 Chilton Hills Road, agreed with the previous commenter and supported the ordinances.

Mary McKee, 3842 Baker Road, Hopkins, shared that she was confused because of the mountain bike trail that was possible going in at Lone Lake Park. She asked the council to take a breath and make a long-term plan for the funding.

Harlen Jacobs, 3412 Oak Ridge Road, had lived in Minneapolis for 25 years where the property owner was assessed for sidewalks. He asked why property owners were exempted from paying for sidewalks in Minnetonka and how much of the fees was for sidewalks and how much for trails. Wiersum said the proposal was $1.8 billion and was for walkability. The city was seeking connections particularly north to south. The city used trails and sidewalks interchangeably because it was all about pedestrian connections. Jacobs urged the council to do it through property taxes or ask businesses to pay for the trails through naming rights.

Barone answered a question about the relationship of trails to utilities explaining that the utility companies use the cities public rights-of-way and that was where the trails would be. With regard to past history use of franchise fees, the council had been very dedicated to specific uses such as burying power lines. She discussed the question concerning the sudden need for $60 million dollars. The trail list had been around for 20-years and the city had slowly chipped away at it. She clarified that the state did not allow the city to charge income tax and that Minnetonka had a long-standing policy of not assessing the property owner for street improvements.

Wiersum said that the council had a challenging conversation, but the issue was fairly clear. There seemed to be broad support on the council for finding a funding stream to improve walkability.

Bergstedt asked if the council approved the franchise fees for trails and sidewalks would it have to option to change the use later or eliminate the fees. Barone answered that the council would have the opportunity to reconsider the fees once every 12 months.
City Attorney Corrine Heine clarified that there was a provision in the electric franchise that stated that the fees must be equivalent to all utilities in order to be able to change the use.

Acomb asked if there was a way to fix the regressive nature of the fees. Heiner answered that the franchise agreements require that it be a flat fee per count.

Acomb said that she was one of the loudest advocated for the expansion of the trail system and the increased pace. Imagine Minnetonka was affirmation that the community wanted it too. Council had asked staff to find a dedicated funding stream, but she did have a little bit of heartburn about the regressive nature of the fee.

Happe said that by his count 70% of people in the room and 90-95% of the feedback was against the franchise fees. He supported trails, but could not support the franchise fees.

Bergstedt took offense to the speakers that had inferred that this was a hurried decision without public input and that had called it a hidden tax.

Schack agreed about the demand for trails and the deliberate nature which the council, staff and public have had input. She was sensitive to the cost, but felt differently when something was being demanded by the community. Her only issue was the regressive nature of the fees, but the trails would be such a benefit for everyone. She mentioned that a lot of the feedback was negative, but that was normal when an increase in fees or taxes was being proposed.

Ellingson talked about living on a park and being able to walk to a commercial area. He said that making trails convenient increased public health.

Barone read Calvert’s email supporting the franchise fee, but noted that it was a hard decision.

Wiersum said that the city wanted walkability and connection. So, the question was how to pay for it. The council had asked staff for a consistent, reliable funding stream and staff had worked really hard to pay for it. He said that the franchise fee was a tax that was collected by the utility company on behalf of the city. He stated that he would vote for the franchise fee even if there was a political price because he believed it was the right thing to do.
Bergstedt shared that he was always proud of his mayor, but tonight he was especially proud of him. He agreed that it was not a hidden fee, but a tax. He said that it was important to him to know that the council would have the option to change the use, decrease, or even eliminate the fees in the future. He noted that this was a challenging vote, but he was supporting the franchise fees.

Acomb said that it was a hard decision, but that she liked it because it offered flexibility for future councils to change. She noted that it was a defined funding stream which provided a known amount of stable revenue. She didn't like the regressive nature, but would be supporting the franchise fees.

Bergstedt moved, Schack seconded a motion to adopt ordinance 2018-15 increasing the electric franchise fee on Northern States Power Company for providing electric energy service within the City of Minnetonka. And ordinance 2018-16 implementing a gas franchise fee on CenterPoint Energy Minnesota Gas for providing gas energy service within the City of Minnetonka. Schack, Acomb, Bergstedt, Ellingson, and Wiersum voted “yes.” Happe voted “no.” Motion carried.

E. Items related to the 2019 preliminary tax levy

1) **Resolution setting a preliminary 2018 tax levy and preliminary 2018 HRA levy, collectible in 2019, and a preliminary 2019 budget, and consenting to a special benefit tax levy of the Minnetonka Economic Development Authority**

2) **Resolution setting a preliminary 2018 tax levy, collectible in 2019, for the Bassett Creek Watershed Management Tax District**

Barone gave the staff report.

Wiersum asked staff to clarify the difference between the General Fund and the tax levy. Barone talked about the differences and the different uses for the General Fund and the tax levy.

Acomb moved, Schack seconded a motion to adopt resolution 2018-129 setting a preliminary 2018 tax levy and preliminary 2018 HRA levy, collectible in 2019, and a preliminary 2019 budget, and consenting to a special benefit tax levy of the Minnesota Economic Development Authority and resolution 2018-130 setting 2018 tax levy, collectible in 2019, for the Bassett Creek Watershed Management Tax District. Schack, Acomb, Happe, Bergstedt, and Wiersum voted “yes.” Ellingson was absent. Motion carried.
Wiersum called a recess at 9:53 p.m. Happe was excused for the rest of the meeting. Wiersum called the meeting back to order at 9:58 p.m.

F. Items related to the Green Line Extension (Southwest LRT)

Wischnack gave the staff report.

Bergstedt moved, Acomb seconded a motion to adopt resolution 2018-131 reaffirming previous approvals for Southwest LRT; to approve Subordinate Funding Agreement (SFA) 6 – Change Orders for Locally Requested Capital Improvements (LRCI’s); to approve Funding Agreement (SFA) Amendments – SFA 4 and SFA 5; and to adopt resolution 2018-132 approving real estate conveyances. All voted “yes.” Motion carried.

15. Appointments and Reappointments: None

16. Adjournment

Acomb moved, Schack seconded a motion to adjourn the meeting at 9:59. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
1. **Call to Order**
   
   Mayor Brad Wiersum called the meeting to order at 6:30 p.m.

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

3. **Roll Call**
   
   Councilmembers Mike Happe, Rebecca Schack, Deb Calvert, Tim Bergstedt, Bob Ellingson, Patty Acomb, and Brad Wiersum were present.

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

5. **Approval of Minutes: None**

6. **Special Matters:**
   
   A. **Proclamation for Extra Mile Day**
      
      Acomb read the Proclamation.

7. **Reports from City Manager & Council Members**
   
   Barone reported on upcoming city events and council meetings.

   Acomb attended the Municipal Legislative Committee Board meeting on behalf of the mayor. She shared that it was a great opportunity where she met other members.

   Calvert attended an unveiling of a Little Free Library at West Ridge Apartments on behalf of the mayor.

8. **Citizens Wishing to Discuss Matters not on the Agenda**

9. **Bids and Purchases:**
   
   A. **Bids for City Hall Office Remodeling**
      
      Barone gave the staff report.
Happe moved, Schack seconded a motion to award the construction portion of the city hall remodeling project to RAM General Contracting, Inc. in the amount of $1,810,648. All voted “yes.” Motion carried.

10. Consent Agenda – Items Requiring a Majority Vote:

A. Resolution adopting revised Hennepin County Hazard Mitigation Plan

Ellingson moved, Bergstedt seconded a motion to adopt resolution 2018-133 approving the revised Hennepin County Hazard Mitigation Plan. All voted “yes.” Motion carried.

B. Order for liquor license stipulation

Wiersum pulled item 10B. He shared that this was Nordstrom, Inc.’s second violation with a three-day suspension penalty. He noted that the city had a best practices program which would have allowed one extra strike.

Wiersum moved, Ellingson seconded a motion to issue the Findings of Fact, Conclusion, and Orders for Nordstrom, Inc. (DBA Nordstrom Ruscello). All voted “yes.” Motion carried.

C. Resolution authorizing the Minnetonka Police Department to enter into a Towards Zero Death Traffic Enforcement grant agreement

Ellingson moved, Bergstedt seconded a motion to adopt resolution 2018-134 authorizing execution of Towards Zero Death Traffic Enforcement grant agreement. All voted “yes.” Motion carried.

D. Solar garden subscription agreement with New Energy Equity, LLC

Acomb pulled item 10D.

Public Works Director Brian Wagstrom shared that public works along with energy management services searched for solar garden subscriptions because there was a need to increase the subscription from seven million kilowatt hours to ten million kilowatt hours for a total savings of $66,000.00 this year.

Acomb asked if the need had changed given the new public safety building. Wagstrom answered that the need would go up; however, the city had the ability to subscribe to more than actual need.

Acomb moved, Ellingson seconded a motion to approve the agreement, subject to the city manager’s and city attorney’s approval of the final language. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes: None

12. Introduction of Ordinances:
A. Ordinance repealing and replacing City Code 325, Sign Regulations

Assistant City Planner Susan Thomas gave the staff report.

Calvert noted that the changes made a great deal of sense and would help the council make decisions in the future.

Wiersum said that signs were hard to manage and that the changes made the ordinance more user friendly.

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

B. Ordinance authorizing the sale of city property adjacent to 2430 Winter Circle

City Attorney Corrine Heine gave the staff report.

Calvert asked about the wetlands being filled in. Heine explained that there had been some filling in, but it had already been rectified. Calvert asked if a resident had built a sport court would they need a variance. Heine answered that the location of the sport court was not in violation of the ordinance.

Wiersum asked if this property would be developable under different circumstances. Heine answered that it was not developable because it did not have separate access.

Calvert moved, Happe seconded a motion to introduce the ordinance and approve the purchase agreement, subject to nonmaterial changes as approved by the city manager and city attorney, and authorize the mayor and city manager to execute the final purchase agreement. All voted “yes.” Motion carried.

13. Public Hearings:

A. Resolution vacating public drainage and utility easements at 2932 Beechwood Avenue

Barone gave the staff report.

Wiersum opened the public hearing at 7:08 p.m. No one spoke. Wiersum closed the public hearing at 7:09 p.m.

Bergstedt moved, Calvert seconded a motion to adopt resolution 2018-135 approving the vacation of drainage and utility easements. All voted “yes.” Motion carried.

B. Temporary on-sale liquor license for Episcopal Parish of St. David, 13000 St. David Road
Barone gave the staff report.

Wiersum opened the public hearing at 7:10 p.m.

Bill Jacobs, 4771 Hamilton Road, shared that the annual outreach gala was scheduled for Saturday, November 10th. The proceeds would benefit St. David and the Intercongregation Communities Association food shelf.

Wiersum closed the public hearing at 7:13 p.m.

Schack moved, Calvert seconded a motion to hold the public hearing and grant the temporary liquor license for the annual gala at St. David’s. All voted “yes.” Motion carried.

C. **On-sale wine and on-sale 3.2 percent malt beverage liquor licenses for DelSur L.L.C., 14725 Excelsior Blvd.**

Barone gave the staff report.

Wiersum continued the public hearing from the August 27, 2018 City Council meeting at 7:14 p.m. No one spoke. Wiersum closed the public hearing at 7:15 p.m.

Bergstedt noted that this was a fine addition to the Glen Lake area.

Acomb asked whether Del Sur was participating in the city’s best practices program. Barone answered yes for the applicant who was present in the audience.

**Bergstedt moved, Happe seconded a motion to grant the licenses. All voted “yes.” Motion carried.**

D. **On-sale intoxicating liquor license for Olive Garden Holdings, LLC, at 11390 Wayzata Blvd.**

Barone gave the staff report.

Wiersum opened the public hearing at 7:18 p.m. No one spoke.

**Acomb moved, Calvert seconded a motion to continue the public hearing to Nov. 5, 2018. All voted “yes.” Motion carried.**

14. **Other Business:**

A. **Items concerning VILLAS OF GLEN LAKE at 5517 and 5525 Eden Prairie Road:**

1) **Ordinance rezoning the property from B-1 and R-1 to R-3; and**
2) Resolution approving preliminary and final plats, with variances.

Thomas gave the staff report.

Schack asked if there was a connecting sidewalk south of the property. Thomas confirmed.

Ellingson asked if there was a sidewalk on the other side of the street was it likely that the city would put one in on the other side. Gordon answered that it wasn’t likely. Ellingson asked if the applicant needed to show a hardship in order to get a variance. Thomas answered that the applicant needed to show practical difficulty. Ellingson asked if the applicant had proven practical difficulty. Thomas said that the applicant request was reasonable because of the unique circumstances and general character of locality.

Blaine Waters, Quest Development, Inc., said that staff had done a thorough job on the presentation and he did not have anything to add.

Calvert asked about trees missing from the tree inventory as referenced by a concerned neighbor. Thomas said that staff fact checks the tree inventory.

Waters addressed the neighbor’s concerns, the drive aisle, and presented a rendering of what the site might look like.

Acomb discussed the orientation of backyards facing the road and asked how the two westerly lots would be oriented. Waters answered that those homes would back up towards County Road 4.

Wiersum asked about the driveway shown on Eden Prairie Road. Waters answered that the driveway was not achievable.

Anne Hossfeld, 14616 Glendale Street, said that she lived directly west of this development and had no major objections. She voiced a concern over water management and showed photos of her property during a rain storm.

Acomb thought the use was appropriate, but was concerned with the lack of a sidewalk.

Calvert thought that rezoning was appropriate and understood the need for orienting the homes towards each other, but she struggled with having the backyards against the road. She shared the concern about the sidewalk and did not want to lose trees.

Ellingson raised an objection from former council member Tony Wagner concerning the backyards of homes facing the street. Ellingson was also concerned about tree loss and the lack of practical difficulty that justified the variance.
Bergstedt thought that squeezing five-units on the site seemed generous. He noted that if there were only four-units then more trees could be preserved. He discussed the benefits of a sidewalk versus losing trees.

Barone noted that page three of the resolution talked about the practical difficulties.

Acomb asked if there had been conversations with Hennepin County concerning the strict rules concerning sidewalks. City Engineer Will Manchester discussed the requirements of the county for sidewalks. He noted that the county was open to discussion about the rules.

Happe noted that there was a sidewalk across the street so he was in favor of preserving trees over a sidewalk.

Schack noted a concern about five-units being too many and did not like the backs of homes facing the road. She also preferred preserving trees over a sidewalk.

Wiersum said that the proposal was trying to add a lot in a small space, but that the type of house and transition was appropriate. He said that he would choose public safety over trees because putting in a crosswalk was difficult. He talked about storm water management and how requirements continued to change to keep up with changing weather patterns. He concluded that he was not comfortable with the proposal as it stood.

Acomb talked about the lack of sidewalk and didn’t believe that having to cross to the other side was safe. This prevented her from supporting the proposal.

Bergstedt said that five-units was too high for this site. He talked about his discomfort with backs of home facing the road. He was comfortable with staff’s recommendation to not require a sidewalk.

Calvert acknowledged the report and photos from Hossfeld. She encouraged staff and the developer to continue looking at stormwater management.

Wischnack suggested tabling the vote to give the developer a chance to revisit some of the issues that the council was concerned with.

Wiersum asked the council to lay out and prioritize issues.

Barone asked if the applicant wanted to approve an extension until November 5th, 2018.

Waters was agreeable to postponing, but asked the council to clarify what it wanted.

Schack noted that a sidewalk going to nowhere had its own safety issues. She stated that her priorities were four-units and to reorient some of the homes.
Happe agreed that the sidewalk was not necessary and also preferred four-units.

Bergstedt supported four-units for tree preservation and was against the sidewalk.

Calvert agreed that a sidewalk was not necessary because of the existing sidewalk and to preserve trees. She also agreed that four-units would allow for tree preservation and reorienting the homes.

Acomb leaned toward four-units, but supported the sidewalk in order to continue connecting Glen Lake.

Ellingson agreed about reducing the proposal to four-units. He thought it would be nice to have a sidewalk, but understood that it might not be possible.

Wiersum said that from a council perspective four-units was a pretty easy decision. He discussed the sidewalks versus trees issue, but in the end favored preserving the trees.

Bergstedt moved, Schack seconded a motion to table the items concerning VILLAS OF GLEN LAKE at 5517 and 5525 Eden Prairie Road until a future date decided on by staff and developer. All voted “yes.” Motion carried.

B. Revised concept plan for Marsh Run Two Redevelopment at 11650 and 11706 Wayzata Blvd.

Thomas gave the staff report.

Wischnack continued the staff report and discussed affordability.

Tony Kuechle, president of development, Doran Companies, asked for council input on the architecture. He said that Doran had made significant changes based on previous input. The unit count had been reduced by 45-units or 19%, two-stories had been eliminated from the side facing the town homes, one-story had been eliminated on the freeway side, the parking on the north side had been eliminated, the berm would be preserved, and the setback had been increased from 33 to 43-feet along the north property line.

Ben Lindau, senior architect, Doran Companies, talked about the exterior design. He said it was meant to complement the existing neighborhood and natural surroundings. He said the increased setback would allow for another row of trees and discussed the different materials that would be used.

Sara Maloney, 705 Fairfield Circle, Hopkins, said that board members from all three associations had formed a coalition. She discussed some of its concerns including 190-units on 2.5-acre parcel, size of building, proximity to Fairfield
Road, traffic, architecture, and lost trees. She asked the council to oppose the project.

Wiersum clarified that this was not a proposal, but a concept plan. No action would be taken.

Don Knox, 921 Fairfield Way, Hopkins, talked about what he wanted to see at the site including a structure that was no higher than three stories, a setback with adequate green space, parking that was contained, and activity during the day time such as a senior apartment building or medical building.

Andrew Jackson, 1012 Fairfield Spur, Hopkins, shared that he would be most impacted. He agreed with previous commenters about the size of the building and voiced a concern over privacy and sunlight.

Gary Anderson, 943 Fairfield Way, Hopkins, discussed traffic impacts and the increased likelihood of accidents.

Charlie Ross, 992 Fairfield Court, Hopkins, shared that he was part of the Ridgedale Home Owners Association with only 20-units. He discussed the proposed reduction and argued that it was not significant enough. He asked if increased taxes were not considered during a proposal like this then what was the benefit. He suggested a park instead of a building and discussed affordable housing. He was concerned that the amenities were not essential. He also mentioned that he was an insurance adjuster and that renters don’t take care of property.

Jamie Flaws, 994 Fairfield Court, mentioned that the entire area abutted wetlands and that the wetlands and animals would be affected.

Bob Uhlhorn, 907 Fairfield Way, addressed traffic safety and density concerns. He suggested that this was the wrong developer.

Pam Lewis, 980 Fairfield Court, reminded the council of some of its comments from the previous meeting concerning density. She thought that gargantuan had been reduced to humongous. She said she was for maintaining the current zoning, but that if it did change to residential then something that was comparable to what was there. She said if it had to be rental then she was for a pitched roof and a maximum of 60-units.

Acomb asked if this development would trigger a staff study. Thomas said that it would. Acomb asked if staff thought the road would be expanded. Manchester answered that there were not current plans to do so. Acomb asked if there were any sites that had similar density. Thomas answered 50 to 55-units, but that she could not think of any in this range off the top of her head.

Ellingson asked if there was any discussion of re-guiding this area in the Comprehensive Guide Plan. Wischnack answered that the area was considered for change with residential as a possibility.
Schack asked about the garbage procedures. Kuechle explained that there would be a tenant move in area off Wayzata Boulevard and that garbage would be contained inside until garbage day.

Acomb asked about the shadow effect. Kuechle answered that Doran was confident that it would not shadow, but a study would be done when the proposal was submitted.

Calvert asked what the price point would be if the project was reduced to 60-units. Kuechle said he didn’t have an answer. He said if the units were reduced below 190 then the project would lose all of its amenities. He noted that amenities were what hold people. The industry average for retention was 50% and Doran’s average was mid-70s.

Happe thanked Doran for the changes and thought the building looked nice. He asked what the rent cost would be. Kuechle said a range of $1,400.00 to $3,600.00. Kuechle clarified that a flat roof did not affect density, but that a pitched roof was possible if preferred.

Wiersum asked about the density range in projects that Doran had completed over the last five years. Kuechle said a building in the northeast side of Minneapolis was approaching 140-units per acre, and Maple Grove was around 37-units per acre. Kuechle also noted that Doran had received requests from neighbors to make it higher.

Ellingson asked how people felt about living next to a freeway with so much noise. Kuechle answered that Doran reduces the noise on that side with insulation and triple pane windows.

Calvert said that it was very attractive building and materials if building was taken by itself, but it did not fit the neighborhood. She said that the property did present opportunity for some density, but she was still struggling with the size and traffic concerns.

Acomb said that no matter happened there it would be a big change for the neighbors. She discussed affordable housing, but was still struggling with 77-units per acre. She thought it was a good developer and project and was leaning supportive. She talked about being as respectful as possible to the neighbors to make the transition more palatable.

Schack said that she thought it was an appropriate site for high density residential, but that this project might be too dense. She was concerned about traffic and traffic management. She said that housing was a priority and too many office buildings were empty. She liked the design, but was concerned about mass.
Calvert shared that property rights do not extend to your view, but did allow land owners to develop. She said that as the council was struggling with size, height, and density, she was struggling with green space and losing mature trees.

Bergstedt said that it was a very nice building, but the parcel was too small for it.

Happe said that the good news was that there’s already sidewalks. He understood the neighbors’ concerns, but thought the building looked nice.

Ellingson agreed with Bergstedt’s comments.

Wiersum said that the issues were mass, density, traffic, and affordability. The developer had done a nice job of listening and adjusting the building, but unfortunately it was a big building on a small site. He recognized that density was needed to get affordability, but thought that maybe Doran was not the right developer for this site.

Wischnack reviewed what would happen next. She said the developer would take the council’s comments and decide whether or not to proceed with formal proposal. She reiterated that the council seemed comfortable with high density residential, but that the project, so far, was too dense.

15. Appointments and Reappointments: None

16. Adjournment

Happe moved, Calvert seconded a motion to adjourn the meeting at 10:17 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
City Council Agenda Item #12A
Meeting of Nov. 26, 2018

Brief Description
Items concerning the Glen Lake Apartments at 14317 Excelsior Blvd.:

1) Comprehensive Guide Plan amendment from commercial to high-density residential;
2) Rezoning from R-1, low-density residential, to PUD, planned unit development;
3) Master development plan;
4) Site and building plan review; and
5) Right-of-way vacation.

Recommendation
Introduce the ordinance and refer it the planning commission.

Background
In 2018, Ron Clark Construction submitted a concept plan for redevelopment of the property at 14317 Excelsior Blvd. The plan contemplated removal of the existing single-family home and construction of a three-story, 60-unit market rate apartment building.

Proposal
Ron Clark Construction has now submitted formal applications for redevelopment of the site. As proposed, the existing home would be removed and a new apartment building would be constructed. The building would contain 58 market-rate apartments within three stories. The building would be served by underground parking, accessed via Stewart Lane, and surface parking, accessed via Excelsior Boulevard.

The proposal requires approval of:

- **Comprehensive Guide Plan.** To amend the property from commercial to high-density residential.

- **Rezoning.** To facilitate the proposed development, the applicant is requesting that the property be rezoned to PUD.

- **Master Development Plan.** Under the zoning ordinance, a master development plan is required in conjunction with PUD zoning.

- **Final Site and Building Plans.** By city code, site and building plan review is required in conjunction with PUD zoning.
• **Right of Way Vacation.** Consistent with a previous request and approval on the adjacent property to the west, the applicant is requesting vacation of an unused area of right-of-way along the north property line.

**Issue Identification**

The purpose of introducing an ordinance is to give the city council the opportunity to review a new application before sending it to the planning commission for a recommendation. Introducing an ordinance does not constitute an approval. The tentative planning commission date is Dec. 6, 2018.

Based on preliminary review of the proposal, staff has identified the following issues for further analysis and discussion.

- **Zoning.** Staff will analyze the use of PUD zoning. In particular, staff will consider whether the proposed development is "compatible with the existing surrounding development type and intensity."¹

- **Site Design.** Staff will evaluate proposed site massing, parking and building setbacks, and green space/landscaping.

- **Traffic and Access.** A traffic study is currently being conducted. The study will look at existing conditions and the proposal’s anticipated impact on these conditions. The study will further suggest/identify any necessary roadway or site design improvements.

**Staff Recommendation**

1) Introduce the attached rezoning ordinance and refer it to the planning commission.

2) Approve or modify the attached notification area. This is the same area used for the previous concept plan.

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

Originated by:
  Susan Thomas, AICP, Assistant City Planner

---

¹ City Code §300.22, Subd. 2(e), Planned Unit Development District
Location Map

Project: Glen Lake Apts
Address: 14317 Excelsior Blvd
Tuesday, November 06, 2018

Susan Thomas
City of Minnetonka
14600 Minnetonka Blvd
Minnetonka, MN 55345

RE: Glen Lake Apartment Project Narrative

Ron Clark Construction is proposing a three-story, 58-unit apartment building on the property located at 14317 Excelsior Boulevard.

The proposed apartment building would have underground parking, resident community room, exercise room, onsite manager's office and a common area deck on third floor.

It is proposed to have a mix of 1, 1+Den and 2-bedroom apartments and they currently expect the unit rents to be between $1,200 and $2,500 per month.

Zoning for the property is currently R-1. The City’s Comprehensive Guide Plan for 2030 designates the site for Commercial Use.

Rezoning: The proposed residential use requires a rezoning and guide plan change. The proposed housing component would qualify the project for public benefit under the planned unit development zoning district. A complementary high density residential comprehensive plan re-guidance would align with the zoning density of 44 units/acre. (58 units/1.31 acre).

Building Design: The proposed 3 story building is designed with a low pitch hip roof to lower the profile. The ‘U’ shape of the building plan has projecting wings on each end which divide the mass along Excelsior Blvd. The exterior materials include a variety of brick, stone, Hardie/SmartSide type panels. Each unit will include a metal deck or a concrete patio.
Site Design: The building is placed on the property to create an opportunity to preserve existing trees at the NE corner along Excelsior Blvd. and to also allow adequate space for landscaping on the east side along Stewart Lane.

The main entrance and guest surface parking is accessed from Excelsior Blvd. The enclosed parking level is accessed from Stewart Lane to the south due to the existing topography of the site, as this is at a low point of the existing grades.

Stormwater Management: Stormwater runoff from the site will be collected and routed to an underground arch chamber system which is designed to store and infiltrate water into the soils below it. The arch chamber system will discharge stormwater to the existing storm sewer system in Stewart Lane. The system has been designed to meet the requirements of both the City and the Watershed District.

A Stormwater Management Plan is included as part of this Application.

Traffic: A Traffic Study has been ordered by the City and is currently underway and should be available for review prior to the upcoming City Planning Commission and City Council Meetings in December.

Based on the initial review of the traffic from our consultants they feel that the impact of our proposed project will have little or no effect on the current traffic in the area including the parking garage access to Stewart Lane.

The 2030 Comprehensive Plan Designated Commercial use for the site could generate considerably more traffic than our proposed apartment project.
**Professional Management:** Steven Scott Management will be our management company. They are a highly respected local company whom we currently do business with. Management will assign three corporate employees to the Property: Regional Portfolio Manager; a Marketing Director; and a Senior Accountant. These employees are overhead to management and selected based on experience in working on similar projects with Ron Clark.

- The Regional Portfolio Manager (RPM) will oversee all site operations and be the liaison to the Owner.

- The Marketing Director is intricately involved with the property during the lease up and through the term of the contract. The Marketing Director is responsible for maintaining a Marketing Plan and assisting the property staff in securing sufficient leads to ensure a high occupancy level in accordance with the Tenant Selection Plan.

- The Senior Accountant is responsible for compiling all necessary monthly and periodic financial reports.

Employees of the Property will include:

- Property Manager – minimum 30 hours/week
- Leasing Agent (during lease up)
- On-site caretaker
- Maintenance Technician (part-time)

**Maintenance Services:** Management has policies in place for routine and preventative maintenance for the property. Routine maintenance will primarily be done by the maintenance technician, and as necessary, through an outside vendor. All maintenance requests are directed to the Property Manager and acknowledged/completed within a 24-hour period. Maintenance after-hours emergency services are handled through the Management Company on-call services, or through an outside vendor if necessary.

A Preventative Maintenance Program will be custom designed for the Property once all construction is completed.

Management will also establish an after-hours emergency on call procedure to provide needed services to the Property.
Resident Selection Plan/Criteria: The Resident Selection Plan and Resident Selection Criteria are intended to serve as tools to be used to assist the Property in determining applicant housing eligibility and selection. Owner and Manager will collectively work to implement and administer these tools fairly and consistently to effectively meet the goals of Glen Lake Apartments to maintain a safe and attractive market rate community. Resident criteria will include a required income rate of three times the monthly rental rate. Additional requirements include favorable credit, landlord and criminal history.

Lease infractions, conflict resolution, lease terminations and appeals process:
In most cases, the following will apply:

- Lease infraction notices will be sent to residents upon incident.
- Reasons for an infraction are stated in the lease, but might include noise, litter or pet waste, or late rent payment.
- Lease terminations can occur once infractions have accumulated or if a resident becomes a danger to the health, safety and well-being of the other residents, the building, or the staff.
- Depending on the situation, the terminated resident may meet with the Property Managers to discuss the termination.
- If a terminated resident wishes to appeal the termination, they may do so by requesting an appointment with their Property Manager in writing.

Steven Scott Management utilizes a Drug-free/Crime-free lease addendum, signed by all residents with their lease agreement prior to move-in.

Glen Lake will be Pet Friendly and Smoke Free. All required addendums will be signed with the lease agreement prior to move-in.
That part of the Northeast Quarter of the Northeast Quarter of Section 34 and the Southwest Quarter of
the Southwest Quarter of Section 27, all in Township 117, Range 22, Hennepin County, Minnesota, being
described as follows and which lies northeasterly of the northeasterly line of the recorded plat of THE
EXCHANGE.

Beginning at a point on the southeasterly line of HENNEPIN COUNTY STATE AID HIGHWAY NO. 3, PLAT
43, according to the recorded plat thereof, distant 1373.48 feet northeasterly from the most southerly
corner of said PLAT 43, as measured along said southeasterly line; thence North 38 degrees 02 minutes
21 seconds West (said plat being the basis for bearings) 11.23 feet, at right angles to said southeasterly
line; thence North 45 degrees 51 minutes 54 seconds East 238.26 feet; thence northeasterly 396.51 feet
on a non-tangential curve concave to the southeast, radius 1388.39 feet, central angle 16 degrees 21
minutes 47 seconds and chord bearing North 56 degrees 16 minutes 02 seconds East; thence North 64
degrees 26 minutes 53 seconds East 330.70 feet, tangent to said curve; thence South 36 degrees 07
minutes 07 seconds East 28.38 feet to the southeasterly line of said PLAT 43; thence southwesterly
along said southeasterly line to the point of beginning.
### ACCEPTABLE FILL MATERIALS: STORMTECH MC-3500 CHAMBER SYSTEMS

<table>
<thead>
<tr>
<th>MATERIAL LOCATION</th>
<th>DESCRIPTION</th>
<th>AASHTO MATERIAL CLASSIFICATIONS</th>
<th>COMPACTION / DENSITY REQUIREMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>D</td>
<td>ANY SOIL/ROCK MATERIALS, NATIVE SOILS, OR PER ENGINEERS PLANS, CHECK PLANS FOR PAVEMENT SUBGRADE REQUIREMENTS.</td>
<td>NA</td>
<td>PREPARE PER SITE DESIGN ENGINEERS PLANS. PAVED INSTALLATIONS MAY HAVE STRINsIENT MATERIAL AND PREPARATION REQUIREMENTS.</td>
</tr>
<tr>
<td>C</td>
<td>GRANULAR WELL-GRATED SOIL/AGGREGATE MIXTURES, &lt;3% FINES OR PROCESSED AGGREGATE. MOST PAVEMENT SUBGRADE MATERIALS CAN BE USED IN LIEU OF THE LAYER.</td>
<td>AASHTO MH-14* A-1, A-2-4, A-3 OR AASHTO MH-14* 3, 5, 7, 8, 11, 12, 17, 18, 30, 39, 41</td>
<td>BEGIN COMPACTIONS AFTER 24&quot; (600 mm) OF MATERIAL OVER THE CHAMBERS IS REACHED. COMPACT ADDITIONAL LAYERS IN 12&quot; (300 mm) MAX LIFTS TO A MIN. 95% PROCTOR DENSITY FOR WELL-GRADING MATERIAL AND 95% RELATIVE DENSITY FOR PROCESSED AGGREGATE MATERIALS.</td>
</tr>
<tr>
<td>B</td>
<td>CLEAN, CRUSHED, ANGULAR STONE, NOMINAL SIZE DISTRIBUTION BETWEEN 3/4&quot;-2&quot; INCH (20-50 mm).</td>
<td>AASHTO MH-14* 3, 4</td>
<td>NO COMPACTION REQUIRED.</td>
</tr>
<tr>
<td>A</td>
<td>CLEAN, CRUSHED, ANGULAR STONE, NOMINAL SIZE DISTRIBUTION BETWEEN 3/4&quot;-2&quot; INCH (20-50 mm).</td>
<td>AASHTO MH-14* 3, 4</td>
<td>PLATE COMPACT OR ROLL TO ACHIEVE A FLAT SURFACE, 1&quot;</td>
</tr>
</tbody>
</table>

**NOTES:**

1. MC-3500 CHAMBERS SHALL CONFORM TO THE REQUIREMENTS OF ASTM F2418 "STANDARD SPECIFICATION FOR POLYETHYLENE (PE) CORRUGATED WALL STORMWATER COLLECTION CHAMBERS".
2. MC-3500 CHAMBERS SHALL BE DESIGNED IN ACCORDANCE WITH ASTM F2787 "STANDARD PRACTICE FOR STRUCTURAL DESIGN OF THERMOPLASTIC CORRUGATED WALL STORMWATER COLLECTION CHAMBERS".
3. "ACCEPTABLE FILL MATERIAL" TABLE ABOVE PROVIDES MATERIAL LOCATIONS, DESCRIPTIONS, GRADES, AND COMPACT REQUIREMENTS FOR FUNDAMENTAL EMBLEMB, EMBLEM, AND FILL MATERIALS.
4. THE "SITE DESIGN ENGINEER" REFERS TO THE ENGINEER RESPONSIBLE FOR THE DESIGN AND LAYOUT OF THE STORMTECH CHAMBERS FOR THIS PROJECT.
5. THE SITE DESIGN ENGINEER IS RESPONSIBLE FOR ASSESSING THE BEARING RESISTANCE (ALLOWABLE BEARING CAPACITY) OF THE SUBGRADE SOILS AND THE DEPTH OF FOUNDATION STONE WITH CONSIDERATION FOR THE RANGE OF EXPECTED SOIL MOISTURE CONDITIONS.
6. PERIMETER STONE MUST BE EXTENDED HORIZONTALLY TO THE EXCAVATION WALL FOR BOTH VERTICAL AND SLOPED EXCAVATION WALLS.
7. ONCE LAYER C IS PLACED, ANY SOIL MATERIAL CAN BE PLACED IN LAYER D UP TO THE FINISHED GRADE, MOST PAVEMENT SUBGRADE SOILS CAN BE USED TO REPLACE THE MATERIAL REQUIREMENTS OF LAYER C OR D AT THE SITE DESIGN ENGINEER’S DISCRETION.

**OR APPROVED EQUAL**
INSPECTION & MAINTENANCE

STEP 1) INSPECT ISOLATOR ROW FOR SEDIMENT
A. INSPECTION POINTS (IF PRESENT)
   A1. REMOVE/OPEN LID ON NYLON PLAST IN-LINE DRAIN
   A2. REMOVE AND CLEAN FLEXSTORM FILTER IF INSTALLED
   A3. USING A FLASHLIGHT AND STADIA ROD, MEASURE DEPTH OF SEDIMENT AND RECORD ON MAINTENANCE LOG
   A4. LOWER A CAMERA INTO ISOLATOR ROW FOR VISUAL INSPECTION OF SEDIMENT LEVELS (OPTIONAL)
   A5. IF SEDIMENT IS AT, OR ABOVE, 3’ (90 mm) PROCEED TO STEP 2. IF NOT, PROCEED TO STEP 3.
B. ALL ISOLATOR ROWS
   B1. REMOVE COVER FROM STRUCTURE AT UPSTREAM END OF ISOLATOR ROW
   B2. USING A FLASHLIGHT, INSPECT DOWN THE ISOLATOR ROW THROUGH OUTLET PIPE
   i) MIRRORS ON POLES OR CAMERAS MAY BE USED TO AVOID A CONFINED SPACE ENTRY
   B3. IF SEDIMENT IS AT, OR ABOVE, 3’ (90 mm) PROCEED TO STEP 2. IF NOT, PROCEED TO STEP 3.

STEP 2) CLEAN OUT ISOLATOR ROW USING THE JET-VAC PROCESS
A. A FIXED CULVERT CLEANING NOZZLE WITH REAR FACING SPREAD OF 45° (1.1 m) OR MORE IS PREFERRED
B. APPLY MULTIPLE PASSES OF JET-VAC UNTIL BACKFILL WATER IS CLEAN
C. VACUUM STRUCTURE SUMP AS REQUIRED

STEP 3) REPLACE ALL COVERS, GRATES, FILTERS, AND LIDS. RECORD OBSERVATIONS AND ACTIONS.

STEP 4) INSPECT AND CLEAN BASINS AND MANHOLES UPSTREAM OF THE STORMTECH SYSTEM.

NOTES
1. INSPECT EVERY 6 MONTHS DURING THE FIRST YEAR OF OPERATION, ADJUST THE INSPECTION INTERVAL BASED ON PREVIOUS OBSERVATIONS OF SEDIMENT ACCUMULATION AND HIGH WATER ELEVATIONS.
2. CONDUCT JETTING AND VACUUMING ANNUALLY OR WHEN INSPECTION SHOWS THAT MAINTENANCE IS NECESSARY.
Monday, November 5, 2018

Susan Thomas
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN 55345

RE: Glen Lake Development Application

Subject: Neighborhood Meeting Information

1) 7/31/18 Neighborhood Mtg #1
   - Initial NH Mtg hosted at Unmapped Brewery
   - Concept Plan introduced
   - Susan Thomas fielded questions on the City process
   - Tim Whitten and Mike Waldo fielded questions on the development plan and design
   - 58 attendees signed our attendance list (approximately 120 totals in attendance)

2) 8/13/18 Neighborhood Mtg #2
   - NH Mtg #2 was hosted at the City Hall to provide a quieter environment for conversation.
   - Revised plans were presented based on comments from Mtg #1
   - Susan Thomas fielded questions on the City process
   - Tim Whitten and Mike Waldo fielded questions on the development plan and design
   - Approximately 50 neighbors/interested parties attended

3) 9/20/18 Neighborhood Mtg #3 – Workshop
   - NH Mtg #3 was hosted at the City Hall in a Workshop Format in order to offer the opportunity for the neighbors to provide sketches of their ideas.
   - Revised plans were presented based on comments from Mtg #1 & #2
   - Susan Thomas was present for part of the meeting as well as Planning Commissioner David Knight.
   - Tim Whitten reviewed the design and fielded questions.
   - Mike Waldo fielded questions on the development plan and process.
   - Approximately 23 neighbors were in attendance
Ordinance No. 2018-
An ordinance rezoning the property at 14713 Excelsior Blvd. from R-1, low-density residential, to PUD, planned unit development

The City Of Minnetonka Ordains:

Section 1.

1.01 The subject property at 14713 Excelsior Blvd. is hereby rezoned from R-1, low-density residential, to PUD, planned unit development

1.02 The property is legally described on Exhibit A of this ordinance.

Section 2.

2.01 This ordinance is based on the following findings:

1. The rezoning to PUD would result in development that is compatible with existing, surrounding development type and intensity that would not be allowed in other existing zoning districts.

2. The rezoning would be consistent with the intent of the zoning ordinance and of the comprehensive guide plan.

3. The rezoning would be consistent with the public health, safety, and welfare.

2.02 This ordinance is subject to the following conditions:

1. The site must be developed and maintained in substantial conformance with the following plans:

   - Site Plan, dated Oct. 29, 2018
   - Utility Plan, dated Oct. 29, 2018
   - Grading Plan, dated Oct. 29, 2018
   - Stormwater Pollution Prevention Plan, dated Oct. 29, 2018
   - Landscape Plan, dated Nov. 2, 2018
• Building Elevations, dated Nov. 5, 2018

2. The development must further comply with all conditions outlined in City Council Resolution No. 2018-xx, adopted by the Minnetonka City Council on ____________, 2018.

Section 3. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on Nov. 26, 2018.

Brad Wiersum, Mayor

Attest:

David E. Maeda, City Clerk

Action on this ordinance:

Date of introduction: Nov. 26, 2018
Date of adoption:
Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Ordinance adopted.

Date of publication:

I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on Nov. 26, 2018.

David E. Maeda, City Clerk
Exhibit A

Parcel 1:

Tracts A and B, Registered Land Survey No. 207, Hennepin County, Minnesota.

Parcel 2:

That part of Lot 10, "Clen Lake Park," described as follows: Beginning at the point of intersection of the southeasterly line thereof and the west line of the Northwest Quarter of the Northwest Quarter of Section 34, Township 117, Range 22; thence northeasterly along the southeasterly line thereof a distance of 116.3 feet to the point of beginning of the tract to be described; thence northwesterly at an angle to the left of 85 degrees and 47 minutes a distance of 57.9 feet, more or less to the north line of said section 34; thence east along the north line thereof to the most easterly corner of said Lot 10; thence southeasterly along the southeasterly line of said Lot 10 a distance of 88.15 feet, more or less to the point of beginning.

That part of the abandoned right of way of the St. Paul, Minneapolis and Milwaukee Railway in Section 34, Township 117, Range 22 described as follows: Beginning at the point of intersection of the southeasterly line of Lot 10, "Clen Lake Park," and the west line of the Northwest Quarter of the Northwest Quarter, Section 34, Township 117, Range 22; thence northwesterly along the southeasterly line thereof a distance of 116.3 feet to the point of beginning of the tract to be described; thence southeasterly to the right, deflection angle 85 degrees 47 minutes, a distance of 101.3 feet, more or less to the southeasterly line of said abandoned railway right of way; thence northwesterly along said abandoned railway right of way a distance of 88.15 feet; thence northwesterly a distance of 101.3 feet, more or less to the most easterly corner of said Lot 10, "Clen Lake Park," thence southeasterly along the southeasterly line of said Lot 10 a distance of 88.15 feet, more or less to the point of beginning.

That part of Lot 68, Auditor's Subdivision No. 321, Hennepin County, Minn., described as follows: Beginning at the most westerly corner of Lot 68; thence northwesterly along the northwesterly line of said Lot 68 a distance of 88.2 feet; thence southeasterly a distance of 55.2 feet, more or less to the most easterly corner of Lot 10, "Clen Lake Park," thence west along the south line of said Lot 68 a distance of 102 feet, more or less to the point of beginning.

TURNBACK AREA:

That part of the northeast quarter of the northeast quarter of section 34 and the southwest quarter of the southwest quarter of section 27, all in Township 117, Range 22, Hennepin County, Minnesota, being described as follows and which lies northeasterly of the northeasterly line of the recorded plat of the EXCHANGE:

Beginning at a point on the southeasterly line of Hennepin County State Aid Highway No. 3, plat 43, according to the recorded plat thereof, distant 1373.48 feet northeasterly from the most southerly corner of said plat 43, as measured along said southeasterly line; thence north 38 degrees 02 minutes 21 seconds west (saidplat being the basis for bearings) 11.23 feet, at right angles to said southeasterly line, thence north 45 degrees 51 minutes 54 seconds east 258.26 feet; thence northeasterly 596.51 feet on a non-tangential curve concave to the southeast, radius 1388.39 feet, central angle 15 degrees 21 minutes 47 seconds and chord bearing north 56 degrees 16 minutes 02 seconds east; thence north 64 degrees 26 minutes 53 seconds east 330.70 feet, tangent to said curve; thence south 35 degrees 07 minutes 07 seconds east 28.38 feet to the southeasterly line of said plat 43; thence southeasterly along said southeasterly line to the point of beginning.
City Council Agenda Item #14A1
Meeting of Nov. 26, 2018

Brief Description

Items concerning The Mariner, a multi-family residential development at 10400, 10500, and 10550 Bren Road East:

1) Ordinance rezoning the property from B-2, limited business, to PUD, planned unit development;

2) Master development plan;

3) Final site and building plans; and

4) Preliminary and final plats.

Recommended

Adopt the ordinance and resolutions approving the rezoning, master development plan, final site and building plans, and plats.

Background

In 2017, Newport Midwest presented a concept plan for redevelopment of a 3.9-acre site at 10400, 10500, and 10550 Bren Road East. The plan contemplated removal of three existing office buildings and construction of a new apartment building, containing roughly 240 units. The city council indicated support for the general concept.

Proposal

Newport Midwest, LLC has now submitted formal applications for redevelopment of the site. As proposed, the existing buildings would be removed and two new apartment buildings would be constructed. The new buildings, containing 194 market rate units and 55 workforce units, would be physically connected by common and amenity spaces. Unit mix within the buildings is generally proposed as follows:

<table>
<thead>
<tr>
<th></th>
<th>West Building</th>
<th>East Building</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(market rate units)</td>
<td>(workforce units)</td>
</tr>
<tr>
<td>Studio</td>
<td>17</td>
<td>-</td>
</tr>
<tr>
<td>One Bedroom</td>
<td>116</td>
<td>11</td>
</tr>
<tr>
<td>Two Bedroom</td>
<td>46</td>
<td>28</td>
</tr>
<tr>
<td>Three Bedroom</td>
<td>15</td>
<td>16</td>
</tr>
<tr>
<td>TOTAL</td>
<td>194</td>
<td>55</td>
</tr>
</tbody>
</table>

The buildings would be served by underground parking, as well as surface parking lots. The future Southwest Light Rail Transit Opus Station will be located roughly 700 feet north of the site.
Planning Commission Review and Recommendation

The planning commission considered the redevelopment proposal on Nov 1, 2018. The commission report, associated plans, and meeting minutes are attached. Staff recommended approval of the proposal, finding:

1. The proposed residential use is consistent with both the past plans for OPUS and the future goals for the area.

2. The use of PUD zoning is appropriate, as it would promote a public benefit recognized by the ordinance. Specifically, the proposal would result in the provision of 55 workforce housing units.

3. The proposed architectural design, including façade treatments, is reasonable and attractive. The proposed building articulation and variety of materials – including glass, fiber cement panels, metal panels, and masonry – would provide visual interest from both onsite and offsite views.

Consistent with planning and engineering staff opinion, the commission also found that the private development improvements – including a dog run and 21 parking stalls – should not be allowed within public easements. The location of the improvements would: (1) be contrary to written city council policy; (2) be contrary to staff direction to this applicant and to applicants for other redevelopment projects within OPUS; and (3) would set a bad precedent for future requests within OPUS. The commission also supported the trail connection on the south side of the building.

At the commission meeting, a public hearing was opened to take comment. No one appeared to speak. Following the public hearing, the commission discussed and expressed general support for the proposal. On a 6-0 vote, the commission recommended that the city council approve the redevelopment with the staff recommended conditions of approval.

Since the Planning Commission

The applicant recently discussed with staff potential changes to the plan. The changes would add the requested sidewalk on the south side of the building and would remove the “formal” dog run from the easement. However, surface parking would continue to be located in the easement. (See attached email.) Staff’s position on private uses within the public easement has not changed. As such, staff has not changed the conditions of approval requiring that final plans include a sidewalk area on the south side of the site and not include private uses within public easements.

Staff Recommendation

Staff recommends that the city council adopt the following pertaining to The Mariner, at 10400, 10500, and 10550 Bren Road East:

1) Ordinance rezoning the property from B-2, limited business, to PUD, planned unit development and adopting a master development plan;

2) Resolution approving final site and building plans; and
3) Resolution approving preliminary and final plats.

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

Originated by:
   Susan Thomas, AICP, Assistant City Planner
MINNETONKA PLANNING COMMISSION
Nov. 1, 2018

Brief Description

Items concerning The Mariner, a multi-family residential development at 10400, 10500, and 10550 Bren Road East:

1) Ordinance rezoning the property from B-2, limited business, to PUD, planned unit development;

2) Master development plan;

3) Final site and building plans; and

4) Preliminary and final plats.

Recommended

Recommend the city council adopt the ordinance and resolutions approving the rezoning, master development plan, final site and building plans, and plats.

Background

In 2017, Newport Midwest presented a concept plan for redevelopment of a 3.9-acre site at 10400, 10500, and 10550 Bren Road East. The plan contemplated removal of three existing office buildings and construction of a new apartment building, containing roughly 240 units. The city council indicated support for the general concept.

Formal Application

Newport Midwest, LLC has now submitted formal applications for redevelopment of the site. As proposed, the existing buildings would be removed and two new apartment buildings would be constructed. The new buildings, containing 194 market rate units and 55 workforce units, would be physically connected by common and amenity spaces. The buildings would be served by underground parking, as well as surface parking lots. The future Southwest Light Rail Transit Opus Station will be located roughly 700 feet north of the site.

Proposal Summary

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

- Existing Site Conditions.

The combined 3.9-acres subject site is located north and east of Bren Road East and is occupied by three small office buildings and their associated parking lots. Though the commercially-zoned property is considered fully developed, it does contain over 60 trees regulated by the tree protection ordinance.
SWLRT Impacts. The Southwest Light Rail Transit line (SWLRT) will be constructed immediately west of the subject site. Construction of the regional transportation system will impact the site in several ways: (1) Bren Road East will be configured, reducing the total site area and affecting on-site topography; (2) temporary construction easements on the site will be necessary; and (3) utilities associated with SWLRT will be located within existing permanent easements on the site. As with any transportation project that requires reconfiguration of roadways/adjacent property lines and the taking of easement areas, the property owner has been compensated by SWLRT Project Office for these impacts.

Proposed Buildings.

As proposed, the existing buildings and parking lots would be removed and two new apartment buildings would be constructed. The westerly building is proposed as a six-story, 194-unit, market-rate apartment building. The easterly building would be five stories in height and contain 55 workforce units; four of these units would be “designated for families experiencing long-term homelessness, with support services provided by Simpson Housing Services.”1 The two buildings would be connected on the second and third floors. Unit mix within the buildings is generally proposed as follows:

<table>
<thead>
<tr>
<th></th>
<th>West Building</th>
<th>East Building</th>
</tr>
</thead>
<tbody>
<tr>
<td>Studio</td>
<td>17</td>
<td>-</td>
</tr>
<tr>
<td>One Bedroom</td>
<td>116</td>
<td>11</td>
</tr>
<tr>
<td>Two Bedroom</td>
<td>46</td>
<td>28</td>
</tr>
<tr>
<td>Three Bedroom</td>
<td>15</td>
<td>16</td>
</tr>
<tr>
<td>TOTAL</td>
<td>194</td>
<td>55</td>
</tr>
</tbody>
</table>

Proposed Parking and Site Improvements.

The proposed buildings would be served by 340 parking stalls2. The majority of parking would be located within underground garage space, with surface parking generally situated on the north side of the easterly building. Vehicle access to the proposed development would be via two driveways, one on Bren Road East and the other located off a private access drive immediately east of the site. Other site improvements are also proposed, including an outdoor play area and dog run.

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 and staff findings associated with the proposal.

Is the proposed residential land use appropriate?

---

1 Applicant Narrative, 1.
2 This number may be have to be reduced to 338 to ensure adequate drive aisle widths within the underground garage.
Yes. The proposed residential use is consistent with both the past plans for OPUS and the future goals for the area. During its 1970s development, OPUS was envisioned to contain residential areas "convenient to the office, commercial and industrial portions … as well as to the surrounding services, communities, mass transportation systems, parks and recreational areas." Looking to the future, the 2030 Comprehensives Guide Plan generally emphasizes accommodating a variety of housing types within the community that will appeal to a variety of residents at a variety of ages and a variety of income levels. The plan specifically notes that redevelopment within the OPUS area should include the provision of additional residential uses.

- **Is the use of PUD zoning appropriate?**

  Yes. The city of Minnetonka uses PUD zoning to provide flexibility from certain ordinance regulations in order to achieve public benefits that may not otherwise be achieved. One of the specific public benefits recognized by the ordinance is the provision of affordable housing. The proposal would result in the provision of 55 workforce housing units.

- **Is the proposed building design reasonable?**

  Yes. The proposed architectural design, including façade treatments, is reasonable and attractive. The proposed building articulation and variety of materials – including glass, fiber cement panels, metal panels, and masonry – would provide visual interest from both onsite and offsite views.

- **Has on and off-site grading been appropriately coordinated?**

  Generally, yes. As part of the SWLRT construction, Bren Road East will be reconfigured. This will impact the subject site, in that the southwest corner of the property will be regraded and the roadway moved closer to the proposed building. Considerable coordination will be necessary between the applicant and the SWLRT Project Office to ensure grading for the residential and transit projects do not conflict. Various draft grading plans have been submitted and reviewed over the last several months. The most recent plan, which is referenced in the staff-drafted resolution, represents the best of these plans to date. As a condition of approval, the SWLRT Project Office must approve the grading plan in writing prior to issuance of any grading permit for the project.

- **Has stormwater management been appropriately addressed?**

  Yes. Both the city and Nine-Mile Creek Watershed District have requirements pertaining to stormwater management. Generally, new development must control:

  1. **Rate.** The flow rate of runoff leaving a site must be limited to “pre-redevelopment” conditions.

  2. **Volume.** A certain amount of runoff from impervious surfaces must be retained on-site.

  3. **Quality.** Runoff must be treated such that a certain amount of phosphorus and

---

suspended solids are removed.

As with the grading plans, the city has received various draft stormwater management plans over the last several months. The most recently submitted plan, which is referenced in the staff-drafted resolution, would meet stormwater management rules. As a condition of approval, Nine-Mile Creek Watershed District staff must grant preliminary approval of the stormwater management plan prior to issuance of any grading permit for the project.

- **Should the city allow significant private uses within public easements?**

  Generally, no. There is a large public utility easement on the northern portion of the site. The easement area is currently occupied by public watermain and a pedestrian trail. The SWLRT office has indicated that various utilities may also be relocated to this easement in conjunction with the SWLRT construction. The submitted plans show private development improvements within the easement, including a dog run and 21 parking stalls. The proposed location of these improvements is contrary to: (1) written city council policy; and (2) to staff direction to this applicant and to applicants for other redevelopment projects within OPUS. Staff acknowledges that the easement limits the usable area of the site to some extent. However, the applicant is in full control of the size and shape of the proposed buildings and parking areas. It follows, therefore, that redesign of the buildings and parking areas could ensure that private uses are not located within public easements.

  It should be noted that staff views the proposed sidewalk connections from the west side of the building to the existing transportation easement on the west side of the site differently. These proposed pedestrian connections serve the same purpose as the existing easement.

**Summary Comments**

Staff supports a high-density residential use of the subject site and the incorporation of affordable housing into the applicant’s proposal. Staff’s primary concerns regarding proposal are: (1) construction coordination with SWLRT; and (2) private uses with the public easements. To address these concerns staff has included conditions of approval requiring that: (1) a document be submitted from SWLRT Project Office approving the grading plan and building location relative to Metro Transit easements; and (2) the site plan be amended, removing the parking, dog run, and other similar improvements from the northerly easement.

**Staff Recommendation**

Recommend the city council adopt the following pertaining to The Mariner, at 10400, 10500, and 10550 Bren Rd E.:

1. An ordinance rezoning the property from B-2, limited business, to PUD, planned unit residential and adopting a master development plan;

2. A resolution approving final site and building plans; and

3. A resolution approving preliminary and final plats.
Supporting Information

**Surrounding Land Uses**
- North: Minneapolis Mart; zoned B-2, commercial
- South: Office/warehouse; zoned I-1, industrial
- East: Office/warehouse; zoned I-1, industrial
- West: Office/warehouse; zoned I-1, industrial

**Planning**
- Guide Plan designation: mixed-use
- Existing Zoning: B-2, commercial

**Required Actions**
The proposal requires the following:

**Land Use**

- **Rezoning.** To facilitate the proposed development, the applicant is requesting that the property be rezoned to PUD. The planning commission makes a recommendation to the city council, which has final authority to approve or deny the rezoning.

- **Master Development Plan.** Under the zoning ordinance, a master development plan is required in conjunction with PUD zoning. The planning commission makes a recommendation to the city council, which has final authority to approve or deny the master development plan.

- **Final Site and Building Plans.** By city code, site and building plan review is required in conjunction with PUD zoning. The planning commission makes a recommendation to the city council, which has final authority to approve or deny the final site and building plans.

- **Preliminary and Final Plats.**

- **Easement Vacation.** As is typical, there are existing drainage and utility easement on either side of the common property lines separating the three existing lots. These easements would become obsolete should the proposal be approved. As a condition of approval, vacation applications must be considered by the council prior to construction of the buildings.

**Finance**

- **Tax Increment Financing Pooling Funds** To assist with the production of affordable housing, the applicant is requesting that the city provide Tax Increment Financing (TIF) Pooling fund assistance in the amount of $556,179. The Economic Development Advisory Commission (EDAC) and city council previously reviewed this request for assistance and found the
request reasonable. The use of TIF funds is not the purview of the planning commission.

- **Contract for Private Development.** This contract outlines the key points of the TIF request as well as expectations for the development. The council will review the final contract at its Nov. 26, 2018 meeting. This contract is not the purview of the planning commission.

**Grading**

The site slopes upward from its center to the southwest adjacent to the Bren Road East curve. The change in grade is roughly 18 feet. To accommodate the proposed development, this southwest corner would be regraded – though maintaining the upward slope to the roadway. At various areas, two to eight feet to fill would be added.

**Tree Impact**

The property contains a total of 68 regulated trees. As proposed:

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Removed</th>
<th>% Removed</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Priority</td>
<td>13</td>
<td>11</td>
<td>85%</td>
</tr>
<tr>
<td>Significant</td>
<td>55</td>
<td>41</td>
<td>75%</td>
</tr>
</tbody>
</table>

* By city code, a tree is considered removed if 30 percent or more of the critical root zone is compacted, cut, filled or paved.

As the proposal is for redevelopment of property, the level of tree removal/impact would be permitted under the tree protection ordinance. However, based on the submitted plans, the following tree mitigation would be required: two, 2-inch deciduous trees and 35 total feet – or roughly six, 6-foot – evergreens. The submitted landscape plan includes plantings well in excess of this requirement.

**Stormwater**

As proposed, stormwater runoff would be directed to several catch basins and directed via pipe to a stormwater facility located under the proposed parking lot. The facility would ultimately outlet to the public storm sewer system.

**Utilities**

Public water and sewer facilities are available at the site. An existing water mains is located within an existing easement on the north side of the property and an existing sanitary sewer main is located northwest of the site.

**Traffic**

OPUS is sometimes maligned for its one-way road system, which casual visitors to the area can find confusing. However, from a traffic movement perspective, the roadway design is excellent. The traffic study commissioned for The Mariner project confirms this. The purpose of any traffic study is to understand: (1) the existing traffic volume and operations; (2) the impact of the proposal on existing traffic volume and operations; and (3) if the proposal impact would be negative, how those impacts could be mitigated. In addition to this basic information, the city also requested the study evaluate
traffic implications if/when the traffic pattern on Green Oak and Red Circle Drives was reversed and the large 20-acre site to the north were to redevelop. Staff foresees both changes occurring with or shortly after the construction of the SWLRT.

The traffic study concluded:

✓ The intersections adjacent to the subject site currently operated a Level of Service (LOS) A.

✓ The Mariner is expected to generate 1,355 daily vehicle trips and conceptual redevelopment of the site to north may generate 4,700 daily trips.

✓ The study intersections, under existing and proposed traffic flow directions, would continue to operate at LOS A following development.

Parking

As proposed, parking would be constructed/supplied as follows:

<table>
<thead>
<tr>
<th></th>
<th>East Building</th>
<th>West Building</th>
</tr>
</thead>
<tbody>
<tr>
<td>Underground</td>
<td>46 stalls</td>
<td>247 stall</td>
</tr>
<tr>
<td>Surface</td>
<td>47 stalls</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>340 stalls*</td>
</tr>
</tbody>
</table>

*may need to be reduced to 338 to ensure adequate drive aisle widths within the underground garage.

The parking ratio proposed would be slightly less than at other apartment buildings in the community. However, it would be consistent with Institute of Transportation Engineers suggested parking demand.

<table>
<thead>
<tr>
<th></th>
<th>Stalls per Bedroom</th>
<th>Stalls per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traditional City Code Standard</td>
<td>n/a</td>
<td>2</td>
</tr>
<tr>
<td>PROPOSED</td>
<td>0.88</td>
<td>1.37</td>
</tr>
<tr>
<td>ITE</td>
<td>n/a</td>
<td>1.0 to 1.3*</td>
</tr>
<tr>
<td>The Overlook</td>
<td>1.15</td>
<td>1.49</td>
</tr>
<tr>
<td>Carlson Island</td>
<td>1.03</td>
<td>1.55</td>
</tr>
<tr>
<td>The Ridge</td>
<td>.93</td>
<td>2</td>
</tr>
<tr>
<td>Highland Bank</td>
<td>1.2</td>
<td>1.78</td>
</tr>
</tbody>
</table>

** Institute of Transportation Engineers, Low/Mid-Rise Apts, within 1/3 mile of LRT station and more than 10 miles from Central Business District
Setbacks, Etc.

The PUD ordinance contains no specific development standards relating to setbacks, lot coverage, etc. However, the following chart outlines these items for informational purposes:

<table>
<thead>
<tr>
<th>Measurement</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Setbacks</strong>*</td>
<td></td>
</tr>
<tr>
<td>North property line</td>
<td>50 ft</td>
</tr>
<tr>
<td>South property line</td>
<td>10 ft (25 ft from roadway)</td>
</tr>
<tr>
<td>East property line</td>
<td>20 ft (bldg) and 15 ft (porches)</td>
</tr>
<tr>
<td>West property line</td>
<td>50 ft</td>
</tr>
</tbody>
</table>

**Height**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>East Building</td>
<td>65 ft</td>
</tr>
<tr>
<td>West Building</td>
<td>55 ft</td>
</tr>
</tbody>
</table>

**Miscellaneous**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Impervious Surface</td>
<td>65%</td>
</tr>
</tbody>
</table>

* rounded down to closest 5 ft

SBP Standards

City Code §300.27, Subd.5 outlines the following items that must be considered in evaluation of site and building plans:

1. Consistency with the elements and objectives of the city’s development guides, including the comprehensive plan and water resources management plan.

   **Finding**: The proposed high-density residential development is consistent with the general housing goals of the 2030 Comprehensive Guide Plan and the Plan’s specific goal to provide additional housing in the OPUS area. Further, the proposal has been reviewed by city planning, engineering, and natural resources staff and found to be generally consistent with the city’s development guides, including the water resources management plan.

2. Consistency with this ordinance.

   **Finding**: The proposal is consistent with the PUD zoning ordinance.

3. Preservation of the site in its natural state to the extent practicable by keeping tree and soil removal and designing grade changes to
be in keeping with the general appearance of neighboring developed or developing properties.

**Finding:** The subject property is a developed site, with no “natural” areas. The proposal is considered redevelopment.

4. Creation of harmonious relationship of buildings and open spaces with natural site features and with existing and future buildings having a visual relationship to the development.

**Finding:** The proposal would result in a harmonious relationship of buildings, with open space generally located at the perimeter of the site.

5. Creation of a function and harmonious design for structures and site features, with special attention to the following:
   - An internal sense of order for the buildings and uses on the site and provision of a desirable environment for occupants, visitors, and the general community.
   - The amount and location of open space and landscaping.
   - Materials, textures, colors and details of construction as an expression of the design concept and compatibly of the same with the adjacent and neighboring structures and uses.
   - Vehicular and pedestrian circulation, including walkways, interior drivees and parking in terms of location and number of access points to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic and arrangement and amount of parking.

**Finding:** The proposal would result in a unique and attractively-designed development.

6. Promotion of energy conservation through design, location, orientation and elevation of structures, the use and location of glass in structures, and the use of landscape materials and site grading.

**Finding:** As new construction, the building code would require use of additional energy saving features within the buildings themselves.

7. Protection of adjacent and neighboring properties through reasonable provision for surface water drainage, sound and site buffers, preservation of views, light and air and those aspects of design not adequately covered by other regulations which may have substantial effects on neighboring land uses.
**Finding:** The proposal would visually and physically alter the property and the immediate area. However, this change would occur with any redevelopment of the site, which the city has long anticipated.

---

**Pyramid of Discretion**

---

**Motion Options**

The planning commission has three options:

1. Concur with the staff recommendation. In this case a motion should be made recommending the city council approve the requests.

2. Disagree with staff's recommendation. In this case, a motion should be made recommending the city council deny the request. This motion must include a statement as to why denial is recommended.

3. Table the requests. Due to the statutory deadlines for action, this item cannot be tabled.

---

**Voting Requirement**

The planning commission will make a recommendation to the city council. The city council's final approval requires an affirmative vote of four members.

---

**Neighborhood Comments**

The city sent notices to 76 property owners and has received no written comments to date.

---

**Deadline for Action**

November 26, 2018.
Location Map

Project: Mariner
Address: 10400, 10500 & 10550 Bren Rd E
Newport Midwest, LLC (Newport Midwest) is seeking final zoning approval to PUD, master development plan approval, preliminary and final plat approval and site and building plan approval at 10400, 10500, and 10550 Bren Road E.

Newport Partners housing demonstrates our focus on a triple bottom line of environmental sustainability, social responsibility, and economic viability. All our developments are high-density infill products that epitomize smart growth and responsible land use. Our portfolio of high-quality affordable housing shows our ongoing commitment to working individuals and families, and seniors on fixed incomes. Our projects focus on social equity, health, sustainability, transit, and active transportation. Each of Newport's developments is unique; design and development decisions are made after evaluating the individual needs of each site and its surrounding neighborhood. Using this approach, we are able to create buildings that not only serve the needs of our residents, but also act as a catalyst in revitalizing neighborhoods.

Newport Midwest has entered into a purchase agreement with the owners at 10400, 10500 and 10550 Bren Road and intends to build two residential apartment buildings, “The Mariner,” connected, that will provide 249 units of housing. Fifty-five of the 249 units will be permanent affordable housing targeted to families. Funding, including the scarce 9% tax credits, have been committed to the project by Minnesota Housing, Hennepin County, Metropolitan Council and the City of Minnetonka to make the units affordable to households earning 50% of the area median income or below. The Mariner’s units meet the Met Council definition of affordable rental housing according to the Livable Communities Act. Construction of these 55 units will apply towards the City’s Met Council goal of creating 378 additional affordable housing units in Minnetonka between 2011 and 2020.

The Mariner’s affordable component includes four units (two 2-bedroom and two 3-bedroom) designated for families experiencing long-term homelessness, with supportive services provided by Simpson Housing Services (“Simpson”). Through a partnership with Simpson, families will find stability and support at The Mariner. Clients referred through Simpson will be assigned a case manager and will meet with them regularly (at least weekly) to set goals, address and identify needs, and work towards self-sufficiency.

Site and Development Description

The project site is bounded by Bren Road E to the south and west, a one story commercial building to the east and Minneapolis Mart to the north. The proposed Green Line light rail extension will be built along the eastern border of the site, with the Opus Station immediately adjacent. A city-maintained trail runs along the northern lot line. The site is currently zoned B-2 and contains three one-story buildings and surface parking lots. The buildings are being used as a daycare, property management company, and contracting services.

The two building will contain housing units, as well resident amenities. The eastern building will feature 55 units, 11 one-bedroom, 28 two-bedrooms and 16 three-bedroom units, ranging in size from a gross 764 square feet to 1402 square feet. The western building will contain 194 units, 17 studios, 116 one-bedroom, 46 two-bedroom and 15 three-bedroom units, ranging in size from a gross 485 square feet to 1368 square feet.

The two buildings will be connected on the second and third floor by an enclosed bridge over the drive entrance. Each building features common and amenity space, which can be accessed by residents in both
buildings. The eastern building features a common area and lobby, as well as a billiard room and offices for property management on the first floor. A large common area with a kitchen, a sauna, a fitness area and a large rooftop patio are located on the second floor. The western building includes a party room, a family game room, and office and meeting space for the service providers and property management.

The combined site is 3.89 acres. The proposed plat will place each building on a separate lot. The western building will have a 46,983 square foot building footprint and a total floor area of 200,543 square feet. The proposed lot for the western building is 2.68 acres. The eastern building will have an 15,385 square foot building footprint and a total floor area of 77,950 square feet. The proposed lot for the eastern building is 1.22 acres. The western building will be six stories, plus a level of underground parking. The eastern building will be five stories, plus a level of underground parking. Expected exterior materials on the building will be primarily brick, metal panels and fiber cement lap siding.

The site features a courtyard with a splash pad and a playground area as resident amenity. A dog run is also provided. The project includes massing of plantings and trees throughout the site to enhance the landscaping. Additional pedestrian walkways to the public sidewalk are planned.

**Setbacks.** The building setback from the building face and the back of curb is 51 feet along the western border of the site. Along the eastern border, the setback range between 41.5 feet, at the maximum between the building face and property line and 33 feet where the balconies project. Along the northern border, the setbacks range between 96 feet between the building face and property line to 51 feet at the minimum. feet along the northern border. Along the southern border, MNDOT intends to realign the road to accommodate the proposed Green line light rail extension. Contracts to start the relocation work will be let this summer for a September 2018 start. Met Council’s contractor will also be relocating utilities and constructing a new retaining wall in the area where Bren Road will intersect with the LRT tracks. Gate arms will be installed at the intersection as well. The building setback from the building face to the current back of curb range between 95 feet and 22 feet. When the road is reconstructed, the building setback from the building face and back of curb will range between 46 feet and 27 feet. MNDOT staff confirmed that they do not have a recommended or required setback distance and that they are comfortable with 20.8 feet, which is the shortest distance of the building to Bren Road in current plans for the Development. with the presence of LRT traffic and gate arms, the LRT / Bren Road intersection just southwest of the Development will be busier and that traffic will move considerably more slowly as a result. MNDOT indicated that the relocated Bren Road will have an anticipated speed of 25 miles per hour as it turns as the southwest corner of the Development property. For reference, there is no traffic signal or other stopping mechanism at the intersection now and MNDOT confirmed that current average speeds are considerably higher than 25 miles per hour on Bren Road.

**Sustainability.** Newport Midwest delivers buildings that are environmentally sustainable in design and operation. The eastern building will meet the Minnesota Green Communities Overlay standards. The building will feature water conserving fixtures throughout, use energy star rated appliances and light fixtures, low VOC coatings and sealants, and dedicated areas for recycling. The building will be designed to exceed NC ASRAE 90.1 energy standards by 5%, meaning the building will be more energy efficient than required by building code. The storm water management for the entire site will be improved. The existing property currently does not have any stormwater treatment or retention on site. Existing topography splits the site in half, with stormwater runoff typically directed to the northeast and northwest corners where it enters the city sewer system. The ultimate drainage discharge points are two city retention ponds a few parcels north of the site. The proposed plan includes an underground infiltration vault within the parking and drive aisle areas. On site stormwater runoff and roof drainage will be collected in a private stormwater sewer system which discharges to the vault.
Parking, traffic and transit. The primary entrance is accessed off Bren Road. The drive is “L” shaped and connects to the private drive along the eastern portion of the site. Per City Staff direction, the proposed plan assumes that the existing private driveway will be converted to a public street. The plan assumes that the future right-of-way will be 60 feet wide with 30 feet will be located on Newport Midwest’s property. Newport Midwest is prepared to dedicate 30 feet of the eastern portion of the lot to the City for the public right-of-way.

The bridge connecting the two buildings is above the access drive. At the lowest point, the distance between the drive and bridge is 12’ 6”, which exceeds the height of the tallest fire truck in the City’s fleet. Emergency vehicles may also access the site from the private drive on the east, and the public trail along the northern border.

The surface parking lot, as designed, has 47 parking stalls. The underground parking on the eastern building and western building has 46 and 247 stalls, respectively. The combined parking capacity of 340 stalls provide a parking ratio of 1.36. All the parking is accessed from the driveway. The plans show 21 parking spaces extending 18 feet into the easement, leaving over 30 unimproved feet in the easement. Though not required by City code, the City has indicated, from experience, the additional parking stalls are important to ensure there will be adequate parking for the residents and visitors. Newport Midwest will be responsible for the cost of demolition and restoration of the area should the City require the 18-foot space in the easement for future use.

Finally, the project includes 162 bicycle parking spots and indoor bicycle storage.

Consistency with Minnetonka’s Land Use and Housing Goals and Policies

The Opus business park was originally designed as a large mixed-use development providing the opportunity for people to live, work and play. The change of land use from B-2 to a PUD establishing housing as an allowed use is consistent with the vision for Opus and the need for additional housing near the Opus Station.

The comprehensive plan states, “The city is nearly 100 percent developed. Therefore, infill development and redevelopment activities will be the primary ways to add new housing in order to meet the goals for achieving the 383 new affordable units in the city by 2020.” (Chapter 5, Section F.2).

And, “The city had a significant number of new rental housing units built in the late 1990s. Due to the favorable conditions for purchasing a home, high vacancies existed within the rental housing market in the early 2000s, and therefore only three new general occupancy rental buildings have been constructed since 1997. It is anticipated that it will be difficult to construct new and larger rental housing buildings or complexes in the future because it will require redevelopment and few programs are available to cities for redevelopment activities.

Actions
1. Assist developers, to the extent allowed by law, who may want to construct rental housing. At a minimum, provide advice about desired areas and potential sites.
2. Continue to implement the EDA’s policy that 10 to 20 percent of new multi-family units should be affordable housing.
3. Promote the use of —greenl technologies, sustainable building techniques and design, and energy efficient products in new construction and redevelopment projects.” (Chapter 5, Section F.3.b).

And, “The 2020 goal is for the addition of 383 new affordable units between 2011 and 2020. Since the city is fully developed, these units will likely be added to the city’s affordable housing supply through infill or redevelopment opportunities. Additionally, in order to make the units affordable, it is probable
that the units will be multi-family (either owner-occupied or rental) due to the high land values in the city.

Actions
a. Continue working with developers to include affordable housing in their developments, where appropriate.
b. Continue to work with developers in the development process to ensure the long-term affordability of units.
c. Work with Homes Within Reach and other affordable housing agencies and developers to add more affordable housing units in the city. Collaborate and support applications for grants or other funding sources for affordable housing. Provide information to these agencies on homes or areas of the city where affordable units could be located.
d. Locate new affordable and senior housing near access to the transit system, as appropriate…
g. Promote the use of —green technologies, sustainable building techniques and design, and energy efficient products in new construction and redevelopment projects.” (Chapter 5, Section F.5)

And, “Access to transit in Minnetonka continues to be a challenge for all residents because of the lack of convenient routes. Linking affordable family and senior housing to transit services is important as many of these residents rely upon the transit system to reach work and service destinations…. With the lead of Hennepin County, the city and other communities and agencies are involved in studies pertaining to a future light rail transit (LRT) line from Minneapolis to the southwest metropolitan area, including Minnetonka. There are more studies, coordination and funding arrangements required before the LRT line could be constructed and construction is not anticipated before 2015.

Actions
a. Continue to collaborate with the transit providers in Minnetonka to ensure that as many residents are served as possible. Analyze and prioritize areas where more transit service may be necessary such as near locations with transit-dependent populations.
b. Continue to be involved in the LRT planning and station area studies and look for ways to add housing, services, and walkability around station areas.” (Chapter 5, Section F.6)

The development incorporates the objectives outlined in the Opus Station Area Plan. The site is listed as a potential redevelopment site in figure 13-9. The plan states, “The land use in the Opus station area include a mix of office, light industrial, commercial/retail, residential, hotel and park/open spaces uses. Several underutilized industrial sites present opportunities for future redevelopment in the area. The property directly east of and adjacent to the proposed station platform presents an opportunity for higher density and mixed land use…”

Development potential for the Opus station area could include a mix of office, light industrial, residential, hotel, and retail uses.”

The guidance for built form and land uses state, “Design new buildings in the Bren Road loop to enhance pedestrian access by orientating them to the street and locating them as close to the street line as possible.”

In planning for the Green Line extension, a housing analysis was performed for each of the 15 stations to project market demand for housing within ½ mile of the stations within the next 15 years. The analysis projected the market would likely demand over 11,000 housing units for the entire line from Eden Prairie to Minneapolis, of which, 600 housing units were projected for the Opus Station.
October 18, 2018

Ms. Susan Thomas  
Principal Planner, City of Minnetonka  
14600 Minnetonka Blvd  
Minnetonka, MN 55345

Dear Ms. Thomas:

It has been a pleasure to work with you and your team on the proposed development located at 10400 Bren Road, Minnetonka, MN. In response to our conversations, please find the following revised drawings and documents for your review:

- P8 Water Quality Model: “2018-1016 The Mariner P8-p8c”
- P8 Precipitation File: “MSP Precip File 10-19-1.pcp7”
- P8 Temperature File: “MSP Temperature File 10-19-17.tem”
- Comment Response letter to previous submittal: “2018-1015 City Comment Response”
- Comment Response from Minnesota Department of Health approving watermain above the infiltration footprint: “RE_Watermain_Infiltration Question”

It is worth noting that our revised design does not include a sidewalk at the southwest corner of the site. Our team feels that the addition of a sidewalk at this corner would be counterproductive to the design and utility of the site. Primary factors driving this decision are safety, privacy and connectivity. These concerns are explored in detail below:

SAFETY:
The Mariner is concerned about the safety of pedestrians using the sidewalk along the southwest edge of the property due to the proximity of the walk to the embankment and the building. There is only 12 feet of space between the building and the easement. In that twelve feet there needs to be a retaining wall that allows for ADA acceptable grading as well as the six foot sidewalk. The walk is six feet and the wall would require another three feet placing the sidewalk three feet from the building. The building at this location is 65’ tall. On the other side of the trail is the embankment for the light rail overpass. The overpass is approximately 15’ above the trail. This condition is asking pedestrians to walk in a narrow twenty-eight foot wide corridor with a 65’ building on one side and a bridge embankment on the other. We believe this condition to lack essential safety. Lighting this would be helpful, but will adversely affect the apartment residents.
PRIVACY:
The twelve foot setback puts pedestrians within three feet of the building. In this location, the building has windows, and a townhouse style unit with a patio and front door. The pedestrians could look directly into the apartment unit. Since this walk wraps around the corner of the building, it is not possible to relocate windows. This condition adversely affects the units.

BETTER CONNECTIVITY:
The proposed plan provides great sidewalk connections to the public trail on the north side of the property. This trail connection is more closely aligned to the LRT station and would be a shorter route. There is no sidewalk in the overpass. Therefore the pedestrian traffic will be coming from the East.

This sidewalk in question would be located on private land and is a concern for operations and maintenance—but even with proper care the condition is not very safe. We believe the Mariner has proposed a much better option for pedestrian safety and building privacy. Pedestrian access is vital to The Mariner, and we are making great connections where we believe them to be appropriate.

Should you have any questions on the items submitted, or require further information, please do not hesitate to reach out to me directly.

Sincerely,

Claire VanderEyk
Senior Development Associate, Newport Midwest, LLC
475 Cleveland Avenue North, Suite 325
Saint Paul, MN 55104
|m| 320.266.0827 |e| cvandereyk@newportpartners.com
PRELIMINARY CIVIL CONSTRUCTION PLANS
FOR
THE MARINER
CITY OF MINNETONKA
HENNEPIN COUNTY, MINNESOTA
LOTS 1 AND 2, BLOCK 1
THE MARINER ADDITION

INDEX OF SHEETS

<table>
<thead>
<tr>
<th>Sheet Number</th>
<th>Sheet Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>G-101</td>
<td>COVER SHEET</td>
</tr>
<tr>
<td>G-102</td>
<td>GENERAL NOTES</td>
</tr>
<tr>
<td>1 SHEET</td>
<td>PRELIMINARY PLAT</td>
</tr>
<tr>
<td>1 SHEET</td>
<td>EXISTING CONDITIONS</td>
</tr>
<tr>
<td>C-101</td>
<td>TREE SURVEY</td>
</tr>
<tr>
<td>C-102</td>
<td>REMOVAL &amp; EROSION CONTROL PLAN</td>
</tr>
<tr>
<td>C-103</td>
<td>SITE PLAN</td>
</tr>
<tr>
<td>C-104</td>
<td>FUTURE SITE PLAN</td>
</tr>
<tr>
<td>C-105</td>
<td>POST CONSTRUCTION EROSION CONTROL PLAN</td>
</tr>
<tr>
<td>C-501</td>
<td>GRADING AND DRAINAGE PLAN</td>
</tr>
<tr>
<td>C-401</td>
<td>UTILITY PLAN</td>
</tr>
<tr>
<td>C-501</td>
<td>STORM SEWER PLAN</td>
</tr>
<tr>
<td>1 SHEET</td>
<td>PHOTOMETRIC PLAN</td>
</tr>
<tr>
<td>C-800</td>
<td>DETAILS</td>
</tr>
<tr>
<td>C-801</td>
<td>DETAILS</td>
</tr>
<tr>
<td>C-802</td>
<td>DETAILS</td>
</tr>
<tr>
<td>C-803</td>
<td>DETAILS</td>
</tr>
</tbody>
</table>

NOTES:
1. IF REPRODUCED, THE SCALES SHOWN ON THESE PLANS ARE BASED ON A 22"x34" SHEET.
2. ALL NECESSARY INSPECTIONS AND/OR CERTIFICATIONS REQUIRED BY CODES AND/OR UTILITY SERVICE COMPANIES SHALL BE PERFORMED PRIOR TO ANNOUNCED BUILDING POSSESSION AND THE FINAL CONNECTION OF SERVICES.
3. ALL GENERAL CONTRACTOR WORK TO BE COMPLETED (EARTHWORK, UTILITIES, AND FINAL GRADING) BY THE MILESTONE DATE IN PROJECT DOCUMENTS AND/OR PER OWNER'S DIRECTION.
4. CONTRACTOR SHALL CONFIRM THAT THE EXISTING CONDITIONS FOR THIS SITE MATCH WHAT IS SHOWN ON THE DRAWINGS INCLUDED PRIOR TO CONSTRUCTION.

WARNING:
THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING FOR LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL COOPERATE WITH ALL UTILITY COMPANIES IN MAINTAINING THEIR SERVICE OR RELOCATION, IF NEEDED. THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL AT 651-454-0002 AT LEAST 48 HOURS IN ADVANCE FOR THE LOCATIONS OF ALL UNDERGROUND WIRES, CABLES, CONDUITS, MANHOLES, VALVES OR OTHER BURIED STRUCTURES BEFORE DIGGING. THE CONTRACTOR SHALL REPAIR OR REPLACE THE ABOVE WHEN DAMAGED DURING CONSTRUCTION AT NO COST TO THE OWNER.

TWIN CITY AREA: 651-454-0002
TOLL FREE 1-800-252-1166
CALL BEFORE YOU DIG

VICINITY MAP
NOT TO SCALE
INDEPENDENTLY VERIFIED BY THE OWNER OR THE ENGINEER. NO GUARANTEE IS MADE THAT ALL EXISTING UNDERGROUND UTILITIES ARE SHOWN OR THAT THE LOCATION OF THOSE UTILITIES WILL NOT BE AFFECTED. FAILURE TO NOTIFY OWNER OF AN IDENTIFIABLE CONFLICT PRIOR TO INSTALLATION OF ANY PORTION OF THE SITE WORK THAT WOULD BE AFFECTED.

SHALL DRAIN TOWARDS THE INTENDED STRUCTURE TO CONVEY STORM WATER AND FIRE SUPPRESSION SYSTEMS AS SHOWN ON THESE PLANS. THE CONTRACTOR SHALL FURNISH ALL REQUIREMENTS FOR UTILITY LOCATIONS AND COORDINATION AS DICTATED BY THE PROJECT DOCUMENTS. ANY REQUEST FOR UTILITY INFORMATION WHICH SHALL BE RECORDED AS CONSTRUCTION PROGRESSES OR AT THE TERMINATION OF THE CONTRACT.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE VERTICAL CONTROL FOR THIS PLAN IS ADEQUATELY DRAIN TOWARDS THE INTENDED STRUCTURE TO CONVEY STORM WATER AND FIRE SUPPRESSION SYSTEMS AS SHOWN ON THESE PLANS.

THE VERTICAL CONTROL FOR THIS PLAN IS

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.

THE CONTRACTOR SHALL PERFORM, AT THEIR OWN EXPENSE, ANY AND ALL TESTS REQUIRED BY THE SPECIFICATIONS AND ADDITIONAL EXPERIMENTAL TESTS REQUIRED BY THE ENGINEER OR THE OWNER FOR THE EFFECTIVENESS OF THE WORK ON THE SITE.
PROVIDE TREE PROTECTION FOR

REMOVE ±43 LF OF PVC SANITARY SEWER TRAIL TO REMAIN

RETAINING WALL TO REMAIN

CONSTRUCTION FENCE ±353 LF SILT / AT GRADING LIMITS

LIMITED TO DRIVEWAY CONNECTIONS. CONTRACTOR TO INSTALL AND MAINTAIN EROSION PROTECTION ON ALL AREAS RECEIVING OFFSET FROM GRADING LIMITS FOR CLARITY. OFFSITE WORK IS NOTE: LIMITS OF DISTURBANCE AND SILT FENCE ARE SHOWN ±40 LF SILT FENCE

REMOVE SANITARY STRUCTURE FOR WATER MAIN INSTALLATION

REMOVE AND REPLACE BIT TRAIL ENCLOSURE

REMOVE ±230 LF PVC SANITARY SEWER EXISTING BITUMINOUS TRAIL TO REMAIN

SAWCUT PVMT. AND REMOVE ±110 SF OF BITUMINOUS PVMT. REMOVE ±63 LF 15" RCP ENCLOSURE

REMOVE TRASH

THE CONTRACTOR SHALL MAINTAIN ALL EROSION CONTROL MEASURES NECESSARY (AS NECESSARY)

THE CONTRACTOR SHALL INSTALL CATCH BASIN SEDIMENT CONTROL STRUCTURES BEFORE DIGGING. THE CONTRACTOR SHALL REPAIR OR REPLACE THE ABOVE WHEN DAMAGED DURING CONTRACTING AT NO COST TO THE OWNER.

WARNING:

THE LOCATIONS OF ALL UNDERGROUND WIRES, CABLES, CONDUITS, PIPES, MANHOLES, VALVES OR OTHER BURIED STRUCTURES BEFORE DIGGING. THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL AT 651-454-0002 AT LEAST 48 HOURS IN ADVANCE FOR THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING FOR LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL APPLY WATER FROM A TANK TRUCK TO ALL CONSTRUCTION AREAS.

ANY EXCESS SEDIMENT ACCUMULATED ONSITE SHALL BE REMOVED BY THE CONTRACTOR. THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL (TOLL FREE 1-800-252-1166) 7265-01 JRA TWIN CITY AREA: 651-454-0002 ONE CALL IS FOR LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL OPERATE WITH ALL EXISTING UTILITY OWNERS TO DETERMINE THEIR SERVICE WRAP LOCATION OF UTILITIES. THE CONTRACTOR SHALL NOTIFY CALL BEFORE YOU DIG. CALL BEFORE YOU DIG IS FOR DAMAGES TO THE OWNER.

THE CONTRACTOR SHALL MAINTAIN ALL EROSION CONTROL MEASURES NECESSARY PRIOR TO ANY SITEWORK. TEMPORARY EROSION CONTROL BMP'S TO BE IN PLACE AND STABILIZED PRIOR TO ANY CONSTRUCTION ACTIVITIES.

WARNING:

THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL AT 651-454-0002 AT LEAST 48 HOURS IN ADVANCE FOR THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING FOR LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL APPLY WATER FROM A TANK TRUCK TO ALL CONSTRUCTION AREAS.

ANY EXCESS SEDIMENT ACCUMULATED ONSITE SHALL BE REMOVED BY THE CONTRACTOR. THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL (TOLL FREE 1-800-252-1166) 7265-01 JRA TWIN CITY AREA: 651-454-0002 ONE CALL IS FOR LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL OPERATE WITH ALL EXISTING UTILITY OWNERS TO DETERMINE THEIR SERVICE WRAP LOCATION OF UTILITIES. THE CONTRACTOR SHALL NOTIFY CALL BEFORE YOU DIG. CALL BEFORE YOU DIG IS FOR DAMAGES TO THE OWNER.

THE CONTRACTOR SHALL MAINTAIN ALL EROSION CONTROL MEASURES NECESSARY PRIOR TO ANY SITEWORK. TEMPORARY EROSION CONTROL BMP'S TO BE IN PLACE AND STABILIZED PRIOR TO ANY CONSTRUCTION ACTIVITIES.

WARNING:

THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL AT 651-454-0002 AT LEAST 48 HOURS IN ADVANCE FOR THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING FOR LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL APPLY WATER FROM A TANK TRUCK TO ALL CONSTRUCTION AREAS.

ANY EXCESS SEDIMENT ACCUMULATED ONSITE SHALL BE REMOVED BY THE CONTRACTOR. THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL (TOLL FREE 1-800-252-1166) 7265-01 JRA TWIN CITY AREA: 651-454-0002 ONE CALL IS FOR LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL OPERATE WITH ALL EXISTING UTILITY OWNERS TO DETERMINE THEIR SERVICE WRAP LOCATION OF UTILITIES. THE CONTRACTOR SHALL NOTIFY CALL BEFORE YOU DIG. CALL BEFORE YOU DIG IS FOR DAMAGES TO THE OWNER.

THE CONTRACTOR SHALL MAINTAIN ALL EROSION CONTROL MEASURES NECESSARY PRIOR TO ANY SITEWORK. TEMPORARY EROSION CONTROL BMP'S TO BE IN PLACE AND STABILIZED PRIOR TO ANY CONSTRUCTION ACTIVITIES.

WARNING:

THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL AT 651-454-0002 AT LEAST 48 HOURS IN ADVANCE FOR THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING FOR LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL APPLY WATER FROM A TANK TRUCK TO ALL CONSTRUCTION AREAS.

ANY EXCESS SEDIMENT ACCUMULATED ONSITE SHALL BE REMOVED BY THE CONTRACTOR. THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL (TOLL FREE 1-800-252-1166) 7265-01 JRA TWIN CITY AREA: 651-454-0002 ONE CALL IS FOR LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL OPERATE WITH ALL EXISTING UTILITY OWNERS TO DETERMINE THEIR SERVICE WRAP LOCATION OF UTILITIES. THE CONTRACTOR SHALL NOTIFY CALL BEFORE YOU DIG. CALL BEFORE YOU DIG IS FOR DAMAGES TO THE OWNER.

THE CONTRACTOR SHALL MAINTAIN ALL EROSION CONTROL MEASURES NECESSARY PRIOR TO ANY SITEWORK. TEMPORARY EROSION CONTROL BMP'S TO BE IN PLACE AND STABILIZED PRIOR TO ANY CONSTRUCTION ACTIVITIES. THE CONTRACTOR. THE CONTRACTOR SHALL INSTALL CATCH BASIN SEDIMENT CONTROL STRUCTURES BEFORE DIGGING. THE CONTRACTOR SHALL REPAIR OR REPLACE THE ABOVE WHEN DAMAGED DURING CONTRACTING AT NO COST TO THE OWNER.

WARNING:

THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL AT 651-454-0002 AT LEAST 48 HOURS IN ADVANCE FOR THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING FOR LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL APPLY WATER FROM A TANK TRUCK TO ALL CONSTRUCTION AREAS.
**SITE LEGEND**

- Property Line
- Baseline Line
- Proposed B612 Curb and Gutter
- Proposed Innards Curb and Gutter
- WORKSHEET 3/4" - 3/8" INCH RADIUS ROUNDED END - 2/3" REINFORCING STEEL BAR [5/16"
- Standard Duty Bituminous Pavement
- Refer to Geotechnical Report for Detail
- Sewer, Water Main, Storm Drain Pipe
- Heavy Duty Concrete Pavement
- Refer to Geotechnical Report for Detail
- Pathway
- Recreational Parks, References Landscape Plan for Detail
- Landed Park
- Standard Duty Concrete Sidewalk
- Landscaped Area, References Landscape Plan
- Playground Area, References Landscape Plan
- Recessed Canopy, References Arch / Structural Plans
- Proposed Pavement Count

**SITE NOTES**

1. **ALL WORK AND MATERIALS SHALL COMPLY WITH ALL CITY / COUNTY REGULATIONS AND CODES, AND OSHA STANDARDS.**
2. **CONTRACTOR SHALL REFER TO THE ARCHITECTURAL PLANS FOR EXACT LOCATIONS OF ALL STRUCTURES BEFORE DIGGING. THE CONTRACTOR SHALL REPAIR OR REPLACE THE ABOVE WHEN DAMAGED DURING CONSTRUCTION AT NO COST TO THE OWNER.**
3. **THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL AT 651-454-0002 AT LEAST 48 HOURS IN ADVANCE FOR THE LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL COOPERATE WITH ALL UTILITY COMPANIES IN MAINTAINING THEIR SERVICE AND/OR RELOCATION OF LINES.**
4. **WARNING: THE LOCATIONS OF ALL UNDERGROUND WIRES, CABLES, CONDUITS, PIPES, MANHOLES, VALVES OR OTHER BURIED STRUCTURES BEFORE DIGGING. THE CONTRACTOR SHALL REPAIR OR REPLACE THE ABOVE WHEN DAMAGED DURING CONSTRUCTION AT NO COST TO THE OWNER.**

**KEYNOTE LEGEND**

- Concrete Sidewalk
- See Detail
- Generator, Reference Arch / MEP Plans
- Curb and Gutter
- Directional Pavement Marking
- FREEWAY TYP. - OTHERS, REFER TO GEOTECHNICAL REPORT FOR DETAIL
- Plans for Electrical Routing
- Test Pit, Reference Landscape Plan for Detail
- Stop Sign
- Accessible Curb Ramp - See Detail
- Accessible Parking Sign
- Accessibility Guide - Area Shaded White
- Accessible Van Parking Sign
- Water Paving, Side Walks, Exit Porches, Truck Dock
- A - White pavement striping - dashed or solid per plan
- B - Concrete Sidewalk. See Detail
- C - Cement Joint Spacing shall have max aspect ratio of 1.5:1 and shall be as follows:
  - C42" X 1/2" - MIN "C" MOLD
  - C62" X 7/8" - MIN "C" MOLD
  - C82" X 1 1/2" - MIN "C" MOLD
- D - Asphalt Paving, Sidewalks, Exit Porches, Truck Dock
- E - Refer to Geotechnical Report for Detail
- F - Parking Area
- G - Landscaped Area, References Landscape Plan
- H - Play Ground Area, References Landscape Plan
- I - Horizontal Marker Sign
- J - Stop Sign
- K - Accessible Pedestrian Crossing Sign
- L - Switch Existing Curb Section
- M - Not Used

**SITE ANALYSIS TABLE**

<table>
<thead>
<tr>
<th>Lot/Lot 2, Block 1: The Mariner Addition</th>
<th>Lot Area: 1.066 SF (±1000 AC)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Proposed</strong></td>
<td><strong>Existing &amp; Proposed</strong></td>
</tr>
<tr>
<td>GreenSpace Summary</td>
<td>Existing</td>
</tr>
<tr>
<td>Residential Area (BL)</td>
<td>51,927 SF</td>
</tr>
<tr>
<td>Residential Area (FL)</td>
<td>29,943 SF</td>
</tr>
<tr>
<td>Parking Summary</td>
<td>Proposed</td>
</tr>
<tr>
<td>Surface Parking</td>
<td>262 stalls</td>
</tr>
<tr>
<td>Underground Parking</td>
<td>263 stalls</td>
</tr>
<tr>
<td>Total Parking Count</td>
<td>525 stalls</td>
</tr>
<tr>
<td><strong>Setback</strong></td>
<td><strong>Maximum</strong></td>
</tr>
<tr>
<td>BREW RD. SETBACK</td>
<td>20'</td>
</tr>
<tr>
<td>TOTAL AT GRADE</td>
<td>20'</td>
</tr>
</tbody>
</table>

**SITE LIGHTING**

- Site Lighting. Refer Photometric Plans. Refer Architect / MEP Plans

**SITE ANNOTATIONS**

- Lot/Lot 2, Block 1: The Mariner Addition
- Lot Area: 1.066 SF (±1000 AC)
- **Proposed** | **Existing & Proposed**
- GreenSpace Summary | Existing | Proposed
- Residential Area (BL) | 51,927 SF | 51,927 SF
- Residential Area (FL) | 29,943 SF | 29,943 SF
- Parking Summary | Proposed
- Surface Parking | 262 stalls
- Underground Parking | 263 stalls
- Total Parking Count | 525 stalls
- **Setback** | **Maximum** | **Average** | **Proposed**
- BREW RD. SETBACK | 20' | 20' | 20'
- TOTAL AT GRADE | 20' | 20' | 20'

**WARNING:**

- CONTRACTOR TO PRODUCE LOCATION OF ALL UNDERGROUND UTILITIES. THEY SHALL COMPLY WITH ALL CITY / COUNTY REGULATIONS AND CODES, AND OSHA STANDARDS.
- THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL AT 651-454-0002 AT LEAST 48 HOURS IN ADVANCE FOR THE LOCATIONS OF ALL UNDERGROUND UTILITIES. THE CONTRACTOR SHALL REPAIR OR REPLACE THE ABOVE WHEN DAMAGED DURING CONSTRUCTION AT NO COST TO THE OWNER.
PROPOSED FIVE-STORY MULTI-FAMILY RESIDENTIAL ±15,385 G.S.F. AT F.F.E.
F.F.E.: ±902.0'
L.F.E.: ±890.2'

PROPOSED SIX-STORY MULTI-FAMILY RESIDENTIAL ±46,983 G.S.F. AT F.F.E.
F.F.E.: ±902.0'
L.F.E.: ±892.0'

DOG RUN AREA
UNDERGROUND INFILTRATION VAULT
100-YR HWL: ±891.4'
27.83'

FUTURE SWLRT TRACK ALIGNMENT
PER METRO TRANSIT
SWLRT TEMPORARY CONSTRUCTION EASEMENT

PROPOSED PERMANENT DRAINAGE AND UTILITY EASEMENT

FUTURE CONCRETE DRIVEWAY AND CURB EXTENSION RE-DESIGN REQUIRED BY METRO TRANSIT.
DRIVEWAY TO ALIGN WITH FUTURE BREN RD E. - BY OTHERS
MATCH TRAIL AND ANY NECESSARY SIDEWALK EXTENSIONS TO EXISTING - BY OTHERS (TYP. 9)
EXISTING PEDESTRIAN TRAIL TO BE REMOVED AND REPLACED FOR SWLRT UTILITY INSTALLATION - MATCH EXISTING - BY OTHERS (TYP.)
FUTURE BREN ROAD EAST RE-ALIGNMENT BY OTHERS PER METRO TRANSIT SWLRT FILES

WARNING:
THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING FOR LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL
COOPERATE WITH ALL UTILITY COMPANIES IN MAINTAINING THEIR SERVICE AND/OR RELOCATION OF LINES.
THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL AT 651-454-0002 AT LEAST 48 HOURS IN ADVANCE FOR
THE LOCATIONS OF ALL UNDERGROUND WIRES, CABLES, CONDUITS, PIPES, MANHOLES, VALVES OR OTHER BURIED
STRUCTURES BEFORE DIGGING. THE CONTRACTOR SHALL REPAIR OR REPLACE THE ABOVE WHEN DAMAGED DURING
CONSTRUCTION AT NO COST TO THE OWNER.

TWIN CITY AREA: 651-454-0002
TOLL FREE 1-800-252-1166
CALL BEFORE YOU DIG
PROVIDE TREE PROTECTION FOR INSTALL INLET PROTECTION

EROSION CONTROL NOTES

1. All perimeter Silt Fence for Curb Construction Erosion Control shall be installed prior to construction.
2. The Contractor shall install catch basin sediment control measures prior to any construction activities.
3. All disturbed areas shall be stabilized with sod, rock, or mulch. Sediment control measures such as topsoil washing site grading and completed within two weeks (14 days). Refer to landscape plans for materials.
4. All erosion control measures shall be installed and maintained in accordance with city, state, and watershed district permits.
5. The Contractor shall maintain all erosion control measures throughout construction. Sediment shall be removed at regular intervals. Sediment build up shall be removed when it reaches 2% of the height of the Silt fence above ground elevation.
6. Sediment accumulated onsite shall be removed by the Contractor.
7. All erosion control measures after site has been stabilized and vegetation is established.
8. The Contractor shall remove all Silt and Sediment tracked onto existing streets and paved areas.
9. If blowing dust becomes a nuisance, the Contractor shall protect adjacent streets.
10. Sheet adjacent street in accordance with city and watershed requirements.

WARNING:

The Contractor shall notify the City of any excess Silt or Sediment in advance of the construction area for the site. The Contractor shall remove the excess Sediment during construction.

NOTE: LIMITS OF DISTURBANCE AND SILT FENCE ARE SHOWN OFFSET FROM GRADING LIMITS FOR CLARITY. OFFSITE WORK IS LIMITED TO DRIVeway CONNECTIONS. CONTRACTOR TO INSTALL AND MAINTAIN EROSION PROTECTION ON ALL AREAS RECEIVING STORMWATER RUNOFF FROM THE SITE.

PROPOSED TREE PROTECTION (MAY USE SILT FENCE AS NECESSARY)

EROSION CONTROL LEGEND

TWIN CITY AREA: 651-454-0002 TOLL FREE 1-800-252-1166
PROPOSED FIVE-STORY MULTI-FAMILY RESIDENTIAL ±15,385 G.S.F. AT F.F.E.

F.F.E.: ±902.0'
L.F.E.: ±890.2'

PROPOSED SIX-STORY MULTI-FAMILY RESIDENTIAL ±46,983 G.S.F. AT F.F.E.

F.F.E.: ±902.0'
L.F.E.: ±892.0'

DOG RUN AREA

UNDERGROUND INFILTRATION VAULT 100-YR HWL: ±891.4'

PROPOSED PRIVATE WATERMAIN SERVICE - SEE C-401 FOR DETAIL

PROPOSED STORM SEWER - SEE SHEET C-501 FOR DETAIL

PROPOSED 10" AWWA C900 PVC WATERMAIN - BY OTHERS

PROPOSED SWLRT TRACKS, BY OTHERS

EXISTING 10" DIP WATERMAIN

EXISTING HYDRANT

EXISTING HYDRANT

PROPOSED PRIVATE WATERMAIN SERVICE - SEE C-401 FOR DETAIL

PROPOSED PRIVATE SANITARY - SEE C-401 FOR DETAIL

PROPOSED 10" WATERMAIN CONNECTION, BFV, AND BOX - BY OTHERS

EXISTING 8" PVC SANITARY SEWER

PROPOSED FUTURE STORM SEWER - SEE SHEET C-302 FOR DETAIL

SWLRT TEMPORARY CONSTRUCTION EASEMENT

PROPOSED PERMANENT DRAINAGE AND UTILITY EASEMENT

PROPOSED PERMANENT TRANSPORTATION EASEMENT

WARNING: THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING FOR LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL COOPERATE WITH ALL UTILITY COMPANIES IN MAINTAINING THEIR SERVICE AND/OR RELOCATION OF LINES. THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL AT 651-454-0002 AT LEAST 48 HOURS IN ADVANCE FOR THE LOCATIONS OF ALL UNDERGROUND WIRES, CABLES, CONDUITS, PIPES, MANHOLES, VALVES OR OTHER BURIED STRUCTURES BEFORE DIGGING. THE CONTRACTOR SHALL REPAIR OR REPLACE THE ABOVE WHEN DAMAGED DURING CONSTRUCTION AT NO COST TO THE OWNER.
STORM SEWER LEGEND

- PROPERTY LINES
- EASEMENT LINES
- PROPOSED CONTOUR
- EXISTING CONTOUR
- EXISTING SCARP
- PROPOSED SCARP
- PROPOSED STORM SEWER
- PROPOSED STORM SEWER DETAIL
- EXISTING STORM SEWER
- PROPOSED CATCH BASIN / MANHOLE
- EXISTING CATCH BASIN / MANHOLE
- TRENCH DRAIN INLET
- EXISTING TRENCH DRAIN INLET
- UNDERGROUND INFILTRATION VAULT
- EXISTING UNDERGROUND INFILTRATION VAULT
- FUTURE EQUITY STRUCTURE
- EXISTING EQUITY STRUCTURE
- INSTALL AGGREGATE BASE PER MANUFACTURERS
- INSTALL DRAINTILE AT BOTTOM OF SECTION
- TOP OF SECTION ELEV: 890.3'
- BOTTOM OF SECTION ELEV: 888.8'
- INSTALL DRAINTILE TO BE SPACED 10' 0.C.
- 6" PERFORATED HDPE DRAINTILE
- DRAINTILE TO BE INSTALLED UNDER ALL CURB STRUCTURAL / ARCHITECTURAL PLANS.
- CONNECT STRUCTURAL / ARCHITECTURAL PLANS.
- CONNECT STRUCTURAL / ARCHITECTURAL PLANS.

STORM SEWER NOTES

1. All the revisions to the original are marked on the sheets. A key to the changes is shown on the sheet titled "BREN ROAD E, MINNETONKA, MN 55343"
2. Storm sewer pipe shall be RCP.
3. All catch basin structures shall be constructed so that the casting is installed integrally with the concrete curb and gutter.
4. Contractor to provide 4" insulation by 4" centers on storm pipe if less than 4' of cover in pavement areas and less than 2' of cover in landscape areas.
5. All utilities should be kept 10' on center (if applicable) or when crossing by vertical separation clearance (outside edge of pipe to outside edge of pipe).
6. Lines underground shall be installed, inspected, and approved prior to backfilling.
7. Existing utilities shall be verified in field prior to installation of any new lines.
8. Refer to interior plumbing drawings for tie-in of all utilities.
9. Tops of existing manholes shall be raised as necessary to be flush with proposed pavement elevations, and to be flush with hand-bedded ground elevations, in green areas, with watertight loss.
10. Contractor is responsible for complying with the local authorities of the city of Minnetonka with regard to materials and installation of all utilities.
11. Contractor is specifically cautioned that the location, and elevation of existing utilities as shown on the plans is based on records of the various utility companies, and where possible, measurements taken in the field. The information is not to be relied on as being exact or complete. The contractor shall verify the approximate utility companies at least 72 hours before any excavation to request the exact field location of utilities. It shall be the contractor's responsibility to relocate all existing utilities which conflict with the location of proposed utilities shown on the plans.
12. Contractor is responsible for all necessary inspections and/or certifications required by codes and/or utility service companies.
13. Contractor shall coordinate with all utility companies for installation requirements and specifications.
14. All storm sewer shall be installed in accordance with Minnesota plumbing code.
15. All portions of the storm sewer located within 10 feet of the building or water service lines must be tested in accordance with Mn Rules Chapter 474.
16. Pipe to manhole connections shall be installed with resilient rubber connectors meeting ASTM C883.
17. Reinforced concrete pipe shall conform to ASTM C2857.
18. Reinforced concrete pipe shall comply within Mn rules Chapter 474, Section 71.6.
19. All storm sewer shall be installed in accordance with Mn Rules Chapter 474, Section 71.6.
20. All catch basin structures shall be constructed with resilient rubber connectors meeting ASTM C883.
OPUS DEVELOPMENT
ORIGINAL CONCEPT
CROSSROADS OF TOMORROW, TODAY.
NEW LIFE IN THE RAW FRONTIER

In the early 1800’s, Minnesota was a vast tract of land inhabited only by various bands of Chippewa and Sioux Indians. Around the middle of the century things started to change. Settlers arrived in increasing numbers at St. Paul Landing, the recently designated political capitol for the large expanse of land between the St. Croix and Missouri Rivers.

After a short stay in St. Paul, many of the settlers moved further up river to the smaller village of St. Anthony, the sawmill town by the falls. St. Paul and St. Anthony, both raw frontier communities, offered the excitement, hustle and bustle characteristic of newly created boom towns.

The trail to points west led from these fledgling cities past Lake Calhoun, Lake Harriet, paralleled Minnehaha Creek and eventually ended in the rich farm land surrounding Lake Minnetonka. Those here for the purpose of homesteading or farming followed this trail westward in search of fertile land.

The area comprising Hopkins, Minnetonka, Edina and Eden Prairie soon was settled with families. Civilization had come to this newly instituted Territory of Minnesota. The areas that were populated by these pioneers eventually became towns and villages that still exist today.
The Township of Eden Prairie and Minnetonka came into existence in 1858. Eden Prairie's name was bestowed on it by Elizabeth Ellet, an author of national fame. She was impressed with the beautiful rolling prairies and likened them to her conception of the Garden of Eden. Others must have agreed with her as the township was officially chartered under the name of Eden Prairie in 1858.

About the same time, the Township of Minnetonka was officially chartered, taking its name from the large lake close by. The lake was originally named Peninsula Lake by Calvin Tuttle and Simon Stevens, earlier pioneers. Governor Alexander Ramsey later renamed it Minnetonka, a Sioux word meaning big water.

Hopkins, then a part of Minnetonka Township, had its beginning roughly around 1870. The Minneapolis and St. Louis Railway purchased right-of-ways across farmers' land for their line to St. Louis, Missouri. Once the line was completed, a station was constructed opposite the home of Harley Hopkins and was given the name of Hopkins. With the added growth brought by the railroad, Hopkins became an entity in its own right and in 1887 the village was formally incorporated and separated from Minnetonka Township.

In 1888, Edina followed suit, electing to make their settlement a separate village from that of Richfield. Andrew and John Craik, immigrants from the Old World and pioneers in the new Territory, had come to Minnesota from Edinburgh, Scotland. They opened a flour mill and named it Edina in honor of their homeland. It is from the Craik brothers' Edina flour mill that the village of Edina took its name.

From their first perilous foothold, these four cities grew and prospered. Today, they offer Minnesota a heritage rich in determination, vision and progress, a history as much a part of the present and future as it is of the past.

At the convergence of these four progressive communities, a new pioneering effort has begun. 410 acres of small truck farms and private estates that once belonged to the Minnesota Pioneers has been acquired by Rauenhorst Corporation. The land, located in Minnetonka, Edina, and Eden Prairie, and bordered by Hopkins, will be the site of a new innovative community geared to our modern way of working and living.
There has long been a need for a new approach to community planning, especially on a large scale. Major cities, unlike smaller communities, are decades behind in responding to our present needs, work habits and life styles. Traffic systems and patterns can no longer handle the growing number of commuters. Present day transportation is producing a pollution problem that was undreamed of back in the 1950's and early 60's. Today's major cities are no longer people oriented.

Mr. Rauenhorst, aware of the direction community planning has taken in the last twenty years and of the problems that have resulted, devised an entirely new approach, one that was people oriented. He called it Opus 2.

Opus 2 combines the history of the past, needs of the present and the projected requirements of the future into a self-contained working/living center offering 95% of what is essential to life. It coordinates office, industrial, commercial and residential areas into an integral working/living environment able to provide jobs, recreation, housing, shopping, medical and cultural facilities. It is self-sustaining, making it profitable for companies to locate there, and it is convenient for commuting. Opus, which means creation, is an appropriate name to apply to this unusual approach to community planning.
A SEARCH SPARKS THE BEGINNING

Opus 2 went from concept to reality when Data 100 approached Rauenhorst Corporation to build new Corporate Headquarters, an office and plant facility. Rauenhorst was asked to find a suitable site within a designated area. Twenty-five acres were eventually located west of the Twin Cities bordered by Shady Oak Road, County Road 18 and Crosstown Highway 62. While in the process of acquiring the land for Data 100, Rauenhorst noticed that the adjoining acreage was also available. The area was ideal for the Opus 2 concept. The most important criteria were there: Proximity to the surrounding communities, existing access through roads and freeways and over 400 acres of undeveloped land in a suburban location. Rauenhorst Corporation decided to use this opportunity to implement Opus 2.
Much in-depth research was required concerning the environmental aspects of Opus 2's impact on the area. Independent studies were initiated to determine the feasibility of the automobile primary road system and the pedestrian traffic secondary road system concept as it related to the land use pattern. An environmental assessment was performed. Informal meetings were held with several different agencies, councils, commissions, and governments at the staff level including: the Nine Mile Creek Watershed District, the Environmental Quality Control Council, the Metropolitan Council, the Hennepin County Highway Department, the planning and engineering staffs of Edina, Eden Prairie, Hopkins, and Minnetonka, the Hennepin County Conservation Department and the Metropolitan Transit Commission.

Input received from these groups helped to determine the strength of each element of the Opus 2 concept and how well it would work with other elements of the plan. One of the main elements Rauenhorst Corporation considered during planning was preservation of the area's natural amenities. Rather than redesign the topography to fit the needs of Opus 2, Opus 2 has been designed to coordinate with the environment that already exists. Great care is being taken to preserve ecosystems such as wooded sections, marshes, knolls, valleys and natural water retention areas that enrich and enhance the environmental setting. It is this care and concern for the unspoiled beauty of the land that makes Opus 2 unique.
WORKING IN OPUS 2

Opus 2 is a staged development, taking an estimated ten years for completion. The industrial and office portions of Opus 2, consisting of 2 million square feet, are presently being developed. These will be coordinated with the 55,000 square foot neighborhood convenience shopping center, some residential housing and the 300,000 square foot multi-purpose service center.

Designed to fit today's working/living needs, Opus 2 offers many advantages not found elsewhere. Opus 2's location is nearly perfect for the businessman. Services such as restaurants, hotels, shopping centers, and some of the Twin Cities' greatest recreational facilities are located either in Opus 2 or are just moments away. Opus 2 is serviced by one of the metropolitan area's major arteries, Crosstown Highway 62, which puts the office, commercial and industrial areas of downtown Minneapolis, downtown St. Paul, the suburbs that circle the metropolitan area and the Minneapolis/St. Paul International Airport within minutes of the busy executive. Opus 2 is situated in the heart of the blue and white collar labor markets and is surrounded by four executive residential communities.

Added to this, buildings constructed in Opus 2 are architecturally designed to meld with the environment, avoiding visual congestion and enhancing the natural scenic amenities.

As Opus 2 was being engineered, much thought was given to controlling traffic peaks, thus avoiding rush hour traffic jams. The result is a dual roadway system.
that intra-connects Opus 2. It consists of a one-way primary roadway for standard automobiles and a two-way secondary roadway for pedestrian, bicycle traffic and electric vehicles. The two systems are totally separate and are bridged wherever they intersect. Traffic from the primary system can’t cross over or interfere with traffic on the secondary system. Counter-rotating traffic circles and the use of one-way streets in the primary system enable 50,000 vehicles to move in and out of Opus 2 daily without ever encountering oncoming vehicles, traffic signals or stop signs. This transportation system permits easy employee and customer access to all areas of Opus 2 in a continuous and uninterrupted fashion.

Opus 2 is in an ideal location for eventually connecting with mass transportation systems of the surrounding communities of Hopkins, Edina, Eden Prairie, Minnetonka, Minneapolis and St. Paul. Although Opus 2 is presently only minutes from these office, commercial and industrial areas, interconnected mass transportation will further tie Opus 2 into the Metropolitan business community.
LIVING IN OPUS 2

The central feature that blends the office, commercial and industrial portion of Opus 2 with the residential areas is the focal point of the working/living community, the multi-purpose service center. This structure, intended to serve Opus 2 and the surrounding area, will combine a number of uses on the same site. Proposed are high-value specialty shops, cultural facilities such as a community theater, an ecumenical chapel, dining establishments, police, fire and medical auxiliary services, all combined and located in a uniquely designed building.

Situated within casual walking distance of the multi-purpose service center will be a number of neighborhoods, each with its own architectural style and individual characteristics. They will be serviced by the same primary and secondary roadway system that intra-connects the office, commercial and industrial portions of Opus 2.

The treatment of the residential areas will reflect the Rauenhorst Corporation commitment to preserve and enhance the natural environment. Exquisitely manicured grounds will accent the aesthetically designed buildings. Each neighborhood will vary in density and will be convenient to the office, commercial and industrial portions of Opus 2, as well as to the surrounding services, communities, mass transportation systems, parks and recreational areas. The housing will range from rental units to condominiums, providing a way of life that is both distinctive and elegant. Residents will enjoy comfort, beauty, quality and peace of mind living.

Opus 2 living is designed for the discriminating. The over one thousand units planned will provide the ultimate in modern living, offering a new vista in housing experience.
EXCITING CHALLENGES

Numerous challenges are presented by the Opus 2 project; corporate headquarters with adjacent housing, mixed professional, commercial, office, and research facilities, industrial condominiums, preservation of natural amenities, aesthetically designed buildings, new techniques of crime prevention through internal security systems, experimentation with energy supply, the primary/secondary roadway concept, mass transit systems and people movers. These are just a few of the exciting developments planned for Opus 2.

Intense research is presently underway concerning the last category, people movers. Proposed are electric vehicles. They would be advantageous to residents as they would adapt to the dual roadway concept, would cost a fraction of the present sub-compact car, both to purchase and to operate, and they would be non-polluting.

RAUENHORST CORPORATION AND OPUS 2

Opus 2 originated from Mr. Rauenhorst's deep-seated conviction that he and his firm have a responsibility to society to research and create new methods and ideas for living and working. These new ideas are then implemented through the Rauenhorst Corporation concept of Total Responsibility which includes: site selection, architectural design, financing, development, engineering, construction, leasing, management and maintenance—all under one unified contract. As applied to Opus 2, the Total Responsibility concept has played a major role in helping to create a compatible working/living environment, developed and maintained along stringent standards, that will provide 95% of what is essential to life as well as ensure steadily increasing property values for your firm's investment. Therefore, Opus 2 isn't just another development. It's a singular working/living experience at the crossroad of what was, and what ought to be.

OPUS 2—CROSSROADS OF TOMORROW, TODAY.
THE CITY OF MINNETONKA

Critical to the development of an enterprise such as Opus 2 is the understanding, and support of local governmental bodies during the planning, programming, and construction phases. We have been fortunate indeed to have had a cooperative endeavor emerge with a number of such governmental groups, but especially with the City of Minnetonka. Even as we wrote our Opus 2 brochure, events were moving forward with gratifying rapidity. Zoning of our industrial park and commercial areas was obtained, concept plan approval for the housing area of the plan was granted, and an industrial revenue bond issue providing for the timely completion of the industrial/commercial areas was authorized by the City Council.

We at Rauenhorst Corporation extend special thanks and appreciation to the Council, Planning Commission, and Staff of Minnetonka for their assistance in making the promise of Opus 2 a reality today.

Gerald Rauenhorst
No item was removed from the consent agenda for discussion.

Knight moved, second by Hanson, to approve the item listed on the consent agenda as recommended in the respective staff report as follows:

A. Resolution approving a front yard setback variance for construction of a garage addition at 4425 Tonkawood Road.

Adopt the attached resolution approving a front yard setback expansion permit to construct an attached garage addition at 4425 Tonkawood Road.

Sewall, Hanson, Henry, Knight, Luke, and Kirk voted yes. Powers was absent. The motion on the consent agenda item carried.

Chair Kirk stated that an appeal of the planning commission’s decision must be made in writing to the planning division within 10 days.

8. Public Hearings

A. Resolution approving rezoning, master development plan, final site and building plans, and preliminary and final plats for The Mariner.

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.

In response to Sewall’s question, Thomas explained that staff referred to the proposed structure as two “buildings,” but they are parts of the same building. The property line separates the west wing which would have 194 market-rate units and the east wing made up of 55 units that would meet affordable housing standards. Wischnack explained that the different financing makes it necessary to separate the types of units.

Sewall asked how far into the easement the proposed amenities would extend. Thomas pointed out the boundary. A large watermain is located underground in the easement. The city may need to access the watermain in the future.

Henry asked why some easements are vacated and not others. Thomas explained that an easement may become obsolete when a property is redeveloped and utilities previously located in an easement are removed.

In response to Chair Kirk’s question, Thomas explained that the staff recommendation includes a condition of approval that would prohibit a dog run and parking area from being located in the easement. The proposal would still meet parking ordinance requirements with the removal of the proposed parking area located in the easement.
Becky Landon, president of Newport Midwest, applicant, stated that:

- She enjoyed working with staff.
- The building would look and function as one development. There would be affordable and market-rate components.
- The amenities would be equally attractive to all units. There would be a playground, splash pad, common room, game room, and gathering areas geared more toward adults.
- The northwest corner of the building would be about 550 feet from the SWLRT station platform and 70 - 80 feet from the tracks.
- There would be four units of high-priority supportive homeless housing. Hennepin County would refer a family when a unit is open. There would still be a background check and lease. A supportive provider would provide case management services. This would be permanent, supportive housing. These would be families with children.
- The applicant maximized every square inch of the site in order to create the kind of density the area dictates. The applicant is concerned with parking because there is no off-street parking in the area. The 21 stalls would help alleviate that problem. The dog run would not be much different than typical landscaping, but it would be maintained and designated as an area for residents to take their dogs. There are already people walking their dogs on the trail system now, but a lot more dogs would be added with the completion of the proposal.

Jack Immerman, civil engineer with Wenck Associates, stated that:

- There is a 10-inch watermain running through the 50-foot wide drainage and utility easement. The watermain is located directly underneath the existing bituminous trail. A 20-foot wide trench would be needed to repair the watermain. Repairs to the watermain would not encroach on the proposed parking. The dog run and parking area would extend 20 feet into the easement and leave 30 feet of easement for future utilities.
- Cable, electric, and telephone utilities use small cables buried three feet below the surface that fit within a five-foot easement.
- The dog park would consist of landscaping with a fence around it and the parking area would be bituminous with a concrete curb. It would be fairly simple to remove the parking or fence if needed.

Ms. Landon said that connecting residents of the proposed building and surrounding area to the SWLRT is critical. Making sure as many users can get to the SWLRT as safely as possible is a priority. Sidewalks would be located on the south side of the building from a private driveway to the driveway located on Bren Road East. She explained the pedestrian traffic pattern and the concessions made for safety and privacy.

Mr. Immerman stated that:
• Bren Road East has been moved closer to the proposed building. There is a 16-foot grade difference between the top of the road and the pedestrian underpass. A 3:1 grade could be constructed from the top of the road to the building. An additional 10-foot tall retaining wall would be required to build a sidewalk between the road and the building.

• The third concept is a rendering that shows that pedestrians would travel between a building wall and a 10-foot retaining wall. The applicant did not think pedestrians living off site would utilize this corridor and it would not provide a safe environment. There would be better connectivity from the north and east sides of the site.

In response to Chair Kirk’s request, Thomas explained the grading plan and existing trail system.

Ms. Landon pointed out that there is no sidewalk along Bren Road East. Most of the pedestrian traffic would come from the existing trails located on the north side of the site.

Wischnack explained that staff supports taking a broader view of the area and adding segments of trails that would link up with future trails.

In response to Henry’s question, Thomas stated that the site may be accessed from Bren Road East and the private drive. She pointed out the accesses to the underground parking areas.

Ms. Landon explained other guest parking options that were considered. There would be lifts in the underground parking.

The public hearing was opened.

Ryan Kronzer, assistant director of the SWLRT, stated that:

• He was available for questions.
• He has met with the applicant to coordinate the development proposal and discuss grading and the shifting of Bren Road East. The location of stormwater utility pipes was adjusted to allow the building to be constructed in the proposed location.
• Retaining wall work may be delayed depending on how the road will shift and the type of shoring required.

No additional testimony was submitted and the hearing was closed.

Hanson appreciated staff’s long-term view. There is quite a bit of action happening in the area. He agreed with staff’s recommendation.

Sewall felt that staff’s recommendation is reasonable. There are too many unknowns with the area on the north. The area could still be designated for dogs. As the SWLRT is
developed, the demand on parking may decrease. Having a 10-year vision for sidewalks will be beneficial. He supports the design and affordable housing component. He likes the look and supports staff’s recommendation.

Henry noted that this type of housing is needed in the city, especially located near the SWLRT. It would provide a huge benefit to the city. He appreciated the thought the applicant put into the demographics of who would reside in the proposal. It is a strong proposal. He encouraged the applicant to consider providing underground guest parking to provide better access for people with disabilities. He supports approving the proposal with the conditions provided in staff’s recommendation.

Luke agreed with commissioners. The building is well thought out. It takes into account a lot of living situations needed in Minnetonka. She agrees with staff’s recommendation regarding sidewalks and keeping the easements. She appreciates planning for the future. It is a very good project and it would be good for the city.

Knight liked the appearance of the building. He was a little concerned with not having enough guest parking.

Chair Kirk felt that there would be enough parking on site because renters would not live there unless there would be enough parking for their vehicles. There may need to be a modification to create additional parking. He liked the design of the building and the use. He did not want funding the south trail to eliminate the applicant’s ability to provide the same number of affordable and support units. The realignment of Bren Road East encumbered the positioning of the building. He liked the design and articulation of the building. The view of the architecture would be nice. The Opus trails are designed for a campus feel. The addition of the SWLRT would create a demand for pedestrians and bikers to get from one point to another. He supports the condition requiring the south sidewalk. He appreciates the product and the mix of housing.

Henry moved, second by Hanson, to recommend that the city council adopt the following pertaining to The Mariner at 10400, 10500, and 10550 Bren Road East:

1. An ordinance rezoning the property from B-2, limited business, to PUD, planned unit residential and adopting a master development plan.
2. A resolution approving final site and building plans.
3. A resolution approving preliminary and final plats.

Sewall, Hanson, Henry, Knight, Luke, and Kirk voted yes. Powers was absent. Motion carried.

9. Adjournment
Dear Susan, Loren, Julie and Alicia,

Following up on our phone call today, we are able to meet two of the staff recommended conditions of Council approval of the Mariner site plan.

1) The Mariner will not include a dog run within the 50-foot easement on the north side of the building. Rather, we propose an unfenced dog exercise area that we will encourage our residents to use, and which will be kept clean and tended. This will be located on the north side of the property, between the market rate building and the trail.

2) The Mariner will include a private sidewalk adjacent to the southwesterly façade of the building, between the main drive on the east and the public trail on the west. As you recall, we had safety and “walkability” concerns about this sidewalk sited in a narrow space between the building and a tall, long retaining wall. We are able to redesign this area by moving one of the housing units from the southern side of the building to the north, replacing the “dog spa” room and two parking stalls. Relocation of the unit allows us to lift the grade around the southwest corner of the building, eliminating the need for the retaining wall and creating a safer, more pedestrian-friendly sidewalk.

The loss of two parking stalls, however, makes the need for surface parking within the 50 foot easement on the north side of the property even more critical. With no off-site parking options in the area, it is vital that the Mariner provide sufficient parking (including visitor parking) for the number of units proposed. The SWLRT will not be a viable means of transportation for a number of years. Until that time, parking is a necessity in this area. The surface parking in the easement can be easily removed, at the owner’s expense, in the instance that the City needs to make improvements within the easement.

Thanks again for continuing to work with us on this development. Please call or email with any questions.

Happy Thanksgiving!

Becky Landon | Partner
Newport Midwest, LLC
475 Cleveland Avenue North, Suite 325 | Saint Paul, MN 55104
Ordinance No. 2018-

An ordinance rezoning the properties at 10400, 10500, and 10550 Bren Road East from B-2, limited business, to PUD, planned unit development and adopting a master development plan

The City Of Minnetonka Ordains:

Section 1.

1.01 The subject properties at 10400, 10500, and 10550 Bren Road East are hereby rezoned from B-2, commercial, to PUD, planned unit development.

1.02 The properties are legally described as:

Parcel A:
Lots 1 and 3, Block 1, Bren Trail, Hennepin County, Minnesota.
Together with the benefits contained in Declaration of Reciprocal Easements dated May 11, 2010, filed May 12, 2010 as Document Number 9511555.

Parcel B:
Lot 2, Block 1, Bren Trail, Hennepin County, Minnesota.
Together with the benefits contained in Declaration of Reciprocal Easements dated May 11, 2010, filed May 12, 2010 as Document Number 9511555.

Abstract Property

Section 2.

2.01 This ordinance is based on the following findings:

1. The rezoning to PUD would result in the provision of workforce rental housing, which is a living option desirable to the city.

2. The rezoning would be consistent with the intent of the zoning ordinance and of the comprehensive guide plan.

3. The rezoning would be consistent with the public health, safety, and welfare.
2.02 This ordinance is subject to the following conditions:

1. The site must be developed and maintained in substantial conformance with the following plans:
   - Site Plan and Future Site Plan, dated Oct. 15, 2018. Except that private improvements – parking and dog run – are not allowed to be constructed within public easements.

   The above plans are hereby adopted as the master development plan for the site.


Section 3. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on Nov. 26, 2018.

______________________________
Brad Wiersum, Mayor

Attest:

______________________________
David E. Maeda, City Clerk

Action on this ordinance:

Date of introduction: July 23, 2018
Date of adoption: 
Motion for adoption: 
Seconded by: 
Voted in favor of: 
Voted against: 
Abstained: 
Absent: 
Ordinance adopted.
Date of publication:

I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on Nov. 26, 2018.

________________________
David E. Maeda, City Clerk
Resolution No. 2018-
Resolution approving final site and building plans for The Mariner, a multi-family residential development at 10400, 10500, and 10550 Bren Road East

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

Section 1. Background.

1.01 Newport Midwest, LLC has requested approval of final site and building plans for a 249-unit rental housing development at 10400, 10500, and 10550 Bren Road East.

1.02 The subject properties are legally described as:

Parcel A:
Lots 1 and 3, Block 1, Bren Trail, Hennepin County, Minnesota.
Together with the benefits contained in Declaration of Reciprocal Easements dated May 11, 2010, filed May 12, 2010 as Document Number 9511555.

Parcel B:
Lot 2, Block 1, Bren Trail, Hennepin County, Minnesota.
Together with the benefits contained in Declaration of Reciprocal Easements dated May 11, 2010, filed May 12, 2010 as Document Number 9511555.

Abstract Property

1.03 On Nov. 1, 2018, the planning commission held a hearing on the proposal. 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 the city council approve the final site and building plans.

Section 2. Site and Building Plan Standards and Findings.

2.01 City Code §300.27, Subd.5 outlines several items that must be considered in evaluation of site and building plans. Those items are incorporated by reference into this resolution.

2.02 The proposal would meet site and building plan standards outlined in the City Code §300.27, Subd.5.
1. The proposed high-density residential development is consistent with the general housing goals of the 2030 Comprehensive Guide Plan and the
Plan’s specific goal to provide additional housing in the OPUS area. Further, the proposal is consistent with Southwest Light Rail Transit (SWLRT) plans for the area. The proposal has been reviewed by city planning, engineering, and natural resources staff and found to be generally consistent with the city’s development guides, including the water resources management plan.

2. The proposal is consistent with the zoning ordinance.

3. The subject property is a developed site, with no “natural” areas. The proposal is considered redevelopment.

4. The proposal would result in a harmonious relationship of buildings, with open space generally located at the perimeter of the site.

5. The proposal would result in a unique and attractively-designed development.

6. As new construction, the building code would require use of additional energy saving features within the buildings themselves.

7. The proposal would visually and physically alter the property and the immediate area. However, this change would occur with any redevelopment of the site, which the city has long anticipated.

Section 3. City Council Action.

3.01 The above described site and building plans are approved based on the findings outlined in Sections 2 and 3 of this resolution. Approval is subject to the following conditions:

1. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:

   • Site Plan and Future Site Plan, dated Oct. 15, 2018. Except that private improvements – parking and dog run – are not allowed to be constructed within public easements.
   • Storm Sewer Plan, dated Oct. 15, 2018.

2. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.
a) The following must be submitted for the grading permit to be considered complete.

1) An electronic PDF copy of all required plans and specifications.

2) Final site, grading, utility, stormwater management, landscape, and tree mitigation plans, and a stormwater pollution prevention plan (SWPPP) for staff approval.

   a. Final site plan. The plan must:
   
   • Not include parking, dog run, or other similar private improvements within the 50-foot wide drainage and utility easent located on the north side of the site.

   b. Final grading plan must:
   
   • Include a private sidewalk adjacent to the southwesterly façade of the building. The sidewalk must connect the proposed main drive aisle and existing public trail to the west.

   • Not include steps immediately adjacent to public trails.

   c. Final utility plan. The plan must:
   
   • Illustrate that sanitary sewer main located outside of public utility easements are designed in compliance with the Minnesota Plumbing Code.

   • Include specific specifications and materials.

   Note: Separate sewer and water permits, tests, and inspections are required for on-site work located outside of public utility easements. Permits must be submitted by a licensed contractor.

   d. Final stormwater management plan is required for the entire site’s impervious surface. The plan must demonstrate conformance with the following criteria:

   • Rate. Limit peak runoff flow rates to that of existing conditions from the 2-, 10-, and 100-
year events at all points where stormwater leaves the site.

- **Volume.** Provide for onsite retention of 1-inch of runoff from the entire site’s impervious surface.

- **Quality.** Provide for all runoff to be treated to at least 60 percent total phosphorus annual removal efficiency and 90 percent total suspended solid annual removal efficiency.

In addition:

- Stormdrains located outside of the building must be connected to the storm sewer, not to internal building plumbing.

- Consider locating a structure between CBMH 3 and 4 to provide for more separation between the storm sewer and the roadway.

- Provide evidence that the underground system will be able to support 83,000 pounds and 10,800 pounds per square foot outrigger load.

- Provide evidence that the underground facility can be maintained in the future without damaging or undermining the building.

- The underground facility must be inspected by a qualified third party during installation and that party must verify that the pressure requirements are adequately met.

e. **Final landscaping plan must:**

- Meet city code value requirements as outlined in city code and city policy pertaining to landscaping within easements. Note, only small shrubs, perennials and grasses may be located in public easements.

- Include information pertaining to species, sizes, quantities, locations and landscape value.

- Include pollinator-friendly species.
• Include tree mitigation meeting city code requirements. Based on submitted grading plans, one, 2-inch tree and six, 6-foot evergreen trees are required.

• Show deciduous trees located at least 10 feet from public trails and 15 feet from public streets. Evergreens must be located at least 15 feet from public trails and 20 feet from public streets.

3) A utility exhibit. The exhibit must show only property lines, buildings, sewer, water, storm sewer and underground stormwater facilities. The exhibit must clearly note which lines are private and which are public.

4) A truck turning exhibit. The exhibit must use templates for the city’s largest fire truck and illustrate that the truck can maneuver through the site.

b) Prior to issuance of a grading permit:

1) This resolution must be recorded at Hennepin County.

2) Final plat must be released for recording.

3) Obsolete public easements must be vacated.

4) Obsolete private easements must be released.

5) Pay any outstanding assessments, taxes, and utility bills.

6) Submit park dedication fee in the amount of $1,245,000.

7) Submit the following:

   a. Executed contract for private development

   b. A stormwater maintenance agreement in a city approved format for review and approval of city staff.

   c. A private hydrant maintenance agreement in a city approved format for review and approval of city staff.

   d. An encroachment agreement for sidewalks within the transportation easement on the west side of the site.
e. A construction phasing plan for staff review and approval.

f. A written document from SWLRT Project Office: (1) approving the grading plan; and (2) amending the location of temporary construction easements.

g. Preliminary approval from Nine Mile Creek Watershed District staff.

h. A MPCA Sanitary Sewer Extension permit or documentation that a permit is not required.

i. A MDH permit for the proposed water main construction or documentation that a permit is not required.

j. A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance.

k. Financial guarantees in the amount of 125% of a bid cost or 150% of an estimated cost to comply with grading permit and landscaping requirements and to restore the site. Staff is authorized to negotiate the manner in which site work and landscaping guarantees will be provided. The city will not fully release the guarantee until: (1) as-built drawings and tie-cards have been submitted; (2) a letter certifying that the underground facility has been completed according to the plans approved by the city; (3) vegetated ground cover has been established; and (4) required landscaping or vegetation has survived one full growing season.

l. Evidence that an erosion control inspector has been hired to monitor the site through the course of construction. This inspector must provide weekly reports to natural resource staff in a format acceptable to the city. At its sole discretion, the city may accept escrow dollars, in an amount to be determined by natural resources staff, to contract with an erosion control inspector to monitor the site throughout the course of construction.

m. 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.

1) Install 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.

2) Hold a preconstruction meeting with site contractors and city planning, engineering, public works, and natural resources staff. The meeting may not be held until all items required under 2(a) and 2(b)(7) of this resolution have been submitted, reviewed by staff, and approved.

3. Prior to issuance of any building permit, submit the following documents:

a) A snow removal and chloride management plan.

b) A revised underground parking plan illustrating all aisle widths and stall dimensions in conformance with zoning and building code requirements.

c) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for noncompliance. If the builder is the same entity doing grading work on the site, the construction management plan submitted at the time of grading permit may fulfill this requirement.

1) 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.

If the builder is the same entity doing grading work on the site, the escrow submitted at the time of grading permit may fulfill this requirement.

4. The property owner is responsible for replacing any required landscaping that dies.

5. Construction must begin by Dec. 31, 2019, unless the city council grants a time extension.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Nov. 26, 2018.

Brad Wiersum, 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 Nov. 26, 2018.

David E. Maeda, City Clerk

SEAL
Resolution No. 2018-
Resolution approving the preliminary and final plat of
THE MARINER

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

Section 1. Background.

1.01 Newport Midwest, LLC has requested approval of preliminary and final plats of
THE MARINER at 10400, 10500, and 10550 Bren Road East.

1.02 The property is legally described as:

Parcel A:
Lots 1 and 3, Block 1, Bren Trail, Hennepin County, Minnesota.
Together with the benefits contained in Declaration of Reciprocal Easements
dated May 11, 2010, filed May 12, 2010 as Document Number 9511555.

Parcel B:
Lot 2, Block 1, Bren Trail, Hennepin County, Minnesota.
Together with the benefits contained in Declaration of Reciprocal Easements
dated May 11, 2010, filed May 12, 2010 as Document Number 9511555.

Abstract Property

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.

Section 3. Findings.

3.01 The proposed plats would meet the design standards as outlined in City Code
§400.030.

4.01 The above-described preliminary and final plats are hereby approved, subject to the following conditions:

1. Prior to release of the final plat for recording, submit the following:

   a) Evidence for the city engineer’s review and approval that sufficient permanent drainage and utility easement is being dedicated adjacent to Bren Road East to maintain a consistent drainage and utility corridor.

   b) A copy of Driveway Easement Doc. No. 4372853.

   c) The following documents for review and approval of the city attorney:

      1) Title evidence that is current within thirty days before release of the final plat.

      2) A cross access and parking agreement.

      3) An easement over the easterly 20 feet of the property for roadway, utility, and sidewalk/trail purposes. The city will not be responsible for maintenance of driveways or trails in the area unless or until the driveways and sidewalks are converted to, and accepted as, public infrastructure.

   d) An electronic CAD file of the plat in microstation or DXF.

   e) Three sets of mylars for city signatures.

2. This approval will be void on Nov. 26, 2019, if: (1) a final plat is not recorded; and (2) the city council has not received and approved a written application for a time extension.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Nov. 26, 2018.

____________________________
Brad Wiersum, 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 Nov. 26, 2018.

_________________________________________
David E. Maeda, City Clerk
Brief Description
Resolution approving contract for private development with the City of Minnetonka and Mariner Affordable Apartments Limited Partnership

Recommendation
Adopt the resolution

Background
In 2017, Newport Midwest formally requested gap financing to assist with providing 55 affordable units within the redevelopment project at 10400, 10500, and 10550 Bren Road East. An Economic Development Advisory Commission (EDAC) subcommittee and the EDAC both reviewed the request and recommended that the city council approve the financing request. The details of the request are outlined in this report.

The developer formally submitted applications for redevelopment of the site that will be considered by council at the Nov. 26, 2018 city council meeting.

Financing Request
The developer is requesting gap assistance of up to $556,179 from the city’s TIF Pooling Fund. Staff and the city’s financial advisor have reviewed this request and are proposing that the assistance be structured as a note with a 4% interest rate that would be repayable from available surplus cash over a minimum term of 14 years and a maximum of 30 years. If a capital improvement was necessary during the 14 year term, the developer could access the cash flow to make any necessary improvements. Additional information regarding this request is included in the attached memo from Ehlers.

In addition to the request for city funding, the developer secured the following grants to assist with the development gap and continued affordability:

- Hennepin County Transit Oriented Design - $450,000
- Metropolitan Council – Livable Communities Demonstration Account funding - $1,876,500
- Metropolitan Council – Affordable Housing Investment Fund - $400,000
- Metropolitan Council - Local Housing Incentives Account Grant - $210,500

After detailed review of the development proposal, establishment of a TIF district for this project does not seem to be appropriate because of the scale of the affordability in this project. Instead, staff believes use of TIF pooling funds (from Boulevard Gardens) is more appropriate. As noted in the city’s 2018 TIF Management Report, by 2022, a total of $4,961,930 million in TIF pooling funds will be available for tax-credit eligible affordable housing developments after accounting for the Mariner project ($556,179) and for Shady Oak Crossings ($1.2 million). To date, $1.025 million has been used for The Ridge project. The attached Council Policy 2.14 provides further guidance on the use of TIF pooling funds. Uses of the funds are intended to be strategically allocated to projects that provide affordable housing.
Prior Meeting Review and Summary

May 15, 2017 EDAC Subcommittee Review and May 25, 2017 EDAC Review

On May 15, EDAC Commissioners Isaacson, Yunker, and Jacobsohn met as a subcommittee to review the assistance request, using Council Policy 2.14 on TIF pooling as a guide. The EDAC subcommittee expressed that the request for assistance was reasonable and concluded that it met the following criteria:

- The project is compatible with the Comprehensive Guide Plan as a proposed mixed-use development;
- The project would not occur “but for” the assistance;
- The project is in a high priority “village area” as identified in the Comprehensive Guide Plan;
- The project includes affordable housing units, which meets the city’s affordable housing standards;
- The proposed project amenities will benefit a larger area than identified in the development; and
- The project will maximize and leverage the use of other financial resources.

In addition, the EDAC subcommittee provided feedback on items to consider including in the contract for private development. The commissioners suggested capping the assistance as a percentage of the total development costs. If the total development costs came in lower, the city assistance would be lower, proportionately. In addition, the commissioners advised to secure the cash flow note in second position after the first mortgage and add a deadline for use of the city assistance in the event that the project does not begin on schedule.

At the EDAC meeting on May 25, 2017 the commissioners recommended that the city council adopt the resolution of support committing up to $556,179 in TIF pooling assistance to support the MHFA tax credit application due June 15. The city assistance would be considered “gap assistance” and the last source of funding into the project.

EDAC Review – August 9, 2018

On August 9, the EDAC further reviewed the draft Contract for Private Development and provided the following feedback:

- Commissioner Hromatka inquired about how the demonstrated gap was determined.
  - Staff clarified that assistance was needed to bridge the gap of the cost of providing affordable units.
  - The city’s financial consultant, Stacie Kvilvang at Ehlers, confirmed that she had reviewed the developer’s development pro forma and confirmed that the assistance of $556,179 was an appropriate level of assistance needed to fill the project gap.

- Commissioners recommended updating the affordable housing chart to include both the affordable and market rate units in the chart.
• Commissioner Knickerbocker inquired about how this financing request differs from previous projects and if there are any outstanding issues.
  o Kvilvang confirmed that the city benefits from the project including both market rate and affordable units and confirmed that the TIF funds are structured as a repayable loan and can be reused for future projects.
  o Kvilvang commented that she was not aware of any outstanding issues.

• Commissioner Knickerbocker asked for clarification about the term “income averaging” in the contract.
  o Gina Fiorini, the city’s legal counsel at Kennedy & Graven, confirmed that the federal tax law allows for income averaging. Minnesota Housing Finance Agency, which oversees low income housing tax credit allocation in Minnesota, has not yet adopted this policy but could do so in future years. The language in the contract allows flexibility if income averaging should be allowed.

• Commissioner Knickerbocker inquired about the property management clause in the contract.
  o Staff confirmed that this language is common and included in all contracts.

• Staff clarified the affordability level and income limits. There are 55 units affordable to households earning up to 60% of the area median income (AMI). Additionally, rents for those households are capped at 50% of the AMI based on the tenant’s income for the initial 5-10 year period, then rents can be raised to 60% from 10-20 years under the tax credit program rules.

The EDAC recommended the city council approve the contract for private development.

**Contract for Private Development Overview**

The city’s legal counsel, Julie Eddington at Kennedy & Graven, drafted the attached Contract for Private Development that was developed based upon the requests for city assistance by the developer with feedback from the EDAC and city council.

Highlights of the Contract for Private Development are listed below:

**Declaration of Restrictive Covenants**

• Given that the developer is requesting TIF assistance and utilizing tax credit financing through the MHFA, there are certain income and rent restriction requirements the developer must follow. The developer is proposing to make all 55 units affordable to households earning 60% AMI or less ($45,300 for a two person household). In addition, rent limits on those affordable units may not exceed 50% of the income calculated for that unit. (Rents will range from $826 to $1,226 in the workforce units.)

• The declaration requires a minimum of 30 years of affordability for the 55 workforce units.
Tax Increment Financing (TIF) Pooling Assistance

- The developer requested assistance of up to $556,179 from the city’s TIF Pooling Fund. The assistance is structured as a note with a 4% interest rate, repayable over a maximum of 30 years from 100% of the surplus cash, as defined in the agreement. It is anticipated that the note would be repaid within 14 years. If a capital improvement was necessary during the estimated 14-year term, the developer could access the same cash flow to make any necessary improvements.

- Prior to disbursal of the TIF loan, the city’s municipal advisor will review the project finances. If the advisor determines that all or a portion of the TIF loan is not needed to cover the gap, the TIF loan will be reduced to the amount necessary to cover the remaining gap in order to construct the project.

Grants

- In 2018, the city was awarded a Local Housing Incentives Account (LHIA) Grant in the amount of $210,500 from Metropolitan Council. These funds can be used for property/structure acquisition, demolition, site preparation (such as water, sewer, roads), general construction, interior and exterior finishing, roofing, electrical, plumbing, heating and ventilation, as more fully described in the LHIA Grant Agreement that was approved by council on August 6, 2018. This is considered a pass-through grant and is disbursed to the developer as project costs are incurred and documented.

- In 2018, the city also was awarded a Livable Communities Demonstration Account (LCDA) Grant in the amount of $1,876,500 from Metropolitan Council. The grant can be used for site acquisition, site preparation, (grading and demolition), stormwater management, and a sidewalk along Bren Road. The subrecipient agreement for the grant was approved at the August 6, 2018 city council meeting. This grant is also considered a pass-through grant and is disbursed to the developer as project costs are incurred and documented.

- In 2017 and 2018, Hennepin County awarded Affordable Housing Incentive Funds to the Mariner program totaling $400,000 in loans to Newport Midwest, LLC to fund the development of 55 affordable rental units. These funds are awarded directly to the developer to assist with providing long term affordability. On August 6, 2018 the council approved a resolution authorizing the utilization of these funds as required under the terms of the funding.

- In 2018, Hennepin County also awarded $450,000 in Transit Oriented Design funding to the developer. These funds can be used to assist with acquisition and infrastructure work and are awarded directly to the developer.

Minimum Improvements

- Construction of a multifamily housing development with approximately 55 rental housing units with 46 underground parking spaces and 16 surface parking spaces.
Commencement and Completion of Construction

- The minimum improvements must be commenced on or around July 1, 2019 and completed by August 30, 2020. Construction is considered to be commenced upon the physical improvements beyond grading.

Recommendation

The project concept by Newport Midwest will help meet the city’s affordable housing goals outlined in the draft 2040 Comprehensive Guide Plan, the city's 2011-2020 affordable housing goals, and new housing construction needs identified in the Southwest Corridor Housing Strategy.

Staff recommends the city council adopt the resolution approving the contract for private development with the City of Minnetonka and Mariner Affordable Apartments Limited Partnership and authorize city officials to approve non-substantive changes to the contract for private development.

Submitted through:
- Julie Wischnack, AICP, Community Development Director
- Geralyn Barone, City Manager
- Merrill King, Finance Director

Originated by:
- Alisha Gray, EDFP, Economic Development and Housing Manager

Additional Information

Contract for Private Development

Location Map

Memo from Ehlers

TIF Pooling Policy 2.14

History of Affordability and Assistance

Minnetonka Housing Action Plan (2011-2020 Affordable Housing Goals)

March 6, 2017 City Council Staff Report

February 16, 2017 Planning Commission Report
August 6, 2018 – City Council Meeting

August 9, 2018 – EDAC Meeting

Southwest LRT Corridor Housing Strategy

Southwest LRT Housing Gaps Analysis
Resolution No. 2018-

Resolution approving contract for private development with the Economic Development Authority in and for the City of Minnetonka and Mariner Affordable Apartments Limited Partnership

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 (the “Authority”) have established Redevelopment Tax Increment Financing District No. 2 (Boulevard Gardens) (the “TIF District”) within a larger development district known as Development District No. 1 (the “Development District”) and adopted a financing plan (the “TIF Plan”) for the TIF District in order to facilitate redevelopment of certain property in the Development District, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended. The TIF Plan provides for pooling tax increment for housing projects outside the TIF District if the housing project meets certain affordability requirements.

1.02. In order to facilitate development of affordable rental housing in the City, the City and the Authority have caused to be prepared a Contract for Private Development (the “Contract”) between the City, the Authority and Mariner Affordable Apartments Limited Partnership, a Minnesota limited partnership (the “Developer”). Pursuant to the Contract, the Developer will construct on certain property located within the City (the “Development Property”) a multifamily housing development with approximately 55 Rental Housing Units, 4 of which will be considered permanent supportive housing, subject to the affordability requirements and bedroom configurations described in Section 4.5 hereof, and 46 underground parking spaces and 16 surface parking spaces (the “Minimum Improvements”). The Developer has proposed connecting the Minimum Improvements to a market-rate rental housing building to be constructed on the Development Property with approximately 191 units and the two buildings will be connected by a bridge with shared amenities, such as rooftop deck spaces, a playground, an urban courtyard, a bike repair station, bike paths and green spaces surrounding the property.

1.03. In order to assist in financing the Minimum Improvements, the Authority has proposed to provide a loan of tax increment derived from property within the TIF District (the “TIF Loan”).

1.04. There has been presented before this Council a Contract for Private Development (the “Agreement”) proposed to be entered into between the Authority, the City, and the Developer setting forth the terms of the development of the Minimum Improvements and the provision of the TIF Loan.

Section 2. The Agreement.

2.01. The Council approves the Agreement in substantially the form on file in City Hall.
The Mayor and City Manager are hereby authorized and directed to execute and deliver the Agreement. All of the provisions of the 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 Agreement shall be substantially in the form on file with the City which is hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the Mayor and the City Manager, in their discretion, shall determine, and the execution thereof by the Mayor and the City Manager shall be conclusive evidence of such determination.

Section 3. Effective Date.

3.01. This resolution shall be effective upon full execution of the Agreement.

Adopted by the City Council of the City of Minnetonka, Minnesota at a meeting held on Nov. 26, 2018.

Brad Wiersum, 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 Nov. 26, 2018.

David E. Maeda, City Clerk
CONTRACT

FOR

PRIVATE DEVELOPMENT

between

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

CITY OF MINNETONKA, MINNESOTA,

and

MARINER AFFORDABLE APARTMENTS LIMITED PARTNERSHIP

Dated __________, 2018

This document was drafted by:

KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota  55402
Telephone: (612) 337-9300
# TABLE OF CONTENTS

PREAMBLE ........................................................................................................................................ 1

ARTICLE I
Definitions

Section 1.1. Definitions ...................................................................................................................... 3

ARTICLE II
Representations and Warranties

Section 2.1. Representations of the Authority ................................................................................... 7
Section 2.2. Representations of the City ............................................................................................. 7
Section 2.3. Representations and Warranties by the Developer ......................................................... 8

ARTICLE III
Tax Increment Assistance

Section 3.1. Status of the Property ..................................................................................................... 9
Section 3.2. Environmental Conditions .............................................................................................. 9
Section 3.3. Tax Increment Assistance ............................................................................................... 9
Section 3.4. Grants ............................................................................................................................ 11
Section 3.5. Payment of Administrative Costs .................................................................................. 11
Section 3.6. Exemption from Business Subsidy Act ........................................................................... 12

ARTICLE IV
Construction of Minimum Improvements

Section 4.1. Construction of Improvements ..................................................................................... 13
Section 4.2. Construction Plans ........................................................................................................ 13
Section 4.3. Commencement and Completion of Construction ....................................................... 14
Section 4.4. Certificate of Completion ............................................................................................. 14
Section 4.5. Affordable Housing Covenants .................................................................................... 15
Section 4.6. Affordable Housing Reporting ..................................................................................... 16
Section 4.7. Records ......................................................................................................................... 16
Section 4.8. Property Management Covenant .................................................................................. 16
Section 4.9. Construction of Site Improvements ............................................................................. 17
Section 4.10 Site Improvement Construction Addendum ................................................................. 17
Section 4.11 Fees ............................................................................................................................... 17

ARTICLE V
Insurance

Section 5.1. Insurance ....................................................................................................................... 18
Section 5.2. Subordination ................................................................................................................ 19

ARTICLE VI
Tax Increment; Taxes

Section 6.1. Right to Collect Delinquent Taxes .................................................................................. 20
Section 6.2. Review of Taxes ........................................................................................................... 20
Section 6.3. Use of Tax Increment ................................................................................................... 20

ARTICLE VII
Financing

Section 7.1. Financing ...................................................................................................................... 21

ARTICLE VIII
Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Representation as to Redevelopment ............................................................................ 22
Section 8.2. Prohibition Against Transfer of Property and Assignment of Agreement ..................... 22
Section 8.3. Release and Indemnification Covenants ....................................................................... 23

ARTICLE IX
Events of Default

Section 9.1. Events of Default Defined ............................................................................................ 25
Section 9.2. Remedies on Default .................................................................................................... 25
Section 9.3. No Remedy Exclusive .................................................................................................. 26
Section 9.4. No Additional Waiver Implied by One Waiver ............................................................ 26
Section 9.5. Attorneys’ Fees ............................................................................................................. 26

ARTICLE X
Additional Provisions

Section 10.1. Conflict of Interests; Authority or City Representatives Not Individually Liable ..... 27
Section 10.2. Equal Employment Opportunity ................................................................................ 27
Section 10.3. Restrictions on Use .................................................................................................... 27
Section 10.4. Provisions Not Merged With Deed ........................................................................... 27
Section 10.5. Titles of Articles and Sections ................................................................................. 27
Section 10.6. Notices and Demands ................................................................................................ 27
Section 10.7. Counterparts ................................................................................................................. 27
Section 10.8. Recording ..................................................................................................................... 28
Section 10.9. Amendment .................................................................................................................. 28
Section 10.10. Authority Approvals ................................................................................................ 28
Section 10.11. Termination ............................................................................................................... 28

SIGNATURES ................................................................................................................................... S-1

EXHIBIT A Description of Development Property ......................................................................... A-1
EXHIBIT B Certificate of Completion ........................................................................................... B-1
EXHIBIT C Declaration of Restrictive Covenants ..................................................................... C-1
EXHIBIT D Site Improvements .................................................................................................. D-1
EXHIBIT E Developer Surplus Cash Note ..................................................................................... E-1
CONTRACT FOR PRIVATE DEVELOPMENT

THIS CONTRACT FOR PRIVATE DEVELOPMENT, made on or as of the ____ day of ____________, 2018 (the “Agreement”), is between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), the CITY OF MINNETONKA, MINNESOTA (the “City”), 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, and MARINER AFFORDABLE APARTMENTS LIMITED PARTNERSHIP, a Minnesota limited partnership (the “Developer”).

WITNESSETH:

WHEREAS, the Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended, and was authorized to transact business and exercise its powers by a resolution of the City Council of the City; and

WHEREAS, the Authority and the City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing, and in this connection created a development district known as Development District No. 1 (the “Project”) in the City, pursuant to Minnesota Statutes, Sections 469.124 through 469.134, as amended; and

WHEREAS, by Resolution No. 93-9649, the City transferred control, authority and operation of the Project from the City to the Authority; and

WHEREAS, the City and the Authority have established Redevelopment Tax Increment Financing District No. 2 (the “TIF District”) within the Project and adopted a financing plan (the “TIF Plan”) for the TIF District in order to facilitate redevelopment of certain property in the Project, all pursuant to Minnesota Statutes, Sections 469.124 through 469.134, as amended; and

WHEREAS, by Resolution No. 93-9649, the City transferred control, authority and operation of the Project from the City to the Authority; and

WHEREAS, the City and the Authority have established Redevelopment Tax Increment Financing District No. 2 (the “TIF District”) within the Project and adopted a financing plan (the “TIF Plan”) for the TIF District in order to facilitate redevelopment of certain property in the Project, all pursuant to Minnesota Statutes, Sections 469.124 through 469.134, as amended; and

WHEREAS, pursuant to Section 469.1763, subdivision 2(d) of the TIF Act, the Authority and the City modified the TIF Plan for the TIF District in order to increase the amount of Tax Increment (defined hereinafter) that may be spent outside the boundaries of the TIF District from twenty-five percent (25%) to thirty-five percent (35%), provided that such pooled Tax Increment is used solely to assist the development of rental housing that meets the requirements for federal low income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, the Developer has proposed a development of an affordable rental housing facility described further herein as the “Minimum Improvements” on certain property (the “Development Property”) located in the Project, which facility is expected to receive federal low income tax credits; and

WHEREAS, the Developer has proposed to connect the Minimum Improvements to a market-rate rental housing building to be constructed on the Development Property with approximately 191 units and the two buildings will be connected by a bridge with shared amenities, such as rooftop deck spaces, a playground, an urban courtyard, a bike repair station, bike paths and green spaces surrounding the property; and

WHEREAS, the Authority has proposed to provide the Developer with a loan of Tax Increment from the TIF District to assist in financing the acquisition and construction of the Minimum Improvements on the Development Property; and
WHEREAS, the Authority and the City believe that the development of the Minimum Improvements pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Minnesota and local laws and requirements; and

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

(The remainder of this page is intentionally left blank.)
ARTICLE I

Definitions

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

“Act” means the Economic Development Authority Act, Minnesota Statutes, Sections 469.090 through 469.1082, as amended.

“Affiliate” means (a) any corporation, partnership, corporation or other business entity or person controlling, controlled by or under common control with the Developer; and (b) any successor to such party by merger, acquisition, reorganization or similar transaction involving all or substantially all of the assets of such party (or such Affiliate). For the purpose hereof the words “controlling,” “controlled by,” and “under common control with” shall mean, with respect to any corporation, partnership, corporation or other business entity, the ownership of fifty percent (50%) or more of the voting interests in such entity, possession, directly or indirectly, of the power to direct or cause the direction of management policies of such entity, whether ownership of voting securities or by contract or otherwise.

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

“Authority” means the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State, or any successor or assign.

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

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


“Certificate of Completion” means the certification to be provided the Developer, pursuant to Section 4.4 hereof and substantially in the form attached hereto as EXHIBIT B.

“City” means the City of Minnetonka, Minnesota.

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

“Closing” has the meaning provided in Section 3.3(b) hereof.


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

“County” means the County of Hennepin, Minnesota.

“Declaration” means the Declaration of Restrictive Covenants attached hereto as EXHIBIT C.

“Developer” means Mariner Affordable Apartments Limited Partnership, a Minnesota limited partnership, its successors and assigns.


“Development Plan” means the Development Program for the Project.

“Development Property” means the property legally described in EXHIBIT A attached hereto.

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

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

“Market Rate Apartments” means the construction by the Developer on the Development Property of a market rate multifamily housing development with approximately 191 units.

“Material Change” means any change which would (i) cause the Construction Plans to fail to conform with the terms and conditions of this Agreement, the goals and objectives of the Redevelopment Plan and/or all applicable federal, State, and local laws, ordinances and regulations; or (ii) would materially alter the design and/or construction of the Minimum Improvements.

“Minimum Improvements” means the construction on the Development Property of a multifamily housing development with approximately 55 Rental Housing Units, 4 of which will be considered permanent supportive housing, subject to the affordability requirements and bedroom configurations described in Section 4.5 hereof, and 46 underground parking spaces and 16 surface parking spaces.

“Mortgage” means any mortgage made by the Developer in favor of one of the Other Lenders which is secured, in whole or in part, with the Development Property, and which is a permitted encumbrance pursuant to the provisions of Article VIII hereof.

“Other Lenders” means any entities (other than the Authority and the Tax Credit Investor) that provide grants or loans to the Developer in order to finance a portion of the cost of the Minimum Improvements.

“Other Loans” means a construction loan to be obtained by the Developer for the construction of the Minimum Improvements, a permanent first mortgage loan to be obtained by the Developer for permanent financing of the Minimum Improvements, and any other loan financing obtained by the Developer and related to the construction of the Minimum Improvements.
“Project” means the Authority’s Development District No. 1.

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

“State” means the State of Minnesota.

“Surplus Cash” means the annual cash flow of the Developer, calculated pursuant to the partnership agreement of the Developer as total cash receipts of the Developer from ordinary operations of the Minimum Improvements less the total cash disbursements of the Developer associated with the Minimum Improvements, such as but not limited to (1) operating expenses, (2) costs of repair or restoration, (3) management fees, (4) financing fees or other requirements of any lender to the Developer, (5) interest and principal repayments of the Other Loans, as the same may be refinanced, to the extent such amounts are due and payable under the applicable loan documents associated with the Other Loans, (6) amounts paid in connection with the establishment or maintenance of reserves required for the Minimum Improvements, (7) payments to the Tax Credit Investor for Asset Management Fees, (8) payments of unpaid Developer Fees, and (9) payments of Limited Partner Asset Management Fees and General Partner Asset Management Fees (collectively capped at a maximum amount of $10,000), all as defined in the partnership agreement of the Developer.

“Tax Credit Investor” means the entity that purchases tax credits awarded for the Minimum Improvements under the Tax Credit Law.

“Tax Credit Law” means Section 42 of the Code.

“Tax Increment” means that portion of the real property taxes which is paid with respect to the TIF District and which is remitted to the Authority as tax increment pursuant to the Tax Increment Act.

“Tax Increment Act” or “TIF Act” means the Tax Increment Financing Act, Minnesota Statutes, Sections 469.174 through 469.1794, as amended.

“Tax Increment District” or “TIF District” means the Authority’s Redevelopment Tax Increment Financing District No. 2.

“Tax Increment Plan” or “TIF Plan” means the Authority’s Tax Increment Financing Plan for the TIF District, as most recently modified by the Authority and City on December 20, 2010, and as it may be amended from time to time.

“Tax Official” means any County assessor, County auditor, County or State board of equalization, the commissioner of revenue of the State, or any State or federal court including the tax court of the State.

“Termination Date” means the later of the date the TIF Loan is paid in full in accordance with its terms, or the date of termination of the “Qualified Project Period” as defined in the Declaration.

“TIF Loan” has the meaning provided in Section 3.3(a) hereof.

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

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

(The remainder of this page is intentionally left blank.)
ARTICLE II

Representations and Warranties

Section 2.1. Representations and Covenants by the Authority.

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

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

(c) The activities of the Authority are undertaken for the purpose of fostering the development of affordable rental housing, which will also revitalize this portion of the Project and increase the City’s tax base.

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

(e) The Authority shall promptly advise the Developer in writing of all litigation or claims affecting any part of the Minimum Improvements.

Section 2.2. Representations by the City. The City makes the following representations:

(a) The City is a home rule city duly organized and existing under its Charter and the laws of the State. Under the provisions of the TIF Act, the City has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The City finds that the Minimum Improvements are necessary to alleviate a shortage of, and maintain existing supplies of, decent, safe, and sanitary housing for Qualifying Tenants of low or moderate income and their families.

(c) The execution, delivery and performance of this Agreement and of any other documents or instruments required pursuant to this Agreement by the City, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof, do not and will not conflict with or constitute a breach of or default under any existing (i) indenture, mortgage, deed of trust or other agreement or instrument to which the City is a party or by which the City or any of its property is or may be bound; or (ii) legislative act, constitution or other proceedings establishing or relating to the establishment of the City or its officers or its resolutions.

(d) There is not pending, nor to the best of the City’s knowledge is there threatened, any suit, action or proceeding against the City before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions
contemplated hereby, the ability of the City to perform its obligations hereunder, or the validity or enforcement of this Agreement.

Section 2.3. Representations and Warranties by the Developer. The Developer represents and warrants that:

(a) The Developer is a limited partnership organized and in good standing under the laws of the State, is not in violation of any provisions of its organization documents, or, to the best of its knowledge, the laws of the State, is duly authorized to transact business in the State, has power to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action of its partners.

(b) The Developer will construct, operate and maintain the Minimum Improvements in accordance with the terms of this Agreement, the Construction Plans, and all applicable local, State and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations) in all material respects.

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

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

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

(f) The proposed redevelopment on the Development Property hereunder would not occur but for the financial assistance being provided by the Authority hereunder.

(The remainder of this page is intentionally left blank.)
ARTICLE III

Tax Increment Assistance

Section 3.1. Status of the Property. As of the date of this Agreement, the Developer has entered into a purchase agreement to acquire the Development Property. Neither the Authority nor the City has an obligation to acquire the Development Property or any portion thereof.

Section 3.2. Environmental Conditions.

(a) The Developer acknowledges that the Authority and the City make no representations or warranties as to the condition of the soils on the Development Property or the fitness of the Development Property for construction of the Minimum Improvements or any other purpose for which the Developer may make use of such property, and that the assistance provided to the Developer under this Agreement neither implies any responsibility by the Authority or the City for any contamination of the Development Property or poor soil conditions nor imposes any obligation on such parties to participate in any cleanup of the Development Property or correction of any soil problems.

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

Section 3.3. Tax Increment Assistance.

(a) TIF Loan. In order to make development of the Minimum Improvements financially feasible, the Authority will make a loan to the Developer in an amount of $556,179 (the “TIF Loan”). The amount of the TIF Loan is subject to reduction as described in paragraphs (b) and (c) below, and the proceeds of the TIF Loan shall be disbursed in accordance with said paragraph (b). The unpaid balance of the TIF Loan shall bear interest at the rate of 4.0% per annum, and interest shall accrue on a simple basis and will not be added to principal.

(b) Disbursement of TIF Loan. Notwithstanding anything to the contrary herein, if the total costs of developing the Minimum Improvements required to be financed as of the closing date for the construction financing for the Minimum Improvements (the “Closing Date”) are reduced below the amounts estimated as of the date of this Agreement due to additional financing for the Minimum Improvements from other sources (except for the grants described in Section 3.4 hereof and the Affordable Housing Investment Fund grant in the amount of $400,000) or a reduction in anticipated total development costs, such reduction shall be applied first to reduce the amount of the TIF Loan, prior to reducing any other funding sources; provided that if the Developer demonstrates to the Authority’s reasonable satisfaction that such reduction in the TIF Loan will impair the Developer’s eligibility to receive the full amount of tax credits awarded for the Minimum Improvements under the Tax Credit Law, then the TIF Loan reduction amount will be adjusted to a level that prevents such impairment. Subject to the immediately following conditions, the TIF Loan shall be funded in a single disbursement of funds to the Developer on the Closing Date. The Authority’s obligation to fund the TIF Loan is subject to satisfaction of the following conditions as of the Closing Date:
(i) the Developer having provided evidence satisfactory to the Authority that the Developer has established a separate accounting system for the Minimum Improvements for the purpose of recording the receipt and expenditure of the TIF Loan proceeds;

(ii) the Authority and the City having approved Construction Plans for the Minimum Improvements in accordance with Article IV hereof;

(iii) the Developer having obtained, and the Authority having approved, financing as described in Article VII hereof;

(iv) the Developer having delivered to the Authority the executed Declaration in accordance with Section 4.5 hereof;

(v) the Developer having delivered to the Authority a list of all sources of funding to be used to develop the Minimum Improvements and evidence of the total costs of developing the Minimum Improvements, in a form reasonably satisfactory to the Authority, evidencing any reduction in the amount TIF Loan as described in this paragraph;

(vi) the Developer has obtained all entitlements for the Market Rate Apartments; and

(vi) there being no uncured Event of Default under this Agreement.

(c) Reduction of TIF Loan. Subject to the provisions of paragraph (b) above, if after review of the sources of funds and total costs of developing the Minimum Improvements provided by the Developer pursuant to paragraph (b)(v) above, but prior to disbursal of the TIF Loan to the Developer, the Authority’s municipal advisor reasonably determines that all or a portion of the amount of the TIF Loan is not necessary to cover a gap in the amount of funds needed to construct the Minimum Improvements, the TIF Loan will be reduced to the amount necessary to cover the gap in the amount of funds needed to construct the Minimum Improvements.

(d) Developer Fee. The Developer further agrees that the aggregate amount paid to the Developer as a developer fee from proceeds of all sources of funding, and from the proceeds of permanent financing entered into upon completion of construction of the Minimum Improvements (but net of any portion of such fee reinvested to pay Minimum Improvements costs) shall not exceed $1,000,000. Upon completion of the Minimum Improvements (and as a condition to issuance of a Certificate of Completion), the Developer shall provide to the Authority a report from an independent certified public accountant evidencing compliance with this paragraph. Upon request from the Authority from time to time (but no more often than annually), the Developer shall provide to the Authority a report certifying and evidencing compliance with this paragraph.

(e) Information Regarding Surplus Cash. Prior to April 1 of each year, the Developer shall submit to the Authority evidence of the Surplus Cash for the Minimum Improvements for the preceding fiscal year. In addition, if requested, the Developer agrees to provide to the Authority any background documentation reasonably related to the financial data, upon written request from the Authority or the Authority’s municipal advisor.

(f) Repayment of TIF Loan. The Authority and the Developer agree that the principal of and accrued interest, if any, on the TIF Loan will be subject to repayment in full. The TIF Loan will be paid by the Developer over time through payments on the Developer Surplus Cash Note, payment of which shall commence May 1 of the first year in which Surplus Cash is available, with interest at a rate of four
percent (4.0%) per annum accruing on a simple basis and shall continue until all principal of and interest on the Developer Surplus Cash Note is paid in full. Each year, on May 1, the Developer shall repay the principal of and interest on the TIF Loan in an amount equal to one hundred percent (100%) of Surplus Cash. The Developer shall continue to make principal and interest payments on the TIF Loan each year on May 1 until the TIF Loan is repaid in full. The principal of the TIF Loan must be paid in full on the later of (i) thirty (30) years following the Closing Date or (ii) the maturity of any permanent mortgage loan obtained by the Developer to finance the Minimum Improvements.

(g) **Sale of Property.** The Developer shall repay the principal amount and interest, if any, on the TIF Loan in full upon a sale of the Minimum Improvements or refinancing of any mortgage loan obtained by the Developer to finance the Minimum Improvements. However, in the event that any mortgage loan obtained by the Developer is refinanced, the Authority may, in its sole discretion, review the terms of such refinancing and consent to the refinancing without requiring the payment in full of the outstanding principal amount and interest, if any, on the TIF Loan. In addition, the Authority hereby consents to the repayment in full of the Developer’s construction financing for the Minimum Improvements, upon the completion of the Minimum Improvements, and the placement of permanent financing on the Development Property and agrees that such actions by the Developer shall not constitute a sale or refinancing requiring approval of the Authority hereunder. Additionally, a conveyance of any membership or partnership interest in the Developer pursuant to the partnership agreement of the Developer shall not constitute a sale of the Development Property.

Section 3.4. **Grants.**

(a) The City was awarded a Local Housing Incentives Account Grant in the amount of $210,500 from Metropolitan Council (the “LHIA Grant”). The City has approved the Metropolitan Livable Communities Act Grant Agreement associated with the LHIA Grant (the “LHIA Grant Agreement”). The LHIA Grant may be used for [land/property/structure acquisition, demolition, site preparation (such as water, sewer, roads), general construction, interior and exterior finishing, roofing, electrical, plumbing, heating and ventilation, as more fully described in the LHIA Grant Agreement.] The Developer covenants to comply with all of the requirements of the LHIA Grant Agreement. The City will loan the Developer the proceeds of the LHIA Grant and the Developer will enter into a loan agreement with the City and repayment of the loan will be secured by a promissory note and a subordinate mortgage from the Developer.

(b) The City was awarded a Livable Communities Demonstration Account Grant in the amount of $1,876,500 from Metropolitan Council (the “LCDA Grant”). The City has approved the Metropolitan Livable Communities Act Grant Agreement associated with the LCDA Grant (the “LCDA Grant Agreement”). The LCDA Grant may be used for site acquisition, site preparation (grading and demolition), stormwater management, and a sidewalk along Bren Road, as more fully described in the LCDA Grant Agreement. The Developer covenants to comply with all of the requirements of the LCDA Grant Agreement applicable to the Minimum Improvements. The Developer covenants to comply with all of the requirements of the LCDA Grant Agreement. The City will loan the Developer and/or an affiliate of the Developer the proceeds of the LCDA Grant and the Developer will enter into a Sub-Recipient Funding Agreement with the City. The LCDA Grant will be split between the Minimum Improvements (receiving 22% of LCDA Grant) and the Market Rate Apartments (receiving 78% of LCDA Grant) unless otherwise agreed to by the City and the Authority.

Section 3.5. **Payment of Administrative Costs.** The Authority acknowledges that the Developer has deposited with the City and the Authority $15,000. The City and the Authority will use such deposit to pay “Administrative Costs,” which term means out-of-pocket costs
incurred by the Authority together with staff costs of the Authority, all attributable to or incurred in connection with the negotiation and preparation of this Agreement, the TIF Plan, and other documents and agreements in connection with the development of the Development Property. At the Developer’s request, but no more often than monthly, the Authority and the City will provide the Developer with a written report including invoices, time sheets or other comparable evidence of expenditures for Administrative Costs and the outstanding balance of funds deposited. If at any time the Authority and the City determine that the deposit is insufficient to pay Administrative Costs, the Developer is obligated to pay such shortfall within fifteen (15) days after receipt of a written notice from the Authority and the City containing evidence of the unpaid costs. If any balance of funds deposited remains upon the issuance of the Certificate of Completion pursuant to Section 4.4 hereof, the Authority shall promptly return such balance to the Developer; provided that Developer remains obligated to pay subsequent Administrative Costs related to any amendments to this Agreement requested by the Developer. Upon termination of this Agreement in accordance with its terms, the Developer remains obligated under this section for Administrative Costs incurred through the effective date of termination.

Section 3.6. Exemption from Business Subsidy Act. The parties agree and understand that all financial assistance provided by the Authority under this Agreement represents assistance for housing, and accordingly is not subject to the Business Subsidy Act.

(The remainder of this page is intentionally left blank.)
ARTICLE IV

Construction of Minimum Improvements

Section 4.1. Construction of Improvements. The Developer agrees that it will construct the Minimum Improvements on the Development Property substantially in accordance with the approved Construction Plans. The Developer agrees that, at all times prior to the Maturity Date, it will operate and maintain, preserve and keep the Minimum Improvements or cause the improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition. The Authority will have no obligation to operate or maintain the Minimum Improvements.

Section 4.2. Construction Plans.

(a) Before commencement of construction of the Minimum Improvements, the Developer will submit to the Authority the Construction Plans. The Construction Plans must provide for the construction of the Minimum Improvements and must be in substantial conformity with the Redevelopment Plan, this Agreement, and all applicable State and local laws and regulations. The Authority Representative will approve the Construction Plans in writing if: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to the goals and objectives of the Redevelopment Plan; (iii) the Construction Plans conform to all applicable federal, State, and local laws, ordinances, rules and regulations; (iv) the Construction Plans are adequate to provide for construction of the Minimum Improvements; (v) the Construction Plans do not provide for expenditures in excess of the funds available to the Developer from all sources (including the Developer’s equity) for construction of the Minimum Improvements; and (vi) no Event of Default has occurred. Approval may be based upon a review by the City’s Building Official of the Construction Plans. No approval by the Authority Representative will relieve the Developer of the obligation to comply with the terms of this Agreement or of the Redevelopment Plan, applicable federal, State, and local laws, ordinances, rules and regulations, or to construct the Minimum Improvements in accordance therewith. No approval by the Authority Representative will constitute a waiver of an Event of Default. If approval of the Construction Plans is requested by the Developer in writing at the time of submission, the Construction Plans will be deemed approved unless rejected in writing by the Authority Representative, in whole or in part. The rejections must set forth in detail the reasons therefor, and must be made within twenty (20) days after the date of their receipt by the Authority. If the Authority Representative rejects any Construction Plans in whole or in part, the Developer must submit new or corrected Construction Plans within twenty (20) days after written notification to the Developer of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans will continue to apply until the Construction Plans have been approved by the Authority. The Authority Representative’s approval will not be unreasonably withheld, delayed or conditioned. Said approval will constitute a conclusive determination that the Construction Plans (and the Minimum Improvements constructed in accordance with said plans) comply to the Authority’s satisfaction with the provisions of this Agreement relating thereto.

(b) If the Developer desires to make any Material Change in the Construction Plans after their approval by the Authority, the Developer must submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 with respect to the previously approved Construction Plans, the Authority will approve the proposed change and notify the Developer in writing of its approval. Any change in the Construction Plans will, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to the Developer, setting forth in detail the reasons therefor. Any rejection must be made within twenty (20) days after receipt of the notice of such change prior to the
commencement of construction and within ten (10) days after commencement of construction. The Authority’s approval of any Material Change in the Construction Plans will not be unreasonably withheld.

Section 4.3. Commencement and Completion of Construction.

(a) Subject to Unavoidable Delays, the Minimum Improvements must be constructed in accordance with the following schedule: commence construction on or about July 1, 2019 and complete construction by August 30, 2020. Construction is considered to be commenced upon the beginning of physical improvements beyond grading.

(b) All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Development Property shall be in substantial conformity with the Construction Plans as submitted by the Developer and approved by the Authority and the City. The Developer agrees for itself, its successors and assigns, and every successor in interest to the Development Property, or any part thereof, that the Developer, and such successors and assigns, shall promptly begin and diligently prosecute to completion the redevelopment of the Development Property through the construction of the Minimum Improvements thereon, and that, subject to Unavoidable Delays, such construction shall be commenced and completed within the period specified in this Section 4.3. Until construction of the Minimum Improvements has been completed, the Developer shall make reports, in such detail and at such times as may reasonably be requested by the Authority and the City, as to the actual progress of the Developer with respect to such construction.

Section 4.4. Certificate of Completion.

(a) Promptly after substantial completion of the Minimum Improvements in accordance with those provisions of the Agreement relating solely to the obligations of the Developer to construct the Minimum Improvements (including the dates for completion thereof), and delivery of the developer fee evidence described in Section 3.3(e) hereof, the Authority will furnish the Developer with a Certificate of Completion in substantially the form attached hereto as EXHIBIT B. Such certification by the Authority shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the Agreement and in any deed with respect to the obligations of the Developer, and its successors and assigns, to construct the Minimum Improvements and the dates for the completion thereof. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Holder of a Mortgage, or any insurer of a Mortgage, securing money loaned to finance the Minimum Improvements, or any part thereof.

(b) The Certificate of Completion provided for in this Section 4.4 shall be in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Development Property. If the Authority shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.4, the Authority shall, within thirty (30) days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Authority, for the Developer to take or perform in order to obtain such certification.

(c) The construction of the Minimum Improvements will be considered substantially complete when the Developer has received a certificate of occupancy from the City for all Rental Housing Units.
Section 4.5. Affordable Housing Covenants.

(a) The Developer shall cause all fifty-five (55) of the Rental Housing Units in the Minimum Improvements to be rent-restricted and income-restricted in accordance with the Tax Credit Law, all as further described in the Declaration attached hereto as EXHIBIT C. Notwithstanding anything to the contrary in the Tax Credit Law, such restrictions shall remain in effect for the later of (i) the thirty (30) year period described in the Declaration; or (ii) the repayment of the TIF Loan. On or before the Closing Date, the Developer shall deliver the executed Declaration to the Authority in recordable form.

(b) Of the 55 Rental Housing Units that are restricted, between ten (10) and twelve (12) Rental Housing Units must be one-bedroom units; twenty-eight (28) and thirty (30) Rental Housing Units must be two-bedroom units; and between fourteen (14) and sixteen (16) Rental Housing Units must be three-bedroom units. Of the 55 Rental Housing Units, four (4) will be permanent supportive housing units, two (2) two-bedroom units will be available for Section 8 tenants, and two (2) three-bedroom units will be available for Section 8 tenants.

(c) The Authority and its representatives shall have the right at all reasonable times while the covenants in this Section are in effect, after reasonable notice, to inspect, examine and copy all books and records of Developer and its successors and assigns relating to the Developer’s satisfaction of the covenants described in this Section and in the Declaration.

(d) During the term of the Declaration, the Developer shall not adopt any policies specifically prohibiting or excluding rental to tenants holding certificates/vouchers under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor because of such prospective tenant’s status as such a certificate/voucher holder.

(e) The Developer will immediately notify the Authority if at any time during the term of the Declaration the dwelling units in the Minimum Improvements are not occupied or available for occupancy as required by the terms of the Declaration.

(f) In consideration for the issuance of the TIF Loan, the Developer agrees to provide the Authority with at least ninety (90) days’ notice of any sale of the Minimum Improvements.

(g) This Agreement and the Declaration requires the Developer to cause one hundred percent (100%) of the Rental Housing Units in the Minimum Improvements to be affordable to families at or below sixty percent (60%) of the area median income, all as further described in the Declaration attached hereto as EXHIBIT D. Recent Federal legislation has introduced an income-averaging option for the low-income housing tax credit program. This legislation allows projects to accept residents with higher average median incomes as long as the overall average of the income of tenants in the project does not exceed 60% of the area median income, which provides LIHTC projects the ability to serve tenants with a greater range of incomes. Minnesota Housing does not currently allow for income-averaging. However, if in the future Minnesota Housing allows the income-averaging option for the low-income housing tax credit program to be used for the Minimum Improvements, the Developer may opt to use the income-averaging methodology; provided, however, that the Developer must cause at least forty percent (40%) of the Rental Housing Units in the Minimum Improvements to be affordable to families at or below sixty percent (60%) of the area median income in order to comply with Section 469.1763, subdivision 3 of the TIF Act. The Developer must provide the Authority at least thirty (30) days’ notice before opting into the income-averaging methodology and will cooperate with the Authority to revise this Agreement and the Declaration, if necessary.

Section 4.6. Affordable Housing Reporting. At least annually, no later than April 1 of each year commencing on the April 1 first following the issuance of the Certificate of Completion for the Minimum
Improvements, the Developer shall provide a report to the Authority evidencing that the Developer complied with the income affordability covenants set forth in Section 4.5 hereof during the previous calendar year. The income affordability reporting shall be on the form entitled “Tenant Income Certification” from the Minnesota Housing Finance Agency (MHFA HTC Form 14), or if unavailable, any similar form. The Authority may require the Developer to provide additional information reasonably necessary to assess the accuracy of such certification. Unless earlier excused by the Authority, the Developer shall send affordable housing reports to the Authority until the Declaration terminates.

Section 4.7. Records. The Authority, the City, the legislative auditor, and the State auditor’s office, through any authorized representatives, shall have the right after reasonable notice to inspect, examine and copy all books and records of the Developer relating to the construction of the Minimum Improvements. The Developer shall maintain such records and provide such rights of inspection for a period of six (6) years after issuance of the Certificate of Completion for the Minimum Improvements.

Section 4.8. Property Management Covenant. The Developer shall cause its property manager to operate the Minimum Improvements in accordance with the policies described in this Section. For any documented disorderly violations by a tenant or guest, including but not limited to prostitution, gang-related activity, intimidating or assaultive behavior (not including domestic), unlawful discharge of firearms, illegal activity, or drug complaints (each a “Violation”), the Developer agrees and understands that the following procedures shall apply:

(a) After a first Violation regarding any unit in the Minimum Improvements, the City police department will send notice to the Developer and the property manager requiring the Developer and the property manager to take steps necessary to prevent further Violations.

(b) If a second Violation occurs regarding the same tenancy within twelve (12) months after the first Violation, the City police department will notify the Developer and the property manager of the second Violation. Within ten (10) days after receiving such notice, the Developer or the property manager must file a written action plan with the Authority and the City police department describing steps to prevent further Violations.

(c) If a third Violation occurs regarding the same tenancy within twelve (12) continuous months after the first Violation, the City police department will notify the Developer and the property manager of the third Violation. Within ten (10) days after receiving such notice, the Developer or the property manager shall commence termination of the tenancy of all occupants of that unit. The Developer shall not enter into a new lease agreement with the evicted tenant(s) for at least one (1) year after the effective date of the eviction.

(d) If the Developer or the property manager fails to comply with any of the requirements in this Section, then the Authority may provide at least ten (10) days’ written notice to the Developer and the property manager directing attendance at a meeting to determine the cause of the continuing Violations in the Minimum Improvements and provide an opportunity for the Developer and the property manager to explain their failure to comply with the procedures in this Section.

(e) If the Developer and property manager fail to respond to the written notice under paragraph (d) above, or at least two (2) additional Violations occur within the next twelve (12) month period after the date of the notice under paragraph (d) above, then the Authority may direct the Developer to terminate the management agreement with the existing property manager and to replace that entity with a replacement property manager selected by the Developer but approved by the Authority. The parties agree and understand that appointment of any replacement manager may also be subject to consent by the Tax Credit Investor and the Holder of one (1) or more of the Other Loans on the Development Property.
Section 4.9. Construction of Site Improvements.

(a) In consideration of the assistance provided to the Developer by the Authority, subject to the limitations set forth in Sections 4.9 and 4.10, the Developer agrees that it will install or cause to be installed, in conformance with City standards and specifications, the Site Improvements on the Development Property or adjacent to the Development Property, as applicable, as described in EXHIBIT D attached hereto.

(b) When constructing the Site Improvements, the Developer is responsible for compliance with all conditions outlined in Resolution No. 2018-_____ and Resolution No. 2018-_____.

(c) Building permits for the Site Improvements will be issued only in conformance with conditions in Resolution 2018-_____. Unless otherwise authorized by the City in writing, no certificates of occupancy will be provided until the following is completed:

(i) Site grading is completed and approved by the City;
(ii) All public utilities have been tested, approved, and accepted by the City Engineer;
(iii) All curbing is installed and backfilled;
(iv) The first lift of bituminous is in place and approved by the City; and
(v) All required fees have been paid in full.

Upon completion of the Site Improvements, the City shall issue a certificate of occupancy. The receipt of a certificate of occupancy for one or more of the Site Improvements shall confirm that the conditions referred to in this Section 4.8(c) have been met for the applicable Site Improvement unless so stated in the certificate of occupancy.

Section 4.10. Site Improvements Construction Addendum. Prior to the issuance of any permits, the City and the Developer shall enter into a mutually agreeable Construction Addendum containing (i) timeframes for the construction of the Site Improvements; (ii) the security to be provided by the Developer to the City to ensure the quality and completion of the Site Improvements; (iii) the methods of acceptance related to the Site Improvements; (iv) the process by which the security provided to the City may be reduced; (v) the process to obtain a certificate of occupancy from the City; and (vi) final design details.

Section 4.11. Fees. The Developer must pay all water and sewer hook-up fees, SAC, WAC, and REC fees, Engineering Inspection Fees and park dedication fees in accordance with applicable City policies and ordinances. Based on the size of the Minimum Improvements, it is anticipated that the Developer will owe approximately $5,000 per unit in park dedication fees.

(The remainder of this page is intentionally left blank.)
ARTICLE V

Insurance

Section 5.1. Insurance.

(a) The Developer or the general contractor engaged by the Developer will provide and maintain at all times during the process of constructing the Minimum Improvements an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the Authority, furnish the Authority with proof of payment of premiums on policies covering the following:

(i) Builder’s risk insurance, written on the so-called “Builder’s Risk – Completed Value Basis,” in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called “all risk” form of policy. The interest of the Authority shall be protected in accordance with a clause in form and content satisfactory to the Authority;

(ii) Commercial general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with a Protective Liability Policy with limits against bodily injury and property damage of not less than $2,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); and

(iii) Workers’ compensation insurance, with statutory coverage.

(b) Upon completion of construction of the Minimum Improvements and prior to the Termination Date, the Developer shall maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the Authority shall furnish proof of the payment of premiums on, insurance as follows:

(i) Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses.

(ii) Comprehensive, general public liability insurance, including personal injury liability, against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of $2,000,000 and shall be endorsed to show the City and Authority as additional insureds.

(iii) Such other insurance, including workers’ compensation insurance respecting all employees of the Developer, if any, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure.

(c) All insurance required in this Article V shall be taken out and maintained in responsible insurance companies selected by the Developer that are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer will deposit annually with the Authority a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V each policy shall contain a provision that the insurer shall not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Developer and the Authority at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Developer may
maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer shall deposit with the Authority a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

(d) The Developer agrees to notify the Authority immediately in the case of damage exceeding $250,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In such event the Developer will forthwith repair, reconstruct, and restore the Minimum Improvements to substantially the same or an improved condition as it existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction, and restoration, the Developer will apply the net proceeds of any insurance relating to such damage received by the Developer to the payment or reimbursement of the costs thereof.

(e) The Developer shall complete the repair, reconstruction and restoration of the Minimum Improvements, regardless of whether the net proceeds of insurance received by the Developer for such purposes are sufficient to pay for the same. Any net proceeds remaining after completion of such repairs, construction, and restoration shall be the property of the Developer.

Section 5.2. Subordination. Notwithstanding anything to the contrary herein, the rights of the Authority and the obligations of the Developer with respect to the receipt and application of any insurance proceeds shall, in all respects, be subordinate and subject to the rights of any Holder under a Mortgage allowed pursuant to Article VII hereof.

(The remainder of this page is intentionally left blank.)
ARTICLE VI

Tax Increment; Taxes

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment described in this Agreement. The Developer understands that, while the Development Property itself is not located within the TIF District or any other tax increment financing district, a purpose of the assistance under this Agreement is to increase the property tax base of the City. To that end, the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements. The Developer acknowledges that this obligation creates a contractual right on behalf of the Authority through the Termination Date to sue the Developer or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the County auditor. In any such suit, the Authority shall also be entitled to recover its costs, expenses and reasonable attorneys’ fees. Notwithstanding the foregoing, nothing in this Agreement in any way limits or prevents the Developer from contesting the assessor’s proposed market values for the Development Property or the Minimum Improvements.

Section 6.2. Review of Taxes. The Developer agrees that prior to the Termination Date, it will not cause a reduction in the real property taxes paid in respect of the Development Property through: (A) willful destruction of the Development Property or any part thereof; or (B) willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 hereof. The Developer also agrees that it will not, prior to the Termination Date, apply for a deferral of property tax on the Development Property pursuant to any law, or transfer or permit transfer of the Development Property to any entity whose ownership or operation of the property would result in the Development Property being exempt from real estate taxes under State law (other than any portion thereof dedicated or conveyed to the City or Authority in accordance with this Agreement). The Developer may, at any time following the issuance of the Certificate of Completion, seek through petition or other means to have the estimated market value for the Development Property reduced. The Authority and the Developer acknowledge and understand that the Developer intends to seek the “class 4d” property classification rate for affordable rental properties under Minnesota Statutes, Section 273.13 for the Development Property at all times during the term of this Agreement.

Section 6.3. Use of Tax Increment. The parties agree and understand that the Authority expects to finance the TIF Loan under Section 3.3 hereof. However, the Authority may use any funds available to the Authority to fund the TIF Loan, and may also, in its discretion, approve an interfund loan to apply Tax Increment toward repayment of other funds used for those purposes. The Developer does not have any title or interest in Tax Increment, except to the extent the Authority elects to use Tax Increment to fund the TIF Loan. Notwithstanding the foregoing, the Authority shall not finance the TIF Loan with any source which negatively impacts the ability of the Developer to obtain Tax Credits to assist in financing the Minimum Improvements.

(The remainder of this page is intentionally left blank.)
ARTICLE VII

Financing

Section 7.1. Financing.

(a) Before the Closing Date, the Developer shall submit to the Authority evidence of receipt of a reservation of low income tax credits under the Tax Credit Law from the Minnesota Housing Finance Agency, together with commitments for other financing (including without limitation grants the Other Loans) which, together with committed equity for such construction, is sufficient for acquisition of the Development Property construction of the Minimum Improvements. Such commitments may be submitted as short-term financing, long-term mortgage financing, a bridge loan with a long-term take-out financing commitment, or any combination of the foregoing.

(b) If the Authority finds that the financing is sufficiently committed and adequate in amount to pay the costs specified in paragraph (a) then the Authority shall notify the Developer in writing of its approval. Such approval shall not be unreasonably withheld and either approval or rejection shall be given within twenty (20) days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to such evidence of financing shall be deemed to constitute an approval hereunder. If the Authority rejects the evidence of financing as inadequate, it shall do so in writing specifying the basis for the rejection. In any event the Developer shall submit adequate evidence of financing within ten (10) days after such rejection or such longer period as is reasonably necessary to secure additional financing.
ARTICLE VIII

Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Representation as to Redevelopment. The Developer represents and agrees that its purchase of the Development Property and its other undertakings pursuant to the Agreement are, and will be used, for the purpose of redevelopment of the Development Property by the Developer and not for speculation in land holding.

Section 8.2. Prohibition Against Transfer of Property and Assignment of Agreement. The Developer represents and agrees that until the Termination Date:

(a) Except as specifically described in this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, to any person or entity (collectively, a “Transfer”), without the prior written approval of the Authority’s Board of Commissioners and the City Council. The term “Transfer” does not include (i) an assignment of this Agreement and/or the Development Property to a partnership in which the Developer or an entity wholly owned by the Developer is the general partner; (ii) encumbrances made or granted by way of security for, and only for, the purpose of obtaining construction, interim or permanent financing necessary to enable the Developer or any successor in interest to the Development Property or to construct the Minimum Improvements or component thereof; (iii) any lease, license, easement or similar arrangement entered into in the ordinary course of business related to operation of the Minimum Improvements; or (iv) a transfer of any ownership interest in the Developer in accordance with the terms of the Developer’s partnership agreement. The Developer may effect a Transfer of the Development Property to an Affiliate without approval by the Authority and the City provided that the Developer submit to the Authority and the City an assignment and assumption executed by the Affiliate in accordance with paragraph (b)(2) below.

(b) If the Developer seeks to effect a Transfer, the Authority and the City shall be entitled to require as conditions to such Transfer that:

(1) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the Authority and the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer as to the portion of the Development Property to be transferred; and

(2) Any proposed transferee, by instrument in writing satisfactory to the Authority and the City and in form recordable in the public land records of the County, shall, for itself and its successors and assigns, and expressly for the benefit of the Authority and the City, have expressly assumed all of the obligations of the Developer under this Agreement as to the portion of the Development Property to be transferred and agreed to be subject to all the conditions and restrictions to which the Developer is subject as to such portion; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority and the City) deprive the Authority and the City of any rights or remedies or controls with respect to the Development Property, the Minimum Improvements or any part thereof or the construction of the Minimum Improvements; it being the
intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally, or practically, to deprive or limit the Authority or the City of or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Development Property that the Authority or the City would have had, had there been no such transfer or change. In the absence of specific written agreement by the Authority and the City to the contrary, no such transfer or approval by the Authority and the City thereof shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the Development Property, from any of its obligations with respect thereto; and

(3) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property governed by this Article VIII shall be in a form reasonably satisfactory to the Authority and the City.

(c) If the conditions described in paragraph (b) above are satisfied, then the Transfer will be approved and the Developer shall be released from their obligations under this Agreement, as to the portion of the Development Property that is transferred, assigned, or otherwise conveyed, unless the parties mutually agree otherwise. Notwithstanding anything to the contrary herein, any Transfer that releases the Developer from its obligations under this Agreement (or any portion thereof) shall be approved by the Authority’s Board of Commissioners and the City Council, which approval shall not be unreasonably withheld, conditioned, or delayed. If the Developer remains fully bound under this Agreement notwithstanding the Transfer, as documented in the transfer instrument, the Transfer may be approved by the Authority Representative. The provisions of this paragraph (c) apply to all subsequent transferors.

(d) Except as otherwise provided herein, upon the sale of the Minimum Improvements, the principal amount of the TIF Note, and interest, if any, shall be due and payable in full in accordance with Section 3.3(f) hereof.

Section 8.3. Release and Indemnification Covenants.

(a) The Developer releases from and covenants and agrees that the Authority and the City and the governing body members, officers, agents, servants and employees thereof shall not be liable for and agrees to indemnify and hold harmless the Authority and the City and the governing body members, officers, agents, servants and employees thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements.

(b) Except for willful or negligent misrepresentation, misconduct or negligence of the Indemnified Parties (as hereafter defined), and except for any breach by any of the Indemnified Parties of their obligations under this Agreement, the Developer agrees to protect and defend the Authority and the City and the governing body members, officers, agents, servants and employees thereof (the “Indemnified Parties”), now or forever, and further agrees to hold the Indemnified Parties harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Minimum Improvements.

(c) Except for any negligence of the Indemnified Parties (as defined in paragraph (b) above), and except for any breach by any of the Indemnified Parties of their obligations under this Agreement, the
Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Minimum Improvements due to any act of negligence of any person.

(d) All covenants, stipulations, promises, agreements and obligations of the Authority and the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Authority and the City and not of any governing body member, officer, agent, servant or employee of the Authority or the City in the individual capacity thereof.

(The remainder of this page is intentionally left blank.)
ARTICLE IX

Events of Default

Section 9.1. Events of Default Defined. The following shall be “Events of Default” under this Agreement and the term “Event of Default” shall mean, whenever it is used in this Agreement, any one or more of the following events, after the non-defaulting party provides thirty (30) days’ written notice to the defaulting party of the event, but only if the event has not been cured within said thirty (30) days or, if the event is by its nature incurable within thirty (30) days, the defaulting party does not, within such thirty (30) day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

(a) The Developer, the City, or the Authority fails to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement; or

(b) The Developer:
   
   (i) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law;

   (ii) makes an assignment for benefit of its creditors;

   (iii) admits in writing its inability to pay its debts generally as they become due; or

   (iv) is adjudicated as bankrupt or insolvent.

Section 9.2. Remedies on Default.

(a) Whenever any Event of Default referred to in Section 9.1 hereof occurs, the non-defaulting party may exercise its rights under this Section 9.2 after providing thirty (30) days’ written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days or, if the Event of Default is by its nature incurable within thirty (30) days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible. The Authority agrees that it will provide notice and an opportunity to cure any Event of Default to the Tax Credit Investor and that it will accept such cure as though it was made by the Developer.

(b) Upon an Event of Default by the Developer, the Authority or the City may (i) demand repayment of the outstanding principal and accrued interest on the TIF Loan from the Developer, and (ii) take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

(c) Upon an Event of Default, the non-defaulting party may take whatever action, including legal, equitable, or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

Section 9.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority, the City, or the Developer is intended to be exclusive of any other available remedy or
remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the City to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article IX.

Section 9.4. **No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.5. **Attorneys’ Fees.** Whenever any Event of Default occurs and if the City or the Authority employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, and the City or the Authority prevails in the action, the Developer agrees that it will, within ten (10) days of written demand by the City or the Authority, pay to the City or the Authority the reasonable fees of the attorneys and the other expenses so incurred by the City and the Authority.

(The remainder of this page is intentionally left blank.)
ARTICLE X

Additional Provisions

Section 10.1. Conflict of Interests; Authority and City Representatives Not Individually Liable. The Authority, the City, and the Developer, to the best of their respective knowledge, represent and agree that no board member, city council member, official, or employee of the Authority or the City shall have any personal interest, direct or indirect, in the Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the Authority or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Authority or the City or for any amount which may become due to the Developer or its successors or on any obligations under the terms of the Agreement.

Section 10.2. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in the Agreement it will comply with all applicable federal, State and local equal employment and non-discrimination laws and regulations.

Section 10.3. Restrictions on Use. The Developer agrees that until the Termination Date, the Developer, and such successors and assigns, shall devote the Development Property to the operation of the Minimum Improvements for uses described in the definition of such term in this Agreement and shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Development Property or any improvements erected or to be erected thereon or any part thereof.

Section 10.4. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Development Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 10.5. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 10.6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, overnight mail, or delivered personally; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at Mariner Affordable Apartments Limited Partnership, 475 Cleveland Avenue North, Suite 325, Saint Paul, MN 55104, Attn: Becky Landon, with a copy to Newport Partners LLC, 9 Cushing, Suite 200, Irvine, CA 92618, Attn: Monique Hastings, with a copy to any permitted assignee pursuant to an approved Transfer, at the address indicated in the Transfer approval, and to the Tax Credit Investor;

(b) in the case of the Authority, is addressed to or delivered personally at 14600 Minnetonka Boulevard, Minnetonka, Minnesota 55345-1502, Attn: Community Development Director; and
(c) in the case of the City, is addressed to or delivered personally at 14600 Minnetonka Boulevard, Minnetonka, Minnesota 55345-1502, Attn: City Manager;

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 10.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 10.8. Recording. The Authority may record this Agreement and any amendments thereto with the County Recorder or Registrar of Titles of the County, as the case may be. The Developer shall pay all costs for recording.

Section 10.9. Amendment. This Agreement may be amended only by written agreement approved by the Authority, the City, and the Developer.

Section 10.10. Authority and City Approvals. Unless otherwise specified, any approval required by the Authority under this Agreement may be given by the Authority Representative and any approval required by the City under this Agreement may be given by the City Representative.

Section 10.11. Termination. This Agreement terminates on the Termination Date, except that termination of the Agreement does not terminate, limit or affect the rights of any party that arise before the Termination Date.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed in its name and behalf on or as of the date and year first written above.

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

By ____________________________________________
Its President

By ____________________________________________
Its Executive Director

STATE OF MINNESOTA         
)                    ) SS.
COUNTY OF HENNEPIN         

The foregoing instrument was acknowledged before me this _____________, 2018, by Brad Wiersum, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

______________________________________________
Notary Public

STATE OF MINNESOTA         
)                    ) SS.
COUNTY OF HENNEPIN         

The foregoing instrument was acknowledged before me this _____________, 2018, by Geralyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

______________________________________________
Notary Public
CITY OF MINNETONKA, MINNESOTA

By __________________________________________
Its Mayor

By __________________________________________
Its City Manager

STATE OF MINNESOTA      )
COUNTY OF HENNEPIN      ) SS.

The foregoing instrument was acknowledged before me this ___ day of __________, 2018, by Brad Wiersum, the Mayor of 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, on behalf of the City.

______________________________
Notary Public

STATE OF MINNESOTA      )
COUNTY OF HENNEPIN      ) SS.

The foregoing instrument was acknowledged before me this ___ day of __________, 2018, by Geralyn Barone, the City Manager of 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, on behalf of the City.

______________________________
Notary Public
MARINER AFFORDABLE APARTMENTS LIMITED PARTNERSHIP, a Minnesota limited partnership

By: ____________________________
Its: General Partner

By: ____________________________
____________________________
Its: Chief Manager

STATE OF MINNESOTA )
) SS.
COUNTY OF __________ )

The foregoing instrument was acknowledged before me this ______________, 2018, by _____________________, the Chief Manager of [GENERAL PARTNER], the general partner of Mariner Affordable Apartments Limited Partnership, a Minnesota limited partnership, on behalf of the Developer.

____________________________
Notary Public
EXHIBIT A

DESCRIPTION OF DEVELOPMENT PROPERTY

Parcel A:
Lots 1 and 3, Block 1, Bren Trail, Hennepin County, Minnesota.
Together with the benefits contained in Declaration of Reciprocal Easements dated May 11, 2010, filed May 12, 2010 as Document Number 9511555.

Parcel B:
Lot 2, Block 1, Bren Trail, Hennepin County, Minnesota.
Together with the benefits contained in Declaration of Reciprocal Easements dated May 11, 2010, filed May 12, 2010 as Document Number 9511555.
Abstract Property
EXHIBIT B

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that Mariner Affordable Apartments Limited Partnership, a Minnesota limited partnership (the “Developer”), has fully complied with its obligations under Articles III and IV of that document titled “Contract for Private Development,” dated ______________, 2018 (the “Contract”), between the Economic Development Authority in and for the City of Minnetonka, Minnesota and the Developer, with respect to construction of the Minimum Improvements in accordance with the Construction Plans, and that the Developer is released and forever discharged from its obligations to construct the Minimum Improvements under Articles III and IV of the Contract, but all other covenants under the Contract remain in full force and effect.

Dated: ________________, 20__.

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

By ______________________________________
Its Executive Director

STATE OF MINNESOTA     )
) SS.
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this ________________, 20__, by ____________________, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

____________________________________
Notary Public

This document was drafted by:

KENNEDY & GRAVEN, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota  55402
Telephone:  (612) 337-9300
EXHIBIT C

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this “Declaration”) dated ______________, 2018, by MARINER AFFORDABLE APARTMENTS LIMITED PARTNERSHIP, a Minnesota limited partnership (the “Developer”), is given to the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”).

RECITALS

WHEREAS, the Authority entered into that certain Contract for Private Development, dated ______________, 2018, filed ______________, 20____ in the Office of the [County Recorder] [Registrar of Titles] of Hennepin County as Document No. ____________ (the “Contract”), between the Authority and the Developer; and

WHEREAS, pursuant to the Contract, the Developer is obligated to cause construction of 55 housing units of rental housing on the property described in EXHIBIT A attached hereto (the “Property”), and to cause compliance with certain affordability covenants described in Section 4.5 of the Contract; and

WHEREAS, Section 4.5 of the Contract requires that the Developer cause to be executed an instrument in recordable form substantially reflecting the covenants set forth in Section 4.5 of the Contract; and

WHEREAS, the Developer intends, declares, and covenants that the restrictive covenants set forth herein shall be and are covenants running with the Property for the term described herein and binding upon all subsequent owners of the Property for such term, and are not merely personal covenants of the Developer; and

WHEREAS, capitalized terms in this Declaration have the meaning provided in the Contract unless otherwise defined herein.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer agrees as follows:

1. Term of Restrictions.

   (a) Occupancy and Rental Restrictions. The term of the Occupancy Restrictions set forth in Section 3 hereof and the Rental Restriction set forth in Section 4 hereof shall commence at the end of the first taxable year of the credit period for the Property under the Tax Credit Law for all rental units on the Property. The period from commencement to termination is the “Qualified Project Period.”

   (b) Termination of Declaration. This Declaration shall terminate upon the date that is thirty (30) years after the commencement of the Qualified Project Period.

   (c) Removal from Real Estate Records. Upon termination of this Declaration, the Authority shall, upon request by the Developer or its assigns, file any document appropriate to remove this Declaration from the real estate records of Hennepin County, Minnesota.
2. **Project Restrictions.**

(a) The Developer represents, warrants, and covenants that:

(i) All leases of units to Qualifying Tenants (as defined in Section 3(a)(i) hereof) shall contain clauses, among others, wherein each individual lessee:

   1. Certifies the accuracy of the statements made in its application and Eligibility Certification (as defined in Section 3(a)(ii) hereof); and

   2. Agrees that the family income at the time the lease is executed shall be deemed substantial and material obligation of the lessee’s tenancy, that the lessee will comply promptly with all requests for income and other information relevant to determining low or moderate income status from the Developer or the Authority, and that the lessee’s failure or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of the lessee’s tenancy.

(ii) The Developer shall permit any duly authorized representative of the Authority to inspect the books and records of the Developer pertaining to the income of Qualifying Tenants residing in the Project.

3. **Occupancy Restrictions.**

(a) **Tenant Income Provisions.** The Developer represents, warrants, and covenants that:

(i) **Qualifying Tenants.** From the commencement of the Qualified Project Period, one hundred percent (100%) of the Rental Housing Units shall be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Qualifying Tenants. Qualifying Tenants shall mean those persons and families who shall be determined from time to time by the Developer to have combined adjusted income that does not exceed sixty percent (60%) of the Minneapolis–St. Paul metropolitan statistical area (the “Metro Area”) median income for the applicable calendar year. For purposes of this definition, the occupants of a residential unit shall not be deemed to be Qualifying Tenants if all the occupants of such residential unit at any time are “students,” as defined in Section 151(c)(4) of the Internal Revenue Code of 1986, as amended (the “Code”), not entitled to an exemption under the Code. The determination of whether an individual or family is of low or moderate income shall be made at the time the tenancy commences and on an ongoing basis thereafter, determined at least annually. If during their tenancy a Qualifying Tenant’s income exceeds one hundred forty percent (140%) of the maximum income qualifying as low or moderate income for a family of its size, the next available unit (determined in accordance with the Code and applicable regulations) (the “Next Available Unit Rule”) must be leased to a Qualifying Tenant or held vacant and available for occupancy by a Qualifying Tenant. If the Next Available Unit Rule is violated, the Rental Housing Unit will not continue to be treated as a Qualifying Unit. The annual recertification and Next Available Unit Rule requirements of this paragraph 3(a)(i) shall not apply to a given year if, during such year, no residential unit in the Project is occupied by a new resident whose income exceeds the applicable income limit for Low Income Tenants. In addition, of the Rental Housing Units held vacant and available for occupancy by Qualifying Tenants, 4 shall be permanent supporting housing units for families who have experienced long-term homelessness.
(ii) **Certification of Tenant Eligibility.** As a condition to initial and continuing occupancy, each person who is intended to be a Qualifying Tenant shall be required annually to sign and deliver to the Developer a Certification of Tenant Eligibility substantially in the form attached as EXHIBIT B hereto, or in such other form as may be approved by the Authority (the “Eligibility Certification”), in which the prospective Qualifying Tenant certifies as to qualifying as low or moderate income. In addition, such person shall be required to provide whatever other information, documents, or certifications are deemed necessary by the Authority to substantiate the Eligibility Certification, on an ongoing annual basis, and to verify that such tenant continues to be a Qualifying Tenant within the meaning of Section 3(a)(i) hereof. Eligibility Certifications will be maintained on file by the Developer with respect to each Qualifying Tenant who resides in a Project unit or resided therein during the immediately preceding calendar year.

(iii) **Lease.** The form of lease to be utilized by the Developer in renting any units in the Project to any person who is intended to be a Qualifying Tenant shall provide for termination of the lease and consent by such person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the Eligibility Certification.

(iv) **Annual Report.** The Developer covenants and agrees that during the term of this Declaration, it will prepare and submit to the Authority on or before January 31 of each year, a certificate substantially in the form of EXHIBIT hereto, executed by the Developer, (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants in the Project, including the percentage of the dwelling units of the Project which were occupied by Qualifying Tenants (or held vacant and available for occupancy by Qualifying Tenants) at all times during the year preceding the date of such certificate; (b) describing all transfers or other changes in ownership of the Project or any interest therein; and (c) stating, that to the best knowledge of the person executing such certificate after due inquiry, all such units were rented or available for rental on a continuous basis during such year to members of the general public and that the Developer was not otherwise in default under this Declaration during such year.

(v) **Notice of Non-Compliance.** The Developer will immediately notify the Authority if at any time during the term of this Declaration the dwelling units in the Project are not occupied or available for occupancy as required by the terms of this Declaration.

(b) **Section 8 Housing.** During the term of this Declaration, the Developer shall not adopt any policies specifically prohibiting or excluding rental to tenants holding certificates/vouchers under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor, because of such prospective tenant’s status as such a certificate/voucher holder.

4. **Rental Restrictions.** The Developer represents, warrants, and covenants that the maximum gross rent for all units occupied by Qualifying Tenants shall not exceed thirty percent (30%) of the sixty percent (60%) income limitation, all in accordance with the Tax Credit Law.

5. **Transfer Restrictions.** The Developer covenants and agrees that the Developer will cause or require as a condition precedent to any Transfer (as defined in the Contract) that the transferee of the Project pursuant to the Transfer assume in writing, in a form acceptable to the Authority, all duties and obligations of the Developer under this Declaration, including this Section 5, in the event of a subsequent Transfer by the transferee prior to expiration of the Rental Restrictions and Occupancy Restrictions provided herein (the “Assumption Agreement”). The Developer shall deliver the Assumption Agreement to the Authority prior to the Transfer.
6. [Intentionally omitted.]

7. Enforcement.

   (a) The Developer shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Authority to inspect any books and records of the Developer regarding the Project with respect to the incomes of Qualifying Tenants.

   (b) The Developer shall submit any other information, documents or certifications requested by the Authority which the Authority deems reasonably necessary to substantial continuing compliance with the provisions specified in this Declaration.

   (c) The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided in this Declaration is to ensure compliance of the property with the housing affordability covenants set forth in Section 4.5 of the Contract, and by reason thereof, the Developer, in consideration for assistance provided by the Authority under the Contract that makes possible the construction of the Minimum Improvements (as defined in the Contract) on the Property, hereby agrees and consents that the Authority shall be entitled, upon any breach of the provisions of this Declaration and the Developer’s failure to cure such breach within the cure periods described in Section 9.1 of the Contract, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Developer of its obligations under this Declaration in a state court of competent jurisdiction. The Developer hereby further specifically acknowledges that the Authority cannot be adequately compensated by monetary damages in the event of any default hereunder.

   (d) The Developer understands and acknowledges that, in addition to any remedy set forth herein for failure to comply with the restrictions set forth in this Declaration, the Authority may exercise any remedy available to it under Article IX of the Contract.

8. Indemnification. The Developer hereby indemnifies, and agrees to defend and hold harmless, the Authority from and against all liabilities, losses, damages, costs, expenses (including attorneys’ fees and expenses), causes of action, suits, allegations, claims, demands, and judgments of any nature arising from the consequences of a legal or administrative proceeding or action brought against them, or any of them, on account of any failure by the Developer to comply with the terms of this Declaration, or on account of any representation or warranty of the Developer contained herein being untrue.

9. Agent of the Authority. The Authority shall have the right to appoint an agent to carry out any of its duties and obligations hereunder, and shall inform the Developer of any such agency appointment by written notice.

10. Severability. The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.

11. Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing. The Developer and the Authority may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent. The initial addresses for notices and other communications are as follows:
To the Authority: Economic Development Authority in and for the
City of Minnetonka
14600 Minnetonka Blvd.
Minnetonka, MN 55345
Attention: Community Development Director

To the Developer: Mariner Affordable Apartments Limited Partnership
475 Cleveland Avenue North, Suite 325
Saint Paul, MN 55104
Attention: Becky Landon

With a copy to:
Newport Partners LLC
9 Cushing, Suite 200
Irvine, CA 92618
Attention: Monique Hastings

So long as the Tax Credit Investor is a partner in the Developer, with a copy to:

____________________________
____________________________
Attention: ___________________

12. Governing Law. This Declaration shall be governed by the laws of the State of Minnesota and, where applicable, the laws of the United States of America.

13. Attorneys’ Fees. In case any action at law or in equity, including an action for declaratory relief, is brought against the Developer to enforce the provisions of this Declaration, the Developer agrees to pay the reasonable attorneys’ fees and other reasonable expenses paid or incurred by the Authority in connection with such action.

14. Declaration Binding. This Declaration and the covenants contained herein shall run with the real property comprising the Project and shall bind the Developer and its successors and assigns and all subsequent owners of the Project or any interest therein, and the benefits shall inure to the Authority and its successors and assigns for the term of this Declaration as provided in Section 1(b) hereof.

15. Relationship to Tax Credit Law Requirements. Notwithstanding anything to the contrary, during any period while at least 55 units in the Property are subject to income and rent limitations under the Tax Credit Law, evidence of compliance with such Tax Credit Law requirements filed with the Authority at least annually will satisfy any requirements otherwise imposed under this Declaration. During any portion of the Qualified Project Period as defined herein when the Tax Credit Law income and rent restrictions do not apply to the Property, this Declaration controls.

16. Notice of Sale. In consideration for the issuance of the TIF Loan, the Developer agrees to provide the Authority with at least ninety (90) days’ notice of any sale of the Project.
IN WITNESS WHEREOF, the Developer has caused this Declaration of Restrictive Covenants to be signed by its respective duly authorized representatives, as of the day and year first written above.

MARINER AFFORDABLE APARTMENTS LIMITED PARTNERSHIP, a Minnesota limited partnership

By: ___________________________
Its: General Partner

By: ___________________________
Its: Chief Manager

STATE OF MINNESOTA  
)  
COUNTY OF __________  
)

The foregoing instrument was acknowledged before me this _____________, 2018, by __________________, the Chief Manager of [GENERAL PARTNER], the general partner of Mariner Affordable Apartments Limited Partnership, a Minnesota limited partnership, on behalf of the Developer.

Notary Public

This document was drafted by:

KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
This Declaration is acknowledged and consented to by:

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

By ______________________________
Its President

By ______________________________
Its Executive Director

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ______________, 2018, by Brad Wiersum, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

______________________________
Notary Public

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ______________, 2018, by Geralyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

______________________________
Notary Public
EXHIBIT A TO DECLARATION OF RESTRICTIVE COVENANTS

LEGAL DESCRIPTION

[Insert legal description]
EXHIBIT B TO DECLARATION OF RESTRICTIVE COVENANTS

CERTIFICATION OF TENANT ELIGIBILITY

Project: [Address]

Developer:

Unit Type: _______ 1 BR  _____ 2 BR  _____ 3 BR

1. I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully, frankly and personally each of the following questions for all persons (including minors) who are to occupy the unit in the above apartment development for which application is made, all of whom are listed below:

<table>
<thead>
<tr>
<th>Name of Members of the Household</th>
<th>Relationship To Head of Household</th>
<th>Age</th>
<th>Place of Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Income Computation

2. The anticipated income of all the above persons during the 12-month period beginning this date,

   (a) including all wages and salaries, overtime pay, commissions, fees, tips and bonuses before payroll deductions; net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness); interest and dividends; the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts; payments in lieu of earnings, such as unemployment and disability compensation, worker’s compensation and severance pay; the maximum amount of public assistance available to the above persons; periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling; and all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; but

   (b) excluding casual, sporadic or irregular gifts; amounts which are specifically for or in reimbursement of medical expenses; lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen’s compensation), capital gains and settlement for personal or property losses; amounts of educational scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purposes; special pay to a
serviceman head of a family who is away from home and exposed to hostile fire; relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; foster child care payments; the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged for the allotments; and payments received pursuant to participation in ACTION volunteer programs, is as follows: $__________.

3. If any of the persons described above (or whose income or contributions was included in item 2) has any savings, bonds, equity in real property or other form of capital investment, provide:
   (a) the total value of all such assets owned by all such persons: $__________;
   (b) the amount of income expected to be derived from such assets in the 12 month period commencing this date: $__________; and
   (c) the amount of such income which is included in income listed in item 2: $______.

4. (a) Will all of the persons listed in item 1 above be or have they been full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?
   Yes _______________  No _________________

   (b) Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return?
   Yes _______________  No _________________
THE UNDERSIGNED HEREBY CERTIFY THAT THE INFORMATION SET FORTH ABOVE IS TRUE AND CORRECT. THE UNDERSIGNED ACKNOWLEDGE THAT THE LEASE FOR THE UNIT TO BE OCCUPIED BY THE UNDERSIGNED WILL BE CANCELLED UPON 10 DAYS WRITTEN NOTICE IF ANY OF THE INFORMATION ABOVE IS NOT TRUE AND CORRECT.

______________________________
Head of Household

______________________________
Spouse
1. Calculation of Eligible Tenant Income:
   (a) Enter amount entered for entire household in 2 above: $__________
   (b) If the amount entered in 3(a) above is greater than $5,000, enter the greater of
   (i) the amount entered in 3(b) less the amount entered in 3(c) or (ii) 10% of the amount entered in
   3(a): $__________
   (c) TOTAL ELIGIBLE INCOME (Line 1(a) plus Line 1(b)): $__________

2. The amount entered in 1(c) is less than or equal to _______ 60% of median income for
the area in which the Project is located, as defined in the Declaration. 60% is necessary for status as a
“Qualifying Tenant” under Section 3(a) of the Declaration.

3. Rent:
   (a) The rent for the unit is $______________.
   (b) The amount entered in 3(a) is less than or equal to the maximum rent permitted
under the Declaration.

4. Number of apartment unit assigned: ____________.

5. This apartment unit was ____ was not ____ last occupied for a period of at least
31 consecutive days by persons whose aggregate anticipated annual income as certified in the above
manner upon their initial occupancy of the apartment unit was less than or equal to 60% of Median
Income in the area.

6. Check as applicable: _______ Applicant qualifies as a Qualifying Tenant (tenants of at
least ___ units must meet), or ____ Applicant otherwise qualifies to rent a unit.

THE UNDERSIGNED HEREBY CERTIFIES THAT HE/SHE HAS NO KNOWLEDGE OF ANY
FACTS WHICH WOULD CAUSE HIM/HER TO BELIEVE THAT ANY OF THE INFORMATION
PROVIDED BY THE TENANT MAY BE UNTRUE OR INCORRECT.

NAME OF OWNER, a ____________________

By ________________________________
Its ________________________________
EXHIBIT C TO DECLARATION OF RESTRICTIVE COVENANTS

CERTIFICATE OF 
CONTINUING PROGRAM COMPLIANCE

Date: _______________________, ______.

The following information with respect to the Project located at __________________, Minnetonka, Minnesota (the “Project”), is being provided by Mariner Affordable Apartments Limited Partnership (the “Developer”) to the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”), pursuant to that certain Declaration of Restrictive Covenants dated _______, 2018 (the “Declaration”), with respect to the Project:

(A) The total number of residential units which are available for occupancy is 27. The total number of such units occupied is ________________.

(B) The following residential units (identified by unit number) have been designated for occupancy by “Qualifying Tenants,” as such term is defined in the Declaration (for a total of ___ units):

1 BR Units:

2 BR Units:

3 BR Units:

(C) The following residential units which are included in (B) above, have been re-designated as units for Qualifying Tenants since ____________, 20___, the date on which the last “Certificate of Continuing Program Compliance” was filed with the Authority by the Developer:

<table>
<thead>
<tr>
<th>Unit Number</th>
<th>Previous Designation of Unit (if any)</th>
<th>Replacing Unit Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(D) The following residential units are considered to be occupied by Qualifying Tenants based on the information set forth below:

<table>
<thead>
<tr>
<th>Unit Number</th>
<th>Name of Tenant</th>
<th>Number of Persons Residing in the Unit</th>
<th>Number of Bedrooms</th>
<th>Total Adjusted Gross Income</th>
<th>Date of Initial Occupancy</th>
<th>Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>19</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>27</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>31</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>32</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>33</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>34</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>36</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>37</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>38</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>39</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>40</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(E) The Developer has obtained a “Certification of Tenant Eligibility,” in the form provided as EXHIBIT B to the Declaration, from each Tenant named in (D) above, and each such Certificate is being maintained by the Developer in its records with respect to the Project. Attached hereto is the most recent “Certification of Tenant Eligibility” for each Tenant named in (D) above who signed such a Certification since ______________, ____, the date on which the last “Certificate of Continuing Program Compliance” was filed with the Authority by the Developer.

(F) In renting the residential units in the Project, the Developer has not given preference to any particular group or class of persons (except for persons who qualify as Qualifying Tenants); and none of the units listed in (D) above have been rented for occupancy entirely by students, no one of which is entitled to file a joint return for federal income tax purposes. All of the residential units in the Project have been rented pursuant to a written lease, and the term of each lease is at least ___ months.

(G) The information provided in this “Certificate of Continuing Program Compliance” is accurate and complete, and no matters have come to the attention of the Developer which would indicate that any of the information provided herein, or in any “Certification of Tenant Eligibility” obtained from the Tenants named herein, is inaccurate or incomplete in any respect.

(H) The Project is in continuing compliance with the Declaration.

(I) The Developer certifies that as of the date hereof at least ____ of the residential dwelling units in the Project are occupied or held open for occupancy by Qualifying Tenants, as defined and provided in the Declaration.

(J) The rental levels for each Qualifying Tenant comply with the maximum permitted under the Declaration.

IN WITNESS WHEREOF, I have hereunto affixed my signature, on behalf of the Developer, on ______________________, 2018.
MARINER AFFORDABLE APARTMENTS LIMITED PARTNERSHIP, a Minnesota limited partnership

By: ___________________________
Its: General Partner

By: ___________________________

Its: Chief Manager
The following improvements are the Site Improvements required under this Agreement:

- Surveying and staking;
- Surface improvements, including but not limited to streets, curbs, sidewalks and trails;
- Water main;
- Sanitary sewer;
- Storm sewer and stormwater management facilities;
- Lot and block monuments;
- Gas, electric, telephone and cable lines;
- Site grading;
- Landscaping;
- Street lighting;
- Street signs; and
- ____________________
EXHIBIT E

DEVELOPER SURPLUS CASH NOTE
(Project – Mariner Multifamily Housing in Minnetonka, Minnesota)

FOR VALUE RECEIVED, MARINER AFFORDABLE APARTMENTS LIMITED PARTNERSHIP, a Minnesota limited partnership ("Maker") promises to pay to ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota ("Payee") the sum of Five Hundred Fifty-Six Thousand One Hundred Seventy-Nine Dollars ($556,179), that was advanced pursuant to that certain Contract for Private Development, dated _______, 2018 (the “Development Contract”), between the Maker and the Payee, with interest at the rate of four percent (4.0%) per annum accruing on a simple basis from ____________ and payable annually, commencing May 1, 20__, and thereafter on the first day of May until the entire indebtedness has been paid. Any interest not so paid shall not create any default in the terms of this Developer Surplus Cash Note, but shall accrue on a simple basis and be payable in full on the maturity date hereof. In any event, the balance of principal, if any remaining unpaid, plus accrued interest, shall be due and payable on May 1, 20__ (the “Maturity Date”). (The definition of any capitalized term or word used herein but not defined shall have the meaning given such term in that certain ____________________________ (the “Borrower’s Regulatory Agreement”), and/or the Borrower’s Security Instrument, as defined below.)

This Developer Surplus Cash Note is subject to the following terms and conditions:

1. By April 1 of each year, beginning April 1, 20__, and continuing until the Maturity Date, the Maker shall deliver to the Payee a certificate signed by an officer of the Maker’s managing member providing the calculation of Surplus Cash available for distribution by the Maker. The Payee requires scheduled payments to be made on each May 1, commencing May 1, 20__ (each a “Payment Date”). Payments shall be payable by the Maker on each Payment Date from 100% of Surplus Cash, as provided in Section 3.3 of the Development Contract, and shall continue until principal of and interest on this Note is paid in full.

2. Prior to the Maturity Date, the entire amount due and owing under this Developer Surplus Note shall be due and payable in full on the occurrence of any of the following events: (a) the voluntary or involuntary sale, transfer, or conveyance of any part of the Development Property or the Minimum Improvements (which shall not include liens securing the financing required for the acquisition and construction of the Development Property and the Minimum Improvements); (b) the voluntary or involuntary sale, transfer or conveyance of any part of the Developer (excluding the sale, transfer or conveyance of any part of the Developer to an affiliate of the Developer or a tax credit partner); or (c) the refinancing of the debt incurred to acquire the Development Property and construct the Minimum Improvements.

3. In the event that the maturity date of that certain [Mortgage], dated ____, 20__ in the principal amount of $___________ made by Maker to ______________________, a ___________________________ Lender, in connection with a loan to Developer made by the Lender in the amount of $__________________ (the “Loan”) and insured by [Insurer] for the Project referenced above (the “Borrower’s Security Instrument”) is extended and such extension is approved by ______ , then in such event the Maturity Date shall automatically be extended to the extended maturity date of the Borrower’s Security Instrument without further consent of Payee.
4. Except as provided in Section 7 below, as long as [Insurer/Lender] is the insurer or holder of the Note secured by the Borrower’s Security Instrument, payments due under this Developer Surplus Cash Note shall be payable only from 100% of Surplus Cash. The restriction on payment imposed by this Section shall not excuse any default caused by the failure of Maker to pay the indebtedness evidenced by this Developer Surplus Cash Note.

5. In the event the Loan secured by the Borrower’s Security Instrument is paid in full and the Borrower’s Security Instrument released of record, then the holder of this Developer Surplus Cash Note may, at its option, declare the whole principal sum or any balance thereof, together with interest thereon, immediately due and payable.

6. Maker may pay any part or all of the principal of this Developer Surplus Cash Note on any interest payment date, provided no such prepayment of principal in any amount or any payment of interest shall be made except from 100% of Surplus Cash in accordance with the conditions prescribed in the Borrower’s Regulatory Agreement.

7. Notwithstanding the provisions of Sections 4, 6, and 9, Maker may also make payments due hereunder from sources other than income of the Project or Assets.

8. Any unauthorized payments, as determined by [Insurer/Lender], shall be returned to the Project.

9. Except as permitted pursuant to Section 7 hereof, no prepayment of this Developer Surplus Cash Note shall be made until after final endorsement for mortgage insurance by [Insurer/Lender] of the Note, unless such prepayment is made from non-Project Assets.

10. This Developer Surplus Cash Note is non-negotiable.

11. Interest on this Developer Surplus Cash Note shall not be compounded as long as [Insurer] is the insurer or holder of the Note secured by the Borrower’s Security Instrument.

12. Maker hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Developer Surplus Cash Note.

13. The terms and provisions of this Developer Surplus Cash Note are also for the benefit of and are enforceable by [Insurer] against any party hereto, their successors and assigns. This Developer Surplus Cash Note shall not be modified or amended without the written consent of [Insurer/Lender].

14. This Developer Surplus Cash Note is not forgivable.

15. This Surplus Cash Note is a special, limited obligation of the Developer and is payable solely from Surplus Cash and any other revenues, funds, and assets available to the Developer to pay the principal of and interest on the Surplus Cash Note. Any recourse for a cause of action under this Note shall be payable solely from the sources of payment pledged hereunder.
IN WITNESS WHEREOF, Maker has executed this Developer Surplus Cash Note on this ____ day of __________, 20__.  

MAKER:

MARINER AFFORDABLE APARTMENTS

LIMITED PARTNERSHIP

By: ________________________________
Name: ______________________________
Title: ______________________________

Maker and Payee hereby certify that this is a bona fide transaction and that they fully understand all the requirements of this Developer Surplus Cash Note, and that no prepayment of principal or interest shall be made or accepted without evidence that [INSURER] has authorized such prepayment, unless such prepayment is from Surplus Cash or non-Project Assets as described in Sections 4, 6, and 9. If an unauthorized prepayment is made or accepted, the funds shall be returned to the Project immediately upon discovery.

Maker and Payee hereby certify that the statements and representations of fact contained in this instrument and all documents in connection with this transaction are, to the best of their knowledge, true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of [INSURER] in insuring the Loan, and may be relied upon by [INSURER] as a true statement of the facts contained therein.

MAKER:

MARINER AFFORDABLE APARTMENTS

LIMITED PARTNERSHIP

By: ________________________________
Name: ______________________________
Title: ______________________________

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

By ________________________________
   Its President

By ________________________________
   Its Executive Director
LOCATION MAP

Landon/Domus Group
10400, 10500 and 10550 Bren Road East

This map is for illustrative purposes only.
The City of Minnetonka requested Ehlers to review the development pro forma and $556,179 funding request from Newport Midwest, LLC for their proposal to construct a new 55-unit affordable housing project called The Mariner.

They are submitting a funding application to the Minnesota Housing Finance Agency (MHFA) in June 2017 to compete for an allocation of 9% Low-income Housing Tax Credits (LIHTC), which would provide nearly 64% of the project’s funding needs. The applicant is requesting financial support from the City to close a financial gap and increase their competitiveness for a LIHTC allocation from MHFA. Locally committed funds make funding applications more competitive for MHFA’s limited and highly competitive 9% LIHTC resources.

We have reviewed the project based on general industry standards for construction, land, and project costs; affordable rental rates and operating expenses; developer fees; available funding sources; underwriting criteria; and, project cash flow. Based on the submitted project information, the development pro forma assumptions are reasonable and within industry standards. The applicant has maximized the potential private mortgage, 9% tax credits and is seeking out other sources of funding. However, a demonstrated financial gap remains.

The Developer has requested $556,179 from the City of Minnetonka to help fill the project funding gap. If the City chooses to fund this project, Ehlers recommends structuring the $556,179 as a cash flow note with a 4% interest rate (based upon the maximum interfund loan rate the City can charge). The project would repay the principle and interest to the City from 100% of available cash flow after operating expenses and debt service on the first mortgage. Based on current projections, the cash flow note may be repaid to the City in approximately 14 years, with the City receiving approximately $203,000 in interest payments during that period. The cash flow note structure helps the developer to have a competitive application and fill the funding gap while returning proceeds to the City over time that can be utilized for other affordable housing projects.

Please contact me at 651-697-8506 with any questions.
Policy Number 2.14
Tax Increment Financing Pooling Funds

Purpose of Policy: This policy establishes evaluation criteria that guide the city council in consideration of use of tax increment financing pooling funds

Introduction

Under the Minnesota Statutes Chapter 469, at least 75 percent of tax increment in a redevelopment tax increment financing (TIF) district must be spent on eligible activities within the district, leaving up to 25 percent of the funds to be pooled and therefore eligible to be spent outside of the district, but within the project area.

An exception to the pooling funds is for affordable rental housing. The city may allow the pooling allowance to be increased to 35 percent, which can then go to finance certain affordable housing projects. The project may be located anywhere in the city, and not limited to the project area. Each financed project must be rental housing that is eligible for federal low income housing tax credits. The amount of the assistance is also limited to any amount that satisfies tax credit rules.

The council is aware that use of such TIF pooled funds may be of benefit to the city and will consider requests for pooled funds subject to this council policy. The council considers the use of these funds to be a privilege, not a right.

It is the judgment of the council that TIF pooled funds is to be used on a selective basis. It is the applicant’s responsibility to demonstrate the benefit to the city, and that they should understand that although approval may have been granted previously by the city TIF pooled funds for a similar project, the council is not bound by that earlier approval.

Evaluation Criteria

The city will use the following criteria when evaluating a development proposal requesting the use of TIF pooled funds:

- The project supports reinvestment in an identified village center and addresses the goals set out in the comprehensive plan for that center.

- Priority will be provided for projects that are within a “regional” village center or support transit areas.

- Weight will be given when the proportion of affordability is greater than what is customary in other tax increment financed projects in the city, overall affordability of 20% of units (usually at 60% AMI for rental).

- The project may request both tax increment financing and pooling dollars as long as the project has provided data that “but for” the additional pooling dollars, this project would not occur.
• If the project is receiving funds from other sources, the pooled dollars would be the last source utilized unless it impacts other sources.

Other Provisions
• A project will not normally be given financing approval until all city planning and zoning requirements have been met. Planning and zoning matters may be considered simultaneously with preliminary approval of the financing.

• The city is to be reimbursed and held harmless for any out-of-pocket expenses related to the TIF pooling funds, but not limited to, legal fees, financial analyst fees, bond counsel fees, and the city’s administrative expenses in connection with the application. The applicant must execute a letter to the city undertaking to pay all such expenses.

• The applicant will be required to enter into a development agreement with the city outlining the terms of the use of TIF pooled funds.

Adopted by Resolution No. 2011-039
Council Meeting of May 16, 2011
<table>
<thead>
<tr>
<th>Name of Project</th>
<th>Number of Affordable Units</th>
<th>Total Assistance (for affordable units)</th>
<th>Years of Affordability</th>
<th>Assistance per Unit, per Year</th>
<th>Affordability Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newport Partners (Mariner)</td>
<td>55</td>
<td>$556,179 (est)</td>
<td>30</td>
<td>$337</td>
<td>60% AMI</td>
</tr>
<tr>
<td>Dominium</td>
<td>482</td>
<td>$7,809,000</td>
<td>30</td>
<td>$540</td>
<td>60% AMI</td>
</tr>
<tr>
<td>Homes Within Reach (2004-2012 grant years)</td>
<td>35</td>
<td>$1,740,000</td>
<td>99</td>
<td>$502</td>
<td>80% AMI</td>
</tr>
<tr>
<td>The Ridge</td>
<td>52</td>
<td>$1,050,000</td>
<td>30</td>
<td>$673</td>
<td>60% AMI</td>
</tr>
<tr>
<td>Shady Oak Redevelopment</td>
<td>49</td>
<td>$1,209,000 (est)</td>
<td>30</td>
<td>$822</td>
<td>60% AMI</td>
</tr>
<tr>
<td>West Ridge Market (Crown Ridge, Boulevard Gardens, Gables, West Ridge)</td>
<td>185</td>
<td>$8,514,000</td>
<td>30</td>
<td>$1,534</td>
<td>Crown Ridge—60% AMI Boulevard Gardens—60% AMI Gables—initially 80% AMI, now no income limit West Ridge—50% AMI</td>
</tr>
<tr>
<td>Beacon Hill (apartments)</td>
<td>62</td>
<td>$2,484,000</td>
<td>25</td>
<td>$1,602</td>
<td>50% AMI</td>
</tr>
<tr>
<td>Ridgebury</td>
<td>56</td>
<td>$3,243,000</td>
<td>30</td>
<td>$1,930</td>
<td>Initially—80% AMI Now no income limit</td>
</tr>
<tr>
<td>Glen Lake (St. Therese, Exchange)</td>
<td>43</td>
<td>$4,800,000</td>
<td>30</td>
<td>$3,721</td>
<td>60% AMI</td>
</tr>
<tr>
<td>Cedar Point Townhomes</td>
<td>9</td>
<td>$512,000</td>
<td>15</td>
<td>$3,792</td>
<td>50% AMI</td>
</tr>
<tr>
<td>Tonka on the Creek</td>
<td>20</td>
<td>$2,283,000</td>
<td>30</td>
<td>$3,805</td>
<td>50% AMI</td>
</tr>
<tr>
<td>At Home (Rowland)</td>
<td>21</td>
<td>$2,500,000</td>
<td>30</td>
<td>$3,968</td>
<td>50% AMI</td>
</tr>
<tr>
<td>Applewood Pointe</td>
<td>9</td>
<td>$1,290,000</td>
<td>Initial Sale/Ongoing maximum %</td>
<td>$4,777</td>
<td>80% AMI</td>
</tr>
</tbody>
</table>

updated 11/1/2018
Introduction

In 1995, the Minnesota Legislature created the Livable Communities Act (LCA) to address the affordable and life-cycle housing needs in the Twin Cities metropolitan area. When the LCA was established, Minnetonka was one of the communities to sign up to participate in the program, negotiating a series of affordable and lifecycle housing goals with the Metropolitan Council for 1996-2010.

In August 2010, the Minnetonka City Council passed a resolution electing to continue participating in the LCA for the years 2011-2020. As part of that resolution, the city agreed to the following affordable and lifecycle housing goals:

| New Affordable Units (rental and ownership) | 246 to 378 |
| New Lifecycle Units                        | 375 to 800 |

The purpose of this Housing Action Plan is to outline the steps and tools that the city may use between the years 2011-2020 to help meet its LCA goals.

Overview of Minnetonka Housing Trends

Development Conditions

Minnetonka is a desirable community in which to live. Its natural environment, good schools, and homes on large lots contribute to the attraction of Minnetonka as a great place to live, work and play. As such, the demand for these community attributes has led to increased home values that have risen to the point that most single-family homes, despite their age, are not affordable to low and moderate income families. Land values, in particular, have increased substantially, making it difficult for developers to build affordable and mid-priced single-family homes.

Additionally, Minnetonka is a fully developed city with little vacant or underdeveloped land available for new housing development. With the combination of increasing land values and little developable land, most of the affordable homes in the community are rental units and for-sale condominiums and townhomes.

Aging of the Population

One of the biggest demographic shifts affecting this nation is the aging of the “baby boomer” generation (the large generation of people born between 1946 and 1964). This trend is already apparent in Minnetonka, where the median age in 2007 was 52 years old and 44% of the households were age 55 and older. As the population continues to
age, housing location, types, and proximity to public transit or transit alternatives will become increasingly important.

Preservation and Rehabilitation of the Existing Housing Stock

Much of Minnetonka’s single-family housing stock was built between 1950 and 1970 while most multi-family housing was built in the 1970s and 1980s. As the housing stock continues to age, additional maintenance and repairs will be needed in order to keep homes in adequate condition and to preserve neighborhood character. Older homes may need to be updated in order to attract younger families to the community. Also, as both Minnetonka’s population and housing age, older residents may require increased support through funding and in-kind service programs that will help them to maintain and make necessary repairs to ensure that their homes are safe, accessible, energy efficient, and habitable.

While not all older homes are affordable, older homes tend to be the more affordable housing stock in Minnetonka. The preservation of these homes is critical to providing homeownership opportunities for those who could normally not afford to live in the community.

Current Housing Conditions

In 2007, there were approximately 22,500 housing units in Minnetonka, of which 76.6% are owner-occupied. The housing stock includes a mix of the following types:

- 57% single-family
- 20% condominium/townhome
- 18% general-occupancy rental
- 5% senior (including independent and assisted living facilities)

Land values in Minnetonka continue to greatly influence the cost of housing. In Minnetonka, land accounts for about one-third of a home’s total value, thus making up a large proportion of the home value. For a single-family home, the median value is $326,850, with only about 1% of the single-family homes valued under $200,000. The median value of Minnetonka’s multi-family for-sale homes (i.e. condominiums and townhomes) in 2007 was $200,000. Multi-family homes contribute to the bulk of the city’s affordable for-sale housing stock because they are generally more affordable than Minnetonka’s single-family detached homes.

The average monthly rents at Minnetonka’s market-rate multi-family apartments are much higher than other market-rate apartments in the metropolitan area. In the 1st Quarter 2007, Minnetonka’s average apartment rents were $1,106 compared to the metropolitan area’s average apartment rental rate of $876. Additionally, only about 20% of Minnetonka rental units are considered affordable under the Metropolitan Council’s definition.
Housing Goals

In addition to the city’s agreement to add new affordable and lifecycle housing units as set out in the 2011-2020 affordable and lifecycle housing goals with the Metropolitan Council, the city’s 2008 Comprehensive Plan update also provides a series of housing goals that the city will be working towards achieving. These goals include:

1. Preserve existing owner-occupied housing stock.
2. Add new development through infill and redevelopment opportunities.
3. Encourage rehabilitation and affordability of existing rental housing and encourage new rental housing with affordability where possible.
4. Work to increase and diversify senior housing options.
5. Continue working towards adding affordable housing and maintaining its affordability.
6. Link housing with jobs, transit and support services.

More details on these goals as well as action steps are provided in the 2008 City of Minnetonka Comprehensive Plan Update.

Tools and Implementation Efforts to Provide Affordable and Lifecycle Housing

Housing Assistance Programs

The purpose of housing assistance programs is to provide renters or homeowners help in obtaining a housing unit. These programs can be federal, state, or local programs. For the years 2011-2020, Minnetonka anticipates the following programs will be available to Minnetonka residents.

Section 8 Voucher Program
The Section 8 Voucher Program is funded by the U.S. Department of Housing and Urban Development (HUD), and administered by the Metro HRA on behalf of the city. The program provides vouchers to low income households wishing to rent existing housing units. The number of people anticipated to be served depends on the number of voucher holders wishing to locate in Minnetonka as well as the number of landlords wishing to accept the vouchers.

Shelter Plus Care
The Shelter Plus Care program is another federal program administered by the Metropolitan Council and sometimes the City of St. Louis Park. This program provides rental assistance and support services to those who are homeless with disabilities. There are a small number of these units (less than 10) in the city currently, and it is unlikely there will be any more added.

Minnesota Housing Finance Agency Programs
The Minnesota Housing Finance Agency (MHFA) offers the Minnesota Mortgage Program and the Homeownership Assistance Fund for people wishing to purchase a
home in Minnetonka. The Minnesota Mortgage Program offers a below market rate home mortgage option, while the Homeownerships Assistance Fund provides downpayment and closing cost assistance. It is unknown how many people are likely to use these services as it seems to depend on what the market conditions are.

Homes Within Reach
Homes Within Reach, the local non-profit community land trust, acquires both new construction and existing properties for their program to provide affordable housing in the city. Using a ground lease, it allows the land to be owned by Homes Within Reach and ensures long-term affordability. Additionally, if rehabilitation is needed on a home, Homes Within Reach will rehabilitate the home before selling the property to a qualified buyer (at or less than 80% area median income). It is anticipated that approximately three to five homes per year will be acquired in Minnetonka as part of this program.

City of Minnetonka First Time Homebuyer Assistance Program
In 2010, the city levied for funds to begin a first time homebuyer assistance program. The program is anticipated to begin in 2011. General program details include funds for downpayment and closing costs of up to $10,000, which would be structured as a 30 year loan and available to those at incomes up to 115% of area median income or those that can afford up to a $300,000 loan. The number of households to be assisted depends on the amount of funding available for the program. Currently, this program is anticipated to be funded with HRA levy funds.

Employer Assisted Housing
Through employer assisted housing initiatives, Minnetonka employers can help provide their employees with affordable rental or home ownership opportunities. There are several options that employers can use to both increase the supply of affordable housing, as well as to provide their employees with direct assistance by:

- Providing direct down payment and closing cost assistance
- Providing secondary gap financing
- Providing rent subsidies

No employer assisted housing programs have been set up to date; however, it is a tool that the city has identified in the past as an opportunity for those who work in Minnetonka to live in Minnetonka.

Housing Development Programs

Housing development programs provide tools in the construction of new affordable housing units—both for owner-occupied units as well as rental units.

Public Housing
There are currently 10 public housing units, located in two rental communities, which offer affordable housing options for renters at incomes less than 30% of area median income. The Metropolitan Council and Minneapolis Public Housing Authority administer
the public housing program on behalf of the city. It is not anticipated that more public housing units will be added to the city.

HOME Program
HOME funds are provided through Hennepin County through a competitive application process. The city regularly supports applications by private and non-profit developers that wish to apply for such funds. Homes Within Reach has been successful in the past in obtaining HOME funds for work in Minnetonka and suburban Hennepin County.

Other Federal Programs
The city does not submit applications for other federal funding programs such as Section 202 for the elderly or Section 811 for the handicapped. However, the city will provide a letter of support for applications to these programs.

Minnesota Housing Finance Agency Programs
The Minnesota Housing Finance Agency (MHFA) offers a variety of financing programs, mainly for the development of affordable rental housing. Similar to federal programs, the city does not usually submit applications directly to MHFA; however, it will provide letters of support for applications to the programs.

Metropolitan Council Programs
The Metropolitan Council, through participation in the LCA, offers the Local Housing Incentives Account and Livable Communities Demonstration Account programs to add to the city’s affordable housing stock. Over the past 15 years, the city has received nearly $2 million in funds from these programs, and will continue to seek funding for projects that fit into the criterion of the programs.

Twin Cities Habitat for Humanity
The Twin Cities Habitat for Humanity chapter has had a presence in Minnetonka in the past, completing four affordable housing units. At this time there are no projects planned for Minnetonka, as land prices make it significantly challenging unless the land is donated. The city is willing to consider projects with Habitat for Humanity in the future to assist those with incomes at or below 50% of area median income.

Tax Increment Financing
Minnetonka has used tax increment financing (TIF) to offset costs to developers of providing affordable housing in their development projects. The city will continue to use TIF financing, as permitted by law, to encourage affordable housing opportunities. Unless the state statutes provide for a stricter income and rental limit, the city uses the Metropolitan Council’s definition of affordable for housing units.

Housing Revenue Bonds
The City has used housing revenue bonds for eight rental projects since 1985. Housing revenue bonds provide tax exempt financing for multi-family rental housing. The bond program requires that 20 percent of the units have affordable rents to low and moderate income persons. The city will continue to use housing revenue bonds for projects that
meet housing goals and provide affordable units meeting the Metropolitan Council’s guidelines.

Housing and Redevelopment Authority (HRA) Levy
By law, the city’s Economic Development Authority (EDA) has both the powers of an economic development authority and a housing and redevelopment authority (HRA). It can use these powers to levy taxes to provide funding for HRA activities, including housing and redevelopment. The city first passed an HRA levy in 2009 to support Homes Within Reach, and now uses the funds to support its own housing rehabilitation and homeownership activities for those at 100-115% of area median income.

Community Development Block Grant (CDBG) funds
CDBG funds are allocated to the city by HUD each year. Based upon the needs, priorities, and benefits to the community, CDBG activities are developed and the division of funding is determined at a local level. CDBG funds are available to help fund affordable housing.

Livable Communities Fund
In 1997, special legislation was approved allowing the City to use funds remaining from Housing TIF District No. 1 for affordable housing and Livable Communities Act purposes. The city can use these funds to help achieve its affordable housing goals.

Housing Maintenance and Rehabilitation
As the city’s housing stock continues to age, a number of programs are already in place to help keep up the properties.

Minnesota Housing Finance Agency Programs--Rental
The Minnesota Housing Finance Agency (MHFA) offers a variety of financing programs, for the rehabilitation of affordable rental housing. The city does not submit applications for these programs as the city does not own any rental housing; however, it will provide letters of support for those wishing to apply.

Minnesota Fix-up Fund
The Minnesota Housing Fix-Up Fund allows homeowners to make energy efficiency, and accessibility improvements through a low-interest loan. Funded by MHFA, and administered by the Center for Energy and Environment, the program is available to those at about 100% of area median income.

Community Fix-up Fund
The Community Fix-Up Fund, offered through Minnesota Housing, is similar to the Fix-Up Fund, but eligibility is targeted with certain criteria. In the city, Community Fix-Up Fund loans are available to Homes Within Reach homeowners, since community land trust properties cannot access the Fix-Up Fund due to the ground lease associated with their property.
Home Energy Loan
The Center for Energy and Environment offer a home energy loan for any resident, regardless of income, wishing to make energy efficiency improvements on their home.

Emergency Repair Loan
Established in 2005, the City’s Emergency Repair Loan program provides a deferred loan without interest or monthly payments for qualifying households to make emergency repairs to their home. The amount of the loan is repaid only if the homeowner sells their home, transfers or conveys title, or moves from the property within 10 years of receiving the loan. After 10 years, the loan is completely forgiven. This loan is funded through the City’s federal Community Development Block Grant (CDBG) funds in order to preserve the more affordable single-family housing stock by providing needed maintenance and energy efficiency improvements. The program is available to households with incomes at or below 80% of area median income. On average, 10 to 15 loans are completed each year.

City of Minnetonka Home Renovation Program
In 2010, the city levied for funds to begin a home renovation program. The program is anticipated to begin in 2011. This program would be similar to the existing federal community development block program (CDBG) rehabilitation program. The challenge with CDBG funding involves the maximum qualifying household income of 80% of AMI, Use of HRA funds, would allow the City of Minnetonka Home Renovation Program more flexibility to include households up to 115% AMI, which equates to 82% of all Minnetonka households. The program would be geared toward maintenance, green related investments and mechanical improvements. Low interest loans would be offered up to $7,500 with a five year term.

H.O.M.E. program
The H.O.M.E. program is a homemaker and maintenance program that is designed to assist the elderly. The H.O.M.E. program assists those who are age 60 and older, or those with disabilities with such services as: house cleaning, food preparation, grocery shopping, window washing, lawn care, and other maintenance and homemaker services. Anyone meeting the age limits can participate; however, fees are based on a sliding fee scale. Nearly 100 residents per year are served by this program.

Home Remodeling Fair
For the past 17 years, the city has been a participant in a home remodeling fair with other local communities. All residents are invited to attend this one day event to talk to over 100 contractors about their remodeling or rehabilitation needs. Additionally, each city has a booth to discuss various programs that are available for residents. Approximately 1,200 to 1,500 residents attend each year.
Local Official Controls and Approvals

The city recognizes that there are many land use and zoning tools that can be utilized to increase the supply of affordable housing and decrease development costs. However, with less than two percent of the land currently vacant in the city, most new projects will be in the form of redevelopment or development of under-utilized land. New infill development and redevelopment is typically categorized as a planned unit development (PUD), which is given great flexibility under the current zoning ordinance.

Density Bonus
Residential projects have the opportunity to be developed at the higher end of the density range within a given land use designation. For example, a developer proposing a market rate townhouse development for six units/acre on a site guided for mid-density (4.1-12 units/acre) could work with city staff to see if higher density housing, such as eight units/acre, would work just as well on the site as six units/acre. This is done on a case by case basis rather than as a mandatory requirement, based on individual site constraints.

Planned Unit Developments
The use of cluster-design site planning and zero-lot-line approaches, within a planned unit development, may enable more affordable townhome or single-family cluster developments to be built. Setback requirements, street width design, and parking requirements that allow for more dense development, without sacrificing the quality of the development or adversely impacting surrounding uses, can be considered when the development review process is underway.

Mixed Use
Mixed-use developments that include two or more different uses such as residential, commercial, office, and manufacturing or with residential uses of different densities provide potential for the inclusion of affordable housing opportunities.

Transit Oriented Development (TOD)
TOD can be used to build more compact development (residential and commercial) within easy walking distance (typically a half mile) of public transit stations and stops. TODs generally contain a mix of uses such as housing, retail, office, restaurants, and entertainment. TODs provides households of all ages and incomes with more affordable transportation and housing choices (such as townhomes, apartments, live-work spaces, and lofts) as well as convenience to goods and services.

Authority for Providing Housing Programs

The City of Minnetonka has the legal authority to implement housing-related programs, as set out by state law, through its Economic Development Authority (EDA). The EDA was formed in 1988; however, prior to that time, the city had a Housing and Redevelopment Authority (HRA).
City Council Agenda Item #14B  
Meeting of Nov. 26, 2018

Brief Description  Council policy regarding fair housing

Recommendation  Adopt the resolution

Background

In 2014, the City of Minnetonka and other regional cities and counties, operating through the Fair Housing Implementation Council (FHIC), sponsored the creation of an Analysis of Fair Housing Impediments (AI) and subsequent Addendum to the 2014 AI in 2017. The Addendum specifically addresses housing discrimination, gentrification and displacement, barriers to housing choice, and the conditions of segregation and integration in the Metropolitan Council (Met Council) service area. The report recommended that cities identify goals and strategies to mitigate impediments to fair housing.

In response to the barriers identified in the Addendum to the 2014 Regional AI, community development staff drafted a Fair Housing Policy that re-affirms the city’s commitment to fair housing. The draft policy is based upon a model policy developed by the Housing Justice Center for the Met Council. Although the city previously had a process to refer fair housing complaints, this policy clarifies the internal and external processes. The city of Bloomington has recently adopted a similar policy.

In addition, in 2019 the Met Council will require all recipients of Livable Communities Act funding to have an adopted Fair Housing Policy as a component of eligibility for projects that were awarded funding through its grant programs in 2018. Dominium apartments recently received $2 million in assistance through the Met Council’s Livable Communities’ Transit Oriented Development program. The Met Council is requiring that a Fair Housing Policy is established prior to releasing any grant funding for the project.

Overview

The Federal Fair Housing Act of 1968, the Federal Fair Housing Act Amendments Act of 1988, and the Minnesota Human Rights Act prohibit housing discrimination on the basis of a person’s race, color, religion, sex, sexual orientation, marital status, status with regard to public assistance, creed, familial status, national origin, or disability. Federal antidiscrimination laws are administered by the Department of Housing and Urban Development, and state laws are administered by the Minnesota Department of Human Rights.

Though these laws have been in place since 1968, the process for filing a complaint can be intimidating and challenging to understand. The goals of the Minnetonka Fair Housing Policy are to demystify the process for submitting a concern, and clarify the chain of command when fair housing complaints arise. It establishes a set of best practices which will help city staff be prepared to answer any fair housing questions, and it will strengthen the city’s role as a source of information for discrimination protection.

Federal and state housing discrimination laws cover real property (homes, apartments, lots, etc.) rented or sold; boarding houses; public housing; mobile home parks; condominiums;
homeless shelters and sober housing. In some limited circumstances, housing operated by religious organizations and private clubs that limit occupancy to members may be excluded.

The following actions are examples of prohibited forms of housing discrimination:

- Denying or refusing to rent or sell housing
- Refusing to negotiate for housing
- Providing false information about availability of housing for inspection, sale, or rental
- Persuading owners to sell or rent in order to make a profit
- Denying anyone access to (or membership in) a facility, community (such as a homeowners association or mobile home park), or service related to housing
- Having different terms, conditions, rules or privileges based on protected class
- Imposing different terms or conditions for purchasing or renting; constructing, improving, repairing, insuring, appraising, or maintaining a home; or for loans secured by housing
- Retaliation for bringing a complaint about discrimination

Best Practices

This policy establishes several internal and external best practices the city will implement to promote awareness and competency regarding fair housing issues and alleged discrimination as defined by federal and state law.

External Practices

The following external practices will be promoted:

- The Fair Housing Policy will designate a staff liaison from the community development department as the responsible authority for the intake of all fair housing complaints.
- The city will display information about fair housing on its website including links to:
  - Department of Housing and Urban Development
  - Minnesota Department of Human Rights
  - Mid-Minnesota Legal Aid
  - Complaint forms and procedures
  - State of Minnesota’s Olmstead Plan
  - Reasonable Accommodation Ordinance
- The community development director will designate staff to provide in-person fair housing information whenever requested. Information to be shared is outlined in the attached web resources document.
- The city will make an effort to reasonably accommodate translation services when needed.

Internal Practices

The following internal practices will be promoted:

- Staff will undergo training on fair housing considerations as it becomes available.
- The city will periodically review its housing stock to examine the affordability of rental and owner occupied units to inform future city actions.
• The city will periodically review its municipal code, with specific focus on ordinances related to zoning, building, and occupancy standards to identify any potential for disparate impact.
• City planning functions and development review will consider housing issues, including whether potential projects may perpetuate segregation or lead to displacement of protected classes.
• The city will continue to support the Fair Housing Implementation Council.

Budgetary Impact

The budgetary impact of this policy is minimal. Budgetary impacts could include staff time for training, informational handouts, and translation services. Any budget impacts could be covered through funds from the Development Account.

EDAC Review and Feedback – Nov. 8, 2018

At the Nov. 8 Economic Development Advisory Commission (EDAC) meeting, the commissioners reviewed the draft Fair Housing Policy. Below are the EDAC’s comments and findings from their review:

• EDAC Commissioner Hromatka inquired about why the presented Fair Housing Policy draft, prepared by staff, removed policies related to Reasonable Accommodation, American with Disabilities Act (ADA), and Language Accommodation as suggested by the model policy provided by the Housing Justice Center.
  o The Federal Fair Housing Act enacted in 1968 and amended in 1988 prohibited discrimination based upon a protected class which has been enforceable since 1968. Staff has coordinated responses to fair housing complaints in the past. This policy would formalize a process for which staff can respond to fair housing concerns.
  o The city has had a reasonable accommodation ordinance in place since 2013 and enforces the building code for ADA compliance.
  o Staff indicated the city will continue to follow requirements as described in the ADA and will make every effort to provide reasonable accommodation for disabled or non-native speaking persons.
  o A statement will be drafted and published with the fair housing informational material re-affirming the city’s commitment to reasonable accommodation and the ADA.

• EDAC City Council Liaison Calvert asked that if any of the defined protected classes were to change, how it would affect this policy.
  o This policy uses the federal and state definitions for determining protected classes. Should a protected class change at the federal level, but remain recognized as a protected class by state law, the city would be obligated to continue recognition of the respective protected classes under state law.

• Commissioner Knickerbocker asked that the web resources document be identified as supplemental to the policy document to avoid confusion as it being a part of the adopted policy.

• Internal Practice Review
Staff noted that the periodic review of housing stock, affordability, zoning, code review, and building standards could be included in the annual review of the Economic Improvement Program (EIP).

Additionally, the inclusion of the Fair Housing Policy in the EIP would provide an opportunity for commissioners to review and recommend policy updates to the policy on an annual basis or as needed.

The EDAC recommended that the city council approve the Fair Housing Policy as presented.

**Recommendation**

Staff recommends that the council adopt the attached resolution approving Council Policy 13.1 related to fair housing.

Submitted through:
- Geralyn Barone, City Manager
- Corrine Heine, City Attorney

Originated by:
- Julie Wischnack, AICP, Community Development Director
- Alisha Gray, EDFP, Economic Development and Housing Manager
- Rob Hanson, EDFP, Economic Development Coordinator

**Attachments**

Fair Housing Council Policy
Web Resources Document

**Supplemental Material**

[Metropolitan Council Fair Housing Policy Guide](#)
[Addendum to the 2014 Regional Analysis of Impediments](#)
Resolution No. 2018-

Resolution adding Council Policy 13.1 – Fair Housing

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

Section 1.  Background.

1.01 The city of Minnetonka participated in the 2014 Analysis of Fair Housing Impediments and subsequent Addendum to the 2014 Analysis of Fair Housing Impediments in 2017.

1.02 The Addendum to the Analysis of Fair Housing Impediments identified housing discrimination, gentrification, and segregation as fair housing obstacles and made a series of recommended practices for cities to implement to mitigate fair housing obstacles.

1.03 City staff has drafted a Fair Housing Policy that re-affirms the city’s commitment to fair housing.

1.04 This policy establishes internal and external practices that the city will undertake to promote the awareness and competency regarding fair housing issues.

Section 2. Council Action

2.01 The city council hereby adopts Council Policy 13.1 Fair Housing.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Nov. 26, 2018.

________________________________________
Brad Wiersum, 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 Nov. 26, 2018.

David E. Maeda, City Clerk
Policy Number 13.1
Fair Housing

Purpose of Policy: This policy strives to advance its commitment to inclusion and equity of fair housing and to further the goal of creating a vibrant, safe, and healthy community where all residents will thrive.

Introduction
Title VIII of the Civil Rights Act of 1968, with the Fair Housing Amendments Act of 1988, is called the Fair Housing Act. The Fair Housing Act prohibits discrimination based on protected class and deals with the sale, rental, or financing of housing, as well as any advertisements or statements with respect to housing. The City of Minnetonka, as a recipient of federal community development funds under Title I of the Housing and Community Development Act of 1974 is obligated to certify that it will affirmatively further fair housing. This policy applies to all forms of housing as defined within the federal Fair Housing Act and Minnesota Human Rights Act.

Policy Statement
It is the policy and commitment of the City of Minnetonka to ensure that fair and equal housing opportunities are available to all persons in all housing opportunities and development activities funded by the city regardless of race, color, religion, sex, sexual orientation, marital status, status with regard to public assistance, creed, familial status, national origin, or disability. This is done through external policies to provide meaningful access to all constituents as well as fair housing information and referral services; and through internal practices and procedures that promote fair housing and support the city’s equity and inclusion goals.

External Practices
Intake and Referral. The city council designates the community development director as the responsible authority for the intake and referral of all fair housing complaints. At a minimum, the community development director will be trained, or will designate community development staff to be trained, in state and federal fair housing laws, the complaint process for filing discrimination complaints, and the state and federal agencies that handle complaints. The date, time, and nature of the fair housing complaint and the referrals and information given will be fully documented. The community development director will advise the city council on city programs and policies affecting fair housing and raise issues and concerns where appropriate.

 Meaningful Access.
- Online Information: The city will display information about fair housing prominently on its website. The website will include links to various fair housing resources, including the Department of Housing and Urban Development, Minnesota Department of Human Rights, Mid-Minnesota Legal Aid, and others as well as links to state and federal fair housing complaint forms. In addition, the city will link the State of Minnesota’s Olmstead Plan and provide the City of Minnetonka’s Reasonable Accommodation ordinance on its website.
• In-Person Information: Upon request, the city will provide in-person fair housing information including:
  o A list of fair housing enforcement agencies;
  o Frequently asked questions regarding fair housing law; and
  o Fair housing complaint forms for enforcement agencies.

Languages.
The city is committed to providing information in the native languages of its residents. Upon request, the city will make reasonable efforts to provide translation services.

Internal Practices
The city commits to the following steps to promote awareness and competency regarding fair housing issues in all of its government functions:

• Staff and Officials Training: The city will continue to train its staff and officials on fair housing considerations as training opportunities become available.

• Housing Analysis: The city will review its housing periodically to examine the affordability of both rental and owner-occupied housing to inform future city actions.

• Code Analysis: The city will review its municipal code periodically, with specific focus on ordinances related to zoning, building, and occupancy standards, to identify any potential for disparate impact or treatment.

• Project Planning and Analysis: City planning functions and development review will consider housing issues, including whether potential projects may perpetuate segregation or lead to displacement of protected classes.

• Affirmatively Furthering Fair Housing: As a member of the Urban Hennepin County CDBG Consortium the city agrees, through the consortium, to participate in the Regional Analysis of Impediments. Through the consortium, the city will continue to support and participate in the Fair Housing Implementation Council (FHIC), an ad hoc coalition of jurisdictions and others working together to affirmatively further fair housing. The city will review the recommendations from the analysis for potential integration into city planning documents, including the comprehensive plan and other related documents.

Adopted by Resolution No. 2018-
Council Meeting of Nov. 26, 2018
Fair Housing Resources

Purpose of this document
You have the right to be treated fairly and equally regardless of where you come from, what you look like, or who is part of your family. This document aims to provide resources and information on your rights in regards to fair housing.

Federal Housing Act, and the Minnesota Human Rights Act

What is the The Federal Fair Housing Act and The Minnesota Human Rights Act?

The Federal Fair Housing Act prohibits discrimination in housing because of:

- Race or color
- National origin
- Religion
- Sex
- Familial status
- Handicap (disability)

Find out more on the Federal Fair Housing Law by visiting:

hud.gov/program_offices/fair_housing_equal_opp

The Minnesota Human Rights Act is similar to the federal legislation in that it prohibits discrimination based on:

- Race or color
- National origin
- Religion
- Sex
- Familial status
- Handicap (disability)

Additionally, it prohibits discrimination based on:

- Sexual or affectional orientation
- Marital status
- Creed
- Status with regard to receipt of public assistance

See revisor.mn.gov/statutes/cite/363A for more information on Minnesota State Statues on Human Rights.
Fair Housing Policy Documents

Reasonable Accommodations in Housing - lawhelpmn.org/resource/reasonable-accommodations-in-housing

Minnesota’s Olmstead Plan
dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=opc_home

The Olmstead Plan is a broad series of key activities our state must accomplish to ensure people with disabilities are living, learning, working, and enjoying life in integrated settings.

Minnetonka ADA Statement for Website:

The City of Minnetonka complies with all applicable provisions of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, and does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its services, programs, or activities. Upon request, accommodation will be provided to allow individuals with disabilities to participate in all City of Minnetonka services, programs, and activities.

Fair Housing Videos Courtesy of Housinglink.org
English: housinglink.org/HousingResources/FairHousing/English
Hmong: housinglink.org/HousingResources/FairHousing/Hmong
Somali: housinglink.org/HousingResources/FairHousing/Somali
Spanish: housinglink.org/HousingResources/FairHousing/Spanish

Complaint Procedures:

Where can I file a complaint?
You can look to government agencies that enforce housing discrimination laws. They will investigate at no charge to you. If they find discrimination, they will see if an agreement can be reached. If no agreement is reached, the agency may file a case against the person who discriminated against you.

In Minnesota, the government agencies are:

Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp

Minnesota Department of Human Rights
mn.gov/mdhr/

Federal Housing Complaint Form: hud.gov/program_offices/fair_housing_equal_opp/online-complaint
State of Minnesota Housing Complaint Form: mn.gov/mdhr/intake/
Before you contact any of the above organizations to file a discrimination complaint, it would be beneficial to have the following information available:

Your name and address;
The name and address of the person your complaint is against;
The address of the housing involved;
A short description of the event that caused you to believe your rights were violated; and
The date(s) of the alleged violation

Legal Aid

Where can I get legal advice?

Several agencies are available to help victims of fair housing violations including:

Housing Link
housinglink.org/

HOME Line Tenant Hotline
homelinemn.org/e-mail-an-attorney/

Mid Minnesota Legal Aid
mylegalaid.org/get-help/

Volunteer Lawyers Network
vlmn.org/

Law Help MN
lawhelpmn.org/

Housing FAQ

What is Housing Discrimination?
Housing discrimination is treating people differently than others are treated under the same or similar circumstances.

This is illegal if it is done because of one’s protected class status, or because of the protected class of those s/he associates with.

Housing discrimination also includes refusal to make reasonable accommodations or modifications for people with disabilities, or failure to build certain multi-family housing so that it is accessible to people with disabilities.

What kind of housing is covered?
Covered housing includes real property (home, apartments, lots, etc.) rented or sold; boarding houses; public housing; mobile home parks; condominiums; homeless shelters and sober housing.
In some limited circumstances, housing operated by religious organizations and private clubs that limit occupancy to members may be excluded from complying.
What is a “protected class?”
The term "protected class" refers to a group of people whom the law protects against illegal discrimination. A protected class is named for the characteristic that these people share, such as race or religion.
The Fair Housing Act, which is the federal law governing housing discrimination, includes seven protected classes: race, color, religion, national origin, sex, disability, and familial status. In addition, the Minnesota Human Rights Act considers sexual orientation, marital status, status with regard to public assistance and creed to be protected classes.

What does “familial status” cover?
"Familial status" protects families with children (under 18) from housing discrimination. This protection is broad, and also covers women who are pregnant and people who are in the process of adopting or fostering a child.

What is a disability under the law?
A disability is defined as any physical or mental impairment that substantially limits one or more major life activities such as walking, seeing, hearing, thinking, self-care, or a chronic condition (such as mental illness, AIDS, blindness, hearing impairment, mental retardation, mobility impairment, etc.). In addition, those who have a record of an impairment or are regarded as having an impairment, are also covered. Recovering alcoholics and drug addicts may also be considered to have a disability and covered by the law.

Is sexual harassment covered by fair housing law?
Yes. Courts have held that the law's ban on housing discrimination based on sex includes sexual harassment.

Courts have recognized two types of violations of the law based on sexual harassment.

The first type of sexual harassment is called "quid pro quo" - that's when a housing provider, janitor, manager, caretaker, etc, offers or requires you to exchange sexual acts or favors for rent.
The second type of sexual harassment is a hostile environment. This is when the housing provider (or employees') sexual comments, requests for dates, unauthorized entrances into your apartment or other behavior of a sexual nature is so severe or pervasive that it changes the nature of your tenancy.

Who must obey the law?
Everyone, including
- Landlords
- Real estate operators, brokers and agents
- Savings & loan associations, mortgage lenders, banks, or other financial institutions
- Apartment managers
- Rental agents
- Builders, contractors and developers
- Owners of building lots
- Advertising media
- Homeowners advertising and selling their own home
- Caretakers and janitors
- Condo and townhome owners associations
What are some examples of housing discrimination?

The following are examples of acts or practices are illegal if based on someone's protected class:

- Denying or refusing to rent or sell housing
- Refusing to negotiate for housing
- Providing false information about availability of housing for inspection, sale, or rental
- Persuading owners to sell or rent in order to make a profit ("blockbusting")
- Denying anyone access to (or membership in) a facility, community (such as a homeowners association or manufactured home park), or service (such as a multiple listing service) related to housing
- Having different terms, conditions, rules or privileges based on protected class
- Advertising a discriminatory preference or limitation
- Harassing, coercing or intimidating people from enjoying or exercising their rights under fair housing laws
- Imposing different terms or conditions for purchasing or renting; constructing, improving, repairing, insuring, appraising, or maintaining a home; or for loans secured by housing
- Denying use of or participation in real estate services, e.g., brokers' organizations, multiple listing services, etc.
- Neighbor-on-neighbor harassment
- Retaliation for bringing a complaint about discrimination

Are there additional protections if you have a disability?

Besides not discriminating, housing providers may be required to make exceptions to rules, policies, and practices for people with disabilities in order for them to be able to gain full use and enjoyment of their housing. This comes in the form of a "reasonable accommodation" or a "reasonable modification" request.

The Fair Housing Act requires that housing providers must "make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling."

One example of a common reasonable accommodation is the waiver of a "no pets" policy for an individual with a disability who requires an animal because of his / her disability. There are narrow and specific reasons that a request for reasonable accommodation may be denied. See our section on Disability Rights for more information.

What are requirements for housing to be accessible?

The Fair Housing Act requires all "covered multifamily dwellings" designed and constructed for first occupancy after March 13, 1991 to be accessible to and usable by people with disabilities. Covered multifamily dwellings are all dwelling units in buildings containing four or more units with one or more elevators, and all ground floor units in buildings containing four or more units, without an elevator.
**What about housing opportunities for families?**

Unless a building or community qualifies as housing for older persons, it may not discriminate based on familial status. That is, it may not discriminate against families in which one or more children under 18 live with:
- A parent
- A person who has legal custody of the child or children, or
- The designee of the parent or legal custodian with the parent or custodian’s written permission.

**Does “Senior Housing” fall under the prohibition against familial status discrimination?**

Housing for older persons is exempt from the prohibition against familial status discrimination if:
- The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a Federal, State or local government program or
- It is occupied solely by persons who are 62 or older or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates an intent to house persons who are 55 or older.

**What are Fair Housing Acts design and construction requirements for buildings?**

The Fair Housing Act lists seven basic standards that must be met to comply with the access requirements of the Act. Those requirements are:
- Requirement 1: An accessible building entrance on an accessible route.
- Requirement 2: Accessible common and public use areas.
- Requirement 3: Usable doors (usable by a person in a wheelchair).
- Requirement 4: Accessible route into and through the dwelling unit.
- Requirement 5: Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
- Requirement 6: Reinforced walls in bathrooms for later installation of grab bars.
- Requirement 7: Usable kitchens and bathrooms.

**Can a landlord deny my housing because I have a Section 8 voucher?**

It depends. Although "status with regard to public assistance" is protected under Minnesota laws, the Minnesota courts have found that a private housing provider can choose to not participate in the Section 8 Housing Choice Voucher Program. However, some buildings with tax credits and other government funds may not reject vouchers used by qualified tenants.

**If a landlord has a “No Pets” policy, can he/she refuse to rent to me if I need a guide dog/companion animal?**

NO. A landlord may have a ‘no pets' policy and enforce that policy, however, a guide dog, service animal or companion animal is not a pet. If its purpose is to assist a person with a disability, acceptance of the animal could be considered a reasonable accommodation. No pet fee or additional deposit may be charged to a person with a disability for having a service animal.

*Source: Fair Housing MN Resource Guide*
Addendum
Minnetonka City Council
Meeting of November 26, 2018

12A Items concerning the Glen Lake Apartments at 14317 Excelsior Blvd

Attached is a change memo from the assistant city planner. Staff is recommending postponing action on four items due to concerns about the proposed Excelsior Boulevard access. Staff is recommending moving ahead with the proposed schedule for action on the comprehensive plan amendment. The change memo outlines the reason for this recommendation.

Staff also recommends moving this item from "Introduction of Ordinances" to "Other Business" making the item 14C on the agenda.
TO: City Council
FROM: Susan Thomas, AICP, Assistant City Planner
DATE: Nov. 26, 2018
SUBJECT: Change Memo for Nov. 26, 2018

Change ITEM 12A – Glen Lake Apartments to ITEM 14C

As was noted in the written staff report, the proposed Glen Lake Apartments requires approval the following:

- Comprehensive plan amendment
- Rezoning
- Master development plan
- Final site and building plans
- Right of way vacation

During staff review of the proposed plans, concerns have been raised by both city and county staff related to the proposed Excelsior Blvd. access. Additional discussion with county staff is needed to understand what would or would not be allowed. Given that this discussion may result in site plan changes, staff recommends that action related to the following be postponed:

- Rezoning
- Master development plan
- Final site and building plans
- Right of way vacation

However, staff recommends that the review of a comprehensive plan amendment continue on its current schedule: planning commission review on Dec. 6, 2018 and city council review and action on Dec. 17, 2016.

This recommendation is based on Met Council amendment policies. No amendments to the 2030 comprehensive plan will be accepted by the Met Council after December 31, 2018. The 2040 comprehensive plan is not anticipated to be approved by the Met Council until mid-summer 2019. Essentially, this means that all redevelopment activities in the city occurring between the end of 2018 and the middle of 2019 must occur under the 2030 designation.

The property 14317 Excelsior Blvd. is designated for commercial use in the 2030 Comprehensive Plan and mixed use in the draft 2040 Comprehensive Plan. (Mixed use would allow for a variety of different types of land use, including the proposed apartments.) Staff recommends that the 2030 comprehensive plan be amended now to reflect the mixed use designation. This would allow for continued review and consideration of the applicant’s proposal or any new proposal that may be received prior to mid-summer 2019. If the council is comfortable with this course, it should refer just the comprehensive guide plan amendment to the planning commission for consideration.
1. **What is income averaging?**

The Consolidated Appropriations Act of 2018 (the Act) permanently establishes income averaging as a third minimum set-aside election for new Housing Credit developments which owners could choose in lieu of the two previously existing minimum set-aside elections (the 40 at 60 and 20 at 50 standards). Income averaging allows Credit-qualified units to serve households earning as much as 80 percent of Area Median Income (AMI), so long as the average income/rent limit in the property is 60 percent or less of AMI. Owners electing income averaging must to commit to having at least 40 percent of the units in the property affordable to eligible households.

The 80 percent of AMI standard is consistent with long-standing federal affordable housing policies, which define “low-income” as households earning no more than 80 percent of AMI. Under the income averaging option, the higher rents that households with incomes in the above 60 percent of AMI range could pay would have the potential to offset the lower rents for extremely low- and very low-income households living in units designated at lower income levels, thereby allowing developments to maintain financial feasibility while providing a deeper level of affordability than may be possible otherwise. Income averaging thus preserves rigorous targeting to low-income households, while providing more flexibility to the program and greater income-mixing potential.

Income averaging applies to the designated income/rent levels of the units, not the incomes of individual tenant households. Under income averaging, designated income/rent levels may only be set at 10 percent increments beginning at 20 percent of AMI; thus the allowable income/rent designation levels are 20 percent of AMI, 30 percent of AMI, 40 percent of AMI, 50 percent of AMI, 60 percent of AMI, 70 percent of AMI, and 80 percent of AMI.

2. **Must a state allow income averaging for developments applying for Credits (or seeking bond-financed Credits) in 2018 and subsequent years?**

While the Internal Revenue Code (IRC) allows for income averaging, there does not appear to be a legal obligation for a state to allow income averaging as part of its Housing Credit program.
3. **Must a state modify its Qualified Allocation Plan (QAP) or related regulatory document(s) before allowing income averaging?**

Given the complexity of the income averaging option, NCSHA encourages states that intend to allow income averaging to provide guidance to applicants regarding this election. That guidance can be part of the state’s QAP or provided in other documents.

States should keep in mind that the QAP preferences required by the IRC, including the preference for serving the lowest income tenants, continue to apply. States will need to determine how best to balance the flexibility provided by income averaging to serve households up to 80 percent of AMI with the preference for serving the lowest income tenants.

If a state determines it will charge higher compliance monitoring fees for developments that elect income averaging due to the added complexity of income averaging, it may do so. However, it should specify the fee level in its QAP or related documents wherever compliance monitoring fees are covered.

4. **Must the Internal Revenue Service (IRS) issue guidance before states can allow income averaging?**

No. Income averaging is allowable for new developments making their minimum set-aside/income election after the date of enactment of the Act (March 23, 2018), and is not dependent on the issuance of IRS guidance. However, IRS guidance, as outlined in the answers to several of the questions in this FAQ document, could help facilitate the implementation of income averaging.

5. **Must IRS revise Form 8609 before states can allow income averaging?**

The IRC has been changed to make the income averaging election available. If the state chooses to allow income averaging, the absence of a revised Form 8609 should not be a barrier to its use. Until IRS revises Form 8609, the state can provide owners an attachment to Form 8609 setting forth the election. NCSHA has reached out to IRS to discuss the importance of revising Form 8609 to reflect the new option.
6. **Are existing Housing Credit developments already placed in service eligible to change their minimum set-aside election to income averaging?**

No. The minimum set-aside election is irrevocable once made on Form 8609. Therefore, existing developments already placed in service are not eligible to change their minimum set-aside/income election to income averaging. Income averaging is available, at the state’s discretion, to new developments making their minimum set-aside election after March 23, 2018.

Theoretically, IRS could issue guidance allowing income averaging to apply to existing developments on the premise that the change in the IRC implicitly permits changing an otherwise irrevocable election. However, unless and until IRS issues such guidance, existing Housing Credit developments are not able to take advantage of income averaging.

7. **If an owner has a development in the pipeline for which it has indicated that it will elect either the 40-60 or 20-50 minimum set-aside, but for which it has not yet received a carryover allocation, can the owner change to income averaging? Can the owner seek to change either such election to include income averaging after it has received a carryover allocation, but before it has made the actual election on Part II of Form 8609?**

In this circumstance, there is no specific federal prohibition against selecting income averaging as the minimum set-aside election after previously indicating the intent to choose one of the other minimum set-aside options. Therefore, states may allow this change. However, NCSHA recommends states ensure the following criteria are met first: (i) the state’s QAP or other authorizing document should permit a change, (ii) the change would not be inconsistent with the basis upon which the project was selected, and (iii) the development’s underwriting would not be adversely affected.

8. **Can states modify the Housing Credit extended use agreement for developments in the period following the tax credit compliance period (post Year 15) to allow for income averaging rather than the minimum set-aside they elected at the time of Form 8609 issuance?**

No. IRC Section 42(h)(6)(B)(i) provides that the “applicable fraction,” the basis upon which “low income” is determined, throughout the extended use period be that originally specified in the extended use agreement.
9. **Can states allow developments seeking a resyndication of Credits to elect income averaging? How would such election affect the existing low-income units?**

A new election would not free the continuing low-income units of their obligations under the prior extended use agreement, so the owner would, in effect, have to comply with the more stringent rules applicable to each particular unit if it were to change its election upon resyndication. Given the complexity of complying with two separate minimum set-aside rules, income averaging is not likely to be a helpful tool for resyndications. However, to the extent that the resyndication includes additional low-income units, the owner technically could elect income averaging as a new minimum set-aside.

10. **Is income averaging an option when acquiring and/or rehabilitating developments participating in other affordable housing programs?**

If a subsidized development was not previously a Housing Credit development and an owner intends to use Housing Credit equity to acquire and/or rehabilitate the development, the owner may (at the discretion of the state) elect income averaging. However, the development must also adhere to all income and rent restrictions of the other applicable affordable housing program(s).

States and owners should keep in mind that income limits may be calculated differently for various federal programs. Housing Credit income and rent limits have various adjustments, such as Housing and Economic Recovery Act (HERA) Special income limits, that other affordable housing programs may not use. Therefore, extra care should be taken when underwriting projects, leasing units, and calculating rent changes to make sure a project is complying with all restrictions for all programs. Income averaging will add to this complexity.

11. **How does income averaging apply to tax-exempt bond-financed 4 percent Credit deals?**

The Act modifies IRC Section 42 to allow for income averaging, but does not make a similar change in IRC Section 142, which covers exempt facility bonds, including multifamily Housing Bonds. However, income averaging still may be used in bond-financed Housing Credit developments so long as the development satisfies both the income averaging minimum set-aside election and one of the minimum set-aside elections applicable to tax-exempt bond financing (20 at 50 or 40 at 60). Thus, units with income limits above 60 percent or 50 percent, as applicable, do not count for purposes of bond compliance.
12. **Does income averaging apply to rent limits as well as income limits?**

Yes. Income averaging applies to both income and rent limits. Therefore, if a unit has a designated limit of 80 percent of AMI, the maximum rent level that may be charged to a household in that unit is 30 percent of 80 percent of AMI. Similarly, if a unit has a designated limit of 30 of AMI, the maximum rent level that may be charged to a household in that unit is 30 percent of 30 percent of AMI.

13. **What is the process for designating units at specific income levels under income averaging?**

The IRC does not specify the process by which owners may designate units at specific income levels under income averaging. Absent contrary guidance from IRS, states have the authority to determine a process for unit designation. NCSHA encourages states to indicate unit designations in the extended use agreement and the carryover allocation.

14. **Can an owner shift designated units from one income level to another so long as they maintain a 60 percent income level on average? How will this impact waiting list management? How should compliance monitoring staff monitor for this in practice?**

The language in IRC section 42(g)(1)(C)(ii)(I) is not clear as to whether a unit’s designated income limit may be changed. In mixed-income projects, the next available unit rule and vacant unit rule will inevitably force some shifting of income limit designations.

- **Example**—Income averaging in a development that has some market-rate units: a qualified low-income tenant living in a two-bedroom 70 percent unit goes over income (140 percent of the greater of 60 percent of AMI or the designated limit applicable to the unit; in this case 140 percent of 70 percent of AMI). A two-bedroom market rate unit of comparable or smaller size becomes available. Another qualifying low-income tenant wants to rent the now vacant market rate unit at the 70 percent rent. The previously market-rate unit must be rented to the qualifying low-income tenant at the 70 percent rent rather than a market rate tenant.

If the owner of a 100 percent low-income development would like the flexibility to change designations of units in order to limit vacancies, absent contrary guidance from IRS, states may determine whether to permit the shifting of designations. States should have a formal notice and documentation procedure for the change in designation so that the state’s records for monitoring purpose would be consistent with the owner’s documentation and practices.
States should also consider the facts that such shifting may increase the complexity of compliance monitoring.

15. **How would shifting designated units work in developments that have units of various bedroom sizes? Is there any requirement for maintaining unit size parity among various designated income levels?**

There is no requirement within income averaging for bedroom or other unit feature parity among Housing Credit units. States may adopt policies along these lines.

16. **Are there additional issues states must consider in monitoring the income averaging option for 100 percent low-income developments that are not subject to annual income recertification?**

The Act makes no changes to IRC Section 142(d)(3)(A)—applicable to Housing Credit projects in Section 42(G)(4)—which does not require current income determinations for units in 100 percent low-income developments. If a state has an accurate listing of units and income limit designations, it may be able to evaluate compliance solely by evaluating the incomes of new occupants to vacant units for consistency with the designated limit. However, a state may conclude that in order to assess compliance of a development with the income averaging rule, it needs regular monitoring and reporting.

17. **How will the next available unit rule work in developments that elect the income averaging option? Will the rule apply differently in developments with some market-rate units?**

The next available unit rule, as modified by the new language, (i) provides that a unit is over income if the occupant’s income exceeds 140 percent of the greater of 60 percent of AMI or the designated limit applicable to the unit and (ii) effectively requires that the next available unit of comparable or smaller size be rented (A) to a tenant whose income does not exceed the designated limit applicable to the new unit, if it was previously a low-income unit or (B) to a tenant at an income level that would not cause a violation of the 60 percent average, if the new unit had not previously been a low-income unit.

As is the case when using either of the original two minimum set-asides, following the next available unit rule should be straightforward for 100 percent Housing Credit properties. Developers should consult with compliance experts in evaluating how income averaging will work in developments with market rate units.
18. How can a state ensure that the 60 percent of AMI average is achieved for a project, under IRS’ definition of a project, without knowing whether the owner will treat buildings as separate projects or make a multi-building election (line 8b election on Part II or Form 8609)?

The state should require the owner to address this question in its application. The state may choose to require the owner to state in advance what unit distribution by income designation it intends to apply to each building and show that the income averaging is achieved for the defined project(s) within the property.

19. Does the 30 percent of AMI income and rent level under the Housing Credit for purposes of income averaging conform to the Extremely Low-Income and rent restriction under the Housing Trust Fund?

No. The Housing Trust Fund statute and regulation define “Extremely Low-Income” as the greater of 30 percent of AMI or the federal poverty line for applicable household size. Income averaging unit designation is based solely on AMI.

20. Will noncompliance with the income averaging option be reportable on IRS Form 8823?

Yes. Basic noncompliance will work the same as it does with the other minimum set-asides. If a development elects income averaging and fails to meet the income averaging standard at the end of a year, it is not a qualified low-income housing development for the year under IRC Section 42(g)(1)(C), and this noncompliance must be reported to IRS Form 8823 and the owner could be subject to loss of Credits. Presumably IRS will revise the Form 8823 and its instructions accordingly.

Theoretically, IRS could provide guidance allowing such developments to be considered in compliance so long as the development complies with one of the other two minimum set-aside elections; however, until such time as the IRS issues guidance allowing this flexibility, states should consider noncompliance with the income averaging option to be reportable on IRS Form 8823.

Note that targeting under income averaging differs from deeper targeting under the 20 at 50 or 40 at 60 minimum set-aside elections. For example, if an owner elects the 40 at 60 minimum set-aside, but commits to deeper income targeting at 30 percent of AMI for a portion of the units in the development for scoring purposes, noncompliance with the deeper income targeting commitment
is not reportable on Form 8823 because it is not a federal requirement. Conversely, maintaining the average level of 60 percent of AMI in an income averaging property is a federal requirement, and thus noncompliance could trigger loss of Credits.

NCSHA thanks Anthony Freedman of Holland & Knight LLP and Mark Shelburne of Novogradac & Company LLP for their contributions to this FAQ document.

Questions? Please contact:
Jennifer Schwartz | Director of Tax and Housing Advocacy | jschwartz@ncsha.org.
## MULTI-FAMILY BUILDINGS

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>TYPE</th>
<th>UNITS</th>
<th>DENSITY*</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>RIDGEDALE AREA</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Avidor (Active Adults)</td>
<td>12610 Ridgedale Drive</td>
<td>Senior Rental</td>
<td>168</td>
<td>71 units/acre</td>
</tr>
<tr>
<td>Cherrywood Pointe</td>
<td>2004 Plymouth Road</td>
<td>Senior Rental</td>
<td>100</td>
<td>34 units/acre</td>
</tr>
<tr>
<td>The Luxe</td>
<td>12501 Ridgedale Drive</td>
<td>Rental</td>
<td>77</td>
<td>17 units/acre</td>
</tr>
<tr>
<td>Residences at 1700 (Highland)</td>
<td>1730 Plymouth Road</td>
<td>Rental</td>
<td>120</td>
<td>59 units/acre</td>
</tr>
<tr>
<td>The Ridge</td>
<td>12708 Wayzata Blvd</td>
<td>Affordable Rental</td>
<td>64</td>
<td>37 units/acre</td>
</tr>
<tr>
<td>Ridgegate</td>
<td>1919 YMCA Lane</td>
<td>Rental</td>
<td>60</td>
<td>15 units/acre</td>
</tr>
<tr>
<td>Ridgepointe</td>
<td>12600/12800 Marion Lane W</td>
<td>Senior Rental</td>
<td>274</td>
<td>32 units/acre</td>
</tr>
<tr>
<td>Woodbine Condos</td>
<td>12700 Sherwood Place</td>
<td>Condos</td>
<td>45</td>
<td>6 units/acre</td>
</tr>
<tr>
<td><strong>GLEN LAKE AREA</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Atrium</td>
<td>14401-14601 Atrium Way</td>
<td>Condos</td>
<td>90</td>
<td>18 units/acre</td>
</tr>
<tr>
<td>Beacon Hill</td>
<td>5300/5330 Beacon Hill Road</td>
<td>Senior Rental</td>
<td>152</td>
<td>22 units/acre</td>
</tr>
<tr>
<td>The Exchange</td>
<td>14403 Excelsior Blvd</td>
<td>Rental</td>
<td>52</td>
<td>24 units/acre</td>
</tr>
<tr>
<td>Glen Lake Apts, proposed</td>
<td>14317 Excelsior Blvd</td>
<td>Rental</td>
<td>58</td>
<td>44 units/acre</td>
</tr>
<tr>
<td>Glen Lake Shores</td>
<td>14319 Stewart Lane</td>
<td>Condos</td>
<td>30</td>
<td>9 units/acre (net)</td>
</tr>
<tr>
<td>Glen Lake Landing</td>
<td>5416 Beacon Hill Road</td>
<td>Senior Rental</td>
<td>97</td>
<td>43 units/acre</td>
</tr>
<tr>
<td>St. Therese</td>
<td>5300 Woodhill Rd</td>
<td>Senior Rental</td>
<td>149</td>
<td>56 units/acre</td>
</tr>
<tr>
<td>Zvago</td>
<td>14301 Stewart Lane</td>
<td>Cooperative</td>
<td>54</td>
<td>21 units/acre (net)</td>
</tr>
<tr>
<td><strong>OTHER AREAS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applewood Pointe</td>
<td>12201 Minnetonka Blvd</td>
<td>Cooperative</td>
<td>87</td>
<td>22 units/acre</td>
</tr>
<tr>
<td>Carlson Island Apartments</td>
<td>501 Carlson Parkway</td>
<td>Rental</td>
<td>174</td>
<td>15 units/acre</td>
</tr>
<tr>
<td>The Chase (At Home Apts)</td>
<td>Rowland Road</td>
<td>Rental</td>
<td>106</td>
<td>32 units/acre</td>
</tr>
<tr>
<td>Crest Ridge Senior Living</td>
<td>10955 Wayzata Blvd</td>
<td>Senior Rental</td>
<td>147</td>
<td>21 units/acre</td>
</tr>
<tr>
<td>Dominium</td>
<td>11001 Bren Road W</td>
<td>Affordable Rental</td>
<td>482</td>
<td>51 units/acre</td>
</tr>
<tr>
<td>DORAN, proposed</td>
<td>11706 Wayzata Blvd</td>
<td>Rental</td>
<td>168</td>
<td>67 units/acre</td>
</tr>
<tr>
<td>Havenwood of Minnetonka</td>
<td>17710 Old Excelsior Blvd</td>
<td>Senior Rental</td>
<td>100</td>
<td>40 units/acre</td>
</tr>
<tr>
<td>MARINER, proposed</td>
<td>10400 Bren Road W</td>
<td>Rental/Affordable Rental</td>
<td>249</td>
<td>64 units/acre</td>
</tr>
<tr>
<td>Minnetonka Hills Apartment</td>
<td>2814 Jordan Avenue</td>
<td>Rental</td>
<td>78</td>
<td>32 units/acre</td>
</tr>
<tr>
<td>Overlook (Tonka on the Creek)</td>
<td>9731 Minnetonka Blvd</td>
<td>Rental</td>
<td>100</td>
<td>49 units/acre</td>
</tr>
<tr>
<td>Rize at Opus</td>
<td>10101 Bren Road E</td>
<td>Rental</td>
<td>322</td>
<td>42 units/acre</td>
</tr>
</tbody>
</table>