Agenda
Minnetonka City Council
Regular Meeting, Monday, August 8, 2016
6:30 P.M.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Allendorf-Acomb-Wiersum-Bergstedt-Wagner-Ellingson-Schneider
4. Approval of Agenda
5. Approval of Minutes: None
6. Special Matters: None
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters Not on the Agenda
9. Bids and Purchases:
   A. Authorize execution of solar garden contract with MN Community Solar
      Recommendation: Approve the contract (majority vote)
10. Consent Agenda - Items Requiring a Majority Vote:
    A. Items concerning the construction of a new house at 2512 Bantas Point Lane:
       1) Variances and expansion permits; and
       2) Floodplain alteration permit.
    B. Resolution approving a conditional use permit for telecommunications facilities at 12475 Marion Lane West
    C. Resolution approving the final plat of WILLISTON WOODS WEST at 5431 Williston Road

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Replays of this meeting can be seen during the following days and times: Mondays, 6:30 p.m., Wednesdays, 6:30 p.m.,
Fridays, 12 p.m., Saturdays, 12 p.m. The city’s website also offers video streaming of the council meeting.
For more information, please call 952.939.8200 or visit eminnetonka.com
11. Consent Agenda - Items Requiring Five Votes:
   A. Resolution authorizing purchase of real property and amending the 2016-2020 CIP

12. Introduction of Ordinances:
   A. Items concerning a townhome development at 11901 Minnetonka Boulevard
      1) Ordinance amending the existing Big Willow Townhomes master development plan;
      2) Site and building plan review; and
      3) Preliminary and final plats.

      Recommendation: Introduce the ordinance and refer to the planning commission (4 votes)

13. Public Hearings:
   A. Resolution vacating an existing public trail easement located at 14301 Stewart Lane

      Recommendation: Hold the public hearing and adopt the resolution (4 votes)

   B. Resolution authorizing and affirming the issuance, sale, and delivery of multifamily housing revenue obligations for the benefit of CHC Minnetonka Affordable Housing LLC or its affiliates; authorizing the execution and delivery of the documents related thereto; and taking certain other actions

      Recommendation: Hold the public hearing and adopt the resolution (4 votes)

14. Other Business:
   A. Conditional use permit, with parking variance, for Eden Prairie Islamic Community Center at 5620 Smetana Drive

      Recommendation: Adopt the resolution approving the request (4 votes)

   B. Resolution approving the preliminary plat of HIGHVIEW PLACE, a nine-lot subdivision, generally located at the northwest corner of I-494/State Highway 7 interchange

      Recommendation: Adopt the resolution approving the request (4 votes)

   C. Resolution endorsing the Glen Lake Neighborhood Study

      Recommendation: Adopt the resolution (4 votes)
15. Appointments and Reappointments: None

16. Adjournment
City Council Agenda Item #9A
Meeting of August 8, 2016

Brief Description:  Authorize execution of solar garden contract with MN Community Solar

Recommended Action:  Approve the contract

Background

On August 31, 2015, the city council approved contracts with three solar garden providers in order to improve sustainability and save energy costs for the city. The three providers were: Innovative Power Systems, Solar Stone and TruNorth Solar. It was anticipated that approximately 15 million KWh (kilowatt-hours) of energy would be derived from solar gardens built by these providers. Two of the three contracts were signed; however, the contract with TruNorth Solar was not executed due to financing difficulties. This resulted in a loss of 8 million KWh of energy.

Since that time, staff with the assistance of the city’s energy consultant, Energy Management Solutions, has sought and successfully vetted a company that can provide 3.5 million KWh of the 8.0 million KWh that were previously lost. Minnesota Community Solar is the company that has unreserved space in a project that is being constructed yet this year.

Minnesota Community Solar currently has three solar gardens currently operating at this time. The operating solar gardens serve the cities of St. Paul, Tyler and Kasota and range in size from 40 KW (kilowatts) to 250 KW which are smaller gardens. The company also has larger gardens permitted with the necessary interconnection fees paid to Xcel Energy that will serve Northfield, Hector, Pipestone and Sherburne County. Construction of these facilities will begin this year and will range in size from 1Megawatt to 5 Megawatts. Minnesota Community Solar has plans for additional solar gardens next year and it is likely that the city can be a subscriber in those projects if need be.

Subscriber Contract Types

Energy savings for the city are realized in one of four ways based on the provisions of the contract:

- Fixed Discount: $ per kWh discount
- Percent of Xcel Credit: percent of the credit
- Fixed Rate: flat rate $ per kWh
- Initial Rate with Escalator: flat rate with annual escalator

Energy savings are realized once the solar garden is producing energy. Xcel Energy issues monthly billing credits to the city for being a recognized solar garden subscriber. The city then pays the solar garden provider based on the provisions of the contract. The larger portion of the credit goes to the provider which has the development costs
and the remainder goes to the city which reduces overall energy costs during the term of the agreement.

The contract with Minnesota Community Solar is an initial rate with an escalator for each succeeding year of the contract with an escalator cap. Like the other contracts, this proposed contract is for 25 years with a calculated savings of approximately $2 million over that time. An analysis spreadsheet is included with the contract that outlines the details of this contract.

The city’s energy consultant, Gary Swanson, will be attending the council meeting and will be able to answer general questions the council may have about this contract.

**Recommendation**

Staff recommends that the city council authorize the mayor and city manager to execute the solar garden provider contract with Minnesota Community Solar subject to approval of the final language by the city manager and city attorney.

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

Originated by:
- Brian Wagstrom, Director of Public Works
City Council Agenda Item #10A  
Meeting of August 8, 2016

**Brief Description**

Items concerning the construction of a new house at 2512 Bantas Point Lane:

1) Variances and expansion permits; and

2) Floodplain alteration permit.

**Recommendation**

Adopt the resolution approving the request

**Proposal**

The applicant, on behalf of the property owners, is proposing to tear down the existing house, at 2512 Bantas Point Lane, in order to construct a new two-story home. The home and attached two-car garage would have a footprint of 2,100 square feet. Additional site improvements include an unenclosed porch and deck off of the rear of the home. The applicant is also proposing a maximum of 2,000 cubic feet of floodplain alteration to elevate the home above the 100-year floodplain. A portion of this fill would provide access from Bantas Point Lane, which is constructed below floodplain, to the proposed garage, which would be situated above floodplain.

**Planning Commission Hearing**

The planning commission considered the request on July 21, 2016. The staff report from that meeting is attached and various plans and documents describing the proposed project may be found on pages A1–A36. At that meeting, a public hearing was opened to take comment. One resident appeared to express concern related to long-standing drainage issues in the Bantas Point Lane neighborhood.

Following the public hearing, the commission asked staff to describe any anticipated or potential impacts of the proposed fill on the surrounding neighborhood. Staff described that the new home would have a floodable crawl space, which would actually increase the amount of flood storage on the property. This would generally result in an improvement over existing conditions.

**Planning Commission Recommendation**

On a 7-0 vote, the commission recommended that the city council approve the proposal. Meeting minutes may be found on pages A51–A52.
Since Planning Commission Hearing

There have been no changes to the proposal or additional information received since the planning commission’s meeting on this item.

Staff Recommendation

1. Adopt resolution on pages A38–A46, which approves an expansion permit and variances for the construction of a new house at 2512 Bantas Point Lane.

2. Adopt the resolution on pages A47–A50, which approves a floodplain alteration permit for a new house at 2512 Bantas Point Lane.

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

Originator: Ashley Cauley, Senior Planner
Items concerning the construction of a new house at 2512 Bantas Point Lane:

1) Variances and expansion permits; and

2) Floodplain alteration permit.

Recommend the council adopt the resolution approving the request

Background

The subject property is 8,100 square feet in size. The existing one-story, 1,700 square foot house was constructed in 1924. As a result, the home has a number of non-conforming setbacks. Much like a majority of the Bantas Point Lane neighborhood, the subject property and existing home are entirely located at – or below – the 100-year floodplain. Other site improvements include: (1) decks on the northeast corner and on the rear of the home; and (2) small sheds on the north and east side of the home.

In September 1993, the city approved a lot combination and re-division for the subject property and the property to the north at 2515 Bantas Point Lane. At the time, three lots existed. Two of the lots were improved with single family homes and the center lot was vacant. The proposal divided the center lot for combination with the two adjoining properties.

In addition to the lot division and combination, the planning commission approved a series of variances to allow the construction of an attached garage on the subject property. The approval included “variances from the floodplain regulations pertaining to setback and minimum basement elevations.” However, the approval does not specify an approved floodplain setback or minimum low floor elevation. Staff assumes, based on the existing conditions, that the floodplain setback variance was from 20 feet to 0 feet. Additionally, staff assumes that the approved minimum low floor elevation was 930.9 feet, as this was the elevation included in the hold harmless agreement filed with the county at that time. (See pages A21-A34.)

Proposal

The applicant, on behalf of the property owners, is proposing to tear down the existing home in order to construct a new home. The new two-story home and attached two-car attached garage would have a footprint of 2,100 square feet. To ensure that the proposed home would not extend further into the shoreland setback than the existing home, the
proposed home would be shifted north on the property. Additional site improvements include an unenclosed porch and a deck off the rear of the home. (See pages A1-A16.)

By ordinance, homes and attached garages must be located two feet above the 100-year elevation. The applicant is proposing a maximum of 2,000 cubic feet of floodplain alteration to elevate the home above the floodplain. A portion of this floodplain fill would provide access from Bantas Point Lane, which is constructed below floodplain, to the proposed garage which will be above floodplain. Consistent with many of the homes which have been rebuilt in the Bantas Point neighborhood, floodplain storage is provided via void “crawl space” under the proposed home. This crawl space would be engineered to be open and have the ability to flood. City staff has reviewed the conceptual plans and is comfortable with this method.

The following chart outlines the existing, previously approved and proposed setbacks:

<table>
<thead>
<tr>
<th></th>
<th>Required by ordinance</th>
<th>Existing</th>
<th>Approved in 1993</th>
<th>Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Shoreland setback</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>house (east)</td>
<td>50 ft</td>
<td>-</td>
<td>20 ft</td>
<td>20 ft **</td>
</tr>
<tr>
<td>house (south)</td>
<td>50 ft</td>
<td>26.7</td>
<td>-</td>
<td>26.7 ft **</td>
</tr>
<tr>
<td>deck</td>
<td>35 ft</td>
<td>7.5 ft</td>
<td>-</td>
<td>7.5 *</td>
</tr>
<tr>
<td>walkway</td>
<td>50 ft</td>
<td>18 ft</td>
<td>-</td>
<td>25 ft *</td>
</tr>
<tr>
<td>decorative stone wall</td>
<td>50 ft</td>
<td>-</td>
<td>-</td>
<td>14.5 ft *</td>
</tr>
<tr>
<td><strong>Floodplain setback</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>house</td>
<td>20 ft</td>
<td>-</td>
<td>0 ft</td>
<td>0 ft **</td>
</tr>
<tr>
<td>garage</td>
<td>20 ft</td>
<td>-</td>
<td>0 ft</td>
<td>0 ft **</td>
</tr>
<tr>
<td>deck</td>
<td>10 ft</td>
<td>0 ft</td>
<td>-</td>
<td>0 ft *</td>
</tr>
<tr>
<td><strong>Low floor elevation</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>house</td>
<td>933.5 ft</td>
<td>930 ft</td>
<td>-</td>
<td>933.5 ft</td>
</tr>
<tr>
<td>garage</td>
<td>933.5 ft</td>
<td>-</td>
<td>930.9 ft</td>
<td>933.0 ft *</td>
</tr>
<tr>
<td>deck</td>
<td>933 ft</td>
<td>~930 ft</td>
<td>-</td>
<td>932.9 ft ***</td>
</tr>
<tr>
<td>driveway</td>
<td>932.5 ft</td>
<td>930 ft</td>
<td>-</td>
<td>930 ft **</td>
</tr>
<tr>
<td><strong>Front yard setback</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>house (north)</td>
<td>20 ft</td>
<td>5 ft</td>
<td>-</td>
<td>n/a</td>
</tr>
<tr>
<td>house (east)</td>
<td>20 ft</td>
<td>3.3 ft</td>
<td>-</td>
<td>1 ft *</td>
</tr>
<tr>
<td>portico (east)</td>
<td>20 ft</td>
<td>-</td>
<td>-</td>
<td>18 ft *</td>
</tr>
<tr>
<td>garage (east)</td>
<td>25 ft</td>
<td>35 ft</td>
<td>-</td>
<td>31 ft *</td>
</tr>
<tr>
<td><strong>Side yard setback</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>north</td>
<td>7 ft</td>
<td>-</td>
<td>6.5 ft</td>
<td>3.5 ft *</td>
</tr>
<tr>
<td>west</td>
<td>7 ft</td>
<td>7.2 ft</td>
<td>-</td>
<td>12 ft</td>
</tr>
<tr>
<td><strong>Impervious surface</strong></td>
<td>max. 30 %</td>
<td>51.15%</td>
<td>-</td>
<td>30%</td>
</tr>
</tbody>
</table>

* Variance required  
** Expansion permit required  
*** Required to meet ordinance by conditions of approval
Primary Issues

- Is the proposal reasonable?

The subject property has very little – if any – buildable area at present. Under current standards, the property is substandard and would be considered unbuildable. However, the property is currently improved with an existing single family home. As such, the property is entitled to continued reasonable – and developed – use of the property.

- Are the proposed setback variances and expansion permits reasonable?

Yes, despite the proposal requiring a number of variances and expansion permits. For purposes of this report, staff has consolidated the variances and expansion permit findings. Staff finds the proposed variances and expansion permit reasonable as:

PURPOSE AND INTENT OF THE ZONING ORDINANCE: The proposal, and resulting variance and expansion permit requests, would be in keeping with the city's zoning ordinance. The intent of setback requirements is to ensure that neighborhoods retain residential characteristics while protecting environmental and hydrologic functions of the city's natural features. Staff finds that while a number of variances and expansion permits are required, the proposed home would maintain but would not encroach further into the required shoreland setback. Further, the home would maintain setbacks similar to those within the Bantas Point neighborhood.

CONSISTENT WITH THE COMPREHENSIVE PLAN: The proposal would be consistent with the city's comprehensive plan. The intent of the city's comprehensive plan is to maintain, preserve, and support the character of existing neighborhoods. If approved, the setbacks would be similar to those of the existing home and of homes within the Bantas Point Lane neighborhood, which has had a long history of approved setback variances.

REASONABLENESS: Despite the number of approvals required, staff finds that the applicant is proposing a reasonable use of the property.

1. While the proposed home would expand vertically and horizontally within the existing setback, the proposed home would not encroach further into the required shoreland setback.

2. The proposed front and side yard setback variances are similar to those within the existing neighborhood.

3. The proposal would result in improved floodplain conditions. The existing home and garage are constructed at – and below – the 100-year floodplain elevation. In 1993, the city approved “variances to floodplain regulations” to allow the
construction of the attached garage. As currently proposed, the home would be 2-feet above and the garage would be 1.5 feet above the 100-year floodplain. Staff recognizes that the garage would not meet the city’s minimum 2-foot requirement. However, staff finds that the proposal would still result in a significant improvement over existing conditions.

4. The existing deck does not meet floodplain or shoreland setbacks but was constructed after the adoption of the city’s ordinances. Staff finds that the proposed deck would result in an improvement over existing conditions. While the proposed deck would maintain the existing deck’s setback, it would be smaller in size.

5. The proposal would decrease the amount of impervious surface on the property from 51 percent to 30 percent. This would bring the property into compliance with the city’s ordinance.

NEIGHBORHOOD CHARACTER: The proposal would not negatively impact the character of the surrounding neighborhood. The proposed setbacks would be similar to, or greater than, many of the existing setbacks within the Bantas Point neighborhood. This is recognized by the city’s long history of variance and expansion permit approvals within the neighborhood. In fact, the city has approved setback and floodplain variances on eight of the 11 properties.

CIRCUMSTANCE UNIQUE TO THE PROPERTY: The requested variances and expansion permit are a result of the property’s lot configuration and smaller lot size. A platted right-of-way extension was created by the BANTAS POINT subdivision, in 1914, to provide access to a former lot. Despite the former lot’s combination with another to create the subject property, the right-of-way extension is still used to provide access to the property. By ordinance, front yard setbacks are measured from the structure to the platted right-of-way. As such, the front yard setback variance for the proposed house are the direct result of this right-of-way extension. If the extension did not exist, the proposed home would meet the required setback.

Further, the lot is only 8,100 square feet in size. This is significantly less than the city’s minimum lot size. The property’s unique lot configuration, lot size, and existing floodplain conditions are not common to similarly zoned properties.

• Is the proposed floodplain alteration request reasonable?

Yes. Staff finds the proposed floodplain alteration reasonable as:

1. The proposed alteration would meet the general and specific standards for floodplain alteration as outlined in City Code §300.24, Subd 9.

2. The proposed alteration would not negatively impact adjacent properties or the hydrology of the floodplain.
3. The proposal would not result in a net fill of the floodplain.

4. The proposal would result in an increase of flood storage capacity on the property.

**Staff Recommendation**

Staff recommends the city council:

1) Adopt the resolution on pages A38–A46 which approves an expansion permit and variances for the construction of a new house at 2512 Bantas Point Lane.

2) Adopt the resolution on pages A47-A50 which approves a floodplain alteration permit for a new house at 2512 Bantas Point Lane.

Originator: Ashley Cauley, Senior Planner
Through: Loren Gordon, AICP, City Planner
Supporting Information

Project No. 93026.16a

Property 2512 Bantas Point Lane

Applicant JAL Architects, represented by Jean Andre LaTondresse

Surrounding Properties to the north and west are properties zoned R-1 and are improved with single family residential homes. Lake Minnetonka borders the property to the south and east.

Planning Guide Plan designation: Low density residential
Zoning: R-1

Small Lot By City Code §300.10, Subd. 7, properties that are defined as qualifying small lots are allowed lesser setbacks from property lines than “typical” properties. To be defined as a small lot, a property must be less than 15,000 square feet; have been a lot of record prior to February 12, 1966; and must be located in an area where the average lot size of residential lots is less than 15,000 square feet. The property is considered a small lot.

Bantas Point Neighborhood The Bantas Point neighborhood has had a long history of approved variances. While the city attorney has advised that this does not necessarily set precedent for future approvals, it does indicate that the city has acknowledged the unique circumstances and neighborhood character of the neighborhood since the late 1970s. The table below is intended to summarize the variances granted amongst the eleven properties that make up the Bantas Point neighborhood.

<table>
<thead>
<tr>
<th>Address</th>
<th>Side-yard setback</th>
<th>Front yard setback</th>
<th>Shoreland setback</th>
<th>Floodplain setback</th>
<th>Impervious surface</th>
</tr>
</thead>
<tbody>
<tr>
<td>2502</td>
<td>-</td>
<td>9 ft</td>
<td>10 ft</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2503</td>
<td>3.37 ft</td>
<td>4 ft</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2504</td>
<td>-</td>
<td>7 ft</td>
<td>22 ft</td>
<td>0 ft</td>
<td>40%</td>
</tr>
<tr>
<td>2508</td>
<td>3 ft</td>
<td>5 ft</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2511</td>
<td>3.9 ft</td>
<td>-</td>
<td>23 ft</td>
<td>1 ft</td>
<td>34%</td>
</tr>
<tr>
<td>2515</td>
<td>4 ft</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2513</td>
<td>0 &amp; 6 ft*</td>
<td>-</td>
<td>16 ft</td>
<td>0 ft</td>
<td>-</td>
</tr>
<tr>
<td>2513</td>
<td>3 &amp; 3 ft**</td>
<td>-</td>
<td>15 ft</td>
<td>0 ft</td>
<td>47%</td>
</tr>
<tr>
<td>2510</td>
<td>5 ft</td>
<td>15 ft</td>
<td>16 ft</td>
<td>0 ft</td>
<td>45%</td>
</tr>
</tbody>
</table>

* approved in 2005
** approved in 2006
Wetland

In 1993, the city approved wetland setback variances for the attached garage. At that time, the city applied the wetland ordinance to the properties which were adjacent to “finger” of Lake Minnetonka. The city no longer views this area as a wetland but as a DNR shoreland property.

McMansion Policy

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

By ordinance, floor area includes the sum of the fully exposed horizontal area of a building, as measured from exterior walls and including attached garage space and enclosed porch areas, and one-half of the horizontal area of any partially exposed level such as a walkout or lookout level.

As a result of the unenclosed porch, the property complies with the city's McMansion Policy. The largest FAR in the neighborhood is 0.52. The subject property has a FAR of 0.45. Included is a condition of approval that restricts the enclosing of the covered porch. If the porch was enclosed the property would no longer comply with the policy. (See page A17.)

Right of way

A portion of the city’s right-of-way (ROW) extends into the property. The extension was platted as part of the BANTAS POINT plat, in 1914, to provide access to what was, prior to 1993, the southerly lot of the subdivision. In 1993, this lot was combined with a portion of another to form the subject property. Despite the combination, the ROW extension has continued to serve as a gravel connection between the paved roadway of Bantas Point Lane and the subject property’s driveway. To date, the city has not opened the ROW extension for public access. (See page A20.)

The proposal includes the improvement of the right-of-way extension with pervious pavers. Staff has informed the applicant that additional work would be required prior to approval of the ROW improvement. Staff presented the following options:

1. The applicant could request a vacation of the undeveloped right-of-way. At this time, staff is unsure who is considered the underlying property owner. A vacation would “force” the county to determine ownership. Based on other similar
situations, staff anticipates that ownership would be shared by the two adjoining property owners at 2510 and 2512 Bantas Point Lane. Prior to improvement, staff would accept an authorization by both property owners.

2. Reconfigure access out of the extension via the north side of the property.

3. Improve the half, which is assumed to be owned by the subject property owners.

4. Leave as-is. The extension would remain gravel.

**Expansion permit vs. Variance**

By ordinance, staff could administratively approve a permit to build a new house within the same footprint and with the same mass and size as the existing house. Under the current proposal the applicant is proposing to remove the existing house in order to construct a new home. While a large portion of the home would be constructed within the existing home’s footprint, there are portions that: (1) fall outside of the footprint but maintain a similar setback; (2) encroach further into a required setback than the existing home; and (3) a second story that occupies space within the existing footprint that was not previously occupied.

Expansion permits are applied to the portions of the proposed home that either vertically or horizontally expand within an established non-conforming setback. Typically, approved variances become the “conforming” setbacks for the property. In an effort to “clean up” the previous approvals, staff is recommending expansion permits for the minimum low floor elevation of the garage and floodplain setbacks.

A variance is required for the portion of the proposed home that fall outside of the existing home’s footprint and as a result encroach further into a required setback.

**Burden of Proof**

By city code, an expansion permit for a non-conforming use may be granted, but is not mandate, when an applicant meets the burden of proving that:

1. The proposed expansion is reasonable use of the property considering things such as:
   - Functional and aesthetic justifications for the expansions;
   - Adequacy of off-street parking for the expansion;
• Absence of adverse off-street impacts from such things as traffic, noise, dust, odors and parking;
• Improvement to the appearance and stability of the property and neighborhood.

2. The circumstances justifying the expansion are unique to the property, and are not caused by the landowner, are not solely for the landowner’s convenience, and are not solely because of economic considerations; and

3. The expansion would not adversely affect or alter the essential character of the neighborhood.

Variance Standard

A variance may be granted from the requirements of the zoning ordinance when: (1) it is in harmony with the general purposes and intent of the ordinance; (2) it is consistent with the comprehensive plan; and (3) when an applicant establishes that there are practical difficulties in complying with the ordinance. Practical difficulties mean that the applicant proposes to use a property in a reasonable manner not permitted by the ordinance, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and, the variance if granted, would not alter the essential character of the locality. (City Code §300.07)

Floodplain alteration Standards

General Standards

In reviewing floodplain alteration, the city will consider whether the following general standards are met:

1) The magnitude of the alteration is appropriate relative to the size of the floodplain district;

2) The amount of increase in the buildable area before floodplain;

3) The alteration will not negatively impact the hydrology of the floodplain;

4) Floodplain mitigation area will not negatively impact adjacent properties;

5) The alteration will meet the intent of the city’s water resources management plan and subdivision and zoning ordinances;
6) The alteration will not adversely impact governmental facilities, utilities, services or existing or proposed public improvements; and

7) The alteration will not have an undue impact on the public health, safety or welfare.

**Specific standards**
Notwithstanding the general standards, no alteration permit will be granted unless the following specific standards are met:

1) Water storage must be maintained and provided in an amount at least equal to that filled unless acceptable hydrologic engineering data has been presented and approved by the city engineer including conditions that have changed such that the floodplain characteristics will be maintained even with the proposed floodplain fill;

2) Floodplain fill area must be located no more than 20 feet from any existing or proposed structure, except where required by the city engineer to achieve a required evacuation route;

3) Where floodplain alteration is required for construction of a driveway, a driveway must be no wider than 12 feet and must be located to minimize impact to the floodplain;

4) Floodplain alteration, including the creation of compensatory water storage, must not result in removal of regulated trees, adversely impact wetlands or existing wetland buffers, or be located within public easements. The city council may waive this condition if the proposed alteration would improve existing site conditions.

**Natural Resources**
Best management practices must be followed during the course of site preparation and construction activities. This would include installation and maintenance of a temporary rock driveway, erosion control, and tree protection fencing. As a condition of approval the applicant must submit a construction management plan detailing these management practices.

**Motion Options**
The city council has the following motion options:

1. Concur with staff's recommendations. In this case, a motion should be made recommending the city council approve the proposal based on the findings based on the staff-drafted resolutions.
2. Disagree with staff’s recommendations. In this case, a motion should be made recommending the city council deny the proposal. The motion should include findings for denial.

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

Pyramid of Discretion

**Neighborhood Comments**

The city sent notices to 32 area property owners and received one comment. See page A36.

**Deadline for Decision**

September 17, 2016
Location Map

Project: Jeannie Buckner
Applicant: JAL Architects LLC
Address: 2512 Bantas Point La
Project No. 93026.16a
Expansion Permit Discussion
2512 Bantas Point Lane
May 20, 2016

The proposed expansion is clearly a reasonable use of the property. The existing house was originally built in 1924 and has had a number of piecemeal additions. All of this limits its functionality. The house negatively impacts the overall character of the neighborhood, as it is substandard in relationship to other homes in the neighborhood that have been improved over the past 10 years.

The proposed improvements will not significantly affect parking. Two garage spaces will be provided as well as 4-5 surface spaces in the pervious paver driveway. The owner anticipates no increase in traffic, noise, dust, odors or parking, as the home will be transitioned from a vacation property to a primary residence.

These improvements are justified since the current condition of the property results from historical circumstances that far precede the current owner. While the proposed improvements will certainly make the property more serviceable and enjoyable for the owner, these improvements will also benefit neighborhood as a whole as they will increase the impression of value of the overall neighborhood. Substandard properties are a blot on any neighborhood they are found in.

A significant benefit to both the community and the entire watershed will be the storm water management features incorporated in the project. Currently all rain falling on impervious surfaces like the house slabs, and parking areas must be managed by surface runoff and absorption of surrounding soft surfaces. Existing extensive gravel parking surfaces will be replaced by more limited and defined previous paver drives. Impervious hardcover is reduced by nearly 30%. The house is designed to conduct water from gutters and downspouts into a gravel-filled storage cavity located under the house.

In order to respect the scale of the neighborhood, the home has been designed as a one and a half-story home with gables and dormers to keep the primary eave lines around the main floor level.

The proposed improvements will bring this property up to the standard of the other newly improved homes in the neighborhood and be yet another enhancement to the overall character of the neighborhood.
Variance Permit Discussion
2512 Bantas Point Lane
May 20, 2016

The proposed improvements are clearly a reasonable use of the property. The existing house was originally built in 1924 and has had a number of piecemeal additions.

The Property is located on Bantas Point. Properties on this street meet the Qualifying Small Lots provisions of the R-1 Zone with an average lot size of around 5000 s.f. The surface of the lot lies a half-a-foot to a foot and a half below flood elevation 931.5.

Current hardcover exceeds 50% of lot area. Existing pavements, accessory structures, and gravel drive and parking areas will be removed. New hard surfaces will be removed and a more limited pervious paver driveway and apron system will be installed in its place. This will reduce the hardcover to 36.4%, a nearly 30% improvement.

The Flood Plane ordinance requires the lowest floor of the principle structure to be a minimum of 24” above flood plane with the ability to flood below. The house is designed to meet this requirement with the exception that the garage floor be lowered 6 inches. This is necessary to keep the driveway from being too steep. Improvements will be designed to maintain or improve the current flood water storage capacity of the lot.

The proposed house is 4187 s.f. on two floors (2108 + 2079) which includes the attached garage. The house is well within height requirements and is designed with a one and one-half story style top blend with the mix of one and full two story homes in the neighborhood. The Floor Area Ratio is .52, which complies with ordinance.

Due to the small lot size it is not practicable to place even a small house on the property without setback variances. The front-yard setback and the side-yard setback to the northwest are compliant. The side yard setback to the northeast is 3.5 feet; over half of existing properties on Bantas Point currently have 3 foot side-yard setbacks. The house has been positioned to be the same as the existing house at both shoreline setbacks. The shoreline setback to the main lake is 26.7 feet; adjacent properties on this lakeshore have setbacks ranging from 15 foot to 22 feet. The setback to the channel shoreline is 21.7 feet; the adjacent property on the channel is set back 20 feet. The proposed deck stays behind a line connecting the current deck and the deck on the immediately adjacent property.

<table>
<thead>
<tr>
<th></th>
<th>ordinance</th>
<th>requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shoreline setback</td>
<td>35 ft</td>
<td>26.7 &amp; 21.7 ft.</td>
</tr>
<tr>
<td>Side-yard setback</td>
<td>7 ft</td>
<td>3.5 ft</td>
</tr>
</tbody>
</table>

The proposed improvements will bring this property up to the standard of the other newly improved homes in the neighborhood and be yet another enhancement to the overall character of the neighborhood.
Floodplain Alteration Discussion
2512 Bantas Point Lane
June 27, 2016

The Property is located on Bantas Point. Properties on this street meet the Qualifying Small Lots provisions of the R-1 Zone with an average lot size of around 5000 s.f. The surface of the lot lies a half-a-foot to a foot and a half below flood elevation 931.5.

The current house on the property was built in 1924 and has had a number of piecemeal additions. Both Expansion and Variance Applications have been filed for removal of the existing home and construction of a new home.

The Flood Plane ordinance requires the lowest floor of the principle structure to be a minimum of 24" above flood plane with the ability to flood the space below by means of flood vents. Improvements will be designed to maintain or improve the current flood water storage capacity of the lot.

The proposed house is 4187 s.f on two floors which includes the attached garage. The house is designed to provide flood water storage capacity below both the house and garage. The driveway design incorporates pervious pavers providing additional storage.

Proposed fill is for the purpose of raising an existing lawn area that collects water and to provide minimal slope away from new foundation. Also included is fill alongside the new driveway, garage, and apron area. See discussion of restorations of these areas below.

Site Elevation Data
Lake Minnetonka floodplain elevation: 931.5 feet
Garage floor elevation: 931.3 feet
Typical grade at house: 930.5 feet

Site Flood Water Capacity Increase Due to Project*
Estimated under-house and pervious paver storage capacity: 1950 – 2100 cu. ft.

Site Flood Water Capacity Decrease Due to Project
Proposed fill (Estim. ave. 6" depth): 2000 s.f. Flood water capacity: 1000 cu. ft.

Net Increase in Flood Water Capacity: 950 – 1100 cu. ft.

* This does not include floodwater displacement of existing house and garage which will be removed and which are estimated to displace between 600 cu. ft. & 1800 cu. ft. depending whether flooding of the existing crawl space is assumed.

Additional information on following page.

A4

Buckner
2512 Bantas Point Lane
#93026.16a
<table>
<thead>
<tr>
<th><strong>Application Fee</strong></th>
<th>Check for $800.00 included with this submittal.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal Description</strong></td>
<td>On survey. included with this submittal.</td>
</tr>
<tr>
<td><strong>Survey</strong></td>
<td>Included with this submittal.</td>
</tr>
<tr>
<td><strong>Tree Plan</strong></td>
<td>On Existing and Resulting Conditions Plans included with this submittal.</td>
</tr>
<tr>
<td><strong>Grading &amp; Drainage Plan</strong></td>
<td>On Survey and Existing and Resulting Conditions Plans included with this submittal.</td>
</tr>
<tr>
<td><strong>Erosion Control Plan</strong></td>
<td>On Survey included with this submittal.</td>
</tr>
<tr>
<td><strong>Revegetation Plan</strong></td>
<td>Proposed fill areas are lawn areas with perennial plantings at various foundation and drive locations. These would be restored to a similar condition with sod and/or seeding of lawn areas and with plantings.</td>
</tr>
</tbody>
</table>
CERTIFICATE OF SURVEY FOR
JEANNIE BUCKNER
OF LOTS 7 & 8, BANTAS POINT
HENNEPIN COUNTY, MINNESOTA

LAKE
MINNETONKA
GRAYS BAY

LEGAL DESCRIPTION OF PREMISES:
Par 1: Tract B, Registered Land Survey No. 474.
Par 2: Lot 8, Banta’s Point
Par 3: Lot 7, except that part thereof which lies Northerly of the following described line:
Comencing at the most Northerly corner of said Lot 7; thence Southerly along the West line
of said Lot 7 a distance of 20 feet to the point of beginning of the line being described; thence
Southeasterly deflected left 54 degrees 16 minutes to the Southerly line of the Northerly 27.00
feet of said Lot 7; thence Easterly along said Southerly line to the shore line of Lake
Minnetonka, and said line there ending Banta’s Point.

:: denotes iron marker found
(908.3) :: denotes existing spot elevation, mean sea level datum
---917--- :: denotes existing contour line, mean sea level datum

Bearings shown are based upon an assumed datum.

This survey intends to show the boundaries of the described property, an existing house, two sheds, topography, spot elevations, and the location of all visible “hardcover” therein. It does not purport to show any other improvements or encroachments.

GROENBERG AND ASSOCIATES, INC.
CONSULTING ENGINEERS, LAND SURVEYORS & SITE PLANNERS
444 NORTH WILLOW DRIVE
LOUISVILLE, KENTUCKY 40207
502-472-4441

Mark S. Groenber, Minnesota License Number 12755

I hereby certify that this survey, plan, or report
was prepared by me, or under my direct supervision,
and that I am a duly Licensed Land Surveyor under
the laws of the State of Minnesota.

SCALE

1" = 10'

6-25-13

JOB NO.
13-190

Buckner 2512 Bantas Point Lane
90320.18a
CERTIFICATE OF SURVEY FOR
JEANNIE BUCKNER
OF LOTS 7 & 8, BANTAS POINT
HENNEPIN COUNTY, MINNESOTA

PROPOSED HARD COVER CALCULATIONS:

- Lot area = 8056 sf
- House = 2068 sf
- Pervious paver driveway = 744 sf = 0 sf
- Pervious paver walk = 84 sf = 0 sf
- Portico = 22 sf
- Covered porch = 247 sf
- Deck = 576 sf
- Total hardcover = 2933 sf
- 2933 / 8056 x 100 = 36.41%

LEGAL DESCRIPTION OF PREMISES:

Par 1: Tract B, Registered Land Survey No. 474.

Par 2: Lot 8, Banta's Point

Par 3: Lot 7, except that part thereof which lies Northerly of the following described line: Commencing at the most Northerly corner of said Lot 7; thence Southerly along the West line of said Lot 7 a distance of 20 feet to the point of beginning of the line being described; thence Southeasterly deflecting left 54 degrees 16 minutes to the Southerly line of the Northerly 27.00 feet of said Lot 7; thence Easterly along said Southerly line to the shore line of Lake Minnetonka, and said line there ending Banta's Point.

- (908.3): denotes existing spot elevation, mean sea level datum
- (917.2): denotes proposed spot elevation, mean sea level datum
- (933.2): denotes proposed contour line, mean sea level datum
- (933.5): denotes proposed contour line, mean sea level datum

Bearings shown are based upon an assumed datum.

This survey intends to show the boundaries of the above described property, the location of three existing buildings, to be removed, topography, spot elevations, and the proposed location of a proposed house, driveway and grades thereon. It does not purport to show any other improvements or encroachments.

Gronberg and Associates, Inc.
Consulting Engineers, Land Surveyors & Site Planners
450 North Willow Drive
Maple Lake, MN 55356
651-473-8141

Mark S. Gronberg, Minnesota License Number 12755

BEAR

DATE
5-19-16

JOB NO.
16-215

1/10" Scale
1/10" Scale

A9

Buckner
2512 Bantas Point Lane
903208.18a
CERTIFICATE OF SURVEY FOR
JEANNE BUCKNER
OF LOTS 7 & 8, BANTAS POINT
HENNEPIN COUNTY, MINNESOTA

PROPOSED HARD COVER CALCULATIONS:
Lot area = 8056 sf
House = 2068 sf
Pervious paver driveway = 744 sf
Pervious paver walk = 84 sf
Portico = 22 sf
Covered porch = 247 sf
Deck = 576 sf
Total hardcover = 2933 sf
2933 / 8056 x 100 = 36.41%

LEGAL DESCRIPTION OF PREMISES:
Par 1: Tract B, Registered Land Survey No. 474,
Par 2: Lot B, Banta’s Point
Par 3: Lot 7, except that part thereof which lies NORTHERLY of the following described line: Commencing at the most NORTHERLY corner of said Lot 7; thence SOUTHERLY along the West line of said Lot 7 a distance of 20 feet to the point of beginning of the line being described; thence Southeasterly deflection left 54 degrees 16 minutes to the Southerly line of the NORTHERLY 27.00 feet of said Lot 7; thence EASTERLY along said Southerly line to the shore line of Lake Minnetonka, and said line there ending Banta’s Point.

PROPOSED ELEVATIONS: (per architect, verify)
1) Garage = 033.0
2) Main floor = 033.3

LEGEND:
• denotes existing iron marker found
(908.3) denotes existing spot elevation, mean sea level datum
001.3 denotes proposed spot elevation, mean sea level datum
917.1 denotes existing contour line, mean sea level datum
813.0 denotes proposed contour line, mean sea level datum

Bearings shown are based upon an assumed datum.

This survey intends to show the boundaries of the above described property, the location of three existing buildings, to be removed, topography, spot elevations, and the proposed location of a proposed house, driveway and grades thereon. It does not purport to show any other improvements or encroachments.

Gronberg and Associates, Inc.
Consulting Engineers, Land Surveyors, & Site Planners
450 North Yellowwood Drive
Honey Lake, VA 20000
540-473-4141

Mark S. Gronberg, Minnesota License Number 12755

16-215

A10

Buckner
2512 Bantas Point Lane
903205-16a
EXPANSION AND VARIANCE APPLICATION
FOR
JEANNIE BUCKNER
2512 BANTAS POINT LN.
MINNETONKA, MN 55391

MAY 20, 2016

FLOOR/LOT AREA SUMMARY

UPPER LEVEL
FLOOR AREA: 2108 S.F.

MAIN LEVEL
FLOOR AREA: 2079 S.F.

COMBINED
FLOOR AREA: 4187 S.F.

LOT AREA: 8056 S.F.

FLOOR AREA RATIO: .52

DECK AREA: 450 S.F.

UNDER-HOME AREA: 2096 S.F.

PERVIOUS PAVER AREA: 1110 S.F.

STORMWATER MANAGEMENT
LOT AREA: 8056 S.F.

REQUIRED STORAGE CAPACITY
FOR 1" RAINFALL: 671.0 CU. FT.

CAPACITY PROVIDED BELOW
HOUSE & PERVIOUS PAVER AREAS
(15" GRAVEL - .24 TO .28 POROSITY):
2096 + 1110 S.F x 1.25' x .24 TO .28
= 961 TO 1122 CU. FT.
EXPANSION AND VARIANCE APPLICATION 
FOR 
JEANNIE BUCKNER 
2512 BANTAS POINT LN. 
MINNETONKA, MN 55391 

APPROACH VIEW FROM NORTHWEST

LAKE VIEW FROM SOUTHWEST

MATERIALS

STONE VENEER

BOARD ON BOARD SIDING 
AT LOWER LEVEL

CEDAR SHAKES IN GABLES 
& DORMERS

WOOD /ENGINEERED WOOD 
TRIM

ALUMINUM CLAD WINDOWS
EXPANSION AND VARIANCE APPLICATION
FOR
JEANNIE BUCKNER
2512 BANTAS POINT LN.
MINNETONKA, MN 55391

LAKE VIEW FROM SOUTHEAST

CHANNEL VIEW FROM NORTHEAST
Previous Approvals
Planning Commission and Members of the City Council

Ann Perry, Director of Planning
Carolyn Braun, Project Planner

September 23, 1993

Items pertaining to Stephen Wachs for the properties located at 2512, 2514, and 2515 Bantas Point Lane in Section 8.

A. Variances to construct an attached garage include the following:
   - side yard setback variance from 7' to 6';
   - shoreland setback variance from 50' to 28';
   - wetlands setback variance from 35' to 28';
   - variance from the floodplain regulations pertaining to setback and minimum basement elevation.

B. 93026.8 Lot Combination/Redivision.

Stephen Wachs

2512, 2514, 2515 Bantas Point Lane, generally located south of McDinty Road West on the northern edge of Gray's Bay in the NE 1/4 of Section 8.

On September 2, 1993, the Planning Commission continued the lot combination/redivision portion of this request due to the uncertainty about the location of the 931' floodplain elevation. At this time, the applicant is requesting a lot combination/redivision and variances to facilitate garage construction.

Currently, three lots exist with two containing existing houses and a center lot which is vacant. The applicant owns Lots 7 and 8 and is proposing to divide Lot 7 (center lot) and combine the "halves" with the respective, adjoining properties. This action will ameliorate a current condition of very small lot sizes providing for larger lots for both parcels containing homes. Previously, a cottage existed on the center parcel. The applicant demolished the cottage to facilitate the lot combination/redivision and to allow for the placement of a garage on the newly created Parcel B.

Eight variances are required for approval of the lot combination/redivision. Staff is recommending approval of these variances due to the small lot size and the fact that this action will improve upon an existing condition.

The second request is for variances to construct a 24' x 26' attached garage onto the existing house on Parcel B. The rear wall of the proposed garage will be aligned with the eastern-most wall of the existing home. The northwesterly corner of the garage will be at the 930.9' elevation and will lie within the floodplain. Construction of an attached garage will minimally decrease the amount of water storage in the area. Approval of this request will require a variance from the floodplain regulations pertaining to setbacks and minimum basement elevations. An alternative placement of a detached two-car garage exists on the northwestern edge of Parcel B but would result in greater water storage loss in addition to variances. Due to the minimal storage loss from construction of the proposed attached garage, staff supports the variance from the floodplain ordinance requirements. However, since the applicant is constructing a garage within the floodplain, staff is recommending that the applicant file a waiver of all claims against the City.
In addition to the variance from the floodplain regulations, construction of the garage requires three setback variances. Staff supports the variances based on City policy that considers a two-car garage on single family residential property to be a reasonable use of that property. Further, construction of an attached garage is consistent with neighborhood characteristics.

Staff supports both requests and recommends approval with the variances and stipulations as noted.

On June 26, 1986, the Board of Zoning Adjustment granted variances to reduce floodplain setback from 35’ to 5’, front yard setback from 35’ to 22’ to enclose a patio; and reduce floodplain setback from 35’ to 9’ and increase hard surface coverage within 150’ of floodplain from 15% to 30% to allow a 12’ x 20’ attached garage at 2502 Bantas Point Lane.

On June 22, 1989, the Board of Zoning Adjustment approved a request for a north side yard setback variance from 7’ to 4’ to replace a single story portion of the house with a two-story addition at 2515 Bantas Point Lane (Parcel A of the subject property).

On September 3, 1992, the Planning Commission granted variances to reduce west side yard setback from 7’ to 3’; reduce front yard setback from 20’ to 5’, and variance to increase hard surface coverage from 30% to 34% to construct a two car garage and house addition at 2508 Bantas Point Lane.

On March 4, 1993, the Planning Commission granted variances for a westerly side yard setback from 7’ to 3’ 9", shoreland setback from 50’ to 23’, floodplain setback from 35’ to 8’ for a principal structure, and reduce floodplain setback from 25’ to 1’ for a patio at 2511 Bantas Point Lane.

SITE CHARACTERISTICS:
The .38 acre lot (16,600 square feet) is located on the end of Bantas Point on Gray’s Bay. The subject properties are bounded by the Gray’s Bay shoreline to the south and east, and single family homes to the north and west.

The subject property is essentially flat, with elevations ranging from 929.4’ on the shoreline to 931.2’ on the west property line near Bantas Point Lane. The elevations of a portion of the lot which is to be divided (Lot 7) fall below the City designated floodplain elevation of 931.0’.

ACCESS:
Access for both properties is from Bantas Point Lane and will not change due to the lot combination/redvision.

GRADING/DRAINAGE:
Minor grading is expected to occur for garage construction on Parcel B.

UTILITIES:
Utilities are provided from Bantas Point Lane.

EASEMENTS:
No easements are required for this request.

CURRENT ZONING:
R-1, Low Density Residential

GUIDE PLAN:
Low Density Residential
COMPLIANCE WITH THE ORDINANCE: R-1

LOT COMBINATION/RDIVISION PROPOSED BY THE APPLICANT

<table>
<thead>
<tr>
<th>Lot Area (Sq. Ft.)</th>
<th>Lot Width at Right-of-way</th>
<th>Lot Width at Setback</th>
<th>Lot Depth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ordinance: 22,000</td>
<td>80'</td>
<td>110'</td>
<td>125'</td>
</tr>
<tr>
<td>Parcel A 8,000 V 1</td>
<td>79' V 3</td>
<td>84' V 5</td>
<td>95' V 7</td>
</tr>
<tr>
<td>Parcel B 8,500 V 2</td>
<td>42.5' V 4</td>
<td>88' V 6</td>
<td>95' V 8</td>
</tr>
</tbody>
</table>

Variance:

V 1 8100 square feet of lot area when 22,000 square feet is required for Parcel A.
V 2 8500 square feet of lot area when 22,000 square feet is required for Parcel B.
V 3 79' lot width at right of way when 80' is required for Parcel A.
V 4 42.5' lot width at right of way when 80' is required for Parcel B.
V 5 84' lot width at setback when 110' is required for Parcel A.
V 6 88' lot width at setback when 110' is required for Parcel B.
V 7 95' lot depth when 125' is required for Parcel A.
V 8 95' lot depth when 125' is required for Parcel B.

STAFF COMMENT/FINDINGS: Although the lot combination/rdivision requires a number of variances, this request improves the current status of both Parcels A and B and will increase the amount of open space in the surrounding area. Additionally, construction of an attached garage minimizes intrusion into the floodplain. Staff recommends approval of the garage variances based on the following findings:

1. Lot size is small.
2. Garage construction is reasonable use of the property.
3. The proposed structure is consistent with neighborhood characteristics.

STAFF RECOMMENDATION: A. Staff recommends approval of the following variances to construct an attached garage:

1. Variance to reduce side yard setback from 7' to 6';
2. Variance to reduce shoreline setback from 50' to 28';
3. Variance to reduce wetlands setback from 35' to 28';
4. Variance from the floodplain regulations pertaining to setback and minimum basement elevation.

subject to the following stipulations:
Variance and 93026.8 Lot Combination/Redivision
Steven Wachs
September 23, 1993

1. The applicant shall file in the chain of title for the property, a waiver of all claims against the City in a form acceptable to the City Attorney.

2. The applicant obtain Minnehaha Creek Watershed District approval prior to the issuance of a building permit.

B. Staff recommends approval of 93026.8 Lot Combination/Redivision without stipulations and with the following variances:

1. 8100 square feet of lot area when 22,000 square feet is required for Parcel A.

2. 8500 square feet of lot area when 22,000 square feet is required for Parcel B.

3. 79’ lot width at right of way when 80’ is required for Parcel A.

4. 42.5’ lot width at right of way when 80’ is required for Parcel B.

5. 84’ lot width at setback when 110’ is required for Parcel A.

6. 88’ lot width at setback when 110’ is required for Parcel B.

7. 95’ lot depth when 125’ is required for Parcel A.

8. 95’ lot depth when 125’ is required for Parcel B.
CURRENT ZONING: R-1, Low Density Residential
GUIDE PLAN: Low Density Residential
COMPLIANCE WITH THE ORDINANCE: R-1

**PROPOSED BY THE APPLICANT**

<table>
<thead>
<tr>
<th>Lot Area (Sq. Ft.)</th>
<th>Lot Width (Right-of-way)</th>
<th>Lot Width at Setback</th>
<th>Lot Depth</th>
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<tbody>
<tr>
<td>Ordinance:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22,000</td>
<td>80'</td>
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<td>125'</td>
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<tr>
<td>Parcel A</td>
<td>8,000 V 1</td>
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<td>84' V 5</td>
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<tr>
<td>Parcel B</td>
<td>8,500 V 2</td>
<td>42.5' V 4</td>
<td>88' V 6</td>
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</tbody>
</table>

Variances:

V 1 8100 square feet of lot area when 22,000 square feet is required for Parcel A.
V 2 8500 square feet of lot area when 22,000 square feet is required for Parcel B.
V 3 79' lot width at right of way when 80' is required for Parcel A.
V 4 42.5' lot width at right of way when 80' is required for Parcel B.
V 5 84' lot width at setback when 110' is required for Parcel A.
V 6 88' lot width at setback when 110' is required for Parcel B.
V 7 95' lot depth when 125' is required for Parcel A.
V 8 95' lot depth when 125' is required for Parcel B.

**RECOMMENDED BY STAFF**

<table>
<thead>
<tr>
<th>Lot Area (Sq. Ft.)</th>
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<td></td>
<td></td>
</tr>
<tr>
<td>22,000</td>
<td>80'</td>
<td>110'</td>
<td>125'</td>
</tr>
<tr>
<td>Parcel A</td>
<td>7,860 V 1</td>
<td>79' V 3</td>
<td>81' V 5</td>
</tr>
<tr>
<td>Parcel B</td>
<td>8,740 V 2</td>
<td>42.5' V 4</td>
<td>91' V 6</td>
</tr>
</tbody>
</table>

Variances:

V 1 7860 square feet of lot area when 22,000 square feet is required for Parcel A.
V 2 8740 square feet of lot area when 22,000 square feet is required for Parcel B.
V 3 79' lot width at right of way when 80' is required for Parcel A.
V 4 42.5' lot width at right of way when 80' is required for Parcel B.
V 5 81' lot width at setback when 110' is required for Parcel A.
V 6 91' lot width at setback when 110' is required for Parcel B.
V 7 95' lot depth when 125' is required for Parcel A.
V 8 95' lot depth when 125' is required for Parcel B.
Council Minutes  

CITY OF MINNETONKA  
October 11, 1993

CONSENT AGENDA (CONTINUED)

12. ITEMS REQUIRING 5 VOTES:

B. RESOLUTION GRANTING PRELIMINARY AND FINAL APPROVAL OF 93026.8 LOT COMBINATION/REDIVISION WITH VARIANCES FOR STEPHEN WACHS FOR THE PROPERTIES LOCATED AT 2512, 2514, AND 2515 BANTA’S POINT LANE.

Hanus moved, Hise seconded a motion that the Resolution No. 93-9610 granting preliminary and final approval of 93026.8 Lot Combination/Redivision with variances for Stephen Wachs for the properties located at 2512, 2514, and 2515 Banta’s Point Lane is hereby adopted with the following variances:

1. 7860 square feet of lot area when 22,000 square feet is required for Parcel A.

2. 8740 square feet of lot area when 22,000 square feet is required for Parcel B.

3. 79’ lot width at right of way when 80’ is required for Parcel A.

4. 42.5’ lot width at right of way when 80’ is required for Parcel B.

5. 81’ lot width at setback when 110’ is required for Parcel A.

6. 91’ lot width at setback when 110’ is required for Parcel B.

7. 95’ lot depth when 125’ is required for Parcel A.

8. 95’ lot depth when 125’ is required for Parcel B.

Hanus, Burke, Allendorf, Anderson, Schneider, Hise, and Bergstedt voted "aye". Motion carried.

PUBLIC HEARING - 7:00 P.M.

13. PUBLIC HEARING TO CONSIDER THE APPROVAL OF A MINNESOTA CURRENCY EXCHANGE LICENSE FOR ACTION CHECK CASHING, 11503 EXCELSIOR BOULEVARD.

Mayor Bergstedt opened the public hearing. No one spoke in favor or in opposition. Mayor Bergstedt closed the public hearing. Allendorf moved, Burke seconded a motion that the City Council hereby approves the issuance of a renewed
WAIVER, RELEASE AND INDEMNIFICATION

This agreement is entered into this 2nd day of November, 1993, by and between STEPHEN H. WACHS, single, of Hennepin County, State of Minnesota, Fee Owner (hereinafter referred to as "Wachs"), with the attached written consent of Heigle Mortgage and Financial Corporation, Edina, MN., Mortgagee (hereinafter referred to as "Heigle"), for the benefit of THE CITY OF MINNETONKA, a Minnesota municipal entity (hereinafter referred to as "Minnetonka").

WHEREAS, Wachs is the owner of that certain property located in Hennepin County, Minnesota, and legally described on Exhibit "A" attached hereto (hereinafter referred to as the "Subject Property"); subject to the Mortgage in favor of Heigle; and

WHEREAS, on October 11, 1993, the City Council of the City of Minnetonka approved Application No. 93026.8, a Lot Combination/Redivision with variances for subdivision of the Subject Property.

WHEREAS, this approval was subject to certain stipulations and restrictions.

WHEREAS, Wachs is proposing to construct a 24' x 26' attached garage onto the existing house on the Subject Property, as shown on Exhibit "B", attached hereto and made a part hereof, the northwesterly corner of the garage will be at the 930.9' elevation and will lie within the floodplain. Construction of an attached garage will minimally decrease the amount of water storage in the area.

WHEREAS, Minnetonka has agreed to allow a portion of the proposed garage to be located within the floodplain as proposed by Wachs providing that Wachs files a waiver of all claims against the City in the chain of title for the Subject Property.

WHEREAS, Wachs seeks now to acknowledge acceptance of those stipulations and restrictions.

NOW THEREFORE, in consideration of Minnetonka's agreement to allow a portion of the proposed garage to be located within the floodplain on the Subject Property, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, Wachs agrees as follows:

1. Wachs hereby waives any and all claims he may have against the City of Minnetonka, its officials, employees and agents (the "Released Parties"), and indemnify and hold harmless the Released Parties from damage, injury or loss.
which he may sustain, resulting from flooding that occurs due to a portion of the garage being located in the floodplain.

2. **NOTICE IS HEREBY GIVEN** that the City is not responsible for any damage to the garage or home that results from flooding due to the location of a portion of the garage in the floodplain.

3. This agreement shall be deemed a covenant running with the Subject Property described on Exhibit "A" and shall be binding upon the heirs, successors and assigns of said properties during the period of time any heirs, successors or assigns shall own any of said properties.

4. This agreement and all questions arising thereunder shall be governed by the laws of the State of Minnesota.

IN WITNESS WHEREOF, the undersigned parties have executed this agreement the date first above written.

____________________________
Stephen H. Wachs

____________________________
By: Timothy M. Bergstedt

Its: Mayor

____________________________
By: David M. Childs

Its: City Manager
STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) ss.

Acknowledged before me this 14th day of November, 1993 by Stephen H. Wachs, single, as his free act and deed.

KATHRYNE A. KINNANE  
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
My Commission Expires June 10, 1999

Notary Public

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) ss.

Acknowledged before me this 9th day of November, 1993 by Timothy M. Bergstedt, the Mayor, and David M. Childs, the City Manager of the City of Minnetonka, on behalf of the City of Minnetonka.

MICHAEL L. JOHNSON  
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
My Commission Expires May 23, 1997

Notary Public

This instrument was drafted by:

CITY OF MINNETONKA  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345-1597
CONSENT OF MORTGAGE

CONSENT TO WAIVER, RELEASE AND INDEMNIFICATION AGREEMENT

THIS CONSENT is made by Heigle Mortgage and Financial Corporation, Edina, MN., a Minnesota corporation (hereinafter referred to as "Mortgagee"),

WITNESSETH:

That Mortgagee is now the holder and owner of a mortgage lien dated February 22, 1993, filed March 5, 1993 as Document No. 2351730 to secure $94,775.00.

That Mortgagee hereby joins in and consents to all of the terms, provisions, covenants, conditions and restrictions contained in the within Waiver, Release and Indemnification Agreement between Stephen H. Wachs, single, and the City of Minnetonka, and agrees that its interest in the property covered by and pursuant to said mortgage is subject to said Waiver, Release and Indemnification Agreement and to all of the terms, provisions, covenants and restrictions therein contained.

IN TESTIMONY WHEREOF, the undersigned has caused this instrument to be executed and delivered this 2nd day of November, 1993.

Heigle Mortgage and Financial Corporation, Edina, MN.

By:  [Signature]

Its:  Assistant Vice President

CORPORATE SEAL

NO SEAL

By:  [Signature]

Its:  [Signature]
STATE OF MINNESOTA  
)  
COUNTY OF HENNEPIN  )  

The foregoing instrument was acknowledged before me this 2nd day of November, 1993 by Marcia Johnson and xxxxxxxxxxxxxxxxxxxxxxxxxxxx, the Assistant Vice President and the xxxxxxxxxxxxxxxxxxxxxxxxxxxx of Heigle Mortgage and Financial Corporation, Edina, MN., a Minnesota corporation, on behalf of said corporation.

[Signature]
Notary Public

This instrument was drafted by:

CITY OF MINNETONKA  
14600 Minnetonka Boulevard  
Minnetonka, MN  55345-1597

P.P. 930263 Lot Combination/Redivision  
Torrens Title No. 794515  Govt. Center as to PID No. 08-117-22-13-0008  
Torrens Title No. __________ Govt. Center as to PID No. 08-117-22-13-0053  
(M2935 OWNER as of 4-20-93)  Current to 8-13-93

C.C. 10-11-93
Exhibit "A"

"Subject Property"

Tract B, Registered Land Survey No. 474; Lot 8, BANTA'S POINT and accretions thereto, and that part of Lot 7, BANTA'S POINT, and accretions thereto which lies southerly of the following described line:

Commencing at the most Northerly corner of said Lot 7; thence southerly along the west line of said Lot 7 a distance of 20 feet to the point of beginning of the line being described; thence southeasterly deflecting left 54 degrees 16 minutes to the southerly line of the northerly 27.00 feet of said Lot 7; thence easterly along said southerly line to the shoreline of Lake Minnetonka, and said line there ending.
CERTIFICATE OF SURVEY FOR

STEPHEN WACHS

OF LOTS 6, 7, & 8, BANTAS POINT

HENNEPIN COUNTY, MINNESOTA

Existing Legal Descriptions

Lot 5, BANTA'S POINT
BANTA'S POINT
BANTA'S POINT and Tract B, Registered Land Survey
no. 474

Proposed Legal Descriptions

A. Lot 5, BANTA'S POINT and accretions thereto, and that part of Lot 7, BANTA'S POINT, and accretions thereto, which lies northerly of the following described line: Commencing at the most northerly corner of said Lot 7, thence southerly along the west line of said Lot 7 a distance of 20 feet to the point of beginning of the line being described; thence southeasterly deflecting left 54 degrees 16 minutes to the southerly line of the northerly 27.00 feet of said Lot 7; thence easterly along said southerly line to the shore line of Lake Minnetonka, and said line there ending.

B. Tract B, Registered Land Survey No. 474; Lot 8, BANTA'S POINT and accretions thereto, and that part of Lot 7, BANTA'S POINT, and accretions thereto which lies southerly of the following described line: Commencing at the most northerly corner of said Lot 7; thence southerly along the west line of said Lot 7 a distance of 20 feet to the point of beginning of the line being described; thence southeasterly deflecting left 54 degrees 16 minutes to the southerly line of the northerly 27.00 feet of said Lot 7; thence easterly along said southerly line to the shore line of Lake Minnetonka, and said line there ending.

This survey intends to show the location of all existing buildings in relation to the boundaries of the above described property. It does not purport to show any other improvements or encroachments.

I hereby certify that this survey was prepared by me or under my direct supervision, and that I am a duly registered Civil Engineer and Land Surveyor under the laws of the State of Minnesota.

Mark S. Gronberg
Minnesota License Number 12755

Coffin & Gronberg, Inc.

EXHIBIT "B"

Buckner
2512 Bantas Point Lane
#93026.16a
Neighborhood feedback
Hi Ashley:

My wife Eileen and I live at 2492 Bantas Point Rd, directly across the canal from the Buckner property at the above address. We have reviewed the proposal on-line, and I am responding on behalf of both of us.

When we evaluated the proposal, the items that were top of mind for us were: 1) does the project represent an aesthetic improvement over what exists today on that property; 2) how does the proposed plan fit within the existing neighborhood, and 3) will the project result in additional traffic or other disturbances.

In summary, we think that the proposed plan is beautiful and we enthusiastically support the project.

Regarding #1 above, there is an existing structure on the property and the new plan represents a major improvement. We appreciate that the design was done with an eye to minimize the footprint and height of the home. The design really looks beautiful. Regarding #2 above, the project will clearly be an upgrade to the neighborhood. And finally regarding #3 above we see no additional traffic resulting from this as the home is already occupied. Further, Jeannie and family have been good and friendly neighbors and we expect the project will be completed in a way that is respectful to all surrounding neighbors.

Two thumbs up from us. Thanks for the opportunity to comment.

Tim & Eileen Baker  
2492 Bantas Point Road  
Wayzata, MN 55391
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Resolution No. 2016-

Resolution approving an expansion permit and variances for the construction of a new home at 2512 Bantas Point Lane

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

Section 1. Background.

1.01 JAL Architects, on behalf of the property owners, are proposing to tear down the existing, one-story home in order to construct a new, two-story home. (Project No. 93026.16a).

1.02 The property is located at 2512 Bantas Point Lane. It is legally described as:

Parcel 1: Tract B, Registered Land Survey No. 474

Parcel 2: Lot 8, Banta’s Point

Parcel 3: Lot 7, except that part thereof which lies Northerly of the following described line: Commencing at the most Northerly corner of said Lot 7: thence Southerly along the West line of said Lot 7 a distance of 20 feet to the point of beginning of the line being described; thence Southeasterly deflecting left 54 degrees 16 minutes to the Southerly line of the Northerly 27.00 feet of said Lot 7: thence Easterly along said Southerly line to the shore line of Lake Minnetonka, and said line there ending Banta’s Point.

1.03 The existing house was constructed in 1924, prior to the adoption of the city’s first zoning ordinance. As such, the house has non-conforming setbacks.

1.04 In 1993, the city approved a lot division, lot combination and several setback and floodplain variances to allow the construction of an attached garage on the property.
The applicant is proposing to construct a new home on the property. The existing non-conforming, previously approved, and proposed setbacks are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Required by ordinance</th>
<th>Existing</th>
<th>Approved in 1993</th>
<th>Proposal</th>
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<tr>
<td>Shoreland setback</td>
<td></td>
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<tr>
<td>house (east)</td>
<td>50 ft</td>
<td>-</td>
<td>20 ft</td>
<td>20 ft **</td>
</tr>
<tr>
<td>house (south)</td>
<td>50 ft</td>
<td>26.7</td>
<td>-</td>
<td>26.7 ft **</td>
</tr>
<tr>
<td>deck</td>
<td>35 ft</td>
<td>7.5 ft</td>
<td>-</td>
<td>7.5 *</td>
</tr>
<tr>
<td>walkway</td>
<td>50 ft</td>
<td>18 ft</td>
<td>-</td>
<td>25 ft *</td>
</tr>
<tr>
<td>decorative stone wall</td>
<td>50 ft</td>
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<td>-</td>
<td>14.5 ft *</td>
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<tr>
<td>Floodplain setback</td>
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<tr>
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<td>0 ft</td>
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<td>0 ft *</td>
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<tr>
<td>Low floor elevation</td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>house</td>
<td>933.5 ft</td>
<td>930 ft</td>
<td>-</td>
<td>933.5 ft</td>
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<tr>
<td>garage</td>
<td>933.5 ft</td>
<td>-</td>
<td>930.9 ft</td>
<td>933.0 ft *</td>
</tr>
<tr>
<td>deck</td>
<td>933 ft</td>
<td>~ 930 ft</td>
<td>-</td>
<td>932.9 ft ***</td>
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<td>driveway</td>
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<td>930 ft</td>
<td>-</td>
<td>930 ft **</td>
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<td>5 ft</td>
<td>-</td>
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<td>house (east)</td>
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<td>3.3 ft</td>
<td>-</td>
<td>1 ft *</td>
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<td>portico (east)</td>
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<td>-</td>
<td>-</td>
<td>18 ft *</td>
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<td>garage (east)</td>
<td>25 ft</td>
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<td>-</td>
<td>31 ft *</td>
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<td>Side yard setback</td>
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</tr>
<tr>
<td>north</td>
<td>7 ft</td>
<td>-</td>
<td>6.5 ft</td>
<td>3.5 ft *</td>
</tr>
<tr>
<td>west</td>
<td>7 ft</td>
<td>7.2 ft</td>
<td>-</td>
<td>12 ft</td>
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<tr>
<td>Impervious surface</td>
<td>max. 30 %</td>
<td>51.15%</td>
<td>-</td>
<td>30%</td>
</tr>
</tbody>
</table>

* Variance required  
** Expansion permit required  
*** Required to meet ordinance by conditions of approval  

1.05 Minnesota Statute §462.357 Subd. 1(e)(b) allows a municipality, by ordinance, to permit an expansion of nonconformities.  

1.06 City Code §300.29 Subd. 3(g) allows expansion of a nonconformity only by variance or expansion permit.  

1.07 On July 21, 2016, the planning commission held a hearing on the application. The applicant was provided the opportunity to present information to the commission. The commission considered all of the
comments and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council approve the variances and expansion permits.

Section 2. Standards.

2.01 City Code §300.29 Subd. 7(c) states that an expansion permit may be granted, but is not mandated, when an applicant meets the burden of proving that:

1. The proposed expansion is a reasonable use of the property, considering such things as: functional and aesthetic justifications for the expansion; adequacy of off-site parking for the expansion; absence of adverse off-site impacts from such things as traffic, noise, dust, odors, and parking; and improvement to the appearance and stability of the property and neighborhood.

2. The circumstances justifying the expansion are unique to the property, are not caused by the landowner, are not solely for the landowners convenience, and are not solely because of economic considerations; and

3. The expansion would not adversely affect or alter the essential character of the neighborhood.

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

Section 3. Findings.

3.01 The proposal meets the expansion permit standards as outlined in City Code §300.29 Subd. 7(c):

1. REASONABLENESS: It is reasonable to construct a new home that maintains the existing setbacks of an existing home. Despite vertical and horizontal expansion within the established setback, the
The proposed house, garage and deck would not encroach further into the existing shoreland setback.

2. UNIQUE CIRCUMSTANCE: The expansion permit is the result of the property’s unique lot configuration, smaller lot size, and the existing home’s non-conforming setbacks. The property is only 8,100 square feet in size, which is significantly less than the R-1 lot size requirement. This, coupled with the unique lot configuration resulting from an unimproved right-of-way extension, present unique circumstances not common to similarly zoned properties.

3. NEIGHBORHOOD CHARACTER: The proposal would not negatively impact the character of the surrounding neighborhood. Approval of the expansion permit would allow the applicant to make reasonable improvements to the property and home without encroaching further into existing setbacks.

3.02 The proposal meets the variance standard outlined in City Code §300.07 Subd. 1(a):

1. PURPOSE AND INTENT OF THE ZONING ORDINANCE: The proposed variance requests would be in keeping with the city’s zoning ordinance. The intent of the city’s setback requirements is to ensure that neighborhoods retain residential characteristics while protecting environmental and hydrologic functions of the city’s natural features. Staff finds that the side and front yard setback variances are the result of shifting the house north on the property in order to maintain shoreland setback. The remaining floodplain setback variance requests would result in improvements over existing conditions.

2. CONSISTENT WITH COMPREHENSIVE PLAN: The proposal would be consistent with the city’s comprehensive plan. The intent of the city’s comprehensive plan is to maintain, preserve and support the character of existing neighborhoods. If approved, the setbacks would be similar to those of the existing home and of homes within the Bantas Point neighborhood.

3. PRACTICAL DIFFICULTIES: There are practical difficulties in complying with the ordinance:

   a) REASONABLENESS: Despite the number of approvals required, staff finds that the applicant is proposing a reasonable use of the property:
1) The proposed front and side yard setbacks would be similar to those within the existing neighborhood.

2) The proposal would result in improved floodplain conditions. The existing home and garage are constructed at – or below – the 100-year flood elevation. In 1993, the city approved “variances to the floodplain regulations” to allow the construction of the attached garage. As currently proposed, the home would be 2-feet above and the attached garage 1.5-feet above the 100-year flood elevation. While the proposed garage would not meet the city’s minimum 2-foot requirement, the proposal would still result in a significant improvement over existing conditions.

3) The existing deck does not meet floodplain or shoreland setbacks but was constructed after the adoption of the city’s ordinances. Staff finds that the proposed deck would result in an improvement over existing conditions. While the proposed deck would maintain the existing deck’s setback, it would be smaller in size.

4) The proposal would decrease the amount of impervious surface on the property from 51 percent to 30 percent. This would bring the property into compliance with the city’s ordinance.

b) UNIQUE CIRCUMSTANCE: The requested variances are a result of the property’s lot configuration and smaller lot size. A platted right-of-way extension was created by the BANTAS POINT subdivision, in 1914, to provide access to a former lot. Despite the former lot’s combination with another lot to create the subject property, the right-of-way extension is still used to provide access to the property. By ordinance, front yard setbacks are measured from a structure to the platted right-of-way. As such, the front yard setback variances for the proposed house are the direct result of this right-of-way extension. If the extension did not exist, the proposed home would meet the required setback.

Further, the lot is only 8,100 square feet in size. This is significantly less than the city’s minimum lot size. The property’s unique lot configuration, lot size, and existing setbacks are not common to similarly zoned properties.
c) CHARACTER OF LOCATILTY: The proposal would not negatively impact the character of the surrounding neighborhood. The proposed setbacks would be similar to, or greater than, many of the existing setback within the Bantas Point neighborhood. This is recognized by the city’s long history of variance approvals within the neighborhood. In fact, the city has approved setback and floodplain variances on eight of the 11 properties.

Section 4. City Council Action.

4.01 The city council approves the above-described variance based on the findings outlined in section 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, excepted as modified by the conditions below:
   - Survey dated May 19, 2016
   - Site plan dated May 20, 2016
   - Floor plans dated May 20, 2016
   - Perspectives dated May 20, 2016

2. Prior to issuance of a building permit:
   a) A copy of this resolution must be recorded with Hennepin County.
   b) Submit a revised survey, or site plan, that:
      1) Includes sewer and water locations.
      2) Extend contours into adjacent property at 2515 Bantas Point Lane. The survey must tie the proposed grades into existing site grades within the lot and adjacent properties.
      3) Driveways and parking areas must be 1-foot above the 931.5 foot elevation.
      4) The attached deck and porch must be 1.5 feet above the 931.5 foot elevation.
   c) Submit the following for city staff review and approval:
1) Stormwater management plan. This plan must include calculations to show that 1-inch of volume is captured from the site’s impervious surface.

2) Final plans for the construction of the pervious driveway and walkways. The driveway and walkway must be constructed of pervious pavers over a pervious base. Final plans are subject to staff review and inspections.

3) Pervious pavement agreement. This agreement must be in a city-approved format and must be recorded with Hennepin County prior to release of the building permit.

4) Revised hold harmless agreement. This revised agreement must, at a minimum, revise the low floor elevation of the garage from 930.9 to 933 feet. The property owners may choose to release the existing document in order to file a new document. This document must be recorded with Hennepin County prior to release of the building permit.

5) Construction management plan. This plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance. In addition, this plan must outline the following:
   - Contractor parking during construction.
   - How the home will be constructed without encroaching onto adjacent properties.

6) Evacuation route. Principal structures, including attached garage, must have areas within 15-feet of the structure at 6-inches above the flood elevation or have an approved evacuation route from the principal structure to land above the flood elevation.

   d) A minimum of two automatic openings must be included on the uninhabitable space used to elevate the low floor 2-feet above the flood elevation on at least two sides of the structure. These openings must be sized 1 square inch per square foot of floodable space.
e) All existing structures, accessory structures and pavement included on the existing conditions survey dated June 25, 2013 must be removed.

f) Install erosion control fencing as required by staff for inspection and approval. These items must be maintained throughout the course of construction.

3. Maximum impervious surface, excluding the pervious paver drive and walkways, must not exceed 30-percent of the lot area above the 929.4 elevation.

4. The total square footage of the walkway and driveway within the lot area may not exceed the square footage shown on the survey dated May 19, 2016. This is a maximum of 828 square feet.

5. This resolution does not approve pervious pavers within the city’s right-of-way as shown on the survey and site plan.

6. The proposed deck must be constructed to be pervious.

7. To ensure compliance with the McMansion Policy, the covered porch cannot be enclosed.

8. This variance will end on December 31, 2017, unless the city has issued a building permit for the project covered by this variance or has approved a time extension.

Adopted by the City Council of the City of Minnetonka, Minnesota, on August 8, 2016.

________________________________________
Terry Schneider, Mayor

Attest:

________________________________________
David E. Maeda, City Clerk

Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on August 8, 2016.

____________________________________

David E. Maeda, City Clerk
Resolution No. 2016-

Resolution approving a floodplain alteration permit for the construction of a new home at 2512 Bantas Point Road

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

Section 1. BACKGROUND.

1.01 JAL Architects, on behalf of the property owners, are proposing to tear down the existing, one-story home in order to construct a new, two-story home. (Project No. 93026.16a).

1.02 The property is located at 2512 Bantas Point Lane. It is legally described as:

Parcel 1: Tract B, Registered Land Survey No. 474

Parcel 2: Lot 8, Banta’s Point

Parcel 3: Lot 7, except that part thereof which lies Northerly of the following described line: Commencing at the most Northerly corner of said Lot 7: thence Southerly along the West line of said Lot 7 a distance of 20 feet to the point of beginning of the line being described; thence Southeasterly deflecting left 54 degrees 16 minutes to the Southerly line of the Northerly 27.00 feet of said Lot 7: thence Easterly along said Southerly line to the shore line of Lake Minnetonka, and said line there ending Banta’s Point.

1.03 In 1993, the city approved a lot division, lot combination and several setback variances to allow the construction of an attached garage on the property. In addition, the city approved “variances from the floodplain regulations pertaining to setback and minimum basement elevations” for the garage. The existing low floor elevation of the attached garage is 931.3 feet.
1.04 On July 21, 2016, the planning commission held a hearing on the application. The applicant was provided the opportunity to present information to the planning commission. The commission considered all of the comments and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council approve the permits.

Section 2. GENERAL STANDARDS.

2.01 City Code §300.24, Subd. 9(c) lists the general standards for alteration of floodplain. These standards are incorporated by reference into this resolution.

2.02 City Code §300.24, Subd. 9(d) lists the specific standards for alteration of floodplain. These standards are incorporated by reference into this resolution.

Section 3. FINDINGS.

3.01 The proposed alteration would meet the general and specific standards for floodplain alteration as outlined in City Code §300.24, Subd. 9.

3.02 The proposed alteration would not negatively impact adjacent properties or the hydrology of the floodplain.

3.03 The proposal would not result in a net fill of the floodplain.

3.04 The proposal would result in an increase of flood storage capacity on the property.

Section 4. CITY COUNCIL ACTION.

4.01 The city council approves the above-described request, based on the above findings. Approval is subject to the following conditions:

1. Subject to staff approval, the floodplain alteration must be in substantial conformance with the following plans, unless modified by the conditions below:

   - Survey dated May 19, 2016
   - Site plan dated May 20, 2016
   - Floor plans dated May 20, 2016
   - Perspectives dated May 20, 2016
2. Prior to issuance of a building permit:
   a) Silt fence must be installed and inspected by city staff.

3. Prior to conducting any excavation or fill:
   a) A copy of this resolution must be recorded with Hennepin County and a copy of the recorded document returned to the city.
   b) Install temporary erosion control, tree and wetland protection fencing, and any other measures required by staff for staff inspection and approval. These items must be maintained throughout the course of site work.

4. After construction an as-built with the flood elevation and volumes must be submitted to city staff to confirm that there has been zero net floodplain fill.

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

6. Approved fill and mitigation must be completed by December 31, 2017. If not completed by that date, this approval will be void.

Adopted by the City Council of the City of Minnetonka, Minnesota, on August 8, 2016.

______________________________
Terry Schneider, Mayor

ATTEST:

______________________________
David E. Maeda, City Clerk

ACTION ON THIS RESOLUTION:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on August 8, 2016.

_________________________________
David E. Maeda, City Clerk

SEAL
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. Items concerning the construction of a new house at 2512 Bantas Point Road.

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

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

Andre Latondresse, JAL Architects, representing the applicant, stated that he has been involved with two other projects on Bantas Point Road. He took into consideration the scale of the neighborhood. He provided views of the proposed house. It would be a story-and-a-half design with a floodable understory. The current house would be damaged every time there is a high water. The proposal would protect the house for the long term.

Knight asked how the house would be constructed to prevent water damage. Mr. Latondresse explained the anchor and hollow-floor system that would be waterproof.

The public hearing was opened.

Lyle Scott, 2508 Bantas Point Lane, asked what could be done about the excess water that runs off buildings. He provided pictures that showed another lot he owns at 2507 Bantas Point Lane with standing water. His renters have to walk through water to get to their vehicles. It has been going on for 12 years.

No additional testimony was submitted and the hearing was closed.

Calvert asked how fill would impact the area. Dietrich explained that the structure would be built on grade beams, so the area below the garage and house would be floodable. It would be a vast improvement to what currently exists. The proposal would create space for water to be stored.

Cauley added that the proposal would decrease the amount of impervious surface on the property from 50 percent to 30 percent.
Odland moved, second by Powers, to recommend that the city council adopt the resolution on pages A38-A46 of the staff report which approves an expansion permit and variances for the construction of a new house at 2512 Bantas Point Lane and the resolution on pages A47-A50 of the staff report which approves a floodplain alteration permit for a new house at 2512 Bantas Point Lane.

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

B. Variances for a blade sign at 1700 Plymouth Road.

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

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

Ann Hurlbert, Landform Professional Services, and Paul Guidera, director of real estate for Caribou Coffee, representing the applicant, introduced themselves. Ms. Hurlburt stated that:

- The proposed sign would allow Caribou Coffee and Einstein Bagels to advertise on the same sign.
- It would provide movement, liveliness, and character.
- It would be compatible with other signs in Minnetonka in commercial areas.
- The location is important because it is the only representation of the coffee and bagel sign that would be visible to motorists.
- The code did not anticipate this type of sign. She appreciated staffs’ open mindedness.
- There should be no distraction to motorists. There would be no flashing lights. It would move slowly. There would be no changing message. The inside 24 inch medallion part would move in two locations. It would be subtle, but allow both businesses to be advertised.
- She and Mr. Guidera were available for questions.
- The sign would be internally lit and not super bright. There would be no flashing.
City Council Agenda Item #10B
Meeting of August 8, 2016

Brief Description  Resolution approving a conditional use permit for telecommunications facilities at 12475 Marion Lane West

Recommendation  Adopt the resolution approving the request

Proposal

The applicant, US Internet, is proposing to construct three (3) telecommunication masts with dishes. As proposed, the dishes would be located behind the existing building and would have a total height of 26 feet. Each dish would be roughly 12 feet in diameter. (See narrative and plans on pages A1-A11.)

Planning Commission Hearing

The planning commission considered the request on July 21, 2016. The staff report from that meeting is attached and various plans and documents describing the proposed project may be found on pages A1–A11. Staff recommended approval of the proposal noting:

1. The proposed telecommunication dishes would meet the general and specific conditional use permit standards for telecommunication facilities. Those standards are included in the “Supporting Information” section of the staff report.

2. The telecommunication ordinance specifically allows for 75-foot telecommunication towers and antennas. The applicant is proposing 26-foot tall telecommunication masts with dishes. (See page A6).

3. The proposed dishes would be located in a well buffered location. (See pages A9-A11). The subject building, existing buildings, vegetation, and changes in elevation would assist in blocking the view of the structure from the public right-of-way and adjacent buildings. Staff finds that the proposed structure will have minimal visual impacts on the surrounding area.

The item was on the commission’s consent agenda and there was no commission discussion.

Planning Commission Recommendation

On a 7-0 vote, the commission recommended that the city council approve the request. Meeting minutes may be found on page A24.
Since Planning Commission Hearing

There have been no changes to the proposal or additional information received since the planning commission’s meeting on this item.

Staff Recommendation

Adopt the resolution approving a conditional use permit for a telecommunications facility at 12475 Marion Lane West. (See pages A13–A22.)

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

Originator:  Drew Ingvalson, Planner
MINNETONKA PLANNING COMMISSION  
July 21, 2016

**Brief Description**  Conditional use permit for telecommunications facilities at 12475 Marion Lane West

**Recommendation**  Recommend the city council adopt the resolution approving the request

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**Project No.**  16008.16a

**Property**  12475 Marion Lane West (JKT Properties II LLC)

**Applicant**  US Internet

**Proposal**  US Internet has recently received cable television franchise rights to serve residents within the City of Minneapolis. US Internet requires three (3) satellite dish antennas to receive cable television data from cable provider satellites and is now requesting a conditional use permit for construction and operation of these dishes. (See pages A1-A12).

**Ordinance**  The intent of the Telecommunications Ordinance is to accommodate the growth of wireless communication systems within the city, while protecting the public against any adverse impacts on public welfare or on the city’s resources. The city’s current ordinance favors the location of antennas on existing support structures – such as existing towers, water towers, and high density and non-residential buildings – over new free-standing stand-alone towers. However, the city ordinance recognizes that environmental and locational challenges can prevent the placement of antennas on such existing structures. As such, the ordinance establishes additional standards for free-standing structures to minimize their visual impact on the community. By ordinance, all free-standing towers require a conditional use permit regardless of the underlying zoning.

**Proposed Dishes**  The proposed satellite dishes would be located on the south side of the existing building at 12475 Marion Lane West. Each dish would be attached to a mast that would, in turn, be anchored to a concrete base and attached to the existing building for stability. The total height of the dishes and mast would be approximately 26 feet. Given this, the dishes would be located above 12 feet above the existing 14-foot tall building. (See page A6). Each dish
would be roughly 12 feet in diameter. The proposed dishes would be immobile and all cabling would be routed into the existing building on the site.

**Alternative Locations**

The applicant considered and reviewed three alternative locations for the proposed dishes.

First, the applicant considered locating the dishes on top of the existing building. Upon review, the applicant found that the existing roof structure could not support the weight of the proposed dishes.

Second, the applicant considered locating the dishes at grade in a parking lot across the street from the subject site that is owned by US Internet (1100 City View Drive). This location was not further considered by the applicant because it would be very difficult to mitigate visual impacts and there were safety and security concerns regarding the location.

Third, the applicant considered locating the dishes at grade on the south side of the subject property. This location would require the removal of 3-4 trees on an adjacent property (Erik’s Bikes and Boards) to access an acceptable signal. The removal of these trees would create additional visual impacts. This location would also reduce space on the property, would create a safety hazard for vehicles in the lot, and would create security concerns for the applicant.

**Staff Analysis**

Staff finds the applicant’s proposal is reasonable:

1. The proposed telecommunication dishes would meet the general and specific conditional use permit standards for telecommunication facilities. Those standards are included in the “Supporting Information” section of this report.

2. The telecommunication ordinance specifically allows for 75-foot telecommunication towers and antennas. The applicant is proposing a 26-foot tall telecommunication masts with dishes. (See page A6).

3. The proposed dishes would be located in a well buffered location. (See pages A9-A11). The subject building, existing buildings, vegetation, and changes in elevation would assist in blocking the view of the structure from the public right-of-way and adjacent buildings. Staff finds that
the proposed structure will have minimal visual impacts on the surrounding area.

Staff Recommendation

Recommend that the city council adopt the resolution on pages A13-A22. This resolution approves a conditional use permit for 26-foot tall telecommunications facilities on the property at 12475 Marion Road West.

Originator: Drew Ingvalson, Planner
Through: Loren Gordon, AICP, City Planner
Supporting Information

Surrounding
Northerly: JKT Properties LLC (parking lot) and The Cliffs LTD Partnership (The Cliffs apartments); both zoned PID

Land Uses
Easterly: JKT Properties (US Internet and other tenants); zoned PID
Southerly: LNR Properties (Fireside Hearth and Home); zoned PID
Westerly: LNR Properties (Erik’s Bikes and Boards); zoned PID

Planning
Guide Plan designation: High Density Residential
Zoning: Planned I-394 District (PID)

Federal Law
Under federal law, communities may not: (1) discriminate between telecommunications providers; (2) ban the construction, modification, or placement of facilities in a particular area; or (3) regulate the placement, construction, or modification of facilities based on the environmental effects of radio frequency emissions.

Federal law does not prohibit the denial of specific telecommunications facilities requests. However, the denial must be based on a “reasoned approach” and must be made in writing.

Administrative Review
By ordinance, telecommunication facilities can be reviewed and approved administratively when the facility would be located on: (1) a high-voltage transmission tower; or (2) on an antenna support structure for which a CUP has already been approved. In addition, the ordinance allows administrative review and approval of a one-time 15-foot extension of an existing facility.

CUP Standards
The proposed telecommunications facilities would meet the general conditional use permit standards as outlined in City Code §300.34 Subd.5:

1. **Vertical projection.** Antennas mounted on an antenna support structure must not extend more than 15 feet above the height of the structure to which they are attached. Wall or facade-mounted antennas may not extend above the cornice line and must be constructed of a material or color that matches the exterior of the building.

**Finding:** This condition is not applicable to the current proposal. This condition applies to antennas mounted onto an
existing antenna support structure on atop a building. Nevertheless, the dish structures would extend 12 feet above the existing building.

2. **Horizontal projection.** Antennas must not project out from the side of the antenna support structure or tower, unless it is physically impossible to locate the antennas within the structure or tower, in which case they must not project out by more than three feet by more than three feet.

   **Finding:** This condition applies to antennas mounted on a support structure, such as a building or monopole, and is not applicable to the current proposal.

3. **Setbacks.** A tower adjacent to an R-1, R-2, or R-3 zoning district must meet the building setback that is established for the district where it is to be located, but only from the residential zone. This setback is not required for a tower in a right-of-way. The city may waive this setback requirement if necessary to implement stealth design techniques or if the residentially zoned property is public or institutional property. An accessory equipment cabinet that is greater than 120 square feet in size must be at least ten feet from all property lines.

   **Finding:** The proposed telecommunication tower would be located on a Planned I-394 District zoned property surrounded by similarly zoned properties.

4. **Height.** The height of an antenna and tower must be the minimum necessary to meet the applicant’s coverage and capacity needs, as verified by an electrical engineer or other appropriate professional. The city council may waive this requirement if additional height is appropriate for co-location opportunities.

   **Finding:** The proposed project was reviewed by OWL Engineering – the city’s telecommunication’s consultant. The proposed 26-foot height of the telecommunication structures is reasonable.

5. **Exterior surfaces.** Towers and antennas must be painted a non-contrasting color consistent with the surrounding area such as: blue, gray, brown, or silver, or have a galvanized finish to reduce visual impact. Metal towers must be constructed of, or treated with, corrosion-resistant material.
Finding: A condition of approval is included requiring that the applicant submit color options for review and approval of city staff.

6. **Ground-mounted equipment.** Ground-mounted accessory equipment or buildings must be architecturally designed to blend in with the surrounding environment, including the principal structure, or must be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the character of the surrounding neighborhood. No more than one accessory building is permitted for each tower. Additional space needed for the co-location of antennas must be added to an existing accessory building in a manner to make it appear as one building. Design of the building or equipment cabinet, screening and landscaping are subject to a site plan review under section 300.27 of this code.

Finding: The applicant is not proposing ground-mounted accessory equipment or buildings. All support equipment would be located within the existing building.

7. **Construction.** Telecommunications facilities must be in compliance with all building and electrical code requirements. A tower must be designed and certified by an engineer to be structurally sound and in conformance with the building code. Structural design, mounting and installation of the telecommunications facilities must be in compliance with the manufacturer’s specifications.

Finding: The applicant is required to obtain all applicable building and electrical permits prior to the installation of the masts and dishes. Compliance with building and electrical code requirements would be verified through the permit review process.

8. **Co-location opportunity.** If a new tower over 60 feet in height is to be constructed:

   a) The tower must be designed to accommodate both the applicant’s antennas and antennas for at least one additional comparable user;

   b) the tower must be designed to accept antennas mounted at additional heights;
c) the applicant, the tower owner, the landowner, and their successors must allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use, must submit a dispute over the potential terms and conditions to binding arbitration, and must sign the conditional use permit agreeing to these requirements. The city council may waive these co-location requirements if necessary to implement stealth design.

Finding: This condition is not applicable. The proposed masts and dish height is 26 feet.

9. Exterior Message. No advertising message or identification sign larger than two square feet may be affixed to the telecommunications facilities.

Finding: This has been included as a condition of approval.

10. Lighting. Telecommunications facilities may not be artificially illuminated unless required by law or by a governmental agency to protect the public’s health and safety or unless necessary to facilitate service to ground-mounted equipment.

Finding: This has been included as a condition of approval.

11. Rights-of-way. All telecommunication facilities in a public right-of-way must comply with the following:

a) Telecommunications facilities located within a right-of-way must not negatively impact the public health, safety and welfare, interfere with the safety and convenience of ordinary travel over the right-of-way, or otherwise negatively impact the right-of-way or its users. In determining compliance with this standard, the city may consider one or more of the following factors:

1) the extent to which right-of-way space where the permit is sought is available, including the placement of the ground equipment;
2) the potential demands for the particular space in the right-of-way;
3) the availability of other locations in a right-of-way that would have less public impact;
4) the extent to which the placement of the telecommunications facilities minimizes impacts on adjacent property; and
5) the applicability of ordinances or other regulations of the right-of-way that affect location of equipment in the right-of-way;

b) The facility, including attachments other than lighting rods, may not exceed 60 feet in height measured from grade in residential and commercial zones, or 75 feet in industrial zones. The city council may waive this height standard for a facility used wholly or partially for essential public services, such as public safety;

c) The support structure for the antennas cannot exceed the diameter of the closest public utility pole by more than 50 percent, but in no event may exceed 18 inches in diameter;

d) Antennas and other components must not project out from the side of the support structure by more than two feet in residential and commercial districts or three feet in industrial districts;

e) The support structure for the antennas must match the materials and color of the closest public utility structures in the right-of-way, if required by the city planner;

f) Ground mounted equipment will be allowed only if:

1) the equipment will not disrupt traffic or pedestrian circulation;
2) the equipment will not create a safety hazard;
3) the location of the equipment minimizes impacts on adjacent property; and
4) the equipment will not adversely impact the health, safety, or welfare of the community;

g) Ground mounted equipment must be:

1) set back a minimum of 10 feet from the existing or planned edge of the pavement;
2) separated from a sidewalk or trail by a minimum of 3 feet;
3) set back a minimum of 50 feet from the nearest intersection right-of-way line;
4) set back a minimum of 50 feet from the nearest principal residential structure;
5) separated from the nearest ground mounted telecommunication facilities in a right-of-way by at least 330 feet;
6) no larger than 3 feet in height above grade and 27 cubic feet in size in residential districts;
7) no larger than 5 feet in height above grade and 81 cubic feet in size in non-residential districts; and
8) screened by vegetative or other screening compatible with the surrounding area if deemed necessary by the city planner;

h) The antennas cannot interfere with public safety communications;

i) The telecommunication facility must be removed and relocated when the road authority requires the removal and relocation of public utility structures; and

j) Telecommunications facilities within a right-of-way must receive a right-of-way permit from the appropriate road authority

Finding: The proposed facilities would not be located in/on right of-way.

12. On-site employees: There must be no employees on the site on a permanent basis. Occasional or temporary repair and service activities are allowed.

Finding: No permanent employees are proposed. However, this has been included as a condition of approval.

13. Landowner authorization. When applicable, the applicant must provide written authorization from the property owner. The property owner must sign the conditional use permit agreeing to the permit conditions, agreeing to remove the telecommunication facilities when they are unused, obsolete, or become hazardous, and agreeing to the city’s right to assess removal costs under paragraph (n) below.

Finding: This has been included as a condition of approval.

14. Removal. Obsolete telecommunications facilities must be removed within 90 days after cessation of their use at the site,
unless an exemption is granted by the city council. Unused telecommunications facilities and all related equipment must be removed within one year after cessation of operation at the site, unless an exemption is granted by the city council. Telecommunications facilities and related equipment that have become hazardous must be removed or made not hazardous within 30 days after written notice to the current owner and to any separate landowner, unless an exemption is granted by the city council. Notice may be made to the address listed in the application, unless another one has subsequently been provided, and to the taxpayer of the property listed in the Hennepin county tax records. Telecommunications facilities and all related equipment that are not removed within this time limit are declared to be public nuisances and may be removed by the city. The city may assess its costs of removal against the property.

**Finding:** This has been included as a condition of approval.

15. **Historic Places.** No telecommunication tower may be located with 400 feet of the boundary of any property that contains a facility or structure listed on the national register of historic places. Antennas may be located in this restricted area only if they are hidden from public view.

**Finding:** Staff is unaware of any facility or structure within 400 feet of the proposed antennas that is listed on the national register of historic places.

**CUP Standards Specific**
The proposal would meet the specific conditional use permit standards as outlined in City Code §300.34 Subd.4(b)(1):

1. Telecommunication facilities may be located only on public or institutional property: in R-1 and R-2 residential districts and on property guided for low-density residential in the Planned I-394 District subject the standards listed in subparagraphs b through e which follow.

**Finding:** The proposed facilities would be located on Planned I-394 District.

2. An applicant must provide an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the antennas is necessary to meet the coverage and capacity needs of its system and that there is no existing antenna support structure that could adequately serve the
area if antennas were placed on it. The applicant must also pay the reasonable expenses of a radio or electrical engineer retained by the city, at its option, to review this analysis;

**Finding:** The information supplied by the applicant was reviewed by the city's telecommunications consultant. Since the project does not include any transmitting frequencies there is no potential for the system to cause any interference to any city or public safety systems. The proposed dishes are required for receiving cable television data from satellites.

3. A telecommunications facility must use as many stealth design techniques as reasonably possible. Economic considerations alone are not justification for failing to provide stealth design techniques. The city council may require that a different location be used if it would result in less public visibility, is available, and would meet the applicant's reasonable capacity and coverage needs; and

**Finding:** This standard pertains primarily to monopole structures. From staff's perspective, the applicant is proposing stealth design dish structures and masts. The dishes do not contain any unnecessary or non-symmetric protrusions or extensions.

4. A telecommunications tower and antennas, including attachments other than lighting rods, must not exceed 75 feet in height, measured from grade. The city council may increase this height to 90 feet if the increase in height would not have a significant impact on surrounding properties because of proximity, topography or screening by trees or buildings or would accommodate two or more users. The city council may waive this height standard for a tower used wholly or partially for essential public services, such as public safety.

**Finding:** The proposed masts and dishes would be a total of 26 feet in height.

**Approving Body**
The planning commission makes a recommendation to the city council, which has final authority to approve or deny the request. (City Code §300.06 Subd. 4)
Meeting of July 21, 2016
Subject: US Internet Dishes, 12475 Marion Lane West

Pyramid of Discretion

Motion Options

The planning commission has three options:

1. Concur with staff’s recommendation. In this case, a motion should be made recommending the city council approve the proposal based on the findings outlined in the staff-drafted resolution.

2. Disagree with staff’s recommendation. In this case a motion should be made recommending the city council deny the proposal. The motion should include findings for denial.

3. Table the request. In this case a motion should include a statement as to why the request is being tabled with direction to staff, the applicant, or both.

Neighborhood Comments

The city sent notices to 253 area property owners and received one comment from a representative from 12300 Marion Lane, The Cliffs Apartments (see page A23).

Deadline for Decision

July 21, 2016
Location Map

US Internet Corp
Address: 12475 Marion Lane W
Project No. 16008.16a

This map is for illustrative purposes only.
PARCEL ID: 0211722230029
OWNER NAME: Wagener Properties Llc
PARCEL ADDRESS: 12475 Marion La W, Minnetonka MN 55305
PROPERTY TYPE: Commercial-Preferred
HOMESTEAD: Non-Homestead
PARCEL AREA: 0.41 acres, 17,793 sq ft
A-T-B: Torrens
MARKET VALUE: $450,000
TAX TOTAL: $15,685.48
SALE PRICE: $512,500
SALE DATA: 06/2010
SALE CODE:

This data (i) is furnished 'AS IS' with no representation as to completeness or accuracy; (ii) is furnished with no warranty of any kind; and (iii) is not suitable for legal, engineering or surveying purposes. Hennepin County shall not be liable for any damage, injury or loss resulting from this data.

COPYRIGHT © HENNEPIN COUNTY 2016
US Internet (USI) has retained WJE to analyze and design the support structure for three satellite dishes which will be added to their property as a part of a larger project to distribute television over broadband. The purpose of this memorandum is to convey the simulated views of the three satellite dishes

The three satellite dishes will installed on the south side of a utility building owned by US Internet and be supported using posts which have independent foundations but use the existing building for stability. The existing utility building is constructed with exterior CMU walls and is 13 feet tall. The satellite dishes are 3.7 meters in diameter and will be supported at most 20 feet above the surrounding grade.

The following renderings were created using a schematic, to-scale model created in Sketchup and subsequently imported into Google Earth using the terrain setting to approximate the size and shape of obstructions such as trees, buildings, and signs which exist proximate to the site.
Drew Ingvalson

From: Jason Prock <JProck@usinternet.com>
Sent: Tuesday, July 05, 2016 12:51 PM
To: Drew Ingvalson
Subject: RE: USI Satellite Dish Installation
Attachments: Roof level.jpg; overhead view.jpg

Follow Up Flag: Follow up
Flag Status: Completed

1.) Please explain more about your proposed project/ the communication process. Explain where the signal is coming from, where it is going, etc.

   USI will be building an Earth Base Station for receiving the satellite signals of TV programming from the major network content providers. This will allow USI to act as a cable TV provider. USI is receiving standard CATV signals from the C Band frequency range, as all CATV providers (Comcast, Mediacom...) around the country are required to receive the signals from the programmers (HBO, Turner Networks, ESPN, etc.), as this is the primary method of transport. The satellite signal is received by the dishes and is then transported over standard coaxial cable to the USI datacenter where it is decrypted and unscrambled. Once that process is complete the individual channels are transmitted via our fiber optic network to our customer’s homes in much the same way current cable providers deliver the signal over their coaxial cable network.

2.) Explain why large dishes are required for your project. Why can you not use smaller receivers?

   For C band frequency range, the 3.7m antennas are required for the frequency range, and to help protect the signals from weather related issues. This is a different frequency range than DBS (DirecTV or Dish), and is standard at any CATV Headend throughout the USA. Because the signal USI is receiving is the parent signal for all 600+ channels, any degradation in the signal quality will effect all the subscribers of our TV service. The larger dishes and specific frequency allow for a much higher quality of signal. This allows us to mitigate weather issues and provide a true 4K Ultra High Definition signal to the end users.

3.) The city will also need a $6,000 escrow which will be used for an interference study (this must be submitted prior to the planning commission meeting).

   Understood. However, the proposed dishes are receive only, and do not transmit any data. The location will be registered with the FCC as a TVRO (Television Receive Only site).

4.) Please send an additional rendering of the proposed dishes that is closer to the building and shows how far the structure exceeds the height of the building.

   Please see attachments. The proposed dishes will extend 5 feet above the building structure. This puts them at or slightly below the roof line of the adjacent building to the East.

Please let me know if you require any additional info.

Jason
20'-0" 20'-0"

Galaxy 17
Azimuth 176.3°
Elevation 38.1°

Galaxy 14
Azimuth 220.9°
Elevation 28.3°

Galaxy 15
Azimuth 295.3°
Elevation 55.4°

Elevation View

Building South Wall

21'-0"
27'-0"

Azimuth View

Building

20'-0"
14'-0"

5'-0"
5'-0"
Simulated view from the roof of Ridgedale Mall looking north.

Simulated view from the top floor of The Ridge apartments looking east.
Simulated view from the top floor of the Cliffs of Minnetonka apartments looking south.

Simulated view looking west. The satellite antennas are approximately the height of the adjacent office building.
View from Wayzata Boulevard outside Eric’s Bike Shop looking north. Existing trees provide cover from view from Wayzata Boulevard.

View from Wayzata Boulevard outside Eric’s Bike Shop looking north.
July 3, 2016

City of Minnetonka  
Ms. Susan M. Thomas, Principal Planner  
14600 Minnetonka Blvd.  
Minnetonka, MN 55435

Dear Ms. Thomas:

We have completed a preliminary review for the US Internet request for satellite antennas. The proposed location is 12474 Marion Lane W and will include satellite receiving antennas. Since the project does not include any transmitting frequencies there is no potential for the system to cause any interference to any City or Public safety systems.

However, there should be a condition on the permit/authorization to advise the city if any transmitting systems are planned to be installed in the future an interference study can be performed, if required.

If you have any questions in this matter please contact me.

Sincerely,

Garrett G. Lysiak, P.E.
Resolution No. 2016-

Resolution approving a conditional use permit for telecommunications facilities at 12475 Marion Lane West

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

Section 1. Background.

1.01 US Internet, has requested a conditional use permit for 26-foot tall telecommunications facilities to be located at 12475 Marion Lane West.

1.02 The property is located at 12475 Marion Lane West. It is legally described as:

That part of lot 9 lying North of the South 190 feet thereof except road, Sunset Hill, Hennepin County, Minnesota.

1.03 On July 21, 2016, the planning commission held a hearing on the request. The applicant was provided the opportunity to present information to the planning commission. The planning commission considered all of the comments received, the staff report, and the telecommunications consultant report, all of which are incorporated by reference into this resolution. The commission recommended that the city council approve the conditional use permit.

Section 2. General Standards.

2.01 By 47 US Code §332(c)7, local governments have authority over the placement, construction, and modification of personal wireless service facilities, except local government may not:

1. Unreasonably discriminate among providers of functionally equivalent services;

2. Prohibit or have the effect of prohibiting the provision of personal
wireless services; and

3. Regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communication Commission's regulations concerning such emissions.

2.02  City Code §300.34 Subd.5 lists the following general standards that must be met for granting a conditional use permit:

1. **Vertical projection.** Antennas mounted on an antenna support structure must not extend more than 15 feet above the height of the structure to which they are attached. Wall or facade-mounted antennas may not extend above the cornice line and must be constructed of a material or color that matches the exterior of the building.

2. **Horizontal projection.** Antennas must not project out from the side of the antenna support structure or tower, unless it is physically impossible to locate the antennas within the structure or tower, in which case they must not project out by more than three feet.

3. **Setbacks.** A tower adjacent to an R-1, R-2, or R-3 zoning district must meet the building setback that is established for the district where it is to be located, but only from the residential zone. This setback is not required for a tower in a right-of-way. The city may waive this setback requirement if necessary to implement stealth design techniques or if the residentially zoned property is public or institutional property. An accessory equipment cabinet that is greater than 120 square feet in size must be at least ten feet from all property lines.

4. **Height.** The height of an antenna and tower must be the minimum necessary to meet the applicant’s coverage and capacity needs, as verified by an electrical engineer or other appropriate professional. The city council may waive this requirement if additional height is appropriate for co-location opportunities.

5. **Exterior surfaces.** Towers and antennas must be painted a non-contrasting color consistent with the surrounding area such as: blue, gray, brown, or silver, or have a galvanized finish to reduce visual impact. Metal towers must be constructed of, or treated with, corrosion-resistant material.
6. **Ground-mounted equipment.** Ground-mounted accessory equipment or buildings must be architecturally designed to blend in with the surrounding environment, including the principal structure, or must be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the character of the surrounding neighborhood. No more than one accessory building is permitted for each tower. Additional space needed for the co-location of antennas must be added to an existing accessory building in a manner to make it appear as one building. Design of the building or equipment cabinet, screening and landscaping are subject to a site plan review under section 300.27 of this code.

7. **Construction.** Telecommunications facilities must be in compliance with all building and electrical code requirements. A tower must be designed and certified by an engineer to be structurally sound and in conformance with the building code. Structural design, mounting and installation of the telecommunications facilities must be in compliance with the manufacturer’s specifications.

8. **Co-location opportunity.** If a new tower over 60 feet in height is to be constructed:

   a) The tower must be designed to accommodate both the applicant’s antennas and antennas for at least one additional comparable user;

   b) the tower must be designed to accept antennas mounted at additional heights;

   c) the applicant, the tower owner, the landowner, and their successors must allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use, must submit a dispute over the potential terms and conditions to binding arbitration, and must sign the conditional use permit agreeing to these requirements. The city council may waive these co-location requirements if necessary to implement stealth design.

9. **Exterior Message.** No advertising message or identification sign larger than two square feet may be affixed to the telecommunications facilities.
10. **Lighting.** Telecommunications facilities may not be artificially illuminated unless required by law or by a governmental agency to protect the public’s health and safety or unless necessary to facilitate service to ground-mounted equipment.

11. **Rights-of-way.** All telecommunication facilities in a public right-of-way must comply with the following:

a) Telecommunications facilities located within a right-of-way must not negatively impact the public health, safety and welfare, interfere with the safety and convenience of ordinary travel over the right-of-way, or otherwise negatively impact the right-of-way or its users. In determining compliance with this standard, the city may consider one or more of the following factors:

1) the extent to which right-of-way space where the permit is sought is available, including the placement of the ground equipment;
2) the potential demands for the particular space in the right-of-way;
3) the availability of other locations in a right-of-way that would have less public impact;
4) the extent to which the placement of the telecommunications facilities minimizes impacts on adjacent property; and
5) the applicability of ordinances or other regulations of the right-of-way that affect location of equipment in the right-of-way;

b) The facility, including attachments other than lightning rods, may not exceed 60 feet in height measured from grade in residential and commercial zones, or 75 feet in industrial zones. The city council may waive this height standard for a facility used wholly or partially for essential public services, such as public safety;

c) The support structure for the antennas cannot exceed the diameter of the closest public utility pole by more than 50 percent, but in no event may exceed 18 inches in diameter;

d) Antennas and other components must not project out from the side of the support structure by more than two feet in
residential and commercial districts or three feet in industrial
districts;

e) The support structure for the antennas must match the
materials and color of the closest public utility structures in the
right-of-way, if required by the city planner;

f) Ground mounted equipment will be allowed only if:

1) the equipment will not disrupt traffic or pedestrian
circulation;

2) the equipment will not create a safety hazard;

3) the location of the equipment minimizes impacts on
adjacent property; and

4) The equipment will not adversely impact the health,
safety, or welfare of the community;

g) Ground mounted equipment must be:

1) set back a minimum of 10 feet from the existing or
planned edge of the pavement;

2) separated from a sidewalk or trail by a minimum of 3
feet;

3) set back a minimum of 50 feet from the nearest
intersection right-of-way line;

4) set back a minimum of 50 feet from the nearest
principal residential structure;

5) separated from the nearest ground mounted
telecommunication facilities in a right-of-way by at least
330 feet;

6) no larger than 3 feet in height above grade and 27
cubic feet in size in residential districts;

7) no larger than 5 feet in height above grade and 81
cubic feet in size in non-residential districts; and

8) screened by vegetative or other screening compatible
with the surrounding area if deemed necessary by the
city planner;

h) The antennas cannot interfere with public safety
communications;

i) The telecommunication facility must be removed and
relocated when the road authority requires the removal and
relocation of public utility structures; and
j) Telecommunications facilities within a right-of-way must receive a right-of-way permit from the appropriate road authority.

12. On-site employees. There must be no employees on the site on a permanent basis. Occasional or temporary repair and service activities are allowed.

13. Landowner authorization. When applicable, the applicant must provide written authorization from the property owner. The property owner must sign the conditional use permit agreeing to the permit conditions, agreeing to remove the telecommunication facilities when they are unused, obsolete, or become hazardous, and agreeing to the city’s right to assess removal costs under this ordinance.

14. Removal. Obsolete telecommunications facilities must be removed within 90 days after cessation of their use at the site, unless an exemption is granted by the city council. Unused telecommunications facilities and all related equipment must be removed within one year after cessation of operation at the site, unless an exemption is granted by the city council. Telecommunications facilities and related equipment that have become hazardous must be removed or made not hazardous within 30 days after written notice to the current owner and to any separate landowner, unless an exemption is granted by the city council. Notice may be made to the address listed in the application, unless another one has subsequently been provided, and to the taxpayer of the property listed in the Hennepin county tax records. Telecommunications facilities and all related equipment that are not removed within this time limit are declared to be public nuisances and may be removed by the city. The city may assess its costs of removal against the property.

15. Historic Places. No telecommunication tower may be located within 400 feet of the boundary of any property that contains a facility or structure listed on the national register of historic places. Antennas may be located in this restricted area only if they are hidden from public view.

Section 3. Specific Standards

3.01 City Code 300.34 Subd.4(b)(1) outlines the following conditional use permit
standards for telecommunications facilities within residential and commercial zoning districts:

1. Telecommunication facilities may be located only on public or institutional property: in R-1 and R-2 residential districts and on property guided for low-density residential in the Planned I-394 District subject to the standards listed in subparagraphs which follow.

2. An applicant must provide an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the antennas is necessary to meet the coverage and capacity needs of its system and that there is no existing antenna support structure that could adequately serve the area if antennas were placed on it. The applicant must also pay the reasonable expenses of a radio or electrical engineer retained by the city, at its option, to review this analysis;

3. A telecommunications facility must use as many stealth design techniques as reasonably possible. Economic considerations alone are not justification for failing to provide stealth design techniques. The city council may require that a different location be used if it would result in less public visibility, is available, and would meet the applicant’s reasonable capacity and coverage needs; and

4. A telecommunications tower and antennas, including attachments other than lightning rods, must not exceed 75 feet in height, measured from grade. The city council may increase this height to 90 feet if the increase in height would not have a significant impact on surrounding properties because of proximity, topography or screening by trees or buildings or would accommodate two or more users. The city council may waive this height standard for a tower used wholly or partially for essential public services, such as public safety.

5. Telecommunications facilities may be located in public right-of-way of a major collector or arterial roadway as defined in the comprehensive plan, if they meet all of the following requirements:

   a) The facility is not located within a special area designated subdivision 7;

   b) The facility is not located adjacent to residentially zoned property unless the applicant demonstrates by providing a study prepared by a radio or electrical engineer demonstrating that the proposed location of the antennas
is necessary to meet the coverage and capacity needs of its system and no other location is feasible in a non-residential zone;

c) The facility must use as many stealth design techniques as reasonably possible. In particular, the antennas must be designed to minimize their size and appearance. Economic considerations alone are not justification for failing to provide stealth design techniques; and

d) The facility must also comply with the requirements in subdivision 6(k).

Section 4. Findings.

4.01 The proposal meets the general standards as outlined in City Code §300.34 Subd.5.

4.02 The proposal meets the specific standards as outlined in City Code 300.34 Subd.4(b)(1).

1. The proposed telecommunications facilities would be located on Planned I-394 District, as allowed by City Code.

2. There is no potential for the system to cause any interference with city or public safety systems since the project does not include any transmitting frequencies. The proposed dishes are required for receiving cable television data from satellites.

3. The proposed telecommunication facilities would be buffered by the existing building, surrounding buildings, existing vegetation, and elevation changes. Also, a condition of this resolution requires the color of the masts and dishes must be reviewed and approved by staff.

4. The proposed masts and dishes would be a total of 26 feet in height.

5. The telecommunications facilities will not be located in public right-of-way of a major collector or arterial roadway.

Section 5 Council Action.

5.01 The above-described conditional use permit is approved, subject to the following conditions:
1. Subject to staff approval, the property must be developed and maintained in substantial conformance with the following plans: Construction plans dated May 17, 2016.

2. Prior to issuance of any required electrical or building permits:
   a) This resolution must be recorded with Hennepin County.
   b) The applicant must submit color templates for the masts and dishes to be reviewed and approved by City Staff.
   c) The applicant must submit individual written statements from the property owner and applicant, or their authorized representatives, agreeing to the conditional use permit conditions, agreeing to remove the telecommunication facilities when they are unused, obsolete, or become hazardous, and agreeing to the city’s right to assess the removal costs under City Code Section 300.34.5(n).
   d) The applicant must agree to the above conditions in writing.

3. The fence enclosure surrounding the telecommunication facilities must be kept in good repair.

4. No advertising message or identification sign larger than two square feet may be affixed to the telecommunications facilities.

5. The telecommunications facilities cannot be artificially illuminated.

6. No employees specifically assigned to work on the satellite are allowed on the site on a permanent basis. Occasional or temporary repair and service activities are allowed.

7. The applicant must obtain appropriate electrical and building permits prior to the installation of the dishes.

8. The city council may reasonably add or revise conditions to address any future unforeseen problems.

9. Approval of the telecommunications facilities is for receive dishes only. A new conditional use permit is required if any transmitting systems are to be installed in the future.
Adopted by the City Council of the City of Minnetonka, Minnesota, on August 8, 2016.

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

**Action on this resolution:**

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on August 8, 2016.

David E. Maeda, City Clerk
Drew Ingvalson

From: Beverly Boland [REDACTED]
Sent: Thursday, July 14, 2016 4:58 PM
To: Drew Ingvalson
Cc: Cliffs Manager
Subject: RE: Public Hearing Notice - US Internet Corp Satellite Dishes

Drew,
Thank you for sending the information and link this morning regarding US Internets Hearing.
As noted on the notice card, comments should be submitted by today.
After review of the photos and information, we are concerned about the placement of the satellite dishes as they are visible from and hinder the views from for our residents on the second and third floor of the 12300 Marion Lane bldg at The Cliffs of Minnetonka.

Beverly Boland
Belgarde Property Services, Inc.
7841 Wayzata Blvd, Suite 111
Minneapolis, MN 55425
952-546-2000 phone
952-545-6626 fax
www.belgarde.com

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study.

There will be a joint planning commission meeting with the city of Hopkins July 26, 2016 at 7 p.m. to discuss the Shady Oak station zoning.

The next planning commission meeting will be August 4, 2016.

6. **Report from Planning Commission Members**: None

7. **Public Hearings: Consent Agenda**

No items were removed from the consent agenda for discussion or separate action.

*Odland moved, second by O’Connell, to approve the items listed on the consent agenda as recommended in the respective staff reports as follows:*

A. **Variances to allow construction of a mudroom at 3130 Shores Boulevard.**

Adopt the resolution on pages A11-A14 of the staff report. This resolution approves a side yard setback and aggregate side yard setback variance for a mudroom.

B. **Variances to allow construction of an attached garage at 3218 Shores Boulevard.**

Adopt the resolution on pages A17-A20 of the staff report. This resolution approves a side yard setback variance for an attached garage at 3218 Shores Boulevard.

C. **Conditional use permit for telecommunications facility at 12475 Marion Lane West.**

Recommend that the city council adopt the resolution on pages A13-A22 of the staff report. This resolution approves a conditional use permit for 26-foot tall telecommunications facilities on the property at 12475 Marion Road West.

*Odland, Powers, Calvert, Knight, Hanson, O’Connell, and Kirk voted yes. Motion carried and the items on the consent agenda were approved as submitted.*
Brief Description: Resolution approving the final plat of WILLISTON WOODS WEST at 5431 Williston Road

Recommendation: Adopt the resolution approving the final plat

Introduction

In March 2016, the city council approved the preliminary plat of WILLISTON WOODS WEST. As approved, the existing properties at 5431 and 5439 Williston Road would be divided to create five smaller, single-family lots. At the time of preliminary plat approval, the applicant noted that final platting of the site would likely be presented in two phases. The first final plat application would be submitted for the northerly lots. A second final plat application would be submitted sometime after for the southerly lots. This phased final platting would allow time to resolve a “gap” issue between the existing 5431 and 5439 sites. Phased final platting is allowed by city code. (See pages A1–A3.)

At this time the applicant, Lake West Development Co. LLC., is requesting approval of the first WILLISTON WOODS WEST final plat. The plat would divide the 5431 Williston Road property into three lots and one outlot. The 5439 Williston Road property would remain in its current configuration. (See page A4.)

Staff Comments

The final plat generally reflects the site design approved as the preliminary plat. The phased final platting would not impact any other conditions of the rezoning, master development plan, or site and building plans previously approved for WILLISTON WOODS WEST. These approvals have been recorded against the existing properties.

Staff continues to receive complaints regarding the general upkeep of the two existing homes at 5431 and 5439 Williston Road, both of which are part of the approved preliminary plat. To address this issue, staff has included a condition of approval requiring that by September 30, 2016, the homes either: (1) be brought into compliance with all aspects of the nuisance ordinance; or (2) demolished.

Staff Recommendation

Resolution approving the final plat for WILLISTON WOODS WEST at 5431 Williston Road. (See pages A5–A8.)

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
Location Map

Project: Williston Woods West
Applicant: Lakewest Development
Address: 5431 & 5439 Williston Rd
(15028.15a)

This map is for illustrative purposes only.
EXISTING GAP
KNOW ALL PERSONS BY THESE PRESENTS: That Williston Road, LLC, a Minnesota limited liability company, owner of the following described property situated in the County of Hennepin, State of Minnesota, to wit:

That part of the Northeast Quarter of the Northeast Quarter of Section 33, Township 117, Range 22, Hennepin County, Minnesota described as follows: Beginning at a point on the west line of said Northeast Quarter of the Northeast Quarter distant 250.00 feet south of the northwest corner thereof, thence south along said west line 200.00 feet, thence west parallel with the north line of said Northeast Quarter of the Northeast Quarter 207.31 feet; thence north parallel with said west line 207.31 feet to the point of beginning.

Has caused the same to be surveyed and plotted as WILLISTON WOODS WEST and does hereby dedicate to the public for public use the easements for drainage and utility purposes as shown on the plat.

In witness whereof said Williston Road, LLC, a Minnesota limited liability company, has caused these presents to be signed by its proper officer this ______ day of ______, 20____.

WILLISTON ROAD, LLC

By: ____________________________________________
Mayor

By: ____________________________________________
City Clerk

RESIDENT AND REAL ESTATE SERVICES, HENNEPIN COUNTY, MINNESOTA

I hereby certify that taxes payable in ______ and prior years have been paid in full for all land described on this plat.

Dated this ______ day of ______, 20____.

Mark V. Chapin, Hennepin County Auditor

By: __________________________________________
Deputy

SURVEY DIVISION, HENNEPIN COUNTY, MINNESOTA

Pursuant to Minnesota Statutes, Section 356B.565 (1969), this plat has been approved this ______ day of ______, 20____.

Chris F. Mavis, Hennepin County Surveyor

By: __________________________________________
Deputy

COUNTY RECORDER, HENNEPIN COUNTY, MINNESOTA

I hereby certify that the within plat of WILLISTON WOODS WEST was recorded in this office the ______ day of ______, 20____.

Martin McCormick, County Recorder

By: __________________________________________
Deputy
Resolution No. 2016-

Resolution approving the final plat of WILLISTON WOODS WEST
at 5431 Williston Road

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

Section 1. Background.

1.01 Lakewest Development Co. LLC has requested final plat approval for WILLISTON WOODS WEST.

1.02 The property to be included in the WILLISTON WOODS WEST is located at 5431 Williston Road. It is legally described on Exhibit A of this resolution.

1.03 On March 14, 2016, the city council approved the WILLISTON WOODS WEST preliminary plat.

Section 2. Council Action.

2.01 The city council approves the final plat of WILLISTON WOODS WEST at 5431 Williston Woods West. Approval is subject to the following conditions:

1. Compliance with conditions outlined in preliminary plat Resolution No. 2016-020 except as modified by the following conditions.

2. Prior to release of the final plat:

   a) Submit a revised final plat that includes:

      1) A drainage and utility easement over the rear of Lots 1, 2, and 3 encompassing the drainage path to the infiltration basin at the northeast corner of the plat.
2) Either: (1) a road dedication clause in addition to the easement dedication clause; or (2) a notation of the document number that previously conveyed 33 feet of right-of-way.

b) The following legal documents required under Resolution No. 2016-020 must be submitted for review and approval of the city attorney:

1) Shared driveway easements. The easements must include a non-obstruction requirement over the actual shared portion of the driveway.

2) Title evidence that is current within thirty days of submittal.

3. Prior to September 30, 2016 the existing homes at 5431 and 5439 must either: (1) be brought into compliance with all aspects of the nuisance ordinance; or (2) demolished.

4. Unless the city council approves a time extension, the final plat must be recorded within one year of council approval of the final plat.

Adopted by the City Council of the City of Minnetonka, Minnesota, on August 8, 2016.

______________
Terry Schneider, Mayor

ATTEST:

______________
David E. Maeda, City Clerk

Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on August 8, 2016.

____________________________
David E. Maeda, City Clerk
EXHIBIT A

That part of the Northeast Quarter of the Northeast Quarter of Section 33, Township 117, Range 22, Hennepin County, Minnesota described as follows: Beginning at a point on the west line of said Northeast Quarter of the Northeast Quarter distant 206.50 feet south of the northwest corner thereof; thence south along said west line 250.00 feet; thence east parallel with the north line of said Northeast Quarter 257.31 feet; thence north parallel with said west line 250.00 feet; thence west parallel with said north line 257.31 feet to the point of beginning.
City Council Agenda Item #11A
Meeting of August 8, 2016

Brief Description: Resolution authorizing purchase of real property and amending the 2016-2020 CIP

Recommended Action: Adopt the resolution

Background

In August of 2002, the city of Minnetonka and Faith Presbyterian Church of Minnetonka (Church) entered an agreement to partner on the development of a mini-park on two church-owned parcels at 12117 Pioneer Trail and 4622 Nelson Drive. The agreement expires on December 31, 2016.

Under the terms of the agreement, the church provided the land and the city provided the amenities of the park with continued maintenance. The city’s interest in providing a park at this location was to address a need for parks in the Neighborhood Park Service Area (NPSA) 18, an area defined by Excelsior Boulevard to the north, the railway south of Shady Oak Lake to the south, 494 to the west and Shady Oak Road to the east. The Parks, Open Space and Trails (POST) plan had identified this area as being deficient of parks.

The church is not interested in extending the agreement but has expressed an interest in selling the properties to the city. The church leadership and city staff have negotiated an agreement, under which the city would purchase the properties for $150,000 and the church would allow park users to park in the church parking lot. Closing will be scheduled for late November or early December of 2016.

The purchase will be funded from the Parks & Trails Fund, and $150,000 has been reserved in the planned fund balance. An amendment to the 2016-2020 Capital Improvement Program is required to appropriate an additional $150,000 from that fund in 2016.

Recommendation

Adopt the resolution and amend the CIP.
Meeting of August 8, 2016
Subject: Resolution authorizing purchase of real property and amending the CIP

Submitted through:
   Geralyn Barone, City Manager
   Perry Vetter, Assistant City Manager
   Dave Johnson, Recreation Services Director
   Merrill King, Director of Finance

Originated by:
   Corrine Heine, City Attorney
AGREEMENT FOR CONSTRUCTION AND OPERATION
OF A PARK ON NELSON ROAD

This Agreement is made on 8/14/82, between FAITH PRESBYTERIAN
CHURCH OF MINNETONKA, a Minnesota non-profit corporation (the “Church”), and
the CITY OF MINNETONKA, a Minnesota municipal corporation (the “City”).

1. PURPOSE.

The Church owns property legally described on the attached Exhibit A ("the
Property"), which is presently undeveloped. The Church and the City have determined
that development of a park on the Property ("the Park") would jointly serve and meet
the needs of the Church’s members and the City’s constituents in the nearby
neighborhood and that this joint use is more economical and efficient than
development of two separate parks. The purpose of this agreement is to set forth the
terms governing the parties in the improvement, operation, and maintenance of the
Park.

2. OWNERSHIP.

2.1. The Church agrees to grant to the City a non-exclusive park easement over
the Property, terminating concurrently with termination of this agreement. This
easement will give the City the right to participate in constructing, operating, and using
the Park on the Property.

2.2. The equipment to be installed in the Park will be owned solely by the City.
Upon termination of the easement, title to the equipment will automatically transfer to
the Church if the Church pays to the City any amounts required under paragraph 5.2.
The City agrees to issue a bill of sale of the equipment to the Church, but if the City
fails to do so, this agreement plus a receipt for payment of any money owed under
paragraph 5.2 will act as sufficient evidence of the conveyance of the equipment to
the Church.

2.3. The Church’s capital contribution to the joint venture is the land; the City’s
capital contribution is the funds for the improvements.

3. DESIGN, CONSTRUCTION.

3.1. The City will undertake all necessary actions to design and construct the
agreed-upon improvements for the Park. The City will consult with the Church’s
Building and Grounds Committee Park Representative during the design phase to
incorporate design elements satisfactory to the Church.
3.2. Before the preparation of final plans and specifications, the City must conduct a minimum of two neighborhood meetings to present the proposed project. In addition, the City will present the proposed project to its Park Board for review and comment.

3.3. Before solicitation of construction bids, the final plans and specifications must be approved by both parties. Approval must be given on or before February 1, 2003, unless both parties agree to a later date.

3.4. If both parties approve the plans, the City will solicit bids in compliance with state law. The City is required to enter into this construction contract only if the total construction cost does not exceed $60,000, including design fees not to exceed $12,000. The value of City employees' time will not be included within this maximum amount. Unless otherwise agreed by the parties, the City will award the contract no later than April 1, 2003. If the City fails to award the contract by that date, this agreement will be voidable at the option of either party upon prior written notice to the other, but only if the termination notice is actually received by the other party before the awarding of a contract.

3.5. The City will use ordinary and prudent efforts to require that the Park is constructed and developed in compliance with approved plans and specifications and completed with all reasonable promptness. During construction, representatives of the Church will be given access to the construction site at all reasonable times.

3.6. The City is responsible for paying all costs of the improvements, including all design expenses, even if the agreement is terminated before completion of construction. However, termination may result in a cost-sharing under paragraph 5.2 below.

4. **OPERATION, MAINTENANCE.**

4.1. The Church and the City will jointly use and operate the Park in accordance with this agreement.

4.2. The Park will be open for use by the Church's members and public citizens at all times that other City parks are open for public use. The Park will be subject to all of the rules that apply to other City parks. The City may not permit exclusive use of the Park, or any portion of it, to any one person or group.

4.3. The Church will provide at its own expense all maintenance of the parking lot serving the Park, including snow removal. The Church will maintain the parking lot to
the same standard as the City maintains parking lots serving its other parks. If the Church fails to do so within 30 days after receiving the City's written request, then the Church agrees that the City may complete the maintenance and may collect the costs from the Church in any manner permitted by law, including the right to charge the cost to the Church as part of the Church's sewer and water bills. In undertaking the maintenance, the City must minimize disruption to Church activities and must complete the work in a cost-effective and workmanlike manner, so that the maintenance work blends with the existing improvements as much as possible.

4.4. The City will provide the following for the Park at its own expense:

a. Mowing and maintenance of turf and landscaping;

b. Maintenance of all park equipment and other recreational amenities and utilities such as water fountains and lights;

c. Development and maintenance of park signs;

d. Garbage pick-up service for the Park; and

e. Capital replacement of equipment not to exceed $2,000 annually.

4.5. The name of the Park will be jointly decided by the Church and the City. The parties will begin discussing this issue as soon as reasonably possible after execution of this agreement. The parties must resolve this issue before any design or construction commences. If the parties cannot agree on a name within six months after execution of this agreement, then this agreement automatically terminates.

5. TERMINATION.

5.1. The Church may terminate this agreement at any time by giving 30-days advance written notice to the City. The City may terminate this agreement if the Church defaults on its obligations under this agreement. Written notice of termination must be sent to the addresses provided in paragraph 9.2 below, or to such other address as each party may provide to the other.

5.2. If this agreement is terminated as provided in 5.1 after construction has begun but before the year 2016, the Church must pay to the City a proportionate share of the City's initial investment determined by the following calculation: The base amount will be 100% of design costs and 50% of construction costs. The base amount will be multiplied by a fraction, the denominator of which is 15, and the
numerator of which is the number of years remaining in the term of this agreement. The year 2002 will have the numerator of 15. A partial year will be counted as a full year.

6. **DISPUTE RESOLUTION.**

6.1. If a dispute arises between the parties regarding this agreement or the operation or maintenance of the Park, the Church’s Building and Grounds Committee Park Representative and the City’s Director of Recreation Services must promptly meet and attempt in good faith to negotiate a resolution of the dispute.

6.2. If the parties have not negotiated a resolution of the dispute within 30 days after this meeting, the parties may jointly select a mediator to facilitate further discussion.

6.3. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, the dispute will be submitted to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, except that disputes involving an amount less than $25,000 will be submitted to a single arbitrator.

6.4. The parties will equally share the costs of conducting any mediation or arbitration, excluding each party’s cost for preparation of its own case.

6.5. In addition to the dispute resolution mechanisms contained in this section, each party may seek specific performance of the other party’s obligations under this agreement.

6.6. Each party is responsible for its own attorney’s fees incurred in formulating and terminating this agreement and any disputes regarding this agreement.

7. **LIABILITY, INSURANCE.**

7.1. The City will be responsible for all claims resulting from construction, operation, use, and maintenance of the Park. “Claims” as used in this paragraph means all third-party claims, losses, damages, and expenses, including attorneys' fees, resulting from personal injury, death, violation of civil rights, and/or property damage.

7.2. The parties agree that one attorney may represent both parties in any third-party claim arising under paragraph 7.1. Each party reserves the right to retain its own attorney if circumstances warrant it.
7.3. The City will obtain a policy of public liability insurance, either from a reputable insurance company authorized to do business in Minnesota or through a self-insurance pool organized pursuant to Minnesota Statutes §471.981. The City will name the Church as an additional insured with respect to the Park. The limits of liability must cover the City’s exposure under Minnesota Statutes Chapter 466.

7.4. The City will obtain sufficient insurance (in accordance with prevailing community standards) to protect the parties’ exposures to loss and liability during the time of Park construction.

7.5. Once the Park is constructed and occupied, the City will obtain sufficient property and casualty insurance (in accordance with prevailing community standards) to cover the replacement cost of the Park improvements. This insurance and payment of any deductibles will be a cost of operating the Park borne solely by the City. The City will name the Church as an additional insured.

7.6. Upon request, the City will provide to the Church a certificate of insurance verifying that the insurance policies required by this agreement are in effect.

8. TERM.

8.1. This agreement will continue in effect until December 31, 2016, or until terminated as provided above.

9. GENERAL PROVISIONS.

9.1. All amounts due to one party from the other will be paid within 90 days after a written notice of the amount due has been provided, or in compliance with an alternative re-payment plan approved by both parties. Each party will allow the other to review all of its records regarding a payment demand at reasonable times during normal business hours.

9.2. All notices under this agreement must be sent by first class mail addressed to the address provided below, or to such other address as each party may provide to the other:

If to the Church:
Building and Grounds Committee Park Representative
Faith Presbyterian Church of Minnetonka
12007 Excelsior Blvd.
Minnetonka MN 55343

If to the City:

Director of Recreation Services
City of Minnetonka
14600 Minnetonka Blvd.
Minnetonka, MN 55345

9.3. This agreement may be amended only in writing, executed by the proper representatives of both parties.

9.4. The parties may supplement this agreement with additional written policies or agreements approved in writing by both parties which are not inconsistent with the terms of this agreement.

9.5. This agreement must be interpreted under the laws of the state of Minnesota.

Date: 8/14/02

FAITH PRESBYTERIAN CHURCH OF MINNETONKA

By ______________________________
Its CHAIRMAN

And ______________________________
Its SECRETARY
Nelson Road Park Agreement
Page 7

Date: 7-28-02

CITY OF MINNETONKA

By [Signature]
Its Mayor

And [Signature]
Its City Manager
Exhibit A

**North Parcel – Tax I.D. No.: 26-117-22-21-0003**

That part of the West 83.50 feet of the East 562 feet of the North 322 feet of the Northwest Quarter, Section 26, T117N, R22W, lying South of the Highway.

**South Parcel – Tax I.D. No.: 26-117-22-21-0004**

The West 83.50 feet of the East 562 feet of the South 254 feet of the North 576 feet of the Northeast Quarter of the Northwest Quarter of Section 26, T117N, R22W.
PURCHASE AGREEMENT

This Agreement is made as of ________, 2016 by and between CITY OF MINNETONKA, a Minnesota municipal corporation ("City") and FAITH PRESBYTERIAN CHURCH OF MINNETONKA, a Minnesota nonprofit corporation ("Church").

Recitals

A. The Church is the fee owner of certain real property located at 12117 Pioneer Trail and 4622 Nelson Drive in the City of Minnetonka, County of Hennepin, State of Minnesota, legally described as follows:
   The West 83.5 feet of the East 562 feet of the North 322 feet of the Northeast Quarter of the Northwest Quarter of Section 26, Township 117, Range 22, Hennepin County, Minnesota.
   (Part of land in Certificate of Title No. 810098)
   The South 254 feet of the North 576 feet of the West 83.50 feet of the East 562 feet of the Northeast Quarter of the Northwest Quarter of Section 26, Township 117, Range 22.
   (the “Property”). The Property is improved with playground equipment and related park improvements.

B. The Church is also the fee owner of the real property legally described as follows:
   The East 445.5 feet of that part of the Northeast Quarter of the Northwest Quarter lying Northerly of Winterset Park, and the West 83.5 feet of that East 562 feet of the North 322 feet of said Northeast Quarter of the Northwest Quarter; also that part of the Northwest Quarter of the Northeast Quarter lying North of Winterset Park First Addition, which lies West of the most Westerly line of Block 2, in said Winterset Park First Addition and its Northerly extension. All in Section 26, Township 117, Range 22, Hennepin County, Minnesota.
   (the “Church Property”). A portion of the Church Property is improved with a parking lot (the “Parking Lot”).

C. The City currently leases the Property for public park purposes and park patrons are allowed to use the Parking Lot for parking, pursuant to an Agreement for Construction and Operation of a Park on Nelson Road (the “Park Agreement”). The Park Agreement expires December 31, 2016, and the City desires to purchase the fee title to the Property, together with a revocable license for use of the Parking Lot (the “License”).
Agreement

1. **Offer/Acceptance.** In consideration of the mutual agreements contained in this Agreement, the City offers to purchase and the Church agrees to sell fee simple title to the Property, according to the terms of this Agreement.

2. **Purchase Price.** The total purchase price for the Property and License is $150,000.00. The City agrees to pay the Purchase Price at Closing (as defined below), less adjustments as provided in this Agreement, by wire delivery of funds through the Federal Reserve System to an account designated in writing by the Church.

3. **Contingency.** This Agreement is contingent upon approval of the Church’s membership in accordance with Minn. Stat. ch. 317A and the Church’s bylaws. This contingency must be satisfied by August 1, 2016, or the Agreement is null and void.

4. **Title Examination.** City has reviewed the condition of title to the Property as of March 17, 2016. The City’s requirements for marketable title are addressed by delivery of documents in paragraph 6.a. below.

5. **Closing and Possession.** The closing of the transaction contemplated by this Agreement (the “Closing”) must occur on November 30, 2016 or such other date as mutually agreed upon by City and Church. Church must deliver possession of the Property to City on the Closing Date.

   a. **CHURCH’S CLOSING DOCUMENTS.** On the Closing Date, Church must execute and/or deliver to City the following documents, all of which must be in form reasonably satisfactory to City:

      (1) Limited Warranty Deed conveying Church’s interest in the Property to City in fee-simple absolute, free and clear of all liens and encumbrances, except as follows: subject to Document Nos. 1241180, 2525072 and 3600057, on file with the Hennepin County Registrar of Titles. The Limited Warranty Deed must comply with the requirements of paragraph 8 below, regarding the License.

      (2) Affidavit of Seller, indicating that on the Closing Date there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving either Church or the Property, and that, except for activities undertaken by City pursuant to the Park Agreement, there has been no skill, labor or material furnished to the Property at Church’s request for which payment has not been made or for which mechanics’ liens could be filed, and that there are no other unrecorded interests in the Property.

      (3) Instruments, recorded or in recordable form, releasing the Property from Declaration Document No. 5336347 and Mortgage Document No. 5336348, files of the Hennepin County Registrar of Titles.

      (4) A certificate of the Church secretary, in form acceptable to City, concerning compliance with statutory and bylaw requirements for the sale of the Property, and concerning the incumbency and authority of the person who executes the Deed on behalf of the Church.

      (5) A non-foreign affidavit executed by Church, containing such information as required by IRC Section 1445(b)(2) and its regulations.

      (6) All other documents reasonably determined by City to be necessary to transfer the fee interest in the Property to City in the manner required by this Agreement.

   b. **CITY’S CLOSING DOCUMENTS.** On the Closing Date, City must deliver to Church the
Purchase Price, subject to adjustments as provided in this Agreement, by wire transfer of U.S. Federal Funds.

7. **Prorations, Adjustments and Allocation of Costs.** The prorations and adjustments described in this section 7 will be made between City and Church at Closing:

   a. **Taxes.** The Property is tax exempt, and no adjustments are required for taxes.
   
   b. **ASSESSMENTS.** There are no levied or pending special assessments against the Property, and no adjustments are required for assessments.
   
   c. **TITLE AND CLOSING FEES.** Church will pay the deed tax on the Deed to be provided by the Church and the cost of recording instruments necessary to provide encumbered fee title. City will prepare all documents necessary for closing and handle the closing at its cost. City will pay the cost of recording the Deed from Seller.

   d. **ATTORNEY FEES.** Each party will pay its own attorney fees in connection with this transaction.

8. **License.** The Limited Warranty Deed to be delivered at Closing must include the following language:

   Together with a revocable license in favor of the Grantee as set forth in Exhibit A attached to this Limited Warranty Deed.

Exhibit A to the Limited Warranty Deed must be in substantially the form of the attached Exhibit A.

9. **Disclosures.** Church makes the following disclosures:

   a. **WELL DISCLOSURE.** Church represents that Church does not know of any well on the Property.

   b. **SEPTIC SYSTEM DISCLOSURE.** Church does not know of any individual sewage septic system located on the Property.

10. **No Broker Involved.** The Church and City warrant to each other that there is no broker involved in this transaction with whom it has negotiated or to whom it has agreed to pay a broker commission. Each party agrees to indemnify the other for all claims for brokers’ commissions or finder’s fees in connection with negotiations for the purchase of the Property arising out of any alleged agreement, commitment or negotiation by that party.

11. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the parties and no other agreement prior to, or contemporaneously with, this Agreement is effective except as expressly stated in this document. Any amendment will not be effective unless it is in writing and executed by all parties or their respective successors or assigns.

12. **Notice.** Any communication that may or must be given by one party to the other will be deemed to have been given on the date it is deposited in the United States mail, registered or certified, postage pre-paid, and addressed as follows:

   a. If to City: 
      City Manager
      City of Minnetonka
      14600 Minnetonka Boulevard
      Minnetonka, MN 55345

   b. If to Church: 
      Gary Hemphill, President
Faith Presbyterian Church of Minnetonka
12007 Excelsior Boulevard
Minnetonka, MN 55343

Either party may change this location by giving written notice to the other party specifying the new location.

2

The Seller agrees to the terms of this Purchase Agreement.

SELLER:

FAITH PRESBYTERIAN CHURCH

By ____________________________
Its president of corporation

By ____________________________
Its ____________________________

The Buyer agrees to the terms of this Purchase Agreement.

BUYER:

CITY OF MINNETONKA

By: ____________________________
Its Mayor

By: ____________________________
Its City Manager
EXHIBIT A
(Revocable License)

The Grantor, Faith Presbyterian Church of Minnetonka ("Licensor"), hereby grants to the Grantee, City of Minnetonka ("Licensee"), a revocable license over the following described real property, according to the terms set forth below:

The East 445.5 feet of that part of the Northeast Quarter of the Northwest Quarter lying Northerly of Winterset Park, and the West 83.5 feet of that East 562 feet of the North 322 feet of said Northeast Quarter of the Northwest Quarter; also that part of the Northwest Quarter of the Northeast Quarter lying North of Winterset Park First Addition, which lies West of the most Westerly line of Block 2, in said Winterset Park First Addition and its Northerly extension. All in Section 26, Township 117, Range 22, Hennepin County, Minnesota.

(the "Church Property"), which is located on the opposite side of Nelson Drive from the real property conveyed to the City of Minnetonka by the foregoing Limited Warranty Deed.

Terms:

1. **Uses Allowed.** This license allows individuals to park their personal vehicles in the parking lot on the Church Property (the "Parking Lot") while the individuals are using the public park located on the Park Property. Parking is allowed on an as-available basis, and is subject to Licensor's right to prohibit Park parking at times when Licensor is holding a church event. Overnight parking is not allowed under this license.

2. **Maintenance.** The Licensor is responsible for maintaining the Parking Lot at its expense.

3. **Liability; Insurance.** The Licensee will be responsible for all claims against the Licensor that arise out of a claimant's use of the Parking Lot pursuant to this license; provided, that the Licensee is not responsible for claims attributable to the intentional misconduct or gross negligence of the Licensor, its officers, employees or invitees. At all times while this license is in force, the Licensee will maintain a policy of public liability insurance, either from a reputable insurance company authorized to do business in Minnesota or through a self-insurance pool pursuant to Minnesota Statutes § 471.981, which policy must provide coverage for the Park Property and for the Parking Lot pursuant to this license. The Licensor must be an additional named insured on the insurance policy. The policy must provide coverage in an amount at least equal to the applicable liability limits under Minnesota Statutes § 466.04. Nothing in this License should be construed as waiving applicable immunities and defenses of the Licensor under Minnesota Statutes chapter 466 or other law.

4. **Termination.** Either party may terminate this license by providing at least 90 days' advance written notice to the other. Notice may be given by personal delivery or by first class mail as follows:
a. To Licensor: Faith Presbyterian Church
   12007 Excelsior Avenue
   Minnetonka, MN 55343

b. To Licensee: City of Minnetonka
   14600 Minnetonka Blvd.
   Minnetonka, MN 55345

Either party may change the address at which notice must be given by providing notice to the other party in the manner provided in this paragraph. The party who terminates this license must record a certificate in the records of the Hennepin County Registrar of Titles, referencing the recording information for this instrument, to evidence the termination of this license.

By signing below, Licensee accepts the terms and conditions of this license.

CITY OF MINNETONKA

By
Its Mayor

By
Its City Manager

STATE OF MINNESOTA )
   ) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me on _____________, 2016, by Terry Schneider, the mayor of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the corporation.

Notary Public
The foregoing instrument was acknowledged before me on ____________, 2016, by Geralyn Barone, the city manager of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the corporation.

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

Section 1. Background.

1.01. In 2002, the city entered into an agreement with Faith Presbyterian Church of Minnetonka for the construction and operation of a park on properties owned by the church at 12117 Pioneer Road and 4622 Nelson Drive.

1.02. The improved properties are known as Pioneer Park. The park is located in Neighborhood Park Service Area 18, an area defined by Excelsior Boulevard to the north, the railway south of Shady Oak Lake to the south, I-494 to the west and Shady Oak Road to the east. There are no other neighborhood parks that serve this area.

1.03. The city’s agreement with the church expires on December 31, 2016, and the church has expressed an interest in selling the land to the city rather than extending the agreement.

1.04. The city staff has negotiated a purchase agreement with the church, under which the city would purchase the land for $150,000, and the church would continue to allow park visitors to park in the church’s parking lot.

Section 2. Council Action.

2.01. The 2016-2020 Capital Improvement Program is amended by appropriating an additional $150,000 from the Parks & Trails Fund in 2016.

2.02. The city council hereby approves the purchase agreement with Faith Presbyterian Church of Minnetonka for the properties at 12117 Pioneer Road and 4622 Nelson Drive.

2.03. The mayor and city manager are hereby authorized and directed to execute the purchase agreement and all other instruments necessary to complete the transaction contemplated by the purchase agreement.
Adopted by the City Council of the City of Minnetonka, Minnesota, on [date].

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

**Action on this resolution:**

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on [date].

David E. Maeda, City Clerk
City Council Agenda Item #12A  
Meeting of August 8, 2016

**Brief Description**  
Items concerning a townhome development at 11901 Minnetonka Boulevard:

1) Ordinance amending the existing Big Willow Townhomes master development plan;

2) Site and building plan review; and

3) Preliminary and final plats.

**Recommendation**  
Introduce the ordinance and refer it to the planning commission

**Background**

In 2004, the city considered plans for Big Willow Townhomes, a four-lot townhome development at 11907 Minnetonka Boulevard. While the adjacent property at 11901 Minnetonka Boulevard had not been included in the developer’s original plans – as the then owner of the property was not interested in redevelopment – the city determined that the property should be taken into consideration to promote orderly future development. Ultimately, both properties were zoned planned unit development (PUD) and a master development plan adopted covering each site. Four townhomes were quickly thereafter built on the 11907 site, while the single-family home remained on the 11901 site. (See pages A1–A3.)

**Proposal**

Gatehouse Properties, Ltd. is now proposing to construct three townhomes on the property at 11901 Minnetonka Boulevard. (See pages A4–A12.) The proposal requires:

- **Master Development Plan Amendment.** By city code, a major amendment to an approved master development plan is required for any change to an approved land use. The existing master development plan calls for construction of four townhomes on the site.

- **Site and Building Plan Review.** By city code, site and building plan review is required for construction within a PUD.

- **Preliminary and Final Plats.** A subdivision of the existing property would allow for future separate ownership of individual townhomes.
Issue Identification

The purpose of introducing an ordinance is to give the city council the opportunity to review a new application before referring it to the planning commission for a recommendation. Introducing an ordinance does not constitute an approval. The planning commission review of the proposal is tentatively scheduled for August 18, 2016.

Based on preliminary review of the proposal, staff has identified two issues that will be particularly analyzed as the formal review continues:

- **Amendment.** The proposed uses will be reviewed for consistency with the original and current master development plan for the site.

- **Natural Resources.** The property does not contain a woodland preservation area, but does contain many mature trees of primarily the cottonwood, linden, spruce and some oak varieties. Consistency with the city’s several natural resources ordinances will be particularly reviewed.

Staff Recommendation

Staff recommends the city council:

1) Introduce the rezoning ordinance and refer it to the planning commission. (See pages A13–A15.)

2) Approve or modify the proposed notification area on page A16.

Submitted through:
   Geralyn Barone, City Manager
   Loren Gordon, AICP, City Planner

Originated by:
   Susan Thomas, AICP, Assistant City Planner
Not an accurate survey. For illustration purposes only.
SITE PLAN LEGEND:

SITE PLAN NOTES:
1. ALL DIMENSIONS SHOWN ARE TO FinISHED GRADE SURFACE. CURB FLOWLINE. THAT IS TO SAY, THE CURB SURFACE IS NOT INCLUDED IN THE DIMENSIONS SHOWN.
2. EXISTING PAVING TO REPAIRS WILL BE BY PRECEDENCE TO THE INVESTIGATING PARTY.
3. EXISTING PAVING TO REPAIRS SHALL BE SPOKED OUT FOR CURRENT TRANSFER ON THE STREETS TO BE SERVED ON SCHEDULE.
4. THE LOCATION OF ALL UNDERGROUND UTILITIES AS DRAWN IS WITHIN THE WORK ZONE WITH THE OWNER IN QUESTION.
5. OWNER IS RESPONSIBLE FOR COORDINATING WITH THE NEIGHBORS FOR CLOSING ON THE STREETS, CURB WORK, AND SQUARE AS REQUIRED.
6. OWNER IS RESPONSIBLE FOR ENSURING THE PROPERTY IS FREE OF ALL EXISTING SITE FEATURES THAT INTERFERE WITH NEW WORK AS SHOWN.

GENERAL NOTES:
1. PRIOR TO STARTING CONSTRUCTION, THE CONTRACTOR SHALL VERIFY THAT ALL REQUIRED PERMITS AND APPROVALS HAVE BEEN OBTAINED. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE OBTAINMENT OF ALL PERMITS AND CLEARANCES REQUIRED FOR THE CONSTRUCTION WORK.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE OBTAINMENT OF ALL PERMITS AND CLEARANCES REQUIRED FOR THE CONSTRUCTION WORK.
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4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE OBTAINMENT OF ALL PERMITS AND CLEARANCES REQUIRED FOR THE CONSTRUCTION WORK.

INDEX OF CIVIL SITE DRAWINGS:

C1
- PROJECT LOCATION PLAN
- SITE PLAN
- CRACKING PLAN
- STORMWATER PLAN
- EROSION CONTROL PLAN
- GUS EXISTING CONDITIONS AND REMOVALS PLAN
- DETAILS
GENERAL UTILITY NOTES:

1. Specifications applicable for this project. Construction shall be in compliance with the City of
Hennepin County Health and Metro Design Specifications. Existing utilities shall be marked and
protected per the City's Standard Procedures.

2. Utility requirements shall be followed for all work on this project.

3. The contractor shall provide temporary traffic control in compliance with the City's Temporary
Traffic Control Zone Limits until a final utility plan is approved and provided to the City.

4. All materials shall be delivered to the site as required and in accordance with the City's
Standard Specifications.

5. Construction shall be in compliance with the City's Standard Specifications. No materials
shall be delivered to the site until a final utility plan is approved and provided to the City.

6. The contractor shall remove all existing utilities and parking lots. All materials shall be
removed and hauled from the site as required.

7. The contractor shall provide temporary traffic control in compliance with the City's Temporary
Traffic Control Zone Limits until a final utility plan is approved and provided to the City.

8. No materials shall be delivered to the site until a final utility plan is approved and provided to the
City.

9. All materials shall be delivered to the site as required and in accordance with the City's
Standard Specifications.

10. The contractor shall provide temporary traffic control in compliance with the City's Temporary
Traffic Control Zone Limits until a final utility plan is approved and provided to the City.

11. All materials shall be delivered to the site as required and in accordance with the City's
Standard Specifications.

INDEX OF CIVIL SITE DRAWINGS:

C3  
Sanitary and Water 
Eldorado Villas

A8  
11901 Minnetonka Blvd
#16015.16a
GENERAL UTILITY NOTES:

1. Specification Appendix for this project: General Standard Specifications for the City of
Menasha, WI and all Wisconsin Department of Health and the requirements except where
modified in these contract documents.
2. The contractor shall comply with all Wisconsin Department of Health and
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Ordinance No. 2016-

An ordinance amending the existing master development plan pertaining to the property at 11901 Minnetonka Boulevard

The City Of Minnetonka Ordains:

Section 1.

1.01 This ordinance hereby amends the existing master development plan pertaining to the property at 11901 Minnetonka Boulevard.

1.02 The property is legally described as:

The East 150.00 feet of the West 300.00 feet of the Southwest Quarter of the Northeast Quarter of Section 14, Township 117, Range 22, Hennepin County, Minnesota, lying South of County Road No. 5 and lying North of the South 190 feet thereof.

1.03 The amendment generally approves construction of three townhomes on the site.

Section 2.

2.01 This ordinance is based on the following findings:

1. The proposal is consistent with the 2030 Comprehensive Guide Plan.

2. The amendment would not negatively impact the public health, safety, and welfare.

Section 3.

3.01 Approval is subject to the following conditions:
1. The site must be developed and maintained in substantial conformance with the following plans:
   - Eldorado Villas site plan, dated July 5, 2016
   - Eldorado Villas grading plan, dated July 5, 2016
   - Eldorado Villas sanitary and water utility plan, dated July 5, 2016
   - Eldorado Villas storm sewer utility plan, dated July 5, 2016

   The above plans are hereby adopted as the master development plan for the 11901 Minnetonka Boulevard property.

2. Development must further comply with all conditions as outlined in City Council Resolution No. 2016-___, adopted by the Minnetonka City Council on ______________, 2016.

Section 4. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 5. This ordinance is effective immediately.

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

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

Action on this Ordinance:

Date of introduction:  August 8, 2016
Date of adoption:
Motion for adoption:
Seconded by:
Voted in favor of:
Ordinance No. 2016-

Voted against:
Abstained:
Absent:
Ordinance adopted.

Date of publication:
I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on ______________, 2015.

________________________
David E. Maeda, City Clerk
City Council Agenda Item #13A  
Meeting of August 8, 2016

**Brief Description**  
Resolution vacating an existing public trail easement located at 14301 Stewart Lane

**Recommendation**  
Hold the public hearing and adopt the resolution

**Introduction**

Zvago Cooperative at Glen Lake has petitioned the Minnetonka City Council to vacate a public trail easement located on the west side of the property at 14301 Stewart Lane. A new public trail easement has been established north and east of the senior cooperative building currently under construction as approved during the development review. (See pages A1–A4.)

**Staff Comments**

The requested vacation is reasonable as:

1. There are no public utilities located within the easement.
2. A new public trail easement has been dedicated on the north and east side of the property. (See page A4.)
3. The vacation is not counter to the public interest.

**Staff Recommendation**

Hold the public hearing and adopt the resolution vacating the easement. (See pages A5–A6.)

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
Location Map

Project: OneTwoOne Development
Address: 14217 & 14301 Stewart La
(14028.14a)
June 16, 2016

Loren Gordon, AICP, City Planner
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN 55345

Re: Zvago Cooperative at Glen Lake
14301 Stewart Lane

Dear Mr. Gordon:

Enclosed you will find an application for the vacation of the easement for public trail purposes over the property referenced above, together with the following supporting documents:

<table>
<thead>
<tr>
<th>Application Fee</th>
<th>We understand that you are holding Ecumen Check No. 0025452 in the amount of $800.00, which was sent to the City on 5/18/16.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Description of Property</td>
<td>See enclosed Quit Claim Deed from the City of Minnetonka, Grantor, to Kinsel Point Development LLC, Grantee, dated October 12, 2015, recorded December 1, 2015, as Document No. A10262352 (the “Quit Claim Deed”).</td>
</tr>
<tr>
<td>Legal Description of Vacation</td>
<td>The easement is a blanket easement over the entire property described in the Quit Claim Deed. Therefore, the legal description of the vacation is the same as the legal description of the property (see enclosed Quit Claim Deed).</td>
</tr>
<tr>
<td>Easement Documents</td>
<td>The easement was reserved in the Quit Claim Deed.</td>
</tr>
<tr>
<td>Written Statement</td>
<td>See below.</td>
</tr>
</tbody>
</table>

The property, together with adjacent property owned by Zvago Cooperative at Glen Lake, is intended to be used for a 54 unit senior housing cooperative. The easement which is the subject of the vacation application has been replaced by the easement granted in the Trail Easement and Maintenance Agreement by Zvago Cooperative at Glen Lake, as Owner, in favor of the City of Minnetonka, dated April 13, 2016, recorded April 13, 2016, as Document No. A10302542, a copy of which is enclosed for your reference.
If you have any questions or need anything further, please do not hesitate to contact me at (612) 632-3030.

Very truly yours,

GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.

By
Catherine L. Sjoberg

CLS
Enclosures

cc: Julie Murray (via e-mail)
    Dennis Johnson (via e-mail)
    Dena Meyer (via e-mail)
    Link Wilson (via e-mail)
Resolution No. 2016-

Resolution vacating a public trail easement at 14301 Stewart Lane

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

Section 1. Background.

1.01 Zvago Cooperative at Glen Lake has petitioned the Minnetonka City Council to vacate a public trail easement located on the west side of the property at 14301 Stewart Lane.

1.02 The easement to be vacated is legally described as follows, to wit:

All that existing perpetual easement for public trail purposes originally established by reservation in Deed Doc. No. A10262352, recorded in files of the County Recorder in and for the County of Hennepin, State of Minnesota, over the following described land: That part of Lot 1, Glen Lake Park, lying southwesterly of a line drawn 40 feet northeasterly of and parallel to the southwesterly line of said Lot 1.

1.03 Pursuant to City Charter Section 12.06 a hearing notice on said petition was published in the City of Minnetonka’s official newspaper and written notice was mailed to the owners of each abutting property and to all landowners in the plat.

1.04 On August 8, 2016, the city council held a hearing on such petition, at which time all persons for and against the granting of said petition were heard.

Section 2. Standards.

2.01 City Charter Section 12.06 states that “no vacation shall be made unless it appears in the interest of the public to do so..."
Section 3. Findings.

3.01 The Minnetonka City Council makes the following findings:

1. There are no public utilities located within the easement.

2. A new public trail easement has been dedicated on the north and east side of the property.

3. The vacation is not counter to the public interest.


4.01 The above-described easement is hereby vacated.

Adopted by the City Council of the City of Minnetonka, Minnesota, on August 8, 2016.

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on August 8, 2016.

David E. Maeda, City Clerk
City Council Agenda Item #13B  
Meeting of August 8, 2016

**Brief Description**  
Resolution authorizing and affirming the issuance, sale, and delivery of multifamily housing revenue obligations for the benefit of CHC Minnetonka Affordable Housing LLC or its affiliates; authorizing the execution and delivery of the documents related thereto; and taking certain other actions

**Recommendation**  
Hold the public hearing and adopt the resolution

**Background**

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

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

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

The Borrower is working with the Department of Housing and Urban Development (HUD) to obtain a portion of the permanent financing for its four affordable housing projects. The HUD financing process is taking longer than expected and the Borrower is now asking for approval to issue a temporary conduit note which will be issued in one series on a tax-exempt basis and sold to Bridgewater Bank. Once the HUD financing approvals are complete or other permanent financing is obtained, the temporary bonds will be refunded with the permanent bonds that were approved by the city council in May. The Borrower expects the permanent financing to be completed within the next few months.

Neither the proposed temporary bonds nor the permanent bonds will impact the city’s ability to issue bank-qualified bonds in calendar year 2016. A letter from the city’s bond counsel that further explains the issuance of the bonds is attached (pages A1-A2).
Recommendation

Staff recommends the city council hold the public hearing and adopt the attached resolution (pages A3-A10) and approve supporting documents (pages A11-A178) that include:

- Loan Agreement
- Pledge Agreement
- Disbursing Agreement
- Note
- Regulatory Agreement Music Barn
- Regulatory Agreement Elmbrooke
- Regulatory Agreement Golden Valley
- Guaranty

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

Originated by:
  Alisha Gray, Economic Development and Housing Manager
August 1, 2016

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

Re:  Resolution relating to the issuance of multifamily housing revenue obligations by the City of Minnetonka

Dear Julie,

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

The City has previously authorized the issuance of multifamily housing revenue bonds (the “Bonds”) in the maximum principal amount of $11,500,000 to finance the Project and pay related costs. Section 146 of the Internal Revenue Code of 1986, as amended (the “Code”), requires that this type of housing bond receive an allocation of bonding authority of the State of Minnesota. An application for this allocation was made pursuant to Minnesota Statutes, Chapter 474A, as amended (the “Allocation Act”), and on May 9, 2016, the City received Certificate of Allocation No. 281 from the Minnesota Department of Management & Budget. Pursuant to the Allocation Act, the allocation must be issued within one hundred twenty (120) days of the date of allocation.

The permanent financing for the Project is expected to include two series of tax-exempt obligations, one series secured by a FHA Insured Mortgage Loan and a second series secured by tax credit investor contributions. However, the financing approvals from the Housing and Urban Development Department necessary to issue the bonds secured by the FHA Insured Mortgage will not be complete prior to the date that the allocation will expire (approximately August 26, 2016). In fact, HUD has preliminarily said no to the financing application due to an incomplete application. The Borrower continues to work with HUD to submit all the necessary paperwork and obtain the necessary financing approvals. If HUD declines to

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Julie A. Eddington
Attorney at Law
Direct Dial (612) 337-9213
Email: jeddington@kennedy-graven.com
approve the financing application, the Borrower intends to obtain permanent financing through one series of publicly offered tax-exempt obligations. If the plan for permanent financing changes to a public offering, the Borrower will return to the City Council to request approvals for the documents related to the new form of permanent financing.

In order to avoid the expiration of the bond allocation obtained from the State and provide more time to obtain the required approvals from HUD for the permanent financing, the Borrower is requesting that the City Council consider the enclosed resolution, which provides approval to the issuance of a short-term multifamily housing revenue note (the “Note”) in the maximum principal amount of $11,500,000 to finance the Project and also authorizes the execution of the Note, a Loan Agreement, a Pledge Agreement, Regulatory Agreements, and an updated form of Cooperative Agreement. The Note, if approved by the City Council, will be issued prior to the date that the allocation will expire. The Bonds are expected to be issued within one year of the date that the Note is issued, and the proceeds of the Bonds will be used to refund the Note and finance the remaining costs of the Project.

The enclosed resolution also clarifies that the proceeds of the Note and the Bonds may be used, among other things, to finance the acquisition and substantial rehabilitation of the Elmbrooke Apartments and the Golden Valley Townhomes.

If the City agrees to issue the Note, the Note will be a conduit revenue bond. The Borrower is required to pay all debt service on the proposed Note and any other fees or expenses of the City incurred in relation to the Note, including but not limited to legal expenditures, publication costs, the City’s administrative fee, costs of future modifications, and costs related to any audits by the State of Minnesota or the Internal Revenue Service.

The Note will be secured solely by the revenues derived from the Loan Agreement to be executed by the Borrower and from other security provided by the Borrower and its affiliates. The Note will not constitute a general or moral obligation of the City and will not be secured by or payable from any property or assets of the City (other than the interests of the City in the Loan Agreement) and will not be secured by any taxing power of the City. The Note will not be subject to any debt limitation imposed on the City, and the issuance of the Note will not have any adverse impact on the credit rating of the City, even in the event that the Borrower encounters financial difficulties with respect to the Project to be financed with the proceeds of the Note.

The Note, if issued, will be a “private activity bond” within the meaning of Section 141(a) of the Code but will be “exempt facility bonds” the net proceeds of which are to be used to provide a “qualified residential rental project” within the meaning of Sections 142(a)(7) and 143(d) of the Code and will not affect the City’s ability to designate up to $10,000,000 in tax-exempt bonds as “qualified tax-exempt obligations” (or “bank-qualified bonds”) for calendar year 2016.

The Borrower will agree to pay the out-of-pocket expenses of the City with respect to this transaction as well as the City’s administrative fee.

I will attend the City Council meeting on August 8, 2016 and can answer any questions that may arise during the meeting. Please contact me with any questions you may have prior to the City Council meeting.

Sincerely,

Julie A. Eddington
Resolution No. 2016-

Resolution authorizing and affirming the issuance, sale, and delivery of multifamily housing revenue obligations for the benefit of CHC Minnetonka Affordable Housing LLC or its affiliates; authorizing the execution and delivery of the documents related thereto; and taking certain other actions

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

Section 1. Recitals.

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

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

1.03. The Initial Resolution authorized the issuance of the Bonds for the purposes of (i) financing the acquisition, construction, and equipping of approximately twenty-seven (27) new affordable apartment units to be located at 5750 Shady Oak Road in the City (the “Music Barn Apartments”); (ii) financing the substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive in the City (the “Elmbrooke Apartments”); (iii) financing the substantial rehabilitation of eight (8) existing affordable townhome units on scattered sites located at 2100 Douglas Drive North and 3354 Lilac Drive North in the City of Golden Valley, Minnesota (the “Golden Valley Townhomes,” and collectively with the Music Barn Apartments and the Elmbrooke Apartments, the “Project”); (iv) funding of one or more reserve funds to secure the timely payment of the Bonds, if necessary; (v) paying interest on the Bonds during the construction of the Project, if necessary; and (vi) paying the costs of issuing the Bonds.

1.04. On May 9, 2016, the City received Certificate of Allocation No. 281 from the Minnesota Department of Management & Budget allocating bonding authority to the City in the amount of $11,500,000, pursuant to
Chapter 474A of the Act. In accordance with Chapter 474A of the Act, the Bonds must be issued within one hundred twenty (120) days of the allocation (the “Allocation Expiration Date”).

1.05. The Bonds are expected to be secured by an FHA Insured Mortgage Loan, tax credit investor contributions and/or other security. The financing approvals necessary to issue the Bonds will not be complete prior to the Allocation Expiration Date.

1.06. In order to provide short-term financing for the Project, the Borrower has requested that the City issue its Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Note”), in one or more series, in the maximum principal amount of $11,500,000. The Borrower has further proposed that Bridgewater Bank, a Minnesota banking corporation (the “Purchaser”), purchase the Note.

1.07. If authorized, the Note is expected to be issued on a short-term basis. The Bonds are proposed to be issued as permanent financing for the Project within one year of the issuance of the Note, at which time proceeds of the Bonds will refund the Note and finance the remaining costs of the Project.

1.08. With respect to the Note, there have been presented before the Council (i) a form of Loan Agreement (the “Loan Agreement”) proposed to be entered into between the City and the Borrower, pursuant to which the City will loan the proceeds of the Note to the Borrower; (ii) a form of Pledge Agreement (the “Pledge Agreement”) proposed to be entered into between the City and the Purchaser, pursuant to which the City will assign the repayments to be made under the Loan Agreement to the Purchaser; (iii) a form of the Note; (iv) forms of Regulatory Agreements (the “Regulatory Agreements”) proposed to be entered into between the City, the Borrower, and the Purchaser for each of the Music Barn Apartments, the Elmbrooke Apartments, and the Golden Valley Townhomes; (v) an updated form of Cooperative Agreement (the “Cooperative Agreement”) proposed to be entered into between the City and the City of Golden Valley, Minnesota, as host city, which contemplates the issuance of the Note and the Bonds (together, the “Obligations”); and (vi) a form of Disbursing Agreement (the “Disbursing Agreement”) proposed to be entered into between the Borrower and the Purchaser.

1.09. On the date hereof, the Council conducted a duly noticed public hearing to supplement the public hearing held on May 9, 2016. The purpose of such public hearing is to clarify that the Borrower may use the proceeds of the Obligations for the following purposes: (i) to finance the acquisition, construction, and equipping of the Music Barn Apartments; (ii) to finance
the acquisition and substantial rehabilitation of the Elmbrooke Apartments; 
(iii) to finance the acquisition and substantial rehabilitation of the Golden 
Valley Townhomes; (iv) to fund one or more reserve funds to secure the 
timely payment of the Obligations, if necessary; (v) to pay interest on the 
Obligations during the construction of the Project, if necessary; and (vi) to 
pay the costs of issuance of the Obligations.

Section 2. The Project. The Project hereby authorized includes and is not limited to 
the acquisition, construction, and equipping by the Borrower of the Music 
Barn Apartments, the acquisition and substantial rehabilitation of the 
Elmbrooke Apartments, and the acquisition and substantial rehabilitation 
of the Golden Valley Townhomes.

Section 3. The Note.

3.01. The Borrower has requested that the City issue, sell, and deliver the Note, 
in one or more series, in the maximum principal amount of $11,500,000, to 
the Purchaser.

3.02. The proceeds derived from the sale of the Note will be loaned by the City 
to the Borrower pursuant to the terms of the Loan Agreement.

3.03. The Note and the interest on the Note (i) shall be payable solely from the 
revenues pledged therefor under the Loan Agreement and additional 
sources of revenue provided by or on behalf of the Borrower; (ii) shall not 
constitute a debt of the City within the meaning of any constitutional or 
statutory limitation; (iii) shall not constitute nor give rise to a pecuniary 
liability of the City or a charge against its general credit or taxing powers; 
(iv) shall not constitute a charge, lien, or encumbrance, legal or equitable, 
upon any property of the City other than the City’s interest in the Loan 
Agreement; and (v) shall not constitute a general or moral obligation of the 
City.

3.04. The loan repayments to be made by the Borrower under the Loan 
Agreement will be fixed so as to produce revenue sufficient to pay the 
principal of, premium, if any, and interest on the Note when due. Such 
loan repayments will be assigned to the Purchaser under the terms of the 
Pledge Agreement.

3.05. The City acknowledges, finds, determines, and declares that the issuance 
of the Note is authorized by the Act and is consistent with the purposes of 
the Act and that the issuance of the Note, and the other actions of the City 
under the Loan Agreement, the Pledge Agreement, and this resolution 
constitute a public purpose and are in the interests of the City. In 
authorizing the issuance of the Bonds for the financing of the Project and
the related costs, the City’s purpose is and the effect thereof will be to promote the public welfare of the City and its residents by providing multifamily housing developments for low or moderate income residents of the City and otherwise furthering the purposes and policies of the Act.

3.06. For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the Note in the approximate aggregate principal of $11,500,000. The Note shall bear interest at the rate or rates, shall be designated, shall be numbered, shall be dated, shall mature, shall be in the aggregate principal amount, shall be subject to redemption prior to maturity, shall be in such form, and shall have such other terms, details, and provisions as are prescribed in the Note, substantially in the form now on file with the City, with the amendments referenced herein. The City hereby authorizes all or a portion of the Note to be issued as “tax-exempt bonds,” the interest on which is not includable in gross income for federal and State of Minnesota income tax purposes.

All of the provisions of the Note, when executed 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 Note shall be substantially in the form now on file with the City, which form is hereby approved, with such necessary and appropriate variations, omissions, and insertions (including changes to the aggregate principal amount of the Note, the stated maturity of the Note, the interest rate or rates on the Note and the terms of redemption of the Note) as the Mayor and the City Manager, in their discretion, shall determine. The execution of the Note with the manual or facsimile signatures of the Mayor and the City Manager and the delivery of the Note by the City shall be conclusive evidence of such determination.

3.07. The Note shall be a special, limited obligation of the City payable solely from the revenues provided by the Borrower pursuant to the Loan Agreement and other funds pledged pursuant to the Indentures.

3.08. The Mayor and the City Manager are hereby authorized and directed to execute and deliver the Loan Agreement, the Pledge Agreement, and the Cooperative Agreement. All of the provisions of the Loan Agreement, the Cooperative Agreement, and Pledge 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 Loan Agreement, the Cooperative Agreement, and the Pledge Agreement shall be substantially in the forms on file with the City which are hereby approved, with such omissions and insertions as do
3.09. To ensure compliance with certain rental and occupancy restrictions imposed by the Act and Section 142(d) of the Code, and to ensure compliance with certain restrictions imposed by the City, the Mayor and City Manager are also hereby authorized and directed to execute and deliver the Regulatory Agreements. All of the provisions of the Regulatory Agreements, 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 Regulatory Agreements shall be substantially in the forms on file with the City which are 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.

3.10. The Council authorizes the execution and delivery of the Disbursing Agreement by the Borrower and the Purchaser. The Purchaser is authorized to accept the Pledge Agreement in order to secure payment of the Note and is hereby authorized to take all actions necessary or appropriate under the terms of the Pledge Agreement to ensure timely payment of the principal of, premium, if any, and interest on the Note.

Section 4. Additional Findings and Certifications.

4.01. Except as otherwise provided in this resolution, all rights, powers, and privileges conferred and duties and liabilities imposed upon the City or the Council by the provisions of this resolution or of the aforementioned documents shall be exercised or performed by the City or by such members of the Council, or such officers, board, body or agency thereof as may be required or authorized by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the aforementioned documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member of the Council of the City, or any officer, agent or employee of the City in that person's individual capacity, and neither the Council of the City nor any officer or employee executing the Note shall be personally liable on the Note or be subject to any personal liability or accountability by reason of the issuance thereof.
No provision, covenant or agreement contained in the aforementioned documents, the Note, or in any other document relating to the Note, and no obligation therein or herein imposed upon the City or the breach thereof, shall constitute or give rise to a general or moral obligation of the City or any pecuniary liability of the City or any charge upon its general credit or taxing powers. In making the agreements, provisions, covenants, and representations set forth in such documents, the City has not obligated itself to pay or remit any funds or revenues, other than funds and revenues derived from the Loan Agreement which are to be applied to the payment of the Note, as provided therein.

4.02. Except as herein otherwise expressly provided, nothing in this resolution or in the aforementioned documents expressed or implied is intended or shall be construed to confer upon any person or firm or corporation, other than the City, any holder of the Note issued under the provisions of this resolution, any right, remedy or claim, legal or equitable, under and by reason of this resolution or any provisions hereof, this resolution, the aforementioned documents, and all of their provisions being intended to be and being for the sole and exclusive benefit of the City, and any holder from time to time of the Note issued under the provisions of this resolution.

4.03. In case any one or more of the provisions of this resolution, other than the provisions contained in the first sentence of Section 3.07 hereof, or of the aforementioned documents, or of the Note issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution, or of the aforementioned documents, or of the Note, but this resolution, the aforementioned documents, and the Note shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

4.04. The Note, when executed and delivered, shall contain a recital that it is issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Note and the regularity of the issuance thereof, and that all acts, conditions, and things required by the laws of the State of Minnesota relating to the adoption of this resolution, to the issuance of the Note, and to the execution of the aforementioned documents to happen, exist, and be performed precedent to the execution of the aforementioned documents have happened, exist, and have been performed as so required by law.

4.05. The officers of the City, Kennedy & Graven, Chartered, as bond counsel, other attorneys, engineers, and other agents or employees of the City are hereby authorized to do all acts and things required of them by or in connection with this resolution, the aforementioned documents, and the
Note, for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in the Note, the aforementioned documents, and this resolution. If for any reason the Mayor or the City Manager is unable to execute and deliver the documents referred to in this resolution, such documents may be executed by any member of the Council or any officer of the City delegated the duties of the Mayor or the City Manager with the same force and effect as if such documents were executed and delivered by the Mayor or the City Manager.

4.06. The Borrower shall pay the administrative fee of the City on the date of issuance of the Note in the amount of one-eighth of one percent (0.125%) of the outstanding principal amount of the Note. The Borrower will also pay, or, upon demand, reimburse the City for payment of, any and all costs incurred by the City in connection with the Project and the issuance of the Note, whether or not the Note is issued, including any costs for attorneys’ fees.

4.07. The Council hereby affirms its findings in the Initial Resolution. The Bonds are authorized to be issued to provide, among other things, permanent financing for the Project.

Section 5. Effective Date. This resolution shall be in full force and effect from and after its approval. The approvals contained in the resolution are effective for one year after the date hereof.

Adopted by the City Council of the City of Minnetonka, Minnesota this 8th day of August, 2016.

Terry Schneider, Mayor

ATTEST:

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

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on August 8, 2016.

_________________________________________
David E. Maeda, City Clerk
LOAN AGREEMENT

between

CITY OF MINNETONKA, MINNESOTA,
as Issuer

and

CHC MINNETONKA AFFORDABLE HOUSING LLC,
as Borrower

Dated as of August 1, 2016

Relating to:

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

Except for certain reserved rights, the interest of the City of Minnetonka, Minnesota, in this Loan Agreement has been pledged and assigned to Bridgewater Bank, pursuant to a Pledge Agreement, dated as of August 1, 2016.

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

THIS LOAN AGREEMENT is entered into as of August 1, 2016 (the “Loan Agreement”), between the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “Issuer”), and CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company (the “Borrower”),

RECITALS

WHEREAS, Minnesota Statutes, Chapter 462C, as amended (the “Act”), authorizes the Issuer to issue revenue obligations to finance the acquisition, construction, rehabilitation, and equipping of multifamily housing developments; and

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

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

WHEREAS, the Borrower, whose managing member is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, has proposed that the Issuer issue its Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Note”), in the original aggregate principal amount of $11,500,000, and loan the proceeds to be derived from the purchase thereof (the “Loan”) to the Borrower for the purpose of financing all or a portion of (i) the acquisition, construction, and equipping of approximately twenty-seven (27) new affordable apartment units to be located at 5750 Shady Oak Road, Minnetonka, Minnesota (the “Music Barn Apartments”); (ii) the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive, Minnetonka, Minnesota (the “Elmbrooke Apartments”); and (iii) the acquisition and substantial rehabilitation of six (6) existing affordable townhome units at 2100 Douglas Drive North and two (2) existing affordable townhome units at 3354 Lilac Drive North, Golden Valley, Minnesota (the “Golden Valley Townhomes,” and collectively with the Music Barn Apartments and the Elmbrooke Apartments, the “Facilities”); and

WHEREAS, the Issuer will issue the Note pursuant to this Loan Agreement, a resolution adopted by the City Council of the Issuer on August 8, 2016, the Act, and Minnesota Statutes, Sections 471.59 and 471.656, as amended; and

WHEREAS, the Note will be purchased by Bridgewater Bank, a Minnesota banking corporation (the “Purchaser”); and

WHEREAS, the Borrower agrees to be absolutely and unconditionally obligated to repay the Loan together with interest thereon, at times and in amounts sufficient to pay when due the principal of and interest on the Note; and

A14
WHEREAS, in connection with the issuance of the Note, the Issuer, the Borrower, and the Purchaser will enter into separate Regulatory Agreements, each dated August ___, 2016, related to each of the Music Barn Apartments, the Elmbrooke Apartments, and the Golden Valley Townhomes, relating to compliance with certain federal and state requirements applicable to the Facilities; and

WHEREAS, the Issuer will assign its rights under this Loan Agreement to the Purchaser (except for certain unassigned rights set forth in Section 7.9 hereof) pursuant to the Pledge Agreement, dated as of August 1, 2016, between the Issuer and the Purchaser; and

WHEREAS, as security for the Borrower’s repayment obligations hereunder, Community Housing Corporation of America, Inc., a Delaware nonprofit corporation, will execute and deliver to the Purchaser a Guaranty Agreement, dated as of August 1, 2016; and

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

(The remainder of this page is intentionally left blank.)
ARTICLE 1
DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1 Definitions. In this Loan Agreement the following terms have the following respective meanings unless the context hereof clearly requires otherwise:

**Act:** Minnesota Statutes, Chapter 462C, as amended.

**Bond Counsel:** the firm of Kennedy & Graven, Chartered, of Minneapolis, Minnesota; any opinion of Bond Counsel shall be a written opinion signed by such Bond Counsel.

**Borrower:** CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company, its successors and assigns, and any surviving, resulting or transferee business entity which may assume its obligations in accordance with the provisions of this Loan Agreement.

**Borrower Tax Certificate:** the Borrower Tax Certificate, dated the date of Closing, executed and delivered by the Borrower in connection with the issuance of the Note.

**Business Day:** any day other than a Saturday or Sunday or other day on which commercial banks in the city in which the principal office of the Purchaser is located are not open for business or other day on which the New York Stock Exchange is not open for business.

**City of Golden Valley:** the City of Golden Valley, Minnesota, its successors and assigns.

**Closing:** August ____, 2016, which is the date there is physical delivery of the Note to the Purchaser.

**Code:** the Internal Revenue Code of 1986, as amended and the Treasury Regulations promulgated thereunder.

**Cooperative Agreement:** means the Cooperative Agreement, dated as of August 1, 2016, between the Issuer and the City of Golden Valley, as the same may from time to time be amended or supplemented as herein provided.

**Counsel:** an attorney designated by or acceptable to the Purchaser, duly admitted to practice law before the highest court of any state; an attorney for the Borrower or the Issuer may be eligible for appointment as Counsel.

**Date of Taxability:** the meaning ascribed to it in Section 4.4(2) hereof.

**Determination of Taxability:** the meaning ascribed to it in Section 4.4(2) hereof.

**Disbursing Agreement:** the Disbursing Agreement, dated as of August 1, 2016, between the Borrower and the Purchaser, providing for the disbursement to the Borrower of proceeds of the Note, as the same may from time to time be amended or supplemented as herein provided.

**Douglas Drive Golden Valley Townhomes:** the approximately six (6) existing affordable townhome units located at 2100 Douglas Drive North, Golden Valley, Minnesota.
Elmbrooke Apartments: the forty-six (46) affordable townhome units located at 5400 Smetana Drive, Minnetonka, Minnesota.

Event of Default: any of the events described in Section 6.1 hereof.

Facilities: collectively, the Golden Valley Townhomes, the Elmbrooke Apartments, and the Music Barn Apartments.

Golden Valley Townhomes: collectively, the Douglas Drive Golden Valley Townhomes and the Lilac Drive Golden Valley Townhomes.

Guarantor: Community Housing Corporation of America, Inc., a Delaware nonprofit corporation.

Guaranty: the Guaranty Agreement, dated as of August 1, 2016, by the Guarantor in favor of the Purchaser, as it may be amended from time to time.

Investor Member: Great Lakes Capital Fund for Housing Limited Partnership 29, a Michigan limited partnership, its successors and assigns.

Issuance Expenses: any and all costs and expenses relating to the issuance, sale and delivery of the Note, including, but not limited to, any fees of the Purchaser, all fees and expenses of legal counsel, financial consultants, feasibility consultants and accountants, any fee to be paid to the Issuer, the preparation and printing of this Loan Agreement, the Resolution, the Pledge Agreement, the Disbursing Agreement, the Cooperative Agreement, the Regulatory Agreements, the Note and all other related documents, and all other expenses relating to the issuance, sale and delivery of the Note and any other costs which are treated as “issuance costs” within the meaning of Section 147(g) of the Code.

Issuer: the City of Minnetonka, Minnesota, its successors and assigns.

Land: collectively, the real property and any other easements and rights described in Exhibit A to each of the Regulatory Agreements.

Lilac Drive Golden Valley Townhomes: the approximately two (2) existing affordable townhome units located at 3354 Lilac Drive North, Golden Valley, Minnesota.

Loan: the loan of Note proceeds from the Issuer to the Borrower in accordance with the terms of this Loan Agreement, as described in Section 3.1 of this Loan Agreement.

Loan Agreement: this Loan Agreement between the Issuer and the Borrower as the same may from time to time be amended or supplemented.

Managing Member: CHC Minnesota Affordable Housing MM LLC, a Minnesota limited liability company, its successors and assigns.

Music Barn Apartments: the twenty-seven (27) new affordable apartment units to be located at 5750 Shady Oak Road, Minnetonka, Minnesota.

Note: the $11,500,000 Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016, to be issued by the Issuer pursuant to the Resolution and this Loan Agreement.

Note Documents: the Loan Agreement, the Pledge Agreement, the Cooperative Agreement, the Regulatory Agreements, the Disbursing Agreement and the Resolution.
Operating Agreement: means the Amended and Restated Operating Agreement of the Borrower, dated __________, 2016, as amended, modified, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

Person: any individual, corporation, partnership (general, limited, or limited liability), joint venture, association, trust, unincorporated organization, or government or any agency or political subdivision thereof.

Pledge Agreement: the Pledge Agreement, dated as of August 1, 2016, between the Issuer and the Purchaser, pledging and assigning the Issuer’s interest in this Loan Agreement to the Purchaser to the extent provided therein, as the same may from time to time be amended or supplemented.

Principal Balance: so much of the principal sum on the Note as from time to time and remains unpaid.

Project: means, collectively, (a) the acquisition, construction, and equipping of the Music Barn Apartments; (b) the acquisition and substantial rehabilitation of the Elmbrooke Apartments; (c) the acquisition and substantial rehabilitation of the Golden Valley Townhomes; and (d) the payment of Issuance Expenses.

Project Costs: the total of all Construction Costs and Issuance Expenses.

Project Fund: the fund created by the Disbursing Agreement from which funds are to be disbursed to the Borrower for payment of Project Costs and Issuance Expenses.

Purchaser: Bridgewater Bank, a Minnesota banking corporation, its successors and assigns.

Refunding: the issuance of revenue bonds to pay and refund the Note and finance the Project.

Regulatory Agreements: collectively, the Regulatory Agreement with respect to the Elmbrooke Apartments, dated the date of Closing, between the Issuer, the Borrower, and the Purchaser, the Regulatory Agreement with respect to the Golden Valley Townhomes, dated the date of Closing, between the Issuer, the Borrower, and the Purchaser, and the Regulatory Agreement with respect to the Music Barn Apartments, dated the date of Closing, between the Issuer, the Borrower, and the Purchaser, all as the same may from time to time be amended or supplemented.

Reserve Fund: the fund of such designation established under Section 4.11 hereof to be held by the Purchaser.

Resolution: the resolution of the Issuer adopted August 8, 2016, authorizing the issuance of the Note, together with any supplement or amendment thereto.

State: the State of Minnesota.

Title Company: Commercial Partners Title, LLC, its successors and assigns.

Treasury Regulations: all proposed, temporary or permanent federal income tax regulations then in effect and applicable.
Yield: with reference to any obligation, that discount rate which, when computing the present value of all unconditionally payable payments of principal and interest paid and to be paid on such obligation, produces an amount equal to the present value of the issue price of the obligation.

Section 1.2 Rules of Interpretation.

(1) This Loan Agreement shall be interpreted in accordance with and governed by the laws of the State.

(2) The words “herein” and “hereof” and words of similar import, without reference to any particular section or subdivision, refer to this Loan Agreement as a whole rather than to any particular section or subdivision hereof.

(3) References herein to any particular section or subdivision hereof are to the section or subdivision of this instrument as originally executed.

(4) Where the Borrower is permitted or required to do or accomplish any act or thing hereunder, the Borrower may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Borrower.

(5) The Table of Contents and titles of articles and sections herein are for convenience only and are not a part of this Loan Agreement.

(6) Unless the context hereof clearly requires otherwise, the singular shall include the plural and vice versa and the masculine shall include the feminine and vice versa.

(7) Articles, sections, subsections and clauses mentioned by number only are those so numbered which are contained in this Loan Agreement.

(8) References to the Note as “tax exempt” or to the “tax-exempt status of the Note” are to the exclusion of interest on the Note from gross income pursuant to Section 103(a) of the Code, except during any period the Note is held by a “substantial user” or “related person”, irrespective of such forms of taxation as the alternative minimum tax or branch profits tax on foreign corporations, as is consistent with the approach taken in Section 59(i) of the Code.

(The remainder of this page is intentionally left blank.)
ARTICLE 2

REPRESENTATIONS

Section 2.1 Representations by the Issuer. The Issuer makes the following representations as the basis for its covenants herein:

(1) The Issuer home rule city, political subdivision, and municipal corporation organized and existing under its Charter and the Constitution and laws of the State and is authorized to issue the Note pursuant to the Act and Minnesota Statutes, Sections 471.59 and 471.656.

(2) There is no pending or, to the actual knowledge of the undersigned representatives of the Issuer, without inquiry or investigation, threatened suit, action or proceeding against the Issuer before any court, arbitrator, administrative agency or other governmental authority that challenges the Issuer’s execution and delivery of the Note Documents, as applicable.

(3) To the actual knowledge of the undersigned, without inquiry or investigation, the execution and delivery of the Note Documents by the Issuer will not constitute a breach of or default under any existing (a) provision of any special legislative act or charter provision relating to the establishment of the Issuer or (b) agreement, indenture, mortgage, lease or other instrument to which the Issuer is a party or by which it is bound.

(4) No proceeding of the Issuer for the issuance, execution or delivery of the Note Documents has been repealed, rescinded, amended or revoked.

(5) The Note is issued as a “qualified residential rental bond” within the meaning of Section 142(a)(7) of the Code.

(6) The Issuer has received an allocation of tax-exempt bonding authority for the Note pursuant to Minnesota Statutes, Chapter 474A.

Section 2.2 Representations by the Borrower. The Borrower makes the following representations as the basis for its covenants herein:

(1) The Borrower is a limited liability company duly organized under the laws of the State, is in good standing and duly authorized and qualified to conduct its business in the State, is duly authorized to conduct its business in all states where its activities require such authorization, has power to enter into this Loan Agreement, the Regulatory Agreements, and the Disbursing Agreement and to use the Facilities for the purpose set forth in this Loan Agreement and by proper corporate action has authorized the execution and delivery of this Loan Agreement, the Regulatory Agreements, and the Disbursing Agreement.

(2) The execution and delivery of this Loan Agreement, the Regulatory Agreements, and the Disbursing Agreement, the consummation of the transactions contemplated hereby and thereby, and the fulfillment of the terms and conditions thereof do not and will not conflict with or result in a breach of any of the terms or conditions of the Borrower’s organizational documents, any restriction or any agreement or instrument to which the Borrower or any of its members is now a party or by which it is bound or to which any property of the Borrower is subject, and do not and will not constitute a default under any of the foregoing or a violation of any order, decree, statute, rule or regulation of any court or of any state or federal regulatory body having jurisdiction over the Borrower or its properties, including the
Facilities, and do not and will not result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Borrower contrary to the terms of any instrument or agreement to which the Borrower is a party or by which it is bound.

(3) The acquisition, construction, rehabilitation and equipping of the Project will be completed in accordance with the Plans and Specifications and the portion of the Project funded with the proceeds of the Note will constitute four distinct qualified residential rental projects within the meaning of Section 142(d) of the Code and will be operated and maintained in such manner as to conform in all material respects with all applicable zoning, planning, building, environmental and other applicable Governmental regulations and as to be consistent with the Act.

(4) As of the date hereof, the use of the Facilities as designed and proposed to be operated complies or will comply, in all material respects, with all presently applicable development, pollution control, water conservation and other laws, regulations, rules and ordinances of the federal government and the State and the respective agencies thereof and the political subdivisions in which the Facilities are located. The Borrower has obtained, or will obtain in a timely manner, all necessary and material approvals of and licenses, permits, consents and franchises from federal, state, county, municipal or other governmental authorities having jurisdiction over the Facilities to operate the Facilities and to enter into, execute and perform its obligations under this Loan Agreement, the Regulatory Agreements and the Disbursing Agreement and, to the knowledge of the Borrower, no violation of any local ordinance, laws, regulation or requirement exists with respect to the Facilities,

(5) The proceeds of the Note, together with any other funds to be contributed to the Project by the Borrower or otherwise in accordance with this Loan Agreement, will be sufficient to pay the cost of the Project, and all costs and expenses incidental thereto, and the proceeds of the Note will be used only for the purposes contemplated hereby and allowable under the Act.

(6) The Facilities will be located entirely within the boundaries of the City of Minnetonka, Minnesota and the City of Golden Valley.

(7) Comparable private financing for the Project was not found by the Borrower to be reasonably available, and the Project is economically more feasible with the availability of the financing herein authorized.

(8) The Borrower is not in the trade or business of selling properties such as the Facilities and is constructing the Project for use in its operations, and therefore the Borrower has no intention now or in the foreseeable future to voluntarily sell, surrender or otherwise transfer, in whole or part, its interest in the Facilities, except pursuant to a mortgage. It is hereby acknowledged, however, that the Operating Agreement does provide for certain rights of the Managing Member to acquire the Facilities, and for the possible acquisition of the Project following the fifteen (15) year tax credit compliance period as identified in the Operating Agreement, and those provisions shall not result in a breach of this Section 2.2(8).

(9) There are no actions, suits, or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any property of the Borrower in any court or before any federal, state, municipal or other governmental agency, which, if decided adversely to the Borrower, would have a material adverse effect upon the Borrower or upon the business or properties of the Borrower, and the Borrower is not in default with respect to any order of any court or governmental agency.
(10) The Borrower is not in default in the payment of the principal of or interest on any indebtedness for borrowed money nor in default under any instrument or agreement under and subject to which any indebtedness for borrowed money has been issued.

(11) The Borrower has filed all federal and state income tax returns which, to the knowledge of the managing member of the Borrower, are required to be filed and has paid all taxes shown on said returns and all assessments and governmental charges received by the Borrower to the extent that they have become due.

(12) The Borrower has approved the terms and conditions of the Note.

(13) The Borrower will comply with all provisions of the Act, including without limitation any notice and filing requirements imposed under the Act.

(14) The Borrower has not knowingly taken or permitted to be taken and will not knowingly take or permit to be taken any action which would have the effect, directly or indirectly, of causing interest on any of the Note to be included in the gross income of the owners thereof for purposes of federal income taxation.

(15) The Note is to be issued within the exemption provided under Sections 142(a)(7) and 142(d) of the Code to provide four “qualified residential rental projects” (as defined in Section 142(d) of the Code), and at least ninety five (95%) of the net proceeds of the Note will be used to provide for the acquisition, rehabilitation, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation for an exempt facility within the meaning of Section 142 of the Code.

(The remainder of this page is intentionally left blank.)
ARTICLE 3

THE LOAN

Section 3.1  **Amount and Source of Loan.** The Issuer has authorized the issuance of the Note in the principal amount of not to exceed $11,500,000 to provide funds to the Borrower for its use in the Project. The Issuer agrees to lend to the Borrower, upon the terms and conditions set forth herein and in the Note, the proceeds received from the Note by causing such sums to be advanced and deposited into the Project Fund upon satisfaction of all terms and conditions set forth herein and in the Disbursing Agreement and such other supporting documentation as the Purchaser may reasonably require.

Section 3.2  **Documents Required Prior to Disbursement of the Loan.** Prior to any advance of amounts in the Project Fund, the Borrower shall deliver to the Purchaser executed copies of the following:

1. The Note.
2. The Loan Agreement.
3. The Pledge Agreement.
4. The Disbursing Agreement.
5. The Cooperative Agreement.
6. The Regulatory Agreements.
8. The approving resolutions of the Borrower.
9. Certificate of good standing for the Borrower of recent date issued by the Secretary of State of Minnesota.
10. Copies of the organizational documents of the Borrower, certified by the Secretary of State of Minnesota (together with copies of all amendments thereto), certified by the Borrower, to be true and correct copies of such instruments.
11. An opinion of Bond Counsel to the effect that the Issuer has duly authorized the Note and that the interest thereon is exempt from federal income taxation and subject to other conditions acceptable to the Purchaser.
12. Any other items required under the Disbursing Agreement or reasonably required by the Purchaser.

Section 3.3  **Repayment.** Subject to the prepayment provisions set forth in Article 5 hereof and in the Note, the Borrower agrees to repay the Loan by making all payments of principal, interest and any penalty or charge required to be made by the Issuer under the Note at the times and in the amounts provided therein. All payments shall be made directly to the Purchaser at its principal office for the account of the Issuer. The Borrower shall also pay the reasonable fees and expenses of the Issuer,
including the Issuer’s administrative fee and reasonable fees and expenses of the Issuer’s counsel in connection with the issuance of the Note and the Refunding.

Section 3.4  **Borrower’s Obligations Unconditional.** All payments required of the Borrower hereunder shall be paid without notice or demand and without setoff, counterclaim, abatement, deduction or defense. The Borrower will not suspend or discontinue any payments, and will perform and observe all of its other agreements in this Loan Agreement and, except as expressly permitted herein, will not terminate this Loan Agreement for any cause, including but not limited to any acts or circumstances that may constitute failure of consideration, destruction or damage to the Facilities, eviction by paramount title, commercial frustration of purpose, bankruptcy or insolvency of the Issuer or the Purchaser, change in the tax or other laws or administrative rulings or actions of the United States of America or of the State or any political subdivision thereof, or failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement, the Pledge Agreement or the Note.

Section 3.5  **Disbursement of the Loan.**

(1)  Pursuant to the Loan Agreement and the Act, the Issuer has authorized the Borrower to provide directly for the financing of the Project in such manner as is determined by the Borrower and hereby authorizes the Purchaser to advance $50,001 of the proceeds of the Note to pay the costs of issuing the Note.

(2)  Interest earnings on any proceeds of the Note held in the Project Fund shall be disbursed to the Purchaser on or prior to each interest payment date and applied as a credit against Loan repayments.

(3)  The Issuer authorizes and directs the Purchaser to disburse money from the Project Fund as further provided in the Disbursing Agreement.

Section 3.6  **Administrative Fee.** The Borrower agrees to pay to the Issuer an administrative fee equal to $14,375 (one-eighth of one percent (0.125%) of the total principal amount of the Note) on the date hereof with respect to the Note.

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ARTICLE 4
BORROWER’S COVENANTS

Section 4.1 Indemnity.

(1) The Borrower will indemnify, defend, and hold harmless the Purchaser, the Issuer and its officers, commissioners, employees and agents, from and against any and all claims by or on behalf of any person, firm, corporation or other entity arising from the conduct, operation or management of, or from, any work or thing done on the Facilities during the term of this Loan Agreement, including, without limitation, (i) any condition of the Facilities; (ii) any breach or default on the part of the Borrower in the performance of any of its obligations under this Loan Agreement; (iii) any act of negligence of the Borrower or of any of its agents, contractors, servants, employees or licensees or (iv) any act of negligence of any assignee or lessee of the Borrower, or of any agents, contractors, servants, employees or licensees of any assignee or lessee of the Borrower. The Borrower shall indemnify and save the Purchaser and Issuer harmless from any such claim arising as aforesaid, or in connection with any action or proceeding brought thereon, and upon notice from the Purchaser or Issuer, the Borrower shall defend them or either of them in any such action or proceeding.

(2) The Borrower agrees to indemnify, defend and hold harmless the Issuer and Purchaser and their respective employees, commissioners, officers and agents (“Indemnified Parties”) against any and all losses, claims, damages or liability to which the Indemnified Parties may become subject under any law in connection with the issuance and sale of the Note, the carrying out of the transactions contemplated by this Loan Agreement and the conduct of any activity in connection with the Project or the Facilities, including claims for which the Indemnified Parties may be or may be claimed to be liable unless such liability is due to the gross negligence or willful misconduct of such Indemnified Party, and to reimburse the Indemnified Parties for any out-of-pocket legal and other expenses (including reasonable counsel fees) incurred by the Indemnified Parties in connection with investigating any such losses, claims, damages or liabilities, or in connection with defending any actions relating thereto. The Indemnified Parties agree, at the request and expense of the Borrower, to cooperate in the making of any investigation in defense of any such claim and promptly to assert any or all of the rights and privileges and defenses identified in writing by the Borrower which may be available to the Indemnified Parties. These provisions shall survive payment of the Note and termination of this Loan Agreement.

(3) If the Issuer incurs any expense or suffers any losses, claims or damages or incurs any liabilities in connection with the transaction contemplated by this Loan Agreement, the Borrower will indemnify, defend, and hold harmless the Issuer from the same and will reimburse the Issuer for any reasonable legal or other expenses incurred by the Issuer in relation thereto. The Borrower shall also reimburse the Issuer for all other costs and expenses, including, without limitation, attorneys’ fees paid or incurred by the Issuer in connection with: (i) the discussion, negotiation, preparation, approval, execution and delivery of this Loan Agreement and the documents and instruments related thereto; (ii) any amendments or modifications thereto and any document, instrument or agreement related thereto and the discussion, negotiation, preparation, approval, execution and delivery of any and all documents necessary or desirable to effect such amendments or modification; and (iii) the enforcement by the Issuer during the term of this Loan Agreement or thereafter of any of the rights or remedies of the Issuer under this Loan Agreement or any document, instrument or agreement related thereto, including, without limitation, costs and expenses of collection in the event of default, whether or not suit is filed with respect thereto.
Section 4.2 Reports to Governmental Agencies. The Borrower shall furnish to agencies of the State, including but not limited to the Minnesota Housing Finance Agency, such periodic reports or statements as are required under the Act or Minnesota Statutes, Chapter 474A, as amended, or as they may otherwise reasonably require of the Issuer or the Borrower throughout the term of this Loan Agreement in connection with the transaction contemplated herein; provided, however, the Issuer shall promptly notify the Borrower of any reports or statements being required by agencies of the State of which the Issuer has received notice to allow the Borrower a reasonable and adequate amount of time to prepare and submit any such reports or statements. Copies of such reports shall be provided, upon request, to the Issuer and, upon request, to the Purchaser.

Section 4.3 Security for the Loan. As additional security for the Loan, and to induce the Issuer to issue and deliver the Note, the Borrower agrees to execute and deliver such other documents requested by the Purchaser, in such places and in such manner as the Purchaser deems necessary or desirable to perfect or protect the security interest of the Purchaser in and to the Project and other collateral referred to in such documents. Furthermore, the Borrower agrees to cause the Guarantor to execute and deliver the Guaranty and agrees to cause the Guarantor to meet all of its obligations under the Guaranty, which shall remain in effect until all payments required hereunder have been made.

Section 4.4 Preservation of Tax Exemption.

(1) In order to ensure that interest on the Note shall at all times be excludable from gross income for federal income tax purposes, the Borrower represents, warrants, and covenants with the Issuer and the Purchaser that it shall comply with applicable provisions of Section 103 and Sections 141 through 150 of the Code and applicable Treasury Regulations promulgated thereunder as follows:

(a) The Borrower shall have entered into an agreement to purchase the Land on or before the date of delivery of the Note and no more than twenty-five percent (25%) of the net proceeds of the Note shall be allocated to the acquisition of the land; the Project shall continue to be owned and operated by the Borrower, except as provided in Section 4.5 and Section 2.2(8), and in no event shall the Project be managed in a manner that would cause interest on the Note to be included in gross income for federal income tax purposes.

(b) The Borrower shall fulfill all continuing conditions specified in Section 142 of the Code and Section 1.103-8(b) of the Treasury Regulations applicable thereunder, to qualify the Note as an “exempt facility bond” issued to provide four “qualified residential rental projects” thereunder and to qualify each of the Facilities as a “qualified residential rental project” thereunder; and the Borrower shall fulfill its obligations under the Regulatory Agreements.

(c) The Borrower covenants and agrees that it will not (i) use or permit the use of any of the funds provided by the Issuer hereunder or any other funds of the Borrower, directly or indirectly, in such manner as would, (ii) enter into, or allow any “related person” (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, for the
purchase of the Note that would, or (iii) take or omit to take any other action that would, in each case cause the Note to be an “arbitrage bond” within the meaning of Section 148 of the Code.

(d) The Borrower understands that the Code imposes a penalty for failure to file with the Secretary of the Treasury an annual certification of compliance with low income occupancy requirements (currently under an Annual Certification of a Residential Rental Project, Form 8703 (Rev. April 2011)), and if the requirements for a “qualified residential rental project” are not met for any of the Facilities, does not allow deduction for interest paid on the Note which accrues during the period beginning on the first day of the taxable year in which the Project ceases to meet such requirements and ending on the date the Project again meets such requirements.

(e) In order to qualify the Note and this Loan Agreement under the “governmental program” provisions of Section 1.148-2(d)(2)(iii) of the Treasury Regulations, the Borrower (and any “related person” thereto) shall take no action the effect of which would be to disqualify this Loan Agreement as a “program investment” under Section 1.148-1(b), including but not limited to entering into any arrangement, formal or informal, for the Borrower or any related person to purchase any obligations that finance the program in an amount related to the amount of the Agreement. Notwithstanding the foregoing, the Issuer understands that the Borrower has an obligation to repurchase the Note from the Purchaser on or before December 31, 2016 (the “Mandatory Purchase Date”), unless extended, and if the Borrower is unable to find replacement financing, the Borrower may be the holder of the Note for a period of time after the Mandatory Purchase Date.

(f) The Borrower has not paid or incurred any costs to be reimbursed from proceeds of the Note before the date sixty (60) days before April 11, 2016, the date of adoption by the Issuer of a written declaration of official intent which complies with the provisions of Treasury Regulations, Section 1.150-2(d) and (e), except for “preliminary expenditures” (within the meaning of Treasury Regulations, Section 1.150-2(f)(2)) for the Project, including engineering or architectural expenses and similar preparatory expenses, which in the aggregate do not exceed twenty percent (20%) of the aggregate “issue price” of the Note, or expenditures in the de minimis amount of $100,000 (as defined in Treasury Regulations, Section 1.150-2(f)(1)).

(g) The weighted average maturity of the Note shall not exceed the estimated economic life of the Project by more than twenty percent (20%), all within the meaning of Section 147(b) of the Code.

(h) While the Note remains outstanding, no portion of the proceeds of the Note shall be used to provide any airplane, skybox or other private luxury box, any facility primarily used for gambling, or a store, the principal business of which is the sale of alcoholic beverages for consumption off premises.

(i) Any Issuance Expenses financed by the Note shall not exceed two percent (2%) of the proceeds of the Note. Except as permitted by Treasury Regulations 1.148-6(d)(3)(ii), none of the proceeds of the Note will be used for working capital purposes.

(j) The Borrower shall not use the proceeds of the Note in such manner as to cause either of the Note to be an “arbitrage bond” within the meaning of Section 148 of the Code and applicable Treasury Regulations.

(k) The Borrower, on behalf of the Issuer, shall pay to the United States, as a rebate, an amount equal to the sum of (A) the excess of (i) the aggregate amount earned on all
nonpurpose investments (other than investments attributable to an excess described in this clause), over (ii) the amount which would have been earned if all nonpurpose investments were invested at a rate equal to the yield on the Note, plus (B) any income attributable to the excess described in clause (A), at the times and in the amounts required by Section 148(f) of the Code and applicable Treasury Regulations, all within the meaning of Section 148(f) of the Code and applicable Treasury Regulations. The Borrower shall maintain records of the interest rate borne by the Note and earnings thereon in adequate detail to enable the Borrower to calculate the amount of any rebate required to be made to the United States at times and in installments which satisfy Section 148(f) of the Code and applicable Treasury Regulations, at least once every five (5) years and within sixty (60) days after the day on which the Note is paid in full. Calculations of the amount to be rebated shall be made at least once every five (5) years (or at such other times as may be required by Section 148(f) of the Code and applicable Treasury Regulations) and the Purchaser shall be furnished with such calculations within sixty (60) days of the time they are made. If the Purchaser is not furnished with such calculations, the Purchaser may undertake to have such calculations made at the expense of the Borrower. Such calculations shall be retained until six (6) years after the Note is paid in full. The rebate shall be calculated as provided in Section 148(f) of the Code and Treasury Regulations, Sections 1.148-0 through 1.148-9, including taking into account the gain or loss on the disposition of nonpurpose investments. The Borrower shall acquire, and shall cause the Purchaser to acquire, all nonpurpose investments at their fair market value in arm’s length transactions.

(l) The Borrower has not leased, sold, assigned, granted, or conveyed and shall not lease, sell, assign, grant, or convey all or any portion of the Project or any interest therein to the United States, or any agency or instrumentality thereof, within the meaning of Section 149(b) of the Code.

(m) In addition to the Note, no other obligations have been or shall be issued under Section 103 of the Code which are sold at substantially the same time as the Note under a common plan of marketing and at substantially the same rate of interest as the Note and which are payable in whole or part by the Borrower or otherwise have with the Note any common or pooled security for the payment of debt service thereon, or which are otherwise treated as the same “issue of obligations” as the Note under Treasury Regulations, Section 1.50(1)(c)(1).

(n) The rehabilitation expenditures, within the meaning of Section 147(d) of the Code, with respect to the rehabilitation of each of the Elmbrooke Apartments, the Douglas Drive Golden Valley Apartments, and the Lilac Drive Golden Valley Apartments will equal or exceed fifteen percent (15%) of the portion of the cost of acquiring each such project financed with proceeds of the Note.

(o) The Borrower shall observe the requirements of this Loan Agreement with respect to the obligations imposed by applicable provisions of the Code and the representations, warranties, covenants, and requirements of the Borrower Tax Certificate.

(p) No proceeds of the Note shall be invested in investments which cause the Note to be federally guaranteed within the meaning of Section 149(b) of the Code.

(q) The Borrower shall not otherwise use the proceeds of the Note, or take or fail to take any action, the effect of which would be to impair the exclusion of interest on the Note from gross income for federal income tax purposes.
(2) For the purpose of this Section, a “Determination of Taxability” shall mean the issuance of a statutory notice of deficiency by the Internal Revenue Service, or a ruling of the National Office or any District Office of the Internal Revenue Service, or a final decision of a court of competent jurisdiction, or a change in any applicable federal statute, which holds or provides in effect that the interest payable on the Note is included, for federal income tax purposes under Section 103 of the Code, in the gross income of the Purchaser or any other holder or prior holder of the Note, if the period, if any, for contest or appeal of such action, ruling, or decision by the Borrower or Purchaser or any other interested party has expired without any such contest or appeal having been properly instituted by the Purchaser, the Borrower, or any other interested party. The expenses of any such contest shall be paid by the party initiating the contest, and neither the Purchaser nor the Borrower shall be required to contest or appeal any Determination of Taxability. The “Date of Taxability” shall mean that point in time, as specified in the determination, ruling, order, or decision, that the interest payable on the Note becomes includable in the gross income of the Purchaser or any other holder or prior holder of the Note, as the case may be, for federal income tax purposes.

(3) If the Purchaser receives notice of a “Determination of Taxability” with respect to the Note and delivers to the Borrower a copy of that notice, the rate of interest on the Note shall be automatically adjusted and additional charges shall be paid as provided in the Note and the Borrower shall be obligated to pay the same as provided in Section 3.3 herein.

(4) If the Borrower becomes aware of a Determination of Taxability it shall promptly give notice of such Determination of Taxability to the Issuer and the Purchaser.

Section 4.5 Lease or Sale of Facilities. The Borrower shall not lease, sell, convey or otherwise transfer any of the Facilities in whole or part, nor sell any of the Facilities in whole or part, without first securing the written consent of the Purchaser; provided that in no event shall any lease, transfer, assignment, or sale be permitted if the effect thereof would be to cause the Note to be deemed issued in violation of any requirement under Section 142(a) of the Code, and the Treasury Regulations promulgated thereunder, that substantially all of the net proceeds of the Note be used to provide a qualified residential rental project, or under the Act that no portion of any of the Facilities to be financed from proceeds of the Note be acquired in whole or part for sale, nor shall any such transaction be permitted if the effect thereof would otherwise be to impair the validity or the tax exempt status of the Note, nor shall any such transaction release the Borrower of any of its obligations under this Loan Agreement. The Borrower shall promptly notify the Issuer and the Purchaser of any such sale, transfer, assignment, or lease. Nothing contained in this Section shall prohibit the Borrower from (a) the transfer by the Investor Member or the Managing Member of its interest in the Borrower in accordance with the terms of the Borrower’s Operating Agreement, as it may be amended from time to time, (b) the removal of the Managing Member of the Borrower in accordance with the Operating Agreement and the replacement thereof with the Investor Member, or any of its affiliates, (c) the transfer of ownership interests in the Investor Member or the Managing Member, (d) the transfer of the interests of the Investor Member in Borrower to the Borrower’s Managing Member or any of its affiliates, and (e) any amendment to the Operating Agreement to memorialize the transfers or removal described above.

Section 4.6 Facility Operation and Maintenance Expenses.

(1) The Borrower shall pay all expenses of the operation and maintenance of the Facilities including, but without limitation, adequate insurance thereon and insurance against all liability for injury to persons or property arising from the operation thereof, and all taxes and special assessments levied upon or with respect to the Facilities and payable during the term of this Loan Agreement.
(2) The Facilities shall not be used for purposes which violate any Federal, State or other laws prohibiting discrimination in access or employment based on race, creed, sex, handicap, ethnic origin, age or marital status.

Section 4.7 Notification of Changes. The Borrower covenants and agrees that it will promptly notify the Purchaser of:

(a) any litigation which might materially and adversely affect the Borrower and any of its properties;

(b) the occurrence of any Event of Default under this Loan Agreement or under any other loan agreement, debenture, note, purchase agreement or any other agreement providing for the borrowing of money by the Borrower or any event of which the Borrower has knowledge and which, with the passage of time or giving of notice, or both, would constitute an Event of Default under this Loan Agreement or under such other agreements; and

(c) any material adverse change in the operations, business, properties, assets or conditions, financial or otherwise, of the Borrower.

Section 4.8 Financial Statements. The Borrower will cause to be prepared annual financial statements for the Borrower (including a balance sheet, statement of income and statement of changes in financial position which may be done on a consolidating basis) and certified by an independent certified public accountant, and within one hundred twenty (120) days of the close of each fiscal year will furnish a copy to the Purchaser along with a copy of annual filed tax returns containing all schedules and exhibits within thirty (30) days of Borrower filing such tax returns annually.

Section 4.9 IRS Audit Expenses. The Borrower agrees to pay any costs incurred by the Issuer or the Purchaser as a result of the Issuer’s or the Purchaser’s compliance with an audit, random or otherwise, by the Internal Revenue Service or the Minnesota Department of Revenue with respect to the Note or the Project.

Section 4.10 Compliance with Issuer’s Private Activity Bond Policy. The Borrower agrees to comply with the Issuer’s Policy Number 2.5 related to Tax Exempt Financing.

Section 4.11 Reserve Fund. The Borrower shall maintain a Reserve Fund in the amount of $50,001 funded with equity of the Borrower. Amounts in the Reserve Fund may be used to make up any deficiencies in debt service payments on the Notes when due.

All income derived from the investment of amounts on hand in the Reserve Fund shall remain in and be credited as received to the Reserve Fund until such time as the balance therein (valued at the outstanding stated principal amount of investments therein) is equal to $50,001. Thereafter all such investment income shall be transferred as received to the Borrower. If at any time the amount in the Reserve Fund is less than $50,001, the Purchaser shall request the amount of deficiency from the Borrower for deposit to the Reserve Fund. The Borrower shall make deposits in twelve monthly installments to replenish the deficiency in the Reserve Fund. Amounts in the Reserve Fund, if not previously used as aforesaid, shall be applied against the final installments of principal of and interest due on the Note.

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ARTICLE 5

PREPAYMENT OF LOAN

Section 5.1 Prepayment at Option of Borrower. The Borrower may at its option prepay the Loan, in whole or in part, by prepaying a like amount of the Principal Balance of the Note, but only in the manner, at the times and under the conditions provided in the Note.

Section 5.2 Other Prepayment Provisions. The Loan shall also be subject to prepayment if and to the extent the Note is subject to prepayment other than as described in Section 5.1.

Section 5.3 Partial Prepayment. If the Loan is prepaid hereunder only in part, the Purchaser shall apply any prepayment first against reasonable attorneys’ fees and collection costs, second against accrued interest due under the Note, and then against the Principal Balance due under the Note; and the Borrower shall continue to pay in full the monthly payments due under the Note until the entire Principal Balance and accrued interest due on the Note and any other charges or premiums due hereunder or under the Note have been paid.

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ARTICLE 6
EVENTS OF DEFAULT AND REMEDIES

Section 6.1  Events of Default. Any one or more of the following events is an Event of Default continuing beyond the applicable cure period under this Loan Agreement:

(1) If the Borrower shall fail to make (a) any payments required under Section 3.3 of this Loan Agreement on the date due, or (b) any other payment due under this Loan Agreement on or before the date that the payment is due, and such default continues for ten (10) days after written notice given to the Borrower by the Issuer or the Purchaser as provided in the Note.

(2) If the Borrower shall fail to observe and perform any other covenant, condition or agreement on its part under this Loan Agreement for a period of thirty (30) days after written notice (a “Default Notice”), specifying such default and requesting that it be remedied, is given to the Borrower by the Issuer or the Purchaser, unless the Purchaser shall agree in writing to an extension of such time prior to its expiration, or for such longer period as may be reasonably necessary to remedy such default provided that the Borrower is proceeding with reasonable diligence to remedy the same, but not exceeding sixty (60) days after the Default Notice is given.

(3) If the Borrower shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal bankruptcy act or any similar federal or state law, shall consent to the entry of an order for relief pursuant to any present or future federal bankruptcy act or under any similar federal or state law, or shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the entry of an order for relief of the Borrower under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof, or a receiver, trustee or liquidator of the Borrower or of all or substantially all of the assets of the Borrower or of the Facilities shall be appointed in any proceeding brought against the Borrower and shall not be discharged or appointed within ninety (90) days after such appointment or if the Borrower shall consent to or acquiesce in such appointment, or if the estate or interest of the Borrower in the Facilities or a part thereof shall be levied upon or attached in any proceeding and such process shall not be vacated or discharged within ninety (90) days after such levy or attachment; if the Borrower shall be dissolved or liquidated or shall be merged with or be acquired by another business entity in violation of Section 4.5.

(4) If the Operating Agreement of the Borrower shall expire or be annulled; or if the Borrower shall be dissolved or liquidated (other than when a new entity assumes the obligations of the Borrower under the conditions permitting such action contained in Section 4.5).

(5) If any representation or warranty made by the Borrower herein, or by an officer or representative of the Borrower in any document or certificate furnished the Purchaser or the Issuer in connection herewith or therewith or pursuant hereto or thereto, shall prove at any time to be, in any material respect, incorrect or misleading as of the date made.

(6) If the Borrower shall default or fail to perform any covenant, condition or agreement on its part under the Disbursing Agreement, the Regulatory Agreements, the Note, or any other document securing the Note, and such failure continues beyond the period set forth in such documents during which the Borrower may cure the default.
Section 6.2 Remedies. Whenever any Event of Default referred to in Section 6.1 hereof shall have happened and be subsisting, any one or more of the following remedial steps, to the extent permitted by law, may be taken by the Issuer with the prior written consent of the Purchaser (except that rights arising under the sections listed in Section 7.9 hereof may not require such consent in order to be exercised by the Issuer) or by the Purchaser itself:

(1) The Issuer, upon written direction of the Purchaser, or the Purchaser may declare, upon ten (10) days’ written notice to the Borrower, all installments of the Loan (being an amount equal to that necessary to pay in full the Principal Balance of plus accrued interest on the Note, assuming acceleration of the Note under the terms thereof, and to pay all other indebtedness thereunder) to be immediately due and payable, whereupon the same shall become immediately due and payable by the Borrower.

(2) The Issuer, upon written direction of the Purchaser (except as otherwise provided in Section 7.9 herein), or the Purchaser (in either case at no expense to the Issuer) may take whatever action at law or in equity may appear necessary or appropriate to collect the amounts then due and thereafter to become due under this Loan Agreement, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement.

(3) The Purchaser’s obligation to advance any further amounts under the Disbursing Agreement, if any, may terminate. Notwithstanding anything to the contrary contained herein or in any other instrument evidencing or securing the Loan, the Purchaser may exercise the foregoing remedy upon the occurrence of an event that would constitute such an Event of Default but for the requirement that notice be given or that a period of cure or time elapse.

(4) The Purchaser may disburse any amounts remaining in the Project Fund first towards payment of accrued interest owing on the Note and then to the Principal Balance of the Note in accordance with the terms of the Note.

(5) The Purchaser may exercise its rights under the Guaranty.

In addition, the Purchaser will have such remedies as are provided in the Pledge Agreement and the Disbursing Agreement upon an Event of Default under this Loan Agreement.

Section 6.3 Disposition of Funds. Notwithstanding anything to the contrary contained in this Loan Agreement, any amounts collected pursuant to action taken under Section 6.2 hereof, shall, after deducting all expenses incurred in collecting the same, be applied as a prepayment of the Note in accordance with Section 5.1.

Section 6.4 Manner of Exercise. No remedy herein conferred upon or reserved to the Issuer 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 Loan Agreement or now or hereafter existing at law or in equity 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 Issuer or the Purchaser to exercise any remedy reserved to either of them in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 6.5 Effect of Waiver. In the event any agreement contained in this Loan Agreement should be breached by either party and the breach 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 breach hereunder.

Section 6.6 Attorneys’ Fees and Expenses. In the event the Borrower should default under any of the provisions of this Loan Agreement and the Issuer or the Purchaser should employ attorneys or incur other expenses for the collection of amounts due hereunder or the enforcement of performance of any obligation or agreement on the part of the Borrower, the Borrower will on demand pay to the Issuer or the Purchaser the reasonable fees and costs of such attorneys and such other expenses so incurred.

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ARTICLE 7

GENERAL

Section 7.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when received by certified or registered mail, postage prepaid, with proper address as indicated below. The Issuer, the Borrower and the Purchaser may, by written notice given by each to the others, designate any address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated by this Loan Agreement. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

To the Issuer: City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, MN  55345
Attn: City Manager

To the Purchaser: Bridgewater Bank
4400 Excelsior Boulevard
St. Louis Park, MN  55416
Attn: Senior Vice President, Commercial Lending

To the Borrower: CHC Minnetonka Affordable Housing LLC
161 St. Anthony Avenue, Suite 820
St. Paul, MN  55103
Attn: _______________

With copies to: Shelter Corporation
1600 Hopkins Crossroad
Minnetonka, MN  55305
Attn: _______________

Winthrop & Weinstine, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, MN 55402-4629
Attention: Jeffrey J. Koerselman, Esq.

Section 7.2 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer and the Borrower and their respective successors and assigns.

Section 7.3 Severability. In the event any provision of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 7.4 Amendments, Changes and Modifications. Except as otherwise provided in this Loan Agreement, subsequent to the initial issuance of the Note and before the Note is satisfied and discharged in accordance with its terms, this Loan Agreement may not be effectively amended, changed, modified, altered, or terminated without the written consent of the Purchaser.
Section 7.5 Execution Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.6 Limitation of Issuer’s Liability. No covenant, provision or agreement of the Issuer herein or in the Note or in any other document executed by the Issuer (or any other party) in connection with the issuance, sale and delivery of the Note, or any obligation herein or therein imposed upon the Issuer or respecting the breach thereof, shall give rise to a pecuniary liability of the Issuer, its officers, employees or agents, or a charge against the Issuer’s general credit or taxing powers or shall obligate the Issuer, its officers, employees or agents, financially in any way except with respect to this Loan Agreement and the application of revenues and the proceeds of the Note. The Note shall be and constitutes only a special and limited revenue obligation of the Issuer, payable solely from the revenues pledged to the payment thereof pursuant to this Loan Agreement and the Pledge Agreement, and the Note does not now and shall never constitute an indebtedness, a general or moral obligation or a loan of the credit of the Issuer, the State or any political subdivision thereof or a lien, charge or encumbrance, legal or equitable, against the Issuer’s general credit or taxing powers or any of the Issuer’s property. No failure of the Issuer to comply with any term, condition, covenant or agreement therein shall subject the Issuer, its officers, employees or agents, to liability for any claim for damages, costs or other financial or pecuniary charges except to the extent that the same can be paid or recovered from this Loan Agreement or revenues therefrom or proceeds of the Note. No execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing powers of the Issuer. In making the agreements, provisions and covenants set forth herein, the Issuer has not obligated itself except with respect to this Loan Agreement and the application of revenues hereunder as hereinafo above provided. It is further understood and agreed by the Borrower and the Purchaser that the Issuer, its officers, employees or agents shall incur no pecuniary liability hereunder and shall not be liable for any expenses related hereto, all of which the Borrower agrees to pay. If, notwithstanding the provisions of this Section, the Issuer, its officers, employees or agents incurs any expense, or suffers any losses, claims or damages or incurs any liabilities, the Borrower will indemnify and hold harmless the Issuer, its officers, employees or agents for any and all losses, costs, expenses (including attorneys’ fees), damages, judgments, claims and causes of action, paid, incurred or sustained by the Borrower as a result of or relating to any action, or failure or refusal to act, on the part of any party with respect to the Note, this Loan Agreement, or the documents and transactions related thereto, including, without limitation, costs and expenses of collection in the Event of Default, whether or not suit is filed with respect thereto.

Section 7.7 Issuer Attorneys’ Fees and Costs. The Borrower shall reimburse the Issuer, upon demand, for all costs and expenses, including without limitation attorneys’ fees, paid or incurred by the Issuer in connection with (i) the discussion, negotiation, preparation, approval, execution and delivery of the Note, this Loan Agreement, and the documents and instruments related hereto or thereto; (ii) any amendments or modifications to any of the foregoing documents, instruments or agreements and the discussion, negotiation, preparation, approval, execution and delivery of any and all documents necessary or desirable to effect such amendments or modifications; (iii) the servicing and administration of the Loan during the term hereof or thereafter; and (iv) the enforcement by the Issuer during the term hereof or hereafter of any of the rights or remedies of the Issuer hereunder or under the foregoing documents, or any document, instrument or agreement related hereto or thereto, including, without limitation, costs and expenses of collection in the Event of Default, whether or not suit is filed with respect thereto.

Section 7.8 Release. The Borrower hereby acknowledges and agrees that the Issuer shall not be liable to the Borrower, and hereby releases and discharges the Issuer from any liability, for any and all losses, costs, expenses (including attorneys’ fees), damages, judgments, claims and causes of action, paid, incurred or sustained by the Borrower as a result of or relating to any action, or failure or refusal to act, on the part of any party with respect to the Note, this Loan Agreement, or the documents and transactions related thereto.
related hereto or thereto or contemplated hereby or thereby, including, without limitation, the exercise by any third party of any of its rights or remedies pursuant to any of such documents.

**Section 7.9 Assignment by Issuer and Survivorship of Obligations.** The Issuer may assign its rights under this Loan Agreement and any related documents to the Purchaser to secure payment of the principal of and interest on the Note, conditioned upon the Purchaser’s assumption of the Issuer’s and Purchaser’s obligations to the Borrower hereunder, but any such assignment shall not operate to limit or otherwise affect the following provisions hereof to the extent that they run to the Issuer from the Borrower to which extent they shall survive any such assignment: Sections 3.4, 3.6, 4.1, 4.2, 4.4, 4.9, 6.6, 7.6, 7.7, 7.8, and 7.9.

Upon any such assignment, the provisions immediately above running to the Issuer from the Borrower for the Issuer’s benefit shall run jointly and severally to the Issuer and the Purchaser (if appropriate), provided that the Issuer shall have the right to enforce any retained rights without the approval of the Purchaser but only if the Purchaser is not enforcing such rights in a manner to protect the Issuer or is otherwise taking action with respect thereto that brings adverse consequences to the Issuer. The obligations of the Borrower running to the Issuer for the purpose of preserving the tax exempt status of the Note or otherwise for the Issuer’s benefit under the foregoing Sections shall survive repayment of the Note and interest thereon.

**Section 7.10 Required Approvals.** Consents and approvals required by this Loan Agreement to be obtained from the Borrower, the Issuer or the Purchaser shall be in writing and shall not be unreasonably withheld or delayed.

**Section 7.11 Termination Upon Retirement of Note.** At any time when no principal balance on the Note remains outstanding, and arrangements satisfactory to the Purchaser and the Issuer have been made for the discharge of all other accrued liabilities, if any, under this Loan Agreement, this Loan Agreement shall terminate, except as otherwise expressly provided in Section 7.9 or otherwise herein.

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

CITY OF MINNETONKA, MINNESOTA

By ________________________________
Its Mayor

By ________________________________
Its City Manager

(Issuer Signature Page to Loan Agreement)
CHC MINNETONKA AFFORDABLE HOUSING
LLC, a Minnesota limited liability company

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

By: ________________________________
Name: ______________________________
Title: ______________________________

(Borrower Signature Page to Loan Agreement)
PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT is made as of August 1, 2016 (the “Pledge Agreement”), between the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “Issuer”), and BRIDGEWATER BANK, a Minnesota banking corporation, its successors and assigns (the “Purchaser”).

RECITALS

WHEREAS, CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”) and the Issuer have entered into a Loan Agreement (the “Loan Agreement”) of even date herewith, pursuant to which the Issuer will lend to the Borrower the proceeds of the Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Note”), in the original aggregate principal amount of $11,500,000, for use in financing (i) the acquisition, construction, and equipping of approximately twenty-seven (27) new affordable apartment units to be located at 5750 Shady Oak Road, Minnetonka, Minnesota (the “Music Barn Apartments”); (ii) the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive, Minnetonka, Minnesota (the “Elmbrooke Apartments”); and (iii) the acquisition and substantial rehabilitation of six (6) existing affordable townhome units at 2100 Douglas Drive North and two (2) existing affordable townhome units at 3354 Lilac Drive North, Golden Valley, Minnesota (the “Golden Valley Townhomes,” and collectively with the Music Barn Apartments and the Elmbrooke Apartments, the “Project”); and

WHEREAS, the Note is payable from and secured by the loan repayments to be made by the Borrower under the Loan Agreement; and the Purchaser, as a condition to the purchase of the Note, has required the execution of this Pledge Agreement; and

NOW THEREFORE, as an inducement to the Purchaser to purchase the Note, and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. In order to secure the due and punctual payment of the Note and all other sums due the Purchaser under the Loan Agreement, the Issuer does hereby pledge and assign to the Purchaser all of the Issuer’s right, title and interest in and to the Loan Agreement (including, without limitation, any right, title and interest of the Issuer in the Project Fund, as defined in the Loan Agreement), except for those rights retained by the Issuer under the provisions of Section 7.9 of the Loan Agreement.

2. The Issuer hereby represents and warrants to the Purchaser that the Issuer has not assigned or encumbered its right, title and interest in the Loan Agreement other than by this Pledge Agreement.

3. The Issuer hereby authorizes the Purchaser to exercise, whether or not a default exists under the Note or an Event of Default has occurred under the Loan Agreement, either in the Issuer’s name or the Purchaser’s name, any and all rights or remedies available to the Issuer under the Loan Agreement. The Issuer agrees, on request of the Purchaser, to execute and deliver to the Purchaser such other documents or instruments as shall be deemed necessary or appropriate by the Purchaser at any time to confirm or perfect the security interest hereby granted. The Issuer hereby appoints the Purchaser its
attorney-in-fact to execute on behalf of the Issuer, and in its name, any and all such assignments, financing statements or other documents or instruments which the Purchaser may deem necessary or appropriate to perfect, protect or enforce the security interest hereby granted.

4. The Issuer will not:

(a) exercise or attempt to exercise any remedies under the Loan Agreement except as permitted by Sections 6.2 and 7.9 of the Loan Agreement, or terminate, modify or accept a surrender of the same, or by affirmative act, consent to the creation or existence of any security interest or other lien in the Loan Agreement to secure payment of any other indebtedness; or

(b) receive or collect or permit the receipt or collection of any payments, receipts, rentals, profits or other moneys under the Loan Agreement (except as allowed under Section 7.9 thereof) or assign, transfer or hypothecate (other than to the Purchaser hereunder) any of the same then due or to accrue in the future.

5. The Issuer expressly covenants and agrees that the Purchaser shall be entitled to receive all payments under the Loan Agreement (except any payments due the Issuer under Section 7.9 thereof), and hereby authorizes and directs the Borrower to make such payments directly to the Purchaser. The Purchaser covenants and agrees that all payments received by the Purchaser pursuant to the Loan Agreement shall be applied to the payment of principal and interest on the Note and any other amounts due and owing by the Borrower to the Purchaser under the Note or the Loan Agreement.

6. The Purchaser agrees to advance the purchase price of the Note on the Borrower’s behalf into the Project Fund as provided in the Note, the Loan Agreement and the Disbursing Agreement. In accordance with Section 7.9 of the Loan Agreement, the Purchaser hereby assumes the Issuer’s obligations to the Borrower thereunder.

7. If an Event of Default shall occur and be continuing, the Purchaser may exercise any one or more or all, in any order, of the remedies hereinafter set forth, in addition to any other remedy at law or in equity or specified in the Loan Agreement, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies; but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

(a) The Purchaser may, without prior notice of any kind, declare the principal of and interest accrued on the Note immediately due and payable.

(b) The Purchaser may exercise any rights and remedies and options of a secured party under the Uniform Commercial Code as adopted in the State of Minnesota and any and all rights available to it under the Loan Agreement and the Disbursing Agreement related to the Note.

8. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Pledge Agreement contained by or on behalf of the Issuer or the Purchaser shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

9. The unenforceability or invalidity of any provision or provisions of this Pledge Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.
10. This Pledge Agreement shall in all respects be construed in accordance with and governed by the laws of the State of Minnesota. This Pledge Agreement may not be amended or modified except in writing signed by the Issuer and the Purchaser.

11. This Pledge Agreement may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all of which together constituting one agreement.

12. The terms used in this Pledge Agreement which are defined in the Loan Agreement shall have the meanings specified therein, unless the context of this Pledge Agreement otherwise requires, or unless such terms are otherwise defined herein.

13. No obligation of the Issuer hereunder shall constitute or give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers, but shall be payable solely out of the proceeds and the revenues derived under the Loan Agreement.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Issuer and the Purchaser have caused this Pledge Agreement to be
duly executed as of the day and year first above written.

CITY OF MINNETONKA, MINNESOTA

By
Its Mayor

By
Its City Manager

(City Signature Page to Pledge Agreement)
BRIDGEWATER BANK

By ____________________________________________

Its ____________________________________________

(Purchaser Signature Page to Pledge Agreement)
DISBURSING AGREEMENT

THIS DISBURSING AGREEMENT is made as of August 1, 2016 (the “Disbursing Agreement”), by and between CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company (the “Borrower”), and BRIDGEWATER BANK, a Minnesota banking corporation (the “Purchaser”).

RECITALS

WHEREAS, the City of Minnetonka (the “Issuer”) has provided for the issuance of its Multifamily Housing Revenue Note (CHC Minnetonka Affordable Housing LLC Project), Series 2016 (the “Note”), in the original aggregate principal amount not to exceed $11,500,000;

WHEREAS, by a Loan Agreement, dated as of August 1, 2016 (the “Loan Agreement”), between the Issuer and the Borrower, the Issuer has agreed to lend the proceeds of its Note to the Borrower for use in financing (i) the acquisition, construction, and equipping of approximately twenty-seven (27) new affordable apartment units to be located at 5750 Shady Oak Road, Minnetonka, Minnesota (the “Music Barn Apartments”); (ii) the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive, Minnetonka, Minnesota (the “Elmbrooke Apartments”); and (iii) the acquisition and substantial rehabilitation of six (6) existing affordable townhome units at 2100 Douglas Drive North and two (2) existing affordable townhome units at 3354 Lilac Drive North, Golden Valley, Minnesota (the “Golden Valley Townhomes,” and collectively with the Music Barn Apartments and the Elmbrooke Apartments, the “Facilities”);

WHEREAS, by a Pledge Agreement, dated as of August 1, 2016, between the Issuer and the Purchaser, the Issuer has assigned to the Purchaser the Issuer’s interest in the Loan Agreement, except for those rights retained by the Issuer under the provisions of Section 7.9 of the Loan Agreement;

WHEREAS, by separate Regulatory Agreements, each dated August ___, 2016 (collectively, the “Regulatory Agreements”), between the Issuer, the Borrower, and the Purchaser, related to each of the Music Barn Apartments, the Elmbrooke Apartments, and the Golden Valley Townhomes, the Borrower agrees to comply with certain rental and occupancy requirements of federal and state law set forth therein;

WHEREAS, the Loan Agreement provides that the proceeds of the Note shall be disbursed from the Project Fund created hereunder to the Borrower in accordance herewith; and

NOW, THEREFORE, in consideration of the premises, the payment by the Borrower to the Purchaser of a fee (receipt of which is acknowledged by the Purchaser), and of the mutual covenants and agreements hereinafter set forth, it is agreed between the parties hereto as follows:
ARTICLE 1
DEFINITIONS

Section 1.01 Defined Terms. As used in this Disbursing Agreement, the following terms shall have the meanings set out respectively after each (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

Appraisal: an acceptable appraisal of the market value of the completed Facilities and the Land (a) addressed to the Purchaser, (b) prepared by an appraiser approved by the Purchaser and (c) conforming to all laws applicable to the Purchaser and otherwise in a form satisfactory to the Purchaser.

Architect: the architect retained by the Borrower to design the Facilities.

Architect’s Contract: the agreement between the Borrower and the Architect as to preparation of the Plans and Specifications for the construction and rehabilitation of each of the Facilities.

Borrower: CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company.

Contractor: any person, including the General Contractor, who shall be engaged to work on, or to furnish materials and supplies for, the Facilities.

Construction Contract: the agreement between the Borrower and the General Contractor pursuant to which the General Contractor agrees to rehabilitate and construct the Facilities in accordance with the Plans and Specifications for a fixed price or maximum cost.

Disbursement: a disbursement by the Purchaser from the Project Fund to the Borrower pursuant to Article II hereof.

Draw Request: a request for a Disbursement made on a form approved by the Purchaser and in accordance with Section 2.03 hereof.

Event of Default: one of the events of default specified in Section 6.01 hereof and the continuance of such event following the giving of any notice and the expiration of any cure period specified in Section 6.01.

Facilities: the facilities of the Borrower described in the Recitals, above.

General Contractor: the general contractor retained by the Borrower to rehabilitate and build the Facilities.

Governing Authorities: the Issuer and any other local, state or federal governing authority having jurisdiction over the Project.

Guarantor: Community Housing Corporation of America, Inc., a Delaware nonprofit corporation.

Guaranty: the Guaranty Agreement, dated as of August 1, 2016, by the Guarantor in favor of the Purchaser, as it may be amended from time to time.
Issuer: the City of Minnetonka, Minnesota.

Land: the land in Minnetonka, Minnesota and Golden Valley, Minnesota, upon which the Facilities are to be constructed.

Loan: the loan to be made to the Borrower pursuant to the terms of the Loan Agreement and to be disbursed in accordance with this Disbursing Agreement.

Loan Agreement: the Loan Agreement, dated as of August 1, 2016, between the Issuer and the Borrower.

Note: the Multifamily Housing Revenue Note (CHC Minnetonka Affordable Housing LLC Project), Series 2016, issued by the Issuer in the original aggregate principal amount of $11,500,000.

Organizational Documents: the following documents each of which shall be in form and substance acceptable to the Purchaser:

(i) copies of the Borrower’s Operating Agreement, duly certified as of a current date by the Minnesota Secretary of State;

(ii) Articles of Organization, duly certified as of a current date by the Minnesota Secretary of State and copies of the Operating Agreement and Member Control Agreement of the managing member of the Borrower;

(iii) Certificates of Good Standing of the Borrower and its general partner, duly issued as of a current date by the Minnesota Secretary of State; and

(iv) copies of the resolutions of the Borrower’s and its general partner authorizing the execution, delivery and performance of those Loan Documents to which each is a party and the transactions contemplated thereby, duly certified by an officer thereof.

Plans and Specifications: the plans and specifications for the rehabilitation and/or construction of the Facilities prepared and signed by the Architect and approved by the Purchaser.

Pledge Agreement: the Pledge Agreement, dated as of August 1, 2016, between the Issuer and the Purchaser.

Project: the Land and the Facilities as they may at any time exist.

Project Costs: the costs shown on the Total Project Cost Statement.

Project Fund: the fund created pursuant to Section 2.01 hereof.

Purchaser: Bridgewater Bank, a Minnesota banking corporation.

Regulatory Agreements: the Regulatory Agreements, each dated August __, 2016, between the Issuer, the Borrower, and the Purchaser, related to each of the Music Barn Apartments, the Elmbrooke Apartments, and the Golden Valley Townhomes.
Security Documents: the Loan Agreement and Pledge Agreement, and any mortgage, assignment of leases and rents or security documents subsequently executed by the Borrower.

Subcontractor: any person who contracts with the General Contractor to perform any of the work or supply any of the materials necessary to complete the rehabilitation and construction of the Facilities.

Subcontract: any contract between the General Contractor and a Subcontractor.

Sworn Construction Statement: a sworn construction statement duly executed by the Borrower and the General Contractor showing all Contractors having contracts or subcontracts for specific portions of the work on the Facilities and the amounts due or to become due each such Contractor, and including all costs and expenses of any kind incurred and to be incurred in constructing and rehabilitating the Facilities and fulfilling the obligations of the General Contractor under the terms of the Construction Contract.

Title: Commercial Partners Title, LLC.

Total Project Cost Statement: a total project cost statement duly executed by the Borrower incorporating the Sworn Construction Statement and setting forth all costs and expenses of any kind incurred or to be incurred by the Borrower in connection with acquisition of the Land and completion of the Facilities, including all so-called “hard” and “soft” costs.

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ARTICLE 2

COMMITMENT TO MAKE DISBURSEMENTS, DISBURSEMENT PROCEDURES AND DEPOSIT OF FUNDS

Section 2.01  The Project Fund. Pursuant to this Disbursing Agreement, a Project Fund has been established and maintained in the Borrower’s name as a separate account with the Purchaser (the “Project Fund”). The Purchaser shall maintain the Project Fund for as long as the Purchaser is the holder of the Note. On the date of this Disbursing Agreement, $50,001 of Note proceeds has been advanced under the Note and has been expended on the costs of issuance of the Note. Thereafter, with the consent of the Purchaser, proceeds of the Note shall be advanced and deposited into the Project Fund in the amount of each Disbursement. All amounts in the Project Fund shall earn interest at a variable per annum rate equal to that paid by the Purchaser on its business money market accounts or at such other rate as the Borrower and the Purchaser may agree, provided, however that any amounts remaining in the Project Fund from and after August __, 2019 shall not be invested at a yield greater than the yield on the Note (____%). The Borrower hereby grants to the Purchaser a security interest in any and all amounts on deposit in the Project Fund as security for payment by the Borrower and performance of its other obligations under the Note and the Security Documents.

Section 2.02  The Disbursements. The Purchaser agrees, on the terms and subject to the conditions hereinafter set forth, to make Disbursements from the Project Fund to the Borrower from time to time in an aggregate principal amount of up to and including the maximum amount of $11,500,000. All Disbursements shall be used to pay Project Costs. The obligation of the Borrower to repay the Disbursements shall be evidenced by the Loan Agreement and the Note which contain terms relating to maturity, interest rate, payments, prepayment, acceleration and other matters.

Section 2.03  Disbursement Procedures.

(a) Whenever the Borrower desires a Disbursement, which shall be no more often than monthly, the Borrower shall submit to the Purchaser a Draw Request, duly executed on behalf of the Borrower, setting forth the information requested therein. Each Draw Request shall be submitted on or between the first (1st) day and the fifteenth (15th) day of the month in which a Disbursement is requested, and shall be filed at least seven (7) days before the date the Disbursement is desired. With respect to construction items (so-called “hard costs”) each Draw Request shall be limited to amounts equal to (i) the total of such costs actually incurred and paid or owing by the Borrower to the date of such Draw Request for work performed on the Project that the Purchaser has committed to finance pursuant to Section 2.02 hereof, plus (ii) the cost of materials and equipment not incorporated in the Project, but delivered to and suitably stored on the Land; less, (iii) five percent (5.0%) holdback with respect to labor and not materials (or such lesser holdback as is authorized by the Purchaser) and less prior Disbursements. Notwithstanding anything herein to the contrary, no Disbursements for materials stored on the Land will be made by the Purchaser unless the Borrower provides suitable security for such storage. With respect to all other costs (so-called “soft costs”) each Draw Request shall be limited to the total of such costs incurred by the Borrower to the date of such Draw Request, less prior Disbursements for such costs. Each Draw Request shall constitute a representation and warranty by the Borrower that all representations and warranties set forth in Article 4 are true and correct as of the date of such Draw Request.

(b) At the time of submission of each Draw Request, the Borrower shall also submit to the Purchaser and Title any materials required by Title, including (without limitation) a written
lien waiver from each Contractor for work done and materials supplied by it which were paid for pursuant to the previous Draw Request.

(c) If on the date a Disbursement is desired, (i) the Borrower has performed all of its agreements and complied with all requirements therefor to be performed or complied with hereunder including satisfaction of all applicable conditions precedent contained in Article 3 hereof, (ii) the Borrower has performed all of its obligations hereunder, and (iii) the Purchaser receives a current construction report from the inspecting architect/engineer, if any, confirming the accuracy of the information set forth in the Draw Request, the Purchaser shall advance under the Note and disburse the amount of the requested Disbursement to or at the direction of the Borrower. Each Disbursement shall constitute an advance under the Note and shall bear interest at the rate provided in the Note from the date such Disbursement is disbursed by the Purchaser.

Section 2.04 Deposit of Funds by the Borrower. If the Purchaser shall at any time after the conditions set forth in Section 3.02 have been met in good faith determine that the undisbursed amount of the Note is less than the amount required to pay all unpaid costs and expenses of any kind which reasonably may be anticipated in connection with the completion of the Project, and shall thereupon send written notice thereof to the Borrower specifying the amount required to be deposited by the Borrower into the Project Fund to provide sufficient funds to pay all such costs and complete the Project, the Borrower agrees that it will, within seven (7) calendar days of receipt of any such notice, deposit into the Project Fund the amount of funds specified in the Purchaser’s notice. The Borrower agrees that any such funds so deposited may be disbursed before any further disbursement of monies in the Project Fund, to pay any and all costs and expenses of any kind in connection with completion of the Project.

Section 2.05 Disbursements Without Receipt of Draw Request. Notwithstanding anything herein to the contrary, the Purchaser shall have the irrevocable right at any time and from time to time to apply monies in the Project Fund to pay interest on the Note as and when it becomes due, and to pay any and all of the expenses referred to in Section 7.04 hereof, all without receipt of a Draw Request from the Borrower.

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ARTICLE 3

CONDITIONS OF ADVANCES

Section 3.01 Conditions Precedent to Initial Advance. The obligation of the Purchaser to make the initial advance of $50,001 to pay the costs of issuing the Note shall not be subject to the requirements provided elsewhere in this Disbursing Agreement (except as indicated in this Section 3.01), but shall be subject to the condition precedent that the Borrower shall be in compliance with the conditions contained in Section 3.03 and the further condition precedent that the Purchaser shall have received on or before the date of the initial advance under the Note, the following, each to be satisfactory to the Purchaser in form and substance:

(a) The Loan Agreement duly executed by the Issuer and the Borrower;

(b) The Note duly executed by the Issuer;

(c) The Pledge Agreement duly executed by the Issuer and the Purchaser;

(d) The Regulatory Agreements duly executed by the Issuer, Borrower and the Purchaser;

(e) The Guaranty duly executed by the Guarantor;

(f) The Organizational Documents;

(g) A signed copy of a favorable opinion of counsel to the Borrower;

(h) An opinion of Kennedy & Graven, Chartered, or other nationally recognized bond counsel to the effect that interest on the Note is exempt from all federal and state income taxes.

Section 3.02 Conditions Precedent to Further Disbursements. The obligation of the Purchaser to make additional advances of the purchase price of the Note and Disbursements shall be subject to the condition precedent that the Borrower shall be in compliance with all the conditions contained in Section 3.03 and the further condition precedent that the Purchaser shall have received (unless waived in writing by the Purchaser) on or before the date of each further Disbursement each of the following, each to be satisfactory to the Purchaser in form and substance:

(a) A mortgage and assignment of leases and rents encumbering the Land;

(b) An Assignment of Construction Contract duly executed by the Borrower and consented to by the General Contractor;

(c) An Assignment of Architect’s Contract duly executed by the Borrower and consented to by the Architect;

(d) A copy of the Plans and Specifications;

(e) Copies of the Construction Contract and the Architect’s Contract;
(f) Copies of such Subcontracts as the Purchaser may request, together with a letter from each Contractor under such Subcontracts permitting the Purchaser, upon its election to complete the Facilities in accordance with the provisions of Section 6.02(c) hereof, to acquire the interest of the Contractor under such Subcontracts;

(g) The Sworn Construction Statement;

(h) The Appraisal;

(i) An extended coverage ALTA Mortgagee’s Policy of Title Insurance issued by Title (Form 1970 or Form 1992 Revised 10-23-92 with the exclusion for creditors rights and arbitration requirements deleted) and containing such endorsements as Purchaser may require including ALTA Form 9 Comprehensive Endorsement and ALTA Form 3.0 Zoning Endorsement. Such Policy shall be in an amount equal to the amount of the Commitment and shall insure any mortgage as a first lien on a good and marketable fee simple title to the Project, subject only to such encumbrances as shall be acceptable to the Purchaser. Without limiting the generality of the foregoing, such Policy shall insure the Purchaser against claims for mechanics’ liens, rights of parties in possession and matters which would be disclosed by a comprehensive survey of the Land;

(j) A boundary survey of the Land prepared and certified by a licensed or registered surveyor to the Purchaser in accordance with Minimum Standard Detail Requirements for a Class A Urban ALTA Land Survey (as most recently adopted by the ALTA/ASCM) including Items Nos. 1, 2, 3, 4, 6, 7(a), 7(b)(1), 8, 9, 10, 11 and 13 of Table A of the Requirements and such other items as the Purchaser may reasonably require. The survey shall set forth the street address of the Project along with the legal description and the number of square feet within said description. The survey shall be “spotted” to show each of the proposed Facilities according to the site plan prepared by the Architect and revised to show foundations when laid. Upon completion of the Facilities the applicable survey shall be recertified “as-built”;

(k) A copy of the plat for the Project conforming to all platting requirements, or evidence that a plat is not required or has been waived by the appropriate Governing Authority;

(l) Appropriate searches conducted in the required offices in the State showing no tax liens, bankruptcies, judgments or other liens affecting the Borrower or the Project, and Uniform Commercial Code searches conducted disclosing no security interests existing against the Project including the equipment, fixtures and personalty;

(m) The site plan prepared by the Architect showing each of the proposed Facilities;

(n) A letter from the appropriate Governing Authority stating that the Facilities when constructed in accordance with the Plans and Specifications will comply in all respects with all applicable ordinances, zoning, planned unit development, subdivision, platting, environmental and land use requirements, without special variance or exception, and such other evidence as the Purchaser shall request to establish that the Project and the contemplated use thereof are permitted by and comply with all applicable use or other restrictions and requirements in prior conveyances, zoning ordinances, environmental laws and regulations, water shed district regulations and all other applicable laws or regulations, and have been duly approved by the municipal and other governmental authorities having jurisdiction over the Project, and that all required permits for construction or rehabilitation of each of the Facilities have been obtained;
(o) Soil reports describing the soil conditions and indicating any corrective action that may be necessitated because of such conditions, together with evidence that the Plans and Specifications incorporate such corrective action, if any;

(p) A Phase I Environmental Site Assessment, addressed and certified to the Borrower and the Purchaser and performed by a qualified licensed engineer or certified environmental/industrial hygienist in strict conformance with the Standard Practice for Environmental Site Assessment Process, ASTM Standard E1527-97 and a findings and conclusions section consistent with Section 11.6.1 thereof and any additional investigations and analysis necessary for the consultant to conclude there are no Recognized Environmental Conditions (as such term is used in Standard E1527) associated with the Project, or such have been remediated in accordance with applicable law;

(q) The Total Project Cost Statement;

(r) Letters from utility companies establishing that all utilities necessary for the construction, rehabilitation and operation of the Project are available at the boundaries of the Land, including without limitation water, sewer, electricity, gas and telephone, and that the Borrower has the right to connect to and use such utilities;

(s) Copies of the policies of builder’s risk insurance (including business interruption insurance) and comprehensive general liability insurance and a certificate of the worker’s compensation insurance, with all such insurance in full force and effect; and

(t) Such other documents as the Purchaser may require.

Section 3.03 Further Conditions Precedent to All Disbursements. The obligation of the Purchaser to make each subsequent Disbursement shall be subject to the condition precedent that the Borrower shall be in compliance with all conditions set forth in Sections 3.01 and 3.02, and the further conditions precedent that on the date of such Disbursement:

(a) No Event of Default hereunder, or event which would constitute an Event of Default but for the requirement that notice be given or that a period of cure or time elapse, shall have occurred and be continuing and all representations and warranties made by the Borrower in Article 4 shall continue to be true and correct as of the date of such Disbursement.

(b) No determination shall have been made by the Purchaser that the unadvanced amount of the Note is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the completion of the Project; or if such a determination has been made and notice thereof sent to the Borrower, the Borrower has deposited the necessary funds in the Project Fund in accordance with Section 2.04 hereof.

(c) The disbursement requirements of Section 2.03 hereof shall have been satisfied.

(d) If required by the Purchaser, the Purchaser shall be furnished with an updated statement of the Borrower and of any Contractor, in form and substance required by the Purchaser, setting forth the names, addresses and amounts due or to become due as well as the amounts previously paid to every Contractor, subcontractor, person, firm or corporation furnishing materials or performing labor in connection with the construction or rehabilitation of any part of the Project.
(e) The Borrower shall have provided to the Purchaser such evidence of compliance with all of the provisions of this Disbursing Agreement as the Purchaser may reasonably request.

(f) The Borrower shall have provided to the Purchaser copies of all building permits and such other licenses and permits as may be required to rehabilitate and construct each of the Facilities. No license or permit necessary for the construction or rehabilitation of any of the Facilities shall have been revoked or the issuance thereof subjected to challenge before any court or other Governing Authority.

Section 3.04 Conditions Precedent to the Final Disbursement. The obligation of the Purchaser to make the final Disbursement shall be subject to the condition precedent that the Borrower shall be in compliance with all conditions set forth in Sections 3.01, 3.02 and 3.03, and, further, that the following conditions shall have been satisfied:

(a) The Project, including all landscape and parking requirements, shall have been completed in accordance with the Plans and Specifications and the Purchaser shall have received a Certificate of Completion from the General Contractor and the Architect certifying that (i) work on the Project has been completed in accordance with the Plans and Specifications and all labor, services, materials and supplies used in such work have been paid for and (ii) the completed Project conforms with all applicable zoning, land use planning, building and environmental laws and regulations of all Governing Authorities.

(b) The Purchaser shall have received satisfactory evidence that all work requiring inspection by municipal or other Governing Authorities has been duly inspected and approved by such authorities, and that all requisite certificates of occupancy and any other approvals for occupancy and operation of the Project have been issued.

(c) The Purchaser and Title shall have received a final lien waiver from each Contractor for all work done and for all materials furnished by it for the Project or Title shall be reasonably satisfied that such lien waivers will be provided within thirty (30) days and shall have provided its Policy of Title Insurance described in Section 3.02(i) with the mechanic’s lien exception removed.

(d) The Purchaser shall have received an “as-built” survey of the Land meeting all of the requirements set forth in Section 3.01(j) and showing that the Facilities as completed are entirely within the exterior boundaries of the Land and any building setback or restriction lines and do not encroach upon any easements or right-of-way, and showing such other information as the Purchaser may reasonably request.

Section 3.05 No Waiver. The making of any Disbursement prior to fulfillment of any condition thereof shall not be construed as a waiver of such condition, and the Purchaser reserves the right to require fulfillment of any and all such conditions prior to making any subsequent Disbursements.
ARTICLE 4
REPRESENTATIONS AND WARRANTIES

Section 4.01 Representations and Warranties. The Borrower represents to the Purchaser and warrants as follows:

(a) The Borrower is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Minnesota, and has all requisite power and authority to own the Land and construct and rehabilitate the Facilities, and to execute and deliver and to perform all of its obligations under the Loan Agreement, this Disbursing Agreement, the Note and the Security Documents and the execution and delivery thereof and the carrying out of the transactions contemplated thereby will not violate, conflict with or constitute a default under the terms of the Organizational Documents or under any note, bond, debenture or other evidence of indebtedness or any contract, loan agreement or lease to which the Borrower is a party or by which the Land is subject, or violate any law, regulation or order of any Governing Authority, or any court order or judgment in any proceeding to which the Borrower is or was a party or by which the property of the Borrower is bound.

(b) The execution, delivery and performance by the Borrower of the Loan Agreement, this Disbursing Agreement, the Regulatory Agreements and the Security Documents have been duly authorized by the Borrower.

(c) This Disbursing Agreement constitutes, and the Loan Agreement, the Regulatory Agreements, the Note and the Security Documents when delivered hereunder will constitute, legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms.

(d) The Borrower has obtained or will obtain all necessary licenses and permits required for construction or rehabilitation of each of the Facilities and operation of the Project, except those which cannot be obtained until completion of the Project.

(e) The Project will be constructed in accordance with the Plans and Specifications; will be constructed entirely on the Land; and will not encroach upon or overhang any easement or right-of-way. The Project, both during construction or rehabilitation and at the time of completion, and the contemplated use thereof, will not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record. The Borrower agrees that it will furnish to the Purchaser from time to time reasonably satisfactory evidence with respect thereto.

(f) Any and all financial statements of the Borrower heretofore delivered to the Purchaser by or on behalf of the Borrower are true and correct in all respects, have been prepared and fairly present the financial condition of the subject thereof as of the respective dates thereof. No materially adverse change has occurred in the financial conditions reflected therein since the respective dates thereof. None of the aforesaid financial statements or any certificate or statement furnished to the Purchaser by or on behalf of the Borrower in connection with the transactions contemplated hereby, and none of the representations and warranties in this Disbursing Agreement, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein or herein not misleading. To the best knowledge of the Borrower, there is no fact which materially adversely affects or in the future (so
far as the Borrower can now foresee) may materially adversely affect the business or prospects or condition (financial or other) of the Borrower or any of its properties or assets, which has not been set forth herein or in a certificate or statement furnished to the Purchaser by the Borrower.

(g) There is no suit, action, proceeding or investigation pending or threatened against or affecting the Borrower (or any basis therefor) at law or in equity or by or before any court, arbitrator, administrative agency or other federal, state or local governmental authority which individually or in the aggregate, if adversely determined, might have a material adverse effect on, or affect the validity as to the Borrower of, any of the transactions contemplated by this Disbursing Agreement or the ability of the Borrower to perform its obligations hereunder or as contemplated hereby.

(h) No consent, approval, order or authorization of or registration, declaration or filing with any governmental authority is required in connection with a valid execution and delivery of this Disbursing Agreement, the Loan Agreement, the Regulatory Agreements, the Security Documents or of any and all other agreements and instruments herein mentioned to which the Borrower is a party or the carrying out or performance of any of the transactions required or contemplated thereby, or, if required, such consent, approval, order or authorization shall have been obtained or such registration, declaration or filing shall have been accomplished prior to the initial Disbursement.

(i) The principal amount of the Note, together with any other funds to be contributed toward the payment of Project Costs by the Borrower will be sufficient to pay the entire cost of acquiring, rehabilitating, constructing, equipping and otherwise rendering the Project suitable for its intended use.

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ARTICLE 5

ADDITIONAL COVENANTS OF THE BORROWER

Section 5.01 Affirmative Covenants. The Borrower agrees that:

(a) The Borrower will diligently proceed with construction or rehabilitation of each of the Facilities according to the Plans and Specifications and in accordance with all applicable laws and ordinances, will complete the Project by the Completion Date and will use the proceeds of the Note solely to pay Project Costs.

(b) The Borrower will use all reasonable efforts to require each Contractor to comply with all rules, regulations, ordinances and laws bearing on its conduct of work on the Project.

(c) The Borrower will provide and maintain at all times during construction or rehabilitation of the Facilities (and, from time to time at the request of the Purchaser, furnish the Purchaser with proof of payment of premiums on) insurance on the Project.

(d) The Borrower shall maintain accurate and complete books, accounts and records pertaining to the Project. The Borrower will permit the Purchaser, acting by and through its officers, employees and agents during normal business hours and upon reasonable notice, to examine all books, records, contracts, plans, drawings, permits, bills and statements of account pertaining to the Project and to make extracts therefrom and copies thereof.

Section 5.02 Negative Covenants. The Borrower agrees that, without the prior written consent of the Purchaser, it will not voluntarily, involuntarily or by operation of law agree to, cause, suffer or permit any sale, transfer, lease, sublease or conveyance of any interest of the Borrower, legal or equitable, in the Project, except in the ordinary course of the Borrower’s business or any transfers of limited partnership interests in the Borrower; any sale, transfer or encumbrance of any of the equity interests in the Borrower; or any mortgage, pledge, encumbrance or lien to be outstanding against the Project or any portion thereof, or any security interest to exist therein, except as created by the Security Documents or as explicitly permitted therein, without, in each instance, the prior written consent of the Purchaser. If the Borrower breaches the foregoing covenant, the Purchaser may, at its election, declare all amounts owing under this Disbursing Agreement, the Loan Agreement, the Note and the Security Documents to be immediately due and payable, without notice to the Borrower (which notice the Borrower hereby expressly waives), and upon such declaration all such amounts shall be immediately due and payable.

No transfer, conveyance, lease, sale or other disposition shall relieve the Borrower from personal liability for its obligations hereunder or under the other Security Documents, whether or not the transferee assumes such obligations. The Purchaser may, without notice to the Borrower, deal with any successor owner of all or any portion of the Project in the same manner as with the Borrower, without in any way discharging the liability of the Borrower hereunder or under the Security Documents.
ARTICLE 6
EVENTS OF DEFAULT AND RIGHTS AND REMEDIES

Section 6.01  Events of Default. Each of the following shall constitute an Event of Default.

(a) The Borrower shall fail to pay, when due, interest or principal due under the Loan Agreement or the Note and such failure shall continue for ten (10) calendar days;

(b) Any representation or warranty made by the Borrower herein, in the Security Documents or in any financial statement, certificate, report or Draw Request furnished pursuant to this Disbursing Agreement or the Security Documents shall prove to have been untrue in any material respect as of the time such representation or warranty was made;

(c) The Borrower shall fail duly to observe or perform, any of the terms, conditions, covenants or agreements required to be observed or performed by the Borrower hereunder (other than terms, conditions, covenants or agreements otherwise specifically dealt with in this Article 6), and such failure shall continue for a period of thirty (30) calendar days after written notice of such failure has been given by the Purchaser to the Borrower, provided that if the Borrower promptly commences and diligently pursues a cure but such default cannot reasonably be cured within thirty (30) days, then the Borrower may have an additional thirty (30) days within which to cure the default;

(d) The Borrower shall be in default under or in breach of any of the covenants contained in any of the Security Documents and such default or breach shall not be cured or waived within the period or periods of grace or time allowed to cure, if any, applicable thereto;

(e) An Event of Default as defined in the Loan Agreement shall occur and be continuing, and such Event of Default shall not be cured or waived within the period or periods of grace or time allowed to cure, if any, applicable thereto;

(f) The Project shall be materially damaged or destroyed by fire or other casualty and the loss, in the reasonable judgment of the Purchaser, shall not be adequately covered by insurance actually collected or in the process of collection or by other funds available to the Borrower;

(g) The Purchaser shall have given notice to the Borrower pursuant to Section 2.04 hereof to deposit additional funds in the Project Fund and the Borrower shall have failed to do so within seven (7) calendar days;

(h) The Borrower shall fail to comply with any requirement of any Governing Authority within thirty (30) days after notice in writing of such requirement shall be given to the Borrower by such Governing Authority, subject to any rights of the Borrower to contest such requirement as provided in the Security Documents;

(i) The Borrower shall fail to disclose to the Purchaser the names of all persons with whom the Borrower contracted or intends to contract for the making or rehabilitating of each of the Facilities or the furnishing of labor or any materials therefor or shall fail to exhibit to the Purchaser, upon request, copies of all such contracts;
(j) A petition in bankruptcy or for reorganization or for an arrangement under any bankruptcy or insolvency law or for a custodian, receiver or trustee for any of its property shall be filed by the Borrower, or a petition in bankruptcy or for reorganization or for an arrangement under any bankruptcy or insolvency law or for a custodian, receiver or trustee of any of the Borrower’s property shall be filed against the Borrower and shall not be dismissed within ninety (90) days, or a custodian, receiver or trustee of any property of the Borrower shall be appointed and shall not be discharged within ninety (90) days, or the Borrower shall make an assignment for the benefit of creditors or generally shall not pay its debts as they become due, or the Borrower shall be adjudged insolvent by any state or federal court of competent jurisdiction, or an attachment or execution shall be levied against any substantial portion of the property of the Borrower and shall not be discharged within ninety (90) days.

Section 6.02 Rights and Remedies. Upon the occurrence of an event which with the passage of time or the giving of notice or both would constitute an Event of Default and at any time thereafter, the Purchaser may by notice in writing to the Borrower, refrain from making any further Disbursements hereunder (but the Purchaser may make Disbursements after the occurrence of such an event or an Event of Default without thereby waiving its rights and remedies hereunder). Upon the occurrence of an Event of Default the Purchaser may, at its option, exercise any and all of the following rights and remedies (and any other rights and remedies available to it):

(a) The Purchaser may, by written notice to the Borrower, declare immediately due and payable all unpaid principal and accrued interest owing under the Loan Agreement and the Note, together with all other sums payable thereunder (including any amounts due upon prepayment of the Loan or Note), and the same shall thereupon be immediately due and payable without presentment or other demand, protest, notice of dishonor or any other notice of any kind, all of which are hereby expressly waived.

(b) The Purchaser shall have the right, in addition to any other rights provided by law, to enforce its rights and remedies under the Loan Agreement and the other Security Documents.

(c) The Purchaser may pay any amount or take any other action necessary to remedy the Event of Default, and any amount so paid shall be repaid to the Purchaser by the Borrower on demand with interest at the rate provided for in the Note plus five percent (5.0%).

(d) The Purchaser may at its option apply any amounts in the Project Fund to repay amounts owing under the Note or the Security Documents, or the Purchaser may use such amounts to pay the costs of completing the Project.

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ARTICLE 7

MISCELLANEOUS

Section 7.01 Inspections. The Borrower and the Architect shall be responsible for making inspections of the Project during the course of the construction and/or rehabilitation of the Facilities and shall determine to their own satisfaction that the work done or materials supplied by the Contractors to whom payment is to be made out of each Disbursement has been properly done or supplied in accordance with the Construction Contract and the other applicable contracts with the Contractors. If any work done or materials supplied by a Contractor are not satisfactory to the Borrower and/or its Architect and the same is not remedied within fifteen (15) days of the discovery thereof; the Borrower will immediately notify the Purchaser in writing of such fact. It is expressly understood and agreed that the Purchaser and any inspecting architect/engineer engaged by the Borrower may conduct such inspections of the Project as either may deem necessary for the protection of the Purchaser’s interest, and that any inspections which may be made of the Project by the Purchaser or such inspecting architect/engineer will be made, and all certificates issued by any inspecting architect/engineer will be issued, solely for the benefit and protection of the Purchaser, and that the Borrower will not rely thereon.

Section 7.02 Indemnification by the Borrower. The Borrower shall bear all loss, expense (including attorneys’ fees) and damage in connection with, and agrees to indemnify and hold harmless the Purchaser, its agents, servants and employees from all claims, demands and judgments made or recovered against the Purchaser, its agents, servants and employees (the “Indemnified Partners”), because of bodily injuries, including death at any time resulting therefrom, and/or because of damages to property of the Purchaser or otherwise (including loss of use) from any cause whatsoever, except to the extent due to the gross negligence or willful misconduct of the Purchaser, arising out of, incidental to, or in connection with the construction and rehabilitation of the Project, whether or not due to any act of omission or commission, including negligence of the Borrower or any Contractor of its or their employees, servants or agents, and whether or not due to any act of omission or commission of the Purchaser, its employees, servants or agents. The Borrower’s liability hereunder shall not be limited to the extent of insurance carried by or provided by the Borrower or subject to any exclusions from coverage in any insurance policy. The obligations of the Borrower under this Section shall survive the payment of all amounts owing under the Loan Agreement and the Note.

Section 7.03 Additional Security Interest. In the event a Disbursement is to be made for materials then being fabricated or stored, or both, for later use in the completion of the Project but which are not then stored upon the Land or installed or incorporated into the Project, then such Disbursement shall be made only after the Borrower has given to the Purchaser such security instruments and insurance on such materials as the Purchaser may reasonably request.

Section 7.04 Fees and Expenses. Whether or not any Disbursement shall be made hereunder, the Borrower agrees to pay all fees of Title and the appraisal fees, survey fees, recording fees, license and permit fees and title insurance and other insurance premiums, and agrees to reimburse the Purchaser upon demand for all reasonable out-of-pocket expenses actually incurred by the Purchaser in connection with this Disbursing Agreement or in connection with the transactions contemplated by this Disbursing Agreement, including, but not limited to, any and all reasonable legal expenses and attorneys’ fees sustained by the Purchaser in the exercise of any right or remedy available to it under this Disbursing Agreement (whether or not suit is commenced) or otherwise by law or equity and all reasonable fees and disbursements of counsel for the Purchaser for the services performed by such counsel in connection with the preparation of this Disbursing Agreement and the other documents and instruments contemplated hereby.
Section 7.05 Notices. All notices or other communications which are required or permitted hereunder shall be in writing and sufficient if (a) delivered personally or sent by telecopier, (b) sent by nationally recognized overnight courier or (c) sent by certified mail, postage prepaid, return receipt requested, addressed as follows:

(a) If to the Purchaser at:

Bridgewater Bank
4400 Excelsior Boulevard
St. Louis Park, MN 55416
Attn: Senior Vice President, Commercial Lending

(b) If to the Borrower at:

CHC Minnetonka Affordable Housing LLC
161 St. Anthony Avenue, Suite 820
St. Paul, MN 55103
Attn: _______________

With copies to:

Shelter Corporation
1600 Hopkins Crossroad
Minnetonka, MN 55305
Attn: _______________

Winthrop & Weinstine, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, MN 55402-4629
Attention: Jeffrey J. Koerselman, Esq.

or to such other addresses as the party to whom notice is to be given may have furnished to each other party in writing in accordance herewith. Any such communication shall be deemed to have been given (i) when delivered if personally delivered or sent by telecopier or email during a business day, (ii) on the business day after dispatch if sent by nationally recognized, overnight courier or if sent by telecopier on other than during a business day, and (iii) on the third day after dispatch, if sent by mail.

Section 7.06 Time of Essence. Time is of the essence in the performance of this Disbursing Agreement.

Section 7.07 Binding Effect and Assignment. This Disbursing Agreement shall be binding upon and inure to the benefit of the Borrower and the Purchaser and their respective successors and assigns, except that the Borrower may not transfer or assign its rights hereunder without the prior written consent of the Purchaser, except as specifically provided in Section 5.02.

Section 7.08 Waivers. No waiver by the Purchaser of any default hereunder shall operate as a waiver of any other default or of the same default on a future occasion. No delay on the part of the Purchaser in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or future exercise thereof or the exercise of any other right or remedy.
Section 7.09  The Purchaser’s Remedies Cumulative. The rights and remedies hereby specified are cumulative and not exclusive of any rights or remedies which the Purchaser would otherwise have.

Section 7.10  Governing Law and Entire Agreement. This Disbursing Agreement shall be governed by the laws of the State of Minnesota. This Disbursing Agreement contains the entire agreement of the parties on the matters covered herein. No other agreement, statement or promise made by any party or by any employee, officer, or agent of any party that is not in writing and signed by all the parties to this Disbursing Agreement shall be binding.

Section 7.11  Counterparts. This Disbursing Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 7.12  Inconsistency. In the event that any of the terms and provisions of this Disbursing Agreement are inconsistent with any of the terms and provisions of the Loan Agreement or the other Security Documents, the terms and provisions of this Disbursing Agreement shall govern.

Section 7.13  Conditions of Disbursements. All conditions of the obligation of the Purchaser to make Disbursements hereunder are imposed solely and exclusively for the benefit of the Purchaser, and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that the Purchaser will refuse to make Disbursements in the absence of strict compliance with any or all thereof, and no other person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by the Purchaser at any time if the Purchaser, in its sole discretion, deems it advisable to do so.

Section 7.14  Amendments. Neither this Disbursing Agreement nor any provision hereof may be amended, changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

Section 7.15  Jurisdiction. The Borrower hereby irrevocably agrees that any legal action or proceedings against it with respect to this Disbursing Agreement may be brought in the Hennepin County District Court in the State of Minnesota, or in any United States District Court in the State of Minnesota, and by the execution and delivery of this Disbursing Agreement, the Borrower hereby irrevocably submits to the jurisdiction of each such court and hereby irrevocably waives any and all objections that the Borrower may have as to jurisdiction or venue in any of such courts. The Borrower acknowledges that it has received sufficient consideration for any inconvenience which may be caused by any legal action brought in the State of Minnesota, and agrees that the enforcement of the provisions of this paragraph against the Borrower would not be unreasonable or unfair under all the circumstances of the Loan or this Disbursing Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Disbursing Agreement to be duly executed as of the day and year first above written.

BORROWER:

CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company

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

By: ________________________________
Name: ________________________________
Title: ________________________________

(Borrower Signature Page to Disbursing Agreement)
PURCHASER:

BRIDGEWATER BANK

By ________________________________

Its ________________________________

(Purchaser Signature Page to Disbursing Agreement)
FOR VALUE RECEIVED, THE CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “Issuer”), hereby promises to pay BRIDGEWATER BANK, a Minnesota banking corporation in St. Louis Park, Minnesota, its successors or registered assigns (the “Purchaser”), solely from the source and in the manner hereinafter provided, the principal sum of ELEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS ($11,500,000), or so much thereof as has been advanced and remains unpaid from time to time (the “Principal Balance”), with interest thereon at the rate of one percent (1.00%) per annum or at such higher rate as may be hereinafter provided in Section 1(b), in any coin or currency which at the time or times of payment is legal tender for the payment of public or private debts in the United States of America, in accordance with the terms hereinafter set forth.

1. (a) Interest shall accrue on the advanced and outstanding Principal Balance from and after the date hereof. Interest only on the advanced and outstanding Principal Balance of the Note shall be due and payable on September 18, 2016 (unless extended with the consent of the Purchaser) and monthly thereafter through and including December 18, 2058 (the “Final Maturity Date”) or any earlier prepayment date at which time the entire remaining Principal Balance and accrued interest shall be fully due and payable.

(b) If the interest on this Note should become subject to federal income taxation pursuant to a “Determination of Taxability” as that term is defined in Section 4.4(2) of the Loan Agreement, dated as of August 1, 2016 (the “Loan Agreement”), between the Issuer and CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), and the Purchaser delivers to the Borrower a copy of the notice of the “Determination of Taxability,” the interest rate shall be immediately adjusted to be equal to the rate of 1.5% per annum and each monthly installment thereafter payable shall be accordingly adjusted. In addition, the Purchaser shall be entitled to receive upon demand an amount equal to the aggregate difference between (i) the monthly payments theretofore made to the Purchaser on this Note between the “Date of Taxability,” as that term is defined in Section 4.4(2) of the Loan Agreement, and the date of receipt by the Borrower of notice of such “Determination of Taxability” and (ii) the monthly payments which would have been made during such period if the adjusted rate had been in effect throughout such period.

2. In any event, the payments hereunder shall be sufficient to pay all principal and interest due, as such principal and interest become due, at maturity, upon redemption, or otherwise. Interest shall be computed on the basis of a 360-day year but shall be payable on the actual days elapsed.
3. Principal and interest due hereunder shall be payable at the office of the Purchaser set forth in the attached Note register, or at such other place as the Purchaser may designate in writing.

4. This Note is issued by the Issuer to provide funds for a project, as defined in Minnesota Statutes, Section 462C, as amended, consisting of the financing of (i) the acquisition, construction, and equipping of approximately twenty-seven (27) new affordable apartment units to be located at 5750 Shady Oak Road, Minnetonka, Minnesota (the “Music Barn Apartments”); (ii) the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive, Minnetonka, Minnesota (the “Elmbrooke Apartments”); and (iii) the acquisition and substantial rehabilitation of six (6) existing affordable townhome units at 3354 Lilac Drive North, Golden Valley, Minnesota (the “Golden Valley Townhomes,” and collectively with the Music Barn Apartments and the Elmbrooke Apartments, the “Project”). This Note is issued pursuant to and in full compliance with the Constitution and laws of the State of Minnesota, particularly Minnesota Statutes, Chapter 462C, as amended, and Minnesota Statutes, Sections 471.59 and 471.656, as amended, and pursuant to a resolution of the governing body of the Issuer duly adopted on August 8, 2016 (the “Resolution”).

5. This Note is secured by a Pledge Agreement, dated as of August 1, 2016 (the “Pledge Agreement”), between the Issuer and the Purchaser. As security for the Borrower’s obligations under the Loan Agreement, Community Housing Corporation of America, Inc., a Delaware nonprofit corporation, will execute and deliver to the Purchaser a Guaranty Agreement, dated as of August 1, 2016 (the “Guaranty”). Amounts held by the Purchaser relating to the Note shall be disbursed pursuant to the Disbursing Agreement, dated as of August 1, 2016 (the “Disbursing Agreement”), between the Borrower and the Purchaser. The Purchaser shall authorize disbursements from the Project Fund to or at the order of the Borrower upon compliance with the terms and conditions of the Disbursing Agreement. The Borrower, the Issuer, and the Purchaser have entered into separate Regulatory Agreements, each dated the date hereof (collectively, the “Regulatory Agreements”), related to each of the Music Barn Apartments, the Elmbrooke Apartments, and the Golden Valley Townhomes, requiring compliance with certain requirements of federal and state law relating to the construction and operation of the Project as four residential rental housing projects.

The Issuer, for itself, its successors and assigns, hereby waives demand, presentment, protest and notice of dishonor, and to the extent permitted by law, the Purchaser may extend the due date of interest and/or principal of this Note, or release any part or parts of the property and interest subject to any security document from the same, all without notice to or consent of any party liable hereon or thereon and without releasing any such party from such liability and whether or not as a result thereof the interest on the Note is no longer exempt from the federal or state income tax.

6. In lieu of providing for a balloon maturity of this Note prior to the Maturity Date, the Purchaser has agreed to the terms of this paragraph. At the option of the Purchaser, this Note is subject to mandatory purchase at a purchase price equal to the entire outstanding Principal Balance hereof plus accrued interest thereon (the “Purchase Price”) by the Borrower, or another purchaser selected by the Borrower and approved by the Issuer, on any date on or after December 31, 2016 (the “Tender Date”) upon notice, written or printed, delivered, at least sixty (60) days prior to such Tender Date, to the Borrower at the address provided in the Loan Agreement or by telex or other means of written or printed instantaneous communication (the “Tender Notice”) stating: (1) the Tender Date, (2) the Purchaser’s intent to require the purchase of this Note on the Tender Date and (3) the then outstanding Principal Balance of this Note. Upon the giving of such notice the entire Purchase Price shall be due and payable in full by the Borrower on the applicable Tender Date and the Purchaser shall deliver the Note to the Borrower, or its designee, on the Tender Date. If this Note is not purchased from the Purchaser by or on
behalf of the Borrower on the Tender Date, the failure to purchase this Note shall constitute an event of default under this Note and an “Event of Default” under the Loan Agreement, and the Purchaser may exercise its remedies for default, including acceleration of this Note.

7. This Note may be prepaid in whole on any date on or after September 1, 2016, at the option of the Borrower, upon ten (10) days’ prior written notice to the Purchaser, at a redemption price equal to the Principal Balance of the Note plus accrued interest thereon, plus any reasonable attorneys’ fees and costs.

8. The Note is subject to extraordinary mandatory redemption or purchase in lieu of redemption in whole but not in part, at a redemption price equal to the Principal Balance of the Note plus accrued interest thereon, without premium, without notice, on the earlier of (i) December 31, 2016 or (ii) the date the Purchaser transfers this Note to another person through assignment or purchase, unless such date is extended as provided below, if the Refunding (as defined in the Loan Agreement) of the Note has not occurred on or before such date. The extraordinary mandatory redemption date shall be extended one or more times to a date not later than December 31, 2019 with the consent of the Purchaser and upon delivery to the Purchaser of an opinion of Bond Counsel to the effect that such extension will not adversely affect the tax-exempt status of interest paid on the Note.

9. In the event of prepayment of this Note, the Purchaser shall apply any such prepayment first against reasonable attorneys’ fees and collection costs, second against the accrued interest on the Principal Balance and then against the principal amounts due under the Note. The monthly payments due under paragraph 1 hereof shall continue to be due and payable in full until the entire Principal Balance and accrued interest due on this Note have been paid regardless of any partial prepayment made hereunder unless otherwise agreed to by the Purchaser.

10. All of the agreements, conditions, covenants, provisions and stipulations contained in the Resolution, the Loan Agreement, the Disbursing Agreement, the Guaranty, and the Pledge Agreement are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein.

11. This Note and interest thereon are payable solely from the revenues and proceeds derived from the Loan Agreement, the Pledge Agreement, the Guaranty, and the Disbursing Agreement and do not constitute a debt of the Issuer within the meaning of any constitutional or statutory limitation, are not payable from or a charge upon any funds of the Issuer other than the revenues and proceeds pledged to the payment thereof, and do not give rise to a pecuniary liability of the Issuer or any of its officers, agents or employees, and no holder of this Note shall ever have the right to compel any exercise of the taxing power of the Issuer to pay this Note or the interest thereon, or to enforce payment thereof against any property of the Issuer, and this Note does not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Issuer, and the agreement of the Issuer to perform or cause the performance of the covenants and other provisions herein referred to shall be subject at all times to the availability of revenues or other funds furnished for such purpose in accordance with the Loan Agreement, sufficient to pay all costs of such performance or the enforcement thereof.

12. It is agreed that time is of the essence of this Note. If an Event of Default (as that term is defined in the Disbursing Agreement or the Loan Agreement) shall occur, then the Issuer, upon written direction of the Purchaser, or the Purchaser shall have the right and option to declare the Principal Balance and accrued interest thereon, immediately due and payable, whereupon the same shall be due and payable, but solely from sums made available under the Loan Agreement, the Pledge Agreement, the Guaranty, and the Disbursing Agreement. Failure to exercise such option at any time shall not constitute a waiver of the right to exercise the same at any subsequent time.
13. The remedies of the Purchaser, as provided herein and in the Loan Agreement, the Pledge Agreement, the Guaranty, and the Disbursing Agreement, are not exclusive and shall be cumulative and concurrent and may be pursued singly, successively or together, at the sole discretion of the Purchaser, and may be exercised as often as occasion therefore shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

14. The Purchaser shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Purchaser, and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

15. As provided in the Resolution and subject to certain limitations set forth therein, this Note is only transferable upon the books of the Issuer at the office of the City’s Finance Director, by the Purchaser in person or by its agent duly authorized in writing, at the Purchaser’s expense, upon surrender hereof together with a written instrument of transfer satisfactory to the City’s Finance Director, duly executed by the Purchaser or its duly authorized agent. Upon such transfer the City’s Finance Director will note the date of registration and the name and address of the new registered owner in the registration blank appearing below. The Issuer may deem and treat the person in whose name the Note is last registered upon the books of the Issuer with such registration noted on the Note, as the absolute owner hereof, for the purpose of receiving payment of or on the account of the Principal Balance or interest, whether or not overdue, and for all other purposes, and all such payments so made to the Purchaser or upon its order shall be valid and effective to satisfy and discharge the liability upon the Note to the extent of the sum or sums so paid, and the Issuer shall not be affected by any notice to the contrary.

16. This Note has been issued without registration under state or federal or other securities laws, pursuant to an exemption for such issuance; and accordingly the Note may not be assigned or transferred in whole or part, nor may a participation interest in the Note be given pursuant to any participation agreement, except in accordance with the Resolution and an applicable exemption from such registration requirements.

17. THIS NOTE, INTEREST HEREON, AND ANY PENALTY OR CHARGE OR ANY AMOUNTS PAYABLE HEREUNDER, OR HOWEVER DESIGNATED, IS A SPECIAL, LIMITED OBLIGATION OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES AND PROCEEDS PLEDGED HERETO. THIS NOTE AND THE INTEREST HEREON DO NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY, GENERAL OR MORAL OBLIGATION OR A PLEDGE OF THE FULL FAITH AND CREDIT OR TAXING POWER OF THE ISSUER, THE STATE OF MINNESOTA, OR ANY POLITICAL SUBDIVISION OF THE STATE OF MINNESOTA WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATIONS AND ARE NOT PAYABLE FROM OR A CHARGE UPON ANY FUNDS OF THE ISSUER OTHER THAN THE REVENUES AND PROCEEDS PLEDGED BY THE ISSUER TO THE PAYMENT HEREOF AND DO NOT GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER OR ITS OFFICERS, AGENTS OR EMPLOYEES AND NO HOLDER OF THIS NOTE SHALL EVER HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE ISSUER OR THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS TO PAY THIS NOTE OR TO ENFORCE PAYMENT HEREOF AGAINST ANY PROPERTY OF THE ISSUER OR HENNEPIN COUNTY, MINNESOTA. THIS NOTE DOES NOT CONSTITUTE A CHARGE, LIEN OR ENCUMBRANCE, LEGAL OR EQUITABLE, UPON ANY PROPERTY OF THE ISSUER, AND THE AGREEMENT OF THE ISSUER TO PERFORM OR CAUSE THE PERFORMANCE OF THE COVENANTS AND OTHER PROVISIONS HEREIN REFERRED TO SHALL BE SUBJECT AT ALL TIMES TO THE
AVAILABILITY OF REVENUES OR OTHER FUNDS FURNISHED FOR SUCH PURPOSE IN ACCORDANCE WITH THE LOAN AGREEMENT SUFFICIENT TO PAY ALL COSTS OF SUCH PERFORMANCE OR THE ENFORCEMENT HEREOF. NEITHER THE STATE OF MINNESOTA NOR THE ISSUER NOR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF MINNESOTA SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF THIS NOTE OR INTEREST HEREON OR OTHER COSTS INCIDENT HERETO EXCEPT FROM REVENUES PLEDGED THEREFOR UNDER THE LOAN AGREEMENT AND THE PLEDGE AGREEMENT, AS MORE FULLY SET FORTH IN THOSE DOCUMENTS. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER, IF ANY, OF THE ISSUER, THE STATE OF MINNESOTA, NOR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF THIS NOTE OR INTEREST HEREON OR OTHER COSTS INCIDENT HERETO. THIS NOTE IS NOT A DEBT OF THE UNITED STATES OF AMERICA OR ANY OTHER AGENCY THEREOF AND IS NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA. THIS NOTE IS NEITHER A MORAL NOR AN ANNUAL APPROPRIATION OBLIGATION OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE PROVISIONS OF THIS PARAGRAPH SHALL, FOR PURPOSES OF THIS NOTE, BE CONTROLLING AND SHALL BE GIVEN FULL FORCE AND EFFECT, ANYTHING ELSE TO THE CONTRARY IN THIS NOTE NOTWITHSTANDING.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts and things required to exist to happen and to be performed precedent to or in the issuance of this Note do exist, have happened and have been performed in regular and due form as required by law.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Issuer has caused this Note to be duly executed in its name by the manual signatures of the Mayor and City Manager, the seal of the City having been intentionally omitted as permitted by law, and has caused this Note to be dated as of the date first written above.

CITY OF MINNETONKA, MINNESOTA

By ________________________________

Its Mayor

By ________________________________

Its City Manager
CERTIFICATE OF REGISTRATION

The ownership of the unpaid Principal Balance of this Note and the interest accruing thereon is registered on the books of City of Minnetonka, Minnesota in the name of the holder last noted below.

<table>
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<th>Date of Registration</th>
<th>Name and Address Registered Owner</th>
<th>Signature of Finance Director, as Registrar</th>
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<tr>
<td></td>
<td>Bridgewater Bank</td>
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<td>4400 Excelsior Blvd.</td>
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<td>St. Louis Park, MN 55416</td>
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REGULATORY AGREEMENT
(MUSIC BARN APARTMENTS)

between

CITY OF MINNETONKA, MINNESOTA,
as Issuer

CHC MINNETONKA AFFORDABLE HOUSING LLC,
as Borrower

and

BRIDGEWATER BANK,
as Purchaser

Dated August ___, 2016

Relating to:

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

This Instrument Drafted by:
Kennedy & Graven, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN  55402
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REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT, dated August __, 2016 (the “Regulatory Agreement”), is between the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “Issuer”), CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company (the “Borrower”) and the owner of the property described herein, and BRIDGEWATER BANK, a Minnesota banking corporation (the “Purchaser”).

RECITALS

The Issuer is authorized to issue bonds to provide financing for multifamily housing developments in accordance with the terms of Minnesota Statutes, Chapter 462C, as amended (the “Act”).

The Issuer has agreed to issue its Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Note”), in the original aggregate principal amount of $11,500,000, a portion of the proceeds of which will be used by the Borrower for the purpose of financing the acquisition, construction, and equipping of approximately twenty-seven (27) new affordable apartment units to be located at 5750 Shady Oak Road, Minnetonka, Minnesota, on the real property described on EXHIBIT A attached hereto (the “Project”).

To finance the Project, the Issuer will loan the proceeds derived from the sale of the Note to the Borrower pursuant to a Loan Agreement, dated as of August 1, 2016 (the “Loan Agreement”), between the Issuer and the Borrower, and the Issuer will assign its rights under the Loan Agreement to the Purchaser (except for certain unassigned rights set forth in Section 7.9 thereof) pursuant to the Pledge Agreement, dated as of August 1, 2016, between the Issuer and the Purchaser.

For good and valuable consideration, the Borrower, the Purchaser, and the Issuer have determined to enter into this Regulatory Agreement in order to impose on the Project certain requirements of the Internal Revenue Code of 1986, as amended, and of the Act applicable to the Project.

NOW, THEREFORE, the Borrower, the Purchaser, and the Issuer do hereby impose upon the Project the following covenants, restrictions, charges, and easements, which shall run with the land and shall be binding and a burden upon the Project and all portions thereof, and upon any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein, for the length of time that this Regulatory Agreement shall be in full force and effect:

Section 1. Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms shall have the respective meanings set forth below for the purposes hereof. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Loan Agreement.

“Act” means Minnesota Statutes, Chapter 462C, as amended.

“Adjusted Income” means the adjusted income of a person (together with the adjusted income of all persons of the age of 18 years or older who intend to reside with such person in one Dwelling Unit), as calculated in the manner prescribed under Section 142(d)(2)(B) of the Code.
“Bond Counsel” means Kennedy & Graven, Chartered, or any other attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds and other obligations issued by states and political subdivisions thereof, duly admitted to practice law before the highest court of any state of the United States of America.

“Borrower” means CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company, and its lawful successors and assigns to the extent permitted by the Loan Agreement.

“Certificate of Continuing Program Compliance” means the document substantially in the form set forth in EXHIBIT C attached hereto.

“Code” means the Internal Revenue Code of 1986, as amended, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Note.

“County” means Hennepin County in the State.

“Dwelling Units” means the units of multifamily residential rental housing comprising the Project.

“Event of Default” has the meaning specified in Section 13 hereof.

“Functionally Related and Subordinate” means and includes facilities for use by tenants, for example, laundry facilities, parking areas, and recreational facilities, provided that the same is of a character and size commensurate with the character and size of the Project.

“Housing Act” means the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq.

“Issuer” means 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.

“Loan” means the loan of the proceeds of the Note pursuant to the Loan Agreement to provide financing for the Project.

“Loan Agreement” means the Loan Agreement, dated as of August 1, 2016, between the Issuer and the Borrower, as it may be amended and supplemented from time to time.

“Low Income Tenants” means persons or families with Adjusted Income which does not exceed sixty percent (60%) of the Median Income for the Area adjusted for household size. In no event will the occupants of a unit be considered to be Low Income Tenants if all of such occupants are students (as defined in Section 152(f)(2) of the Code), unless the unit is occupied:

(i) by an individual who is (A) a student and receiving assistance under Title IV of the Social Security Act, (B) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under Part B or Part E of Title IV of the Social Security Act, or (C) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, State, or local laws; or
(ii) entirely by full-time students if such students are (A) single parents and their children and such parents are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual other than a parent of such children, or (B) married and entitled to file a joint return.

“Low Income Units” means the Dwelling Units in the Project designated for occupancy by Low Income Tenants pursuant to Section 4(a) hereof.

“Median Income for the Area” means the median yearly income for households of an applicable size in the applicable Primary Metropolitan Statistical Area as most recently determined by the Secretary of Housing and Urban Development under Section 8(f)(3) of the Housing Act, or, if such figures are no longer available, the method of calculation is substantially altered, or the programs under Section 8(f) are terminated, the Issuer shall provide the Borrower with another income determination that is reasonably similar to the method used by the Secretary prior to such termination.

“Note” means the Issuer’s Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016, issued in the original aggregate principal amount of $11,500,000.

“Pledge Agreement” means the Pledge Agreement, dated as of August 1, 2016, between the Issuer and the Purchaser, as it may be amended and supplemented from time to time.

“Project” means the approximately twenty-seven (27) new affordable apartment units to be located at 5750 Shady Oak Road, Minnetonka, Minnesota, which will be acquired, constructed, and equipped with a portion of the proceeds of the Note.

“Purchaser” means Bridgewater Bank, a Minnesota banking corporation, or any successor or assign.

“Qualified Project Period” means the period beginning on the later of the date of issuance of the Note and the first day on which ten percent (10%) of the Dwelling Units in the Project are occupied and ending on the latest of:

(i) the date which is fifteen (15) years after the date on which fifty percent (50%) of the Dwelling Units in the Project are occupied;

(ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding; or

(iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

“Regulatory Agreement” means this Regulatory Agreement, dated August ____, 2016, between the Issuer, the Borrower, and the Purchaser, together with any amendments or supplements hereto.

“Section 474A Penalty” means the penalty described in Minnesota Statutes, Section 474A.047, subdivision 3, as applied to the Project.

“State” means the State of Minnesota.
“Treasury Regulations” means the regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time or pursuant to any predecessor statute to the Code.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement words of the masculine, feminine or neuter gender shall be construed to include each other gender when appropriate, and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all of the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

Section 2. Representations by the Borrower. The Borrower covenants, represents, and warrants that:

(a) The Borrower is a limited liability company organized and existing under the laws of the State. The Borrower is in good standing in the State and has duly authorized, by proper action, the execution and delivery of this Regulatory Agreement. The Borrower is duly authorized by the laws of the State to transact business in the State and to perform all of its duties hereunder.

(b) Neither the execution and delivery of this Regulatory Agreement or any other document in connection with the financing of the Project, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the terms and conditions hereof and thereof conflicts with or results in a breach of any of the terms, conditions, or provisions of any agreement or instrument to which the Borrower is now a party or by which it is bound or constitutes a default (with due notice or the passage of time or both) under any of the foregoing or results in the creation or imposition of any prohibited lien, charge, or encumbrance whatsoever upon any of the property or assets of the Borrower under the terms of any instrument or agreement to which the Borrower is now a party or by which it is bound.

(c) The execution, delivery, and performance of this Regulatory Agreement and all other documents to be delivered by the Borrower in connection with the consummation of the transactions contemplated hereby will not conflict with, or constitute a breach of or default under, any indenture, mortgage, deed of trust, lease, commitment, agreement, or other instrument or obligation to which the Borrower is a party or by which the Borrower or any of its property is bound, or under any law, rule, regulation, judgment, order, or decree to which the Borrower is subject or by which the Borrower or any of its property is bound.

(d) To the best of the Borrower’s knowledge, there is no action, suit, proceeding, inquiry, or investigation by or before any governmental agency, public board, or body pending or threatened against the Borrower (nor to the best of its knowledge is there any basis therefor), which:

(i) affects or seeks to enjoin, prohibit, or restrain the issuance, sale, or delivery of the Note or the use of the proceeds of the Note to finance the acquisition or construction, rehabilitation, and equipping of the Project or the execution and delivery of this Regulatory Agreement,

(ii) affects or questions the validity or enforceability of the Note or this Regulatory Agreement,

(iii) questions the tax-exempt status of the Note, or
(iv) questions the power or authority of the Borrower to own, acquire, construct, rehabilitate, or operate the Project or to execute, deliver, or perform the Borrower’s obligations under this Regulatory Agreement.

(e) The Project will be located wholly within the boundaries of the City of Minnetonka, Minnesota.

(f) On and after the date on which the Note is executed and delivered to the Purchaser, the Borrower will have title to the Project sufficient to carry out the purposes of this Regulatory Agreement, and such title shall be in and remain in the name of the Borrower except as otherwise permitted by this Regulatory Agreement.

(g) The Project consists and will consist of those facilities described herein, which generally are described as residential apartment buildings and related facilities situated on the real property described in EXHIBIT A attached hereto. The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exemption from federal income taxation of the interest on the Note. The Borrower will utilize and operate the Project as a multifamily rental housing project during the term of the Note in accordance with all applicable federal, State, and local laws, rules, and regulations applicable to the Project.

(h) The Borrower has obtained, or will obtain on or before the date required therefor, all necessary certificates, approvals, permits, and authorizations with respect to the operation of the Project.

(i) The Borrower does not and will not own the Note. The Borrower acknowledges and understands that during any period of time when the Borrower owns the Note, the interest on the Note shall not be tax-exempt pursuant to Section 147(a) of the Code.

(j) The Borrower does not own any buildings or structures which are proximate to the Project other than those buildings or structures which comprise the Project, which are being financed pursuant to a common plan under which the Project is also being financed.

(k) The statements made in the various certificates delivered by the Borrower to the Issuer or the Purchaser on the date of issuance of the Note are true and correct.

Section 3. Qualified Residential Rental Project. The Borrower shall acquire, construct, rehabilitate, own, manage, and operate the Project as a “qualified residential rental project,” as such phrase is utilized in Section 142(d) of the Code, on a continuous basis during the Qualified Project Period. To that end, the Borrower hereby represents, warrants, and covenants as follows:

(a) that a qualified residential rental project will be constructed on the property described in EXHIBIT A hereto, and the Borrower shall own, manage and operate the Project as a qualified residential rental project containing Dwelling Units and facilities Functionally Related and Subordinate to such Dwelling Units, in accordance with Section 142(a)(7) and Section 142(d) of the Code and all applicable Treasury Regulations promulgated thereunder, as the same may be amended from time to time;

(b) that all of the Dwelling Units of the Project will be similarly constructed and each Dwelling Unit in the Project will contain complete facilities for living, sleeping, eating, cooking, and sanitation for a single person or a family;

(c) that:
(i) none of the Dwelling Units in the Project shall at any time in the future be utilized on a transient basis;

(ii) that none of the Dwelling Units in the Project shall at any time in the future be leased or rented for a period of less than thirty (30) days; and

(iii) that neither the Project nor any portion thereof shall be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or trailer park or trailer court for use on a transient basis, or by a cooperative housing corporation (as defined in Section 216(b)(1) of the Code);

(d) that once available for occupancy:

(i) each Dwelling Unit in the Project must be rented or available for rental on a continuous basis to members of the general public during the Qualified Project Period; and

(ii) the Borrower shall not give preference in renting Dwelling Units in the Project to any particular class or group of persons, other than Low Income Tenants as provided herein or as otherwise permitted by law;

(e) that the Dwelling Units in the Project shall be leased and rented to members of the general public in compliance with this Regulatory Agreement, except for any Dwelling Unit for a resident manager or maintenance personnel;

(f) that the Project consists of one or more discrete edifices and other man-made construction, each consisting of an independent foundation, outer walls and roof, all of which will be (i) owned by the same person for federal tax purposes, (ii) located on a common tract of land or two or more parcels of land which are contiguous except for being separated only by a road, street, stream, or a similar property and (iii) financed by the Loan or otherwise pursuant to a common plan of financing, and which consists entirely of:

(i) units which are similar in quality and type of construction and amenities; and

(ii) property Functionally Related and Subordinate in purpose and size to the Project, e.g., parking areas, laundries, swimming pools, tennis courts, and other recreational facilities (none of which may be unavailable to any person because such person is a Low Income Tenant) and other facilities which are reasonably required for the Project, e.g., heating and cooling equipment, trash disposal equipment, or units for residential managers or maintenance personnel;

(g) that no portion of the Project shall be used to provide any health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;

(h) that the Project shall not include a Dwelling Unit in a building where all Dwelling Units in such building are not also included in the Project;

(i) that the Borrower shall not convert the Project to condominium or cooperative ownership;

(j) that no Dwelling Unit in the Project shall be occupied by the Borrower (or any person related to the Borrower within the meaning of Section 147(a)(2) of the Code) at any time unless such
person resides in a Dwelling Unit in a building or structure which contains at least five Dwelling Units and unless the resident of such Dwelling Unit is a resident manager or other necessary employee (e.g., maintenance and security personnel);

(k) that the Note will not be “federally guaranteed,” as defined in Section 149(b) of the Code;

(l) that the Project shall at all times be used and operated as a “multifamily housing development,” as defined in the Act; and

(m) that the Borrower shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g., AFDC or SSI), physical disability, national origin, or marital status in the rental, lease, use, or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

Section 4. Low Income Tenants. Pursuant to the requirements of the Act and Section 142(d) of the Code, the Borrower hereby represents, warrants, and covenants as follows:

(a) Upon completion of the Project, at least forty percent (40%) of the units in the Project will be occupied or held for occupancy by Low Income Tenants. Throughout the Qualified Project Period, not less than forty percent (40%) of the completed units in the Project shall be continuously occupied or held for occupancy by Low Income Tenants. The Borrower will designate the Low Income Units and will make any revisions to such designations as necessary to comply with the applicable provisions of the Code and the Treasury Regulations. As set forth in subsection (e) below, the Borrower shall advise the Issuer and the Purchaser by delivery of a certificate in writing of the status of the occupancy of the Project with respect to Low Income Tenants on an annual basis for the term of this Regulatory Agreement. An Annual Certification of a Residential Rental Project, Form 8703 (Rev. April 2011), or successor form, shall be prepared annually by the Borrower and filed with the United States Secretary of the Treasury pursuant to Section 142(d)(7) of the Code (currently with the Internal Revenue Service Center, Ogden, Utah 84201), with a copy to be filed by the Borrower with the Issuer and the Purchaser. The percentage of units is measured by number of units, and not square footage of units.

For purposes of satisfying the occupancy requirements set forth above, a unit occupied by a person or family who at the commencement of their occupancy qualified as a Low Income Tenant shall be treated as occupied by a Low Income Tenant until such time as any recertification of such tenant’s income in accordance with subsections (c) and (h) below demonstrates that such tenant’s income exceeds one hundred forty percent (140%) of the income limitation applicable to Low Income Tenants.

A unit occupied by a Low Income Tenant shall be deemed, upon the termination of such tenant’s occupancy, to be continuously occupied by a Low Income Tenant until reoccupied, other than for a temporary period (not to exceed sixty (60) days), at which time the character of the unit shall be redetermined.

(b) The Borrower will notify the Issuer on an annual basis of any vacancy of any Low Income Units.

(c) The Borrower will obtain, complete, and maintain on file income certifications from each Low Income Tenant, obtained immediately prior to the initial occupancy of such tenant in the Project, and thereafter re-obtain in any year in which a unit in the Project is occupied by a new resident whose income exceeds the applicable income limit, income certifications (based upon their then current income), from each Low Income Tenant, substantially in the form of the income certification set forth in EXHIBIT B hereto or another form approved by Bond Counsel (the “Income Certification”) and will provide such
additional information as may be required by Section 142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Treasury Regulations now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service applicable to the Note. Such Income Certification shall be obtained prior to initial occupancy. If requested by the Purchaser or Issuer, a copy of such Income Certification shall be filed with the Purchaser and the Issuer prior to occupancy by the tenant whenever possible but in no event more than one month after initial occupancy by the tenant. A copy of each re-certification of income shall be attached to each report filed with the Issuer and the Purchaser pursuant to subsection (a) above. The Borrower shall make a good-faith effort to verify that the income reported by an applicant in an income certification is accurate by taking at least one of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period, (2) obtain an income tax return for the most recent tax year, (3) conduct a credit or similar search, (4) obtain an income verification form from the applicant’s current employer, (5) obtain an income verification form from the Social Security Administration if the applicant receives assistance from such agency, or (6) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. If the Low Income Tenant is a Section 8 Certificate Holder, the Borrower shall retain a copy of the certificate or voucher for verification of income in lieu of an income verification.

The Borrower understands that failure to file the Annual Certification of a Residential Rental Project, Form 8703 (Rev. April 2011), or successor form, as required by Section 142(d)(7) of the Code at the times stated therein may subject it to the penalty described in Section 6652(j) of the Code.

(d) The Borrower will maintain complete and accurate records pertaining to the Low Income Units and will permit, upon reasonable prior notice, any duly authorized representative of the Issuer, the Purchaser, the Department of the Treasury, or the Internal Revenue Service to inspect the books and records of the Borrower pertaining to the Project, including those records pertaining to the occupancy of the Low Income Units. This section is not intended to create any additional duties to inspect records.

(e) The Borrower will prepare and submit to the Issuer and the Purchaser, on or before May 1 of each year during the Qualified Project Period, beginning the first May 1 following commencement of the Qualified Project Period, a Continuing Program Compliance Certificate in the form of EXHIBIT C attached hereto and executed by the Borrower, and, if requested by the Purchaser or Issuer the Income Certifications described in subsection (c) above.

(f) The Borrower, upon becoming aware of an Event of Default, will notify the Issuer and the Purchaser, in writing, of the occurrence of any such Event of Default hereunder or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. Such notice shall be given promptly and in no event longer than ten (10) Business Days after the Borrower receives notice or gains knowledge of the occurrence of any such event. The Borrower further agrees that it will give prompt written notice to the Issuer and the Purchaser if insurance proceeds or condemnation awards are received with respect to the Project and are not used to repair or replace the Project, which notice shall state the amount of such proceeds or award.

(i) Except as provided in clause (ii) below, the Borrower shall accept as tenants on the same basis as all other prospective tenants Low Income Tenants who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the Housing Act or its successor and shall not apply selection criteria to Section 8 certificate/voucher holders that are more burdensome than the criteria applied to all other prospective tenants.
(ii) The Borrower agrees to modify the leases for units in the Project as necessary to allow the rental of Low Income Units to Section 8 certificate/voucher holders.

(g) Each lease pertaining to a Low Income Unit shall contain a provision to the effect that the Borrower has relied on the income certification and supporting information supplied by the Low Income Tenant in determining qualification for occupancy of the Low Income Unit and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

(h) Throughout the Qualified Project Period, the Borrower shall re-certify each Low Income Tenant’s income on or before the anniversary of the Low Income Tenant’s tenancy, in any year in which a unit in the Project is occupied by a new resident whose income exceeds the applicable income limit, by obtaining a completed Income Certification. In the event the recertification demonstrates that any such tenant’s household income exceeds one hundred forty percent (140%) of the applicable income limit, the Borrower shall hold the next available unit or units of comparable or smaller size in the Project available for rental by new Low Income Tenants.

The Borrower in its sole discretion may notify, in writing, each tenant who is no longer a Low Income Tenant of such fact, and that the rent of such tenant(s) is subject to increase thirty (30) days after receipt of such notice. The Borrower shall be entitled to so increase any such tenant’s rent only if Borrower complies with any law applicable thereto and only after the Borrower has rented the next available unit or units in the Project on a one-for-one basis to a Low Income Tenant, or holds units vacant and available for occupancy by Low Income Tenants.

The Borrower agrees to inform all prospective Low Income Tenants of the requirements for recertification of income and of the provisions of the preceding paragraph.

Section 5. Restrictions Imposed by Minnesota Statutes, Chapter 474A. Because the Note is issued by the Issuer as a residential rental project bond, as defined in Minnesota Statutes, Chapter 474A, as amended (“Chapter 474A”), and has received an allocation of tax-exempt bonding authority pursuant to applicable provisions of Chapter 474A, the restrictions imposed by Chapter 474A apply to the Project as described below.

(a) In addition to any other restrictions on rent or the income of tenants set forth in this Regulatory Agreement, during the Qualified Project Period, the Borrower shall restrict rents on at least twenty percent (20%) of the units in the Project (which shall consist of the same units as meet the requirements of Section 4) to an amount not exceeding the lesser of: (1) thirty percent (30%) of the adjusted income of a family whose gross income equals sixty percent (60%) of the median family income as most recently established by the United States Department of Housing and Urban Development for the Minneapolis/St. Paul standard metropolitan statistical area, as adjusted for family size; or (2) the area fair market rents or exception fair market rents, as applicable, for existing housing as established by the federal Department of Housing and Urban Development from time to time, which units shall be occupied, or held for occupancy, by Low Income Tenants.

(b) The annual certifications required to be made by the Borrower hereunder shall conform to the requirements of Section 474A.047, subdivision 3, and the Issuer shall have the authority to impose upon the Borrower any and all penalties described in Section 474A.047, subdivision 3, from time to time, in addition to any remedies otherwise available under this Regulatory Agreement.

(c) The Borrower must satisfy the requirements of Section 474A.047, subdivision 1(a), during the Qualified Project Period. The Borrower must annually certify to the Issuer over the term of
this Regulatory Agreement that the rental rates for the rent-restricted units are within the limitations under Section 474A.047, subdivision 1(a). The Issuer may request individual certification of the income of residents of the income-restricted units. The Commissioner of Minnesota Management & Budget may request from the Issuer a copy of the annual certification prepared by the Borrower. The Commissioner of Minnesota Management & Budget may require the Issuer to request individual certification of all residents of the income-restricted units.

Section 6. Covenants Run With the Land. The Borrower hereby declares its express intent that the covenants, restrictions, charges, and easements set forth herein shall be deemed covenants running with the land and shall, except as otherwise provided in this Regulatory Agreement, pass to and be binding upon the Borrower’s successors in title including any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein. Except as otherwise provided in this Regulatory Agreement, each and every contract, deed, or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges, and easements contained herein; provided, however, that any such contract, deed, or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed, or other instrument.

Section 7. Indemnification. The Borrower hereby covenants and agrees that it shall indemnify and hold harmless the Issuer and its officers, agents, and employees (the “Indemnified Parties”) and the Purchaser and its officers, agents, members, directors, officials, and employees as provided in the Loan Agreement. All provisions of the Loan Agreement relating to indemnification are incorporated by reference herein and are considered provisions of this Regulatory Agreement, as if expressly set out herein.

Section 8. Consideration. The Issuer has issued the Note in part to provide funds to make the Loan to finance the acquisition, construction, and equipping of the Project all for the purpose, among others, of inducing the Borrower to acquire, construct, and operate the Project. In consideration of the issuance of the Note by the Issuer, the Borrower has entered into this Regulatory Agreement and has agreed to restrict the uses to which the Project can be put on the terms and conditions set forth herein.

Section 9. Reliance. The Issuer and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Note and in the exemption from federal income taxation of the interest on the Note. In performing their duties and obligations hereunder and under the Pledge Agreement, the Issuer and the Purchaser may rely upon statements and certificates of the Borrower and the tenants and upon audits of the books and records of the Borrower pertaining to the Project. In addition, the Issuer and the Purchaser may consult with counsel, and the written opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer or the Purchaser hereunder in good faith and in conformity with such written opinion. A copy of any such opinion shall be furnished by the Issuer or the Purchaser to the Borrower upon written request. In determining whether any default or lack of compliance by the Borrower exists under this Regulatory Agreement, the Issuer or the Purchaser shall not be required to conduct any investigation into or review of the operations or records of the Borrower and may rely solely on any notice or certificate delivered to the Issuer or the Purchaser by the Borrower with respect to the occurrence or absence of a default unless it knows, or in the exercise of reasonable care should have known, that the notice or certificate is erroneous or misleading.
The Purchaser shall be under no duty to make any investigation or inquiry as to any statements or other matters contained or referred to in any documents or any instruments delivered to it in accordance with this Regulatory Agreement, but it may receive and accept the same as conclusive evidence of the truth and accuracy of such statements.

Section 10. Sale or Transfer of the Project. The Borrower hereby covenants and agrees not to sell, transfer, or otherwise dispose of the Project, or any portion thereof, except as permitted under the terms of the Loan Agreement. Any attempted sale, transfer, or disposition which would cause or result in the violation of any of these covenants, provisions, reservations, restrictions, charges, or easements shall be null and void ab initio and of no force and effect. Nothing herein shall prohibit the transfer, sale or assignment of the interests in the Borrower or any direct or indirect ownership interests in the Borrower’s members.

Section 11. Term. This Regulatory Agreement and the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for a term and period equal to the Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Note and termination of the Loan Agreement and the Loan if the Qualified Project Period has not expired at the time of such retirement and expiration. Notwithstanding anything in this Regulatory Agreement to the contrary:

(a) The Project may be transferred pursuant to a foreclosure, exercise of power of sale, or deed in lieu of foreclosure, or comparable proceedings without the consent of or fee of any kind payable to the Issuer or compliance with the provisions of this Regulatory Agreement. In connection with any such foreclosure, deed in lieu of foreclosure, or other proceedings, this Regulatory Agreement shall be terminated upon completion of the foreclosure and expiration of the applicable redemption period, or recording of a deed in lieu of foreclosure.

(b) The requirements of this Regulatory Agreement shall terminate and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire or other casualty, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law, or an action of a federal agency after the date of this Regulatory Agreement, which prevents the Issuer and the Purchaser from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Note is retired or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof (provided that this shall be deemed met if the Note has been previously retired); provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, or the delivery of a deed in lieu of foreclosure, or a similar event, the Borrower or any related person (within the meaning of Section 1.103-10(e) of the Treasury Regulations) obtains an ownership interest in the Project for federal income tax purposes.

(c) This Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the Issuer and the Borrower, upon receipt of an opinion of Bond Counsel to the effect that such termination will not cause interest on the Note to become included in gross income for federal income tax purposes or cause interest on the Note to become included in the net taxable income of individuals, trusts, and estates for State income tax purposes.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver, and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.
Section 12. Burden and Benefit. The Issuer and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Borrower’s legal interest in the Project is rendered less valuable thereby. The Issuer and the Borrower hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Low Income Tenants, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the Note was issued. Notwithstanding the foregoing, the Low Income Tenants are not intended to be third-party beneficiaries of this Regulatory Agreement and shall have no rights to enforce any provision herein.

Section 13. Enforcement. If the Borrower defaults in the performance or observance of any covenant, agreement, or obligation of the Borrower set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days after written notice thereof shall have been given by the Issuer or the Purchaser to the Borrower, then the Issuer or the Purchaser, may declare an “Event of Default” to have occurred hereunder and, at its option, may take any one or more of the following steps:

(a) by mandamus or other suit, action, or proceeding at law or in equity require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Purchaser hereunder;

(b) have access to and inspect, examine, and make copies of all the books and records of the Borrower pertaining to the Project;

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants, and agreements of the Borrower hereunder; or

(d) with the Purchaser’s consent, declare a default under the Loan, accelerate the indebtedness evidenced by the Loan, and proceed to redeem the Note in accordance with their terms.

Notwithstanding anything to the contrary contained herein, the Issuer and the Purchaser hereby agree that any cure of any default made or tendered by one or more of the Borrower’s members shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

All fees, costs, and expenses of the Purchaser or the Issuer incurred in taking any action pursuant to this Section 13 shall be the sole responsibility of the Borrower and shall be paid to the Purchaser or the Issuer, as the case may be, on demand.

After the Note has been discharged, the Issuer may act on its own behalf to declare an “Event of Default” to have occurred and to take any one or more of the steps specified hereinabove to the same extent and with the same effect as if taken by the Purchaser.

Section 14. The Purchaser and the Issuer. The Purchaser is entering into this Regulatory Agreement in its capacity as the Purchaser under the terms of the Note and the Pledge Agreement. The Issuer may, at all times, assume the Borrower’s compliance with this Regulatory Agreement unless otherwise notified in writing by the Purchaser (but the Purchaser shall have no obligation to so notify the Issuer), or unless the Issuer has actual knowledge of noncompliance. The Purchaser can rely on the accuracy of any certificates, instruments, opinions, or reports delivered to it by the Borrower. It is expected that the Note will be discharged and the Loan Agreement will terminate prior to the expiration of the Qualified Project Period. Following the payment in full and the discharge of the Note and the
termination of the Loan Agreement: (i) all obligations, rights, and duties of the Purchaser under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Purchaser will instead be undertaken by the Issuer; (iii) all notices to be delivered to the Purchaser will instead be delivered to the Issuer and all notices to be delivered by the Purchaser will instead be delivered by the Issuer; and (iv) the Purchaser shall no longer be a party to this Regulatory Agreement and shall be considered released from all obligations hereunder.

Section 15. Amendment. The provisions hereof shall not be amended or revised prior to the stated term hereof except by an instrument in writing duly executed by the Issuer and the Borrower, and consented to by the Purchaser as may be required by the Loan Agreement, and duly recorded. The Issuer’s and the Purchaser’s consent to any such amendment or revision (whether or not the Note shall then be outstanding) shall be given only upon receipt of an opinion of Bond Counsel addressed to the Issuer and Purchaser that such amendment or revision will not adversely affect the exemption from federal income taxation of interest on the Note. Neither the Issuer nor the Purchaser shall have a duty to prepare any such consent, amendment, or revision.

Section 16. Right of Access to the Project and Records. The Borrower agrees that during the term of this Regulatory Agreement, the Issuer, the Purchaser, and the duly authorized agents of either of them shall have the right at all reasonable times, and upon reasonable notice of at least twenty-four (24) hours, to enter upon the site of the Project during normal business hours to examine and inspect the Project and to have access to the books and records of the Borrower with respect to the Project, a copy of which shall be maintained at the site of the Project.

Section 17. No Conflict with Other Documents. The Borrower warrants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof.

Section 18. Severability. The invalidity of any clause, part, or provision of this Regulatory Agreement shall not affect the validity of the remaining portions thereof.

Section 19. Notices. All notices to be given pursuant to this Regulatory Agreement shall be in writing and shall be deemed given when sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods or 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:

To the Issuer: City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, MN 55345
Attn: City Manager

To the Purchaser: Bridgewater Bank
4400 Excelsior Boulevard
St. Louis Park, MN 55416
Attn: Senior Vice President, Commercial Lending

To the Borrower: CHC Minnetonka Affordable Housing LLC
161 St. Anthony Avenue, Suite 820
St. Paul, MN 55103
Attn: _______________
Section 20. Governing Law. This Regulatory Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as such laws may be preempted by any federal rules, regulations, and laws.

Section 21. Payment of Fees. Notwithstanding payment of the Loan, the termination of the Loan Agreement, and the defeasance or discharge of the Note, throughout the term of the Qualified Project Period, the Borrower shall continue to pay:

(a) to the Issuer, reimbursement for all reasonable fees and expenses, including, but not limited to, financial advisory and legal fees and expenses necessary for the Issuer’s reviewing and, if necessary, enforcing compliance by the Borrower with the terms of this Regulatory Agreement; and

(b) the fees and expenses of any entity or person designated by the Issuer to perform the review of the Borrower’s compliance with this Regulatory Agreement; provided that such fees and expenses are not duplicative of any fees and expenses paid under subsection (a) above.

Section 22. Limited Liability. All obligations of the Issuer hereunder shall be special, limited obligations of the Issuer, payable solely and only from proceeds of the Note and amounts derived by the Issuer from the Loan and the Loan Agreement.

Section 23. Actions of Issuer. The Issuer shall be entitled to rely conclusively on an opinion of counsel in the exercise or non-exercise of any of the rights or powers vested in the Issuer by virtue of this Regulatory Agreement or any other agreement or instrument executed in connection with the issuance of the Note; it being the intent of the parties hereto that the Issuer, and any and all present and future trustees, members, commissioners, officers, employees, attorneys, and agents of the Issuer shall not incur any financial or pecuniary liability for the exercise or non-exercise of any rights or powers vested in the Issuer by this Regulatory Agreement or any other instrument or agreement executed in connection with the issuance of the Note; or for the performance or nonperformance of any obligation under, or the failure to assert any right, power, or privilege under this Regulatory Agreement, the Note, the Loan Agreement, the Pledge Agreement, or any other instrument or agreement executed in connection with the issuance of the Note. If the Issuer’s consent or approval is required under this Regulatory Agreement, or any other agreement or instrument executed in connection with the issuance of the Note, the Issuer shall be entitled to rely conclusively on an opinion of counsel and shall not be responsible for any loss or damage resulting from any action or inaction in reliance upon such opinion.

Section 24. Counterparts. This Regulatory Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Regulatory Agreement, and, in making proof of this Regulatory Agreement, it shall not be necessary to produce or account for more than one such counterpart.
Section 25. Recording and Filing. The Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto to be recorded and filed in the real property records of the County, the State, and in such other places as the Issuer may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Issuer, the Borrower, and the Purchaser have caused this Regulatory Agreement to be signed by their respective duly authorized representatives as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By
Its Mayor

By
Its City Manager

STATE OF MINNESOTA
)
COUNTY OF HENNEPIN
)

The foregoing instrument was acknowledged before me this ___ day of ________, 2016, by Terry Schneider, the Mayor of the City of Minnetonka, Minnesota, a municipal corporation under the law of the State of Minnesota, on behalf of the Issuer.

____________________________________________
Notary Public

STATE OF MINNESOTA
)
COUNTY OF HENNEPIN
)

The foregoing instrument was acknowledged before me this ___ day of ________, 2016, by Geralyn Barone, the City Manager of the City of Minnetonka, Minnesota, a municipal corporation under the law of the State of Minnesota, on behalf of the Issuer.

____________________________________________
Notary Public
Execution page of the Borrower to the Regulatory Agreement, dated the date and year first written above.

CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company

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

By: _______________________________
Name: ____________________________
Title: _____________________________

STATE OF MINNESOTA )
) ss
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ___ day of ____________, 2016, by _______________________________, the ____________________ of CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, the managing member of CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company, on behalf of the Borrower.

Notary Public
Execution page of the Purchaser to the Regulatory Agreement, dated the date and year first written above.

BRIDGEPARK BANK

By _______________________________

Its _______________________________

STATE OF MINNESOTA          )
COUNTY OF HENNEPIN          ) ss.

The foregoing instrument was acknowledged before me this ____ day of ____________, 2016, by _______________________________, the ______________________ of Bridgewater Bank, a Minnesota banking corporation, on behalf of the Purchaser.

________________________________________

Notary Public
EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

[Insert legal description]
# EXHIBIT B
## FORM OF INCOME CERTIFICATION

### TENANT INCOME CERTIFICATION

- Initial Certification
- Recertification
- Other

**Effective Date:** _______________________

**Move-in Date:** _______________________

**(MM/DD/YY):** _______________________

### PART I. DEVELOPMENT DATA

- **Property Name:** Music Barn Apartments
- **Address:** 5750 Shady Oak Road, Minnetonka, Minnesota

### PART II. HOUSEHOLD COMPOSITION

<table>
<thead>
<tr>
<th>HH Br #</th>
<th>Last Name</th>
<th>First Name &amp; Middle Initial</th>
<th>Relationship to Head of Household</th>
<th>Date of Birth (MM/DD/YY)</th>
<th>F/T Student (Y or N)</th>
<th>Social Security or Alien Reg. No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>HEAD</td>
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</tr>
</tbody>
</table>

### PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

<table>
<thead>
<tr>
<th>HH Br #</th>
<th>(A) Employment or Wages</th>
<th>(B) Soc. Security / Pensions</th>
<th>(C) Public Assistance</th>
<th>(D) Other Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
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</tbody>
</table>

Add totals from (A) through (D) above

**TOTAL INCOME (E):** $
### PART IV. INCOME FROM ASSETS

<table>
<thead>
<tr>
<th>HH Mbr#</th>
<th>(F) Type of Asset</th>
<th>(G) C/I</th>
<th>(H) Cash Value of Asset</th>
<th>(I) Annual Income from Asset</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

**TOTALS:**

Enter Column (H) Total $________________ Passbook Rate if over $5,000 $________________ x 2.00 % = (J) Imputed Income $________________

Enter the greater of the total column I, or J: imputed income $________________

TOTAL INCOME FROM ASSETS (K) $________________

(L) Total Annual Household Income from all sources [Add (E) + (K)] $________________

### HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full-time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

_______________________ Signature __________________________ (Date)  
_______________________ Signature __________________________ (Date)

_______________________ Signature __________________________ (Date)  
_______________________ Signature __________________________ (Date)

### PART V. DETERMINATION OF INCOME ELIGIBILITY

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES $________________  
Household Meets Income Restriction at:  

- [ ] 60%  
- [ ] 50%  
- [ ] 40%  
- [ ] 30%

Current Income Limit per Family Size: $________________

**RECERTIFICATION ONLY:**

Current Income Limit x 140% $________________

Household income exceeds 140% at
<table>
<thead>
<tr>
<th>Household Income at Move-in</th>
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<tr>
<td>$__________________</td>
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</table>

| Household Size at Move-in: |
|___________________________|

<table>
<thead>
<tr>
<th>recertification:</th>
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<tr>
<td>☐ Yes  ☐ No</td>
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<table>
<thead>
<tr>
<th>%</th>
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<tbody>
<tr>
<td>☐ ___%</td>
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</tbody>
</table>
## PART VI. RENT

<table>
<thead>
<tr>
<th>Tenant Paid Rent</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utility Allowance</td>
<td>$</td>
</tr>
</tbody>
</table>

**GROSS RENT FOR UNIT:**
Tenant paid rent plus Utility Allowance and other non-optional charges

<table>
<thead>
<tr>
<th>Tenant paid rent plus Utility Allowance and other non-optional charges</th>
<th>$</th>
</tr>
</thead>
</table>

Unit Meets Rent Restriction at:

- 60%
- 50%
- 40%
- 30%
- ___%

**Maximum Rent Limit for this unit:** $_____

## PART VII. STUDENT STATUS

**ARE ALL OCCUPANTS FULL-TIME STUDENTS?**

- [ ] yes
- [ ] no

If yes, enter student explanation**

(also attach documentation)

**Student explanation:**

1. TANF assistance
2. Job training program
3. Single parent/dependent child
4. Married/joint return*

*Exception for married/joint return is the only exception available for units necessary to qualify tax-exempt bonds.

## PART VIII. PROGRAM TYPE

Mark the program(s) listed below (a. through e.) for which this household’s unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification

- a. Tax Credit  [ ]
- b. HOME  [ ]
- c. Tax Exempt  [ ]
- d. AHDP  [ ]
- e. ____________ [ ]

(Name of Program)

See Part V above.

<table>
<thead>
<tr>
<th>Income Status</th>
<th>Income Status</th>
<th>Income Status</th>
<th>Income Status</th>
<th>Income Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>≤ 50% AMGI</td>
<td>50% AMGI</td>
<td>≤ 50% AMGI</td>
<td>0I **</td>
<td>0I **</td>
</tr>
<tr>
<td>≤ 60% AMGI</td>
<td>60% AMGI</td>
<td>≤ 80% AMGI</td>
<td>0I **</td>
<td></td>
</tr>
<tr>
<td>≤ 80% AMGI</td>
<td>80% AMGI</td>
<td>0I **</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

** Upon recertification, household was determined over income (OI) according to eligibility requirements of the program(s) marked above.

## SIGNATURE OF OWNER / REPRESENTATIVE
Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

________________________________________________ ________________
SIGNATURE OF OWNER / REPRESENTATIVE  DATE
INSTRUCTIONS FOR COMPLETING
TENANT INCOME CERTIFICATION

This form is to be completed by the owner or an authorized representative.

Part I – Development Data

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

Move-in Date Enter the date the tenant has or will take occupancy of the unit.

Effective Date Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.

Property Name Enter the name of the development.

County Enter the county (or equivalent) in which the building is located.

BIN # Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).

Address Enter the unit number.

Unit Number Enter the unit number.

# Bedrooms Enter the number of bedrooms in the unit.

Part II – Household Composition

List all occupants of the unit. State each household member’s relationship to the head of the household by using one of the following coded definitions:

- H Head of household
- A Adult co-tenant
- C Child
- L Live-in caretaker
- S Spouse
- O Other family member
- F Foster child
- N None of the above

Enter the date of birth, student status, and Social Security number or alien registration number for each occupant.

If there are more than seven occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.

Part III – Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.
From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the 12 months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List the respective household member number from Part II.

Column (A) Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.

Column (B) Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.

Column (C) Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.)

Column (D) Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.

Row (E) Add the totals from columns (A) through (D) above. Enter this amount.

Part IV – Income from Assets

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the 12 months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

Column (F) List the type of asset (i.e., checking account, savings account, etc.)

Column (G) Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).

Column (H) Enter the cash value of the respective asset.

Column (I) Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).

TOTALS Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than $5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.

Row (K) Enter the Greater of the total in Column (I) or (J)

Row (L) Total Annual Household Income from All Sources Add (E) and (K) and enter the total
HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than five days prior to the effective date of the certification.

**Part V – Determination of Income Eligibility**

- **Total Annual Household Income from all sources**: Enter the number from item (L).
- **Current Income Limit per Family Size**: Enter the Current Move-in Income Limit for the household size.
- **Household income at move-in Household size at move-in**: For recertifications only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.
- **Household Meets Income Restriction**: Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.
- **Current Income Limit x 140%**: For recertification only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.

**Part VI – Rent**

- **Tenant Paid Rent**: Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).
- **Rent Assistance**: Enter the amount of rent assistance, if any.
- **Utility Allowance**: Enter the utility allowance. If the owner pays all utilities, enter zero.
- **Other non-optional charges**: Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
- **Gross Rent for Unit**: Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.
- **Maximum Rent Limit for this unit**: Enter the maximum allowable gross rent for the unit.
- **Unit Meets Rent Restriction at ___%**: Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.
Part VII – Student Status

If all household members are full-time* students, check “yes.” If at least one household member is not a full-time student, check “no.”

If “yes” is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

* Full time is determined by the school the student attends.

Part VIII – Program Type

Mark the program(s) for which this unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit See Part V above.

HOME If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household’s designation.

Tax Exempt If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household’s designation.

AHDP If the property participates in the Affordable Housing Disposition Program (AHDP), and this household’s unit will count towards the set-aside requirements, mark the appropriate box indicating the household’s designation.

Other If the property participates in any other affordable housing program, complete the information as appropriate.

SIGNATURE OF OWNER / REPRESENTATIVE

It is the responsibility of the owner or the owner’s representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well-trained in tax credit compliance.

These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.
EXHIBIT C
CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

TO: City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, MN 55345
Attn: City Manager

and (prior to the discharge of the Note (hereinafter defined))

Bridgewater Bank
4400 Excelsior Boulevard
St. Louis Park, MN 55416
Attn: Senior Vice President, Commercial Lending

Re: Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Note”)

The undersigned, an authorized representative for CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Owner”), hereby certifies, represents, and warrants that:

1. The Owner owns the multifamily housing project located at 5750 Shady Oak Road, Minnetonka, Minnesota commonly known as the Music Barn Apartments (the “Project”).

2. The undersigned and the Owner have read and are thoroughly familiar with the provisions of (1) the Regulatory Agreement, dated August __, 2016 (the “Regulatory Agreement”), between the Owner, the City of Minnetonka, Minnesota (the “Issuer”), and Bridgewater Bank (the “Purchaser”); and (2) the Loan Agreement, dated as of August 1, 2016, between the Owner and the Issuer with respect to the Series 2016A Bonds, and the Loan Agreement, dated as of August 1, 2016, between the Owner and the Issuer with respect to the Series 2016B Bonds (together, the “Loan Agreement”). The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Note.

3. A review of the activities of the Owner and of the Owner’s performance under the Regulatory Agreement and the Loan Agreement during the year ending ____ has been made under the supervision of the undersigned.

4. The Project’s Qualified Project Period commenced on _________, _____ (the date on which ten percent (10%) of the residential units in the Project were occupied), and will end on the latest of:

   (i) _________, _____ (the date which is fifteen (15) years after the date on which fifty percent (50%) of the residential units in the Project were occupied);
(ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding, or

(iii) the date on which any assistance provided with respect to the Project under section 8 of the United States Housing Act of 1937 terminates.

5. As of the date of this Certificate, the following percentages of completed residential units in the Project are (i) occupied by Low Income Tenants or (ii) currently vacant and being held available for occupancy by Low Income Tenants and have been so held continuously since the date a Low Income Tenant vacated such unit, as indicated:

<table>
<thead>
<tr>
<th></th>
<th>_____ % Units</th>
<th>Nos.____</th>
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<tbody>
<tr>
<td>Occupied by Low Income Tenants</td>
<td>_____</td>
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</tr>
<tr>
<td>Continuously held vacant for occupancy by Low Income Tenants since last occupied by Low Income Tenants</td>
<td>_____</td>
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</table>

6. At no time since the date of filing of the last Continuing Program Compliance Certificate (or since the issuance of the Note, if this is the first such certificate) has less than eleven (11) units (representing forty percent (40%) of the completed units in the Project) been occupied by or were last occupied by Low Income Tenants.

7. As of the date of this Certificate, at least _____% of the units in the Project are (i) occupied by persons or families with Adjusted Income which does not exceed _____% of the Median Income for the Area adjusted for household size; or (ii) held vacant for occupancy for persons or families with Adjusted Income which does not exceed _____% of the Median Income for the Area adjusted for household size. Project Units occupied or held vacant for persons or families with Adjusted Income which does not exceed _____% of the Median Income for the Area adjusted for household size include Unit numbers _______________________________.

8. At all times since the date of filing of the last Continuing Program Compliance Certificate the rent on at least twenty percent (20%) of the units in the Project has been equal to or less than applicable area fair market rents or exception fair market rents for existing housing as established by the federal Department of Housing and Urban Development from time to time.

9. To the knowledge of the undersigned, after due inquiry, all units were rented or available for rental on a continuous basis during the immediately preceding year to members of the general public, and the Owner is not now and has not been in default under the terms of the Regulatory Agreement and the Loan Agreement and, to the knowledge of the undersigned, no Determination of Taxability has occurred with respect to the Note.

10. [CHOOSE ONE: None/One or more] of the Tenants in the Project are currently receiving assistance under Section 8 of the United States Housing Act of 1937.

11. Unless otherwise expressly provided herein or unless the context requires otherwise, the capitalized terms used but not defined herein shall have the meaning assigned to such terms in the Regulatory Agreement.
12. The Owner has not transferred any interest in the Project since the date of submission of the Continuing Program Compliance Certificate last submitted to the Purchaser and the Issuer with respect to the Project. (If the Owner has transferred any interest in the Project, such transfer should be detailed here.)

Signature page of the Borrower to the Certificate of Continuing Program Compliance.

Dated: _____________, ________.

CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company

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

By: 
Name: ____________________________
Title: ____________________________
REGULATORY AGREEMENT
(ELMBROOKE APARTMENTS)

between

CITY OF MINNETONKA, MINNESOTA,
as Issuer

CHC MINNETONKA AFFORDABLE HOUSING LLC,
as Borrower

and

BRIDGEWATER BANK,
as Purchaser

Dated August ___, 2016

Relating to:

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

This Instrument Drafted by:
Kennedy & Graven, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN  55402
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<th>Page</th>
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<td>Section 22.</td>
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<td>15</td>
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EXHIBIT A — LEGAL DESCRIPTION OF PROPERTY ................................................................................. A-1
EXHIBIT B — FORM OF INCOME CERTIFICATION ................................................................................. B-1
EXHIBIT C — CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE.............................................. C-1
REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT, dated August __, 2016 (the “Regulatory Agreement”), is between the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “Issuer”), CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company (the “Borrower”) and the owner of the property described herein, and BRIDGEWATER BANK, a Minnesota banking corporation (the “Purchaser”).

RECITALS

The Issuer is authorized to issue bonds to provide financing for multifamily housing developments in accordance with the terms of Minnesota Statutes, Chapter 462C, as amended (the “Act”).

The Issuer has agreed to issue its Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Note”), in the original aggregate principal amount of $11,500,000, a portion of the proceeds of which will be used by the Borrower for the purpose of financing the acquisition and substantial rehabilitation of forty-six (46) existing affordable apartment units located at 5400 Smetana Drive, Minnetonka, Minnesota, on the real property described on EXHIBIT A attached hereto (the “Project”).

To finance the Project, the Issuer will loan the proceeds derived from the sale of the Note to the Borrower pursuant to a Loan Agreement, dated as of August 1, 2016 (the “Loan Agreement”), between the Issuer and the Borrower, and the Issuer will assign its rights under the Loan Agreement to the Purchaser (except for certain unassigned rights set forth in Section 7.9 thereof) pursuant to the Pledge Agreement, dated as of August 1, 2016, between the Issuer and the Purchaser.

For good and valuable consideration, the Borrower, the Purchaser, and the Issuer have determined to enter into this Regulatory Agreement in order to impose on the Project certain requirements of the Internal Revenue Code of 1986, as amended, and of the Act applicable to the Project.

NOW, THEREFORE, the Borrower, the Purchaser, and the Issuer do hereby impose upon the Project the following covenants, restrictions, charges, and easements, which shall run with the land and shall be binding and a burden upon the Project and all portions thereof, and upon any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein, for the length of time that this Regulatory Agreement shall be in full force and effect:

Section 1. Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms shall have the respective meanings set forth below for the purposes hereof. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Loan Agreement.

“Act” means Minnesota Statutes, Chapter 462C, as amended.

“Adjusted Income” means the adjusted income of a person (together with the adjusted income of all persons of the age of 18 years or older who intend to reside with such person in one Dwelling Unit), as calculated in the manner prescribed under Section 142(d)(2)(B) of the Code.
“Bond Counsel” means Kennedy & Graven, Chartered, or any other attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds and other obligations issued by states and political subdivisions thereof, duly admitted to practice law before the highest court of any state of the United States of America.

“Borrower” means CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company, and its lawful successors and assigns to the extent permitted by the Loan Agreement.

“Certificate of Continuing Program Compliance” means the document substantially in the form set forth in EXHIBIT C attached hereto.

“Code” means the Internal Revenue Code of 1986, as amended, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Note.

“County” means Hennepin County in the State.

“Dwelling Units” means the units of multifamily residential rental housing comprising the Project.

“Event of Default” has the meaning specified in Section 13 hereof.

“Functionally Related and Subordinate” means and includes facilities for use by tenants, for example, laundry facilities, parking areas, and recreational facilities, provided that the same is of a character and size commensurate with the character and size of the Project.

“Housing Act” means the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq.

“Issuer” means 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.

“Loan” means the loan of the proceeds of the Note pursuant to the Loan Agreement to provide financing for the Project.

“Loan Agreement” means the Loan Agreement, dated as of August 1, 2016, between the Issuer and the Borrower, as it may be amended and supplemented from time to time.

“Low Income Tenants” means persons or families with Adjusted Income which does not exceed sixty percent (60%) of the Median Income for the Area adjusted for household size. In no event will the occupants of a unit be considered to be Low Income Tenants if all of such occupants are students (as defined in Section 152(f)(2) of the Code), unless the unit is occupied:

(i) by an individual who is (A) a student and receiving assistance under Title IV of the Social Security Act, (B) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under Part B or Part E of Title IV of the Social Security Act, or (C) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, State, or local laws; or
(ii) entirely by full-time students if such students are (A) single parents and their children and such parents are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual other than a parent of such children, or (B) married and entitled to file a joint return.

“Low Income Units” means the Dwelling Units in the Project designated for occupancy by Low Income Tenants pursuant to Section 4(a) hereof.

“Median Income for the Area” means the median yearly income for households of an applicable size in the applicable Primary Metropolitan Statistical Area as most recently determined by the Secretary of Housing and Urban Development under Section 8(f)(3) of the Housing Act, or, if such figures are no longer available, the method of calculation is substantially altered, or the programs under Section 8(f) are terminated, the Issuer shall provide the Borrower with another income determination that is reasonably similar to the method used by the Secretary prior to such termination.

“Note” means the Issuer’s Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016, issued in the original aggregate principal amount of $11,500,000.

“Pledge Agreement” means the Pledge Agreement, dated as of August 1, 2016, between the Issuer and the Purchaser, as it may be amended from time to time.

“Project” means the approximately forty-six (46) existing affordable apartment units located at 5400 Smetana Drive, Minnetonka, Minnesota, which will be acquired and substantially rehabilitated with a portion of the proceeds of the Note.

“Purchaser” means Bridgewater Bank, a Minnesota banking corporation or any successor or assign.

“Qualified Project Period” means the period beginning on the later of the date of issuance of the Note and the first day on which ten percent (10%) of the Dwelling Units in the Project are occupied and ending on the latest of:

(i) the date which is fifteen (15) years after the date on which fifty percent (50%) of the Dwelling Units in the Project are occupied;

(ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding; or

(iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

“Regulatory Agreement” means this Regulatory Agreement, dated August ___, 2016, between the Issuer, the Borrower, and the Purchaser, together with any amendments or supplements hereto.

“Section 474A Penalty” means the penalty described in Minnesota Statutes, Section 474A.047, subdivision 3, as applied to the Project.

“State” means the State of Minnesota.
“Treasury Regulations” means the regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time or pursuant to any predecessor statute to the Code.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement words of the masculine, feminine or neuter gender shall be construed to include each other gender when appropriate, and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all of the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

Section 2. Representations by the Borrower. The Borrower covenants, represents, and warrants that:

(a) The Borrower is a limited liability company organized and existing under the laws of the State. The Borrower is in good standing in the State and has duly authorized, by proper action, the execution and delivery of this Regulatory Agreement. The Borrower is duly authorized by the laws of the State to transact business in the State and to perform all of its duties hereunder.

(b) Neither the execution and delivery of this Regulatory Agreement or any other document in connection with the financing of the Project, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the terms and conditions hereof and thereof conflicts with or results in a breach of any of the terms, conditions, or provisions of any agreement or instrument to which the Borrower is now a party or by which it is bound or constitutes a default (with due notice or the passage of time or both) under any of the foregoing or results in the creation or imposition of any prohibited lien, charge, or encumbrance whatsoever upon any of the property or assets of the Borrower under the terms of any instrument or agreement to which the Borrower is now a party or by which it is bound.

(c) The execution, delivery, and performance of this Regulatory Agreement and all other documents to be delivered by the Borrower in connection with the consummation of the transactions contemplated hereby will not conflict with, or constitute a breach of or default under, any indenture, mortgage, deed of trust, lease, commitment, agreement, or other instrument or obligation to which the Borrower is a party or by which the Borrower or any of its property is bound, or under any law, rule, regulation, judgment, order, or decree to which the Borrower is subject or by which the Borrower or any of its property is bound.

(d) To the best of the Borrower’s knowledge, there is no action, suit, proceeding, inquiry, or investigation by or before any governmental agency, public board, or body pending or threatened against the Borrower (nor to the best of its knowledge is there any basis therefor), which:

   (i) affects or seeks to enjoin, prohibit, or restrain the issuance, sale, or delivery of the Note or the use of the proceeds of the Note to finance the acquisition or construction, rehabilitation, and equipping of the Project or the execution and delivery of this Regulatory Agreement,

   (ii) affects or questions the validity or enforceability of the Note or this Regulatory Agreement,

   (iii) questions the tax-exempt status of the Note, or
(iv) questions the power or authority of the Borrower to own, acquire, substantially rehabilitate, or operate the Project or to execute, deliver, or perform the Borrower’s obligations under this Regulatory Agreement.

(e) The Project will be located wholly within the boundaries of the City of Minnetonka, Minnesota.

(f) On and after the date on which the Note is executed and delivered to the Purchaser, the Borrower will have title to the Project sufficient to carry out the purposes of this Regulatory Agreement, and such title shall be in and remain in the name of the Borrower except as otherwise permitted by this Regulatory Agreement.

(g) The Project consists and will consist of those facilities described herein, which generally are described as residential apartment buildings and related facilities situated on the real property described in EXHIBIT A attached hereto. The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exemption from federal income taxation of the interest on the Note. The Borrower will utilize and operate the Project as a multifamily rental housing project during the term of the Note in accordance with all applicable federal, State, and local laws, rules, and regulations applicable to the Project.

(h) The Borrower has obtained, or will obtain on or before the date required therefor, all necessary certificates, approvals, permits, and authorizations with respect to the operation of the Project.

(i) The Borrower does not and will not own the Note. The Borrower acknowledges and understands that during any period of time when the Borrower owns the Note, the interest on the Note shall not be tax-exempt pursuant to Section 147(a) of the Code.

(j) The Borrower does not own any buildings or structures which are proximate to the Project other than those buildings or structures which comprise the Project, which are being financed pursuant to a common plan under which the Project is also being financed.

(k) The Borrower will incur rehabilitation expenditures (as defined in Section 147(d)(3) of the Code) with respect to the Project in an amount of at least fifteen percent (15%) of the acquisition cost of the Project financed with the proceeds of the Note within two years from the later of (i) the date the Borrower acquires the Project; or (ii) the date of issuance of the Note.

(l) The statements made in the various certificates delivered by the Borrower to the Issuer or the Purchaser on the date of issuance of the Note are true and correct.

Section 3. Qualified Residential Rental Project. The Borrower shall acquire, rehabilitate, own, manage, and operate the Project as a “qualified residential rental project,” as such phrase is utilized in Section 142(d) of the Code, on a continuous basis during the Qualified Project Period. To that end, the Borrower hereby represents, warrants, and covenants as follows:

(a) that a qualified residential rental project will be acquired and substantially rehabilitated on the property described in EXHIBIT A hereto, and the Borrower shall own, manage and operate the Project as a qualified residential rental project containing Dwelling Units and facilities Functionally Related and Subordinate to such Dwelling Units, in accordance with Section 142(a)(7) and Section 142(d) of the Code and all applicable Treasury Regulations promulgated thereunder, as the same may be amended from time to time;
(b) that all of the Dwelling Units of the Project will be similarly constructed and each Dwelling Unit in the Project will contain complete facilities for living, sleeping, eating, cooking, and sanitation for a single person or a family;

(c) that:

(i) none of the Dwelling Units in the Project shall at any time in the future be utilized on a transient basis;

(ii) that none of the Dwelling Units in the Project shall at any time in the future be leased or rented for a period of less than thirty (30) days; and

(iii) that neither the Project nor any portion thereof shall be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or trailer park or trailer court for use on a transient basis, or by a cooperative housing corporation (as defined in Section 216(b)(1) of the Code);

(d) that, following the substantial rehabilitation thereof, once available for occupancy:

(i) each Dwelling Unit in the Project must be rented or available for rental on a continuous basis to members of the general public during the Qualified Project Period; and

(ii) the Borrower shall not give preference in renting Dwelling Units in the Project to any particular class or group of persons, other than Low Income Tenants as provided herein or as otherwise permitted by law;

(e) that the Dwelling Units in the Project shall be leased and rented to members of the general public in compliance with this Regulatory Agreement, except for any Dwelling Unit for a resident manager or maintenance personnel;

(f) that the Project consists of one or more discrete edifices and other man-made construction, each consisting of an independent foundation, outer walls and roof, all of which will be (i) owned by the same person for federal tax purposes, (ii) located on a common tract of land or two or more parcels of land which are contiguous except for being separated only by a road, street, stream, or a similar property and (iii) financed by the Loan or otherwise pursuant to a common plan of financing, and which consists entirely of:

(i) units which are similar in quality and type of construction and amenities; and

(ii) property Functionally Related and Subordinate in purpose and size to the Project, e.g., parking areas, laundries, swimming pools, tennis courts, and other recreational facilities (none of which may be unavailable to any person because such person is a Low Income Tenant) and other facilities which are reasonably required for the Project, e.g., heating and cooling equipment, trash disposal equipment, or units for residential managers or maintenance personnel;

(g) that no portion of the Project shall be used to provide any health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;

(h) that the Project shall not include a Dwelling Unit in a building where all Dwelling Units in such building are not also included in the Project;
(i) that the Borrower shall not convert the Project to condominium or cooperative ownership;

(j) that no Dwelling Unit in the Project shall be occupied by the Borrower (or any person related to the Borrower within the meaning of Section 147(a)(2) of the Code) at any time unless such person resides in a Dwelling Unit in a building or structure which contains at least five Dwelling Units and unless the resident of such Dwelling Unit is a resident manager or other necessary employee (e.g., maintenance and security personnel);

(k) that the Note will not be “federally guaranteed,” as defined in Section 149(b) of the Code;

(l) that the Project shall at all times be used and operated as a “multifamily housing development,” as defined in the Act; and

(m) that the Borrower shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g., AFDC or SSI), physical disability, national origin, or marital status in the rental, lease, use, or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

Section 4. Low Income Tenants. Pursuant to the requirements of the Act and Section 142(d) of the Code, the Borrower hereby represents, warrants, and covenants as follows:

(a) Upon completion of the substantial rehabilitation of the Project, at least forty percent (40%) of the units in the Project will be occupied or held for occupancy by Low Income Tenants. Throughout the Qualified Project Period, not less than forty percent (40%) of the completed units in the Project shall be continuously occupied or held for occupancy by Low Income Tenants. The Borrower will designate the Low Income Units and will make any revisions to such designations as necessary to comply with the applicable provisions of the Code and the Treasury Regulations. As set forth in subsection (e) below, the Borrower shall advise the Issuer and the Purchaser by delivery of a certificate in writing of the status of the occupancy of the Project with respect to Low Income Tenants on an annual basis for the term of this Regulatory Agreement. An Annual Certification of a Residential Rental Project, Form 8703 (Rev. April 2011), or successor form, shall be prepared annually by the Borrower and filed with the United States Secretary of the Treasury pursuant to Section 142(d)(7) of the Code (currently with the Internal Revenue Service Center, Ogden, Utah 84201), with a copy to be filed by the Borrower with the Issuer and the Purchaser. The percentage of units is measured by number of units, and not square footage of units.

For purposes of satisfying the occupancy requirements set forth above, a unit occupied by a person or family who at the commencement of their occupancy qualified as a Low Income Tenant shall be treated as occupied by a Low Income Tenant until such time as any recertification of such tenant’s income in accordance with subsections (c) and (h) below demonstrates that such tenant’s income exceeds one hundred forty percent (140%) of the income limitation applicable to Low Income Tenants.

A unit occupied by a Low Income Tenant shall be deemed, upon the termination of such tenant’s occupancy, to be continuously occupied by a Low Income Tenant until reoccupied, other than for a temporary period (not to exceed sixty (60) days), at which time the character of the unit shall be redetermined.

(b) The Borrower will notify the Issuer on an annual basis of any vacancy of any Low Income Units.
(c) The Borrower will obtain, complete, and maintain on file income certifications from each Low Income Tenant, obtained immediately prior to the initial occupancy of such tenant in the Project, and thereafter re-obtain in any year in which a unit in the Project is occupied by a new resident whose income exceeds the applicable income limit, income certifications (based upon their then current income), from each Low Income Tenant, substantially in the form of the income certification set forth in EXHIBIT B hereto or another form approved by Bond Counsel (the “Income Certification”) and will provide such additional information as may be required by Section 142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Treasury Regulations now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service applicable to the Note. Such Income Certification shall be obtained prior to initial occupancy. If requested by the Purchaser or Issuer, a copy of such Income Certification shall be filed with the Purchaser and the Issuer prior to occupancy by the tenant whenever possible but in no event more than one month after initial occupancy by the tenant. A copy of each re-certification of income shall be attached to each report filed with the Issuer and the Purchaser pursuant to subsection (a) above. The Borrower shall make a good-faith effort to verify that the income reported by an applicant in an income certification is accurate by taking at least one of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period, (2) obtain an income tax return for the most recent tax year, (3) conduct a credit or similar search, (4) obtain an income verification form from the applicant’s current employer, (5) obtain an income verification form from the Social Security Administration if the applicant receives assistance from such agency, or (6) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. If the Low Income Tenant is a Section 8 Certificate Holder, the Borrower shall retain a copy of the certificate or voucher for verification of income in lieu of an income verification.

The Borrower understands that failure to file the Annual Certification of a Residential Rental Project, Form 8703 (Rev. April 2011), or successor form, as required by Section 142(d)(7) of the Code at the times stated therein may subject it to the penalty described in Section 6652(j) of the Code.

(d) The Borrower will maintain complete and accurate records pertaining to the Low Income Units and will permit, upon reasonable prior notice, any duly authorized representative of the Issuer, the Purchaser, the Department of the Treasury, or the Internal Revenue Service to inspect the books and records of the Borrower pertaining to the Project, including those records pertaining to the occupancy of the Low Income Units. This section is not intended to create any additional duties to inspect records.

(e) The Borrower will prepare and submit to the Issuer and the Purchaser, on or before May 1 of each year during the Qualified Project Period, beginning the first May 1 following commencement of the Qualified Project Period, a Continuing Program Compliance Certificate in the form of EXHIBIT C attached hereto and executed by the Borrower, and, if requested by the Purchaser or Issuer the Income Certifications described in subsection (c) above.

(f) The Borrower, upon becoming aware of an Event of Default, will notify the Issuer and the Purchaser, in writing, of the occurrence of any such Event of Default hereunder or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. Such notice shall be given promptly and in no event longer than ten (10) Business Days after the Borrower receives notice or gains knowledge of the occurrence of any such event. The Borrower further agrees that it will give prompt written notice to the Issuer and the Purchaser if insurance proceeds or condemnation awards are received with respect to the Project and are not used to repair or replace the Project, which notice shall state the amount of such proceeds or award.
(i) Except as provided in clause (ii) below, the Borrower shall accept as tenants on the same basis as all other prospective tenants Low Income Tenants who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the Housing Act or its successor and shall not apply selection criteria to Section 8 certificate/voucher holders that are more burdensome than the criteria applied to all other prospective tenants.

(ii) The Borrower agrees to modify the leases for units in the Project as necessary to allow the rental of Low Income Units to Section 8 certificate/voucher holders.

(g) Each lease pertaining to a Low Income Unit shall contain a provision to the effect that the Borrower has relied on the income certification and supporting information supplied by the Low Income Tenant in determining qualification for occupancy of the Low Income Unit and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

(h) Throughout the Qualified Project Period, the Borrower shall re-certify each Low Income Tenant’s income on or before the anniversary of the Low Income Tenant’s tenancy, in any year in which a unit in the Project is occupied by a new resident whose income exceeds the applicable income limit, by obtaining a completed Income Certification. In the event the recertification demonstrates that any such tenant’s household income exceeds one hundred forty percent (140%) of the applicable income limit, the Borrower shall hold the next available unit or units of comparable or smaller size in the Project available for rental by new Low Income Tenants.

The Borrower in its sole discretion may notify, in writing, each tenant who is no longer a Low Income Tenant of such fact, and that the rent of such tenant(s) is subject to increase thirty (30) days after receipt of such notice. The Borrower shall be entitled to so increase any such tenant’s rent only if Borrower complies with any law applicable thereto and only after the Borrower has rented the next available unit or units in the Project on a one-for-one basis to a Low Income Tenant, or holds units vacant and available for occupancy by Low Income Tenants.

The Borrower agrees to inform all prospective Low Income Tenants of the requirements for recertification of income and of the provisions of the preceding paragraph.

Section 5. Restrictions Imposed by Minnesota Statutes, Chapter 474A. Because the Note is issued by the Issuer as a residential rental project bond, as defined in Minnesota Statutes, Chapter 474A, as amended (“Chapter 474A”), and has received an allocation of tax-exempt bonding authority pursuant to applicable provisions of Chapter 474A, the restrictions imposed by Chapter 474A apply to the Project as described below.

(a) In addition to any other restrictions on rent or the income of tenants set forth in this Regulatory Agreement, during the Qualified Project Period, the Borrower shall restrict rents on at least twenty percent (20%) of the units in the Project (which shall consist of the same units as meet the requirements of Section 4) to an amount not exceeding the lesser of: (1) thirty percent (30%) of the adjusted income of a family whose gross income equals sixty percent (60%) of the median family income as most recently established by the United States Department of Housing and Urban Development for the Minneapolis/St. Paul standard metropolitan statistical area, as adjusted for family size; or (2) the area fair market rents or exception fair market rents, as applicable, for existing housing as established by the federal Department of Housing and Urban Development from time to time, which units shall be occupied, or held for occupancy, by Low Income Tenants.
(b) The annual certifications required to be made by the Borrower hereunder shall conform to the requirements of Section 474A.047, subdivision 3, and the Issuer shall have the authority to impose upon the Borrower any and all penalties described in Section 474A.047, subdivision 3, from time to time, in addition to any remedies otherwise available under this Regulatory Agreement.

(c) The Borrower must satisfy the requirements of Section 474A.047, subdivision 1(a), during the Qualified Project Period. The Borrower must annually certify to the Issuer over the term of this Regulatory Agreement that the rental rates for the rent-restricted units are within the limitations under Section 474A.047, subdivision 1(a). The Issuer may request individual certification of the income of residents of the income-restricted units. The Commissioner of Minnesota Management & Budget may request from the Issuer a copy of the annual certification prepared by the Borrower. The Commissioner of Minnesota Management & Budget may require the Issuer to request individual certification of all residents of the income-restricted units.

Section 6. Covenants Run With the Land. The Borrower hereby declares its express intent that the covenants, restrictions, charges, and easements set forth herein shall be deemed covenants running with the land and shall, except as otherwise provided in this Regulatory Agreement, pass to and be binding upon the Borrower’s successors in title including any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein. Except as otherwise provided in this Regulatory Agreement, each and every contract, deed, or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges, and easements contained herein; provided, however, that any such contract, deed, or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed, or other instrument.

Section 7. Indemnification. The Borrower hereby covenants and agrees that it shall indemnify and hold harmless the Issuer and its officers, agents, and employees (the “Indemnified Parties”) and the Purchaser and its officers, agents, members, directors, officials, and employees as provided in the Loan Agreement. All provisions of the Loan Agreement relating to indemnification are incorporated by reference herein and are considered provisions of this Regulatory Agreement, as if expressly set out herein.

Section 8. Consideration. The Issuer has issued the Note in part to provide funds to make the Loan to finance the acquisition and substantial rehabilitation of the Project all for the purpose, among others, of inducing the Borrower to acquire, substantially rehabilitate, and operate the Project. In consideration of the issuance of the Note by the Issuer, the Borrower has entered into this Regulatory Agreement and has agreed to restrict the uses to which the Project can be put on the terms and conditions set forth herein.

Section 9. Reliance. The Issuer and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Note and in the exemption from federal income taxation of the interest on the Note. In performing their duties and obligations hereunder and under the Pledge Agreement, the Issuer and the Purchaser may rely upon statements and certificates of the Borrower and the tenants and upon audits of the books and records of the Borrower pertaining to the Project. In addition, the Issuer and the Purchaser may consult with counsel, and the written opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer or the Purchaser.
hereunder in good faith and in conformity with such written opinion. A copy of any such opinion shall be furnished by the Issuer or the Purchaser to the Borrower upon written request. In determining whether any default or lack of compliance by the Borrower exists under this Regulatory Agreement, the Issuer or the Purchaser shall not be required to conduct any investigation into or review of the operations or records of the Borrower and may rely solely on any notice or certificate delivered to the Issuer or the Purchaser by the Borrower with respect to the occurrence or absence of a default unless it knows, or in the exercise of reasonable care should have known, that the notice or certificate is erroneous or misleading.

The Purchaser shall be under no duty to make any investigation or inquiry as to any statements or other matters contained or referred to in any documents or any instruments delivered to it in accordance with this Regulatory Agreement, but it may receive and accept the same as conclusive evidence of the truth and accuracy of such statements.

Section 10. Sale or Transfer of the Project. The Borrower hereby covenants and agrees not to sell, transfer, or otherwise dispose of the Project, or any portion thereof, except as permitted under the terms of the Loan Agreement. Any attempted sale, transfer, or disposition which would cause or result in the violation of any of these covenants, provisions, reservations, restrictions, charges, or easements shall be null and void ab initio and of no force and effect. Nothing herein shall prohibit the transfer, sale or assignment of the interests in the Borrower or any direct or indirect ownership interests in the Borrower’s members.

Section 11. Term. This Regulatory Agreement and the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for a term and period equal to the Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Note and termination of the Loan Agreement and the Loan if the Qualified Project Period has not expired at the time of such retirement and expiration. Notwithstanding anything in this Regulatory Agreement to the contrary:

(a) The Project may be transferred pursuant to a foreclosure, exercise of power of sale, or deed in lieu of foreclosure, or comparable proceedings without the consent of or fee of any kind payable to the Issuer or compliance with the provisions of this Regulatory Agreement. In connection with any such foreclosure, deed in lieu of foreclosure, or other proceedings, this Regulatory Agreement shall be terminated upon completion of the foreclosure and expiration of the applicable redemption period, or recording of a deed in lieu of foreclosure.

(b) The requirements of this Regulatory Agreement shall terminate and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire or other casualty, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law, or an action of a federal agency after the date of this Regulatory Agreement, which prevents the Issuer and the Purchaser from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Note is retired or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof (provided that this shall be deemed met if the Note has been previously retired); provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, or the delivery of a deed in lieu of foreclosure, or a similar event, the Borrower or any related person (within the meaning of Section 1.103-10(e) of the Treasury Regulations) obtains an ownership interest in the Project for federal income tax purposes.

(c) This Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the Issuer and the Borrower, upon receipt of an opinion of Bond Counsel
to the effect that such termination will not cause interest on the Note to become included in gross income for federal income tax purposes or cause interest on the Note to become included in the net taxable income of individuals, trusts, and estates for State income tax purposes.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver, and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

Section 12. Burden and Benefit. The Issuer and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Borrower’s legal interest in the Project is rendered less valuable thereby. The Issuer and the Borrower hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Low Income Tenants, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the Note was issued. Notwithstanding the foregoing, the Low Income Tenants are not intended to be third-party beneficiaries of this Regulatory Agreement and shall have no rights to enforce any provision herein.

Section 13. Enforcement. If the Borrower defaults in the performance or observance of any covenant, agreement, or obligation of the Borrower set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days after written notice thereof shall have been given by the Issuer or the Purchaser to the Borrower, then the Issuer or the Purchaser may declare an “Event of Default” to have occurred hereunder and, at its option, may take any one or more of the following steps:

(a) by mandamus or other suit, action, or proceeding at law or in equity require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Purchaser hereunder;

(b) have access to and inspect, examine, and make copies of all the books and records of the Borrower pertaining to the Project;

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants, and agreements of the Borrower hereunder; or

(d) with the Purchaser’s consent, declare a default under the Loan, accelerate the indebtedness evidenced by the Loan, and proceed to redeem the Note in accordance with their terms.

Notwithstanding anything to the contrary contained herein, the Issuer and the Purchaser hereby agree that any cure of any default made or tendered by one or more of the Borrower’s members shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

All fees, costs, and expenses of the Purchaser or the Issuer incurred in taking any action pursuant to this Section 13 shall be the sole responsibility of the Borrower and shall be paid to the Purchaser or the Issuer, as the case may be, on demand.

After the Note has been discharged, the Issuer may act on its own behalf to declare an “Event of Default” to have occurred and to take any one or more of the steps specified hereinabove to the same extent and with the same effect as if taken by the Purchaser.
Section 14. The Purchaser and the Issuer. The Purchaser is entering into this Regulatory Agreement in its capacity as the Purchaser under the terms of the Note and the Pledge Agreement. The Issuer may, at all times, assume the Borrower’s compliance with this Regulatory Agreement unless otherwise notified in writing by the Purchaser (but the Purchaser shall have no obligation to so notify the Issuer), or unless the Issuer has actual knowledge of noncompliance. The Purchaser can rely on the accuracy of any certificates, instruments, opinions, or reports delivered to it by the Borrower. It is expected that the Note will be discharged and the Loan Agreement will terminate prior to the expiration of the Qualified Project Period. Following the payment in full and the discharge of the Note and the termination of the Loan Agreement: (i) all obligations, rights, and duties of the Purchaser under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Purchaser will instead be undertaken by the Issuer; (iii) all notices to be delivered to the Purchaser will instead be delivered to the Issuer and all notices to be delivered by the Purchaser will instead be delivered by the Issuer; and (iv) the Purchaser shall no longer be a party to this Regulatory Agreement and shall be considered released from all obligations hereunder.

Section 15. Amendment. The provisions hereof shall not be amended or revised prior to the stated term hereof except by an instrument in writing duly executed by the Issuer and the Borrower, and consented to by the Purchaser as may be required by the Loan Agreement, and duly recorded. The Issuer’s and the Purchaser’s consent to any such amendment or revision (whether or not the Note shall then be outstanding) shall be given only upon receipt of an opinion of Bond Counsel addressed to the Issuer and Purchaser that such amendment or revision will not adversely affect the exemption from federal income taxation of interest on the Note. Neither the Issuer nor the Purchaser shall have a duty to prepare any such consent, amendment, or revision.

Section 16. Right of Access to the Project and Records. The Borrower agrees that during the term of this Regulatory Agreement, the Issuer, the Purchaser, and the duly authorized agents of either of them shall have the right at all reasonable times, and upon reasonable notice of at least twenty-four (24) hours, to enter upon the site of the Project during normal business hours to examine and inspect the Project and to have access to the books and records of the Borrower with respect to the Project, a copy of which shall be maintained at the site of the Project.

Section 17. No Conflict with Other Documents. The Borrower warrants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof.

Section 18. Severability. The invalidity of any clause, part, or provision of this Regulatory Agreement shall not affect the validity of the remaining portions thereof.

Section 19. Notices. All notices to be given pursuant to this Regulatory Agreement shall be in writing and shall be deemed given when sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods or 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:

To the Issuer: City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, MN 55345
Attn: City Manager
Section 20. Governing Law. This Regulatory Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as such laws may be preempted by any federal rules, regulations, and laws.

Section 21. Payment of Fees. Notwithstanding payment of the Loan, the termination of the Loan Agreement, and the defeasance or discharge of the Note, throughout the term of the Qualified Project Period, the Borrower shall continue to pay:

(a) to the Issuer, reimbursement for all reasonable fees and expenses, including, but not limited to, financial advisory and legal fees and expenses necessary for the Issuer’s reviewing and, if necessary, enforcing compliance by the Borrower with the terms of this Regulatory Agreement; and

(b) the fees and expenses of any entity or person designated by the Issuer to perform the review of the Borrower’s compliance with this Regulatory Agreement; provided that such fees and expenses are not duplicative of any fees and expenses paid under subsection (a) above.

Section 22. Limited Liability. All obligations of the Issuer hereunder shall be special, limited obligations of the Issuer, payable solely and only from proceeds of the Note and amounts derived by the Issuer from the Loan and the Loan Agreement.

Section 23. Actions of Issuer. The Issuer shall be entitled to rely conclusively on an opinion of counsel in the exercise or non-exercise of any of the rights or powers vested in the Issuer by virtue of this Regulatory Agreement or any other agreement or instrument executed in connection with the issuance of the Note; it being the intent of the parties hereto that the Issuer, and any and all present and future trustees, members, commissioners, officers, employees, attorneys, and agents of the Issuer shall not incur any financial or pecuniary liability for the exercise or non-exercise of any rights or powers vested in the Issuer by this Regulatory Agreement or any other instrument or agreement executed in connection with the issuance of the Note; or for the performance or nonperformance of any obligation under, or the failure to assert any right, power, or privilege under this Regulatory Agreement, the Note, the Loan Agreement, the Pledge Agreement or any other instrument or agreement executed in connection with the issuance of the Note. If the Issuer’s consent or approval is required under this Regulatory Agreement, or any other
agreement or instrument executed in connection with the issuance of the Note, the Issuer shall be entitled to rely conclusively on an opinion of counsel and shall not be responsible for any loss or damage resulting from any action or inaction in reliance upon such opinion.

Section 24. Counterparts. This Regulatory Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Regulatory Agreement, and, in making proof of this Regulatory Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 25. Recording and Filing. The Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto to be recorded and filed in the real property records of the County, the State, and in such other places as the Issuer may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Issuer, the Borrower, and the Purchaser have caused this Regulatory Agreement to be signed by their respective duly authorized representatives as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By __________________________________________
Its Mayor

By __________________________________________
Its City Manager

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

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

____________________________________________
Notary Public

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

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

____________________________________________
Notary Public
Execution page of the Borrower to the Regulatory Agreement, dated the date and year first written above.

**CHC MINNETONKA AFFORDABLE HOUSING LLC**, a Minnesota limited liability company

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

By: _______________________________
Name: _______________________________
Title: _______________________________

STATE OF MINNESOTA )
) ss
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ___ day of ____________, 2016, by _______________________________, the ____________________ of CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, the managing member of CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company, on behalf of the Borrower.

_______________________________
Notary Public
Execution page of the Purchaser to the Regulatory Agreement, dated the date and year first written above.

BRIDGEWATER BANK

By ________________________________

Its ________________________________

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) ss.

The foregoing instrument was acknowledged before me this ____ day of ____________, 2016,
by ________________________________, the ______________________ of Bridgewater Bank, a
Minnesota banking corporation, on behalf of the Purchaser.

_____________________________________
Notary Public
EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

[Insert legal description]
EXHIBIT B

FORM OF INCOME CERTIFICATION

<table>
<thead>
<tr>
<th>TENANT INCOME CERTIFICATION</th>
<th>Effective Date: ____________________________</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Initial Certification</td>
<td>Move-in Date: ______________________________</td>
</tr>
<tr>
<td>□ Recertification</td>
<td>(MM/DD/YY): ________________________________</td>
</tr>
<tr>
<td>□ Other</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>PART I. DEVELOPMENT DATA</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Property Name: Elmbrooke Apartments</td>
<td>County:</td>
</tr>
<tr>
<td>Address: 5400 Smetana Drive, Minnetonka, Minnesota</td>
<td>BIN #:</td>
</tr>
<tr>
<td></td>
<td>Unit Number:</td>
</tr>
<tr>
<td></td>
<td># Bedrooms:</td>
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</tbody>
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<thead>
<tr>
<th>PART II. HOUSEHOLD COMPOSITION</th>
<th></th>
</tr>
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<tbody>
<tr>
<td>HH Br #</td>
<td>Last Name</td>
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<tr>
<th>PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)</th>
<th></th>
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<tbody>
<tr>
<td>HH Br #</td>
<td>(A) Employment or Wages</td>
</tr>
<tr>
<td>--------</td>
<td>-------------------------</td>
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</tbody>
</table>

| TOTAL | $ | $ | $ | $ |

Add totals from (A) through (D) above TOTAL INCOME (E): $
PART IV. INCOME FROM ASSETS

<table>
<thead>
<tr>
<th>HH Mbr#</th>
<th>(F) Type of Asset</th>
<th>(G) C/I</th>
<th>(H) Cash Value of Asset</th>
<th>(I) Annual Income from Asset</th>
</tr>
</thead>
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TOTALS: $ $

Enter Column (H) Total Passbook Rate if over $5,000 $ ____________ x 2.00 % = (J) Imputed Income $

Enter the greater of the total column I, or J: imputed income TOTAL INCOME FROM ASSETS (K) $

(L) Total Annual Household Income from all sources [Add (E) + (K)] $

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full-time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature ___________________________ (Date) ___________________________

Signature ___________________________ (Date) ___________________________

Signature ___________________________ (Date) ___________________________

PART V. DETERMINATION OF INCOME ELIGIBILITY

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES $ From Item (L) on page 1

Household Meets Income Restriction at:

- 50% 60% 50% 40% 40% 30% 30%

Current Income Limit per Family Size: $ $ $ $Household income exceeds 140% at

RECERTIFICATION ONLY:

Current Income Limit x 140% $
<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
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</thead>
<tbody>
<tr>
<td>Household Income at Move-in</td>
<td>$______</td>
</tr>
<tr>
<td>recertification:</td>
<td>□ Yes □ No</td>
</tr>
<tr>
<td>Household Size at Move-in:</td>
<td>_______</td>
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</tbody>
</table>
PART VI. RENT

Tenant Paid Rent $

Utility Allowance $

GROSS RENT FOR UNIT: $ Tenant paid rent plus Utility Allowance and other non-optional charges

Maximum Rent Limit for this unit: $

PART VII. STUDENT STATUS

ARE ALL OCCUPANTS FULL-TIME STUDENTS?

☐ yes  ☐ no

If yes, enter student explanation** (also attach documentation)

Student explanation:

1. TANF assistance
2. Job training program
3. Single parent/dependent child
4. Married/joint return*

*Exception for married/joint return is the only exception available for units necessary to qualify tax-exempt bonds.

PART VIII. PROGRAM TYPE

Mark the program(s) listed below (a. through e.) for which this household’s unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification

a. Tax Credit ☐ b. HOME ☐ c. Tax Exempt ☐ d. AHDP ☐ e. __________ (Name of Program)

See Part V above.

<table>
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<tr>
<th>Income Status</th>
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<th>Income Status</th>
<th>Income Status</th>
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<tr>
<td>≤ 60% AMGI</td>
<td>60% AMGI</td>
<td>≤ 80% AMGI</td>
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<tr>
<td>≤ 80% AMGI</td>
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<td>0I **</td>
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</tr>
</tbody>
</table>

** Upon recertification, household was determined over income (OI) according to eligibility requirements of the program(s) marked above.

SIGNATURE OF OWNER / REPRESENTATIVE
Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

______________________________________________________________
SIGNATURE OF OWNER / REPRESENTATIVE                     DATE
INSTRUCTIONS FOR COMPLETING
TENANT INCOME CERTIFICATION

This form is to be completed by the owner or an authorized representative.

Part I – Development Data

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

Move-in Date
Enter the date the tenant has or will take occupancy of the unit.

Effective Date
Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.

Property Name
Enter the name of the development.

County
Enter the county (or equivalent) in which the building is located.

BIN #
Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).

Address
Enter the unit number.

Unit Number
Enter the unit number.

# Bedrooms
Enter the number of bedrooms in the unit.

Part II – Household Composition

List all occupants of the unit. State each household member’s relationship to the head of the household by using one of the following coded definitions:

H  Head of household
A  Adult co-tenant
C  Child
L  Live-in caretaker
S  Spouse
O  Other family member
F  Foster child
N  None of the above

Enter the date of birth, student status, and Social Security number or alien registration number for each occupant.

If there are more than seven occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.

Part III – Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.
From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the 12 months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List the respective household member number from Part II.

| Column (A) | Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business. |
| Column (B) | Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc. |
| Column (C) | Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.) |
| Column (D) | Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household. |
| Row (E) | Add the totals from columns (A) through (D) above. Enter this amount. |

**Part IV – Income from Assets**

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the 12 months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

| Column (F) | List the type of asset (i.e., checking account, savings account, etc.) |
| Column (G) | Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification). |
| Column (H) | Enter the cash value of the respective asset. |
| Column (I) | Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate). |
| TOTALS | Add the total of Column (H) and Column (I), respectively. |

If the total in Column (H) is greater than $5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.

| Row (K) | Enter the Greater of the total in Column (I) or (J) |
| Row (L) | Total Annual Household Income from All Sources  Add (E) and (K) and enter the total |
After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than five days prior to the effective date of the certification.

**Part V – Determination of Income Eligibility**

- **Total Annual Household Income from all sources**: Enter the number from item (L).
- **Current Income Limit per Family Size**: Enter the Current Move-in Income Limit for the household size.
- **Household income at move-in Household size at move-in**: For recertifications only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.
- **Household Meets Income Restriction**: Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.
- **Current Income Limit x 140%**: For recertification only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.

**Part VI – Rent**

- **Tenant Paid Rent**: Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).
- **Rent Assistance**: Enter the amount of rent assistance, if any.
- **Utility Allowance**: Enter the utility allowance. If the owner pays all utilities, enter zero.
- **Other non-optional charges**: Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
- **Gross Rent for Unit**: Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.
- **Maximum Rent Limit for this unit**: Enter the maximum allowable gross rent for the unit.
- **Unit Meets Rent Restriction at ___%**: Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.
Part VII – Student Status

If all household members are full-time* students, check “yes.” If at least one household member is not a full-time student, check “no.”

If “yes” is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

* Full time is determined by the school the student attends.

Part VIII – Program Type

Mark the program(s) for which this unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit See Part V above.

HOME If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household’s designation.

Tax Exempt If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household’s designation.

AHDP If the property participates in the Affordable Housing Disposition Program (AHDP), and this household’s unit will count towards the set-aside requirements, mark the appropriate box indicating the household’s designation.

Other If the property participates in any other affordable housing program, complete the information as appropriate.

SIGNATURE OF OWNER / REPRESENTATIVE

It is the responsibility of the owner or the owner’s representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well-trained in tax credit compliance.

These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.
EXHIBIT C
CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

__________, 20__

TO: City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, MN 55345
Attn: City Manager

and (prior to the discharge of the Note (hereinafter defined))

Bridgewater Bank
4400 Excelsior Boulevard
St. Louis Park, MN 55416
Attn: Senior Vice President, Commercial Lending

Re: Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Note”)

The undersigned, an authorized representative for CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Owner”), hereby certifies, represents, and warrants that:

1. The Owner owns the multifamily housing project located at 5400 Smetana Drive, Minnetonka, Minnesota commonly known as the Elmbrooke Apartments (the “Project”).

2. The undersigned and the Owner have read and are thoroughly familiar with the provisions of (1) the Regulatory Agreement, dated August ___, 2016 (the “Regulatory Agreement”), between the Owner, the City of Minnetonka, Minnesota (the “Issuer”), and Bridgewater Bank (the “Purchaser”); and (2) the Loan Agreement, dated as of August 1, 2016, between the Owner and the Issuer with respect to the Series 2016A Bonds, and the Loan Agreement, dated as of August 1, 2016, between the Owner and the Issuer with respect to the Series 2016B Bonds (together, the “Loan Agreement”). The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Note.

3. A review of the activities of the Owner and of the Owner’s performance under the Regulatory Agreement and the Loan Agreement during the year ending ____ has been made under the supervision of the undersigned.

4. The Project’s Qualified Project Period commenced on _________, ____ (the date on which ten percent (10%) of the residential units in the Project were occupied), and will end on the latest of:

(i) _________, ____ (the date which is fifteen (15) years after the date on which fifty percent (50%) of the residential units in the Project were occupied);
(ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding, or

(iii) the date on which any assistance provided with respect to the Project under section 8 of the United States Housing Act of 1937 terminates.

5. As of the date of this Certificate, the following percentages of completed residential units in the Project are (i) occupied by Low Income Tenants or (ii) currently vacant and being held available for occupancy by Low Income Tenants and have been so held continuously since the date a Low Income Tenant vacated such unit, as indicated:

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<tr>
<th>Status</th>
<th>Percentage</th>
<th>Units</th>
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<tr>
<td>Occupied by Low Income Tenants</td>
<td>_____</td>
<td>Nos.</td>
</tr>
<tr>
<td>Continuously held vacant for occupancy by Low Income Tenants since last occupied by Low Income Tenants</td>
<td>_____</td>
<td>Nos.</td>
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6. At no time since the date of filing of the last Continuing Program Compliance Certificate (or since the issuance of the Note, if this is the first such certificate) has less than nineteen (19) units (representing forty percent (40%) of the completed units in the Project) been occupied by or were last occupied by Low Income Tenants.

7. As of the date of this Certificate, at least _____% of the units in the Project are (i) occupied by persons or families with Adjusted Income which does not exceed _____% of the Median Income for the Area adjusted for household size; or (ii) held vacant for occupancy for persons or families with Adjusted Income which does not exceed _____% of the Median Income for the Area adjusted for household size. Project Units occupied or held vacant for persons or families with Adjusted Income which does not exceed _____% of the Median Income for the Area adjusted for household size include Unit numbers _______________________________.

8. At all times since the date of filing of the last Continuing Program Compliance Certificate the rent on at least twenty percent (20%) of the units in the Project has been equal to or less than applicable area fair market rents or exception fair market rents for existing housing as established by the federal Department of Housing and Urban Development from time to time.

9. To the knowledge of the undersigned, after due inquiry, all units were rented or available for rental on a continuous basis during the immediately preceding year to members of the general public, and the Owner is not now and has not been in default under the terms of the Regulatory Agreement and the Loan Agreement and, to the knowledge of the undersigned, no Determination of Taxability has occurred with respect to the Note.

10. [CHOOSE ONE: None/One or more] of the Tenants in the Project are currently receiving assistance under Section 8 of the United States Housing Act of 1937.

11. Unless otherwise expressly provided herein or unless the context requires otherwise, the capitalized terms used but not defined herein shall have the meaning assigned to such terms in the Regulatory Agreement.
12. The Owner has not transferred any interest in the Project since the date of submission of the Continuing Program Compliance Certificate last submitted to the Purchaser and the Issuer with respect to the Project. *(If the Owner has transferred any interest in the Project, such transfer should be detailed here.)*

Signature page of the Borrower to the Certificate of Continuing Program Compliance.

Dated: _____________, ________.

**CHC MINNETONKA AFFORDABLE HOUSING LLC**, a Minnesota limited liability company

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

By: 
Name: ____________________________  
Title: ____________________________
REGULATORY AGREEMENT
(GOLDEN VALLEY TOWNHOMES)

between

CITY OF MINNETONKA, MINNESOTA,
as Issuer

CHC MINNETONKA AFFORDABLE HOUSING LLC,
as Borrower

and

BRIDGEWATER BANK,
as Purchaser

Dated August __, 2016

Relating to:

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

This Instrument Drafted by:
Kennedy & Graven, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN  55402
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EXHIBIT C — CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE ...................................................... C-1
REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT, dated August ___, 2016 (the “Regulatory Agreement”), is between the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “Issuer”), CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company (the “Borrower”) and the owner of the property described herein, and BRIDGEWATER BANK, a Minnesota banking corporation (the “Purchaser”).

RECITALS

The Issuer is authorized to issue bonds to provide financing for multifamily housing developments in accordance with the terms of Minnesota Statutes, Chapter 462C, as amended (the “Act”).

The Issuer has agreed to issue its Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Note”), in the original aggregate principal amount of $11,500,000, a portion of the proceeds of which will be used by the Borrower for the purpose of financing the acquisition and substantial rehabilitation of six (6) existing affordable townhome units located at 2100 Douglas Drive North and two (2) existing affordable townhome units 3354 Lilac Drive North, Golden Valley, Minnesota, on the real property described on EXHIBIT A attached hereto (each a “Project,” and together the “Projects”).

To finance the Project, the Issuer will loan the proceeds derived from the sale of the Note to the Borrower pursuant to a Loan Agreement, dated as of August 1, 2016 (the “Loan Agreement”), between the Issuer and the Borrower, and the Issuer will assign its rights under the Loan Agreement to the Purchaser (except for certain unassigned rights set forth in Section 7.9 thereof) pursuant to the Pledge Agreement, dated as of August 1, 2016, between the Issuer and the Purchaser.

For good and valuable consideration, the Borrower, the Purchaser, and the Issuer have determined to enter into this Regulatory Agreement in order to impose on the Project certain requirements of the Internal Revenue Code of 1986, as amended, and of the Act applicable to the Project.

NOW, THEREFORE, the Borrower, the Purchaser, and the Issuer do hereby impose upon the Project the following covenants, restrictions, charges, and easements, which shall run with the land and shall be binding and a burden upon the Project and all portions thereof, and upon any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein, for the length of time that this Regulatory Agreement shall be in full force and effect:

Section 1. Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms shall have the respective meanings set forth below for the purposes hereof. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Loan Agreement.

“Act” means Minnesota Statutes, Chapter 462C, as amended.
“Adjusted Income” means the adjusted income of a person (together with the adjusted income of all persons of the age of 18 years or older who intend to reside with such person in one Dwelling Unit), as calculated in the manner prescribed under Section 142(d)(2)(B) of the Code.

“Bond Counsel” means Kennedy & Graven, Chartered, or any other attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds and other obligations issued by states and political subdivisions thereof, duly admitted to practice law before the highest court of any state of the United States of America.

“Borrower” means CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company, and its lawful successors and assigns to the extent permitted by the Loan Agreement.

“Certificate of Continuing Program Compliance” means the document substantially in the form set forth in EXHIBIT C attached hereto.

“Code” means the Internal Revenue Code of 1986, as amended, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Note.

“County” means Hennepin County in the State.

“Dwelling Units” means the units of multifamily residential rental housing comprising the Projects.

“Event of Default” has the meaning specified in Section 13 hereof.

“Functionally Related and Subordinate” means and includes facilities for use by tenants, for example, laundry facilities, parking areas, and recreational facilities, provided that the same is of a character and size commensurate with the character and size of the Projects.

“Housing Act” means the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq.

“Issuer” means 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.

“Loan” means the loan of the proceeds of the Note pursuant to the Loan Agreement to provide financing for the Project.

“Loan Agreement” means the Loan Agreement, dated as of August 1, 2016, between the Issuer and the Borrower, as it may be amended and supplemented from time to time.

“Low Income Tenants” means persons or families with Adjusted Income which does not exceed sixty percent (60%) of the Median Income for the Area adjusted for household size. In no event will the occupants of a unit be considered to be Low Income Tenants if all of such occupants are students (as defined in Section 152(f)(2) of the Code), unless the unit is occupied:

(i) by an individual who is (A) a student and receiving assistance under Title IV of the Social Security Act, (B) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under Part B or Part E of
Title IV of the Social Security Act, or (C) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, State, or local laws; or

(ii) entirely by full-time students if such students are (A) single parents and their children and such parents are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual other than a parent of such children, or (B) married and entitled to file a joint return.

“Low Income Units” means the Dwelling Units in the Projects designated for occupancy by Low Income Tenants pursuant to Section 4(a) hereof.

“Median Income for the Area” means the median yearly income for households of an applicable size in the applicable Primary Metropolitan Statistical Area as most recently determined by the Secretary of Housing and Urban Development under Section 8(f)(3) of the Housing Act, or, if such figures are no longer available, the method of calculation is substantially altered, or the programs under Section 8(f) are terminated, the Issuer shall provide the Borrower with another income determination that is reasonably similar to the method used by the Secretary prior to such termination.

“Note” means the Issuer’s Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016, issued in the original aggregate principal amount of $11,500,000.

“Pledge Agreement” means the Pledge Agreement, dated as of August 1, 2016, between the Issuer and the Purchaser, as it may be amended and supplemented from time to time.

“Project” means, individually, (i) the approximately six (6) existing affordable townhome units located at 2100 Douglas Drive North, Golden Valley, Minnesota; or (ii) the approximately two (2) existing affordable townhome units located at 3354 Lilac Drive North, Golden Valley, Minnesota.

“Projects” means, collectively, the approximately six (6) existing affordable townhome units located at 2100 Douglas Drive North and the approximately two (2) existing affordable townhome units located at 3354 Lilac Drive North, Golden Valley, Minnesota, which will be acquired and substantially rehabilitated with a portion of the proceeds of the Note.

“Purchaser” means Bridgewater Bank, a Minnesota banking corporation, or any successor or assign.

“Qualified Project Period” means, for each Project, the period beginning on the later of the date of issuance of the Note and the first day on which ten percent (10%) of the Dwelling Units in each Project are occupied and ending on the latest of:

(i) the date which is fifteen (15) years after the date on which fifty percent (50%) of the Dwelling Units in each Project are occupied;

(ii) the first day on which no tax-exempt private activity bond issued with respect to either Project is outstanding; or

(iii) the date on which any assistance provided with respect to each Project under Section 8 of the United States Housing Act of 1937 terminates.
“Regulatory Agreement” means this Regulatory Agreement, dated August ___, 2016, between the Issuer, the Borrower, and the Purchaser, together with any amendments or supplements hereto.

“Section 474A Penalty” means the penalty described in Minnesota Statutes, Section 474A.047, subdivision 3, as applied to the Projects.

“State” means the State of Minnesota.

“Treasury Regulations” means the regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time or pursuant to any predecessor statute to the Code.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement words of the masculine, feminine or neuter gender shall be construed to include each other gender when appropriate, and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all of the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

Section 2. Representations by the Borrower. The Borrower covenants, represents, and warrants that:

(a) The Borrower is a limited liability company organized and existing under the laws of the State. The Borrower is in good standing in the State and has duly authorized, by proper action, the execution and delivery of this Regulatory Agreement. The Borrower is duly authorized by the laws of the State to transact business in the State and to perform all of its duties hereunder.

(b) Neither the execution and delivery of this Regulatory Agreement or any other document in connection with the financing of the Projects, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the terms and conditions hereof and thereof conflicts with or results in a breach of any of the terms, conditions, or provisions of any agreement or instrument to which the Borrower is now a party or by which it is bound or constitutes a default (with due notice or the passage of time or both) under any of the foregoing or results in the creation or imposition of any prohibited lien, charge, or encumbrance whatsoever upon any of the property or assets of the Borrower under the terms of any instrument or agreement to which the Borrower is now a party or by which it is bound.

(c) The execution, delivery, and performance of this Regulatory Agreement and all other documents to be delivered by the Borrower in connection with the consummation of the transactions contemplated hereby will not conflict with, or constitute a breach of or default under, any indenture, mortgage, deed of trust, lease, commitment, agreement, or other instrument or obligation to which the Borrower is a party or by which the Borrower or any of its property is bound, or under any law, rule, regulation, judgment, order, or decree to which the Borrower is subject or by which the Borrower or any of its property is bound.

(d) To the best of the Borrower’s knowledge, there is no action, suit, proceeding, inquiry, or investigation by or before any governmental agency, public board, or body pending or threatened against the Borrower (nor to the best of its knowledge is there any basis therefor), which:

(i) affects or seeks to enjoin, prohibit, or restrain the issuance, sale, or delivery of the Note or the use of the proceeds of the Note to finance the acquisition or construction, rehabilitation, and equipping of the Projects or the execution and delivery of this Regulatory Agreement,
(ii) affects or questions the validity or enforceability of the Note or this Regulatory Agreement,

(iii) questions the tax-exempt status of the Note, or

(iv) questions the power or authority of the Borrower to own, acquire, substantially rehabilitate, or operate the Projects or to execute, deliver, or perform the Borrower’s obligations under this Regulatory Agreement.

(e) The Projects will be located wholly within the boundaries of the City of Golden Valley, Minnesota.

(f) On and after the date on which the Note is executed and delivered to the Purchaser, the Borrower will have title to the Projects sufficient to carry out the purposes of this Regulatory Agreement, and such title shall be in and remain in the name of the Borrower except as otherwise permitted by this Regulatory Agreement.

(g) Both Projects consist and will consist of those facilities described herein, which generally are described as residential townhome buildings and related facilities situated on the real property described in EXHIBIT A attached hereto. The Borrower shall make no changes to either Project or to the operation thereof which would affect the qualification of either Project under the Act or impair the exemption from federal income taxation of the interest on the Note. The Borrower will utilize and operate both Projects as multifamily rental housing projects during the term of the Note in accordance with all applicable federal, State, and local laws, rules, and regulations applicable to each Project.

(h) The Borrower has obtained, or will obtain on or before the date required therefor, all necessary certificates, approvals, permits, and authorizations with respect to the operation of the Projects.

(i) The Borrower does not and will not own the Note. The Borrower acknowledges and understands that during any period of time when the Borrower owns the Note, the interest on the Note shall not be tax-exempt pursuant to Section 147(a) of the Code.

(j) The Borrower does not own any buildings or structures which are proximate to either Project other than those buildings or structures which comprise each Project, which are being financed pursuant to a common plan under which the Projects are also being financed.

(k) The Borrower will incur rehabilitation expenditures (as defined in Section 147(d)(3) of the Code) with respect to each Project in an amount of at least fifteen percent (15%) of the acquisition cost of each Project financed with the proceeds of the Note within two years from the later of (i) the date the Borrower acquires each Project; or (ii) the date of issuance of the Note.

(l) The statements made in the various certificates delivered by the Borrower to the Issuer or the Purchaser on the date of issuance of the Note are true and correct.

Section 3. Qualified Residential Rental Project. The Borrower shall acquire, rehabilitate, own, manage, and operate each Project as a “qualified residential rental project,” as such phrase is utilized in Section 142(d) of the Code, on a continuous basis during the Qualified Project Period. To that end, the Borrower hereby represents, warrants, and covenants as follows:
(a) that a qualified residential rental project will be acquired and substantially rehabilitated on the property described in EXHIBIT A hereto, and the Borrower shall own, manage and operate each Project as a qualified residential rental project containing Dwelling Units and facilities Functionally Related and Subordinate to such Dwelling Units, in accordance with Section 142(a)(7) and Section 142(d) of the Code and all applicable Treasury Regulations promulgated thereunder, as the same may be amended from time to time;

(b) that all of the Dwelling Units of each Project will be similarly constructed and each Dwelling Unit in each Project will contain complete facilities for living, sleeping, eating, cooking, and sanitation for a single person or a family;

(c) that:

   (i) none of the Dwelling Units in either Project shall at any time in the future be utilized on a transient basis;

   (ii) that none of the Dwelling Units in either Project shall at any time in the future be leased or rented for a period of less than thirty (30) days; and

   (iii) that neither the Projects nor any portion thereof shall be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or trailer park or trailer court for use on a transient basis, or by a cooperative housing corporation (as defined in Section 216(b)(1) of the Code);

(d) that, following the substantial rehabilitation thereof, once available for occupancy:

   (i) each Dwelling Unit in each Project must be rented or available for rental on a continuous basis to members of the general public during the Qualified Project Period; and

   (ii) the Borrower shall not give preference in renting Dwelling Units in either Project to any particular class or group of persons, other than Low Income Tenants as provided herein or as otherwise permitted by law;

(e) that the Dwelling Units in each Project shall be leased and rented to members of the general public in compliance with this Regulatory Agreement, except for any Dwelling Unit for a resident manager or maintenance personnel;

(f) that each Project consists of one or more discrete edifices and other man-made construction, each consisting of an independent foundation, outer walls and roof, all of which will be (i) owned by the same person for federal tax purposes, (ii) located on a common tract of land or two or more parcels of land which are contiguous except for being separated only by a road, street, stream, or a similar property and (iii) financed by the Loan or otherwise pursuant to a common plan of financing, and which consists entirely of:

   (i) units which are similar in quality and type of construction and amenities; and

   (ii) property Functionally Related and Subordinate in purpose and size to each Project, e.g., parking areas, laundries, swimming pools, tennis courts, and other recreational facilities (none of which may be unavailable to any person because such person is a Low Income Tenant) and other facilities which are reasonably required for each Project, e.g., heating and
cooling equipment, trash disposal equipment, or units for residential managers or maintenance personnel;

(g) that no portion of either Project shall be used to provide any health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;

(h) that neither Project shall include a Dwelling Unit in a building where all Dwelling Units in such building are not also included in either Project;

(i) that the Borrower shall not convert either Project to condominium or cooperative ownership;

(j) that no Dwelling Unit in either Project shall be occupied by the Borrower (or any person related to the Borrower within the meaning of Section 147(a)(2) of the Code) at any time unless such person resides in a Dwelling Unit in a building or structure which contains at least five Dwelling Units and unless the resident of such Dwelling Unit is a resident manager or other necessary employee (e.g., maintenance and security personnel);

(k) that the Note will not be “federally guaranteed,” as defined in Section 149(b) of the Code;

(l) that each Project shall at all times be used and operated as a “multifamily housing development,” as defined in the Act; and

(m) that the Borrower shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g., AFDC or SSI), physical disability, national origin, or marital status in the rental, lease, use, or occupancy of the Projects or in connection with the employment or application for employment of persons for the operation and management of each Project.

Section 4. Low Income Tenants. Pursuant to the requirements of the Act and Section 142(d) of the Code, the Borrower hereby represents, warrants, and covenants as follows:

(a) Upon completion of the substantial rehabilitation of each Project, at least forty percent (40%) of the units in each Project will be occupied or held for occupancy by Low Income Tenants. Throughout the Qualified Project Period, not less than forty percent (40%) of the completed units in each Project shall be continuously occupied or held for occupancy by Low Income Tenants. The Borrower will designate the Low Income Units and will make any revisions to such designations as necessary to comply with the applicable provisions of the Code and the Treasury Regulations. As set forth in subsection (e) below, the Borrower shall advise the Issuer and the Purchaser by delivery of a certificate in writing of the status of the occupancy of each Project with respect to Low Income Tenants on an annual basis for the term of this Regulatory Agreement. An Annual Certification of a Residential Rental Project, Form 8703 (Rev. April 2011), or successor form, shall be prepared annually by the Borrower and filed with the United States Secretary of the Treasury pursuant to Section 142(d)(7) of the Code (currently with the Internal Revenue Service Center, Ogden, Utah 84201), with a copy to be filed by the Borrower with the Issuer and the Purchaser. The percentage of units is measured by number of units in each Project, and not square footage of units.

For purposes of satisfying the occupancy requirements set forth above, a unit occupied by a person or family who at the commencement of their occupancy qualified as a Low Income Tenant shall be treated as occupied by a Low Income Tenant until such time as any recertification of such tenant’s
income in accordance with subsections (c) and (h) below demonstrates that such tenant’s income exceeds one hundred forty percent (140%) of the income limitation applicable to Low Income Tenants.

A unit occupied by a Low Income Tenant shall be deemed, upon the termination of such tenant’s occupancy, to be continuously occupied by a Low Income Tenant until reoccupied, other than for a temporary period (not to exceed sixty (60) days), at which time the character of the unit shall be redetermined.

(b) The Borrower will notify the Issuer on an annual basis of any vacancy of any Low Income Units.

(c) The Borrower will obtain, complete, and maintain on file income certifications from each Low Income Tenant, obtained immediately prior to the initial occupancy of such tenant in each Project, and thereafter re-obtain in any year in which a unit in each Project is occupied by a new resident whose income exceeds the applicable income limit, income certifications (based upon their then current income), from each Low Income Tenant, substantially in the form of the income certification set forth in EXHIBIT B hereto or another form approved by Bond Counsel (the “Income Certification”) and will provide such additional information as may be required by Section 142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Treasury Regulations now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service applicable to the Note. Such Income Certification shall be obtained prior to initial occupancy. If requested by the Purchaser or Issuer, a copy of such Income Certification shall be filed with the Purchaser and the Issuer prior to occupancy by the tenant whenever possible but in no event more than one month after initial occupancy by the tenant. A copy of each re-certification of income shall be attached to each report filed with the Issuer and the Purchaser pursuant to subsection (a) above. The Borrower shall make a good-faith effort to verify that the income reported by an applicant in an income certification is accurate by taking at least one of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period, (2) obtain an income tax return for the most recent tax year, (3) conduct a credit or similar search, (4) obtain an income verification form from the applicant’s current employer, (5) obtain an income verification form from the Social Security Administration if the applicant receives assistance from such agency, or (6) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. If the Low Income Tenant is a Section 8 Certificate Holder, the Borrower shall retain a copy of the certificate or voucher for verification of income in lieu of an income verification.

The Borrower understands that failure to file the Annual Certification of a Residential Rental Project, Form 8703 (Rev. April 2011), or successor form, for each Project as required by Section 142(d)(7) of the Code at the times stated therein may subject it to the penalty described in Section 6652(j) of the Code.

(d) The Borrower will maintain complete and accurate records pertaining to the Low Income Units and will permit, upon reasonable prior notice, any duly authorized representative of the Issuer, the Purchaser, the Department of the Treasury, or the Internal Revenue Service to inspect the books and records of the Borrower pertaining to each Project, including those records pertaining to the occupancy of the Low Income Units. This section is not intended to create any additional duties to inspect records.

(e) The Borrower will prepare and submit to the Issuer and the Purchaser, on or before May 1 of each year during the Qualified Project Period, beginning the first May 1 following commencement of the Qualified Project Period, a Continuing Program Compliance Certificate in the form of EXHIBIT C attached hereto and executed by the Borrower, and, if requested by the Purchaser or Issuer the Income Certifications described in subsection (c) above.
(f) The Borrower, upon becoming aware of an Event of Default, will notify the Issuer and
the Purchaser, in writing, of the occurrence of any such Event of Default hereunder or any event which,
with the passage of time or service of notice, or both, would constitute an Event of Default hereunder,
specifying the nature and period of existence of such event and the actions being taken or proposed to be
taken with respect thereto. Such notice shall be given promptly and in no event longer than ten (10)
Business Days after the Borrower receives notice or gains knowledge of the occurrence of any such event.
The Borrower further agrees that it will give prompt written notice to the Issuer and the Purchaser if
insurance proceeds or condemnation awards are received with respect to either Project and are not used to
repair or replace either Project, which notice shall state the amount of such proceeds or award.

(i) Except as provided in clause (ii) below, the Borrower shall accept as tenants on
the same basis as all other prospective tenants Low Income Tenants who are recipients of federal
certificates for rent subsidies pursuant to the existing program under Section 8 of the Housing Act
or its successor and shall not apply selection criteria to Section 8 certificate/voucher holders that
are more burdensome than the criteria applied to all other prospective tenants.

(ii) The Borrower agrees to modify the leases for units in each Project as necessary
to allow the rental of Low Income Units to Section 8 certificate/voucher holders.

(g) Each lease pertaining to a Low Income Unit shall contain a provision to the effect that the
Borrower has relied on the income certification and supporting information supplied by the Low Income
Tenant in determining qualification for occupancy of the Low Income Unit and that any material
misstatement in such certification (whether or not intentional) will be cause for immediate termination of
such lease.

(h) Throughout the Qualified Project Period, the Borrower shall re-certify each Low Income
Tenant’s income on or before the anniversary of the Low Income Tenant’s tenancy, in any year in which
a unit in either Project is occupied by a new resident whose income exceeds the applicable income limit,
by obtaining a completed Income Certification. In the event the recertification demonstrates that any such
tenant’s household income exceeds one hundred forty percent (140%) of the applicable income limit, the
Borrower shall hold the next available unit or units of comparable or smaller size in each Project available
for rental by new Low Income Tenants.

The Borrower in its sole discretion may notify, in writing, each tenant who is no longer a Low
Income Tenant of such fact, and that the rent of such tenant(s) is subject to increase thirty (30) days after
receipt of such notice. The Borrower shall be entitled to so increase any such tenant’s rent only if
Borrower complies with any law applicable thereto and only after the Borrower has rented the next
available unit or units in either Project on a one-for-one basis to a Low Income Tenant, or holds units
vacant and available for occupancy by Low Income Tenants.

The Borrower agrees to inform all prospective Low Income Tenants of the requirements for
recertification of income and of the provisions of the preceding paragraph.

Section 5. Restrictions Imposed by Minnesota Statutes, Chapter 474A. Because the Note is
issued by the Issuer as a residential rental project bond, as defined in Minnesota Statutes, Chapter 474A,
as amended (“Chapter 474A”), and has received an allocation of tax-exempt bonding authority pursuant
to applicable provisions of Chapter 474A, the restrictions imposed by Chapter 474A apply to each Project
as described below.
(a) In addition to any other restrictions on rent or the income of tenants set forth in this Regulatory Agreement, during the Qualified Project Period, the Borrower shall restrict rents on at least twenty percent (20%) of the units in each Project (which shall consist of the same units as meet the requirements of Section 4) to an amount not exceeding the lesser of: (1) thirty percent (30%) of the adjusted income of a family whose gross income equals sixty percent (60%) of the median family income as most recently established by the United States Department of Housing and Urban Development for the Minneapolis/St. Paul standard metropolitan statistical area, as adjusted for family size; or (2) the area fair market rents or exception fair market rents, as applicable, for existing housing as established by the federal Department of Housing and Urban Development from time to time, which units shall be occupied, or held for occupancy, by Low Income Tenants.

(b) The annual certifications required to be made by the Borrower hereunder shall conform to the requirements of Section 474A.047, subdivision 3, and the Issuer shall have the authority to impose upon the Borrower any and all penalties described in Section 474A.047, subdivision 3, from time to time, in addition to any remedies otherwise available under this Regulatory Agreement.

(c) The Borrower must satisfy the requirements of Section 474A.047, subdivision 1(a), during the Qualified Project Period. The Borrower must annually certify to the Issuer over the term of this Regulatory Agreement that the rental rates for the rent-restricted units are within the limitations under Section 474A.047, subdivision 1(a). The Issuer may request individual certification of the income of residents of the income-restricted units. The Commissioner of Minnesota Management & Budget may request from the Issuer a copy of the annual certification prepared by the Borrower. The Commissioner of Minnesota Management & Budget may require the Issuer to request individual certification of all residents of the income-restricted units.

Section 6. Covenants Run With the Land. The Borrower hereby declares its express intent that the covenants, restrictions, charges, and easements set forth herein shall be deemed covenants running with the land and shall, except as otherwise provided in this Regulatory Agreement, pass to and be binding upon the Borrower’s successors in title including any purchaser, grantee, owner, or lessee of any portion of the Projects and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Projects and any other person or entity having any right, title, or interest therein. Except as otherwise provided in this Regulatory Agreement, each and every contract, deed, or other instrument hereafter executed covering or conveying the Projects or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges, and easements contained herein; provided, however, that any such contract, deed, or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed, or other instrument.

Section 7. Indemnification. The Borrower hereby covenants and agrees that it shall indemnify and hold harmless the Issuer and its officers, agents, and employees (the “Indemnified Parties”) and the Purchaser and its officers, agents, members, directors, officials, and employees as provided in the Loan Agreement. All provisions of the Loan Agreement relating to indemnification are incorporated by reference herein and are considered provisions of this Regulatory Agreement, as if expressly set out herein.

Section 8. Consideration. The Issuer has issued the Note in part to provide funds to make the Loan to finance the acquisition and substantial rehabilitation of the Projects all for the purpose, among others, of inducing the Borrower to acquire, substantially rehabilitate, and operate the Projects. In consideration of the issuance of the Note by the Issuer, the Borrower has entered into this Regulatory Agreement.
Agreement and has agreed to restrict the uses to which each Project can be put on the terms and conditions set forth herein.

Section 9. Reliance. The Issuer and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Note and in the exemption from federal income taxation of the interest on the Note. In performing their duties and obligations hereunder and under the Pledge Agreement, the Issuer and the Purchaser may rely upon statements and certificates of the Borrower and the tenants and upon audits of the books and records of the Borrower pertaining to each Project. In addition, the Issuer and the Purchaser may consult with counsel, and the written opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer or the Purchaser hereunder in good faith and in conformity with such written opinion. A copy of any such opinion shall be furnished by the Issuer or the Purchaser to the Borrower upon written request. In determining whether any default or lack of compliance by the Borrower exists under this Regulatory Agreement, the Issuer or the Purchaser shall not be required to conduct any investigation into or review of the operations or records of the Borrower and may rely solely on any notice or certificate delivered to the Issuer or the Purchaser by the Borrower with respect to the occurrence or absence of a default unless it knows, or in the exercise of reasonable care should have known, that the notice or certificate is erroneous or misleading.

The Purchaser shall be under no duty to make any investigation or inquiry as to any statements or other matters contained or referred to in any documents or any instruments delivered to it in accordance with this Regulatory Agreement, but it may receive and accept the same as conclusive evidence of the truth and accuracy of such statements.

Section 10. Sale or Transfer of the Projects. The Borrower hereby covenants and agrees not to sell, transfer, or otherwise dispose of either Project, or any portion thereof, except as permitted under the terms of the Loan Agreement. Any attempted sale, transfer, or disposition which would cause or result in the violation of any of these covenants, provisions, reservations, restrictions, charges, or easements shall be null and void ab initio and of no force and effect. Nothing herein shall prohibit the transfer, sale or assignment of the interests in the Borrower or any direct or indirect ownership interests in the Borrower’s members.

Section 11. Term. This Regulatory Agreement and the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for a term and period equal to the Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Note and termination of the Loan Agreement and the Loan if the Qualified Project Period has not expired at the time of such retirement and expiration. Notwithstanding anything in this Regulatory Agreement to the contrary:

(a) The Projects may be transferred pursuant to a foreclosure, exercise of power of sale, or deed in lieu of foreclosure, or comparable proceedings without the consent of or fee of any kind payable to the Issuer or compliance with the provisions of this Regulatory Agreement. In connection with any such foreclosure, deed in lieu of foreclosure, or other proceedings, this Regulatory Agreement shall be terminated upon completion of the foreclosure and expiration of the applicable redemption period, or recording of a deed in lieu of foreclosure.

(b) The requirements of this Regulatory Agreement shall terminate and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire or other casualty, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law, or an action of a federal agency after the date of this Regulatory Agreement, which prevents the Issuer and the Purchaser from enforcing such provisions, or condemnation
or a similar event, but only if, within a reasonable period, either the Note is retired or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof (provided that this shall be deemed met if the Note has been previously retired); provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, or the delivery of a deed in lieu of foreclosure, or a similar event, the Borrower or any related person (within the meaning of Section 1.103-10(e) of the Treasury Regulations) obtains an ownership interest in either Project for federal income tax purposes.

(c) This Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the Issuer and the Borrower, upon receipt of an opinion of Bond Counsel to the effect that such termination will not cause interest on the Note to become included in gross income for federal income tax purposes or cause interest on the Note to become included in the net taxable income of individuals, trusts, and estates for State income tax purposes.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver, and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

Section 12. Burden and Benefit. The Issuer and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Borrower’s legal interest in the Projects is rendered less valuable thereby. The Issuer and the Borrower hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of each Project by Low Income Tenants, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the Note was issued. Notwithstanding the foregoing, the Low Income Tenants are not intended to be third-party beneficiaries of this Regulatory Agreement and shall have no rights to enforce any provision herein.

Section 13. Enforcement. If the Borrower defaults in the performance or observance of any covenant, agreement, or obligation of the Borrower set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days after written notice thereof shall have been given by the Issuer or the Purchaser to the Borrower, then the Issuer or the Purchaser may declare an “Event of Default” to have occurred hereunder and, at its option, may take any one or more of the following steps:

(a) by mandamus or other suit, action, or proceeding at law or in equity require the Borrower to perform its obligations and covenants hereunder and enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Purchaser;

(b) have access to and inspect, examine, and make copies of all the books and records of the Borrower pertaining to each Project;

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants, and agreements of the Borrower hereunder; or

(d) with the Purchaser’s consent, declare a default under the Loan, accelerate the indebtedness evidenced by the Loan, and proceed to redeem the Note in accordance with their terms.

Notwithstanding anything to the contrary contained herein, the Issuer and the Purchaser hereby agree that any cure of any default made or tendered by one or more of the Borrower’s members shall be deemed to
be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

All fees, costs, and expenses of the Purchaser or the Issuer incurred in taking any action pursuant to this Section 13 shall be the sole responsibility of the Borrower and shall be paid to the Purchaser or the Issuer, as the case may be, on demand.

After the Note has been discharged, the Issuer may act on its own behalf to declare an “Event of Default” to have occurred and to take any one or more of the steps specified hereinabove to the same extent and with the same effect as if taken by the Purchaser.

Section 14. The Purchaser and the Issuer. The Purchaser is entering into this Regulatory Agreement in its capacity as the Purchaser under the terms of the Note and the Pledge Agreement. The Issuer may, at all times, assume the Borrower’s compliance with this Regulatory Agreement unless otherwise notified in writing by the Purchaser (but the Purchaser shall have no obligation to so notify the Issuer), or unless the Issuer has actual knowledge of noncompliance. The Purchaser can rely on the accuracy of any certificates, instruments, opinions, or reports delivered to it by the Borrower. It is expected that the Note will be discharged and the Loan Agreement will terminate prior to the expiration of the Qualified Project Period. Following the payment in full and the discharge of the Note and the termination of the Loan Agreement: (i) all obligations, rights, and duties of the Purchaser under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Purchaser will instead be undertaken by the Issuer; (iii) all notices to be delivered to the Purchaser will instead be delivered to the Issuer and all notices to be delivered by the Purchaser will instead be delivered by the Issuer; and (iv) the Purchaser shall no longer be a party to this Regulatory Agreement and shall be considered released from all obligations hereunder.

Section 15. Amendment. The provisions hereof shall not be amended or revised prior to the stated term hereof except by an instrument in writing duly executed by the Issuer and the Borrower, and consented to by the Purchaser as may be required by the Loan Agreement, and duly recorded. The Issuer’s and the Purchaser’s consent to any such amendment or revision (whether or not the Note shall then be outstanding) shall be given only upon receipt of an opinion of Bond Counsel addressed to the Issuer and Purchaser that such amendment or revision will not adversely affect the exemption from federal income taxation of interest on the Note. Neither the Issuer nor the Purchaser shall have a duty to prepare any such consent, amendment, or revision.

Section 16. Right of Access to the Projects and Records. The Borrower agrees that during the term of this Regulatory Agreement, the Issuer, the Purchaser, and the duly authorized agents of either of them shall have the right at all reasonable times, and upon reasonable notice of at least twenty-four (24) hours, to enter upon the site of each Project during normal business hours to examine and inspect each Project and to have access to the books and records of the Borrower with respect to each Project, a copy of which shall be maintained at the site of each Project.

Section 17. No Conflict with Other Documents. The Borrower warrants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof.

Section 18. Severability. The invalidity of any clause, part, or provision of this Regulatory Agreement shall not affect the validity of the remaining portions thereof.

Section 19. Notices. All notices to be given pursuant to this Regulatory Agreement shall be in writing and shall be deemed given when sent by unsecured e-mail, facsimile transmission or other similar
unsecured electronic methods or 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:

To the Issuer:  
City of Minnetonka, Minnesota  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345  
Attn: City Manager

To the Purchaser:  
Bridgewater Bank  
4400 Excelsior Boulevard  
St. Louis Park, MN 55416  
Attn: Senior Vice President, Commercial Lending

To the Borrower:  
CHC Minnetonka Affordable Housing LLC  
161 St. Anthony Avenue, Suite 820  
St. Paul, MN 55103  
Attn: ____________________

With copies to:  
Shelter Corporation  
1600 Hopkins Crossroad  
Minnetonka, MN 55305  
Attn: _________________

Winthrop & Weinstine, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402-4629  
Attention: Jeffrey J. Koerselman, Esq.

Section 20. Governing Law. This Regulatory Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as such laws may be preempted by any federal rules, regulations, and laws.

Section 21. Payment of Fees. Notwithstanding payment of the Loan, the termination of the Loan Agreement, and the defeasance or discharge of the Note, throughout the term of the Qualified Project Period, the Borrower shall continue to pay:

(a) to the Issuer, reimbursement for all reasonable fees and expenses, including, but not limited to, financial advisory and legal fees and expenses necessary for the Issuer’s reviewing and, if necessary, enforcing compliance by the Borrower with the terms of this Regulatory Agreement; and

(b) the fees and expenses of any entity or person designated by the Issuer to perform the review of the Borrower’s compliance with this Regulatory Agreement; provided that such fees and expenses are not duplicative of any fees and expenses paid under subsection (a) above.

Section 22. Limited Liability. All obligations of the Issuer hereunder shall be special, limited obligations of the Issuer, payable solely and only from proceeds of the Note and amounts derived by the Issuer from the Loan and the Loan Agreement.

Section 23. Actions of Issuer. The Issuer shall be entitled to rely conclusively on an opinion of counsel in the exercise or non-exercise of any of the rights or powers vested in the Issuer by virtue of this
Regulatory Agreement or any other agreement or instrument executed in connection with the issuance of the Note; it being the intent of the parties hereto that the Issuer, and any and all present and future trustees, members, commissioners, officers, employees, attorneys, and agents of the Issuer shall not incur any financial or pecuniary liability for the exercise or non-exercise of any rights or powers vested in the Issuer by this Regulatory Agreement or any other instrument or agreement executed in connection with the issuance of the Note; or for the performance or nonperformance of any obligation under, or the failure to assert any right, power, or privilege under this Regulatory Agreement, the Note, the Loan Agreement, the Pledge Agreement or any other instrument or agreement executed in connection with the issuance of the Note. If the Issuer’s consent or approval is required under this Regulatory Agreement, or any other agreement or instrument executed in connection with the issuance of the Note, the Issuer shall be entitled to rely conclusively on an opinion of counsel and shall not be responsible for any loss or damage resulting from any action or inaction in reliance upon such opinion.

Section 24. Counterparts. This Regulatory Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Regulatory Agreement, and, in making proof of this Regulatory Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 25. Recording and Filing. The Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto to be recorded and filed in the real property records of the County, the State, and in such other places as the Issuer may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Issuer, the Borrower, and the Purchaser have caused this Regulatory Agreement to be signed by their respective duly authorized representatives as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By ________________________________
Its Mayor

By ________________________________
Its City Manager

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

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

____________________________________________
Notary Public

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ___ day of ________, 2016, by Geralyn Barone, the City Manager of the City of Minnetonka, Minnesota, a municipal corporation under the law of the State of Minnesota, on behalf of the Issuer.

____________________________________________
Notary Public
Execution page of the Borrower to the Regulatory Agreement, dated the date and year first written above.

CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company

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

By: _______________________________
Name: _______________________________
Title: _______________________________

STATE OF MINNESOTA )
) ss
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ___ day of ____________, 2016, by _______________________________, the ____________________ of CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, the managing member of CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company, on behalf of the Borrower.

____________________________________
Notary Public
Execution page of the Purchaser to the Regulatory Agreement, dated the date and year first written above.

BRIDGEWATER BANK

By ________________________________

Its ________________________________

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) ss.

The foregoing instrument was acknowledged before me this ____ day of ____________, 2016, by ________________________________, the ______________________ of Bridgewater Bank, a Minnesota banking corporation, on behalf of the Purchaser.

_________________________________________

Notary Public
EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

[Insert legal descriptions]
# EXHIBIT B

## FORM OF INCOME CERTIFICATION

**TENANT INCOME CERTIFICATION**

- Initial Certification ☐
- Recertification ☐
- Other ☐

- **Effective Date:** _________________________
- **Move-in Date:** _________________________
- **(MM/DD/YY):** _________________________

## PART I. DEVELOPMENT DATA

- **Property Name:** Golden Valley Townhomes
- **Address:** [2100 Douglas Drive North] [3354 Lilac Drive] North, Golden Valley, Minnesota
- **County:** _________________________
- **Unit Number:** _________________________
- **BIN #:** _________________________
- **# Bedrooms:** _________________________

## PART II. HOUSEHOLD COMPOSITION

<table>
<thead>
<tr>
<th>HH Br #</th>
<th>Last Name</th>
<th>First Name &amp; Middle Initial</th>
<th>Relationship to Head of Household</th>
<th>Date of Birth (MM/DD/YY)</th>
<th>F/T Student (Y or N)</th>
<th>Social Security or Alien Reg. No.</th>
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## PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

<table>
<thead>
<tr>
<th>HH Br #</th>
<th>(A) Employment or Wages</th>
<th>(B) Soc. Security / Pensions</th>
<th>(C) Public Assistance</th>
<th>(D) Other Income</th>
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- **TOTAL $**
- **Add totals from (A) through (D) above**

- **TOTAL INCOME (E):** $
### PART IV. INCOME FROM ASSETS

<table>
<thead>
<tr>
<th>HH Mbr#</th>
<th>(F) Type of Asset</th>
<th>(G) C/I</th>
<th>(H) Cash Value of Asset</th>
<th>(I) Annual Income from Asset</th>
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**TOTALS:**

Enter Column (H) Total Passbook Rate if over $5,000 $________ x 2.00% = (J) Imputed Income $_____

Enter the greater of the total column I, or J: imputed income TOTAL INCOME FROM ASSETS (K) $_____

(L) Total Annual Household Income from all sources [Add (E) + (K)] $_____

### HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full-time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

_________________________ (Signature) __________________________ (Date)

_________________________ (Signature) __________________________ (Date)

_________________________ (Signature) __________________________ (Date)

_________________________ (Signature) __________________________ (Date)

### PART V. DETERMINATION OF INCOME ELIGIBILITY

| TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES | $_____
| From Item (L) on page 1 |

Household Meets Income Restriction at:  
- [ ] 50%  
- [ ] 40%  
- [ ] 30%  

Current Income Limit per Family Size: $_____

RECERTIFICATION ONLY: Current Income Limit x 140% $_____

Household income exceeds 140% at $_____

B-2

484008v1 JAE MN140-185
Household Income at Move-in
$__________________

Household Size at Move-in:
_____________

recertification:
☐ Yes  ☐ No

☐ ___%
PART VI. RENT

Tenant Paid Rent $ 

_________________________________________

Utility Allowance $ 

_________________________________________

GROSS RENT FOR UNIT: Tenant paid rent plus Utility Allowance and other non-optional charges $ 

Unit Meets Rent Restriction at:  □ 60% □ 50% □ 40% □ 30% □ __% 

Maximum Rent Limit for this unit: $ 

PART VII. STUDENT STATUS

ARE ALL OCCUPANTS FULL-TIME STUDENTS?  ☐ yes  ☐ no

If yes, enter student explanation** (also attach documentation)

Student explanation:
1. TANF assistance
2. Job training program
3. Single parent/dependent child
4. Married/joint return*

*Exception for married/joint return is the only exception available for units necessary to qualify tax-exempt bonds.

PART VIII. PROGRAM TYPE

Mark the program(s) listed below (a. through e.) for which this household’s unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification

a. Tax Credit ☐  b. HOME ☐  c. Tax Exempt ☐  d. AHDP ☐  e. ____________ ☐

(Name of Program)

See Part V above. 

Income Status    Income Status    Income Status    Income Status    Income Status
☐ ≤ 50% AMGI   ☐ 50% AMGI    ☐ ≤ 50% AMGI   ☐ ____________
☐ ≤ 60% AMGI   ☐ 60% AMGI    ☐ ≤ 80% AMGI   ☐ ____________
☐ ≤ 80% AMGI   ☐ 80% AMGI    ☐ ≤ 0I **    ☐ ___ ______
☐ ≤ 0I **    ☐ 0I **

** Upon recertification, household was determined over income (OI) according to eligibility requirements of the program(s) marked above.

SIGNATURE OF OWNER / REPRESENTATIVE

MUSIC BARN BOND 
AUGUST 8, 2016 COUNCIL
Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

________________________________________________ ________________
SIGNATURE OF OWNER / REPRESENTATIVE  DATE
INSTRUCTIONS FOR COMPLETING
TENANT INCOME CERTIFICATION

This form is to be completed by the owner or an authorized representative.

Part I – Development Data

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

Move-in Date Enter the date the tenant has or will take occupancy of the unit.

Effective Date Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.

Property Name Enter the name of the development.

County Enter the county (or equivalent) in which the building is located.

BIN # Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).

Address Enter the unit number.

Unit Number Enter the unit number.

# Bedrooms Enter the number of bedrooms in the unit.

Part II – Household Composition

List all occupants of the unit. State each household member’s relationship to the head of the household by using one of the following coded definitions:

H Head of household
A Adult co-tenant
C Child
L Live-in caretaker
S Spouse
O Other family member
F Foster child
N None of the above

Enter the date of birth, student status, and Social Security number or alien registration number for each occupant.

If there are more than seven occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.

Part III – Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.
From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the 12 months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List the respective household member number from Part II.

| Column (A) | Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business. |
| Column (B) | Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc. |
| Column (C) | Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.) |
| Column (D) | Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household. |

Row (E) Add the totals from columns (A) through (D) above. Enter this amount.

**Part IV – Income from Assets**

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the 12 months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

| Column (F) | List the type of asset (i.e., checking account, savings account, etc.) |
| Column (G) | Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification). |
| Column (H) | Enter the cash value of the respective asset. |
| Column (I) | Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate). |

**TOTALS** Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than $5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.

Row (K) Enter the Greater of the total in Column (I) or (J)

Row (L) Total Annual Household Income from All Sources Add (E) and (K) and enter the total
After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than five days prior to the effective date of the certification.

### Part V – Determination of Income Eligibility

<table>
<thead>
<tr>
<th>Description</th>
<th>Instruction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Annual Household Income from all sources</td>
<td>Enter the number from item (L).</td>
</tr>
<tr>
<td>Current Income Limit per Family Size</td>
<td>Enter the Current Move-in Income Limit for the household size.</td>
</tr>
<tr>
<td>Household income at move-in Household size at move-in</td>
<td>For recertifications only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.</td>
</tr>
<tr>
<td>Household Meets Income Restriction</td>
<td>Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.</td>
</tr>
<tr>
<td>Current Income Limit x 140%</td>
<td>For recertification only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.</td>
</tr>
</tbody>
</table>

### Part VI – Rent

<table>
<thead>
<tr>
<th>Description</th>
<th>Instruction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tenant Paid Rent</td>
<td>Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).</td>
</tr>
<tr>
<td>Rent Assistance</td>
<td>Enter the amount of rent assistance, if any.</td>
</tr>
<tr>
<td>Utility Allowance</td>
<td>Enter the utility allowance. If the owner pays all utilities, enter zero.</td>
</tr>
<tr>
<td>Other non-optional charges</td>
<td>Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.</td>
</tr>
<tr>
<td>Gross Rent for Unit</td>
<td>Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.</td>
</tr>
<tr>
<td>Maximum Rent Limit for this unit</td>
<td>Enter the maximum allowable gross rent for the unit.</td>
</tr>
<tr>
<td>Unit Meets Rent Restriction at __%</td>
<td>Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.</td>
</tr>
</tbody>
</table>
Part VII – Student Status

If all household members are full-time* students, check “yes.” If at least one household member is not a full-time student, check “no.”

If “yes” is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

* Full time is determined by the school the student attends.

Part VIII – Program Type

Mark the program(s) for which this unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit See Part V above.

HOME If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household’s designation.

Tax Exempt If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household’s designation.

AHDP If the property participates in the Affordable Housing Disposition Program (AHDP), and this household’s unit will count towards the set-aside requirements, mark the appropriate box indicating the household’s designation.

Other If the property participates in any other affordable housing program, complete the information as appropriate.

SIGNATURE OF OWNER / REPRESENTATIVE

It is the responsibility of the owner or the owner’s representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well-trained in tax credit compliance.

These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.
EXHIBIT C

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

[Date]

TO: City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, MN  55345
Attn:  City Manager

and (prior to the discharge of the Note (hereinafter defined))

Bridgewater Bank
4400 Excelsior Boulevard
St. Louis Park, MN  55416
Attn:  Senior Vice President, Commercial Lending

Re: Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Note”)

The undersigned, an authorized representative for CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Owner”), hereby certifies, represents, and warrants that:

1. The Owner owns the multifamily housing project located at [2100 Douglas Drive North] [3354 Lilac Drive North], Golden Valley, Minnesota commonly known as the Golden Valley Townhomes (the “Project”).

2. The undersigned and the Owner have read and are thoroughly familiar with the provisions of (1) the Regulatory Agreement, dated August ___, 2016 (the “Regulatory Agreement”), between the Owner, the City of Minnetonka, Minnesota (the “Issuer”), and Bridgewater Bank (the “Purchaser”); and (2) the Loan Agreement, dated as of August 1, 2016, between the Owner and the Issuer with respect to the Series 2016A Bonds, and the Loan Agreement, dated as of August 1, 2016, between the Owner and the Issuer with respect to the Series 2016B Bonds (together, the “Loan Agreement”). The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Note.

3. A review of the activities of the Owner and of the Owner’s performance under the Regulatory Agreement and the Loan Agreement during the year ending ____ has been made under the supervision of the undersigned.

4. The Project’s Qualified Project Period commenced on ________, ___ (the date on which ten percent (10%) of the residential units in the Project were occupied), and will end on the latest of:

   (i) ________, ___ (the date which is fifteen (15) years after the date on which fifty percent (50%) of the residential units in the Project were occupied);
(ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding, or

(iii) the date on which any assistance provided with respect to the Project under section 8 of the United States Housing Act of 1937 terminates.

5. As of the date of this Certificate, the following percentages of completed residential units in the Project are (i) occupied by Low Income Tenants or (ii) currently vacant and being held available for occupancy by Low Income Tenants and have been so held continuously since the date a Low Income Tenant vacated such unit, as indicated:

- Occupied by Low Income Tenants: _____ % Units Nos.____
- Continuously held vacant for occupancy by Low Income Tenants since last occupied by Low Income Tenants: _____ % Units Nos.____

6. At no time since the date of filing of the last Continuing Program Compliance Certificate (or since the issuance of the Note, if this is the first such certificate) has less than [for Douglas Drive: three (3) units] [for Lilac Drive: one (1) unit] (representing forty percent (40%) of the completed units in the Project) been occupied by or were last occupied by Low Income Tenants.

7. As of the date of this Certificate, at least _____% of the units in the Project are (i) occupied by persons or families with Adjusted Income which does not exceed _____% of the Median Income for the Area adjusted for household size; or (ii) held vacant for occupancy by persons or families with Adjusted Income which does not exceed _____% of the Median Income for the Area adjusted for household size. Project Units occupied or held vacant for persons or families with Adjusted Income which does not exceed _____% of the Median Income for the Area adjusted for household size include Unit numbers _______________________________.

8. At all times since the date of filing of the last Continuing Program Compliance Certificate the rent on at least twenty percent (20%) of the units in the Project has been equal to or less than applicable area fair market rents or exception fair market rents for existing housing as established by the federal Department of Housing and Urban Development from time to time.

9. To the knowledge of the undersigned, after due inquiry, all units were rented or available for rental on a continuous basis during the immediately preceding year to members of the general public, and the Owner is not now and has not been in default under the terms of the Regulatory Agreement and the Loan Agreement and, to the knowledge of the undersigned, no Determination of Taxability has occurred with respect to the Note.

10. [CHOOSE ONE: None/One or more] of the Tenants in the Project are currently receiving assistance under Section 8 of the United States Housing Act of 1937.

11. Unless otherwise expressly provided herein or unless the context requires otherwise, the capitalized terms used but not defined herein shall have the meaning assigned to such terms in the Regulatory Agreement.
12. The Owner has not transferred any interest in the Project since the date of submission of the Continuing Program Compliance Certificate last submitted to the Purchaser and the Issuer with respect to the Project. (If the Owner has transferred any interest in the Project, such transfer should be detailed here.)

Signature page of the Borrower to the Certificate of Continuing Program Compliance.

Dated: _____________, ________.

CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company

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

By: ____________________________
Name: __________________________
Title: ___________________________
GUARANTY AGREEMENT

from

COMMUNITY HOUSING CORPORATION OF AMERICA, INC.,
as Guarantor

to

BRIDGEWATER BANK,
as Purchaser

Dated as of August 1, 2016

Relating to:

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

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

THIS GUARANTY AGREEMENT, dated as of August 1, 2016 (the “Guaranty”), is from COMMUNITY HOUSING CORPORATION OF AMERICA, INC., a Delaware nonprofit corporation (the “Guarantor”), to BRIDGEWATER BANK, a Minnesota banking corporation (the “Purchaser”).

RECITALS

WHEREAS, the City of Minnetonka, Minnesota (the “Issuer”) will issue its Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016A (the “Note”), in the original aggregate principal amount of $11,500,000, under and pursuant to Minnesota Statutes, Chapter 462C, as amended, and a resolution adopted by the City Council of the Issuer on August 8, 2016 (the “Resolution”); and

WHEREAS, the proceeds derived from the issuance of the Note are being loaned by the Issuer to CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), the managing member of which is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company (the “Managing Member”), pursuant to a Loan Agreement, dated as of August 1, 2016 (the “Loan Agreement”), between the Issuer and the Borrower, for the purpose of providing financing with respect to the Borrower’s acquisition, construction, equipping, and substantial renovation of affordable multifamily housing facilities located in Minnetonka, Minnesota and Golden Valley, Minnesota (as further described in the Loan Agreement as the “Project”); and

WHEREAS, the Issuer will assign its rights under the Loan Agreement to the Purchaser (except for certain unassigned rights set forth in Section 7.9 thereof) pursuant to the Pledge Agreement, dated as of August 1, 2016 (the “Pledge Agreement”), between the Issuer and the Purchaser

WHEREAS, terms capitalized but not defined herein have the meanings given them in the Loan Agreement; and

WHEREAS, the Guarantor desires that the Issuer issue the Note and apply the proceeds thereof as described above and further proposes to execute this Guaranty to permit or enhance the security of the Note and thereby achieve enhanced financing terms therefor; and

WHEREAS, the Guarantor hereby, subject to the terms hereof, covenants and agrees with the Purchaser, its successors and assigns, as follows:

ARTICLE I

REPRESENTATIONS AND COVENANTS OF GUARANTORS

(a) The Guarantor has duly executed and delivered and, by proper individual action, has duly authorized the execution and delivery of this Guaranty.

(b) The assumption by the Guarantor of its obligations hereunder will result in a direct financial benefit to the Guarantor and to the financial and operational success of the Project.
ARTICLE II
COVENANTS AND AGREEMENTS

Section 2.1 Obligation. The Guarantor unconditionally guarantees to the Purchaser (i) the full and prompt payment of all principal of and premium, if any, and interest on the Note when and as the same shall become due, whether at the stated maturity thereof, by acceleration, call for redemption or otherwise, and (ii) the full and prompt payment of any other amounts owing to the Purchaser by the Borrower under the Loan Agreement (the “Obligations”).

Section 2.2 Term. Subject to Article III hereof, the obligations of the Guarantor under this Guaranty shall arise absolutely and unconditionally when the Note shall have been issued, sold and delivered by the Issuer and shall remain in full force and effect until the entire principal of, premium, if any, and interest on the Note shall have been paid or provided for in accordance its terms.

Section 2.3 Obligations Unconditional. The Guarantor’s obligations under this Guaranty shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation any of the following:

(a) the compromise, settlement, release or termination of any or all of the Obligations or any obligations, covenants or agreements of the Borrower under the Loan Agreement or the Issuer under the Pledge Agreement;

(b) the failure to give notice to the Borrower or the Guarantor of the occurrence of any default or event of default under the terms and provisions of this Guaranty, the Loan Agreement, or the Pledge Agreement;

(c) the waiver of the payment, performance or observance by the Borrower or the Guarantor of the Obligations or any of the obligations, covenants or agreements of either of them contained in the Resolution, the Loan Agreement, or the Pledge Agreement;

(d) the extension of the time for payment of any Obligations or the principal of, premium, if any, or interest on any Note or of the time for performance of any other obligations, covenants or agreements under or arising out of the Resolution, the Loan Agreement, or the Pledge Agreement or the extension or the renewal of any thereof;

(e) the modification or amendment (whether material or otherwise) of the Obligations or any obligation, covenant or agreement set forth in the Resolution, the Loan Agreement, or the Pledge Agreement;

(f) the taking or omission of any of the actions referred to in the Resolution, the Loan Agreement, or the Pledge Agreement or any actions under this Guaranty;

(g) any failure, omission, delay or lack on the part of the Issuer or Purchaser to enforce, assert or exercise any rights, power or remedy conferred on the Issuer or Purchaser in this Guaranty, the Resolution, the Loan Agreement, or the Pledge Agreement;

(h) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors or readjustment of or other similar
proceedings affecting the Guarantor or the Borrower, or any of the assets of any of them, or any
allegation or contest of the validity of this Guaranty in any such proceeding;

(i) to the extent permitted by law, the release or discharge of the Borrower or the
Issuer from the performance or observance of any obligations, covenants or agreements contained
in the Resolution, the Loan Agreement, the Pledge Agreement, or the Note by operation of law;

(j) the default or failure of the Guarantor to perform any of the Obligations set forth
herein;

(k) the default or failure of the Borrower, the Purchaser or the Issuer to fully perform
any of its obligations to the Guarantor; or

(l) the invalidity or unenforceability of the Loan Agreement, the Pledge Agreement,
or the Resolution.

Notwithstanding the provisions of this Section 2.3, the Guarantor shall not be obligated to make
any payment under Section 2.1 hereof if the obligation of the Borrower to make such payment has been
effectively waived, modified or amended by action of the Purchaser.

Section 2.4 Set-Offs, Counterclaims. No set-off, counterclaim, reduction, or diminution of
the Obligations, or any defense of any kind or nature which the Guarantor has or may have against the
Issuer, the Borrower, or the Purchaser shall be available hereunder to the Guarantor against the Purchaser.

Section 2.5 Default.

(a) In the event of a default in the payment of any Obligations under this Guaranty,
the Purchaser, in its sole discretion, shall have the right to proceed first and directly against the
Guarantor under this Guaranty without proceeding against the Borrower under the Loan
Agreement or exhausting any other remedies which it may have and without resorting to any
other security held by the Purchaser.

(b) The Purchaser shall not be obligated to expend or risk its own funds or otherwise
incur any financial liability in the taking of any action hereunder, if it shall have reasonable
grounds for believing that repayment of such funds or adequate indemnity against such risk or
liability is not reasonably assured to it, except liability which is adjudicated to have resulted from
its negligence, willful misconduct, or willful default by reason of any action so taken.

(c) The Guarantor agrees to pay all the costs, expenses and fees, including all
reasonable attorneys’ fees, which may be incurred by the Purchaser in enforcing or attempting to
enforce this Guaranty following any default on the part of either the Borrower or the Guarantor,
whether the same shall be enforced by suit or otherwise.

Section 2.6 Waiver of Acceptance. The Guarantor hereby expressly waives notice from the
Purchaser of its acceptance of and reliance on this Guaranty.
ARTICLE III
MISCELLANEOUS

Section 3.1 Remedies. No remedy herein conferred upon or reserved to the Purchaser 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 Guaranty or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder 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 Purchaser to exercise any remedy reserved to it in this Guaranty, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. In the event any provision contained in this Guaranty should be breached by the Guarantor and thereafter duly waived by the Purchaser, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 3.2 Purchaser May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, bankruptcy reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the rights of creditors of the Guarantor, the Purchaser shall be entitled and empowered by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of principal, premium, if any, and interest owing and unpaid (whether at stated maturity or by acceleration, call for redemption or otherwise) in respect of the Note and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Purchaser (including any claim for the reasonable compensation, expenses, disbursements and advances of the Purchaser, its agents and counsel) allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized to make such payments to the Purchaser.

Section 3.3 Waiver, Amendment. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the Purchaser.

Section 3.4 Address. The current mailing address of the Guarantor is set forth below:

Community Housing Corporation of America, Inc.
ADDRESS
Attention: _____________________

The Guarantor shall forthwith notify the Purchaser in writing of any change in its mailing address.

Section 3.5 Counterparts. This Guaranty may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
Section 3.6  Separability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Guaranty shall not affect the validity or enforceability of the remaining portions of this Guaranty, or any part thereof.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Guarantor has caused this Guaranty Agreement to be executed as of the date and year first above written.

COMMUNITY HOUSING CORPORATION OF AMERICA, INC.

By ________________________________
Its ________________________________
The undersigned, as Purchaser, hereby acknowledges and consents to this Guaranty Agreement, dated as of the date and year first written above.

BRIDGEWATER BANK

By____________________________________

Its ____________________________________
Conditional use permit, with parking variance, for Eden Prairie Islamic Community Center at 5620 Smetana Drive

Adopt the resolution approving the request

Eden Prairie Islamic Community Center (EPIC) is requesting a conditional use permit to operate a community center within the existing building at 5620 Smetana Drive. At full build-out the community center would include: (1) worship space; (2) a coffee shop that would serve building users; (3) offices; (4) a licensed day care facility; (5) classroom facilities; and (6) a banquet facility. While the interior of the building would be remodeled to accommodate these uses, no external site improvements are proposed at this time.

The planning commission considered the request on July 21, 2016. The staff report from that meeting is attached and various plans and documents describing the proposed project may be found on pages A1–A12. Staff recommended approval of the request noting:

- The city has frequently reviewed and approved conditional use permits for day cares, schools, religious institutions, and other gathering spaces in commercial and industrial districts.

- But for a requested parking variance, the proposal would meet conditional use permit standards.

- The parking variance would meet the variance standard. While the parking ordinance technically requires that parking be provided sufficient to cover demand of each use within the community center, the proposed uses are complementary and would have varied peak parking demands. Further, overflow parking would be available on the adjacent property, which would also be owned by EPIC.

At that meeting, a public hearing was opened to take comment. Six area property owners addressed the commission. These owners generally expressed concern that:

- The proposal may impact area security, parking, and noise.

- The day care have an outdoor play area.
Following the public hearing, the commission asked questions and discussed the proposal:

- **Parking.** The commission confirmed with staff that the proposal did not include any additional proof of parking.

- **Noise impacts.** The commission asked staff to comment on whether the city has received noise complaints from neighbors of religious institutions. Staff commented that a majority of the noise complaints received by the city are related to commercial uses and school events/activities.

**Planning Commission Recommendation**

On a 7-0 vote, the commission recommended that the city council approve the proposal. Meeting minutes may be found on pages A37–A41.

**Since Planning Commission Hearing**

The applicant has requested that the Opus Overlay District Trip Generation Fee be collected at the time of issuance of the building permit for the day care rather than at the time of the issuance of the first building permit for building remodel.

Staff finds this request reasonable as:

- By ordinance, the property is allocated a maximum of 33 p.m. peak hour trips to the interchange. Based on the traffic study which contemplated with the proposal under the “full – build out” scenario, the proposed uses would generate 36 trips to the interchange (3 additional beyond the allowed maximum).

- According to the traffic study, the day care would create nearly half of the trips generated to the Bren Road/TH169 interchange during the p.m. peak hour. If the space is not utilized for the day care use, the proposal would generate fewer trips than the maximum allocated by ordinance for the property.

The resolution has been revised to require the trip generation fee prior to the issuance of a building permit for the day care.

**Staff Recommendation**

Adopt the resolution approving a conditional use permit, with a parking variance, for Eden Prairie Islamic Community Center (EPIC) at 5620 Smetana Drive. (See pages A13–A20.)

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

Originator: Ashley Cauley, Senior Planner
MINNETONKA PLANNING COMMISSION  
July 21, 2016

Brief Description  
A conditional use permit, with parking variance, for Eden Prairie Islamic Community Center at 5620 Smetana Drive

Recommendation  
Recommend the city council approve the request

Introduction

Eden Prairie Islamic Community Center (EPIC) is requesting a conditional use permit to operate a community center within the existing building at 5620 Smetana Drive. EPIC has been leasing space in Eden Prairie for the last year and is now looking for a permanent location.

At full build-out the community center would include: (1) worship space; (2) a coffee shop that would serve building users; (3) offices; (4) a licensed day care facility; (5) classroom facilities; and (6) a banquet facility. The applicant is proposing to phase in the uses over time. (See the “Supporting Information” section of this report for more information.)

The interior of the building would be remodeled to accommodate the various uses. However, no external site improvements are proposed at this time. (See pages A1-A12.)

Staff analysis

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

1. **Is the use generally reasonable?**

   Yes. The proposed uses of the building are reasonable and would generally meet standards outlined in city code. Within the B-2 zoning district, licensed day care facilities and coffee shops are allowed as conditionally-permitted uses. While the zoning district does not contain any provisions for schools, religious institutions, or gathering spaces, the ordinance does allow – as conditionally-permitted uses – public buildings and “other uses similar to those permitted in this section, as determined by the city.”

   Based on the programming of the site and the complementary uses proposed, staff determined it would be more appropriate to review the entire proposal under the “other uses similar to” provision rather than to review each individual use separately.
On several occasions and in several zoning districts, the city has reviewed day cares, schools, religious institutions, and gathering spaces under this “other uses similar to” provision. The city has found that these types of uses operate similar to public buildings in which large groups of people gather at specified times for a specified purpose.

The only conditional use permit standard required by ordinance for public buildings is site and building plan approval. But for a parking variance, the proposal would meet all of the required standards for site and building plan approval. The standards and findings are outlined in the “Supporting Information” section of this report.

2. Is the parking variance reasonable?

Yes. For multi-use buildings, the city’s parking ordinance calculates minimum parking requirements based on the individual uses of the building. By ordinance, the applicant’s proposal would require a minimum of 356 stalls. Currently, there are a total of 194 spaces available on site, 164 of which are surface parking and 30 are available via underground parking.

The applicant has a purchase agreement for the subject property, as well as the adjacent property at 5640 Smetana Drive. While the applicant intends to continue the office use of the building, the associated parking lot could serve as “overflow” parking during off-peak office hours. The 5640 Smetana Drive property is currently improved with an additional 197 stalls; 167 surface stalls and 30 underground.

The following chart is intended to summarize the proposed uses and the associated parking stalls required by ordinance:

<table>
<thead>
<tr>
<th>Proposed use</th>
<th>Parking requirement</th>
<th>Minimum number of stalls required by ordinance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>5620 SMETANA DRIVE</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Worship space</td>
<td>1 space for every 2.5 seats</td>
<td>160 spaces</td>
</tr>
<tr>
<td>Coffee shop</td>
<td>1 space for every 60 sf</td>
<td>22 spaces</td>
</tr>
<tr>
<td>Day care</td>
<td>1 space for every 6 children</td>
<td>9 spaces</td>
</tr>
<tr>
<td>Office space</td>
<td>1 space for every 250 sf</td>
<td>32 spaces</td>
</tr>
<tr>
<td>School</td>
<td>1 space for every 3 students</td>
<td>33 spaces</td>
</tr>
<tr>
<td>Banquet facility</td>
<td>1 space for every 3 seats</td>
<td>100 spaces</td>
</tr>
<tr>
<td><strong>Total required</strong></td>
<td></td>
<td>356 spaces</td>
</tr>
<tr>
<td><strong>Total available on site</strong></td>
<td></td>
<td>194 spaces</td>
</tr>
<tr>
<td><strong>5640 SMETANA DRIVE</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office space</td>
<td>1 space every 250 sf</td>
<td>171 spaces</td>
</tr>
<tr>
<td><strong>Total available on site</strong></td>
<td></td>
<td>197 spaces</td>
</tr>
</tbody>
</table>
By literal interpretation of the code, the subject property would be “under-parked.” However, staff finds that the proposed parking variance is reasonable as:

- The proposed uses are complementary and would experience peak parking demand at varied times. Based on the applicant’s narrative, peak parking demand would occur on Fridays between the hours of 1:00 and 2:00 p.m. At this time, approximately 400 worshipers would occupy the worship space, the day care would be operating, and the office spaces would be utilized. By city code, at full capacity, the uses would require 201 parking spaces at this peak time. With the amount of parking on site and the surplus of stalls available on adjacent property 220 stalls are available. As such, this brief peak parking demand could be accommodated on the applicant’s properties. Additional information on complementary religious, school, and day care uses can be found in the “Supporting Information” section of this report.

- The proposed school use would occur during the hours of 10:00 a.m. and 2:00 p.m. on Saturdays. As such, the peak parking demand time for the school would occur at a different time than the office and religious uses of the building.

- As currently proposed, the coffee shop is intended to serve users of the building. As such, requiring additional parking for the coffee shop would result in a “double count” of parking demand.

- The city has issued parking variances for other religious institutions which share space with day cares and schools, finding that the uses are complementary with varied peak parking demand times.

- The proposed community center is intended to “wholly serve” its users. The intent is to provide all the uses necessary to allow users a place to gather and spend time without having to make numerous stops.

3. Would the specific proposal be appropriate for the site?

Yes. The proposed facility would be appropriate for the site. The subject property is located in a mixed-use area of residential, industrial, and commercial land uses. The proposal would occupy two currently vacant buildings within the BRENWOOD BUSINESS PARK and would provide a service not currently offered within Minnetonka.
Traffic and Transportation

Properties within the Opus Overlay District are allocated a maximum number of p.m. peak hour trips to avoid overloading the Bren Road and Highway 169 interchange. The allocated number is not the number of trips at the property driveway. Rather, it is the number of trips anticipated to use the interchange based on the property’s proximity to the interchange. A redevelopment of property within the overlay district that increases the amount of trips generated to the interchange above what is allocated is required to pay a trip generation fee. By ordinance, the subject property is allocated a maximum of 33 p.m. peak hour trips. This assumes that 65 percent of the p.m. trips generated to and from the property will utilize the interchange.

By the Institute of Traffic Engineers (ITE), the banquet facility, coffee shop and day care would be the highest traffic generators. The coffee shop and banquet facility would likely not generate trips during the p.m. peak hours. This is due to the fact that the coffee shop would serve existing users of the building and banquet facility use would occur primarily on weekends or after 6:00 p.m. on weekdays. Nonetheless, the city secured WSB & Associates to review the proposal for potential impacts on the traffic operations within the Opus area. While, WSB & Associates has guaranteed that the proposal would be available prior to the planning commission meeting, is was not completed prior to the distribution of the packet. The study will be distributed as soon as it is available. Staff’s recommendation regarding the proposal is not dependent on the results of this study. Rather, the study will confirm whether or not the proposal requires that a trip generation fee be paid.

Summary Comments

Staff finds that the proposal would be an appropriate use of the site. While the site would operate differently than an office use, the proposal would not have significant adverse impacts on the surrounding area and would provide a service not currently offered in Minnetonka.

Staff Recommendation

Recommend that the city council adopt the resolution on pages A15-A22. This resolution approves a conditional use permit, with parking variance, for Eden Prairie Islamic Community Center at 5620 Smetana Drive.

Originator: Ashley Cauley, Senior Planner
Through: Loren Gordon, AICP, City Planner
Supporting Information

Project No. 89041.16a

Property 5620 Smetana Drive

Applicant Eden Prairie Islamic Center (EPIC)

Surrounding Land Uses
Northerly: Industrial flex and warehouse buildings, zoned B-2 and I-1, guided for mixed use
Easterly: Cloud 9 Condos, zoned R-5 and guided for mixed use
Southerly: BRENWOOD BUSINESS PARK office buildings, zoned B-2 and guided for mixed use
Westerly: Lionsgate academy, zoned B-3 and guided for mixed use

Planning Guide Plan designation: Mixed Use
Zoning: B-2

Site features The subject property is part of the BRENWOOD BUSINESS PARK. The business park is 13.5 acres in size and is currently comprised of four office buildings held under current ownership.

The subject property is just over 2.4 acres in size and is improved with a three-story building with underground parking. In addition, a 164-stall parking lot wraps around three sides of the building. An additional 30 underground parking stalls are available.

The applicant has a purchase agreement for the subject property, as well as the adjacent property at 5640 Smetana Drive. While no changes are proposed for the office use of 5640 Smetana Drive building, its parking lot may serve as “overflow” parking for the subject property. The 5640 property is improved with a three-story building with underground parking. It is served by a 167-stall surface parking lot and an additional 30 underground parking stalls.

Proposed Use The proposal is comprised of several uses. These uses are intentionally complementary to each other and intended to “wholly serve” those who attend the community center. The applicant is intending to obtain approval of the conditional use permit prior to spending a significant amount of resources on the final building plans. As such, the following chart is intended to simply summarize the proposed square footage of each
proposed use. If approved, staff would review the building plans to ensure they are in substantial conformance with the following table and programming:

<table>
<thead>
<tr>
<th>Proposed Use</th>
<th>Amount of space</th>
<th>Max No. of Users</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LEVEL ONE</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Worship space</td>
<td>7,335 sf</td>
<td>400 people</td>
</tr>
<tr>
<td>Office Space</td>
<td>1815 sf</td>
<td>n/a</td>
</tr>
<tr>
<td>Coffee shop</td>
<td>1,300 sf</td>
<td>n/a</td>
</tr>
<tr>
<td><strong>LEVEL TWO</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office</td>
<td>6,055 sf</td>
<td>n/a</td>
</tr>
<tr>
<td>Day care</td>
<td>2,000 sf</td>
<td>50 children</td>
</tr>
<tr>
<td>Classroom facilities</td>
<td>3,000 sf</td>
<td>100 children</td>
</tr>
<tr>
<td><strong>LEVEL THREE</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Banquet facility</td>
<td>7,000 sf</td>
<td>300 people</td>
</tr>
</tbody>
</table>

**Worship Space.** Muslims worship/pray five times a day at specified times. During worship the users face Mecca or the spiritual leader who will stands in the direction of Mecca. Unlike other religious institutions, Muslims do not become “members” of a specific facility. Rather, Muslims are welcomed to worship at any facility for prayer.

As proposed, the worship space would be approximately 7,300 square feet in size. Typically, 10-30 people would attend worship throughout the day. Peak occupancy of the worship space would occur from 1:00 to 2:00 p.m. on Fridays, when “Friday Prayer” and the sermon is held. EPIC anticipates that the maximum number of users during this time would be 400 worshipers. The following chart is intended to summarize the times and number of people anticipated to attend worship:

<table>
<thead>
<tr>
<th>Worship Time</th>
<th>Number of attendees</th>
</tr>
</thead>
<tbody>
<tr>
<td>4:30 a.m.</td>
<td>30 people</td>
</tr>
<tr>
<td>1:30 p.m.</td>
<td>10 people</td>
</tr>
<tr>
<td>5:30 p.m.</td>
<td>10 people</td>
</tr>
<tr>
<td>9:00 p.m.</td>
<td>20 people</td>
</tr>
<tr>
<td>10:00 p.m.</td>
<td>30 people</td>
</tr>
<tr>
<td>Friday prayer</td>
<td>400 people</td>
</tr>
</tbody>
</table>

**Coffee shop.** The coffee shop would serve those who are using the building. While the coffee shop may have an exit-only egress, the primary access would be internal to the building. To avoid
additional traffic impacts, the applicant has agreed to restrict external signage intended to advertise the coffee shop.

**Day care.** In addition to providing day care to those who are in worship, the day care would provide day care services for working worshipers. The licensed capacity would be determined based on community needs. However, the maximum licensed capacity would be 50 children. The day care would operate during typical business hours. Parents or guardians would park their vehicles and walk their children into the facility.

**Classroom facility.** The classroom space would be utilized for Islamic Studies on Saturdays. The school would serve up to 100 students between the hours of 10:00 a.m. and 2:00 p.m.

**Banquet facility.** The banquet facility would typically be used for weddings and memorial services. The facility would have available seating for up to 300 people. Eventually, the applicant would install a full kitchen for use by the facility users. The applicant has indicated that typically weddings and memorial services occur during the later evenings and weekends. These activities would be held inside the facility.

**Parking**

In the past, the city has issued parking variances to allow schools and day cares on properties with religious institutions, finding that the uses are complementary and have varied peak parking demand times. While the city attorney has advised that this does not necessarily set precedent for future approvals, it does indicate that the city has acknowledged that the peak parking times of these types of uses occur at varied times. The table below is intended to summarize similar parking variances approved by the city.

<table>
<thead>
<tr>
<th>Religious Facility</th>
<th>Uses</th>
<th>Required Parking Stalls</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bethlehem Lutheran Church: 5701 Eden Prairie Road</td>
<td>church and day care</td>
<td>114 stalls</td>
<td>75 stalls and 45 in proof-of-parking</td>
</tr>
<tr>
<td>Faith Presbyterian and International Spanish Language Academy (ISLA); 12007 Excelsior boulevard</td>
<td>church and school</td>
<td>263 stalls</td>
<td>212 stalls</td>
</tr>
<tr>
<td>MN Seventh Day Adventist Church, Minnetonka Christian Academy and Nasha Shkola</td>
<td>church and two schools</td>
<td>430</td>
<td>218 with proof-of-parking for 31 more</td>
</tr>
</tbody>
</table>
Currently, the four buildings within the BRENWOOD BUSINESS PARK are held in common ownership. EPIC has a purchase agreement to purchase two of the four buildings. While staff finds that the parking demand for the two buildings could likely be accommodated on site, the current application may present an opportunity to formalize a shared parking agreement amongst all four buildings. This would provide additional parking during EPIC’s peak parking times.

**CUP Standards**

The proposal would meet the general conditional use permit standards as outlined in City Code §300.16 Subd.2:

1. The use is consistent with the intent of this ordinance;

   **Finding:** A public building is a conditionally-permitted use within the B-2 district. The city has conditionally allowed day cares, schools, and religious institutions as uses similar to a public building under the “other uses similar to” section of this ordinance.

2. The use is consistent with the goals, policies and objectives of the comprehensive plan;

   **Finding:** The site is located within the Opus area, which is guided for mixed use. The larger development includes industrial, commercial, office, and residential land uses.

3. The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements; and

   **Finding:** The proposal has been reviewed by the city’s building, engineering, planning, natural resource and fire staff. Staff has determined that it would not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements.

4. The use is consistent with the city’s water resources management plan;

   **Finding:** The proposal is consistent with the city’s water resources management plan. No significant changes are proposed to the property at this time.

5. The use is in compliance with the performance standards specified in Section 300.28 of this ordinance; and
**Finding:** The majority of the performance standards outlined in the zoning ordinance are related to development and construction. The proposal is for the use of an existing building with minimal impacts to the site and exterior building. But for a parking variance to allow a reduction of parking, the proposal would meet the standards outlined.

6. The use does not have an undue adverse impact on the public health, safety or welfare.

**Finding:** Staff does not believe that the proposal would have an undue adverse impact on the public’s health, safety or welfare.

**Specific CUP Standards and Site and Building Plan Standards**

City Code §300.21 Subd. 3(m) requires that public buildings must meet site and building plan standards as outlined in City Code §300.27. As the applicant is also requesting site and building plan approval, staff has included the standards and findings for both below:

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

   **Finding:** The proposal has been reviewed by the city’s building, engineering, planning, natural resources, and fire staff to ensure consistency with the city’s development guides.

2. Consistency with this ordinance;

   **Finding:** But for a parking variance, the proposal would be consistent with the ordinance. Staff finds that the parking variance is reasonable, as the proposed uses are complementary and would experience varied peak parking demand times.

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

   **Finding:** No external modifications to the property are proposed at this time.
4. Creation of a harmonious relationship of buildings and open space with natural features and with existing and future buildings having a visual relationship to this development;

**Finding:** All proposed changes would be internal to the building. As such, the proposal would not change the site’s visual appearance.

5. Creation of a functional and harmonious design for structures and site features, with special attention to the following:

   a. an internal sense of order for the buildings and uses on site and provision of a desirable environment for occupants, visitors and the general community;

   b. the amount and location of open space and landscaping;

   c. materials, textures, colors and details of construction as an expression of the design concept and with compatibility of the same with the adjacent and neighboring structures and uses; and

   d. vehicular and pedestrian circulation, including walkways, interior drives, 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 applicant is not proposing any site or exterior building improvements at this time. As such, there would be no negative impacts to existing open space on the property.

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; and

   **Finding:** The proposal is for the reuse and remodel of an existing building.

7. Protection of adjacent and neighboring properties through reasonable provision for surface water drainage, sound and sight 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 be complementary to existing uses within the immediate area. Further, the proposal would not have any negative impact on adjacent or neighboring properties.

**Approving Body**

The planning commission makes a recommendation to the city council, which has final authority to approve or deny the request. (City Code §300.06 Subd. 4)

**Motion options**

The planning commission has the following motion options:

1. Concur with staff’s recommendation. In this case, a motion should be made recommending the city council approve the proposal based on the findings outlined in the staff-drafted resolution.

2. Disagree with staff’s recommendation. In this case, a motion should be made recommending the city council deny the request. The motion should include findings for denial.

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

**Pyramid of Discretion**

The city sent notices to 601 area property owners and received one comment. See page A14.

**Deadline for Decision**

October 8, 2016
Location Map

Project: EPIC
Address: 5620 Smetana Dr
Project No. 89041.16a

This map is for illustrative purposes only.
Al-Amaan Center / Eden Prairie Islamic Community (EPIC) can be reached at:

8725 Columbine Road #46482
Eden Prairie, MN 55344
alamaan.org
info@alamaan.org
facebook.com/alamaancenter
@alamaancenter
@alamaancenter

All contributions are fully tax-deductible. Tax ID: 5527592-47

A unique, exciting opportunity to invest in our future!
Our community

We owe Allah SWT our utmost gratitude, for He has blessed Minnesota with an incredible, beautiful, richly diverse community. We've come a long way since the establishment of the Dinkytown masjid. We have steadily grown and strengthened over the years, successfully established opportunities for learning, da‘wah, education, spiritual development, socializing as a community and bonding as families.

Our community is like a patchwork quilt, with various cultural, ethnic, socioeconomic backgrounds, sewn together with the threads of mutual affection and respect onto a foundation of the Qur‘an, the Sunnah, and the love of Allah SWT and His Prophet saw.

II. Shifting the paradigm

The challenge we now face is in further developing and growing our community

Our community has spent decades on the establishment and maintenance of the community and our Muslim identity. Through the grace of Allah SWT we have established programming that enriches community members of all ages. The challenge we now face is in further developing and growing our community, inspiring a love of learning, confidence in our identity, and a desire to continue da‘wah work, with the Masjid and community firmly anchored in the heart.

To this end, we came together to form Al-Amaan Center, a sanctuary, as reflected in its name: rooted in the Qur‘an and Sunnah, anchored in the community, pivoting towards the future. A Center for all generations of Muslims - be they immigrants, refugees, baby-boomers, gen x-ers, millennials, and those yet to come. A Center where all are welcomed and served as the guests of Allah SWT.

Rooted in the Qur‘an and Sunnah, anchored in the community, pivoting towards the future. A center for all generations of Muslims.

EPIC
5620 Smetana Drive
89041.16a
III. Where we're headed

The name Al-Amaan was chosen because it evokes peace, safety, serenity and tranquility. Guided by ayah 125 of surat al-Baqara, "Remember We made the House a place of assembly for mankind and a place of safety," we have obligated upon ourselves the mission to welcome and serve all the guests of Allah SWT and to develop and maintain, in the House of Allah, an environment of peace, safety and tranquility.

Reaffirming our [grass]roots

We envision a community organization built and run by its own people, following the example set by our beloved Prophet saw and those that followed him. This would include a General Assembly of individuals who have a deep connection with the masjid and are actively involved in the community, a Lead Imam to provide spiritual guidance, and a small decision-making body (or "Board") employing consultative decision-making processes, i.e. our long-standing tradition of shura, to allow everyone a say and to make known the will of the people.

IV. What might a day with Al-Amaan look like?

Sara is new to the Twin Cities community and lives in the western suburbs with her husband and their two children (5 years & 12 months). She's an independent design consultant whose needs are simple: a place to work, care for her baby, professional development opportunities, Islamic activities for her older child, a place to pray, and inspiring programming for personal enrichment.

We are committed to equality in facilities, and equity in access to knowledge and resources. Imagine a Center designed with your needs in mind - a Center for you

Meet Sara

Sara has been looking for a class on Android app development - a friend suggests checking out Al-Amaan Center.

She heads over to Al-Amaan Center for her class, checks her baby in at Al-Amaan Kidz Club.

She attends her class in a professional classroom setting.

She finds a course, registers online, and sees that childcare is also offered.

Her husband comes after picking up their older child, who is dropped off at Al-Amaan’s Al-Muttaqeen afterschool program.

After her class she stops by the Kidz Club to check on her baby, and takes care of her needs in the mothering room.

She heads over to the cafe to grab a coffee, then settles in at the coworking space to get some work done while waiting for her husband to join.

Sara and her husband attend a relevant and uplifting halal, worry-free, as both their children are being cared for in an Islamic environment. The evening ends as all pleasant evenings do, with prayer in jam'ah and a cup of chai.

This is Sara’s Al-Amaan story.

What’s yours?

EPIC
5620 Smetana Drive
89041.16a
V. The Center

By the Grace of Allah SWT, we have found a home for Al-Amaan Center, alhamdulillah. Our new home will inshaa Allah host a Masjid that welcomes and serves the guests of Allah, and an Education Center offering:

- Sessions in traditional Islamic Sciences
- Islamic Daycare/Preschool
- Islamic School for our youth
- Hifdh/Qur'an School
- Professional Development

Other planned projects include a cafe, community library, bookstore, coworking/collaborative spaces, a banquet hall, facilities to support our mothers, and professional office spaces.

A multilevel building with over 30,000 sq ft • Spacious musalla on the 1st floor measuring over 8,000 sq ft • Over 200 parking spaces, including underground parking • Fully wheelchair accessible

VI. How to turn ideality into reality

1. Your Duaa

Allah SWT says in the Qur'an (2:186): "I respond to the invocations of the supplicant when he calls on Me," so make dua freely and frequently for the community and this venture, may Allah SWT put baraka in them, inshaa Allah, ameen.

2. Your Help

When we come together to work for the sake of Allah SWT, all things are possible. This new vision needs beautiful, dedicated hearts like yours to make it a reality, and reap the rewards of supporting the Al-Amaan project, envisioned to serve generation upon generation to come.

3. Your Investment

"Who is he that will lend to Allah a goodly loan so that He may multiply it to him many times? And it is Allah that decreases or increases (your provisions), and unto Him you shall return (2:245).

Further, the Prophet said: 'Whosoever shares in building a masjid for Allah, Allah SWT will build for him a house in Paradise.'

We're trying to raise $1 million, but this isn't just another "fundraiser"

This is an opportunity to invest in a vision of unity, in striving together to build a center of excellence that will inshaa Allah be of benefit to every member of the community who seeks it. Your investment is a loan to Allah SWT that He will return manifold - a sadaqa jariya, inshaa Allah. All contributions are appreciated, whatever their size, but to achieve this goal we seek 1000 community members to make an investment of $1,000 each

It seems like a lot, but over a year, it amounts to less than $3/day, less than $100/month.

How to contribute

1. Visit alamaan.org/invest
2. Email invest@alamaan.org, call Dr Mohamed Ibrahim at 612.240.0545 with questions or to set something up, or complete a pledge form
3. For all other types of contributions, email info@alamaan.org

A5

5620 Smetana Drive
89041.16a
JUNE 10, 2015

City of Minnetonka

Dear Planning Department,

Eden Prairie Islamic Community Center (EPIC), has entered into a purchase agreement for the acquisition of 5620 Smetana Drive, Minnetonka, identified as building 4 (IV) with legal description- LOT 002 BLOCK 001 BRENWOOD BUSINESS PARK = PID #: 3611722140015; And 5640 Smetana Dr, Minnetonka, identified as building 3 (III) with legal description - LOT 003 BLOCK 001 BRENWOOD BUSINESS PARK = PID #: 3611722140016. It is the intent of EPIC to utilize 5620 Smetana Drive as a community center. The center needs to become a fully functional community center that caters to the needs of the EPIC community. The center envisions the space to be mostly a place of worship for the entire community. The building’s main level will be dedicated for this purpose. The rest of the space will be used as classrooms for weekend school for kids, provide daycare services for young children and accommodate office facilities. A future coffee shop/convenience store and a banquet facility with a full service kitchen is on the horizon as well. For these, we will seek required city permits, as needed in the future. These space allocation plans are geared towards building a strong community whose present and future needs are adequately planned and provided for. At the present time, EPIC has no specific plans for building 5640 and that building will most likely remain as an office complex for the time being.

Warm regards,

Nemat Janetkhan/ Doctor Mohamed Ibrahim

952-451-3053/612-240-0545
Level One:

- Worship space (7332 square feet):
  - Worship 5 times a day, rows of people standing in designated spaces
  - The following is intended to summarize the times and number of people attending worship:

<table>
<thead>
<tr>
<th>Worship time</th>
<th>Number of attendees</th>
</tr>
</thead>
<tbody>
<tr>
<td>4:30 a.m.</td>
<td>30 people</td>
</tr>
<tr>
<td>1:30 p.m.</td>
<td>10 people</td>
</tr>
<tr>
<td>5:30 p.m.</td>
<td>10 people</td>
</tr>
<tr>
<td>9:00 p.m.</td>
<td>20 people</td>
</tr>
<tr>
<td>10:00 p.m.</td>
<td>30 people</td>
</tr>
<tr>
<td>Friday prayer</td>
<td>400 people</td>
</tr>
</tbody>
</table>

- Office space (1814 square feet)
- Coffee shop (1300 square feet)

Level Two:

- Office (6054 sq ft)
- Daycare (2,000 sq ft)
  - Number of students and teachers to be determined by the need of the community needs.
- Classroom (3,000 sq ft)
  - Saturday school for Islamic students serving 50-100 students from 10 a.m. to 2 p.m.

Level Three:

- Banquet facility (6,000-7,000 sf) with seating for approximately 300 people
- For weddings and memorial services for the deceased
- Anticipated that the use will be between 50 and 250 people.
- Typically used only during the weekends and evenings.
Will remain as offices

Future place of coffee Shop

Place of Worship
LEVEL TWO

This level will be designated for offices, day care, classroom facility

NOT TO SCALE
Resolution No. 2016-
Resolution approving a conditional use permit, with a parking variance, for Eden Prairie Islamic Community Center (EPIC) at 5620 Smetana Drive

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

Section 1. Background.

1.01 Eden Prairie Islamic Community Center (EPIC) has requested a conditional use permit to operate a community center within an existing building.

1.02 The property is located at 5620 Smetana Drive.

It is legally described as:

Lot 2, Block 1, Brenwood Business Park

1.03 At full capacity the community center would include: (1) worship space; (2) a coffee shop to serve building users; (3) offices; (4) a licensed day care facility; (5) classroom facilities; and (6) a banquet facility.

1.04 The proposal requires a parking variance from 356 to 194 parking stalls.

1.05 City Code §300.18 Subd. 4(n) allows public buildings as conditional uses within the B-2 zoning district.

1.06 City Code §300.18 Subd. 4(t) allows other “uses similar to those permitted within this section, as determined by the city” as conditional uses within the B-2 zoning district.

1.07 The proposed community center would be similar to a public building, as it is a place where a group of people would gather at a specified time for a specific purpose.
On July 21, 2016, 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 that the city council approve the permit, with variance.

Section 2. Standards.

2.01 City Code §300.21 Subd. 2 lists the following general standards that must be met for granting a conditional use permit:

1. The use is consistent with the intent of the ordinance;
2. The use is consistent with the goals, policies, and objectives of the comprehensive plan;
3. The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements;
4. The use is consistent with the city’s water resources management plan;
5. The use is in compliance with the performance standards specified in §300.28 of the ordinance; and
6. The use does not have an undue adverse impact on the public health, safety and welfare.

2.02 City Code §300.21 Subd. 3(m) outlines the following specific standards that must be met for granting a conditional use permit for public buildings:

1. Site and building plan pursuant to section 300.27 of this ordinance.

2.03 City Code §300.27, Subd. 5, outlines that the following must be considered in the 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;
2. Consistency with this ordinance;
3. Preservation of the site in its natural state to the extent practicable
by minimizing tree and soil removal and designing grade changes to be in keeping with the general appearance of neighboring developed or developing areas;

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

5. Creation of a functional and harmonious design for structures and site features, with special attention to the following:

   a) 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;

   b) The amount and location of open space and landscaping;

   c) Materials, textures, colors and details of construction as an expression of the design concept and the compatibility of the same with the adjacent and neighboring structures and uses; and

   d) Vehicular and pedestrian circulation, including walkways, interior drives 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.

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; and

7. Protection of adjacent and neighboring properties through reasonable provision for surface water drainage, sound and sight 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.

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

Section 3. Findings.

3.01 The proposal would meet the general conditional use permit standards outlined in City Code §300.21 Subd.2.

1. A public building is a conditionally-permitted use within the B-2 district. The city has conditionally allowed day cares, school, and religious institutions as uses similar to a public building under the “other uses similar to” section of the ordinance.

2. The site is located within the Opus area, which is guided for mixed-use. The larger development includes industrial, commercial, office, and residential land uses.

3. The proposal has been reviewed by the city’s building, engineering, planning, natural resource and fire staff. The use is not anticipated to have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements.

4. The proposal is consistent with the city’s water resources management plan. No significant changes are proposed to the property at this time.

5. The majority of the performance standards outlined in the zoning ordinance are related to development and construction. The proposal is for the use of an existing building with minimal impacts to the site and exterior building. But for a parking variance to allow a reduction of parking, the proposal would meet the standards outlined.

6. Staff does not believe that the proposal would have an undue adverse impact on the public’s health, safety or welfare.

3.02 The proposal would meet all but one of the specific conditional use permit standards outlined in City Code §300.21 Subd. 3(m) and site and building plan standards outlined in City Code §300.27, Subd. 5.
1. The proposal has been reviewed by the city’s building, engineering, planning, natural resources, and fire staff to ensure consistency with the city’s development guides.

2. But for a parking variance, the proposal would be consistent with the ordinance. Further, the parking variance is reasonable as the proposed uses are complementary and would experience varied peak parking demand times.

3. No external modifications to the property are proposed at this time.

4. All proposed changes are internal to the building. As such, the proposal would not change the site’s visual appearance.

5. The applicant is not proposing any site or exterior building improvements at this time. As such, there would be no negative impacts to existing open space on the property.

6. The proposal is for the reuse and remodel of an existing building.

7. The proposal would be complementary to existing uses within the immediate area. Further, the proposal would not have any negative impact on adjacent or neighboring properties.

3.03 The proposal would meet the variance standard as outlined in City Code §300.07 Subd. 1(a):

1. The proposal meets the purpose and intent of the zoning ordinance. The intent of the parking ordinance is to ensure the development provides adequate parking to meet the parking demand. The proposed uses of the building are complementary and would have varied peak parking demand times throughout the day and week. Based on programming, the peak parking demand would occur between 1:00 and 2:00 p.m. on Fridays. At this time at full capacity, approximately 400 worshipers would utilize the worship space, the day care would be operating, and the offices would be occupied. By city code, 201 spaces would be required to accommodate these uses at this peak time. A total of 220 parking stalls would be available on site and on the adjacent property at 5640 Smetana Drive, which the applicant is also purchasing. As such, the required amount of parking could be accommodated.

2. The variance is consistent with the comprehensive plan that encourages mixed-use developments, which experience peak
parking demands at different times for the different uses in the development.

3. There are practical difficulties in complying with the ordinance:

a) It is reasonable to provide flexible parking requirements based on the actual characteristics and programming of the proposed development.

b) In the past, the city has found that day care, educational, and religious institutions have complementary uses. Based on the facility’s programming, the peak parking demand for the religious institution would occur on Fridays from 1:00 and 2:00 p.m. The peak parking demand for the school would occur on Saturday’s from 10:00 a.m. to 2:00 p.m. Further, the coffee shop is intended to serve existing users of the building and would likely not generate or require additional parking. While similar to other religious institutions within the city that have parking variances for varied uses and peak parking demand, this is not common to all other similarly zoned properties.

c) The parking variance would not adversely affect the character of the surrounding neighborhood. The site would meet the anticipated peak parking demand on site. However, parking would also be available on the applicant’s adjacent property at 5640 Smetana Drive. While each property must be reviewed individually, the adjacent property would provide “overflow” parking in the off-peak office parking times if needed.

Section 4. City Council Action.

4.01 The above-described conditional use permit is approved, subject to the following conditions:

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

<table>
<thead>
<tr>
<th>Proposed Use</th>
<th>Amount of space</th>
<th>Max No. of Users</th>
</tr>
</thead>
<tbody>
<tr>
<td>LEVEL ONE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Worship space</td>
<td>7,335 sf</td>
<td>400 people</td>
</tr>
<tr>
<td>Office Space</td>
<td>1815 sf</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------------------------</td>
<td>-------</td>
<td>------</td>
</tr>
<tr>
<td>Coffee shop</td>
<td>1,300 sf</td>
<td>n/a</td>
</tr>
<tr>
<td><strong>LEVEL TWO</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office</td>
<td>6,055 sf</td>
<td>n/a</td>
</tr>
<tr>
<td>Daycare</td>
<td>2,000 sf</td>
<td>50 children</td>
</tr>
<tr>
<td>Classroom facilities</td>
<td>3,000 sf</td>
<td>100 children</td>
</tr>
<tr>
<td><strong>LEVEL THREE</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Banquet facility</td>
<td>7,000 sf</td>
<td>300 people</td>
</tr>
</tbody>
</table>

2. This resolution must be recorded with Hennepin County.

3. Prior to release of a building permit for the day care, a trip generation fee in the amount of $20,370 is required. This fee is based on the findings of the traffic study by WSB & Associates, which finds that three additional trips will be generated to the Bren Road/Highway 169 interchange.

4. A shared parking agreement should be formalized between the properties at 5640 and 5620 Smetana Drive. This agreement should be filed with Hennepin County.

5. Kitchens – including kitchens in the banquet facility kitchen, coffee shop, day care and school – must meet all food code requirements.

6. Prior to certificate of occupancy, all applicable state, county, and city licenses/permits must be obtained and copies submitted to the city.

7. The building must comply with all requirements of the Minnesota state building code, fire code, and health code.

8. Sign permits are required for any exterior signs.

9. The applicant must inform city staff in writing if any significant changes in programming that would increase the p.m. peak trip generation. This includes, but is not limited to, general programming changes and user increases, as it may require an updated traffic study. If an updated study indicates a negative impact on the surrounding roadway system or parking demand, staff may require the conditional use permit be brought back to the city council for further review.

10. The city council may reasonably add or revise conditions to address any future unforeseen problems.

11. Any change to the approved use that results in a significant increase
in traffic or a significant change in character would require a revised conditional use permit.

Adopted by the City Council of the City of Minnetonka, Minnesota, on August 8, 2016.

________________________________________
Terry Schneider, Mayor

Attest:

________________________________________
David E. Maeda, City Clerk

Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on August 8, 2016.

________________________________________
David E. Maeda, City Clerk
ITEM 8C – 5620 Smetana Drive

1. After distribution of the packet, WSB & Associated submitted the attached traffic study. The following is intended to summarize the findings of the study:

   • Based on the property’s proximity to the Bren Road and TH 169 interchange, a majority of the traffic generated by the site is anticipated to utilize the interchange.

   • The property is allocated 33 p.m. peak hour trips to the Bren Road and TH 169 interchange.

   • Based on the programming of the site, the proposed uses are estimated to generate 36 p.m. peak hour trips. This is an increase of 3 trips over the generation outlined in the ordinance. As such, a trip generation fee is required.

   • The implementation of SWLRT and the reversal of Red Circle Drive is not expected to impact the trip distribution of the site.

2. Please include the following change on page 7 of the resolution:

   2. Prior to release of the building permit:

      a. This resolution must be recorded with Hennepin County.

      b. Submit a trip generation fee in the amount of $20,370. This fee is based on the findings of the traffic study by WSB & Associates, which finds that three additional trips will be generated to the Bren
3. The attached information was submitted after the packet was distributed.

ITEM 8F – 16965 and 16957 Cottage Grove Avenue

The applicant has asked the application be pulled from tonight’s agenda.
Memorandum

To: Ashley Cauley, Planning
City of Minnetonka

From: Anthony Heppelmann, PE

Date: July 20, 2016

Re: Eden Prairie Islamic Community Traffic Study
WSB Project No. 1502-68

Introduction

The Eden Prairie Islamic Community is proposing to use the property at 5620 Smetana Drive in the Opus Industrial Park for an Islamic Community Center. The site location is shown on Figure 1. The proposed uses for the Islamic Community Center will include 7332 square feet of worship space, 1300 square feet for a coffee shop, and 1800 square feet of office space on the first floor. The second floor will have 3000 square feet of classroom space, about 2000 square feet of space for daycare for about 50 children, the remaining 6000 square feet would be used as office space. The third floor will have 6000 to 7000 square feet for a banquet facility with the rest of the space used for office (approximately 4000 square feet). Theapplicant also is proposing to acquire the building at 5640 Smetana Drive but no change in the use of this property is proposed. The purpose of this traffic study is to determine the following.

1. **The maximum number of pm peak hour trips at the Bren Road and TH 169 interchange that will be generated by the proposed uses at the 5620 Smetana Drive building between the hours of 4:00 pm and 6:00 pm.** The site is located within the Opus Industrial Park which has a trip generation ordinance that requires purchase of additional capacity at the Bren Road and TH 169 interchange if the site will generate more trips to the interchange than is allocated in the ordinance. This site has been allocated 33 pm peak hour trips based on the current office zoning of the site. This study estimates the number of pm peak hour trips that will be added to the Bren Road and TH 169 Interchange from the proposed land use.

2. **The potential impacts on traffic operations on other roadways within the Opus Industrial Park.** The trip generation estimate above addresses the potential impacts and mitigation associated with the Bren Road and TH 169 interchange. Given the location of this site a major percentage of the site generated traffic will use the Bren Road and TH 169 interchange for access to the site and is addressed by the ordinance. Other proposed...
changes within the Opus Park such as the reversal of Red Circle Drive or the SWLRT are not expected to impact traffic flow at this site.

Figure 1
Project Location
Projected Trip Generation for Eden Prairie Islamic Community

The trip generation for the Eden Prairie Islamic Community was estimated using applicable trip generation rates from the Institute of Transportation Engineers Trip Generation Manual (9th Edition) and surveyed trip generation rates from other daycare facilities. The critical time period for the Opus Park is the pm peak hour based on previous studies. This is the time period that is addressed in the Opus Park Trip Generation Ordinance and is the period addressed in the trip generation table below. We have estimated the trip generation for some of the uses based on the program proposed by the applicant. Table 1 shows the estimated trip generation for the proposed uses. The basis for the assumed trip generation rates for each of the uses is described following the table.

Table 1
Estimated Peak Hour Trip Generation of Eden Prairie Islamic Community Center

<table>
<thead>
<tr>
<th>Building Use</th>
<th>Units</th>
<th>Size</th>
<th>PM Peak Hour Rate</th>
<th>Site Trip Generation</th>
<th>To TH 169 and I-494 Interchange</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worship Space</td>
<td>People</td>
<td>10</td>
<td>2</td>
<td>20</td>
<td>10.4</td>
</tr>
<tr>
<td>Day Care</td>
<td>Children</td>
<td>50</td>
<td>0.63</td>
<td>31.5</td>
<td>16.4</td>
</tr>
<tr>
<td>Coffee Shop</td>
<td>1000 SF</td>
<td>1.3</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Classroom</td>
<td>1000 SF</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Banquet Facilities</td>
<td>1000 SF</td>
<td>7</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Office Space</td>
<td>1000 SF</td>
<td>12</td>
<td>1.49</td>
<td>17.9</td>
<td>9.3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>69.4</strong></td>
<td><strong>36.1</strong></td>
</tr>
</tbody>
</table>

Worship Space—The pm peak hour trip generation rate for this use is based on applicant provided data. Members can attend prayer 5 times daily. The prayer times are 4:30 am, 1:30 pm, 5:00 pm, 9:00 pm, and 10:00 pm. There is also Friday prayer which has the greatest attendance but this occurs early afternoon before the pm peak hour. Therefore we used the estimated people attending the 5:00 pm prayer as the basis for the pm peak hour trip generation. The applicant indicated that this was 10 people. We assumed that people drove separately based on the information provided that men and women came separately. Therefore each person would generate two trips—one in and one out.

Daycare—We used the likely maximum number of children that could attend the daycare based on its size. (50 children). The average pm peak hour trip generation rate for daycares from Institute of Transportation Engineers Trip Generation Manual (9th Edition) is 0.81 trips per child. This is based on limited number of surveys with a large range. WSB has surveyed the trip generation at other daycare facilities and has observed a lower rate. For another proposed daycare in the Opus Park we used a rate of 0.63 trips per child. It is expected that each family would have multiple children in the daycare and that pickup could coincide with prayer. Therefore the lower rate was deemed to be more appropriate for the daycare.
**Coffee Shop**—It was assumed that the coffee shop would not generate any additional pm peak hour trips. The applicant indicated that the coffee shop would cater to the people using the building for worship or other purposes and not to external customers. They indicated they would not have external signing for the coffee shop. Therefore, the trips made by the coffee shop customers are already accounted for in the trip generation estimates for the other uses.

**Classroom**—The applicant indicated that the classroom would be used on Saturdays for Islamic studies and would not be used during the weekday afternoon. Therefore it was assumed that the classroom space would generate zero pm peak hour trips.

**Banquet Facilities**—The banquet facilities will be used for gatherings, dances, meetings, wedding services, and memorial services. The applicant indicated that the banquet facilities would be used primarily in the evenings usually after 8:00 pm. Therefore it was assumed that the banquet facilities would not generate trips during the pm peak hour.

**Office Space**—The trip generation for office space is based on the Institute of Transportation Engineers Trip Generation Manual (9th Edition). It is the same rate used for the Opus Trip Generation Ordinance. The applicant indicated that there would be 1300 square feet of office space on the first floor, 6054 square feet of office on the second floor and the remaining space of approximately 4500 square feet on the third floor for a total of approximately 12,000 square feet. The office uses would be for employees and other operations related to the community center. The applicant indicated that the coffee shop and banquet facilities were future uses and that this space would not be used as office space prior to implementation of these future uses. This is approximately 8,300 square feet of space that was assumed to be vacant until the coffee shop and banquet facilities are opened.

Based on the above assumptions it is estimated that the 5620 Smetana building will generate approximately 69 pm peak hour trips.

**Trip Distribution and Estimated Trips to Bren Road Interchange**

This property was allocated 33 pm peak hour trips to the Bren Road and TH 169 interchange based on the existing office space use on this site. The Trip Generation ordinance for the Opus Industrial Park assumes that 52% of the traffic generated by this site will use the Bren Road and TH 169 Interchange. This is based on the assumption that about 20 percent of the traffic will be to other uses in the Opus Park and of the trips that leave the park 65% will use the Bren Road and TH 169 Interchange. Based on these assumptions the proposed uses are estimated to generate 36 pm peak hour trips to the Bren Road and TH 169 interchange, which is 3 trips over the allocation in the ordinance. The ordinance indicates that if a site will exceed the trip generation outlined in the ordinance a property owner could purchase additional trips based on a specified cost per trip.
Potential Impacts on Trip Distribution from Implementation of SWLRT and Reversal of Red Circle Drive

Two major projects have been proposed within the Opus Industrial Park that have the potential to impact the trip distribution assumed in the ordinance. One is the implementation of the Southwest Light Rail Transit Line and the other is the reversal of Red Circle Drive. Because of the location of this site on Smetana Drive just north of the Bren Road and TH 169 interchange these projects are not expected to impact the trip distribution from the site. Both projects are located west of the site and have more impact on circulation within the heart of the Opus Park.

Impact on Traffic Operations of Other Roadways

The majority of the traffic generated by this site is oriented to the Bren Road and TH 169 Interchange. The traffic operations and capacity of this interchange are governed by the Opus Trip Generation Ordinance and as long as properties are in conformance with the ordinance this interchange is forecast to operate at an acceptable level of service. The proposed change in use at this building is not expected to affect the traffic operations at any other nearby intersections.

Conclusions

The following conclusions were reached from the analysis that was conducted for this traffic study of the proposed Eden Prairie Islamic Community Center.

- The site is located within the Opus Industrial Park which has a trip generation ordinance that requires purchase of additional capacity at the Bren Road and TH 169 interchange if the site will generate more trips to the interchange than is allocated in the ordinance. This site has been allocated 33 pm peak hour trips based on the current office zoning of the site.

- Using ITE Rates and other data it was estimated that this site will generate 36 pm peak hour trips to the Bren Road and TH 169 Interchange, which is 3 trips over the allocation for this site.

- The implementation of the SWLRT and the reversal of Red Circle Drive is not expected to impact the trip distribution from this site.

- The change in land use at this site is not expected to impact the traffic operations at any other roadways or intersections within the Opus Industrial Park.
Neighborhood feedback
I am concerned how this project will impact the traffic on Green Circle Dr. Specific to the condo at 5607 Green circle Drive. A traffic survey should be conducted before the project is approved.

Thanks
A. Miller
July 19, 2016

City of Minnetonka Planning Division
Re: Project No 89041.16a
14600 Minnetonka Blvd.
Minnetonka, MN 55345

Dear Planners:

I am in receipt of the above referenced notice. Unfortunately the notice allows an inadequate period for response. In spite of that deficiency my response is included here.

Why, I ask would our City consider permitting a (mosque) i.e. ‘religious’ facility to be located in an industrial area and indeed within the City at all. Islam has a unique history of violence since its very founding. The facility being considered could very well be a training ground for mischief as has been the case all over the world? There have been over 28,000 such attacks around the world since September 11, 2001. Some information is enclosed explaining what Muslims believe and what they do. During this year’s Ramadan over there have been over 200 bomb attacks around the world all perpetrated by Muslims. How may attacks have there been by Christians and Jews and other religions? None!

Also included are the words of a Muslim leader Abu Bakr-Baghdadi just last year. You can read it for yourself. Certainly not all Muslims are terrorists but there is no way to distinguish one from another and they all learn from the same book.

I have devoted many hours to the study of Islam since the attack on the World Trade Center in New York City. Huge amounts of information is available to any one even those inhibited by the disease of political correctness. How may attacks (like those in Florida, California, Nice France and many others) will it take before we all wake up to the truth. Islam is a religion of “violence.” Always has been.

As you would guess I am adamantly opposed to the City approving this permit. Please convey this information to those who need to know. I will try to attend some of the meetings.

Sincerely,

James L. Cardinal
5645 Green Circle Drive No 312
Minnetonka, MN 55343
"Islam was never a religion of peace, Islam is the religion of fighting."

To: [Redacted]  Thu, Jul 14, 2016 at 1:38 PM

"Islam was never a religion of peace, Islam is the religion of fighting. No-one should believe that the war that we are waging is the war of the Islamic State, it is the war of all Muslims, but the Islamic State is spearheading it. It is the war of Muslims against Infidels."

- ISIS Leader Abu Bakr Al-Baghdadi 14th May 2015
Ramadan Bombathon

2016

Final score

Terror in the Name of ISLAM: 238 1850

ALL Other Religions Combined: 0 0

by "Islamophobes": 0 0

Scorecard produced by TheReligionofPeace.com

Sahih Bukhari (52:220) - Allah’s Apostle [Muhammad] said... 'I have been made victorious with terror’

Over the past 1400 years it is estimated that more than 270 million have perished at the sword of Islam. Islam has a fully developed doctrine and theology that mandate eternal warfare, hatred and enmity against kafirs (unbelievers).

The Qur'an distinguishes Muslims from others (kafirs), bestowing the highest praise for believers while heaping the vilest condemnation on those outside the faith. Islam is a true supremacist ideology. (See also Is the Quran Hate Speech?)

The holiest book of Islam (81% of which is about non-Muslims) draws the sharpest of distinctions between Muslims (the best of people, 3:110) and non-believers (the worst of creatures, 98:6). Praise is lavished on the former while the latter is condemned with scorching generalization.

Far from teaching universal love, the Qur'an incessantly preaches the inferiority of non-Muslims, even comparing them to vile animals and gloating over Allah's hatred of them and his dark plans for their eternal torture. Muslims are told that they are destined to dominate non-believers, against whom harsh treatment is encouraged.
Submitted by James Cardinal

* Dehumanization of other groups and the personal supremacy of men over women.
* The advocating of different standards of treatment based on identity group membership.
* A call to violence against members of other groups.

Sadly, and despite the best intentions of many decent people who are Muslim, the Qur'an qualifies as hate speech on each count.


After 1400 years, the "Religion of Peace" made its holliest month a Ramadan one to remember, with high profile suicide attacks in Florida, Turkey, Bangladesh, Baghdad, Yemen, and elsewhere - resulting in over 1850 dead Christians, Jews, Hindus, Buddhists, gays and co-religionists.

238 fatal terror attacks in 32 countries occurred in the name of Islam this year, while other religions murdered not a single one.

There were also a handful of detestable assaults on innocent Muslims in the aftermath of Islamic terror, although (fortunately) no one was killed.

**Last 30 Days:** During this time period, there were 177 Islamic attacks in 30 countries, in which 1579 people were killed and 2186 injured.
**Ideas do not have rights.**

*You are free to believe what you want, and I’m free to criticize those beliefs.*

<table>
<thead>
<tr>
<th>Year</th>
<th>Islamic Attacks</th>
<th>Countries</th>
<th>People Killed</th>
<th>People Injured</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>1290</td>
<td>50</td>
<td>11860</td>
<td>14364</td>
</tr>
<tr>
<td>2015</td>
<td>2866</td>
<td>53</td>
<td>27627</td>
<td>26159</td>
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<tr>
<td>2014</td>
<td>3001</td>
<td>55</td>
<td>32863</td>
<td>27522</td>
</tr>
<tr>
<td>2013</td>
<td>2822</td>
<td>50</td>
<td>16775</td>
<td>28577</td>
</tr>
<tr>
<td>2012</td>
<td>2480</td>
<td>58</td>
<td>11546</td>
<td>20254</td>
</tr>
<tr>
<td>2011</td>
<td>1986</td>
<td>57</td>
<td>9086</td>
<td>16921</td>
</tr>
<tr>
<td>2010</td>
<td>2023</td>
<td>48</td>
<td>9233</td>
<td>17461</td>
</tr>
<tr>
<td>2009</td>
<td>2131</td>
<td>40</td>
<td>9176</td>
<td>18612</td>
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<tr>
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<td>2212</td>
<td>41</td>
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<td>18088</td>
</tr>
<tr>
<td>2007</td>
<td>3096</td>
<td>45</td>
<td>20478</td>
<td>27317</td>
</tr>
<tr>
<td>2006</td>
<td>2779</td>
<td>42</td>
<td>15245</td>
<td>19496</td>
</tr>
<tr>
<td>2005</td>
<td>1845</td>
<td>38</td>
<td>7625</td>
<td>12855</td>
</tr>
<tr>
<td>2004</td>
<td>1115</td>
<td>37</td>
<td>7166</td>
<td>14574</td>
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<tr>
<td>2003</td>
<td>870</td>
<td>33</td>
<td>3273</td>
<td>6772</td>
</tr>
<tr>
<td>2002</td>
<td>667</td>
<td>24</td>
<td>2849</td>
<td>6055</td>
</tr>
<tr>
<td>2001</td>
<td>177</td>
<td>13</td>
<td>3537</td>
<td>3561</td>
</tr>
</tbody>
</table>
The Islamic State put these teachings from their holy book into practice during a restaurant siege in Bangladesh during Ramadan 2016. They spared fasting Muslims and fed them their iftar - while torturing and killing those who could not recite from the Qur'an.

Polished Muslim pundits in the West are fond of using the word 'bigot' to describe critics of Islam, but they are rarely challenged on their own view of the Qur'an. What does the book they claim to be the literal and eternal word of Allah really say about non-Muslims?


### Differences Between Muhammad and Jesus (2)  

<table>
<thead>
<tr>
<th>Muhammad...</th>
<th>Jesus...</th>
</tr>
</thead>
<tbody>
<tr>
<td>Demanded captured slaves and a fifth of all other loot taken in war. (Qur'an 8:41)</td>
<td>&quot;The Son of Man came not to be served, but to serve.&quot; (Matthew 20:28)</td>
</tr>
<tr>
<td>Was never tortured, but tortured others. (Muslim 4131, Ibn Ishaq 436, 595, 734, 764)</td>
<td>Suffered torture, but never tortured anyone.</td>
</tr>
<tr>
<td>&quot;And fight them until there is no more persecution and religion is only for Allah&quot; (Qur'an 8:39)</td>
<td>&quot;Love your enemies and pray for those who persecute you&quot; (Matthew 5:44)</td>
</tr>
<tr>
<td>Blessed the brutal murder of a half-blind man (al-Tabari 1440)</td>
<td>Healed a blind man (Mark 8:28)</td>
</tr>
</tbody>
</table>

Consider the elements that define hate speech:

* Drawing a distinction between one's own identity group and those outside it.

* Moral comparison based on this distinction.
YOU CANNOT

WITH PEOPLE WHO
WANT TO KILL YOU

"The West must awaken to the fact that it is facing nothing less than the resurgence of the greatest war machine in world history: an ideology that holds the killing of others, the plundering of their wealth, the conquering of their lands, the enslavement of their people, and the destruction of their institutions to be among the highest virtues and stepping stones to salvation! Islam, while it continues to lack a centralized political structure, is nonetheless reacquiring the means of war that it has used to such deadly effect in the past." Greg Davis, Religion of Peace

There is no amount of apology, accommodation or appeasement that can bridge the chasm between civilization and savagery...
C. Conditional use permit, with parking variance, for Eden Prairie Islamic Community Center at 5620 Smetana Drive.

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

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

O’Connell confirmed with Cauley that the proposed use would utilize Lot 2. The adjacent lot may be used for parking. No legal agreement is required for the applicant to use another site for parking, but staff recommended to the applicant that an easement agreement may be beneficial.

Chair Kirk confirmed with Cauley that the parking requirements depend on square footage except for uses such as daycares, schools, and religious institutions which use the number of users. The resolution ties the approval to the standards and identified type of use. If there would be a change or intensification of use, then a review of the conditional use permit would be required.

Mohammad Ibrahim, board member of the Eden Prairie Islamic Community Center (EPIC), applicant, stated that he was present with Bilal Mamdani, Nemat Janetkhan, and Bilal Mamdani who are additional members of the board. He stated that EPIC hopes to foster a community that is engaged and vibrant rooted with a spiritual foundation. EPIC would host activities to better the community. He explained the floorplan. The first floor would be used primarily for prayer.

Hanson asked if the current location has multiple uses or if it is used primarily as a prayer hall. Mr. Ibrahim answered that the current building is only used as a prayer hall.

Powers asked about the daycare. Mr. Ibrahim explained that the daycare would not begin right away. When an operator is secured, then all requirements would be met. Powers asked if there would be an outdoor recreation area. Mr. Ibrahim said that would be taken into consideration at the time a daycare provider would be selected. The daycare plan would be submitted to the city for approval.

Chair Kirk suggested that the applicant research the regulations for a daycare because playground space would be required. Mr. Ibrahim agreed.

The public hearing was opened.

A resident of 5601 Smetana Drive, Cloud 9 Apartments, stated that:
• He thinks there are other issues than real estate. He was worried about security.
• The applicants are nice, local people.
• He is an immigrant himself.
• He would like to know the source of the money funding the project.
• Islam is a religion of peace.
• Radical organizations finance religious institutions.
• He is worried about neighborhood tension. Prayers start at 4:30 a.m. He did not want to see traffic driving at 4:30 a.m.
• There should be an outside play area for the children.
• He wanted to know the plan for the second building.
• He is not against the religious institute of Islam in Minnesota.
• He requested the proposal be rejected.

Matt Teplitski, 5601 Smetana Drive, Cloud 9, stated that:

• He was worried about noise outside of usual business hours.
• The daycare would not be feasible without an outdoor play area.
• There would be many visitors on holidays. The overflow traffic would use his building’s parking lot.
• The city would lose the property tax income, so the neighbors would have to pay higher taxes.
• His property value would decrease because the building would be busier.

Alexander Teplitski, 2916 Plymouth Road, stated that:

• His children have apartments at 5601 Smetana Drive.
• He is worried about radical terrorists and the security of his children and grandchildren.
• He did not want the area to change. He would lose money.

Patty Aossey, 13501 Larkin Drive, stated that:

• She supports the good people submitting the application.

Karen Howe, 3528 Moorland Road, stated that:

• She was worried about people who have to worry about their safety because the color of their skin make them a target.
Chair Kirk instructed speakers to stay focused on the conditional use permit issues and not on race or religious issues.

James Kenser, Moorland Road, stated that:

- The applicants should not be alienated for the actions of others.

Bilal Mamdani introduced his wife, Mona Fahmy, Shakopee resident. Ms. Fahmy stated that she is part of the governing board of the EPIC Center. She stated that:

- She grew up in Iowa and is an optometrist. Everyone at the EPIC Center supports America.
- She works hard against negativity across the globe and teaches children to treat everyone with respect.
- Many Muslims are hurt by lunatics that hijacked the name of their religion.
- The report details the times and number of people who will visit the center.

No additional testimony was submitted and the hearing was closed.

Chair Kirk reiterated the purview of the planning commission.

O’Connell asked what would happen if the number of visitors would be much higher than the anticipated number. Cauley explained that a condition of approval would require review of the conditional use permit if attendance increased to 600 drivers. The conditional use permit could be revised or revoked if conditions would be different than those approved.

Chair Kirk confirmed with Cauley that there would be no additional proof of parking. Cauley stated that there may be an opportunity for a parking arrangement with the Brenwood Business Park. At this time, that would not be necessary.

Powers asked for the proposed hours of operation. Cauley answered 4:30 a.m. to 10 p.m. Memorial services and weddings happen in the evening.

Odland asked what public transportation would be available near the site. Wischnack answered that there is transit service available just north of the site.
Knight knew that neighbors of ball fields complain about noise. He asked if the city receives noise complaints from neighbors of religious institutions. Gordon said that noise complaints are most commonly about commercial uses, followed by schools, and then everything else. Staff did not anticipate a problem with noise at the proposed location.

Calvert said that police assist with directing traffic on holidays at her religious gathering place. She noted that the traffic was congested in St. Paul during one religious holiday where worshipers were outside. She asked if traffic control could be required for special occasions. Cauley answered that could be included as a condition of approval. Gordon stated that there are a few religious institutions that have traffic congestion during special occasions and request help from the police department who usually provide reserve officers to assist.

Odland asked if a play area would cut into the available parking. Cauley said that an outdoor play area may be required by the state licensing agent.

Powers asked how a noise issue occurring at 4:30 a.m. would be addressed. Cauley noted that 30 people are expected to visit the site at 4:30 a.m. City hall has not received a noise complaint when there have been more than 30 staff members present when she has arrived at city hall at 4:30 a.m.

Wischnack explained that if the property would become tax exempt, it would not impact the property taxes of any other Minnetonka property owner because Minnetonka has such a large commercial and industrial tax base that Minnetonka gives money to the pool of fiscal disparities around the metropolitan area. The impact to taxation are not the same in Minnetonka as it would be for another city. Minnetonka is the third highest fiscal disparities payer in the metropolitan area.

Wischnack noted that the city has not seen property values diminish when located near a religious institution.

Chair Kirk said that the noise ordinance would address noise issues.

Odland encouraged the applicant to research the requirements of a daycare before remodeling the building.

Calvert liked the creative use of the building. She liked the variety of uses.

Powers moved, second by Odland, to recommend that the city council adopt the resolution on pages A15-A22 of the staff report. This resolution
approves a conditional use permit with parking variance for Eden Prairie Islamic Community Center at 5620 Smetana Drive.

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

Chair Kirk stated that Minnetonka prides itself on being welcoming without prejudice. He apologized if anyone was offended, but felt that people should have the opportunity to speak. He was being respectful of the speakers, but emphasized that this is not the proper forum to debate race or religion as the planning commission is concerned about parking and traffic issues. He appreciated everyone being respectful.

The city council is tentatively scheduled to review this item August 8, 2016.
Items received since the July 21, 2016 planning commission meeting
Hello Ashley,

Thank you so much for your tremendous help in getting us thus far. We really appreciate you and the whole planning team’s efforts for the approval process to move forward.

As we have discussed in the neighborhood meeting, we would like to formally request the City to defer requiring us to pay the trip generation charge until we formalize our use of the Day Care center. We will reach out to the City once we are ready to move on with starting Day Care center.

We are grateful for the City understanding our needs and working with us to find solutions.

On Thursday, July 21, 2016 10:21 AM, Ashley Cauley <acauley@eminnetonka.com> wrote:

The consultant just sent over the traffic study. I’ll be including it in the change memo for this evening.
Please contact me if you have any questions.
Ashley

Ashley Cauley | Senior Planner | City of Minnetonka
14600 Minnetonka Blvd | Minnetonka, MN 55345 | 952-939-8298
City Council Agenda Item #14B  
Meeting of August 8, 2016

**Brief Description**  
Resolution approving the preliminary plat of HIGHVIEW PLACE, a nine-lot subdivision, generally located at the northwest corner of I-494/State Highway 7 interchange.

**Recommendation**  
Adopt the resolution approving the request.

**Background Information**

In September 2014, the city adopted the residential alternative (R-1A) ordinance. Unlike the planned unit development (PUD) zoning – which is considered a flexible zoning district – R-1A is a traditional zoning classification that allows for a smaller-lot, single family residential development option.

On July 11, 2016, AKARE Companies, represented by Rob Eldridge, requested that a portion of the property at 4301 Highview Place and an adjacent, unaddressed parcel be rezoned from R-1 to R-1A. The city council approved the request to rezone the area, informed by the conceptual plat submitted, based on the following findings:

- The R-1A would not detract from the existing surrounding neighborhood. The site is located at the edge of an existing neighborhood and at the intersection of I-494 and Highway 7.

- As presented on the conceptual plat, the R-1A area would be served by a new public street. This area would result in the creation of a new neighborhood. (See pages A1–A6.)

**Current Request**

AKARE Companies, represented by Rob Eldridge, is now requesting the approval of HIGHVIEW PLACE preliminary plat. As was presented in the conceptual plat, HIGHVIEW PLACE would include nine lots; one R-1 lot containing the existing home and eight new R-1A lots accessed via a new public cul-de-sac.

**Planning Commission Hearing**

The planning commission considered the request on July 21, 2016. The staff report from that meeting is attached and various plans and documents describing the proposed project may be found on pages A1–A17. At that meeting, a public hearing was opened to take comment but no one appeared to speak.
Following the public hearing, the commission commended the applicant for developing a plan that reflected the comments received by the neighbors during the concept plan process.

**Planning Commission Recommendation**

On a 7-0 vote, the commission recommended that the city council approve the proposal. Meeting minutes may be found on page A31.

**Since Planning Commission Hearing**

Page 2 of the staff report for the planning commission meeting was revised to exclude ash and elm as high priority trees. “These high priority trees are predominately of oak, walnut, and pine species and are clustered in the northeast corner of the site and along the western property lines.”

**Staff Recommendation**

Adopt the resolution on pages A18–A30, approving the request.

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

Originator:  Ashley Cauley, Senior Planner
MINNETONKA PLANNING COMMISSION
July 21, 2016

Brief Description
Preliminary plat of HIGHVIEW PLACE, a nine-lot subdivision, generally located at the northwest corner of I-494/State Highway 7 interchange

Recommendation
Recommend the city council approve the preliminary plat

Background
In September 2014, the city adopted the residential alternative (R-1A) ordinance. Unlike the planned unit development (PUD) zoning—which is considered a flexible zoning district—R-1A is a traditional zoning classification that allows for a smaller-lot, single family residential development option.

On July 11, 2016, AKARE Companies, represented by Rob Eldridge, requested that a portion of the property at 4301 Highview Place and an adjacent, unaddressed parcel be rezoned from R-1 to R-1A. The city council approved the request to rezone the area, informed by the conceptual plat submitted, based on the following findings:

• The R-1A would not detract from the existing surrounding neighborhood. The site is located at the edge of an existing neighborhood and at the intersection of I-494 and Highway 7.

• As presented on the conceptual plat, the R-1A area would be served by a new public street. This area would result in the creation of a new neighborhood. (See pages A1-A6.)

Proposal Summary
AKARE Companies, represented by Rob Eldridge, is now requesting approval of HIGHVIEW PLACE preliminary plat. As presented in the conceptual plat, HIGHVIEW PLACE would include nine lots; one R-1 lot containing the existing home and eight new R-1A lots accessed via a new public cul-de-sac. (See pages A8-A17.) The following is intended to summarize the applicant’s proposal. Additional information can be found in the “Supporting Information” section of this report.

• Existing Site Conditions.

The existing site is comprised of two properties generally located at the intersection of I-494 and Highway 7. The total site is 4.5 acres in size. The property generally slopes downward from the existing home towards the I-494/Highway 7 interchange. The site does not include a woodland preservation area. However, it
does include 101 high priority trees. These high priority trees are predominately of oak, walnut, and pine species and are clustered in the northeast corner of the site and along the western property lines. From I-494 and Highway 7 there does appear to be a significant amount of vegetative buffer. However, a majority of these are on the site and are not regulated as high priority trees. There are very few trees within the right-of-ways of these roadways.

- **Proposed Lots.**

The existing home at 4301 Highview Place would remain. Despite being reconfigured to accommodate the new R-1A lots, this lot would comply with all minimum R-1 standards. The new R-1A lots would range in size from 15,600 square feet to 22,377 square feet. (See page A10.)

- **Site Impacts.**

Grading and tree removal would be required to accommodate the new public infrastructure, including the new cul-de-sac, water and sewer utilities, and stormwater management facilities. A retaining wall would be constructed and grading would occur in the southeastern portion of the site to accommodate the new lots and the cul-de-sac. (See pages A13.) The proposal would result in removal or significant impact to 35 high priority trees. This results in a 35-percent loss, which is the maximum amount allowed by ordinance.

**Primary Questions and Analysis**

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

- **Is the proposed plat appropriate?**

Yes. The proposed plat would allow the existing home to remain on a reconfigured lot and eight new R-1A lots. The new lots would be “smaller” than traditional R-1 lots and would be subject to maximum floor area ratios and impervious surface requirements. All of the lots would meet the lot standards for their respective zoning districts. The specific standards are outlined in the “Supporting Information” section of this report.

- **Are the anticipated site impacts acceptable?**

Yes. The redevelopment of the area would result in significant grading and tree removal. Based on staff’s review of the plans, the site contains 101 high priority trees, of which 35 – or 35% - would be removed or significant impacted. This is in compliance with the city’s tree ordinance.
Staff Recommendation

Recommend the city council adopt the resolution on pages A18–A30 approving the preliminary plat of HIGHVIEW PLACE.

Originator: Ashley Cauley, Senior Planner
Through: Loren Gordon, AICP, City Planner
Supporting Information

Project No. 88082.16a

Property 4301 Highview Place and an adjacent, unaddressed parcel

Applicant AKARE Companies represented by Rob Eldridge

Surrounding Land Uses Northerly: Single family residences, zoned R-1
Easterly: I494 and the Highway 7 ramp
Southerly: Highway 7
Westerly: Single family residences, zoned R-1

Planning Guide Plan designation: low density residential
Zoning: R-1 and R-1A

Lot Standards The proposed plat would meet the R-1 and R-1A development standards:

<table>
<thead>
<tr>
<th>LOT</th>
<th>AREA</th>
<th>WIDTH</th>
<th>DEPTH</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Buildable</td>
<td>ROW</td>
</tr>
<tr>
<td>R-1</td>
<td>CODE</td>
<td>22,000 sf</td>
<td>3,500 sf</td>
</tr>
<tr>
<td></td>
<td>1</td>
<td>22,270 sf</td>
<td>15,080 sf</td>
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<td></td>
<td>CODE</td>
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<td></td>
<td>2</td>
<td>16,305 sf</td>
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<td>3</td>
<td>22,380 sf</td>
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<td>7,645 sf</td>
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<td>7</td>
<td>19,035 sf</td>
<td>9,485 sf</td>
</tr>
<tr>
<td></td>
<td>8</td>
<td>15,670 sf</td>
<td>7,395 sf</td>
</tr>
<tr>
<td></td>
<td>9</td>
<td>16,265 sf</td>
<td>8,085 sf</td>
</tr>
</tbody>
</table>

Rounded to the nearest 5 ft.

FAR and Impervious Surface The R-1A ordinance establishes maximum floor area ratios (FAR) and impervious surface requirements for lots within the zoning district.

Based on the code-defined and the city’s McMansion policy, floor area is the sum of the above ground horizontal area of a home,
as measured from exterior walls and including attached garage space and enclosed porch areas, and one-half the horizontal area of a partially exposed level such as walkout or lookout level. FAR is the floor area divided by the lot area.

The maximums for the new eight proposed R-1A lots would be as follows:

<table>
<thead>
<tr>
<th>LOT CODE</th>
<th>LOT AREA</th>
<th>MAXIMUM FAR</th>
<th>IMPERVIOUS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>15,000 sf</td>
<td>0.24 &lt; 17,500 sf</td>
<td>50%</td>
</tr>
<tr>
<td>2</td>
<td>16,305 sf</td>
<td>3,915 sf</td>
<td>8,150 sf</td>
</tr>
<tr>
<td>3</td>
<td>22,380 sf</td>
<td>4,925 sf</td>
<td>11,190 sf</td>
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<td>4</td>
<td>19,225 sf</td>
<td>4,230 sf</td>
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<td>5</td>
<td>15,845 sf</td>
<td>3,800 sf</td>
<td>7,920 sf</td>
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<td>18,345 sf</td>
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<td>7</td>
<td>19,035 sf</td>
<td>4,190 sf</td>
<td>9,520 sf</td>
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<tr>
<td>8</td>
<td>15,670 sf</td>
<td>3,760 sf</td>
<td>7,835 sf</td>
</tr>
<tr>
<td>9</td>
<td>16,265 sf</td>
<td>3,905 sf</td>
<td>8,130 sf</td>
</tr>
</tbody>
</table>

All numbers rounded to the nearest 5 sf

**Stormwater**

The city’s water resources engineering coordinator has reviewed the plans associated with HIGHVIEW PLACE and finds them to be generally acceptable. The plans would meet the standards of the city’s Water Resources Management Plan for rate control, volume control and water quality treatment.

Under current conditions, runoff from the site is directed southeast on the site. Under proposed conditions, this runoff pattern would be maintained, but would be more formally directed to a new infiltration basin in the southeast corner of the site. (See page A14.)

**Infrastructure**

A new cul-de-sac is proposed to provide access to the newly created lots. Public utilities would be located within the new right-of-way until it terminates at the end of the cul-de-sac. From there, the storm sewer would connect to the filtration basin between proposed Lots 4 and 5. The water main would be looped and connect to the existing waterman at the terminus of the Highview Place cul-de-sac. (See page A12.)
**Natural Resources**

Best management practices must be followed during the course of site preparation and construction activities. This would include installation and maintenance of a temporary rock driveway, erosion control, and tree protection fencing. As a condition of approval the applicant must submit a construction management plan detailing these management practices.

**Neighborhood Comments**

The city sent notices to 39 area property owners and received no comments to date.

**Deadline for Decision**

August 22, 2016
Rezoning
Ordinance No. 2016-09

An ordinance rezoning portions of the existing properties at 4301 Highview Place and an adjacent unaddressed parcel

The City Of Minnetonka Ordains:

Section 1.

1.01 Portions of the property located at 4301 Highview Place and an adjacent unaddressed parcel are requested to be rezoned from R-1 to R-1A.

Section 2.

2.01 The area to be rezoned from R-1 to R-1A is legally described on Exhibit A of this ordinance.

2.02 The described area is depicted on Exhibit B of this ordinance.

Section 3.

3.01 Rezoning of these properties is appropriate. This action is based on the following findings:

1. The R-1A area will be appropriately integrated into the existing development.

2. The R-1A area will not detract from the existing surrounding development, as it would be located at the edge of an existing neighborhood and at the intersection of Highway 7 and Interstate 494

3. All lots within the R-1A area will be served by a new street.

4. The rezoning is consistent with the comprehensive plan.
Section 4.

4.01 This ordinance is effective upon approval of the final development plan and final plat.

Adopted by the city council of the City of Minnetonka, Minnesota, on July 11, 2016.

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

Action on this ordinance:

Date of introduction: June 6, 2016
Date of adoption: July 11, 2016
Motion for adoption: Wagner
Seconded by: Wagner, Ellingson, Allendorf, Acomb, Wiersum, Bergstedt, Schneider
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 July 11, 2016.

David E. Maeda, City Clerk
EXHIBIT A

Legal Description to be Inserted Prior to Planning Commission Public Hearing
Current Preliminary Plat Request
HIGHVIEW PLACE
MINNETONKA, MN

PROJECT LOCATION

GOVERNING SPECIFICATIONS:

1. THE MINNESOTA DEPARTMENT OF TRANSPORTATION "STANDARD SPECIFICATIONS FOR CONSTRUCTION" LATEST EDITION & SUPPLEMENTS.
2. CITY ENGINEERS ASSOCIATION OF MINNESOTA (CEA) STANDARD UTILITIES SPECIFICATIONS. (LATEST EDITION)
3. ALL APPLICABLE FEDERAL, STATE AND LOCAL LAWS AND ORDINANCE WILL BE COMPLIED WITH IN THE PERFORMANCE OF THIS WORK.
4. CITY OF MINNETONKA STANDARD SPECIFICATIONS & DETAILS.

INDEX

1. EXISTING CONDITIONS / SEASONAL PLAN
2. EXISTING SURVEY PLAN
3. SANITARY SEWER AND WATERMAIN PLAN
4. STORM SEWER AND STORM WATER PLAN
5. STORM SEWER WASTE POLLUTION PREVENTION PLAN
6. SEWER SHEET PLAN
7. DETAILS
LEGAL DESCRIPTION:
Parcel 1: That part of Lot 5, Block 1, Pierce's Addition, lying Southwesterly of a line drawn from a point on the Southerly line of said Lot 5 distant 70.0 feet East of the most Westerly corner thereof to a point on the Northwesterly line of said Lot 5 distant 56.15 feet Northeasterly of the most Westerly corner thereof.

Parcel 2: Tracts B, C and D, Registered Land Survey No. 557, Hennepin County, Minnesota, except that part of said Tract C lying Southwesterly of the following described line: Commencing at the northwest corner of said Tract C; thence on an assumed azimuth of 182 degrees 25 minutes 01 seconds along the West line of said Tract C for 56.98 feet to the point of beginning of the line to be described; thence southeasterly for 123.37 feet on a non-tangential curve, concave to the southwest, having a radius of 66.00 feet, a delta angle of 86 degrees 48 minutes 42 seconds and a chord azimuth of 135 degrees 52 minutes 42 seconds to the northerly right of way line of Trunk Highway No. 494 as now located and established and said line there terminating.

GOVERNING SPECIFICATIONS:
3. Minnesota Building Code 2014 & Local Law and Ordinance will be complied with in the construction of this project.

LEGAL DESCRIPTION:
Parcel 1: That part of Lot 5, Block 1, Pierce's Addition, lying Southwesterly of a line drawn from a point on the Southerly line of said Lot 5 distant 70.0 feet East of the most Westerly corner thereof to a point on the Northwesterly line of said Lot 5 distant 56.15 feet Northeasterly of the most Westerly corner thereof.

Parcel 2: Tracts B, C and D, Registered Land Survey No. 557, Hennepin County, Minnesota, except that part of said Tract C lying Southwesterly of the following described line: Commencing at the northwest corner of said Tract C; thence on an assumed azimuth of 182 degrees 25 minutes 01 seconds along the West line of said Tract C for 56.98 feet to the point of beginning of the line to be described; thence southeasterly for 123.37 feet on a non-tangential curve, concave to the southwest, having a radius of 66.00 feet, a delta angle of 86 degrees 48 minutes 42 seconds and a chord azimuth of 135 degrees 52 minutes 42 seconds to the northerly right of way line of Trunk Highway No. 494 as now located and established and said line there terminating.

NOTE:
1. Existing Conditions Survey prepared by: ADVANCE SURVEYING & ENGINEERING

LEGEND
REMOVAL LEGEND

GOVERNING SPECIFICATIONS:
3. Minnesota Building Code 2014 & Local Law and Ordinance will be complied with in the construction of this project.

LEGAL DESCRIPTION:
Parcel 1: That part of Lot 5, Block 1, Pierce's Addition, lying Southwesterly of a line drawn from a point on the Southerly line of said Lot 5 distant 70.0 feet East of the most Westerly corner thereof to a point on the Northwesterly line of said Lot 5 distant 56.15 feet Northeasterly of the most Westerly corner thereof.

Parcel 2: Tracts B, C and D, Registered Land Survey No. 557, Hennepin County, Minnesota, except that part of said Tract C lying Southwesterly of the following described line: Commencing at the northwest corner of said Tract C; thence on an assumed azimuth of 182 degrees 25 minutes 01 seconds along the West line of said Tract C for 56.98 feet to the point of beginning of the line to be described; thence southeasterly for 123.37 feet on a non-tangential curve, concave to the southwest, having a radius of 66.00 feet, a delta angle of 86 degrees 48 minutes 42 seconds and a chord azimuth of 135 degrees 52 minutes 42 seconds to the northerly right of way line of Trunk Highway No. 494 as now located and established and said line there terminating.
LEGAL DESCRIPTION:

Parcel 1: That part of Lot 5, Block 1, Pierce's Addition, lying Southwesterly of a line from a point on the Southerly line of said Lot 5 distant 70.0 feet Westward of the most Westerly corner thereof to a point on the Northerly line of said Lot 5 distant 56.15 feet Northward of the most Northerly corner thereof and measured along said Northerly line.

Parcel 2: Tracts B, C and D, Registered Land Survey No. 557, Hennepin County, Minnesota, except that part of said Tract C lying Northwesterly of the following described line: Commencing in the northwestern corner of said Tract C and running northerly a distance of 182 degrees 25 minutes 01 seconds along the west line of said Tract C; thence forward in a northerly direction for 56.98 feet; thence southeasterly for 123.37 feet along a non-tangential curve, concave to the southwest, having a radius of 66.00 feet, a central angle of 86 degrees 48 minutes 42 seconds and a chord azimuth of 135 degrees 52 minutes 42 seconds to the northerly right-of-way line of Trunk Highway No. 494 as now located and established and said line there terminating.

GOVERNING SPECIFICATIONS:

1. THE MINNESOTA DEPARTMENT OF TRANSPORTATION "STANDARD SPECIFICATIONS FOR CONSTRUCTION" LATEST EDITION & SUPPLEMENT.
2. MINNESOTA ENGINEERS ASSOCIATION "STANDARD UTILITIES SPECIFICATIONS" LATEST EDITION.
3. ALL APPLICABLE FEDERAL, STATE AND LOCAL LAWS AND ORDINANCES WILL BE COMPLIED WITH IN THE CONSTRUCTION OF THIS PROJECT.
4. CITY OF MINNETONKA "STANDARD SPECIFICATIONS & DETAILS"
NOTES:
1. ALL WATERMAIN SHALL BE 6" PVC 33g WITH A MILL POLY WRAP.
2. ALL SANITARY SEWER SHALL BE 8" PVC 45g.
3. ALL CULVERTS REQUIRED SHALL BE OF PVC 45g.
4. ALL ATRIP SEAL SHALL BE 6" PVC 40g.
5. CONTRACTOR SHALL INSTALL HEAVY EXCAVATION AT NECESSARY PLACES ON THE ROAD ALIGNMENT TO ENSURE MODERNIST HIGHWAY COST.
6. TRENCHES MUST BE SEALED BY DRY-LOCK ON PVC UG.
7. INSURANCE POLICY PERMITTED FOR ADVANCE PERMITTING & EXCAVATING.
8. ALL UTILITIES INCLUDING WRAP MUST BE CONDITIONAL AND THE CONSTRUCTION STOPS.
9. ALL REQUIRED SANITARY SEWER SEWER MUST BE ADDED TO THE MAIN.
    WEAT CUT OUT JUST THE MAIN UG.

DRAWING SPECIFICATIONS:
1. MINNESOTA DEPARTMENT OF TRANSPORTATION, TRANSPORTATION ADMINISTRATION FOR CONSTRUCTION LAYOUT DETAIL AND ROADMARKING.
2. MINNESOTA ASSOCIATION OF MUNICIPAL ENGINEERS, STANDARD INSTRUCTIONS FOR CONSTRUCTION, LAYOUT DETAIL AND ROADMARKING.
3. MINNESOTA ASSOCIATION OF MUNICIPAL ENGINEERS, LAYOUT DETAIL.
4. ALL APPLICABLE FEDERAL, STATE AND LOCAL CODES AND ORDINANCE WILL BE COMPLIED WITH IN THE CONSTRUCTION OF THIS PROJECT.
Resolution No. 2016-

Resolution approving the preliminary plat of HIGHVIEW PLACE
generally located at the I-494/State Highway 7 interchange

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

Section 1. Background.

1.01 AKARE Companies, represented by Rob Eldridge, has requested preliminary plat approval for HIGHVIEW PLACE, a nine-lot subdivision. (Project 89082.16a).

1.02 The property is located at 4301 Highview Place and an adjacent, unaddressed parcel. The site is legally described on Exhibit A of this resolution.

1.03 On July 21, 2016, the planning commission held a hearing on the proposed plat. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council grant preliminary plat approval.

Section 2. General Standards.

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

2.02 City Code §300.37 Subd. 6 outlines standards for R-1A lots. These standards are incorporated by reference into this resolution.
Section 3. Findings.

3.01 The proposed preliminary plat meets the design requirements as outlined in City Code §400.030 and §300.37 Subd. 6.


4.01 The above-described preliminary plat is hereby approved, subject to the following conditions:

1. Final plat approval is required. A final plat will not be placed on a city council agenda until a complete final plat application is received.
   
a) The following must be submitted for a final plat application to be considered complete:
   
1) A final plat drawing that clearly illustrates the following:
   
1. A minimum 10-foot wide drainage and utility easements adjacent to the public right-of-way(s) and minimum 7-foot wide drainage and utility easements along all other lot lines.
   
2. Provide drainage and utility easements:
   
   • Over existing and proposed public utilities, as determined by the city engineer.
   
   • Over wetlands, floodplains, and stormwater management facilities, as determined by the city engineer.
   
   • For a maintenance path to the infiltration basin on the south side of Lot 4.
   
   • For a drainage path between Lot 3 and 4.
   
2) Application for vacation of existing easements per document 1974181.
   
3) Documents for the city attorney’s review and approval. These documents must be prepared by an attorney knowledgeable in the area of real estate.
1. Title evidence that is current within thirty days before release of the final plat.

2. Documents establishing a homeowner’s association. The association must be responsible for maintaining common areas, common drives, retaining walls, required drainage ponding, and any other required drainage improvements approved by the city.

3. A Contract for Residential Development (or Developers Agreement) if the applicant or developer is constructing any public improvements. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements.

2. Prior to final plat approval:
   a) This resolution must be recorded with Hennepin County.
   b) The documents outlined in section 4.01(1)(a)(2) above must be approved by the city attorney.

3. Prior to release of the final plat for recording:
   a) Submit the following:
      1) Two sets of mylars for city signatures.
      2) An electronic CAD file of the plat in microstation or DXF.
      3) Park dedication fee of $40,000.
   b) If the developer is petitioning the city to construct the public improvements, an appropriate petition must be submitted and the city council must order the improvements.

4. Subject to staff approval, HIGHVIEW PLACE must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:
5. 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) A signed Development Agreement. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements.

2) Evidence of filing the final plat at Hennepin County and copies of all recorded easements and documents as required in section 4.01(1)(a)(2) of this resolution.

3) A maintenance agreement for the retaining walls and filtration basin recorded against all affected properties for review and approval by the city attorney. This agreement must delineate maintenance responsibilities for the filtration basin and retaining walls located in the southeast corner of the site unless Homeowner's Association maintained.

4) Encroachment agreements for the retaining walls within platted easements for review and approval by the city attorney.

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

6) Three full size sets of construction drawings and sets of project specifications.

7) Final site, grading, drainage, utility, landscape, and tree mitigation plans, and a stormwater pollution prevention plan (SWPPP) for staff approval.
a. Final grading plan must:
   • Install bituminous curb where existing driveways are removed.
   • Provide spot elevations to show how Maple Lane will be graded at the intersection. This plan must also demonstrate associated drainage.
   • The maintenance path must be compacted to 95 percent density, be constructed of structural fill materials and contain no waste soils. The path must then have 4 inches of topsoil and be seeded. The path is subject to approval and inspection by city staff.
   • Provide a drainage swale across Lots 3 and 4 to maintain flow across the site from the 12-inch CMP shown on as-built plans.

b. Final drainage plan must
   • Change the label of the basin from “filtration” to “infiltration” to be consistent with stormwater management report.

c. Final utility plan must:
   • Include newly constructed water and sewer services.
   • Remove unused sewer and water services on Highview Place. Water service must be removed to the main and the corporation stop must be turned off. Sewer service must be removed to the main, remove the wye and sleeve.
   • Identify water main connection types.
• Include a gate valve in cul-de-sac prior to entering green space.

• Not include any services from the water main loop in the green space.

• Provide additional information regarding the extent of the directional drill water main.

d. Final stormwater management plans must:

• Specify how an infiltration rate of 0.5 inch per hour was determined.

• Meet the requirements of the city’s Water Resources Management Plan, Appendix A. Design.

e. Final tree preservation plan must:

• Illustrate that no more than 35 of the site’s high priority trees will be removed or significantly impacted.

• Provide appropriate seed mix for infiltration basin.

• Provide mitigation for the removal of 17 significant trees. This would be 31, 2-inch trees and 15, 6-foot evergreens.

f. Final landscaping and tree mitigation plans must meet minimum landscaping and mitigation requirements as outlined in the ordinance. However, at the sole discretion of natural resources staff, mitigation may be adjusted based on site conditions.

8) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to construct streets and utility improvements, comply with grading permit, wetland restoration, tree mitigation requirements, and to restore the site. One itemized
letter of credit is permissible, if approved by staff. The city will not fully release the letters of credit or cash escrow until: (1) as-built drawings have been submitted; (2) a letter certifying that the streets and utilities have been completed according to the plans approved by the city has been submitted; (3) vegetated ground cover has been established; and (4) required landscaping or vegetation has survived one full growing season.

9) 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.

10) A copy of the approved MPCA NPDES permit.

11) A copy of the approved Minnesota Department of Health permit.

12) A copy of the MPCA sewer extension permit.

13) Evidence of closure/capping of any existing wells, septic systems, and removal of any existing fuel oil tanks.

14) All required administration and engineering fees.

15) 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 amount to be determined by natural resources staff, to contract with an erosion control inspector to monitor the site throughout the course of construction.

16) Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:
• The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and

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

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

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

6. Prior to issuance of a building permit for the first new house within the development, submit the following documents:

a) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.

b) Proof of subdivision registration and transfer of NPDES permit.

c) An electronic CAD file or certified as-builts for public infrastructure in micro station or DXF and PDF format.

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

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

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

2) Final grading and tree preservation plan for the lot. The plan must:


   b. Show sewer and water services to minimize impact to any significant or high-priority trees. No trees may be removed for installation of services.

3) A tree mitigation plan. The plan must meet minimum mitigation requirements as outlined in the ordinance. However, at the sole discretion of staff, mitigation may be decreased.

4) 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 cash escrow submitted at the time of grading permit may fulfill this requirement.

b) Install a temporary rock driveway, erosion control, tree and wetland protection fencing and any other measures identified on the SWPPP for staff inspection. These items must be maintained throughout the course of construction.
c) Install heavy duty fencing, which may include chain-link fencing, at the conservation easement. This fencing must be maintained throughout the course of construction.

d) Submit all required hook-up fees.

8. All lots and structures within the development are subject to all setback, floor area ratio, impervious surface, and height ratio requirements outlined in Exhibit B of this resolution. In addition:

a) All lots within the development must meet all minimum access requirements as outlined in Minnesota State Fire Code Section 503. These access requirements include road dimension, surface, and grade standards. If access requirements are not met, houses must be protected with a 13D automatic fire sprinkler system or an approved alternative system.

9. Existing landscape boulders must be removed from right-of-way adjacent to the northern driveway.

10. No landscaping is allowed in drainage and utility easements.

11. The retaining wall located near the infiltration basin must be fully engineered.

12. The city will not be responsible for maintaining the retaining walls within the plat.

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

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

15. This preliminary plat approval will be void if: (1) a final plat application is not received and approved by August 8, 2017; and (2) the city council has not received and approved a written application for a time extension by August 8, 2017.

Adopted by the City Council of the City of Minnetonka, Minnesota, on August 8, 2016.
Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on August 8, 2016.

David E. Maeda, City Clerk
EXHIBIT A

The property at 4301 Highview Place is legally described as:

That part of Lot 5, Block 1, Pierce's Addition, lying Southwesterly of a line drawn from a point on the Southerly line of said Lot 5 distant 70.0 feet East of the most Westerly corner thereof to a point on the Northwesterly line of said Lot 5 distant 56.15 feet Northeasterly of the most Westerly corner thereof and measured along said Northwesterly line.

The unaddressed parcel is legally described as:

Tracts B, C and D, Registered Lane Survey No. 557, Hennepin County, Minnesota except that part of said Tract C lying southwesterly of the following described line: Commencing at the northwest corner of said Tract C; thence on an assumed azimuth of 182 degrees 25 minutes 01 seconds along the west line of said Tract C for 56.98 feet to the point of beginning of a line to be described; thence southeasterly for 123.37 feet on a non-tangential curve, concave to the southwest, having a radius of 66.00 feet, a delta angle of 86 degrees 48 minutes 42 seconds and a chord azimuth of 135 degrees 52 minutes 42 seconds to the northerly right of way line of Trunk Highway No. 494 as now located and established and said line there terminating.
### EXHIBIT B

<table>
<thead>
<tr>
<th>LOT</th>
<th>MINIMUM SETBACKS</th>
<th>MAXIMUM</th>
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<tbody>
<tr>
<td></td>
<td>Front Yard</td>
<td>Side Yard</td>
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<tr>
<td>R-1</td>
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<tr>
<td>1</td>
<td>Highview Pl: 35 ft Maple Lane: 25 ft Proposed street: 25 ft</td>
<td>Min. Aggregate = 30 ft Min side = 10 ft</td>
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<td>2</td>
<td>Proposed street: 25 ft Highview Pl: 25 ft</td>
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* Double frontage lot.

** Floor area is the sum of the above ground horizontal area of the home, as measured from exterior walls and including attached garage space and enclosed porch areas, and one-half the horizontal area of any partially exposed level such as a walkout or lookout level. Floor area ratio (FAR) is the floor area divided by the lot area.

*** On properties zoned R-1, the maximum principal structure height is 35 feet. On properties zoned R-1A, the maximum principal structure height is 35 feet unless the building is a walkout or lookout, in which case the maximum height is 25 feet.
D. Preliminary plat of Highview Place, a nine-lot subdivision, generally located at the northwest corner of Interstate 494 and Highway 7.

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

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

Colleran clarified that Ash trees are not classified as high priority trees. Cauley reviewed the tree preservation plan which is a worst-case scenario. Natural resources staff visit the site during development to ensure compliance. Storm water management would be part of the development.

Rob Eldridge, with Ridge Creek Custom Homes, applicant, stated that:

- He is excited about the project. He has worked hard to make the proposal fit in the neighborhood.
- He and Jo spent a lot of time looking at the trees. The tree removal would be watched very closely. He came up with a floor plan to save trees.
- The site is unique. He hopes to mitigate the busy location.
- He was available for questions.

Colleran explained that she already included trees that may survive grading of their critical root zones in the number of trees that would be removed.

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

Chair Kirk said that the proposal is what was expected.

Powers trusts that Ridge Creek Builders will do exactly what they say they will do. Chair Kirk agreed that the builder did a great job of working with the neighbors.

Knight moved, second by Odland, to recommend that the city council adopt the resolution on pages A18-A30 approving the preliminary plat of Highview Place.

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

The city council is tentatively scheduled to review this item August 8, 2016.
Brief Description  Resolution endorsing the Glen Lake Neighborhood Study
Recommendation  Adopt the resolution

Background
The city council reviewed the Glen Lake Neighborhood Study at its July 11, 2016 regular meeting, ultimately referring it back to staff for revisions based on comments received during the meeting. A revised resolution and study are attached. (See pages A3-A4 and A5-A94.)

Resolution Changes
The council commented on a few items regarding the resolution endorsing the study. They included:

1. The resolution language regarding the use of the phrase “common vision” might not represent the views of all who participated in the process; and

2. The document serves more as a “framework” for future discussions than it does as a “plan”.

The resolution language was revised to reflect the intent to use the study as a framework and reflective of the community conversation:

1.06. The outcome of the Glen Lake Neighborhood study is a document to guide future discussions for change in the neighborhood. The study represents a common framework for future change in the area. It is a collection of conversation, inventory of previous efforts and conceptual designs from residents, property owners, businesses and other interested parties. Vision for future change in the area. The outcome of the Glen Lake Neighborhood study is a document to guide future discussions about change in the neighborhood.

In addition, to address the discussion about the study intent as a “framework,” the revised study includes a new “Preface” section to describe what the study is and is not.

Overall Document Changes
Additional comments were also provided by the council and from a few neighbors. Those comments and how they are addressed in the study include:
1. Include additional past study information on lake hydrology.
   - Appendix B include previous lake studies for reference and information purposes.
     - The presentation information about lake issues from the August 13, 2015 Neighborhood Group Session.
     - A study of water quality control measures conducted by the University of Minnesota Resilient Communities Project.
     - The 1992 joint study of Shady Oak, Glen and Birch Island lake levels by the cities of Eden Prairie and Minnetonka and the Nine Mile Creek Watershed District prepared by Barr Engineering.

2. The Hennepin County site should receive further community wide involvement in the future.
   - City staff met with Hennepin County staff to discuss future planning efforts that could be undertaken if the county decides to relinquish ownership of the property. Staff also discussed the need to understand the acquisition costs at some future point to address the questions about why the city does not simply acquire the property.

3. The west parcel should continue to be identified in the plan but the wishes of the owner to keep the parcel in the family and out of the plan for future development purposes should be noted.
   - Included in the west section is language that identifies the input of the property owner. All graphics have been removed. Public input about the west site in Appendix A is prefaced with a narrative as well. The property owner has indicated they are comfortable with the language.

**Staff Recommendation**

Staff recommends the city council adopt the resolution endorsing the Glen Lake Neighborhood Study. (See pages A3-A4).

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

Originated by:
  Loren Gordon, AICP, City Planner
City Council Agenda Item #14C  
Meeting of July 11, 2016

**Brief Description**  Resolution endorsing the Glen Lake Neighborhood Study

**Recommendation**  Adopt the Resolution

**Background**

The study of the city’s village centers was identified as an implementation component in the city’s 2030 comprehensive plan. Since adoption of the comprehensive plan in 2008, planning studies and/or significant reinvestment/redevelopment have taken place at 11 of the city’s 13 village centers. Over the past decade, a significant amount of change has taken place in the Glen Lake neighborhood. In fact, this private investment has yielded over $33 million of increased property value in the area. While this value has been positive to the vitality of the neighborhood, the manner in which the city prepares for change needed improvement.

In 2014, the city initiated a series of new efforts to examine and plan for potential future changes in the neighborhood. The first of those efforts occurred in the summer of 2014 when the city collaborated with Glen Lake neighbors in a focused study of the former Kraemer’s hardware store redevelopment. In the fall of 2014, the City initiated a second step in the process that included the facilitation of a series of meetings to help assemble a neighborhood planning study specific to the northwestern intersection of Williston Road and Excelsior Boulevard.

At the conclusion of the northwestern study, and prior to the current effort, the city took time to engage the neighborhood in conversation about how to properly conduct a broader neighborhood study. This three-part conversation resulted in a framework for the next planning work. The group discussed ways to engage with neighbors and businesses, an effort to include the lake as an integral study component of the plan and maintain a broad but balanced view of future redevelopment.

The current effort was intended to provide the neighborhood with a close up review of larger parcels that had the potential of redevelopment in the Glen Lake area. In June of 2015, the city council approved a scope of work that included study of a number of properties with the purpose of evaluating future, detailed, redevelopment scenarios, regardless of the intention of current property owners. This responded to the past feedback that the city was not prepared for change. Rather than wait for development proposals to evaluate and be reactionary, the intention of the Glen Lake Neighborhood Study was to proactively identify important assets of these sites and provide general guidance for future change.
Public Engagement

In addition to the neighborhood work group, a series of four public community engagement meetings were conducted on various topics. Informational topics ranged from the status of the Hennepin County Home School to Glen Lake water quality. Interactive workshops explored future development potential, recreation and open space with participants. Input is included in the study appendices and was posted on MinnetonkaMatters.com to the broader public.

In addition to the foundational community engagement meetings, a few other outreach efforts were incorporated including listening sessions at the Glen Lake Caribou Coffee, online engagement with MinnetonkaMatters.com and postcards to residents in the Glen Lake mailing area at key stages in the process.

Prior to the planning commission and city council study review meetings postcards were sent to residents in the Glen Lake mailing area (897 mailings for each meeting).

Planning Commission review

The planning commission reviewed the study at their June 16, 2016 meeting. The meeting was noticed to all in the Glen Lake mailing area that in addition to the planning commission review, public comment would also be received.

During the public input portion, three people shared their comments about the study. The comments are included in the planning commission meeting minutes. (See pages A64-A75).

Public Comment

In addition to public comment received at the planning commission, the city received eight letters. They are included on pages A51-A63.

Staff Recommendation

Staff recommends the city council adopt the resolution endorsing the Glen Lake Neighborhood Study (pages A76-A77).

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

Originated by:
  Loren Gordon, AICP, City Planner
Resolution No. 2016-xx

A Resolution Endorsing the Glen Lake Neighborhood Study

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

Section 1. Background.

1.01. The Glen Lake neighborhood area has been a long established hub of community activity, commerce and life.

1.02. Minnetonka’s 2030 Comprehensive Plan identifies the Glen Lake Station village center as a community village center. Community village centers are places with generally strong market demand for commercial activity and the ability to support higher residential densities in appropriate locations.

1.03. Glen Lake has undergone a number of redevelopment efforts and studies since the first Glen Lake Study was completed in the late 1970s. Redevelopment efforts have generally occurred in the commercial area since that time.

1.04. In concert with the Comprehensive Plan implementation efforts, a study of the Glen Lake neighborhood commenced in 2015. The effort was informed by a scoping study that involved a neighborhood working group in 2014.

1.05. The study was guided by a neighborhood working group, public input and a consultant team. The group identified a number of areas, generally on the periphery of the Glen Lake commercial area where change could occur.

1.06. The study represents a framework for future change in the area. It is a collection of conversation, inventory of previous efforts and conceptual designs from residents, property owners, businesses and other interested parties. The outcome of the Glen Lake Neighborhood study is a document to guide future discussions about change in the neighborhood.

Section 2. Council Action.

2.01. Be it resolved, the council of the city of Minnetonka adopts this Resolution endorsing the Glen Lake Neighborhood Study.

Adopted by the City Council of the City of Minnetonka, Minnesota, on August 8, 2016.

______________________________
Terry Schneider, Mayor
Attest:

________________________________________
David E. Maeda, City Clerk

Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by
the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held
on August 8, 2016.

________________________________________
David E. Maeda, City Clerk
GLEN LAKE NEIGHBORHOOD STUDY
Establishing a Framework for Future Change
MINNETONKA, MINNESOTA
ACKNOWLEDGEMENTS:

City of Minnetonka:
City Council Members:
Terry Schneider, Mayor
Dick Allendorf, At Large
Patty Acomb, At Large
Bob Ellingson, Ward 1
Tony Wagner, Ward 2
Brad Wiersum, Ward 3
Tim Bergstedt, Ward 4

Planning Commission:
Deborah Calvert
Kevan Hanson
Brian Kirk, Chair
David Knight
Sean O’Connell
Heather Odland
John Powers

Community Planning Staff:
Julie Wischnack, AICP
Community Development Director
Loren Gordon, AICP
City Planner
Susan Thomas, AICP
Assistant City Planner

Prepared by:
Hoisington Koegler Group, Inc.

Special Thanks To:
The Glenn by St. Therese Southwest, for hosting some of the project’s community engagement meetings
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Preface

WHAT THIS STUDY IS
The Glen Lake Neighborhood Study is intended to provide a land use framework for future discussions about changes in the area. In recent years, the neighborhood center has seen significant changes with the construction of new housing, new mixed-use buildings, park improvements, and added landscaping, sidewalk and lighting improvements. Past experience in the Glen Lake area and other similar neighborhood centers in Minnetonka have shown that properties that may be vacant and underutilized are likely candidates for conversions for other uses.

WHAT THIS STUDY IS NOT
As a general land use framework, this study does not include a financial component. The ideas presented in the study are concept alternatives, not specific development plans. Accordingly, development proformas are not included nor are potential public funding sources that could be used for added public improvements. As projects are considered in more detail in the future, financial analyses will be completed as appropriate.

The Glen Lake Study also does not include a detailed look at water resources. General information about water resources in the area was presented in the early stages of this study (See Appendix B). Topics addressed included fisheries, aquatic plants, lake characteristics, and lake water quality. Additionally, Appendix B also includes information regarding two past studies addressing the Glen Lake watershed: a link to one study completed by the University of Minnesota and a water level investigation prepared by Barr Engineering for the cities of Minnetonka, Eden Prairie, and the 9 Mile Creek Watershed District. Additional studies could be required in the future as properties are proposed for use changes depending on their size and location.
01. OVERVIEW

Project Overview

Over the past decade, a significant amount of change has taken place in the Glen Lake Neighborhood. A number of studies took place from 2003 to 2008. A 2005 market study investigated a number of topics, including can the community support and attract a full-service grocery store and can mixed-use development formats featuring housing situated over ground-floor retail contribute to the area? The answer to both of these questions is a resounding – yes. Lunds & Byerlys now occupies the long standing grocer location providing the neighborhood with a broad range of food products from this premium Twin City merchant. The Oaks Glen Lake Apartments, which features ground floor retail space, expanded the housing opportunities in the area.

In 2014 Kraemer’s Hardware store relocated from the north side of Excelsior Boulevard to the Glen Lake Center. Subsequent interest in the reuse of the property, as well as interest in the adjacent businesses, prompted the City to initiate the Northwestern Glen Lake Study. The study, completed in September of 2015, focused primarily on properties along Excelsior Boulevard between Williston Road and Beacon Hill. The study included four distinct community workshops involving almost 150 people. The outcome of the effort was a set of development guidelines that reflect the consensus of residents and property owners who participated in the sessions.

This study, the Glen Lake Village Neighborhood Study, builds off of the work that was completed in 2015 and seeks to establish a framework to guide future discussions about additional future land use changes. It focuses on the examination of a series of parcels that are scattered throughout the general area to explore:

» The establishment of a framework for future change in the area
» Exploration of park, open space and trail opportunities
» The identification of aesthetic and public realm improvements
» Providing overall future land use guidelines

Ideas pertaining to the future use of these parcels that were developed during

INTEGRATING PRIOR PLANS:

Glen Lake Neighborhood Concept Plan - 2003

The plan integrated elements of the land use and public realm improvements identified in the plan including:

» Locations for commercial and retail development

Glen Lake Streetscaping Project - 2008

The project integrated elements of the land use and public realm improvements identified in the plan including:

» Locations for gateway elements, public art, and water features
» Pedestrian and bicycle improvements and connections

Northwest Glen Lake Study - 2015

The study established a list of development guidelines to be used by the City and developers to address shared parking, coordinated and complementary land uses, attraction and retention of existing retail and services, and safe and effective traffic movement.
the planning process were reviewed by a Neighborhood Work Group for feedback before being critiqued by the larger neighborhood.

The Planning Process

The planning process has three primary components.

ORGANIZE THE EFFORT
» Establish base information

EXPLORATION
» Explore elements of common interest
» Explore development and redevelopment alternatives, connection and recreational open space opportunities

CREATE A STRATEGIC FRAMEWORK FOR THE FUTURE
» Assemble framework elements
» Compile framework document
Community Engagement Process

The neighborhood planning process included a series of neighborhood meetings with hands-on workshop opportunities for involvement by area residents and businesspersons. The meetings began in the summer of 2015 and concluded in early 2016 with a community meeting to review the framework ideas for potential future changes. Meetings included broader neighborhood group members and neighborhood liaisons to form a workgroup to help guide the planning process and meeting topics.

In addition, a new communication tool was used to actively engage all stakeholders before, during and after meetings throughout the process. Minnetonka Matters was an interactive tool to continue conversations on planning topics, issues & opportunities, and to comment on proposed concepts throughout the process. This on-line forum allowed for live participation during meetings and provided post-meeting follow-up dialogue for those interested in the process.

The City of Minnetonka hosted an on-line forum with “Minnetonka Matters”
Public Meetings

JULY 23, 2015
Meeting Topic: The discussion included a summary of activities to date, the purpose of the current study, goals and a specific schedule of activities. Participants were asked to identify areas of concern, opportunities, and areas of inspiration. Below are links to the discussion topics.
http://minnetonkamatters.com/forums/glen-lake/ideas/opportunities-and-areas-of-inspiration
http://minnetonkamatters.com/forums/glen-lake/ideas/what-are-your-issues-or-concerns

AUGUST 13, 2015
Meeting Topic: The discussion included more in-depth discussion on the following topics: Hennepin County Home School (Commissioner Jan Callison speaking), natural resources including Glen Lake water quality and area parks and trails.

AUGUST 18, 2015
Meeting Topic: Interactive workshops to explored big picture options for future development in the neighborhood, focusing conversations around potential redevelopment opportunities, recreation and open space opportunities.

JANUARY 20, 2016
Meeting Topic: The meeting reviewed the redevelopment scenarios and outlined principles which were then reviewed by the city’s planning commission and council.

A summary of each of these meetings can be found in the appendix.

WHAT WE’VE HEARD:
“We need to improve Glen Lake. It’s a critical community resource and we need to improve access to the water and protecting the lake’s water quality”
03. OPPORTUNITIES AND ANALYSIS

Analysis Overview

GLEN LAKE / WATER QUALITY
As part of the planning process Minnetonka Staff presented information to address questions from residents about the health of Glen Lake which included:

» Fishery conditions: Dominated by small pan-fish, fish population heavily influenced by occasional winter-kill events
» Vegetation conditions: Diverse NATIVE aquatic plant community
» Water quality: Fluctuates, but is generally in line with other area lakes
» Impact of development: Recent area stormwater improvements are helping mitigate the impact of runoff from roadways and new development, but the lake still receives a large amount of contaminants from surface water runoff originating from older, established area land uses

» What residents can do to help improve the quality of Glen Lake

TRANSPORTATION AND ACCESS
Development areas have direct access to a robust transportation network, with east west connections via Excelsior Boulevard and County Road 62, and Eden Prairie Road connecting north south. Transit service occurs along Excelsior Boulevard with express service to Minneapolis, and a planned LRT station at nearby Shady Oak Road.

HENNEPIN COUNTY SITE
Very preliminary conversations are occurring about the long-term future of the Hennepin County Home School property. Should the property ever become available for some other use, the site has many features that could make it attractive for redevelopment.

The Home School campus sits on the west side of the property. The majority of the property currently consists of open space. Large stands of mature pine and oak forests bound the site to the east and portions of the south, while Glen Lake and Glen Lake Golf Course border it on the north and west. The site boasts a rolling scenic natural landscape similar in character to an oak savannah with beautiful views throughout the site and good access to natural resource and recreational amenities. Access to the site is via an existing entrance at the southwest corner of Country Road 62, or in the northwest corner off a small dead-end residential road (Boy School Road).
FIGURE 3.2 AREA ANALYSIS MAP
Opportunities and Areas of Inspiration

As part of the community engagement process, public meetings were held to allow residents to identify existing natural resources and community assets that are important to the success and vitality of the community. These were broken down into the following two categories:

DEVELOPMENT/LAND USE

Land use and development patterns are a sign of the community character and vitality and often signal level of investment by local residents. The Glen Lake community identified these land use and development opportunities:

» New development has been successful and relatively well received
» Desire for a wider range of housing options that make the area attractive to a broader spectrum of people
» Interest in a wider range of retail options, either into existing buildings or as redevelopment of under-utilized sites
» Desire for more park and recreation options, including both active and passive recreation
» Take advantage of existing park and open space resources, and improve what is already in place
» Glen Lake is a substantial and under-utilized natural resource
» Potential for connections to regional trails and transit
» Area has a lot of housing options for seniors
» Good variety of local businesses (grocery, hardware, post office, etc)
» Local business owners are active in the community
» Area housing is affordable

AMENITIES/PUBLIC REALMIMPROVEMENTS

The public realm is an important component of a healthy neighborhood; it provides a sense of place and important public spaces for gathering and recreation. Glen Lake residents identified the following elements:

» Existing sidewalks and trails are frequently used
» Abundant area wildlife, particularly around Glen Lake
» Recent roadway improvements have added to the sidewalk and trail network and improved crossings of major roadways
» Golf course is an important community destination and resource
» Hennepin County site could be a substantial community resource, particularly for making a ‘lake loop trail’ and providing access to open water
» Proximity to LRT and Regional trails is something that should be more fully explored
» Area has good connections to major transportation infrastructure
» Glen Lake Station Park was renovated in 2009 and is frequently used by residents
Community Issues and Concerns

Local residents were also asked to voice their concerns about existing local development patterns, land use, amenities, and natural resources to provide a clear picture of what isn’t working in the area.

DEVELOPMENT/LAND USE

Development that doesn’t fit the scale, character or use of a neighborhood or land uses that have not aged gracefully or no longer provide the highest and best use of land can detract from a neighborhood’s character and economic health. Area residents identified the following concerns regarding land use and development:

- Substantial amount of density already in the area, concern that development isn’t matching the existing scale and character of the neighborhood
- Traffic congestion during peak periods can be problematic for residents
- Development and redevelopment need to address the lack of architectural character and attractiveness of some of the existing buildings
- Adequate parking and access for local businesses is lacking
- The area lacks a destination to draw in outside visitors
- Support and retain existing local businesses and employers
- Minimize the impact of development and redevelopment on Glen Lake
- Streetscape improvements are needed to make the sidewalks feel more pleasant

AMENITIES AND NATURAL RESOURCES

Just as high quality public spaces and natural resources can add interest and energy to a community, so too can they harm that community when those spaces and resources become uncomfortable, degraded, and unattractive. Community members identified the following areas of concern:

- Need to provide more transportation/transit options for local residents
- Pedestrian crossings on busy streets feel unsafe
- Sidewalk network is sporadic and disconnected in areas
- Certain areas are poorly lit and lack good visibility and safety
- Need to address the water quality and access concerns of the neighborhood’s most prominent and valuable resource, Glen Lake
- The neighborhood has no sense of entrance, nothing marks your arrival into the neighborhood
- Local parks are under programmed and under-utilized, lack appropriate programming for residents, don’t fully utilize natural resources
- General lack of plaza/public space on Excelsior Boulevard
- The neighborhood needs a coherent senses of identity/place
- Strengthening existing sidewalk and trail network connections to surrounding destinations and natural resources
- Create a loop trail system around Glen Lake
- Protect existing wildlife and natural resources
04. LAND USE AND PUBLIC REALM IMPROVEMENTS

Land Use

In the early stages of the planning process, a high-level review of all of the parcels in the study area was conducted. The vast majority of the Glen Lake neighborhood area includes various types of housing and commercial development that is firmly established and has been in place for many years. Other parcels are likely to change or may change over time.

Parcels that are the subject of pending development that have received prior approval from the City were considered as being subject to eventual change. Other parcels that owners and/or developers have expressed ideas and concepts about future development were categorized as having near term development potential. And finally, a third category of parcels was identified for areas where potential change might occur over a longer period of time. Properties in this category are those that have larger land areas or are in locations that could encourage future change. It is important to note that owners of properties in this third category have not expressed interest in development and that the City is not encouraging any specific change to any of these properties.

The purpose of looking at all of these land areas is to address the “what if” situation. Should changes occur in the future, the Glen Lake Neighborhood Study establishes a framework that will help guide discussions between property owners and the City.

Figure 4.3 identifies the properties that were categorized as either pending development, near term development potential or areas that may see change. The following is an overview of each:
PENDING/RECENT DEVELOPMENT

Williston Woods West
» Develop two north lots into 5 detached single family homes

Old Kraemer’s Hardware Site
» Demolish the existing building, new day care to be constructed

NEAR TERM DEVELOPMENT POTENTIAL

East (south parcel) Site (Approximately 2.5 Acres)
» Townhomes potential similar to the ‘Water’s Edge’ development
» Single family, either on the entire site or as an interior development type paired with townhomes adjacent to Stewart Lane

Central Site (Approximately 11 Acres)
» Townhomes oriented to Eden Prairie Road
» Single family, either on the entire site or as an interior development type paired with townhomes along Eden Prairie Road

AREAS THAT MAY SEE CHANGE

Hennepin County Site (Approximately 146 Acres)
» Townhomes near southern end of site against Highway 62
» Large passive recreation park at the Home School site (lake access, wetlands, trails, interpretative activities)
» Site as regional park and open space, provide active and passive uses
» A mixed development of single family residential in the core and along Eden Prairie Road and apartments along Highway 62 with integrated park space along Glen Lake shoreline, potential PUD style development
» Single family homes at north end and in core of site, leaving space for park/natural area on east and north end along Glen Lake
» Trails on Home School site, especially along lake, as part of large housing development
» Create trails within a large park, particularly to provide access to the south shoreline of Glen Lake

West Site (Approximately 5.5 Acres)
» Single family residential on the west/south side of the site
» Better connect property to Excelsior Blvd. through commercial site to north
» Preserve existing farm

East (north parcel) Site (Approximately 1 Acres)
» Ideal location for retail development
» Potential location for restaurant
» Potential park use
» Mixed use building on site as extension of mixed use to the west
» Potential for commercial office

NORTHWEST GLEN LAKE PROPERTIES

Zvago - Glen Lake Senior Cooperative
» 54 units (4 affordable)

These properties were previously studied by the community for redevelopment. Residents expressed interest in the following use(s):
» Retail in the middle and east end of the properties
» Bank could be an optional retail use at the eastern corner of the site
» Restaurants could be an optional use
» Develop properties with shared underground parking
FIGURE 4.3 DEVELOPMENT SITES MAP
Public Realm Improvements

Input on public realm improvements came from the community, city staff and a review of previous public realm planning done for the area. Those recommendations are as follows:

KINSEL PARK
- Safety/lighting issues where trails exit park on east side onto Mayview Road
- Trails through park are difficult to use due to poor surface conditions
- Benches and tables are needed in conjunction with a small/simple shelter
- Planting to create more interest (gardens, rain gardens, orchard, etc.)

GLEN LAKE PARK
- Improve crossing from Glen Lake Park to Kinsel Park across Excelsior Boulevard
- Gateway opportunity near Glen Lake Park along Woodhill Road

STEWART LANE
- Traffic volume issues with development, need for traffic calming and management of cut-through movements

EXCELSIOR BOULEVARD
- Entry feature opportunity at NE corner of Williston Road and Excelsior Boulevard
- Improve the crossing at Excelsior Boulevard and Woodhill Road, unsafe despite recent improvements
- Improve biking conditions between Glen Oak Street and Glenview Drive
- Lighting improvements east of Kinsel Park
- Improve lighting between Williston Road and Beacon Hill Road
- More seating, benches and tables in conjunction with restaurants/retail
- Potential public art/place making/neighborhood identity opportunity on the NE corner of Beacon Hill Road and Excelsior Boulevard
- Gateway or place making element to announce arrival into Glen Lake area
- Post office difficult to access
- Vegetation/planting to screen power station

WOODHILL ROAD
- Needs improved lighting, too dark

HENNEPIN COUNTY HOME SCHOOL SITE
- Site could have enhanced wetland areas, with potential for interpretive/interactive plant centric programming

GLEN LAKE
- Create a loop trail that goes around Glen Lake, if possible
- Provide a connecting trail along the eastern and southern edges to connect north trails (Kinsel Park) to eastern and southern trail system

OTHER
- Parking along Tree Street is a concern

WHAT WE’VE HEARD:

“Kinsel Park could be a lot more than it is, there’s just not much to do there now. It needs more lighting, better trail surfaces, seating, a place to gather like a picnic shelter, and most importantly better access to Glen Lake”
FIGURE 4.4 PUBLIC REALM IMPROVEMENTS

LEGEND

- Bike Lane
- Enhanced Planting
- Water Feature
- Public Art / Placemaking
- Access Improvement
- Plaza Space
- Pedestrian Enhancement / Intersection Improvement
The following redevelopment concepts represent possible redevelopment ideas and will be used as a framework for discussions with developers or property owners who bring forward ideas and proposals. No development plans are currently proposed for these sites.

Central Site

OVERVIEW

The Central site is located east of Eden Prairie Road south of the commercial node in the Glen Lake Neighborhood. This study site extends from the Glen Lake Family Dentistry south to Ferris Lane. The eastern boundary is created by Glen Lake and a wetlands complex to the northeast. The study area consists of 7-9 single family lots of varied size, age and condition. This site has seen development pressure in the past and because of it’s proximity to the neighborhood commercial center, it’s a large land area and it’s adjacent to Glen Lake.

The two concepts show different approaches to housing product types, but generally maintain the same development pattern with a singular, realigned access to align with Glendale Street and two cul-de-sac feeding development sites. The areas running north/ south along Eden Prairie Road are envisioned to have villas or attached townhomes in order maintain a narrow development depth and preserve as much of the woodland hillside as possible. The southern street leg would be comprised of single family home sites and would provide access to the existing homes to the southeast of the study site. Lots would remain compact and home sites would be positioned outside of the bluff line to preserve the existing hillside forest. Concept B shows the potential to expand single family housing to the south off of the southern cul-de-sac should there be developer interest.
GUIDING PRINCIPLES

» Focus on residential land use on the site ranging from low density detached to high density attached

» Provide a mix of housing types on the site, including single family home sites, villas and townhomes

» Transition from medium density along Eden Prairie Road to lower density in the southern and eastern portions of the site

» Preserve the existing woodland on the eastern portion of the site

» Preserve the large forested area on the hillside down to the wetland and lake by holding back development and home sites on top of the hill and utilizing conservation easements to preserve the land area as perpetual open space

» Target approximately 50% of the land area to be open space, preserve or park

» Align a singular access point with Glendale Street

» Control and route stormwater away from the lake, back toward the west

» Provide enhanced pedestrian connections along the east side of Eden Prairie Road, connecting back to the commercial core

» Explore the opportunity for additional trail connections through the woodland to connect back with Dickson Road, or to the south ultimately connecting to the Home School site

» Maintain access to existing homes to the south through shared access easements

» Explore the potential for additional single family housing lots south of new roadway (Concept B)

SUGGESTED LAND USES

Attached townhomes and stand alone villas were explored for this site to transition from the existing single family housing to the south, north to the commercial land uses. These uses provide smaller lot sizes and the ability to preserve more land as open space possibly through conservation easements.
**NOTE:** Concepts do not represent actual development proposals and are for discussion purposes only. They do not imply that development is or will be supported by property owners.
Figure 5.6 Central Site - Concept B

This trail segment will require property owner cooperation.

Possible trail connections.

NOTE: Concepts do not represent actual development proposals and are for discussion purposes only. They do not imply that development is or will be supported by property owners.

Glen Lake Neighborhood Study
West Site

OVERVIEW

The West Site is located at the southwest corner of Excelsior Boulevard and Eden Prairie Road. It is a large, contiguous parcel of land with an old farmstead situated in the center of the site. The property owners recognize the historical and unique character of the wooded property and expressed their intention to retain the site in its current use and configuration.

During the course of this study, the West Site was explored for differing configurations of single-family homes or townhomes with emphasis on preservation of wetland and trees and creation of pedestrian connections. Comments were provided, as noted in the meeting summary in Appendix A. However, based on the articulated preference of the owners to retain the property as is, development concepts for the property were not advanced in this study for further consideration.
East Site

OVERVIEW

The East Site is comprised of two distinct areas, the first (South) is a narrow sliver of land extending from Stewart Lane southeast to Glen Lake. The second (North), is a smaller site nestled between Excelsior Boulevard and Stewart Lane just east of the Gold Nugget restaurant.

The Commercial / Mixed Use Site (North) along Excelsior Boulevard provides a great opportunity as a gateway to the commercial district in the Glen Lake Neighborhood. Two concepts explore the possibility of a stand-alone commercial/office development and the other a vertical mixed use project with ground level retail and housing above. Access to this site must be considered in conjunction with the recently completed development to the east to potentially share a joint access to minimize the number access points to Excelsior Boulevard and keep traffic off of the much narrower Stewart Lane.

The Residential Site (South) is challenging for development due to the narrow width of the parcel, but it does have access to Stewart Lane and offers views of Glen Lake on the southern portion of the property. The concept alternatives explored the development of single family home sites or villa-type townhomes off of a singular, shared access drive. The five single family home sites would allow for more tree preservation on the larger lots and is suggested based on discussions with the neighborhood working group. Additional trail connections could connect back to Kinsel Park.
GUARDING PRINCIPLES

Commercial / Mixed Use Site - North
» Focus on commercial office or vertical mixed use with retail on the ground level and residential above
» Locate the building toward Excelsior Boulevard with parking to the south or under the building
» Investigate a shared, singular access to Excelsior Boulevard between the proposed development and the property to the east
» Design the access as a driveway, not as an extension of Woodhill Road
» Provide pedestrian connections along Excelsior Boulevard and Stewart Lane
» Explore a pedestrian link between the Gold Nugget and the proposed development
» Treat the northeast portion of the property with high quality architectural features and landscaping to create a sense of entry to the commercial district

Residential Site - South
» Create a narrow lane along the western boundary of the site for development access and pedestrian connectivity
» Explore single family housing sites or villas on the property
» Preserve trees to the extent possible, particularly at the entry to the property along Stewart Lane and along the shoreline of Glen Lake
» Reduce grading on site by matching street and housing finished floor elevations to existing contours and collecting stormwater in locations shown on plan
» Explore a trail connection to Kinsel Park along the shoreline of Glen Lake in conjunction with easements with adjacent development
» Utilize dark sky compliant lighting to minimize light pollution

SUGGESTED LAND USES
Traditional single-family housing or villas are suggested as options for the residential site north of Stewart Lane. Commercial office (1-2 stories) or a mixed-use development (3-4 stories) including housing and a commercial business are suggested as options for the site south of Stewart Lane. Given the prominence of this location along Excelsior Boulevard, the buildings should have high quality materials and interesting architectural features.
**NOTE:** Concepts do not represent actual development proposals and are for discussion purposes only. They do not imply that development is or will be supported by property owners.

This trail segment will require property owner cooperation.

Possible trail connections.

This trail segment will require property owner cooperation.

---

### DEVELOPMENT TOTALS

<table>
<thead>
<tr>
<th></th>
<th>SF Res.</th>
<th>Compact SF Res.</th>
<th>HDR</th>
<th>Restaurant</th>
<th>Office</th>
<th>Open Space</th>
<th>UNIT TOTALS</th>
<th>Gross Density</th>
<th>Net Density</th>
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<td>-</td>
<td>-</td>
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<td>5 SFR Res 6,500 SF Office</td>
<td>2 Unit/Acre</td>
<td>2 Unit/Acre</td>
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**FIGURE 5.7 EAST SITE - CONCEPT A**
This trail segment will require property owner cooperation. Possible trail connections.

NOTE: Concepts do not represent actual development proposals and are for discussion purposes only. They do not imply that development is or will be supported by property owners.

---

### DEVELOPMENT TOTALS

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<th>HDR</th>
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<th>Office</th>
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FIGURE 5.8 EAST SITE - CONCEPT B
Hennepin County Site

OVERVIEW

Situated on the southern boundary of Glen Lake and north of Country Road 62 is the current Hennepin County Home School. Comprising nearly 146 acres of contiguous land, the site features a mix wetlands, woodlands, open grassland with the primary campus on the western portion of the site adjacent to Glen Lake Golf and Practice Center.

On August 13, 2015 County Commissioner Jan Callison provided an update to the community on the Hennepin County site including reviewing the history of the Home School, the current services at the facility, and then discussed the possibility of partnering with Ramsey County to consolidate the two entities and locations closer to where services are more needed, rendering this site obsolete. The County may be looking to sell the property in the future, thus the reason for the City of Minnetonka to explore potential development scenarios on the property, however no formal time table or commitments by Hennepin County have been established.

The eastern portion of the site has a large wetland, woodland area and pine stand as significant natural features. A central wetland bisects the site with the main campus on the western side and open grassland on the remaining eastern portion. There are two access points to the facility on the western edge near the golf course. During the review process with the community, comments on this site included:

» Try to find a balance between development, and preserving park, open space and wildlife habitat
» Ensure that development is designed sustainably to protect Glen Lake, too much density is a concern
» Create trail connections to and from the site
» Explore a broader park or small commercial use as well

Looking East into the Hennepin County site toward the barns

Floodplain/wetland restoration area as viewed from Highway 62

Site woodland preserve and pine forest as seen from Highway 62

Hennepin County Site boundary

Legend

Development Sites
- Areas That May See Development
- Mid-term Development
- Northwest Glen Lake Study Area
- Revegetation Development
- Potential Development
- Woodland Preservation Area

Study Area
- Trails
- Parks
- Wetland/Wetland Areas
FIGURE 5.9 HENNEPIN COUNTY SITE - SITE ANALYSIS
BUILDABLE AREAS ANALYSIS

Future options for the evolution of the Home School site might include some form of development, open space or even some possible public use of the property. The Glen Lake Study is focused on providing a land use development framework for the site and does not address the use of the site as open space, park or other public use. The ultimate use of the property will be the result of the interests of the site’s owner, Hennepin County, and a larger, more comprehensive examination of the property by the City of Minnetonka.

If the site is ultimately developed for residential uses, plans will need to address the opportunities and limitations posed by the existing topography, tree cover, wetlands and other natural features. The west and east sides of the property are separated by a large wetland complex. The west side is the location of the existing Home School facility and comprises approximately 41 acres of buildable land. The east side is currently undeveloped and is similar in size at approximately 38 buildable acres for a total of 79+ buildable acres.

Access to the site is an important future consideration for development of the site for either public or private uses. Existing access points should remain. A third access point should be explored with the Hennepin County Transportation Department to provide direct access to the eastern half of the property. At the narrowest point between the east and west sides, a roadway connection could be established to link the two areas and to provide better internal circulation and emergency service access. The location may be an opportunity for a signature bridge feature as part of a development.
NOTE: Realign existing access to improve traffic flow and entry sequence into existing golf course and potential redevelopment area.

FIGURE 5.10 HENNEPIN COUNTY SITE - BUILDABLE AREAS
GUIDING PRINCIPLES - PARKS, TRAILS & OPEN SPACE

» Allow the existing natural features (wetlands, woodlands, pine groves, topography) to dictate development areas

» Preserve a continuous open space network along the southern shore of Glen Lake, extending to the east and capturing the wetland network and woodland hillside

» Preserve the existing woodland and dense pine stand on the east side of the site as a buffer and wildlife corridor

» Preserve and enhance the surrounding wetlands

» Preserve and enhance the central wetland as an amenity and wildlife corridor

» Target approximately 40% of the land area to be open space, preserve or park

» Create a common, shared dock and beach near existing Home School water access location

» Provide a network of trails linking a singular lake access point, smaller internal, neighborhood scale parks and connecting more broadly to the surrounding neighborhoods and the Minnesota River Bluffs LRT Regional Trail to the east

» Create wetland overlook and habitat viewing areas

» Provide an expanded trail network linking new park features, preserved open spaces, and existing trails and neighborhoods surrounding Glen Lake

» Develop a central open space amenity with wetland restoration, stormwater treatment, and central bridge feature

Develop a singular shared or common dock and beach area for the entire development, preserving the natural shoreline of Glen Lake

Develop an integrated trail network, linking internal amenities with surrounding trails and adjacent neighborhoods

An enhanced centralized wetland can be an attractive amenity for future development
FIGURE 5.11 HENNEPIN COUNTY SITE - PARKS, TRAILS & OPEN SPACE CONCEPT
GUIDING PRINCIPLES - LAND USE & DEVELOPMENT

» Focus on residential land use on the site ranging from low density detached to high density attached
» Provide a mix of housing types on the site, including single family home sites, villas, townhomes, apartments and condominiums
» Transition from higher density in the southwest portion of the site to lower density in the northern and eastern portions of the site
» Explore options for preserving and reusing portions of the existing campus buildings
» Explore the opportunity for a new southerly access point to Highway 62
» Provide an identifiable loop street network throughout the development

SUGGESTED LAND USES

The size of the overall site, and the configuration (East and West sides) allows for a range of residential development on the site. The reuse of portions of the Home School Facility is a possibility as well.

High density housing is a possibility for this site, either as potential reuse of the existing facility or as redevelopment.

Townhomes or villas are potential products.

The eastern portion of the site has the potential for a new single family neighborhood.
NOTE: Concepts do not represent actual development proposals and are for discussion purposes only. They do not imply that development is or will be supported by property owners.

FIGURE 5.12 HENNEPIN COUNTY SITE - POTENTIAL DEVELOPMENT CONCEPT
The following summary is a list of comments submitted by neighborhood residents during a community open house for the Glen Lake Village Center Study.

**Opportunities and Areas of Inspiration:**

- Creation of large high quality park preferred over development
- Progressive recycling program
- Bicycle connection from trail to Kinsel Park
- Large lot sizes with lots of trees
- Existing hockey rink and track/athletic field (soccer) at Home School
- Retain golf course and ski trails
- Can we repurpose the old hardware store into a new post office to improve access?
- Allow for use of dog grooming building in Glen Lake Park
- Comcast office provides easy access
- Add sidewalks around the Glen Lake Park, bank, and St. Therese
- Alano is a community asset – do they share their parking lot?
- Lots of activity at Optimist Field – skating park
- Love the golf course, retain
- Provide overlook and/or picnic park space at Kinsel Park
- Provide picnic tables for DQ customers and baseball players around NW area
- Love Optimist Park/Kinsel Park
- Retaining grocery store and promoting walkability to other businesses is important
- Need to have a ‘shop local’ campaign to encourage people shopping in the neighborhood
- Make sure to protect loons and other birds, opportunity to highlight them as a feature
- I like the existing sidewalks and the Gold Nugget
- Keep bank, post office, Gold Nugget, Dragon Jade
- Love/support small businesses in area, would like to see more of them developed in the area
  - Work to attract/establish a program to attract more small businesses
- Need a doctor’s office and drug store in the area
- Great play areas for kids. Sidewalks are a great start for improvements
- Fence playground on street side
- Pedestrian crossings and lights would be a step in the right direction
- Retain small town feel
- Proposal to develop Kraemer’s, currently not in keeping with neighborhood character, develop at a lower density
- Developed areas are centralized not sprawled out
- Appreciate the lack of fast food and chain style development, still room for café
- Senior housing availability
- Schools – Glenwood, Gatewood, golf course
• Retain cross country skiing in golf course and on Glen Lake
• Support/retain small businesses (DQ, market, liquor, hardware, post office, pet, service)
• Like having sidewalks and park trails and access to bridge over I494
• Lake and Hennepin County land great for outdoor experience
• Improve access to regional trail near LRT, for pedestrians and cyclists
• Preserve trees and open space
• Redevelop the north side
• Eco-friendly green development
• Mixed use with recreational opportunities, single family and multi-family housing connected to lake and golf

Issues and Concerns

• Develop as a park
• With LRT coming close, can there be a loop connection into Glen Lake area?
• If this is developed, keep it as lower density residential (R1) and do not allow more ‘high density’ like Zvago development
• Is there interest in saving this dying lake? Money needed for project to dredge lake, or at least for weed control
• Shrinking lake, water quality is great but for lower water levels and increase in aquatic weeds
• Water quality has already been tested and studied by watershed and deemed one of cleanest lakes in state
• Miss the old fountain which created more of a gathering place than current water feature
• Traffic congestion is a problem (especially around rush hour) on Excelsior Boulevard at light waiting to make left turn on County Road 5
• Retail and small businesses to create community and foot traffic. Develop the old Kramer’s building as soon as possible. Currently being used for bus parking
• There is enough high density housing in the Glen Lake Area?
• Sidewalk to connect Baker Road to Glen Lake. The sidewalks ends at Woodridge, this is very unsafe for pedestrians
• A lot of existing pedestrian and bike traffic without trails
• Difficult to find parking at post office
• Scary walking at night on streets, need more lights
• What exactly brings people to shop in Glen Lake neighborhood?
• Find a solution for green-topped ponds, small lakes, etc
• Need a pharmacy in the area with large numbers of senior residents
• Kraemer building needs aesthetic improvements
• Ball fields are in rough shape. Can we improve these?
• Expanded golf course could ruin water quality
• Don’t want to see significant development on the Home School site
• Improve connection to existing bike trails
• Can we improve fishing in the lake?
• Can anything be done to reclaim the lake from weeds?
• Bigger community center with better parking
• Keep post office or relocate to community center site
• Sidewalks on both sides within a ¼ mile of intersection Williston and Eden Prairie Road and Woodhill and Beacon Hill
• Concerned about multi-family homes
• Glen Lake, retain public access
• There is no active public space
• Water level going down in lake
• No community gathering attractions (concerts, etc.) Use of ball field?
• Dock access to water?
• Confusing Excelsior Boulevard crossing
• Parking at post office an issue
• Retain hardware store
• Parking, trees, street congestion and safety
• Glen Lake activity center, what can be done?
• Concerned about health of lake due to development of Zvago
• Safety of auto traffic on Stewart Lane very poor site distance
• More child and family friendly park near ball park, neighborhood gathering place
• Avoid high density shift in housing
• Keep the Glen Lake neighborhood a ‘neighborhood’ meaning mix of residential, retail, educational, recreation with a small town like feel
• Traffic concern with development behind Kraemer’s on Williston
• Schools need connectivity to businesses and lake
• Lack of parking at post office, Gold Nugget, Optimist Park, Glen Lake Activity Center
• Glen Lake and businesses, improve access and connectivity to it
• Reconnect to the lake, can’t see or access the lake because of vegetation growth
• Would like easier canoe access to the lake
• What is the Home School site development impact potential on the area?
• Need transportation between Glen Lake and nearby LRT station
• Optimist field to DQ connection improvement
• Woodhill and Beacon Hill intersections with Excelsior are dangerous for pedestrians
Neighborhood Meeting Summary - August 18, 2015

The following summary is a list of comments offered by neighborhood residents during two community open houses held on August 18, 2015.

LAND USE

Pending Development:

*Kraemer Site*
- Quality restaurants are needed in the area, they would be a good fit on the Kraemer Site
- 4-5 story mixed use on Kraemer’s site, transitioning to lower scale retail moving east along Excelsior Boulevard would be good

*Williston West Site*
- Quality restaurants are needed in the area, they would be a good fit on the Williston West Site

*Zvago*
- None

Near-term Development Potential:

*East(South)*
- Potential for townhomes similar to the Water’s Edge development on the property
- A mix of single family residential homes and townhomes on the site, with townhomes closer to Stewart Lane
- Potential small park location near Stewart Lane
- A mix of single family residential homes and townhomes on the site, with townhomes closer to Stewart Lane
- Apartments on un-named parcel if they fit

*Central Site*
- Property has potential for a new retail restaurant
- Townhomes on entire site
- Townhomes on northwest area of the site, transitioning to single family residential (2)
- Single family residential on south and east area of the site, transitioning to townhomes to west and north (2)

Areas That May See Change:

*Hennepin County Home School Site*
- Large park at the site, potential for consolidated sports fields (baseball, softball, soccer) and passive recreation (lake access, wetlands, trails, interpretative activities)
- 9 hole golf expansion into site (likely not financially viable)
- Site as regional park and open space, provide active and passive uses, Arboretum like setting/program a possibility, could also play host to large outdoor events
• A mixed development with single family residential in the core of the site and along Eden Prairie Road and apartments along Highway 62 with integrated park space along Glen Lake shoreline, potential PUD style development
• Single family homes at north end and in core of site, leaving space for park/natural area on east and north end along Glen Lake
• Trails on site, especially along lake, as part of large housing development
• Create trails within a large park located in the site, particularly to provide access to the south shoreline of Glen Lake (2)
• Townhomes near southern end of the site against Highway 62

**West Site**

Note: In the early stages of the Glen Lake Neighborhood Study, future development options were explored for the West Site. At the conclusion of the study, no future development options were advanced for the site given the property owner’s strong desire to retain the property in its current form. Accordingly, the following comments are included since they were voiced in a community meeting but they are no longer applicable given the decision to exclude the property from further development consideration.

• Property has potential for new retail, including pet hospital and bike related shop if commercial area to the north is expanded down into the site
• Townhomes on the eastern half of the west site
• Small park space in northeast corner of west site
• Single family residential on the west/south side of the west site
• Could west site incorporate commercial project to north for larger redevelopment opportunity with commercial/residential density towards Excelsior Boulevard
• Better connect west property to Excelsior Boulevard through commercial site to north if it redevelops.

**East(South) Site**

• Retail on the site
• Site as potential location for restaurant
• Potential park use on the property
• Mixed use building on site as extension of mixed use to the west

**Northwestern Glen Lake Properties**

• Retail in the middle and east end of the properties
• Bank could be an optional retail use at the eastern corner of the properties
• Restaurants could be an optional use on the properties (2)
• Quality restaurants are needed in the area, they would be a good fit on the properties

**Other Sites**

• Existing Dairy Queen corner site(s) would be a great location for a restaurant
• Quality restaurants are needed in the area, they would be a good fit on the commercial properties across Excelsior Boulevard from the Kraemer Site
• Improve existing parks along Excelsior Boulevard, better use of space, safer playground, improved programming
• Repurpose existing private business/property within the park to a public park use
• Provide more public access points to Glen Lake
• Provide a fence around Glen Lake Park playground along Excelsior Boulevard
• Kinsel Park would be an ideal spot for a lake overlook or boardwalk
• Potential consolidation of parcels between East(south) site and Central site(excluding existing townhomes) into a more viable single family residential site, with townhomes near Stewart Lane
• Develop the commercial/retail site southwest of Excelsior Boulevard and Eden Prairie Road into mixed use with parking on lower level to bring retail to eye/road level of Excelsior Boulevard, potential to expand southward into West Sites.
• Incorporate existing local businesses (incl. post office) into new mixed use structures

SAFETY & AESTHETIC IMPROVEMENTS

Kinsel Park
• Safety/lighting issues especially in winter where Kinsel Park trails exit park on east side onto Mayview Road
• The trails through Kinsel Park are difficult to use for older adults because of poor surface conditions
• Benches and tables are needed in Kinsel Park, perhaps in conjunction with a small/simple shelter (2)
• Kinsel park needs better planting to create more interest, perhaps gardens, rain gardens, orchard, or other unique plantings/trees

Glen Lake Park
• Unsafe to cross from Glen Lake Park to Kinsel Park across Excelsior Boulevard at Kinsel Road, could a better crossing or bridge be provided? (2)
• Gateway opportunity near Glen Lake Park along Woodhill Road

Stewart Lane
• Stewart Lane has traffic volume issues, small road with increasing levels of traffic coming from recent (and pending) development
• Can access to Stewart Lane onto Excelsior Boulevard be shifted west to align with Woodhill Road intersection?
• Traffic safety issues (access and turning) at intersection of Stewart Lane and Excelsior Boulevard

Excelsior Boulevard
• Water feature at northeast corner of Williston Road and Excelsior Boulevard
• Improve the crossing at Excelsior Boulevard and Woodhill Road, intersection still feels less than safe despite recent improvements (3)
• Traffic along Excelsior Boulevard (Beacon Hill Road to Glenview Drive) is fast/unsafe, would like to see traffic calming in this area
• Improve the biking conditions along Excelsior Boulevard through the Glen Lake commercial area, west of Glen Oak Road and east of Glenview Drive are ok, but in between feels unsafe for bikes...share the road signs, narrower lanes, stripping, or other options?
• Better lighting east of Kinsel Park is needed along Excelsior Boulevard
• Lighting needs to be improved along Excelsior Boulevard between Williston Road and Beacon Hill Road
• More seating along Excelsior Boulevard, benches and tables in conjunction with restaurants
• Potential public art opportunity on the NE corner of Beacon Hill Road and Excelsior Boulevard
• Potential place making/neighborhood identity opportunity on the NE corner of Beacon Hill Road and Excelsior Boulevard
• Both ends of Excelsior Boulevard need some kind of gateway or place making element to announce arrival into Glen Lake area
• Gateway opportunity at intersection of Williston Ave and Excelsior Boulevard
• Gateway opportunity at intersection of Eden Prairie Road and Glendale Street

**Woodhill Road**
• Woodhill Road needs improved lighting, too dark

**Hennepin County Home School Site**
• Passive water feature in Home School site, perhaps as part of wetland or lake areas
• Home School site could have enhanced wetland areas, with potential for interpretive/interactive plant centric programming
• Outdoor seating (benches and picnic tables) needs to be provided in the Home School site, if it becomes park space

**Kraemer Site**
• Enhanced plantings/garden feature at northeast corner of Williston Road and Excelsior Boulevard (Kraemer site)
• Could Kraemer, Williston West, and NW Glen Lake properties be developed together with underground parking?

**Glen Lake**
• Parking (related to The Glen bldg.) along Tree Street causes issues with access and the passing of two way traffic (too narrow)
• Post office is impossible to use/get into and out of, improve traffic access/follow or relocate to better/bigger location
• Create a loop trail that goes around Glen Lake (2)
• Provide a connecting trail along the eastern and southern edges of Glen Lake to connect north trails (Kinsel Park) to eastern and southern trail system

**East(South) Site**
• Enhanced planting of the East(South) property along Excelsior Boulevard

**Other Sites**
• Screening vegetation/planting on vacant land west of power station, and for the station on Excelsior Boulevard boundary
• Art as a temporary installation on vacant land near power station site (2)
• Art could be part of the neighborhood identity making

**General Notes**

• Improved bus service and facilities to and from the area, provide a senior, dial a ride service that is more reliable the Metro Mobility
Neighborhood Meeting Summary - January 20, 2016

PUBLIC REALM IMPROVEMENTS

- More public art locations to provide neighborhood identity
- Pedestrian and bike improvements needed on Woodhill Road
- Punching Woodhill Road across Excelsior Boulevard is a bad idea
- Pedestrian and bike improvements needed on Eden Prairie Road
- Need a new restaurant in the south strip mall (containing Kraemer’s)
- Placing public art on the old Kraemer’s Hardware site not needed
- Impossible to make left hand turns onto Eden Prairie Road during rush hour, need better traffic signal coordination
- Currently an overabundance of large senior only buildings (7 listed)
- Need bike lanes up both sides of Excelsior Boulevard as well as up Williston Road
- Like sidewalks on the south side of Excelsior Boulevard, need more like it on neighborhood streets
- There is a need for more upscale retail and appropriate retail adjacent to daycare
- Need restaurants in current retail buildings
- Would like to see clean, passive water features, potentially those that support wildlife
- Hard to access Kraemer shopping area by foot/bike
- Improve the neighborhood aesthetic to create a destination
- Improve access to shopping
- More parking needed everywhere
- Consider the impact to wildlife that adding lighting to Kinsel Park would have
- Parking on curve of Beacon Hill Road, can that be shared with The Glen
- Is there going to be too much light pollution from new lighting if added to Kinsel Park?
- Would Stewart be a one-way street?

WEST SITE

Note: In the early stages of the Glen Lake Neighborhood Study, future development options were explored for the West Site. At the conclusion of the study, no future development options were advanced for the site given the property owner’s strong desire to retain the property in its current form. Accordingly, the following comments are included since they were voiced in a community meeting but they are no longer applicable given the decision to exclude the property from further development consideration.

Concept A

- Worried townhomes are going to add more senior only housing
- Are the wetland setbacks enough in the scenarios?
- Prefer the townhome option (2)
- Need townhomes in the $250,000-450,000 range for balance
- Where does guest parking occur in both scenarios?
- Would like to see a high density of housing in this option
- More walking paths around wetland area
- Prefer the access intersection in this option
- Prefer the option that preserves the most green space
- Trail access and density are ok
Concept B
- Scenarios may require additional traffic control for Glendale Street
- Planning needs to be compatible on both sides of the street
- Add community gardens to this concept
- Are urban size lots appropriate for Minnetonka?

CENTRAL SITE

Concept A
- Need a larger buffer on Eden Prairie Road
- 50-60’ Lots small/close for the neighborhood, market needs larger lots
- Development intensity may create too much lighting, worried about wildlife impacts
- Access to the private drives is problematic on both concepts

Concept B
- Trail or sidewalk connection to Eden Prairie Road from the end of the cul-de-sac
- Worried about the displacement of neighborhood wildlife (turkey, deer, woodpecker, eagles, waterfowl etc.) Where will they go when their habitat is removed?
- Density is too high in either concept, the lots in both are too small for the area
- Density of the ‘Compact Residential’ is too high
- All of these pieces don’t fit together, don’t see an overall grand vision

EAST SITE

Concept A
- Eliminate 5 SF Lots and replace with a small park to provide access and views of Glen Lake
- Concern about buffering the wetland, examine ‘buildable’ lots as appropriate (3)
- Flip building footprint to the east away from townhomes
- Stop light would be needed at new intersection
- Improve walkability and add landscaping along Excelsior Boulevard. More greening needed along Kraemer strip mall
- Would like to see a small boardwalk into the lake off the trail connection in between lots 4 and 5
- Lot 5 is too close to lake
- Worried about water quality impacts development will have on lake
- Concerned about the increased traffic development would create
- Concerned about traffic at the new proposed intersection of Stewart Lane and Excelsior Boulevard
- Too much hard surface, but do like the opportunity to share parking with the Gold Nugget
- Would like to see a comprehensive picture of all the potential trail connections with private property barriers indicated
- Trails in this option runs through private property

Concept B
- Some of these units would be a tough sell with no views of the lake
- Units 1-4 might make a good location for townhomes
- Restaurant visible from Excelsior is needed, prefer the more attractive parking configuration compared to the Gold Nugget
- Potential for housing and restaurant/retail underneath?
- Crossing safety concern at new intersection
- Too much grading needed to make this work
• Gold Nugget has loud fan noise on east side of building
• Lots 9-10 are too wet to develop, would prefer a park or trail connection
• Would like to see a small boardwalk into the lake off the trail connection in between lots 4 and 5
• To many units in this option
• Restaurant will need to have adequate parking
• Is the wetland disruption caused by the boardwalk worth the public benefit?

HENNEPIN COUNTY SITE
• Try to find a balance between development and park and open space, need to preserve the existing habitat, as its already limited
• Remember what happened to Wing Lake
• Must have a walking trail around the lake
• The economy, market, and environmental impacts of the proposed development will determine the final development scenario
• More trails connect with limited development
• City needs to develop a plan to purchase the land
• Relocate Optimist Field / Gilliam Ball Field here, redevelop Optimist Fields to commercial
• Is there an option to put retail on this site?
• Trail system needs to be connected to parks
• Add a small zoo to one of the parks
• Like Centennial Lakes, develop recreational options
• 800 units seems very high, but the proximity to Gatewood Elementary School and access to transportation are good elements
• This much development will kill the lake
• Avoid doing another grass lawn choked development and make it a focus on intentional green living and planting
• Remember what happened to Birch Lake
• Way too many units, with all the other proposed housing we should keep this area wild, save the trees
• Maybe too much density
• Could this be a site for a college or university expansion
• How much of this land could the city buy from the compiled park dedication fees from recent development?
City of Minnetonka – August 13th

Glen Lake – The Lake Story

Overview

• Lake History
• Water Resources
• Water Quality
• Roles and Responsibilities
• What You Can Do!
• Resources
Lake History - 1946 to 2012
### Water Resources - Fisheries

#### Fish Sampled up to the 2005 Survey Year

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<td>Trap net</td>
<td>57.2</td>
<td>3.5 - 57.1</td>
<td>0.09</td>
</tr>
<tr>
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<td>Gill net</td>
<td>0.5</td>
<td>6.8 - 7.6</td>
<td>0.71</td>
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<td>6.4 - 53.1</td>
<td>0.61</td>
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<td>0.3 - 2.8</td>
<td>0.03</td>
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<td>N/A - N/A</td>
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<td>Gill net</td>
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<td>2.0 - 10.8</td>
<td>2.07</td>
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<tr>
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<td>Trap net</td>
<td>0.2</td>
<td>N/A - N/A</td>
<td>2.07</td>
</tr>
<tr>
<td>Snapping Turtle</td>
<td>Trap net</td>
<td>2.3</td>
<td>N/A - N/A</td>
<td>ND</td>
</tr>
</tbody>
</table>

*Normal Ranges represent typical catches for lakes with similar physical and chemical characteristics.*

---

#### Water Resources - Fisheries

- Compared to similar lakes:
  - Heavily influenced by occasional winterkill events
  - Small panfish dominate the community; mostly bluegills
  - Northern pike were present above median levels

- [http://www.dnr.state.mn.us/lakefind/index.html](http://www.dnr.state.mn.us/lakefind/index.html)
Water Resources – Aquatic Plants

- Diverse NATIVE aquatic plant community
  
  Floating Leaf Vegetation:
  white waterlily, yellow waterlily, and watershield

Submerged Vegetation
  - Coontail, Canada waterweed, flat stem pondweed, and northern water milfoil

Lake Characteristics

- Total Watershed:
  - 1,100 Acres
- Lake Area:
  - 98 Acres
- Mean Depth
  - 8 feet
- Maximum Depth:
  - 25 feet
Lake Characteristics

- Impervious surface

<table>
<thead>
<tr>
<th>1986</th>
<th>2002</th>
</tr>
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<tbody>
<tr>
<td>Percent Impervious</td>
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<tr>
<td>0 - 10</td>
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<tr>
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<tr>
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<td>81 - 90</td>
<td>81 - 90</td>
</tr>
<tr>
<td>91 - 100</td>
<td>91 - 100</td>
</tr>
</tbody>
</table>

- City Boundary
- Watershed Boundaries

Impervious Surface

- Why this matters:
  - More impervious surfaces means more stormwater runoff
  - More impervious surface means less groundwater recharge
  - More stormwater runoff means greater flows into our lakes and creeks which can lead to flooding

  - AND more stormwater runoff means more pollutants into our waters
Water Quality – *Glen Lake*

- Total Phosphorus
Water Quality – Glen Lake

• Clarity – Secchi Depth

![Secchi Depth Graph]

Water Quality – Glen Lake

• Algae Content – Chlorophyll a

![Chlorophyll a Graph]
Water Quality

For Comparison:

- Lake Minnetonka – Libb’s Lake/Gray’s Bay
  - TP – 26 ug/L
  - Clarity – 1.7 meters
  - Chlorophyll a – 6.4 ug/L

- Shady Oak Lake
  - TP – 17 ug/L
  - Clarity – 3.1 meters
  - Chlorophyll a – 4.1 ug/L

- MPCA Lake Criteria
  - TP – 40 ug/L
  - Clarity – 1.4 meters
  - Chlorophyll a – 14 ug/L

Water Quality

- Completed Studies
  - 1989-2011 – Surface Water Quality Study (city of Minnetonka)
  - 1999 – Glen Lake Use Attainability Analysis (Barr, NMCWD)
  - 1999 – City of Minnetonka Water Resources Management Plan
  - 2008 – Impervious Surface Study
  - 2010 – City of Minnetonka Water Resources Management Plan

- Upcoming Studies
  - 2015 – Surface Water Quality Study and Watershed Assessment
    - New program
Water Quality

- Completed Projects:
  - 2005 - NMCWD Water Quality Improvements
    - Lorence Road Pond
    - Kinsel Park Pond
    - Dickson Road Pond
  - 2008 - Glen Lake Station Water Reuse project
  - Glen Lake Redevelopment – provided new stormwater treatment

Roles and Responsibilities

The Players

- **Department of Natural Resources (DNR)**
  - Aquatic Plants and Fisheries
  - Really anything that happens within the lake itself

- **Mn Pollution Control Agency (MPCA)**
  - Regulates upland areas that run into the lake

- **Nine Mile Creek Watershed District (NMCWD)**
  - Regulations – floodplain, stormwater, wetlands, dredging, sand blankets, etc
  - Capital Improvement – Projects like the 2005 Water Quality Improvements
  - Grant opportunities
Roles and Responsibilities

• The Players (con’t)

• The City
  • Land Use Authority – development and redevelopment
  • Regulations: Floodplain, Wetland, Tree preservation, Shoreland
  • Stormwater Design Guidelines and Standards
  • Capital Improvement Projects
  • Storm Sewer Maintenance – including pond dredging
  • Road Salt Management
  • Sediment and Erosion Control

What Can You Do To Help?

• Water Conservation
  • Rain Barrels
  • Watch for irrigation overspray
  • Moisture sensors for irrigation systems

• Lawn Care practices
  • Don’t overuse chemicals (pesticides, herbicides, fertilizer)

• Rain Gardens
  • Native plants
  • Infiltrates stormwater
  • Collects pollutants before they get to the lake
What Can You Do To Help?

• Lakeshore Buffers
  • Keep lawn chemicals from the lake
  • Stabilizes shoreline

• Salt Management
  • Shovel first
  • Less salt is better—sweep up excess

Resources:

• http://www.dnr.state.mn.us/lakefind/index.html
• http://www.ninemilecreek.org/
• http://www.bluethumb.org/
• http://masterwaterstewards.org/
• http://www.eminnetonka.com/departments/engineering-department/surface-water-quality
Questions?

Liz Stout, P.E.
Water Resources Engineer
lstout@eminnetonka.com
952-939-8233
Glen Lake Watershed Water Quality Control Measures

GLEN LAKE, SHADY OAK LAKE, AND
BIRCH ISLAND LAKE
WATER LEVEL INVESTIGATION

Prepared for the City of Eden Prairie,
City of Minnetonka and the Nine Mile Creek
Watershed District

December 1992

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Engineering Company
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Minneapolis, MN 55437
Phone: (612) 833-2600
Fax: (612) 835-0186
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APPENDIX

TABLE 1 Lake Data

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FIGURE 1 Location Map
FIGURE 2 Watershed Divide
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FIGURE 4 Glen Lake Calibration
FIGURE 5 Shady Oak Lake Calibration
FIGURE 6 Birch Island Calibration

KEYER MODEL

23\27\572\GLENLAKE.RPT\PLS
GLEN LAKE, SHADY OAK LAKE, AND BIRCH ISLAND LAKE
WATER LEVEL INVESTIGATION

The water surface elevations of Glen Lake, Shady Oak Lake and Birch Island Lake have experienced a decline in recent years which has diminishing the value of these water resources. The cities of Eden Prairie, Minnetonka, and Hopkins have requested the Nine Mile Creek Watershed District investigate the cause of the decline in the current elevation of these lakes. The Nine Mile Creek Watershed District prepared a work plan dated September 27, 1991, for a Phase One investigation in response to this request. This report summarizes this investigation and its conclusions.

The three lakes investigated are located near the common borders of the three municipalities listed above and are shown on Figure 1. The lakes have several similarities which can result in significant fluctuations in levels. The two most significant similarities are the small watershed drainage area tributary to the lakes, in relation to the surface area of the lake, and the fact that the lakes do not have low level outlets establishing a normal elevation for the lake. Lakes of this type, that do not have low level outlets, are referred to as landlocked basins. Figure 2 shows the lakes and their watershed boundaries. The figure also shows upstream areas that are currently landlocked or do not overflow except on rare occasions. The analysis to determine the hydrologic system for lakes with these characteristics is referred to as a water balance. A water balance will show the relationship between precipitation, surface water runoff, groundwater flow, evaporation, and transpiration for each of the lakes. This analysis will determine if the elevations are a result of climatic conditions or a change in the hydrologic system to the lake. The following will summarize the analysis of the hydrologic system completed for each of the lakes.

DATA COLLECTION

The initial stage of the investigation was to collect information relating to the lakes and activities that have occurred within the tributary drainage area of the lake. This information included air photographs, construction plans
for development and utilities in the general area of the lakes, precipitation
data, soils information for the area, and lake and groundwater data for the
area. The data collected and its relationship to the analysis completed is
discussed in the following paragraphs.

Lake Levels

The Nine Mile Creek Watershed District has obtained lake elevations for
lakes within the District from 1964 to the present. These levels are obtained
on a monthly basis, with additional measurements taken after intense rainfall
events. The lake level information from the District was obtained for the three
study lakes and also for comparative purposes for Lone Lake; a lake directly
south of Shady Oak Lake that is also a landlocked lake and has similar
characteristics to the lakes being analyzed. The range of recorded lake levels
are listed in Table 1.

Weather Records

Rainfall records have been obtained by the Nine Mile Creek Watershed
District since 1964 at two locations in the general area of the lakes. These
continuous recording gages are currently located at the Hennepin County
Maintenance facility in Hopkins and in Eden Prairie at the Minnesota Department
of Transportation Maintenance facility. Yearly precipitation totals range from
39.1 inches in 1965 to 14.5 inches in 1976. The average precipitation over the
watershed during this time period is 26.9 inches.

Additional precipitation records were obtained from the Minneapolis-St.
Paul Airport Weather Bureau. The Weather Bureau records included monthly
rainfall and the average monthly temperature, relative humidity, and wind speed.
These factors are used in the estimate of the relation of the water levels to
historical meteorologic conditions.

Impacts of Urbanization

As an area urbanizes, several factors can influence the total volume of
surface water runoff generated within a watershed thereby affecting the level
of a landlocked lake. The effects of urbanization can either increase or decrease the amount of water reaching a water body.

Sanitary Sewer

When an area first develops, on-site septic systems are often used for sanitary sewer treatment. As the discharge of water from these systems infiltrates through the subsoil, a source of water is provided for the surficial (drift) groundwater. As municipal improvements are made within these areas, the installation of sanitary sewer systems replaces these on-site septic systems thereby removing a source of the water to the lakes. The installation of sanitary sewer can result in a general lowering of the groundwater level.

Water Supply

The installation of domestic supply wells in a shallow aquifer removes water from the groundwater system resulting in a general lowering of the groundwater elevation. In this instance, as municipal improvements are made and private supply wells are abandoned, a general increase can result in the level of the groundwater aquifer.

Storm Sewer

The development of an area increases the percentage of hard surface area resulting in an increase in the rate and volume of surface water runoff. However, the total area available for groundwater recharge and transpiration (the transmission of infiltrated water to the atmosphere by vegetation) is reduced as an area urbanizes. Storm sewer systems installed to convey runoff from urbanizing areas will expedite the time taken for surface water runoff to reach a receiving water body. The levels of lakes where the watersheds are served by storm sewer will generally respond (rise) much quicker than areas not served by storm sewer.
Construction Activities

An additional item which may have an affect on the level of a lake is the construction and installation of utilities in an area below the groundwater table. If proper construction techniques are not employed, the potential exists to intercept groundwater from reaching a water body by providing an underground conduit for the water to flow. Examples of this would include: (1) a storm sewer with joints that do not seal completely. The open joints allow water to leak into the pipe and the storm sewer would provide an outlet; and (2) a sanitary sewer or other utility installed without impermeable cutoffs constructed perpendicular to the pipe alignment. This condition would also provide a conduit for the conveyance of groundwater along the pipe system.

Construction activities can result in increased or decreased upstream storage areas. These, in turn, affect the groundwater recharge as well as the potential for evaporation. The watershed characteristics will determine the net effect that construction activities will have on the level of the lakes in the area.

ANALYSIS

Several approaches were pursued in the investigation of the levels of the study lakes. These included: (1) a comparison of the lake levels with each other, a comparison with other lakes within the general area (Lake Minnetonka, Lake Minnetona, Lone Lake, and Lake Pulaski); (2) the computation of a water balance for each lake; and (3) the potential impacts that urbanization and construction activities would have on the lake levels.

Lake Level Comparison

The comparison of the levels of the study lakes with other nearby lakes was intended to determine if the lakes are behaving in a similar manner. The lakes previously listed were used for comparative purposes, however, Lone Lake, a landlocked lake in the vicinity of the study area, was used for direct comparison. Figure 3 is a graphical plotting of the levels of the study lakes. The lakes should be expected to respond in a similar manner based on the
characteristics of the watersheds. The figure shows that the lakes generally exhibit similar behavior for the available lake level record, however, the significant exception is the abrupt drop of Birch Island Lake in the late 1980s to the present.

Development Records

In an attempt to further identify any aberrations in the lake levels, aerial photographs taken at approximately 5-year intervals from 1965 to the present were reviewed to determine the timing of significant development in the watersheds. The Shady Oak Lake watershed experienced a significant amount of residential development in the early 1970s. The watersheds of the other lakes did not appear to have any significant development for the period investigated.

Utility Installation

The municipal utility information indicates that the installation of the trunk utility systems within this area, sanitary sewer, water, and storm sewer were generally installed in the early 1970s. A comparison of the historic levels and with the predicted levels using the water balance computations indicated no significant impact attributable to these installations.

Water Balance

In an attempt to determine any changes in the hydrologic systems of the study lakes, a computer model was created to compute the predicted lake levels based on the weather records from 1965 to 1992. The computer model used was the Meyer Model and is discussed in detail in Appendix A. This model computes the long term watershed yield based on hydrologic and watershed factors.

The results of the water balance for Glen Lake and Shady Oak Lake is shown on Figures 4 and 5, respectively. The historic levels and the computed levels show a good comparison for the period of record. This indicates that the lake hydrology has not been significantly altered in the recent past resulting in levels lower than expected.
The results of the water balance for Birch Island Lake, however, gave different results. Figure 6 shows comparison of the historic levels and the computed levels. The computed and recorded levels compared fairly well until the late 1980s. The historic levels have dropped significantly below the predicted levels and have remained well below the predicted levels to the present time. This is an indication that a change has occurred in the watershed altering the hydrologic system of the lake.

**Review of Construction Activities**

The development records of the Nine Mile Creek Watershed District in the area of Birch Island Lake were reviewed to determine the potential impact of construction activities on the lake level. The areas where utilities have been installed, sanitary sewer and storm sewer, the utilities have been installed at an elevation above lake level. Therefore, there are little if any impacts expected due to the utility installation.

In 1985, Hennepin County began filling the wetland north of the Birch Island Lake for the future extension of C.S.A.H. 62. Because of poor foundation material in the area, granular fill was placed along the proposed roadway alignment to surcharge (compact) the existing organic material. Surcharging would provide a stable subbase for the roadway. The construction information indicates that approximately 35 feet of granular surcharge was placed in this area. The soils information obtained from Hennepin County indicates that the existing organic material is underlain by a sand layer. It is possible that with the placement of the granular material a connection was made with this sand layer which could prevent (intercept) surface and groundwater from reaching the lake and/or provide a seepage outlet for the lake. However, the groundwater elevation on both sides of the roadbed appears to be significantly higher, approximately 9 feet, than the lake level. This would indicate the foundation material for the roadway does not connect with the sand stratum and effect the lake level.
CONCLUSIONS

Glen Lake and Shady Oak Lake

The levels on these lakes appear to be the result of long-term climatic trends. There is the potential for adding additional drainage area to these lakes as storm sewers are installed in the upstream watersheds. For Shady Oak Lake, the potential exists for adding additional watershed to the lake by rerouting the pumped outlet from Goose Pond in Hopkins. Further review would be required to assess the potential benefits of such a project.

Birch Island Lake

The current level of Birch Island Lake ranges from 6 to 8 feet below the levels computed, water balance, with the recent climatic conditions. The construction of C.S.A.H. 62 in the area north of the lake has the potential to be the problem with the lowering of the lake level. However, because of conflicting data, a conclusion and recommendation cannot be made without further study and analysis. This would include a detailed assessment of groundwater and surface water conditions in relationship to the construction activities that have been completed and are on going in the general area of Birch Island Lake.

Water Quality

In addition to the decline in the water surface elevation of Glen Lake, the area residents indicated that there is an apparent decline in the water quality of the lake. As the Glen Lake water level has declined, an increase in aquatic weed growth infringing within the open water area of the lake has occurred. A preliminary investigation of this increase in aquatic vegetation in relationship to a possible decline in the water quality of the lake was requested to be made as part of this report.

Three core samples of the bottom sediments of Glen Lake were taken to determine in lake nutrient loading, phosphorus, available for weed/algae growth within the lake. The core samples were taken to a depth of approximately 1 foot and analyzed at the surface, approximately the mid-point and at the bottom of
the sample. An average of the phosphorus content ranged from 1,007 mg/kg at the surface to 690 mg/kg at a depth of 1 foot. These numbers appear to be typical of a lake receiving inflow from an urbanizing watershed. Generally, in eutrophic lakes, sediment accumulates at a rate of approximately 1 inch per 10 years. Therefore, a 12-inch core represents approximately the last 120 years of accumulated sediments, corresponding with the time period that settlement/urbanization has occurred. The bottom sediments at the surface are fairly fertile; however, the increase in the fringe vegetation is the result of the decline in the elevation of the lake. The root structure of aquatic vegetation has been able to establish itself in areas that now have water depths less than 4 feet but were previously much deeper.
Appendix
### Table 1

**Lake Data**

<table>
<thead>
<tr>
<th>Lake</th>
<th>Local Tributary Drainage Area Acres</th>
<th>Landlocked Upstream Drainage Area Acres</th>
<th>Recorded High Water Elevation M.S.L.</th>
<th>Recorded Low Water Elevation M.S.L.</th>
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<td>451</td>
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<td>693</td>
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Figure 5

SHADY OAK LAKE

HISTORIC LEVELS — CALIBRATION

ELEVATION
Figure 6

BIRCH ISLAND LAKE

ELEVATION

HISTORIC LEVELS — CALIBRATION
Meyer Model Description
MEYER MODEL DESCRIPTION

The surface water inflow from the watershed was modeled by means of the Meyer Model (Molsather, et al., 1977). The Meyer Model provides an estimate of the hydrologic budget for the lake on a long-term average basis. The model estimates long-term watershed water yield based on the hydrologic and watershed factors illustrated in Figure A-1. The model can be applied to any watershed to synthesize yields based on meteorological and watershed parameters. Meteorological input includes temperature, relative humidity, precipitation and wind velocity. Watershed parameters such as groundwater characteristics, storage relationships, area, soil types, well pumping and intra-watershed diversions can also be input to the model.

The model handles the input data in two basic steps: (1) calculation of total yield and (2) routing of the yield through groundwater and surface storage. However, the groundwater storage application was not used in this study. The model concept is shown in Figure A-1. The model has the capability to consider several types of water surface and upland to account for various types of terrain, vegetative cover, and land use including marshes, shallow lakes and deep lakes. Watershed losses are calculated and subtracted from precipitation. Incremental yields from each type of upland or water surface are added to determine the total watershed yield. In the routing portion of the program, the model simulates the storage and routing features of the watershed to provide an accounting system for water remaining after the losses have been removed. Water entering the ground is added to soil moisture and routed to groundwater storage after land evaporation and transpiration demand are satisfied.

The model output is in the form of calculated runoff or yield which simulates the actual quantity and time sequence of water released from the watershed to a stream, a lake or groundwater. Where records of runoff, lake levels or other watershed data are available, the output data are compared to verify the accuracy of the simulation. Necessary adjustments are made to various functions to fine tune the model, enabling a refinement in predicted yield results. Where such verification is not possible due to a lack of hydrologic information, the model may still be used because the simulation
depends only upon the input of climatological and watershed data. Figure A-2 is a generalized model schematic to illustrate the manner in which hydrologic factors and land use parameters are handled. Calculations of yield within the model are based upon methods derived by Adolph F. Meyer in his book *Elements of Hydrology*. The Meyer Evaporation Formula and methods for determining land evaporation and transpiration are basically empirical methods which are found to give good results when used in water balance calculations.

Water yield from open water surfaces is determined by deducting the losses to evaporation from the precipitation. By varying the coefficients for evaporation, different water surface types can be represented, i.e. deep lakes, shallow lakes and marshes with varying types of cover. Upland yield is the sum of upland runoff and percolation to the water table. Percolation is water that infiltrates into the soil less evapotranspiration losses and soil moisture storage. The evapotranspiration losses are a function of the soil moisture which is available to support those losses; thus, the model includes an accounting system for soil moisture. When soil moisture is limited, evapotranspiration is reduced, but full evapotranspiration loss is realized when adequate soil moisture is available. The remaining water becomes yield as percolation to the groundwater table. The sum of open water yield and upland yield becomes the total yield for the watershed. Use of the model permits the objective consideration of climatologic and land use factors which affect yield without confusing their effect with the effect of watershed parameters.

Figure A-1 illustrates that the upland yield and the open water yield are routed to account for surface storage, groundwater storage, and the effect of landlocked areas, well pumping and losses to seepage beyond the watershed boundaries. The final output is in the form of a daily or monthly hydrograph of runoff or volume over the period of record. As in the case of the yield calculations, the runoff can be compared with observed hydrologic data, where available, and the routing program logically modified to reflect the influence of identified watershed parameters.
The routing portion of the Meyer Model provides a summary of the average monthly surface water inflows, direct precipitation, evaporation, groundwater seepage, surface water outflow from the lake, and the resulting average lake level for the period of available meteorological data.
REFERENCES


CLIMATOLOGICAL DATA: Temperature, precipitation, wind, relative humidity.

LAND USE DATA: Type cover, variation of land use with time.

Figure 2

GENERALIZED MEYER MODEL SCHEMATIC