Agenda
Minnetonka City Council

Regular Meeting, Monday, August 28, 2017
6:30 P.M.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Wiersum-Bergstedt-Wagner-Ellingson-Allendorf-Acomb-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: None
10. Consent Agenda - Items Requiring a Majority Vote:
   A. Resolution requesting Hennepin County to assume the responsibility for PSAP services for the city of Minnetonka
   B. Cooperative agreement regarding public safety related to 2018 National Football League Super Bowl security
   C. Professional services agreement with Mohagen Hansen Architecture/Interiors
11. Consent Agenda - Items Requiring Five Votes:
   A. Resolution approving final site and building plans, with expansion permit, and conditional use permit, with variance, for Midwest MasterCraft at 17717 State Highway 7
12. Introduction of Ordinances:

A. Ordinance to remove area from floodplain overlay district at 11806 Cedar Lake Road
   
   Recommendation: Introduce the ordinance (4 votes)

B. Ordinance to remove area from floodplain overlay district at 3136 County Road 101
   
   Recommendation: Introduce the ordinance and refer it to the planning commission (4 votes)

C. Ordinance amending section 910.020 of the Minnetonka City Code, relating to recreational fire permits
   
   Recommendation: Introduce the ordinance (4 votes)

13. Public Hearings:

A. Temporary on-sale liquor license for Bet Shalom Congregation, 13613 Orchard Road
   
   Recommendation: Hold the public hearing and grant the license (5 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 and authorizing the execution and delivery of related documents
   
   Recommendation: Adopt the resolution (4 votes)

C. Items related to the Cloud 9 Condominium’s Housing Improvement Area
   
   Recommendation:

   1) Adopt an ordinance establishing the Cloud 9 Sky Flats Housing Improvement Area (4 votes)
   2) Adopt a resolution approving a housing improvement fee for the Cloud 9 Sky Flats Housing Improvement Area (4 votes)
   3) Adopt a resolution approving a development agreement with respect to the Cloud 9 Sky Flats Housing Improvement Area, including future city financing options (4 votes)
14. Other Business:

   A. Items concerning Mesaba Capital at 17710 and 17724 Old Excelsior Boulevard:

      1) Ordinance rezoning properties from B-1 to R-5; and
      2) Resolution approving preliminary and final plats and final site and building plans, with variances

      Recommendation: Adopt the ordinance and resolution approving the request (5 votes)

   B. Items concerning Minnetonka Hills Apartments at 2800 and 2828 Jordan Avenue:

      1) Major amendment to an existing master development plan;
      2) Final site and building plans, with parking variance; and
      3) Preliminary and final plats

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

   C. Concept plan review for Villa West at 16913 and 17101 State Highway 7

      Recommendation: Provide comments, feedback, and direction.

15. Appointments and Reappointments: None

16. Adjournment
**Brief Description:** Resolution requesting Hennepin County to assume the responsibility for PSAP services for the city of Minnetonka

**Recommended Action:** Adopt the resolution

**Background**

In January 2017, staff contracted with PSC Alliance (PSC) to analyze existing and future Public Safety Answering Point (PSAP) operations provided by the city. The thorough analysis included exploration of detailed costs and service benefits of three alternatives – appropriately staffing operational needs of the city’s current dispatch division, contracting for dispatch with the city of Eden Prairie, and developing an agreement with Hennepin County for dispatch services. Considerations included staffing levels and space allocation, resource depth, and ongoing operating and capital costs.

Staff presented the report to the city council at a June study session with the recommendation to further explore the Hennepin County Emergency Communications Facility (ECF) option. The city council supported the recommendation and authorized staff to further explore the ECF option. The following next steps were identified:

- Discussions with Hennepin County ECF regarding conversion requirements and costs.
- Discussion with LOGIS regarding technology conversion.
- Negotiations with Law Enforcement Labor Services (LELS) and union stewards for a fair agreement with the public safety dispatchers regarding retention prior to conversion and severance upon separation.
- Preparation for city council request to Hennepin County Board of Commissioners to accept Minnetonka into the ECF.

Staff has been meeting regularly with Hennepin County to identify conversion requirements and associated costs. Hennepin County has indicated their cost for the conversion is a one-time cost of approximately $58,000. Through these discussions, staff has also identified internal business process changes that will occur with outsourcing our PSAP operations to the ECF. This includes police staffing changes and equipment needed to monitor alarms at city-owned facilities, fire station alerting and the police department’s detention facility door controls. One-time capital costs associated with the above equipment is approximately $174,300 and the ongoing annual operating costs are approximately $177,500. The 2017 dispatch operating budget is $890,800, indicating an ongoing operating net savings of over $713,000. Outsourcing would also eliminate two 2018-2022 adopted CIP dispatch projects totaling $258,000.
Discussions with LOGIS are ongoing. Several other LOGIS cities already use the ECF, and it is believed technology conversion can be accomplished with minimal cost. In 2018, the city is obligated to pay LOGIS $113,918 for PSAP related technology services; however, in 2019 that obligation will end and the city will realize another $76,000 in operating savings (there will continue to be some LOGIS-related expenses going forward).

Impact Bargaining with Law Enforcement Labor Services (LELS) and the dispatchers group regarding retention prior to conversion and severance upon separation is currently underway. Hennepin County has indicated an interest in hiring Minnetonka dispatchers and is exploring a streamlined hiring process for those city employees interested in employment with the ECF as a government-to-government transfer. City human resources staff is currently working with Hennepin County on this process.

The city council and city leadership also received a tour of the ECF on July 31 and were able to observe dispatch operations and support functions provided by the county. During the tour, county staff was available to answer questions.

Recently staff initiated discussions with the Hennepin County administrator to prepare for the final step, which is a formal request to the Hennepin County Board of Commissioners to accept Minnetonka into the ECF (see attached letter). Fiscal details are currently being finalized; however, staff believes there will be a one-time cost of $58,000, with the possibility of a credit for the transfer of state 9-1-1 revenue fund balance currently remaining in city coffers from that source. In addition, all future 9-1-1 fee revenue, $67,000 per year, will transfer to Hennepin County. It is anticipated that after testing, the transfer of PSAP services will occur the week of December 10, 2017.

**Recommendation**

Staff recommends the city council adopt the resolution requesting Hennepin County to assume the responsibility for PSAP services for the city of Minnetonka and authorize the mayor and city manager to submit a formal letter of request to the Hennepin County Board of Commissioners.

Submitted through:
  Geralyn Barone, City Manager

Originated by:
  Scott Boerboom, Police Chief
Resolution No. 2017-

Resolution requesting Hennepin County to assume the responsibility for PSAP services for the city of Minnetonka

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

Section 1. Background.

1.01. In January of 2017, staff contracted with PSC Alliance (PSC) to analyze existing and future Public Safety Answering Point (PSAP) operations provided by the city.

1.02. On June 26, 2017, staff presented the analysis report and the City Council supported further exploration with the Hennepin County Emergency Communications Facility (ECF) for PSAP operations.

1.03. On July 31, 2017, the City Council toured the ECF and were able to observe dispatch operations and support functions provided by the council.

1.04. Discussions with Hennepin County have been successful and staff recommends the conversion to the ECF, after successful testing, occurring the week of December 10, 2017.

1.05. In agreement to provide PSAP services, Hennepin County requires a one-time conversion cost estimated to be $58,000, credited out of the transfer of the balance of the city’s State of Minnesota 9-1-1 revenue funds, and transfer of all future State of Minnesota 9-1-1 revenue funds.

Section 2. Council Action.

2.01. The Mayor and City Manager are hereby authorized to submit a formal letter to the Hennepin County Board of Commissioners requesting the ECF to assume the responsibility of PSAP services for the city of Minnetonka by the end of 2017.

2.02. The City Manager is hereby authorized to execute an agreement with Hennepin County to implement the transfer to the ECF, including transfer of the city’s State of Minnesota 9-1-1 revenue balance to Hennepin County and payment to Hennepin County of a one-time cost estimated to be $58,000, to be credited against the transferred revenue balance.

Adopted by the City Council of the City of Minnetonka, Minnesota, on August 28, 2017.

_____________________
Terry Schneider, Mayor
Attest:

________________________________________
David E. Maeda, City Clerk

**Action on this resolution:**

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on August 28, 2017.

________________________________________
David E. Maeda, City Clerk
August 28, 2017

Hennepin County Board of Commissioners
c/o Commissioner Jan Callison, Chair
300 South 6th Street
A2400 Government Center
Minneapolis, MN 55487

Dear Commissioner Callison and Hennepin County Board of Commissioners,

At its August 28, 2017 meeting, the Minnetonka City Council adopted the attached resolution requesting Hennepin County to assume the responsibility for 9-1-1 PSAP services for the city of Minnetonka by the end of this year. Please accept this letter and the resolution as the city’s formal request to the Hennepin County Board of Commissioners to do so.

We appreciate the collaborative partnership with the Sheriff and Emergency Communications Facilities’ staff in this transition and look forward to the county providing our community with high quality 9-1-1 services that other county residents already receive.

Sincerely,

Terry Schneider                 Geralyn Barone
Mayor                           City Manager

Enc. Minnetonka resolution
Brief Description: 9-1-1 Public Safety Answering Point Analysis

Background

The city of Minnetonka’s Public Safety Answering Point (PSAP) processes 9-1-1 and administrative phone calls on behalf of the police and fire departments and acts as the municipal after hours call center when normal business operations at other city offices have closed and residents need municipal assistance. In addition, dispatchers perform additional duties such as monitoring building security, alarm systems, video surveillance equipment, records data entry, and other duties as assigned.

Prior to 1989, PSAP services for the city of Minnetonka were provided by Hennepin County Sheriff’s Office. In 1989, a new police department facility was built and included a PSAP center operated by the city. In 2000/2001, the PSAP was relocated to a larger space within the police department. Since inception, the city has continuously invested in technology and staff to support PSAP services.

The city’s police and fire departments recently concluded an independent public safety facility study and have now moved to the design phase of a remodeled and expanded police station and new fire station. This study presented an opportunity to examine the complex operations of the PSAP center and the future of that operation. In January 2017, staff contracted with PSC Alliance (PSC) to conduct this analysis. The purpose of the study was to analyze existing and future PSAP operations provided by the city, including staffing and space recommendations. Staff also directed PSC to explore outsourcing opportunities for PSAP services. The PSAPs included in the analysis are the City of Eden Prairie and Hennepin County Sheriff’s Office.

PSAP Analysis

PSC has completed the analysis and submitted the attached report to staff. PSC identified three PSAP services alternatives for exploration and study:

1. Continue to provide PSAP services at Minnetonka and consider appropriate staffing levels and space requirements;
2. Outsource PSAP services to the City of Eden Prairie and identify required technological and business process changes that would be needed;
3. Outsource PSAP services to the Hennepin County Sheriff’s Office and identify required technological and business process changes that would be needed.
PSAP Options

There are two PSAP business process (operational) models in use today:

1. Operate the PSAP as an emergency and public safety call answering and dispatching center only; and,
2. Operate the PSAP as an emergency call answering/dispatch center and add other public safety duties and technology such as monitoring building security, alarm systems, video surveillance equipment, records data entry, and other duties as assigned to the PSAP staff.

Hennepin County’s dispatch center operates using the first business process model. Minnetonka and Eden Prairie operate using the second business process model. Understanding the operational differences between the two models is fundamental to any informed policy discussion. In reviewing the three alternatives, PSC used a SWOT (Strengths, Weaknesses, Opportunities, and Threats) methodology. The following is a summary of the SWOT assessment. (See PSAP study, Section 7, Pg. 41 – SWOT table.)

Minnetonka PSAP

Minnetonka PSAP operates continuously 24 hours a day, processing 9-1-1 and administrative phone calls on behalf of the police and fire departments. The PSAP also provides communication support to public works and performs multiple ancillary duties. (See detailed list of duties on Pg. 25 & 26 of PSAP study.)

Staffing since 2000 has included eight full time dispatchers and one (currently vacant) dispatch coordinator. An additional three to five on-call dispatchers are available to fill in as needed. These on-call dispatchers either work in other metro PSAP centers or have dispatching experience.

The 2017 PSAP operating budget is funded at $894,100. Since 2010, $617,000 in capital projects have been completed and staff has temporarily deferred implementation of a 2018 capital project totaling $90,000 pending further direction on this PSAP analysis.

Current staffing levels do not allow two dispatchers to be on duty at all times. PSC believes this staffing strategy places the city at risk and states there should be a minimum of two dispatchers on duty around-the-clock every day. This recommendation would increase FTE levels to 10 dispatchers and one dispatch supervisor. The study also recommends one additional FTE to provide police and fire Information Technology Support, regardless of the decision to maintain or consolidate PSAP services.

The current PSAP space includes three fully equipped workstations. A fourth workstation is located in a separate room. Current PSAP space is adequate; however,
analysis recommends long term to increase the space to accommodate four workstations in the same room. Renovations to the PSAP to accommodate this growth should be included in the detail design currently underway with the police and fire facilities project and cost implications to the design are currently not known. In addition to space, consideration should be given to enhancing environmental, security and electrical accommodations in a renovated facility.

**Eden Prairie Police Department PSAP**

Eden Prairie PSAP operates continuously 24 hours per day, providing service to the Eden Prairie police and fire departments. The PSAP staff also performs various ancillary duties, similar to duties performed by Minnetonka PSAP staff. Eden Prairie most closely aligns with the business processes of Minnetonka, using model #2.

Eden Prairie PSAP is authorized at 11.5 FTE positions. If Eden Prairie was selected for PSAP outsourcing, Eden Prairie staff has indicated an additional five FTEs would be requested to handle the increase in activity.

Eden Prairie PSAP space is adequate and suitable to accept Minnetonka without modification. There are currently four fully equipped workstations and the environmental, security and electrical facilities are adequate to host Minnetonka PSAP needs. Presently Minnetonka PSAP is Eden Prairie’s backup PSAP, so separate discussions with another entity would be needed if Eden Prairie provided PSAP services to Minnetonka.

Eden Prairie staff perform ancillary duties and functions similar to Minnetonka and further discussions would be needed to determine what, if any, could be redirected to Eden Prairie. Examples include city facility alarm and video monitoring, remote security access, detention door operation and monitoring detainees. Based on these conversations, supplemental Minnetonka staff would be needed to perform functions not performed in Eden Prairie.

Eden Prairie operates a different dispatch software platform than Minnetonka and Minnetonka would be required to migrate onto the Eden Prairie system or an interface solution would need to be identified. PSC has indicated this interface solution can be rather involved but can be accomplished with the right planning.

The ongoing cost of five additional staff and any technology to support technology interfaces would be the responsibility of Minnetonka; staffing cost is estimated at approximately $500,000 and technology costs are unknown without further research. Additionally, it is envisioned that Minnetonka’s state 9-1-1 allowance, currently $67,000 per year, would offset post-conversion capital upgrades for the next few years. Eden Prairie has indicated they would entertain employment applications from incumbent Minnetonka dispatchers.
Hennepin County Sheriff’s Emergency Communications Facility (ECF)

The ECF is a large modern facility located in Plymouth that opened in 2014 and operates continuously 24 hours per day, providing police, fire and emergency medical service provider communications for all Hennepin County communities except Bloomington, Eden Prairie, Edina, Minneapolis, Minnetonka, St. Louis Park and the MSP Airport. For years, the county has provided this service for larger cities like Brooklyn Park, Plymouth and Maple Grove. The ECF also provides service to the Hennepin County Sheriff’s Office. ECF staff does not perform ancillary duties and is less likely aligned with business processes of Minnetonka.

The ECF is authorized for 58 FTE positions who are involved in direct service call answering and dispatching service delivery. These positions are supplemented by additional on-duty supervisors and support staff, with a total authorized level of 70 FTEs. Daily staffing ranges from seven to 14 FTEs depending upon the projected call volume of the scheduled shift.

There are 22 fully equipped workstations and 4 workstations used primarily for training, although those can also be used for major events. The ECF can support Minnetonka operations with no modification and the ECF’s environmental, security, and electrical facilities are adequate to host Minnetonka PSAP needs. The ECF also maintains a fully functioning backup facility in Golden Valley.

The ECF does not perform ancillary duties or functions for individual communities. The thirty-seven communities who use the ECF have developed a variety of methods, procedures, technology, and staff to perform these duties. PSC believes Minnetonka can fulfill these duties with 8,760-person hours/year, using a combination of full and part time positions. Additional discussion would be needed to determine job classification and exact cost, although the preliminary estimate is $257,000.

The ECF utilizes a similar dispatch software system as Minnetonka; however, it is in a different host environment and would require an interface to connect to the Minnetonka system. The interface Minnetonka required is already in use by other LOGIS communities who use the ECF and could be accomplished with minimal cost.

In recent years, several municipalities migrated PSAP operations to Hennepin County and receive the service at no additional charge. ECF command staff have indicated there is a strong likelihood that the dispatching services would be at no cost to Minnetonka, as it is for the thirty-seven communities that use the service. Should Minnetonka decide to shift to the ECF, the city would need to make a formal request to the Hennepin County Board of Commissioners. Ultimately, the county board would make the final decision to accept the city and at what annual fee, if any. Conversion costs are expected to be minimal, although further research is needed. Minnetonka’s annual state 9-1-1 allowance of $67,000 would be redirected to the ECF and the ECF
would assume all future capital improvements. ECF command staff have indicated they would entertain employment applications from current Minnetonka dispatch staff.

Considerations

Previous PSAP consolidation studies were undertaken in 2011 and 2009. In 2011, a study was initiated by the Hennepin County Board and included all cities within the county. The 2009 study was initiated by the city of Minnetonka and examined a consolidated dispatch center with the city of Hopkins. Previous studies identified advantages and disadvantages of a consolidated/outsourced PSAP. At the completion of these studies, staff reviewed the findings and the disadvantages were too difficult to overcome and/or would not provide a significant cost benefit.

Today, the city is preparing to invest significant financial resources into the police and fire facilities by designing a modern facility that will serve our community for several decades. The PSAP is a significant investment and this independent review was essential to help staff understand both short and long-term challenges. The challenges we face today, including increased staffing and space requirements, complex local and multi-jurisdictional events, continual and more technical training, and ever rising operating and capital costs require staff to examine PSAP operations and outsourcing opportunities with greater scrutiny than in the past.

Staffing Levels and Space Allocation

Staffing the PSAP with adequate resources has always been difficult, and managing time off obligations (FMLA, sick, vacation and training) continues to be a challenge. Currently, when a dispatcher takes time off, another dispatcher will have to cover the shift on overtime. The table below is three years comparative hours.

<table>
<thead>
<tr>
<th>Overtime Analysis</th>
<th>2015</th>
<th>2016</th>
<th>Jan - May 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overtime Hours (Full-time)</td>
<td>1,066</td>
<td>1,718</td>
<td>657</td>
</tr>
<tr>
<td>Average/Dispatcher</td>
<td>133</td>
<td>215</td>
<td>94</td>
</tr>
<tr>
<td>On-Call Dispatcher</td>
<td>487</td>
<td>895</td>
<td>479</td>
</tr>
<tr>
<td><strong>Total hours worked</strong></td>
<td><strong>1,553</strong></td>
<td><strong>2,613</strong></td>
<td><strong>1,136</strong></td>
</tr>
</tbody>
</table>

If the city decided to maintain PSAP services, PSC recommends adding two additional full-time dispatchers. A critical question staff has had to ponder is, if additional FTE were added to the police department, would the public be best served by adding resources in this area, or in another role to meet the needs of serving the police department mission.

The existing PSAP room and physical space available for expansion of additional workstations is very limited and PSC believes the space is “maxed out”. The current PSAP
space cannot accommodate future growth as recommended by PSC. The police facility design currently underway does not include an expansion of the PSAP center, and staff believes any expansion or significant changes to the PSAP space would become cost prohibitive. The existing space also provides inadequate protection against natural or man-made disasters, as well as proper protection of PSAP technology. A significant concern is the lack of a hardened facility capable of self-sustainment. If the city decided to maintain PSAP services, PSC recommends necessary environmental, security, and electrical facilities be included in the police facility design either at an increase in overall project cost or at the expense of other functional space.

**Resource Depth**

Managing multiple and large-scale emergencies from the PSAP requires a staffing strategy that maximizes coverage. Peak call times can be identified and staffed appropriately; however outside of these peak times, the PSAP has less capacity to handle multiple or large-scale events. An unusual event that exceeds the PSAP’s ability to manage it places the city at risk.

On occasion, on-duty dispatchers have to leave for various reasons and finding a replacement dispatcher is challenging due to the small number who are available. This often leads to one dispatcher working until another dispatcher is located. The complexity of the technology in the PSAP and the required skill of a dispatcher does not allow non-trained dispatchers to assist. Training opportunities are also limited due to inadequate resources to back-fill when dispatchers are attending training.

**Operating and Capital Costs**

The city’s 2017 PSAP operating cost is $894,100 and increasing FTEs to recommended levels would increase annual costs to $1,170,000. Since 2010, $617,000 in capital improvement projects have been completed in the PSAP and $90,000 is currently deferred pending the PSAP decision. If the PSAP is outsourced, this latter project is not necessary. The life cycle of PSAP equipment is typically seven to ten years and the city will be facing significant capital upgrade costs to update 9-1-1 equipment after 2020. PSC believes within the next ten years, capital costs could be $1,000,000. These costs exclude PSAP remodeling.

**Discussion Points**

- Does the council have any questions or comments on the PSAP background or service model options?
- Does the council have any questions or comments on the PSAP analysis undertaken?
Recommendation

Maintaining a PSAP with adequate staffing and sufficient space and technology can be accomplished at a significant cost and a commitment to provide long-term PSAP services. The recommended staffing increase will increase the operating budget to $1,170,000 in 2018 costs. Currently, the police and fire facilities design underway does not increase the PSAP space and any changes to the space will increase the cost of the project. In addition, PSAP capital projects will continue at an estimated cost of $1,000,000 every seven to ten years.

Minnetonka dispatchers provide high quality PSAP services and community survey results consistently indicate citizen satisfaction with these services. In addition to answering and dispatching calls for service, dispatchers perform other public safety duties for staff and residents. When reviewing these options, it was critical for staff to identify the most cost-effective way to deliver safe and sufficient services that would continue to serve our needs and expectation levels.

After careful consideration, staff believes the Hennepin County Emergency Communications Facility can provide the level of service needed for our community. It has capacity to handle large, extraordinary events that may ‘swamp’ a smaller PSAP with limited resources. The ECF is staffed with professional, well-supervised staff and state of the art technology. Should the county board follow past practice of not charging the city to provide PSAP services (other than annual state 9-1-1 revenue of $67,000 for capital costs), it is the lowest cost per call/dispatch of the three options and provides several other advantages:

- Greater staff depth within the center at any given time
- Standardized call handling, dispatching protocols, and training, decreasing opportunities for error and enhancing public safety
- Improved coordination of multi-jurisdictional incidents
- Maximizes use of available public capital and operating costs for emergency communication services
- Minimum 9-1-1 call transfers to another PSAP
- Elimination of duplicate services
- More efficient dispatch collaboration for fire and Emergency Medical Services
- A more long-term cost effective solution

The ECF does have a different business process and will require the most extensive business process restructuring of the three options. Staff believes these changes can be accomplished by implementing new technology and hiring alternate positions. Initial cost estimates for supplemental staff is $257,000 per year, which is a combination of full and part time positions. Technology costs needed for the conversion is unknown and would need additional exploration; however, PSC believes it is minimal.
Should the city council look favorably upon this recommendation, staff proposes to complete the conversion by year end. Next steps include:

- Discussions with Hennepin County ECF regarding conversion requirements and costs.
- Discussions with LOGIS regarding technology conversion.
- Negotiations with Law Enforcement Labor Services (LELS) and union stewards for a fair agreement with the public safety dispatchers regarding retention prior to conversion and severance upon separation.
- Preparation of city council request to Hennepin County Board of Commissioners to accept Minnetonka into the ECF.

Discussion Point

- *Does the council support the next steps as outlined regarding outsourcing PSAP services to Hennepin County ECF?*

Summary

The attached PSAP analysis conducted independently by PSC Alliance outlines the strengths, weaknesses, opportunities and threats facing the various options to provide 9-1-1 Public Safety Answering Point solutions. Staff recommends council guidance on continued exploration of outsourcing PSAP services based on the Hennepin County ECF option. If supported, staff would further engage Hennepin County and identify needed technology conversion costs and other costs associated with the internal business process changes. Staff would report those results and a final recommendation to the council in the near future.

Submitted through:
   Geralyn Barone, City Manager

Originated by:
   Scott Boerboom, Police Chief
June 12, 2017

Chief Scott Boerboom
Minnetonka Police Department
14600 Minnetonka Blvd.
Minnetonka, MN 55345

Dear Chief Boerboom,

Thank you for the opportunity to assist with the analysis of options regarding Minnetonka’s Public Safety Answering Point (PSAP). This letter transmits our final report which considers options for the continuing delivery of PSAP services. This letter also provides an addendum to report content based upon feedback received from Lt. Bill Wyffels of the Eden Prairie Police Department. Following internal review of a draft of the report Lt. Wyffels offered the comment below.

ADDENDUM

Lt. Wyffels expressed the view that if Minnetonka were to contract for PSAP services from Eden Prairie, a net staff increase of five (5) FTE’s would be appropriate. Page 30 of our report discusses a prospective Eden Prairie staff increase of 2 to 4 people. Lt. Wyffels also indicated that increasing the staff by five, based on the current full-time dispatcher pay rate (including benefits), would bring the recurring cost closer to $500,000 vs. the $300,000 discussed at various points in the report. Lt. Wyffels wanted to be clear that costs may be higher than estimated in the report so that Eden Prairie may deliver “service beyond expectations”.

PSC believes that if Minnetonka were to further explore the outsourcing of dispatch services to Eden Prairie, the number of additional staff to be funded by Minnetonka, the duties, and the associated contract costs would be the subject of negotiations between the parties.

Sincerely yours,
PSC Alliance Inc.

J. J. Nelson

Jeff Nelson
TABLE OF CONTENTS

SECTION 0 - ABSTRACT ........................................................................................................... 3
SECTION 1 - EXECUTIVE SUMMARY .................................................................................. 4-7
SECTION 2 - INTRODUCTION ............................................................................................... 8-9
SECTION 3 - METHODOLOGY ............................................................................................... 10
SECTION 4 - CURRENT STATE CONDITIONS & DEMOGRAPHICS .......... 11-18
SECTION 5 - COMPARATIVE DATA ANALYSIS ............................................................. 19-23
SECTION 6 - OTHER RESOURCE INTERVIEWS ............................................................ 24-40
SECTION 7 - STRENGTHS, WEAKNESSES, OPPORTUNITIES, & THREATS .............................................................................................................................. 41
SECTION 8 - TABULAR COMPARATIVE MATRIX ....................................................... 42-48

Format for 11 x 17

APPENDICES
SECTION 0 - ABSTRACT

The City of Minnetonka (City) has operated a 24-hour Public Safety Answering Point (PSAP) since 1989. Prior to that time PSAP services were received from the Hennepin County Sheriff’s Office. The City decided to establish its own PSAP 28 years ago to deliver the highest quality, customized service to its citizens and public safety response personnel. Since inception the City has continuously invested in technology and staff to support the PSAP mission. Today the City’s PSAP processes 9-1-1 and administrative phone calls on behalf of the police and fire departments and acts as the de-facto municipal after hours call center when normal business operations at other City offices have closed and citizens call with questions or need municipal assistance.

The City engaged PSC Alliance (PSC) to analyze existing PSAP operations including staffing recommendations. Additionally, the City requested an exploration of two outsourcing opportunities for PSAP services. City staff suggested that hypothetical outsourcing venues that should be analyzed were the City of Eden Prairie (EP) and the Hennepin County Emergency Communications Facility (ECF) located in Plymouth. Both Eden Prairie and Hennepin County already operate their own respective PSAPs. Today, Eden Prairie’s PSAP serves the needs of that community alone. Hennepin County’s PSAP provides emergency communications for all other Hennepin County communities except Bloomington, Eden Prairie, Edina, Minneapolis, Minnetonka, the MSP Airport, and St. Louis Park. Those named communities currently operate their own independent PSAPs. The ECF also provides dispatching and communications support to the Hennepin County Sheriff’s Office.

Besides considering various work load metrics of these three study PSAPs, PSC explored business process considerations that may need to change if the City were to outsource its PSAP services. The explored metrics included: telephone call load, radio transmissions, computer events, and staffing. In our experience across many jurisdictions there are two PSAP business process (operational) models in popular use:

1. Operate the PSAP as an emergency and public safety call answering and dispatching center only; and,

2. Operate the PSAP as an emergency call answering/dispatch center and add other public safety duties and technology such as monitoring building security, alarm systems, video surveillance equipment, records data entry, and other duties as assigned to the PSAP staff.

Hennepin County’s ECF operates using the first business process model. Minnetonka and Eden Prairie operate using the second business process model. In PSC’s opinion, having a summary understanding of the operational differences between the two models is fundamental to any informed policy discussion about outsourcing the service.
SECTION 1 - EXECUTIVE SUMMARY

2017 PSAP staffing costs are funded by the City at the level of $894,100. Included in this budget are cost of worker salaries for nine Full Time Equivalent (FTE) positions, operating supplies, services and other charges to deliver the PSAP services 24 hours per day. The prior years’ operating budget was $867,000. The PSAP supervisor’s position has been vacant since the 4th Quarter, 2016. This staff vacancy, coupled with knowledge of this outsourcing analysis, has created considerable uncertainty and anxiety for incumbent PSAP staff concerning the future of their careers with the City. Offsetting the general fund costs of PSAP operations are current outside 9-1-1 revenues of $67,000/year which comes as a form of state aid to assist with maintaining and improving specialized technology associated with 9-1-1 call delivery to the PSAP.

Except for three hours each day, minimum Minnetonka PSAP staffing is scheduled for two people on duty. During the (typically) low activity levels of 3:00 AM to 6:00 AM PSAP staffing reverts to only one person on duty. We suggest that this staffing strategy be re-visited since we think having only one person on duty places the City at risk in the event of an unusual event or worker incapacitation. Staffing two positions around-the-clock every day probably means a FTE allocation of ten Minnetonka dispatchers. In addition, we envision one additional person would provide supervisory support to the front-line dispatch staff. We also anticipate the need for some police/fire technology support, perhaps in the form of an assigned staff member who splits time between the departments.

Over the past ten years the City has invested between $750,000-$1,000,000 in the technology required to support PSAP operations. The life cycle for this equipment is typically seven to ten years and the City may be facing a significant capital upgrade cost to update 9-1-1 equipment again after 2020. Until an outsourcing decision is made one PSAP technology capital improvement (microwave radio link) has already been deferred. Police administrative staff, appropriately, hold the belief that if PSAP outsourcing were to occur, additional economy would accrue to the City from the avoided cost of not having to outfit the PSAP.

Closely tied to the operating and capital is the “value” received as the City funds and operates its own PSAP. The key question associated with the outsourcing discussion is the cost offset by value. PSC has observed that Minnetonka’s business process model makes efficient use of PSAP staff. Employees are both tasked with, and self-initiate, multiple ancillary duties to bring value to their presence even when citizens are not calling in requesting assistance. PSAP staff that we observed or met with take significant pride in their work and are committed to the community. Understandably there is no appetite on the part of incumbent PSAP staff to entertain the concept of outsourcing PSAP services.

Outsourcing PSAP services is a major City undertaking that needs to be carefully deliberated. Every reader of this report has probably experienced the frustrations of contacting a call center (banking, reservation, technology support, etc.) and requesting assistance. PSAP operations bear only limited parallels to commercial call centers but the frustrations that callers may
encounter can be very similar. For this reason, the selection of an outsourcing partner is critical.

Challenging the discussion about cost and value is the uncertainty of cost if the service is outsourced. Each of the potential outsourcing partners is unable to commit to costs pending a more complete understanding of the expected services coupled with associated negotiations. Past practice at Hennepin County has been to offer PSAP services to “dependent” suburban communities at no charge in exchange for the continuing contribution of state 9-1-1 revenue funds to the County’s budget. Under the Hennepin County service model, local interests in the setting and maintaining operating policies and procedures comes in the form of seats on a User Advisory Board (UAB). A copy of the current UAB Bylaws is included in an Appendix to this report.

Eden Prairie public safety administrators expressed the view that a strong PSAP partnership could be forged around these principles:

- A contract for service would need to be negotiated between Eden Prairie and Minnetonka; and,

- PSAP staffing for both communities could be delivered more efficiently, with added staff capacity from Eden Prairie’s PSAP with a nominal ongoing operating cost contribution; and,

- Eden Prairie expects to collect Minnetonka’s share of annual 9-1-1 revenue as an assumed condition of the contract for service.

For purposes of comparative analysis PSC independently assumed that a recurring contract cost to Minnetonka to receive service from Eden Prairie would amount to $300,000 in 2018 dollars. This cost is predicated on the further assumption that minimal changes in business process would be needed in the Eden Prairie outsourcing scenario.

If one adopts the premise that Hennepin County can provide PSAP services to Minnetonka at no recurring operating cost, then it logically flows that attention must be given to the business processes that need to change to accommodate that “free” service. PSC suggests that to maintain comparable business practices to those now offered, Minnetonka would need to staff one position 24 hours per day to handle tasks relating to City property alarm monitoring, video surveillance, and other services now delivered internally by City PSAP staff. Staffing one such a position would require 8,760 person hours/year. Using a part time hourly CSO (Community Service Officer) wage rate of $16/hour results in a personnel cost of $140,160/year.

As a part of our analysis public safety staff from the Minnetonka Police and Fire Departments were invited to complete an on-line survey expressing their views on the topic of PSAP outsourcing. Sixty-seven employee survey responses were received comprised of 7 dispatch, 3 support services, 41 sworn law enforcement, and 9 fire responses. A few responses fit more than one employment category. The general tone of the survey responses expressed skepticism about outsourcing PSAP services. Survey response data has been separately provided to the City administration.
Prior Outsourcing Lessons Learned

PSC’s experience with prior PSAP consolidation/outsourcing initiatives has identified these factors which are universal to all projects.

Degrees of Difficulty

Alternatives can be evaluated on a continuum of perceived difficulty. From a feasibility perspective, consideration needs to be given to the level of difficulty and the associated focus and energy required to accomplish the desired transition. *Commentary:* Maintaining the status quo is the least difficult course of action if cost containment is not a factor. Any change will be more difficult than doing nothing.

Organizational Change

Organizational change never occurs without some element of ‘pain’ and disruption. Even positive changes typically produce some amount of organizational pain. *Commentary:* Restructuring PSAP service delivery will bring pain at many levels.

Level of Risk

Any change in policy or operational context has some element of risk associated with it. No plan is ever perfect and every implementation has some unexpected variable(s) that can increase or decrease the risk of making the change. *Commentary:* There is little risk in maintaining the status quo if suitable financial resources are available. Conversely change is associated with risk and organizational change can be expected both for Minnetonka and the PSAP providing the services.

Duration of the Change Process

Every change, positive and negative, takes some amount of time to develop, design, and implement. How much time is a function of the scope, breadth, depth of the change, the commitment of internal staff resources to the change, and the expectations of the participants. *Commentary:* Outsourcing to Hennepin County could probably be effected most quickly. By comparison negotiating suitable service expectations and contract terms, and cost with Eden Prairie is expected to take longer.

A Comparative Table of Operating & Capital Costs

In the tables on the following page we have compiled an overview of recurring and capital cost estimates for the three scenarios under consideration.
PSAP Operating Cost Estimates - Three Alternatives

<table>
<thead>
<tr>
<th>Personnel Costs</th>
<th>Minnetonka</th>
<th>Eden Prairie</th>
<th>Hennepin ECF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Status Quo Scenario</td>
<td>$867,500</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Outsource to Eden Prairie</td>
<td>N/A</td>
<td>$300,000</td>
<td>N/A</td>
</tr>
<tr>
<td>Outsource to HC ECF</td>
<td>$140,160</td>
<td>N/A</td>
<td>-0-</td>
</tr>
</tbody>
</table>

**Operating Costs**

<table>
<thead>
<tr>
<th></th>
<th>Minnetonka</th>
<th>Eden Prairie</th>
<th>Hennepin ECF</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$16,700</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**Table Notes:**

2. Outsource to Eden Prairie suggests that all PSAP functions now performed by Minnetonka's PSAP are outsourced with elimination of the Minnetonka PSAP staff costs. The $300,000 is based on an assumption of Minnetonka's operating cost contribution to Eden Prairie under a hypothetical contract.
3. Outsource to HC ECF assumes 8,760 hour staffing (one person around-the-clock) of an alarm monitoring, video surveillance, information desk position at the Minnetonka PD. Staffing makeup of the potentially mixed clerical, technical support, and/or community service officer (CSO) work force would need to be determined under this scenario based on further job content analysis.
4. Operating cost reflects Minnetonka's 2017 budget for contracts, supplies, and services.

PSAP Conversion Cost Estimates - Three Alternatives

<table>
<thead>
<tr>
<th>Conversion Costs</th>
<th>Minnetonka</th>
<th>Eden Prairie</th>
<th>Hennepin ECF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Status Quo Scenario</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Outsource to Eden Prairie</td>
<td>N/A</td>
<td>$230,000</td>
<td>N/A</td>
</tr>
<tr>
<td>Outsource to HC ECF</td>
<td>N/A</td>
<td>N/A</td>
<td>$55,000</td>
</tr>
</tbody>
</table>

**Table Notes:**

1. Minnetonka status quo reflects continuing locally operated PSAP at Minnetonka PD.
2. Outsource to Eden Prairie includes allowance for improving Eden Prairie's radio console connection redundancy, improving backup operations, CAD/RMS interfaces, and alarm/video system integration.
3. Outsource to HC ECF includes CAD/RMS interface development between LOGIS and County-hosted Tri-Tech software and creation of a suitable single workspace monitoring position within Minnetonka PD for a CSO to staff the alarm monitoring, video surveillance, and information desk position.
4. Both outsourced conversion cost scenarios anticipate that Minnetonka's $67,000 annual 9-1-1 state revenue is redirected to the PSAP providing outsourced services. That revenue is not reflected in costs shown in table above.

PSAP Capital Cost Estimates - Three Alternatives

<table>
<thead>
<tr>
<th>Capital Costs</th>
<th>Minnetonka</th>
<th>Eden Prairie</th>
<th>Hennepin ECF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Capital Cost Earmark</td>
<td>$100,000</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Outsource to Eden Prairie</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Outsource to HC ECF</td>
<td>N/A</td>
<td>N/A</td>
<td>$2,000</td>
</tr>
</tbody>
</table>

**Table Notes:**

1. Minnetonka's annual capital cost earmark assumes that $100,000 is set aside in a capital replacement fund for a ten-year period and assumes that technology used in the PSAP ‘turns over’ every ten years ($1,000,000/decade).
2. Outsource to Eden Prairie assumes that all capital costs associated with PSAP service delivery not covered by the initial conversion budget allocation are covered by Eden Prairie under the terms of the service agreement.
3. Outsource to HC ECF reflects that $2,000 annually is earmarked for upgrades/modifications to the alarm monitoring, video surveillance, information desk position within the Minnetonka PD.

From the information above, the lowest cost approach to the delivery of Minnetonka PSAP services can be achieved by outsourcing to Hennepin County. Accompanying this fiscal economy is the ability to handle significant major events due to the larger ECF staff.
SECTION 2 - INTRODUCTION

The purpose of this document is to summarize and present preliminary data, assessments, conclusions, and recommendations to City of Minnetonka’s management staff. We anticipate that this report will not (and cannot) address all of the questions which will arise from policy makers as they navigate discussions about outsourcing these important services. Rather the information contained in this report is intended to be a summary comparison of the available choices.

PSC’s experience in PSAP operations has been gained over more than four decades. This experience includes line level dispatching, PSAP supervision/management, and independent contracted consulting for single and multi-agency clients. We have learned that the issues surrounding the best operational models can be so nuanced that it becomes critical to establish a baseline of understanding concerning how the work of PSAP staff is performed to have meaningful discussions about service delivery models, their costs/benefits, and the potential impacts upon citizen expectations and business processes.

With this review, PSC re-affirms that any change in the delivery of PSAP services to Minnetonka’s constituents should be accompanied by policy level agreement on four key factors. Those factors are:

- Clear expectations concerning the needed levels of service and the cost of that service; and,
- An understanding concerning how outsourced performance will be evaluated and measured; and,
- The mechanisms that will used to establish, modify, and agree upon changes in policy or procedure; and,
- A plan concerning how services now performed by incumbent Minnetonka PSAP staff, that may not be available from an outsourced PSAP service provider, will be addressed to maintain continuity of constituent service.

Our strategy for this engagement has been to use a SWOT (Strengths, Weaknesses, Opportunities, and Threats [SWOTs]) methodology. In Section 7 we summarize our SWOT assessment. We believe that by following the SWOT process, logical conclusions will be reached by municipal policy makers which will result in the "best" ultimate outcome for the constituents concerning future dispatch and PSAP operational service delivery strategies.

We note that the City of Minnetonka has already adopted performance satisfaction “indicators” that are used to assess how well individual departments and City services are meeting the needs and expectations of the citizens. A review of published citizen satisfaction summary data, collected via recurring City administered community surveys, has identified that Minnetonka’s existing dispatch staff/processes have consistently generated citizen satisfaction ratings exceeding 95% year after year for the past five years.
In PSC’s opinion, these indicators are critical benchmarks which should be used to inform the City’s internal discussion on alternative PSAP service delivery strategies. In other words, when considering outsourcing PSAP services, policy makers may wish to ask the question, “How will a PSAP outsourcing approach impact historic indicator status?” We have found this Minnetonka specific baseline indicator information often absent in other jurisdictions where we have analyzed comparable PSAP outsourcing questions. Lacking this kind of data, outsourcing discussions in other venues often take on a purely emotional review process.

Eden Prairie has used a similar community based survey to assess citizen satisfaction. PSC was provided with Eden Prairie survey data from 2014. Eden Prairie’s 2014 data identified that 93 percent of surveyed participants identified their interactions with Eden Prairie’s Police Department as excellent or good. While no specific data relating to interactions with Eden Prairie’s PSAP staff were identified in the survey, a logical assumption could be made that some percentage of those surveyed received police department service via initial contacts with the PSAP.

PSC is unaware of any similar survey processes performed by Hennepin County for the services delivered by the ECF.
SECTION 3 - METHODOLOGY

After being retained by the City in January, we met with the
Minnetonka police administration to receive direction and explain our
intended approach and work plan. We received unequivocal cooperation
from the police administration at every step of the analysis. Following
the initial organizational police command staff organization meeting we
conducted additional interviews, observations, and surveys including:

1. Meeting with a representative group of Minnetonka dispatchers
to learn about their jobs, their views on outsourcing, and their
recommendations for the study.
2. Interview the Minnetonka Fire Chief.
3. Interview a representative of the Minnetonka Public Works staff.
4. Meetings with staff from the City of Eden Prairie. These
meetings included the dispatch supervisor, support services
commander, and members of the fire command staff.¹
5. Meeting with staff from Hennepin County Sheriff’s Office ECF
operational command and Sheriff’s administration.
6. Meeting with the Hennepin County Board Chair.
7. Meeting with the former Hopkins Police Chief.²
8. Meeting with the Richfield Public Safety Director/Police Chief.³
9. Separate dispatch work flow observational sessions at Eden
Prairie, HC ECF, and Minnetonka PSAPs.
11. Meeting with a representative of Minnetonka’s Information
Technology (IT) staff.
12. Meeting with Minnetonka’s former dispatch supervisor.
13. Development of an on-line, multi-question, anonymous survey
that was made available to Minnetonka dispatch staff, law
enforcement personnel, fire command staff, and police civilian
support staff.

Information collected from the individual interviews has been
summarized in Section 6 of this report. Comments received via the on-
one employee survey are contained in an Appendix to the report.

¹ In Eden Prairie, technology support for the dispatch functions is shared between a fire
department staff member and the City’s internal IT staff.
² We elected to engage in discussion with the former Hopkins Police Chief because that city
previously operated its own PSAP and decided to outsource the service to Hennepin County in
2012. The purpose of the interview was to identify potential lessons learned.
³ Like Hopkins, Richfield formerly operated their own PSAP. In 2013 Richfield decided to
outsource dispatch and entertained contract offers from Bloomington and Edina to receive the
service. Ultimately Richfield selected Edina under the terms of a multi-year contract for
service. A copy of the Edina-Richfield PSAP contract is included in an Appendix to this report.
SECTION 4 - CURRENT STATE CONDITIONS & DEMOGRAPHICS

A common challenge encountered in many outsourcing studies deals with finding common, comparable data sets to compare performance from individually operated PSAPs. The data contained in the tables of this section of the report represents our effort to bring consistency to the data comparisons to the extent possible. Note that the acronym “CAD” refers to Computer Aided Dispatch (an electronic system used to manage events and resources).

Minnetonka

<table>
<thead>
<tr>
<th>Minnetonka PSAP Demographics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population Served</td>
</tr>
<tr>
<td>Land Area Served</td>
</tr>
<tr>
<td>Police Sworn Personnel</td>
</tr>
<tr>
<td>CAD Service Events - 2016</td>
</tr>
<tr>
<td>Fire Personnel</td>
</tr>
<tr>
<td>Fire Stations</td>
</tr>
</tbody>
</table>

Eden Prairie

<table>
<thead>
<tr>
<th>Eden Prairie PSAP Demographics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population Served</td>
</tr>
<tr>
<td>Land Area Served</td>
</tr>
<tr>
<td>Police Sworn Personnel</td>
</tr>
<tr>
<td>CAD Service Events - 2016</td>
</tr>
<tr>
<td>Fire Personnel</td>
</tr>
<tr>
<td>Fire Stations</td>
</tr>
</tbody>
</table>

Hennepin County ECF

<table>
<thead>
<tr>
<th>HCSO PSAP Demographics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hennepin County Population Total</td>
</tr>
<tr>
<td>Hennepin County Land Area Total</td>
</tr>
<tr>
<td>Population Served by PSAP</td>
</tr>
<tr>
<td>Land Area Served by PSAP</td>
</tr>
<tr>
<td>Police / Sheriff Sworn Personnel</td>
</tr>
<tr>
<td>CAD Service Events – 2016</td>
</tr>
<tr>
<td>Fire Personnel</td>
</tr>
<tr>
<td>Fire Stations</td>
</tr>
</tbody>
</table>

ECF Table Notes

1) Note that this table contains entries both the entire county and separate, gray shaded, rows for PSAP demographics specific to the ECF. The shaded rows describing population and land area served by the ECF PSAP exclude communities operating their own PSAPs as identified in Section 1.

2) The 2016 CAD data represents dispatched events for the entire PSAP. As described later in this report, the ECF has divided its work load into zones which they describe as North, East, and South. Minnetonka is geographically most closely aligned with the South dispatch zone.
Current Minnetonka PSAP Staffing

The 2017 Minnetonka adopted budget authorizes a full time equivalent (FTE) Telecommunicator staff of eight plus five part time staff. The Minnetonka PSAP has the physical space capacity for three work station console positions which support telephone, CAD and radio. A fourth position is located in a separate room in the PSAP Supervisor’s office.

As depicted by the table below, Minnetonka generally operates with two Telecommunicators on duty, with staffing dropping to one person for three hours during the overnight shift. Therefore the table below reflects minimum PSAP staffing. During certain days the normal two person PSAP staffing is supplemented by up to three Telecommunicators on duty. The shifts when three person staffing occurs are random based on employee schedules.

Minnetonka PSAP Staff Minimums

<table>
<thead>
<tr>
<th>Time/Day</th>
<th>Sunday</th>
<th>Monday</th>
<th>Tuesday</th>
<th>Wednesday</th>
<th>Thursday</th>
<th>Friday</th>
<th>Saturday</th>
</tr>
</thead>
<tbody>
<tr>
<td>0000-0300</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>0300-0600</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>0600-2400</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

Given the dimensions of the existing dispatch room, physical space for expansion of additional work stations is very limited and, in PSC’s judgement the existing space is “maxed out”.

Current Minnetonka PSAP Activity Levels

Minnetonka’s PSAP personnel process a variety of activities each day. These activities include, but are not limited to 9-1-1 calls, emergency and non-emergency administrative calls, Computer Aided Dispatch functions, emergency and non-emergency radio functions, and various other non-dispatch related data entry, video and security monitoring, and incidental functions. Telephone calls represent one, but not the only, metric relating to dispatch activity. Significant other activity occurs which is not reflected in the tables below within the Minnetonka PSAP.

Telephone call metrics are contained in this report because they are counted automatically at all three PSAPs which are the subject of this report.

Minnetonka Telephone Activity

<table>
<thead>
<tr>
<th>Type of Activity / Year</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>9-1-1 Call</td>
<td>18,971</td>
<td>18,977</td>
<td>19,484</td>
</tr>
<tr>
<td>Administrative Call</td>
<td>38,710</td>
<td>35,619</td>
<td>34,996</td>
</tr>
<tr>
<td>Total</td>
<td>57,681</td>
<td>54,596</td>
<td>54,480</td>
</tr>
</tbody>
</table>

Activity Table Notes
1) Minnetonka utilizes the West (formerly Positron) VIPER telephone system. These activity levels were derived from that system.

PSC believes that most of the 9-1-1 calls resulted in the dispatch of a public safety response unit and are included in the Minnetonka CAD totals shown in the above table. 64% of the overall calls handled by Minnetonka’s PSAP staff in 2016 were processed on 10-digit lines.
Another automated PSAP activity index is found in CAD (Computer Aided Dispatch) events created. A CAD is generally created when a public safety unit is dispatched or comes upon an event requiring service/intervention. However, a CAD event may not be generated when a dispatcher handles a citizen concern without dispatching a unit. Details of Minnetonka’s CAD activity levels are shown in the following table.

<table>
<thead>
<tr>
<th>Minnetonka CAD Activity</th>
<th>Type of Activity / Year</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAD Events</td>
<td></td>
<td>46,464</td>
<td>46,450</td>
<td>38,378</td>
</tr>
</tbody>
</table>

**Table Notes**

1) Numbers for 2014 and 2015 were collected using the former CAD system. The CAD system was replaced in 2016 when Minnetonka migrated onto the LOGIS hosted Tri-Tech software platform. Based on spot checks of activity levels over several years PSC assumes that Minnetonka’s actual CAD activity level for 2016 is higher than shown but not accurately counted due to the software transition last year.

2) Later in this report we use and estimate of 2016 CAD events of 46,448 for comparative purposes between Minnetonka, Eden Prairie, and the ECF.

because Minnetonka shares the same (ARMER) radio system platform as is used by Eden Prairie and Minnetonka, it was possible to collect a sampling of Minnetonka police and fire radio communications activity using automated tools maintained by Hennepin County. This data was sampled for a two-month period (June & July, 2016). This data set is very large so PSC prescribed the sampling period and requested the radio traffic report as a basis for comparison. We believe the June & July sampling period represents typical activity peaks for all of the PSAPs studied in this report.

<table>
<thead>
<tr>
<th>Minnetonka Radio Activity</th>
<th>Type of Activity / Year</th>
<th>June and July 2016</th>
<th>Daily Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Radio PTT Count</td>
<td></td>
<td>39,468</td>
<td>647</td>
</tr>
<tr>
<td>Cumulative Radio Call Duration</td>
<td></td>
<td>55 hours</td>
<td></td>
</tr>
</tbody>
</table>

**Activity Table Notes**

1) 39,468 represents the number of push-to-talk transmissions generated on the Minnetonka Police and Fire primary radio talk groups. This number represents the radio traffic both monitored and/or originated by Minnetonka’s dispatchers.

2) Radio call duration has been rounded up to the nearest hour.

3) PTT is push-to-talk.

**Current Eden Prairie PSAP Staffing**

The adopted Eden Prairie 2017 PSAP budget authorizes a full time equivalent (FTE) Telecommunicator staff of ten plus three part time staff. The Eden Prairie PSAP is equipped with four work station console positions which support telephone, CAD and radio. As noted by the staffing table below, there is typically one vacant work station position even when three people are working.

As depicted by the table below, Eden Prairie generally has two Telecommunicators on duty and sometimes only one person for three hours each day. Although not shown on the table, between 10:00 and 03:00, on various days, there may be up to three (3) PSAP staff members on duty based on staff schedule rotations.
With the four existing work station consoles positions, and because the general staffing needs are only usually two and sometimes three Telecommunicators on duty, Eden Prairie has suitable available positions in their dispatch center to accommodate Minnetonka without expansion.

The current Telecommunicator scheduling is reflected in the table below. Eden Prairie generally has two Telecommunicators on duty, and like Minnetonka, the staffing drops to one person for three hours during the overnight shift. Also similar to Minnetonka, on certain days the two person PSAP staffing is supplemented by up to three Telecommunicators on duty based on the schedules and full time and part time staff complement.

### Eden Prairie PSAP Staff Minimums

<table>
<thead>
<tr>
<th>Time/Day</th>
<th>Sunday</th>
<th>Monday</th>
<th>Tuesday</th>
<th>Wednesday</th>
<th>Thursday</th>
<th>Friday</th>
<th>Saturday</th>
</tr>
</thead>
<tbody>
<tr>
<td>0000-0300</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>0300-0600</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>0600-2400</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>

Current Eden Prairie PSAP Activity Levels

Eden Prairie’s PSAP personnel process a variety of activities each day in a fashion which is very closely aligned to the business process model used in Minnetonka. (In fact, some Eden Prairie dispatch staff have provided part time services to Minnetonka and are quite familiar with the similarities between the business processes of the two communities.) These Eden Prairie activities include, but are not limited to 9-1-1 calls, emergency and non-emergency administrative calls, Computer Aided Dispatch functions, emergency and non-emergency radio functions, and various other non-dispatch related data entry, video and security monitoring, and incidental functions. Telephone calls represent one, but not the only, metric relating to dispatch activity. Significant other activities which are not reflected in the tables below occur in the Eden Prairie PSAP.

### Eden Prairie Telephone Activity

<table>
<thead>
<tr>
<th>Type of Activity / Year</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>9-1-1 Call</td>
<td>20,224</td>
<td>16,458</td>
<td>18,653</td>
</tr>
<tr>
<td>Administrative Call</td>
<td>58,770</td>
<td>50,472</td>
<td>52,801</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>78,994</strong></td>
<td><strong>66,930</strong></td>
<td><strong>71,454</strong></td>
</tr>
</tbody>
</table>

**Activity Table Notes**

1) Eden Prairie utilizes the Airbus VESTA telephone system since 2015. These activity levels were derived from that system.

2) 2015 telephone activity levels were split between two systems in 2015.
Like Minnetonka, an automatically collected PSAP activity index is also found Computer Aided Dispatch transaction summaries. Details of Eden Prairie’s CAD activity levels are shown in the following table.

<table>
<thead>
<tr>
<th>Eden Prairie CAD Events</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAD Events</td>
<td>50,870</td>
<td>50,503</td>
<td>51,586</td>
</tr>
</tbody>
</table>

**Activity Table Notes**
1) Eden Prairie has used a CAD software application from New World Systems for this entire sampling period. Therefore, while Minnetonka’s CAD counts were affected by a software platform change, Eden Prairie’s were not.

Also like Minnetonka, Eden Prairie shares the ARMER radio system platform. Therefore, the sampling of Eden Prairie police and fire radio communications activity was provided by Hennepin County. This data was sampled for the same two-month period (June & July, 2016) as used in Minnetonka to provide a comparable basis of comparison.

<table>
<thead>
<tr>
<th>Eden Prairie Radio Activity</th>
<th>June and July 2016</th>
<th>Daily Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Radio PTT Count</td>
<td>60,153</td>
<td>986</td>
</tr>
<tr>
<td>Cumulative Radio Call Duration</td>
<td>68 hours</td>
<td></td>
</tr>
</tbody>
</table>

**Activity Table Notes**
1) 60,153 represents the number of push-to-talk transmissions generated on the Eden Prairie Police and Fire primary radio talk groups. This number represents the radio traffic both monitored and/or originated by Eden Prairie's dispatchers.
2) Radio call duration has been rounded down to the nearest hour.
3) PTT is push-to-talk.

**Current Hennepin ECF Operational Staffing**

The ECF PSAP is currently authorized for a full time equivalent (FTE) Telecommunicator staff of 58 people who are involved in direct service call answering and dispatching service delivery. The Telecommunicator staff are supplemented by additional on-duty supervisors. Physically, the ECF PSAP has the capacity of 22 primary work station console positions which support telephone, CAD and radio. An additional four work stations are used for training but can also be activated for major events.

The ECF Telecommunicator staffing ranges from 7 to 14 FTEs depending upon the shift. Because the number of work stations exceeds the typical number of on-duty Telecommunicators there is adequate physical capacity at the ECF to take on dispatch PSAP responsibilities for some additional communities. The current Telecommunicator scheduling is reflected in the table below.

<table>
<thead>
<tr>
<th>ECF PSAP Telecommunicator Minimums</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time/Day</td>
</tr>
<tr>
<td>0000-0200</td>
</tr>
<tr>
<td>0300-1100</td>
</tr>
<tr>
<td>1100-2100</td>
</tr>
<tr>
<td>2100-0000</td>
</tr>
</tbody>
</table>
Current Hennepin ECF PSAP Activity Levels

Telecommunicators at the Hennepin ECF have a more narrowly focused business process role than their counterparts at the Minnetonka and Eden Prairie PSAPs. At the Hennepin ECF the staff answer and dispatch calls and either take messages for, or refer callers to another number, for public safety and community information. The ECF is, therefore, primarily focused on Emergency Communications whereas dispatch personnel from Eden Prairie and Minnetonka have broader responsibilities for public safety communications, including emergencies, and field support.

**ECF Telephone Activity**

<table>
<thead>
<tr>
<th>Type of Activity / Year</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>9-1-1 Call</td>
<td>37,394</td>
<td>245,155</td>
<td>250,959</td>
</tr>
<tr>
<td>Administrative Call</td>
<td>60,478</td>
<td>385,355</td>
<td>389,399</td>
</tr>
<tr>
<td>Total</td>
<td>97,872</td>
<td>630,510</td>
<td>640,358</td>
</tr>
</tbody>
</table>

**Activity Table Notes**

1) Since 2015 the ECF has used a shared-hosted Airbus VESTA telephone system to process administrative and 9-1-1 calls to the PSAP. Prior to 2015 Hennepin County used a different telephone platform and the call counts shown for 2014 should be considered as a partial representation of telephone activity.

2) The ECF shares the VESTA telephone system with Minneapolis, Edina, Hennepin EMS, and Allina EMS. Telephone activity levels for the ECF are counted separately from others on the shared system and form the basis of the data in the table above.

3) Telephone activity levels for 2015 are in aggregate for the entire ECF PSAP. The telephone counts are not specific to the South Main zone.

Like Minnetonka and Eden Prairie, automated PSAP activity index is also found in CAD events created. Details of the ECF CAD activity levels are shown in the following table.

**ECF CAD Activity**

<table>
<thead>
<tr>
<th>Type of Activity / Year</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAD Events</td>
<td>593,382</td>
<td>597,232</td>
<td>599,586</td>
</tr>
</tbody>
</table>

**Activity Table Notes**

1) Hennepin County uses a CAD software application from Tri-Tech. This is the same software vendor used in Minnetonka. Hennepin County hosts the Tri-Tech application on its own servers whereas Minnetonka’s Tri-Tech application is hosted by LOGIS.

2) On December 9, 2014, the ECF began receiving calls and dispatching for Golden Valley. Prior to that time Golden Valley had most recently received service from Edina.

Like Minnetonka and Eden Prairie, Hennepin County shares the ARMER radio system platform. Hennepin County provided the sampling of radio traffic for this report. This data was retrieved for the same two-month period (June & July, 2016) as used in Minnetonka and Eden Prairie to provide a uniform basis of comparison.
ECF Partial Radio Activity

<table>
<thead>
<tr>
<th>Type of Activity / Year</th>
<th>June and July 2016</th>
<th>Daily Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Radio PTT Count – South Main</td>
<td>45,970</td>
<td>754</td>
</tr>
<tr>
<td>Radio PTT County – Fire Main</td>
<td>25,226</td>
<td>413</td>
</tr>
<tr>
<td>Cumulative Radio Call Duration South Main (Law)</td>
<td>83.5 hours</td>
<td></td>
</tr>
<tr>
<td>Cumulative Radio Call Duration Hennepin Fire Main</td>
<td>59.5 hours</td>
<td></td>
</tr>
</tbody>
</table>

Activity Table Notes:

1) It should be noted that while law enforcement dispatching in the ECF is organized around zones, fire dispatching is typically handled Countywide from a single work station. During normal Countywide fire operations, a single Telecommunicator manages the radio traffic for all dispatched fire departments. During periods of peak fire activity such as multiple fire events occurring concurrently within the County, the on-duty ECF supervisor may re-task other on-duty staff to assist the Telecommunicator working the fire position.

2) Physically, 9-1-1 call taking and dispatching activity for the South Main zone is handled by several Telecommunicators clustered together in workstations placed in a ‘pod’ configuration.

3) PTT is push-to-talk.
SECTION 5 - COMPARATIVE DATA ANALYSIS

Using data elements collected in Section 4, PSC performed some analysis of the information and we summarize that information in this Section. For the PSAPs that form the basis of this report, we compared technology capacity, staff workload, typical phone call durations, call answering (pickup) times, radio call durations, and busy hour samples. We also made estimates of the increases that would result at Eden Prairie and at the HC ECF if the City of Minnetonka were to outsource its dispatch functions to one of those PSAPs. Again, we emphasize that there are many activities that Minnetonka’s existing dispatchers perform that are not captured in the available collected Section 4 metrics.

Summary PSAP Comparisons

<table>
<thead>
<tr>
<th>Activity</th>
<th>Minnetonka</th>
<th>Eden Prairie</th>
<th>ECF</th>
<th>Average Per FTE</th>
</tr>
</thead>
<tbody>
<tr>
<td>9-1-1 Calls</td>
<td>19,484</td>
<td>18,653</td>
<td>250,959</td>
<td>2,165 M</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1,865 EP</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4,327 ECF</td>
</tr>
<tr>
<td>10 Digit Calls</td>
<td>34,996</td>
<td>52,801</td>
<td>389,399</td>
<td>3,888 M</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>5,280 EP</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>6,714 ECF</td>
</tr>
<tr>
<td>CAD Events</td>
<td>46,448</td>
<td>51,586</td>
<td>599,586</td>
<td>5,161 M</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>5,159 EP</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>19,338 ECF</td>
</tr>
<tr>
<td>Radio PTT</td>
<td>39,468</td>
<td>60,153</td>
<td>See Note</td>
<td>4,385 M</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>6,015 EP</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>ECF See Note Below</td>
</tr>
</tbody>
</table>

Activity Table Notes:
1) Data for this table aggregated from information contained in report Section 4.
2) Because we only requested radio PTT data for the South Main and Fire Main ECF talk groups, we are unable to establish suitable radio PTT averages, per FTE, for the ECF that served as valid comparisons to the data for Minnetonka and Eden Prairie.

The PSAP summary comparison table above illustrates the efficiencies achieved from having a larger aggregated workforce managing large quantities of emergency calls and CAD events. What this table does not show are the other duties, performed by the local Minnetonka and Eden Prairie PSAP staff that are not counted in the metrics of calls, CAD events, and radio push-to-talk activity.

Answering Time

We also used “Best Practice” industry standard PSAP benchmarks performance and report that assessment here. NENA\(^4\) has established the call answering benchmark of ninety percent (90%) of all 9-1-1 calls arriving at the Public Safety Answering Point (PSAP) being answered within ten (10) seconds during the average busy hour\(^5\).

---

\(^4\) NENA is the National Emergency Number Association. NENA works to establish industry leading standards, training, and certifications.

\(^5\) The average busy hour is defined as the one hour each day with the greatest call volume.
NENA currently recommends that ninety-five (95%) of all 9-1-1 calls should be answered within twenty (20) seconds. NENA is considering adoption of revised call answering benchmarks as follows: “Ninety-five percent (95%) of all 9-1-1 calls arriving at the Public Safety Answering Point (PSAP) SHALL be answered within fifteen (15) seconds. Ninety-nine (99%) of all 9-1-1 calls SHOULD be answered within forty (40) seconds.”

The Tables below depict the PSAP combined answer time averages for incoming 9-1-1 and Administrative calls for June and July of 2014, 2015, and 2016 for each of the three PSAPs.

### Minnetonka Answering Time Performance

<table>
<thead>
<tr>
<th>Feature / Year</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Call Answer Time Avg.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>.01 – 10 sec</td>
<td>96.57%</td>
<td>95.87%</td>
<td>95.35%</td>
</tr>
<tr>
<td>Call Answer Time Avg.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10.1 – 20 sec</td>
<td>2.87%</td>
<td>3.60%</td>
<td>3.93%</td>
</tr>
<tr>
<td>Call Answer Time Avg.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>under 30 sec</td>
<td>99.83%</td>
<td>99.89%</td>
<td>99.64%</td>
</tr>
</tbody>
</table>

### Eden Prairie Answering Time Performance

<table>
<thead>
<tr>
<th>Feature / Year</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Call Answer Time Avg.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>.01 – 10 sec</td>
<td>97.67%</td>
<td>97.41%</td>
<td>n/a</td>
</tr>
<tr>
<td>Call Answer Time Avg.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10.1 – 20 sec</td>
<td>2.21%</td>
<td>2.36%</td>
<td>n/a</td>
</tr>
<tr>
<td>Call Answer Time Avg.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>under 30 sec</td>
<td>99.98%</td>
<td>99.95%</td>
<td>n/a</td>
</tr>
</tbody>
</table>

**Table Notes**

1) Data for 2016 was not available.

### ECF Answering Time Performance

<table>
<thead>
<tr>
<th>Feature / Year</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Call Answer Time Avg.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>.01 – 10 sec</td>
<td>n/a</td>
<td>87.5%</td>
<td>81.5%</td>
</tr>
<tr>
<td>Call Answer Time Avg.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10.1 – 20 sec</td>
<td>n/a</td>
<td>10.11%</td>
<td>16.27%</td>
</tr>
<tr>
<td>Call Answer Time Avg.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>under 30 sec</td>
<td>n/a</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

**Table Notes**

1) Data for 2014 was not available.

2) The ECF commenced full operation from new Plymouth PSAP facility in 2015.

### Answering Time Discussion

Answering time performance for Minnetonka and Eden Prairie is better than the current minimum NENA best practices criteria (calls answered in less than 10 seconds and calls answered from 10-20 seconds). Answering time performance at the ECF for the two-month period examined in 2015 and 2016, did not meet the current NENA standard for answering performance in less than 10 seconds. However, the ECF did meet the NENA best practice criteria for calls answered in less than 20 seconds.
If Minnetonka were to outsource PSAP services to HCSO, expected answering time performance should be well understood as a matter of policy.

**Telephone Call Volume Increases**

The tables below show the predicted call volume increases if, based on 2016 activity levels, the Minnetonka administrative and 9-1-1 telephone calls were outsourced to Eden Prairie or the ECF. These predictions anticipate no procedural or public education campaign, and by implication no significant change in quantity, concerning the types of calls citizens should be placing to the numbers now answered locally at the Minnetonka PSAP.

**Call Volume Increase if Minnetonka Joins Eden Prairie**

<table>
<thead>
<tr>
<th>2016 Calls</th>
<th>Minnetonka</th>
<th>Eden Prairie</th>
<th>Combined</th>
<th>% Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>9-1-1 Call</td>
<td>19,484</td>
<td>18,653</td>
<td>38,137</td>
<td>104.4%</td>
</tr>
<tr>
<td>Administrative Call</td>
<td>34,996</td>
<td>52,801</td>
<td>87,797</td>
<td>66.3%</td>
</tr>
<tr>
<td>Total</td>
<td>54,480</td>
<td>71,454</td>
<td>125,934</td>
<td>76.2%</td>
</tr>
</tbody>
</table>

**Call Volume Increase if Minnetonka Joins ECF**

<table>
<thead>
<tr>
<th>2016 Calls</th>
<th>Minnetonka</th>
<th>HC ECF</th>
<th>Combined</th>
<th>% Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>9-1-1 Call</td>
<td>19,484</td>
<td>250,959</td>
<td>270,443</td>
<td>7.8%</td>
</tr>
<tr>
<td>Administrative Call</td>
<td>34,996</td>
<td>389,399</td>
<td>424,395</td>
<td>9.0%</td>
</tr>
<tr>
<td>Total</td>
<td>54,480</td>
<td>640,358</td>
<td>694,838</td>
<td>8.5%</td>
</tr>
</tbody>
</table>

**Average Telephone Duration (Talk Time)**

The table below shows the average call duration for Minnetonka, Eden Prairie, and ECF Telecommunicators for the months of June and July 2015 and 2016. The quantity and average call duration are useful benchmarks because they can help determine the theoretical capacity of calls that can be processed by a group of answering agents. That theoretical capacity is discussed further in this section.

<table>
<thead>
<tr>
<th>2015/2016 June/July Avg.</th>
<th>Minnetonka</th>
<th>Eden Prairie</th>
<th>HC ECF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duration in Seconds</td>
<td>93</td>
<td>70</td>
<td>100</td>
</tr>
</tbody>
</table>

**Sampling of Telephone Call Durations**

**Radio Traffic PTT Increases**

The data in the tables below show the anticipated push to talk (PTT) radio traffic increases under two scenarios:

- Minnetonka outsourcing to Eden Prairie
- Minnetonka outsourcing to HC ECF

**Radio PTT Increases if Minnetonka Joins Eden Prairie**

<table>
<thead>
<tr>
<th>Avg. June/July Radio PTT</th>
<th>Minnetonka</th>
<th>Eden Prairie</th>
<th>Combined</th>
<th>% Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law</td>
<td>36,262</td>
<td>57,403</td>
<td>93,665</td>
<td>63%</td>
</tr>
<tr>
<td>Fire</td>
<td>3,206</td>
<td>2,750</td>
<td>5,956</td>
<td>117%</td>
</tr>
<tr>
<td>Total</td>
<td>39,468</td>
<td>60,153</td>
<td>96,621</td>
<td>61%</td>
</tr>
</tbody>
</table>
Radio PTT Increases if Minnetonka Joins the ECF

<table>
<thead>
<tr>
<th>Avg. June/July Radio PTT</th>
<th>Minnetonka</th>
<th>HC ECF</th>
<th>Combined</th>
<th>% Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law</td>
<td>36,262</td>
<td>45,970</td>
<td>82,232</td>
<td>79%</td>
</tr>
<tr>
<td>Fire</td>
<td>3,206</td>
<td>25,226</td>
<td>28,432</td>
<td>13%</td>
</tr>
<tr>
<td>Total</td>
<td>39,468</td>
<td>60,153</td>
<td>110,664</td>
<td>54%</td>
</tr>
</tbody>
</table>

Table Notes:
1) Law PTT’s for HC ECF represent increase on the South Main talk group only.

Discussion of Activity Level Increases

If Minnetonka outsources its PSAP functions, a fundamental planning consideration will be needed to determine the capacity of the receiving PSAP to process the additional work load presented by Minnetonka. Additionally, the business process considerations need to be explored. Two examples illustrate.

Call for Police Service Example

Currently when a Minnetonka law enforcement call for service is received, the call is dispatched and radio traffic associated with the call primarily remains on the Minnetonka law talk group (channel). If the call requires multiple units and the response requires “back and forth” radio coordination, the typical practice at the ECF is to have the responding units switch to a different talk group. While this process isn’t difficult, it is different from the practices currently employed in both Minnetonka and Eden Prairie PSAP operations during normal business.

Data Inquiry Example on Individual or Vehicle

Currently in both Minnetonka and Eden Prairie data inquiries on individuals, vehicles, articles, and other “computer checks” are initiated and reported back to the field unit on the regular law talk group. With the ECF a separate position is staffed and law enforcement field personnel are expected to change talk groups to initiate this kind of traffic. During our PSAP observational time at both Eden Prairie and Minnetonka we observed those dispatchers performing additional database checks on behalf of field officers over and above data available via the Minnesota DMV and “hot file” records.

Busy Hour Telephone Call Comparison

As noted above, the busy hour reflects an hour of the busy day, of the busy month of the year. Busy hour data is one component which can be used in establishing minimum PSAP staffing. For Minnetonka’s PSAP, the busy hour data is shown in the following table.
**Minnetonka PSAP Busy Hour Telephone Call Data**

<table>
<thead>
<tr>
<th>Feature/Year</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Busy Hour 9-1-1 Calls</td>
<td>16</td>
</tr>
<tr>
<td>Busy Hour Administrative Calls</td>
<td>11</td>
</tr>
<tr>
<td>Busy Hour Calls Total</td>
<td>27</td>
</tr>
</tbody>
</table>

To determine recommended minimum staffing requirements, the described Busy Hour calls are combined with an anticipated call duration. The following Table shows the average call duration of combined 9-1-1 and administrative calls for June and July of 2015 and 2016. Call duration times are used with call queuing formulas to estimate the capacity of calls/hour based upon available PSAP staffing. For Minnetonka the average call duration during the months of June and July in 2015 and 2016 was 93 seconds (1:33).

The table below shows the staff needed to process incoming calls at the Minnetonka PSAP based on 93 second call durations with variable follow-up times ranging from 30 – 60 seconds. **This data needs to be used with care and judgment because it does not account for ancillary duties performed by PSAP staff such as radio traffic, data entry, video monitoring, etc.**

**Minnetonka Telephone Call Staffing Table**

<table>
<thead>
<tr>
<th>Staff Required to Handle Presented Calls Per Hour</th>
<th>93 Second Call Processing &amp; 30 Second Follow-up</th>
<th>93 Second Call Processing &amp; 45 Second Follow-up</th>
<th>93 Second Call Processing &amp; 60 Second Follow-up</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Up to 15 Calls per hr.</td>
<td>Up to 13 Calls per hr.</td>
<td>Up to 12 Calls per hr.</td>
</tr>
<tr>
<td>3</td>
<td>16 - 32 Calls per hr.</td>
<td>14 - 27 Calls per hr.</td>
<td>13 - 25 Calls per hr.</td>
</tr>
<tr>
<td>4</td>
<td>33 - 51 Calls per hr.</td>
<td>28 - 45 Calls per hr.</td>
<td>26 - 40 Calls per hr.</td>
</tr>
</tbody>
</table>

**Table Notes:**

1) This table depicts the expected number of staff required to handle calls presented with an answering (queuing) time of less than 10 seconds and less than 1 caller in 100 (1:100) receiving a busy signal.

2) As per the Table above, the Minnetonka PSAP can theoretically process up to 15 telephone calls per hour with two Telecommunicators on duty during a single hour and up to 32 calls per hour with three Telecommunicators on duty during a single hour.

Eden Prairie was unable to provide the busy hour call data. Therefore, for purposes of this Report we performed comparable calculations from the Minnetonka data to extrapolate an estimate of the busy hour numbers.

**Eden Prairie Busy Hour Telephone Call Data**

<table>
<thead>
<tr>
<th>Feature/Year</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Busy Hour 9-1-1 Calls</td>
<td>17</td>
</tr>
<tr>
<td>Busy Hour Administrative Calls</td>
<td>17</td>
</tr>
<tr>
<td>Busy Hour Calls Total</td>
<td>34</td>
</tr>
</tbody>
</table>
For Eden Prairie the average call duration during the months of June and July in 2015 and 2016 was 70 seconds (1:10). When comparing the staffing table for Minnetonka with the staffing table for Eden Prairie note the impact that the call duration has on the required staffing.

**Eden Prairie Telephone Call Staffing Table**

<table>
<thead>
<tr>
<th>Staff Required to Handle Presented Calls Per Hour</th>
<th>70 Second Call Processing &amp; 30 Second Follow-up</th>
<th>70 Second Call Processing &amp; 45 Second Follow-up</th>
<th>70 Second Call Processing &amp; 60 Second Follow-up</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Up to 19 Calls per hr.</td>
<td>Up to 16 Calls per hr.</td>
<td>Up to 14 Calls per hr.</td>
</tr>
<tr>
<td>3</td>
<td>20 - 40 Calls per hr.</td>
<td>17 - 34 Calls per hr.</td>
<td>15 - 30 Calls per hr.</td>
</tr>
<tr>
<td>4</td>
<td>41 - 64 Calls per hr.</td>
<td>35 - 55 Calls per hr.</td>
<td>31 - 48 Calls per hr.</td>
</tr>
<tr>
<td>5</td>
<td>65 - 89 Calls per hr.</td>
<td>56 - 77 Calls per hr.</td>
<td>49 - 67 Calls per hr.</td>
</tr>
<tr>
<td>6</td>
<td>72 - 93 Calls per hr.</td>
<td>64 - 82 Calls per hr.</td>
<td>58 - 74 Calls per hr.</td>
</tr>
</tbody>
</table>

**Table Notes:**
1) This table depicts the expected number of staff required to handle calls presented with an answering (queuing) time of less than ten seconds and less than 1 caller in 100 (1:100) receiving a busy signal.
2) As per the Table above, the Eden Prairie PSAP can theoretically process up to 19 telephone calls per hour with two Telecommunicators on duty during a single hour and up to 40 calls per hour with three Telecommunicators on duty during a single hour.

**ECF Busy Hour Telephone Call Data**

<table>
<thead>
<tr>
<th>Feature/Year</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Busy Hour 9-1-1 Calls</td>
<td>76</td>
</tr>
<tr>
<td>Busy Hour Administrative Calls</td>
<td>109</td>
</tr>
<tr>
<td>Busy Hour Calls Total</td>
<td>185</td>
</tr>
</tbody>
</table>

For the ECF the average call duration during the months of June and July in 2015 and 2016 was 100 seconds (1:40). When comparing the staffing table for Minnetonka with the staffing table for the ECF note the impact that the call duration has on the required staffing.

**ECF Telephone Call Staffing Table**

<table>
<thead>
<tr>
<th>Staff Required to Handle Presented Calls Per Hour</th>
<th>100 Second Call Processing &amp; 30 Second Follow-up</th>
<th>100 Second Call Processing &amp; 45 Second Follow-up</th>
<th>100 Second Call Processing &amp; 60 Second Follow-up</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Up to 152 Calls per hr.</td>
<td>Up to 136 Calls per hr.</td>
<td>Up to 122 Calls per hr.</td>
</tr>
<tr>
<td>10</td>
<td>153 - 174 Calls per hr.</td>
<td>137 - 156 Calls per hr.</td>
<td>123 - 140 Calls per hr.</td>
</tr>
<tr>
<td>11</td>
<td>175 - 197 Calls per hr.</td>
<td>157 - 176 Calls per hr.</td>
<td>141 - 159 Calls per hr.</td>
</tr>
<tr>
<td>12</td>
<td>198 - 220 Calls per hr.</td>
<td>177 - 196 Calls per hr.</td>
<td>160 - 177 Calls per hr.</td>
</tr>
<tr>
<td>13</td>
<td>Over 221 Calls per hr.</td>
<td>Over 197 Calls per hr.</td>
<td>178 - 196 Calls per hr.</td>
</tr>
</tbody>
</table>

**Table Notes:**
1) This table depicts the expected number of staff required to handle calls presented with an answering (queuing) time of less than ten seconds and less than 1 caller in 100 (1:100) receiving a busy signal.
2) As per the Table above, the ECF PSAP can theoretically process up to 152 telephone calls per hour with nine Telecommunicators on duty during a single hour and up to 174 calls per hour with ten Telecommunicators on duty during a single hour.
SECTION 6 - OTHER RESOURCE INTERVIEWS

As a part of this project PSC conducted interviews with various individuals who we thought might have input, observations, or recommendations that may be relevant to Minnetonka’s deliberations on PSAP outsourcing. In the following pages, we summarize information collected from those discussions.
Meeting with Minnetonka’s Existing Telecommunicators

Existing Telecommunicators were passionate and candid about the PSAP outsourcing topic. Key impressions that we formed from our interviews with incumbent Telecommunicators include:

- They did not feel that their jobs, their longevity, or their contributions to City quality of life, public safety service delivery, and citizen satisfaction were being well understood or represented in the outsourcing discussions.
- They expressed a significant amount of pride in being a Minnetonka municipal employee and part of the public safety team.
- They were committed to the City’s customer service focus which included ‘doing the right thing, at the right time, for the right reason’.
- They loved and were very committed to their work and public safety contributions on behalf of the City. Many did not want to leave, or be forced to change jobs, in the interest of PSAP outsourcing.
- There is considerable accumulated longevity and experience in the existing Minnetonka dispatch staff.
- They were unclear how comparable service delivery would be achieved if the Minnetonka PSAP mission were outsourced.
- They believed strongly that a municipal PSAP model would be better suited to maintaining the level of service that public safety personnel and citizens in Minnetonka had come to expect.
- They did not feel well represented to police department management since the prior dispatch supervisor left to take another job in 4Q 2016.
- They provided a task list of other duties that were expected of Minnetonka’s Telecommunicators that would need to be addressed to maintain comparable levels of service if the City’s PSAP service were to be outsourced. (See list following.)

Task List as Provided by Minnetonka Telecommunicators

- Weekly Pager test for Police Department personnel
- Weekly Fire Department pager tests
- Routine ERT pager tests
- Answering calls for all City Departments after hours and on weekends
- Monitor radio activity for numerous surrounding agencies, relaying pertinent and immediate information as needed to our Officers to ensure their safety and the welfare of the citizens of Minnetonka
- Notify on call Captain or Chief of weather warnings and critical incidents in the city
- Monitor weather conditions via STAC and updating current weather conditions in Minnetonka to NWS and surrounding agencies expediently
- Assign case numbers to CAD incidents
- Do in-house information searches for Officers and to surrounding agencies when requested
- Entering alarm information for residents and businesses in Minnetonka
- Assist cleaners when requesting access to Police Department
- Page out and direct Public Works on call staff after hours for various emergencies
- Maintain current Solicitor compliance/non-compliance list
- Maintain Willoughby Way Parking Permits
- Contact Xcel and Centerpoint directly to report lines down, power outages, storm damage, etc., for Officers, Fire Personnel, and the Public on request
- Maintain and update City deer list
- Calling people on the deer list when there is a deer available and logging activity and response
- Obtaining appropriate MNDOT, Hennepin County Maintenance, and/or designated animal removal service 24/7 for animal death related incidents
- Running vehicle and driver’s license checks for Officers
- Running Criminal History and Record checks for Hopkins Police Officers upon request
- Entering all traffic stops in CAD and constantly updating event and verifying Officer status
- Entering, updating, and deleting HRO’s and OFP files kept in dispatch
- Sending teletypes from other agencies to Officer MCD’s when appropriate
- Enter in CAD, updating, and deleting NCIC files
- Entering, updating, and cancelling NCIC wants, hits, and other tasks
- Run and print all information on arrestee-driver’s license, vehicle plate, CAD event, Criminal Record
- Reopening, relaying incident details and adding information to closed CAD events at Officer request
- Run Criminal Histories and Criminal Records immediately upon request from Patrol 24/7
- Assign Court dates 24/7
- Notarize warrants and other necessary documents 24/7
- Monitoring/responding to alarms at Public Works buildings
- Monitoring/responding to alarms at Williston Center and both Ice Arenas
- Monitoring/responding to alarms at all of the Burwell House buildings
- Monitoring/responding to Panic Alarms at City Hall, Council Chambers, and Booking area
- Monitor City Council Chambers on camera when in session
- Monitor Minnetonka School cameras when needed
- Monitor/respond to alarms at City Beach buildings
- Monitor Lobby, conference rooms, lobby interview rooms, and parking lot cameras
- Monitor cameras 24/7 for several different covert operations at Investigators request
- Monitor all door activity for the City-Police, Fire, Williston Center, Public Works, etc
- Send response to alarms tripped at Public Works
- Control all door access to main Police Department building
- Monitor cells in booking area when occupied
- Assist in booking when needed-pat-down, urine tests, etc
- Monitor cameras for all booking activity—cells, intoxilizer room, main booking area, sally port, etc.
- Monitor cameras in booking area to ensure Officer Safety
- Monitor cameras and alarms at City Beach buildings
- Monitor generator for Police, Fire, and City buildings-ice arena, city hall, community centers, meeting rooms
- Monitor the ATS alarm
- Entering and updating phone numbers into phone system
- Receiving and confirming status of Matt’s towing impound releases
- Confirming Hit requests/sending Hit confirmations 24/7
- Entering animal Impounds
- Entering and updating status of animals in lost and found book in dispatch for citizens upon request
Meeting with Minnetonka Fire Chief

Chief Vance explained his prior experience with dispatch regionalization during our interview with him. Chief Vance thought that the level of service provided by Minnetonka’s Telecommunicators was high and that it served his department well. He explained the ongoing efforts at cross training Telecommunicators and the PSAP’s role in supporting the Incident Command/Incident Management protocols being utilized by the Minnetonka Fire Department. He believed strongly that the effectiveness of the fire department was impacted by competent PSAP service delivery and he expressed the view that outsourcing the service should be based on mutually negotiated, understood, and agreed upon service delivery criteria “part of the deal.”

The fire chief also indicated that he thought potential benefits of outsourcing included:

- Better staffing (improved staff to call/radio traffic ratio)
- Lower cost per call or dispatched event
- Improved staff training
- Better supervision
- Improved ability to handle major events
- Better situational awareness from shared radio communications
- Better dispatch coordination due to situational awareness of other nearby events
- Better scheduling of dispatch resources
- Better pay/benefits for dispatch staff
- Improved, leading edge technology
- Better career path opportunities for dispatch staff

The fire chief also identified another benefit of outsourcing dispatch services to the ECF. Under the current Minnetonka paging radio system architecture, staff radio paging is generated from a single radio site. With this configuration, the radio coverage footprint is limited by that single site design. The ECF uses a four-site simulcast radio paging architecture for fire department alerting and notifications. This expands the reach and penetration of the fire paging system across a larger geographic footprint within Hennepin County.
Interview with Minnetonka Public Works Supervisor

PSC was referred to Darrin Ellingson of the Public Works supervisory staff to discuss the concept of PSAP outsourcing. The supervisor expressed confidence in the current services received from existing Telecommunicators. The supervisor had no strong position on the topic of outsourcing PSAP services provided that the services and procedures included suitable means/methods to address public works department business processes. During normal business hours, public works operates with little involvement from dispatch under routine conditions. After hours and during exceptional events (e.g. storm damage) public works may have a greater need to interact with dispatch or other personnel such as a representative in the City’s Emergency Operations Center (EOC) to coordinate clean up. Occasionally under the current operating practice, public works may be notified of hazardous conditions (e.g. icy street intersections) by Minnetonka’s dispatchers. A communications method to replace these notifications would need to be considered if PSAP services were outsourced.
Meetings with City of Eden Prairie Staff

PSC met twice with City of Eden Prairie public safety staff. In both discussions the City staff were interested, enthusiastic, and accommodating. We formed the opinion that Eden Prairie’s public safety management was very willing to work to find ways to become Minnetonka’s outsourced PSAP provider of choice. Discussions about outsourcing included:

- Service levels
- PSAP staffing levels
- Technology integration
- Cost
- Service models & agreements
- Agency compatibility and existing cooperative efforts
- Community values

We offer a few comments and impressions on each of these topics below.

Service Levels

Eden Prairie staff shared the view that organizationally they observe a similar constituent focused orientation and a “service beyond expectations” philosophy with Minnetonka. Eden Prairie staff expressed no pre-conceived notions or limits on how service could or should be delivered in support of Minnetonka’s PSAP needs. Eden Prairie’s dispatch supervisor, and several Telecommunicators, have familiarity with Minnetonka’s policies and procedures having worked for Minnetonka’s PSAP part-time in the past. The PSAP supervisor and Police administration articulated several examples of similarities between the two communities.

Staffing Levels

Telephone, radio, and CAD activity levels from Minnetonka were shared with Eden Prairie staff. Discussions about staffing were open-ended. In general, the principal of having a minimum of two Eden Prairie Telecommunicators on-duty 24/7 and three (or more) during periods of peak activity was an objective if Minnetonka elected to receive service from Eden Prairie.

Technology Integration

Minnetonka’s telephone calls could be processed by Eden Prairie’s existing VESTA equipment with minimal reconfiguration. Minnetonka’s radio communications could be integrated into Eden Prairie’s consoles via the ARMER network. Since 2010, Eden Prairie operates using CAD/RMS (Records Management System) software from New World Systems. This is a different software platform from what Minnetonka has recently migrated to via its relationship with LOGIS. Eden Prairie was open to entertaining having Minnetonka migrate onto the New World software suite. Since Eden Prairie plans to continue to operate New World software, the City also would entertain having Minnetonka explore a CAD-to-RMS and/or CAD-to-Mobile interface to allow similar field and investigative functionality for Minnetonka’s public safety staff to preserve their use of LOGIS services and still integrate with Eden Prairie’s dispatch operations. Experience has
demonstrated that these interface discussions can be rather involved but can be accomplished with the right planning.

Like Minnetonka, Eden Prairie also performs video monitoring from the PSAP (e.g. municipal complex, shopping mall, schools, etc.). Eden Prairie is willing to integrate Minnetonka’s video monitoring needs but this issue requires further technical discussions. Eden Prairie also monitors some security and other alarms directly in the PSAP. Planning for security/alarm system upgrades is underway to replace the existing Eden Prairie system.

PSC suggests that the topic of PSAP backup services receive further planning consideration if Minnetonka seeks to outsource to Eden Prairie. In the event of a failure or condition at the current Eden Prairie PSAP which made service delivery impossible, a well-developed back strategy is needed to protect the public safety needs of both communities.

Cost

Eden Prairie staff expressed the point of view that they were not interested in ‘making money’ on a potential PSAP outsource relationship with Minnetonka. Instead, they viewed the potential outsourcing partnership with Minnetonka as an approach to supplement PSAP staffing and thereby improve service for the benefit of both communities. While detailed budgets are beyond the scope of this analysis, Eden Prairie suggested that if they were to receive Minnetonka’s state 9-1-1 allowance (currently about $67,000/year), that should be sufficient to help offset post-conversion capital upgrades for the next few years. We also held general discussions about the additional PSAP staff that might be needed to support Minnetonka’s call load and Eden Prairie staff envisioned that the workload increase might increase their dispatch staff by 2-4 people. Eden Prairie would entertain applications from incumbent Minnetonka dispatchers provided they went through the City’s normal human resources processes. Eden Prairie does entertain “lateral” applications from experienced and qualified job candidates.

Service Models & Agreements

We discussed the forms of PSAP outsourcing arrangements. Eden Prairie believes that a contract for service, perhaps with an initial term of five (5) years, would be a suitable vehicle to memorialize the understandings associated with PSAP service delivery. Under this arrangement, Eden Prairie would retain responsibility for PSAP operations, staffing, technology, etc. Eden Prairie public safety staff also contemplated that radio technology support could be provided to Minnetonka as is now done internally within Eden Prairie by a member of the fire department staff.
Agency Compatibility & Existing Cooperative Efforts

Eden Prairie staff point to several, successfully operating, cooperative ventures with Minnetonka as examples of willingness to collaborate on the PSAP outsourcing front. These examples include the Southwest Regional Training Center, SWAT & Crisis Team cross training, Southwest Hennepin Drug Task Force, and existing fire and police mutual aid agreements. Eden Prairie staff expressed the view that Minnetonka public safety administrators would have direct, personal contact and influence in the development of policies, procedures, and PSAP service delivery expectations.

Community Values

Finally, Eden Prairie expressed the position that they think they offer community values which are already currently aligned with Minnetonka’s. This was expressed repeatedly and by everyone in the Eden Prairie meetings. Public safety staff consultation with the Eden Prairie City manager indicated that he was open and willing to consider an outsourcing partnership to deliver service to Minnetonka.
Meeting with Hennepin Sheriff’s ECF Command & Administration

PSC met with Capt. Hughes and Major Storms to discuss the Minnetonka PSAP outsourcing initiative. They provided background on the ECF and the communities receiving PSAP services via the Sheriff’s dispatch system. They offered cooperation and a willingness to provide information needed for PSC to conduct the analysis. Major Storms asked that HCSO staff be afforded the opportunity to review HCSO / ECF specific report information before it was made public. PSC agreed to do this.

The Sheriff’s User’s Advisory Board (UAB) and its role in policy and procedure creation and service quality process was explained by County staff. At the time of the meeting, the metrics contained in this report had not yet been obtained from any of the three PSAPs. There was general discussion on the call and dispatch activity loads that Minnetonka might present based on population, geography, and public safety staff size if PSAP service were to be delivered from the ECF to Minnetonka. Some re-arrangement of dispatch zones may need to be considered to balance the call loads and staffing would need to be evaluated. Preliminary thinking was that law enforcement dispatch would be conducted on the South Main dispatch zone. Minnetonka’s fire communications would be added to the existing Countywide fire main serving all other fire departments dispatched from the ECF.

Major Storms reported that the Sheriff’s position was that the dispatching services from the ECF should be free to participating entities as it is for 37 cities that use the service. The philosophy is that residents pay for the ECF anyway via the County tax base and they should take advantage of the benefits and investments in the ECF and its staff. The ECF administration has been working continuously to have appropriately recruited, trained, and supervised staff available to serve the needs of the communities and the public safety users.

The ECF would not be able to integrate certain PSAP functions (now provided locally) to Minnetonka if they elected to receive PSAP services. Examples of these functions include alarm and video monitoring, remote security access, maintain solicitor's registry, assist with matron and local sally port operation, monitor detainees in short term holding, answering citizen questions about policies, special events, etc. The position of the Sheriff’s command staff is that other communities now receiving ECF services that formally operated a local PSAP have been able to successfully bridge similar procedural changes.

The ECF would entertain applications from Minnetonka dispatch staff subject to the normal requisites and processes of the positions applied for. The ECF has laterally hired some staff for both front line Telecommunicator and ECF supervisory positions.
Meeting with Hennepin County Board Chair

PSC met with the Hennepin County Board chair (Commissioner Callison) and her aide to discuss Minnetonka’s PSAP outsourcing initiative. We explained that Minnetonka was considering three options:

- Continue to operate a standalone, City staffed PSAP.
- Outsource to receive PSAP services from Eden Prairie.
- Outsource to receive PSAP services from Hennepin County’s ECF.

Key discussion points flowing from that meeting include:

- The County’s recent past practice has been to receive interested suburban communities and deliver service from the ECF, operated by the sheriff’s department, at no cost.
- A request by the City of Minnetonka to receive PSAP services from the ECF would require County Board review and ratification. The topic of cost, if any, would need to be debated and decided by the County Board.
- The process for Minnetonka to request ECF service should be via a formal City request, to Commissioner Callison as the County Board representative for the geographic area which includes Minnetonka. Such a request would need to be before the Board in the third Quarter of 2017 for consideration as part of the 2018 budget setting process.
- The chair believes that the ECF could do a satisfactory job of serving the PSAP needs of Minnetonka and that serving the City from the ECF makes sense.
- The chair believes that other communities receiving PSAP services from the ECF are satisfied (examples include Hopkins and Lakes area communities).
- Minnetonka’s added call volume, size, and activity level would be significant for ECF and would need appropriate consideration.
- The ECF facility had been built to accommodate additional suburban communities now operating their own PSAPs.
Meeting with Former Hopkins Police Chief

PSC met with former Hopkins police chief Mike Reynolds to discuss lessons learned in Hopkins transition from local self-dispatch status to a community receiving dispatch service from Hennepin County. In the 2011 to 2012 time frame, Hopkins determined that it needed to make significant investments in certain dispatch technology. Competing budget pressures caused the City to revisit the option of receiving free dispatch services from Hennepin County and avoid the capital costs of the PSAP technology upgrades. At the time, Hennepin County was still dispatching from its former Golden Valley location.

The City convened a work group that established methods and procedures to transfer the PSAP services to the County. One of the strategies adopted by the City was to staff a person at the police department during daytime business hours. This person would handle walk up traffic and assist with other duties and be the point-of-contact for non-dispatched call referrals from the County. After hours, the police lobby remains open and citizen’s walking in for service can pick up a telephone and reach the dispatcher to have a Hopkins officer dispatched to meet them.

Reynolds felt that the PSAP transition achieved its objective. Dispatch services were successfully moved to the County and the City was able to re-purpose more than $300,000 annually to other City priorities. Reynolds retired from the city in the fourth quarter of 2016 and believes that dispatch service from Hennepin County continues to work well for citizens and public safety personnel in Hopkins.
Meeting with Richfield Public Safety Director/Police Chief

PSC met with Richfield Police Chief/Public Safety Director Jay Henthorne to discuss lessons learned in Richfield’s transition from local self-dispatch status to a community receiving dispatch service from the City of Edina on a contract for service basis. Richfield approved construction of a new municipal complex in 2008. The building was occupied in 2011 and included a PSAP from which the City dispatched its police and fire services. Richfield had previously examined the topic of outsourcing its dispatch services several times before. Options considered included consolidation and contracts for service.

In 2012 Richfield found itself needing to update certain PSAP technology. Costs to do this were competing with other City priorities and funding streams. Based on prior assessments that the City had participated in, the City Council and public safety administrators felt that the time had arrived to outsource PSAP services. From their prior exploration of various options, Richfield decided that it wanted to partner with a municipal agency for dispatch services.

Richfield invited service proposal submissions from Bloomington and Edina. The cost of the Bloomington proposal was considerably more, for similar service, than that proposed by Edina. Edina and Richfield entered into negotiations and subsequently established a 3-year service contract that was approved by elected officials of each community in the fall of 2013. (A copy of the Edina/Richfield dispatch service contract is attached as an exhibit to this report.) The initial contract required that Richfield pay capital costs of the conversion, transfer its recurring 9-1-1 state revenues to Edina and pay recurring fees of approximately $14,000/month for dispatching services during the first two years. Richfield’s chief indicates that he will recommend renewal of an updated contract in the coming weeks to elected officials.

Richfield’s chief indicated that the principal lesson learned is to continue staff engagement throughout the life of the contract for service. He reports that during the initial transition there was a high level of public safety supervisory staff involvement from his department with the City of Edina. After operations got underway some of those planning meetings and regularly scheduled discussions fell by the wayside. Those meetings have recently been reinstituted and he feels that the shared PSAP service arrangement is effectively meeting the needs of his citizens and public safety personnel at reduced cost. Director Henthorne also observed that the City of Richfield made a concerted effort to help place every dispatch employee that wanted a job. Some staff retired, a few took other positions in the City, and Henthorne brought in other Human Resource professionals from other government and private agencies in a “job fair” environment to help place staff.
Observational Visit to the Minnetonka PSAP

PSC conducted a dispatch work flow observational session for approximately two hours during an evening shift on April 6. Temperature was cool; outdoor conditions were dry. Two Minnetonka PSAP Telecommunicators were on duty during our visit. One employee had been serving Minnetonka for fifteen years and the other had less than one year of experience with the City. PSC “plugged in” to observe the telephone and radio traffic, alongside the senior Telecommunicator.

Activity levels throughout the observational period were steady. Discussion (PSC’s questions/staff answers) were regularly interrupted by incoming phone calls and/or radio traffic. Both 9-1-1 and administrative calls were processed during the observational period. The two on-duty Telecommunicators worked collaboratively to service the public and the police field units. Several incoming phone calls were received which did not require dispatch of a field unit. Telecommunicators handled these calls courteously by providing the caller with specific information relative to their request and based on conversations we observed the caller seemed satisfied with the responses they got. PSAP staff seemed to have a good, well memorized grasp of Minnetonka’s geography. We observed no reliance on maps to process calls except to demonstrate how they worked when asked questions.

PSC observed multiple instances where the Telecommunicators entered post call processing data into the computer, which in our opinion, were intended to help “round out” the records management files and offload certain report functions from police field personnel. Dispatchers were also observed monitoring adjacent community law radio traffic to maintain situational awareness.

PSAP Telecommunicators observe the same shift rotation period as the police field personnel. Telecommunicators feel that this approach contributes to teamwork and establishes both an employee bond between the PSAP personnel/field officers/supervisors and helps develop a business practice “rhythm” that allows PSAP staff to know what is expected by officers and vice versa. The interviewed Telecommunicators feel that the level of communication between field personnel, including the fire department staff, is very good. Telecommunicators were “in touch” with the City’s values and mission statements. The interviewed staff easily recited those policies and describe how they brought their individual contributions forward in meeting those objectives. Interviewed Minnetonka employees reported that the PSAP had been working considerable overtime particularly since the departure of the PSAP supervisor in 2016.

Physically the facility was adequate with limited space for expansion. The layout of the dispatch room places work stations in opposite corners (3 corners equipped with work stations). HVAC noise in the facility is a real distraction to communication and both PSC and the staff hosts had to speak louder when HVAC blower was running than when it shut off.
Observational Visit to the Eden Prairie PSAP

PSC conducted a dispatch work flow observational session for approximately two hours during an evening shift on March 23. Temperature was cool; steady rain falling outdoors. Two Eden Prairie PSAP staff were on duty during our visit. Both employees have previously worked part time at Minnetonka’s PSAP. Our host for the Eden Prairie visit was the PSAP supervisor. PSC “plugged in” to observe the telephone and radio traffic, alongside the supervisor who was working to fill a regular PSAP shift. Both staff members described their familiarity with Minnetonka’s PSAP and the similarities in terms of department operations.

Activity levels throughout the observational period were relatively low. Discussion (PSC’s questions/staff answers) were easily achieved due to slow activity, probably resulting from the rainy conditions. Both 9-1-1 and administrative calls were processed during the observational period. The two on-duty staff members worked collaboratively to service the public and the police field units. Incoming phone calls that we observed primarily resulted in the dispatch of police field units.

PSC observed multiple instances where the Telecommunicators entered post call processing data into the computer. Our host demonstrated the functionality of the CAD, records management, and other available IT tools available in dispatch. These tools were used by dispatch in processing an event involving potential damage to a vehicle in an apartment complex. Examples of how Eden Prairie has automated its internal staff communications, policies, informational bulletins, and other department operational procedures were demonstrated.

Staff demonstrated the video surveillance capabilities available in dispatch as well as alarm monitoring systems. Discussion about staff recruitment, selection, training, and evaluation/supervision focused on selecting the “right” candidates for the job. Incumbent employees appear to have good longevity with the City.

Physically, the facility was well laid out. Two (of four) work stations were staffed during our visit. Typical peak staffing at Eden Prairie fills three of the four work stations. The 9-1-1 telephone system was recently upgraded. It uses the same manufacturer’s hardware as is used by the Hennepin ECF but the software resides on servers physically located in Eden Prairie. Backup (PSAP failure) communication is currently provided by Minnetonka. Informal staff discussions about backup from Edina, have been floated in concept were Minnetonka to outsource its PSAP.
Observational Visit to the Hennepin ECF PSAP – South Law Main

PSC conducted a dispatch work flow observational session for approximately two hours during an evening shift on March 23 (prior to the visit to Eden Prairie). Temperature was cool; weather conditions were dry. Our ECF PSAP observation occurred at the South Main law channel work station cluster and then at the fire dispatch position.

During our ECF visit a public tour was taking place and selected staff were also relocating to conduct a backup test using equipment at the old Naper Street facility. Three Telecommunicators were staffing the South Main law channel workstations. Our South Main host at the ECF was an experienced Telecommunicator having worked both for Hennepin County and in another PSAP outside Minnesota previously. During the time we were “plugged in” with this employee we observed the processing of a mixture of both 9-1-1 and administrative telephone calls. 9-1-1 calls were handled effectively and our host kept a despondent caller on the line until Hopkins police arrived to assess and intervene with the caller. We observed competent, considerate treatment of this caller and good interviewing skills exhibited by the Telecommunicator. CAD event records were promptly entered and frequently updated with remarks as calls progressed.

Most administrative calls from the public were either given referrals or told to call the local law enforcement agency back during regular business hours. Several calls were received from police field users asking when the mobile data communications system would be restored to operational status. A few callers were seeking information from the local police agencies and one call was received from a person in a local police station lobby. PSC’s observation was that generally administrative callers did not seem to understand that they were not speaking to the local police representative unless informed of this by the dispatcher. In a few cases the Telecommunicator took call back messages for officers.

Radio traffic on the South Main talk group was steady. Discussion occurred about procedures used to dispatch Golden Valley Police compared to the procedures used with other agencies on the South Main. It appeared that calls for Golden Valley may be subjected to some different processing protocols compared to other agencies. Dispatch staff expressed a preference to have everything done the same for all law enforcement agencies.

Physically, the facility has ample space to accommodate Minnetonka’s PSAP needs. Business process reviews and a clear understanding of procedures requiring change would be essential if Minnetonka were to outsource to the ECF. Our South Main host explained that the existing telephone system was a source of frustration inasmuch as it took what they considered to be a long time to be connected to a caller. We observed a few instances of this condition.
Observational Visit to the Hennepin ECF PSAP – Countywide Fire

Our visit to the Fire work station occurred following our time spent on the South Main talk group. Our Fire host at the ECF was also an experienced Telecommunicator having worked both for Hennepin County and in another Hennepin County independent PSAP previously. During the time when we were “plugged in” with this employee fire dispatch activity was very slow. Several administrative calls were handled principally by referral or message taking. Some officers continued to call in asking about the restoration of their mobile data computers.

The Minnetonka Fire Department has been working with the City PSAP staff to refine and implement certain incident command methods and procedures. The Minnetonka Fire Chief has invested time and training for his staff in adopting incident command “Blue Card” processes. The Fire Chief believes that preserving the Blue Card protocols in an outsourced environment with the ECF providing dispatch services would be important.
Meeting with Minnetonka’s Former PSAP Supervisor

Minnetonka’s former PSAP supervisor took a full-time dispatch position with St. Louis Park. The supervisor explained the efforts, investments, and pride he had during Minnetonka career to establish the PSAP as an integral part of the public safety service delivery system. Generally, the PSAP supervisor felt that while he bore responsibility for the successful delivery of PSAP service he had limited autonomy and fiscal responsibility for PSAP operations.

Meeting with Minnetonka IT Staff Member

Minnetonka’s IT staff work closely with the PSAP because of the technology intensive nature of PSAP operations. IT staff have made significant investments in delivering technical solutions in response to City goals and objectives, which currently depend upon the ability to monitor systems at the PSAP. How this monitoring would be accomplished in an outsourced environment is unclear. The increasing use of video surveillance, site access control technology, alarm monitoring, and other support system has increased the importance of the PSAP to the City’s mission.

Further, the IT staff have worked closely with LOGIS and City public safety staff to implement the automated CAD, RMS, and other information systems used to deliver constituent service.

If the Minnetonka PSAP were to be outsourced, it is envisioned that a staffed (24/7) work station would need to be established to monitor the video, alarm, and security systems now handled by dispatch. Further, IT staff time would need to be allocated concerning the needed interfaces between the host PSAP (Eden Prairie or ECF) and Minnetonka’s existing software applications.

While Minnetonka’s municipal alarm monitoring could be outsourced via contract to private or other “central station” style services, it is less clear how existing 24/7 video surveillance might be accomplished if the Minnetonka PSAP were to be closed since these services may not be provided by monitoring companies. Establishing a location within the Minnetonka municipal complex, or on Minnetonka’s existing IT network, is expected to be least costly from a technology perspective provided that suitable staffing could be provided.
## SECTION 7 - STRENGTHS, WEAKNESSES, OPPORTUNITIES, & THREATS (SWOT)

In tabular form below PSC provides a SWOT summary assessment of the existing Minnetonka PSAP and the outsourcing alternatives.

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Minnetonka</th>
<th>Eden Prairie (EP)</th>
<th>ECF</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Strengths</strong></td>
<td>Motivated, committed, seasoned PSAP work force that consistently receives favorable public “indicator” performance reviews. Contemporary technology and effective use of dispatch staff for other, non-emergency communications function. A history of more than two decades of adaptive service delivery on behalf of public safety and constituents.</td>
<td>Motivated, committed, seasoned PSAP work force. EP is interested in contracting its services to Minnetonka in a fashion which is collaboratively negotiated between the parties. EP is experienced as a recipient of PSAP services having formerly received its dispatch from Richfield in the ‘80’s. Technically sophisticated community that makes use of contemporary technology. Most closely aligned with business processes of Minnetonka.</td>
<td>A large modern facility and work force already being paid for via the Hennepin County tax base. Good capacity to handle large, extraordinary events that may ‘swamp’ a smaller PSAP with limited staff. Professional, well supervised staff and state of the art technology. The lowest cost per call/dispatch of the three options notwithstanding business process modifications.</td>
</tr>
<tr>
<td><strong>Weaknesses</strong></td>
<td>Delivering this service on a recurring basis costs the City more than $900,000 in 2017 dollars. Arguably having a local PSAP may not yield the highest efficiency in terms of Emergency Communications transactions but efficiency must be evaluated in the context of value. Arguably the highest cost approach to PSAP service delivery</td>
<td>Expected to be less costly than Minnetonka operating its own PSAP but more costly than ECF. Will require that Minnetonka either move onto EP’s CAD system or develop interfaces between existing LOGIS software and EP. Less capacity to handle extraordinary events compared to ECF due to smaller staff. The impact of future major capital (technology) upgrades upon Minnetonka is unclear.</td>
<td>Will require the most extensive business process restructuring for Minnetonka. Policy and procedure is established by the County with advisory input for user groups. Customized service delivery now known to Minnetonka residents and staff may change.</td>
</tr>
<tr>
<td><strong>Opportunities</strong></td>
<td>If Minnetonka decides to retain its PSAP it presents an opportunity to recruit new supervision and re-double its commitment to its staff.</td>
<td>EP is interested in having Minnetonka as a partner to reinforce its own standing as an independent PSAP and improve service to both communities.</td>
<td>An opportunity to reduce recurring operating expense assuming the County Board authorizes Minnetonka’s no cost participation.</td>
</tr>
<tr>
<td><strong>Threats</strong></td>
<td>There will be an ongoing need to continue to refresh technology used in PSAP service delivery. The 9-1-1 answering equipment may need to be upgraded in approximately 2020. Competing pressures for operating and capital funds will challenge City policy makers to continuously reflect on the “value” question.</td>
<td>As with Minnetonka, EP will need to upgrade/replace its systems in the future. A long term contractual relationship, or advance agreement on capital cost allocation, may help buffer unexpected expenses for Minnetonka. Future legislative pressures may re-surface bringing scrutiny on small PSAP efficiency.</td>
<td>System managers need to resist complacency in blended service delivery environments. There is some risk to independent communities in having all the PSAP service “eggs in one basket”. A large organization may create a more attractive target for service disruption.</td>
</tr>
</tbody>
</table>
SECTION 8 - Tabular Comparative Matrix

A comparative matrix of factors used in the preparation of this analysis, formatted for 11 x 17 inch paper, is included in the following pages.
<table>
<thead>
<tr>
<th>Focus Area</th>
<th>Minnetonka Internally Provided PSAP Service</th>
<th>Eden Prairie Outsource</th>
<th>Hennepin County Outsource</th>
</tr>
</thead>
<tbody>
<tr>
<td>OPERATIONS</td>
<td>Meet with local representatives of each Minnetonka, Eden Prairie, and Hennepin County to obtain their input on the process.</td>
<td>Task Completed: Report Narrative provides additional information.</td>
<td>Task Completed: Report Narrative provides additional information.</td>
</tr>
<tr>
<td>Interview agency heads for needs and problems with their own dispatch capability plus anticipated problems if an outsourced PSAP service delivery model is implemented.</td>
<td>Task Completed: Minnetonka’s primary concern revolves around maintaining adequate staffing, training and the associated costs.</td>
<td>Task Completed: Eden Prairie reports good success with recruitment, training, retention, and staff longevity. They view dispatch staff as integral to City operations.</td>
<td>Task Completed: HC ECF has been working to recruit and maintain both line and supervisory staffing to deliver suitable services.</td>
</tr>
<tr>
<td>Evaluate existing call receipt and dispatch processes to identify records requirements, similarities, differences, and procedural concerns.</td>
<td>Task Completed: Minnetonka’s existing dispatch procedures are listed in the narrative report.</td>
<td>Task Completed: Based on ‘sit-along’ and staff interviews, Eden Prairie’s call receipt, dispatch, record keeping, and procedures are very similar to Minnetonka’s.</td>
<td>Task Completed: Based on ‘sit-along’ and staff interviews, HC ECF functions primarily as an emergency call center and dispatch facility. Other arrangements to provide ancillary duties now provided by Minnetonka dispatchers in the event of ECF outsourcing.</td>
</tr>
<tr>
<td>Identify current best practice communications procedures, practices, training, and equipment for consideration. Examples include CALEA, NFPA, and IAEI.</td>
<td>Task Completed: No change anticipated if dispatch remains with Minnetonka.</td>
<td>Task Completed: See Technical Interfaces category below (and in following row) concerning software choices.</td>
<td>Task Completed: See Technical Interfaces category below (and in following row) concerning software choices.</td>
</tr>
<tr>
<td>Examine options for data inquiries and record entries under scenarios with and without a PSAP in Minnetonka.</td>
<td>Task Completed: No change anticipated if dispatch remains with Minnetonka.</td>
<td>Task Completed: No change anticipated if dispatch remains with Minnetonka.</td>
<td>Task Completed: No change anticipated if dispatch remains with Minnetonka.</td>
</tr>
<tr>
<td>Explore influence which existing computer systems may have on outsourced service delivery.</td>
<td>Task Completed: Minnetonka today relies upon Tri-Tech public safety software suite via LOGIS. Recently completed transition to this new software for City staff.</td>
<td>Task Completed: Eden Prairie has used New World public safety software suite since 2010. Minnetonka would either need to migrate to New World or interfaces would need to be implemented between New World CAD and Tri-Tech Records and Field Based Reporting under a scenario where Minnetonka dispatch is outsourced to Eden Prairie.</td>
<td>Task Completed: HC ECF uses locally hosted Tri-Tech software for CAD (vs. LOGIS hosted for Minnetonka). Interfaces would need to be deployed between HC ECF CAD and LOGIS to maintain Minnetonka’s Records and Field Based Reporting procedures.</td>
</tr>
<tr>
<td>Assess how dispatch records can be promptly and conveniently obtained at the department level.</td>
<td>Task Completed: No change anticipated if dispatch remains with Minnetonka.</td>
<td>Task Completed: Preceding task describes needed interfaces/options.</td>
<td>Task Completed: Preceding task describes needed interfaces/options.</td>
</tr>
<tr>
<td>Analyze current alarm monitoring equipment and protocols.</td>
<td>Task Completed: No change anticipated if dispatch remains with Minnetonka.</td>
<td>Task Completed: Eden Prairie performs similar monitoring for local facilities using different equipment from Minnetonka.</td>
<td>Task Completed: HC ECF does not provide alarm monitoring. Under a scenario where Minnetonka outsourced, either alarm monitoring would need to be outsourced or methods, procedures, technology, and staff would need to be developed for 24/7 service delivery if dispatch were closed.</td>
</tr>
<tr>
<td>Explore options to handle “walk-in” traffic for the City.</td>
<td>Task Completed: No change anticipated if dispatch remains with Minnetonka.</td>
<td>Task Completed: The existing ‘ring down’ telephone now in Minnetonka lobby would need to be re-programmed to dial Eden Prairie.</td>
<td>Task Completed: The existing ‘ring down’ telephone now in Minnetonka lobby would need to be re-programmed to dial HC ECF.</td>
</tr>
<tr>
<td>Consider how outsourcing will impact the emergent communications needs and relationships for the public works department within the City.</td>
<td>Task Completed: No change anticipated if dispatch remains with Minnetonka.</td>
<td>Task Completed: Eden Prairie performs similar public works support within their community as Minnetonka does. We anticipate that having EP provide secondary public works talk group (channel) monitoring may be negotiated.</td>
<td>Task Completed: HC ECF does not monitor or communicate with local public works fleets except in extraordinary (emergency management) situations.</td>
</tr>
<tr>
<td>Meet with user groups in existing venues. Follow up with an electronic, end-user, written survey.</td>
<td>Task Completed: Results of surveys for Minnetonka were previously transmitted. This data is being compiled as a separate exhibit.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Focus Area</td>
<td>Minnetonka Internally Provided PSAP Service</td>
<td>Eden Prairie Outsource</td>
<td>Hennepin County Outsource</td>
</tr>
<tr>
<td>------------</td>
<td>--------------------------------------------</td>
<td>-----------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td><strong>OPERATIONS (continued)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Impacts upon the Minnetonka fire service.</td>
<td>Task Completed: MFD has been working steadily with PSAP staff to adapt, update, and train on procedures of interest to the fire service. No change anticipated if dispatch remains with Minnetonka.</td>
<td>Task Completed: Eden Prairie follows similar strategies as MFD. Also because EPFD has staff who are heavily involved with PSAP technology support, there is a close working relationship between PSAP and fire operations. Similar support to Minnetonka anticipated if service is outsourced from Eden Prairie.</td>
<td>Task Completed: HC ECF uses a standardized, countywide set of fire dispatch procedures. Petitions for change or adaptation need to be vetted by the HC User’s Advisory Board (UAB).</td>
</tr>
<tr>
<td>Impacts upon the City’s EOC (Emergency Operations Center) in the event of outsourced PSAP services.</td>
<td>Task Completed: No change anticipated if dispatch remains with Minnetonka.</td>
<td>Task Completed: Needed EOC communications pathways could be established if outsourced to Eden Prairie.</td>
<td>Task Completed: Needed EOC communications pathways could be established if outsourced to the ECF.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Focus Area</th>
<th>Minnetonka Internally Provided PSAP Service</th>
<th>Eden Prairie Outsource</th>
<th>Hennepin County Outsource</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SITE</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Establish space requirements for the outsourced services.</td>
<td>Task Completed: No near term change anticipated if dispatch remains with Minnetonka. For the longer term if PSAP remains in Minnetonka recommend larger space to accommodate four (4) fully equipped workstations in the same room with consideration to larger monitors and optimal ergonomic viewing angles.</td>
<td>Task Completed: Existing Eden Prairie PSAP is suitably sized to accept Minnetonka without modification.</td>
<td>Task Completed: Existing HC ECF PSAP is suitably sized to accept Minnetonka without modification.</td>
</tr>
<tr>
<td>Explore cost of new construction or commercial space if no municipally owned space appears to be available or its use is impractical.</td>
<td>Task Deferred.</td>
<td>N/A Eden Prairie’s existing PSAP space is adequate to support Minnetonka.</td>
<td>N/A HC ECF existing PSAP space is adequate to support Minnetonka.</td>
</tr>
<tr>
<td>Compare and rank environmental, security, and electrical accommodations at potential outsourced sites and compare to City’s facilities.</td>
<td>Task Completed: If PSAP remains in Minnetonka, larger PSAP space with necessary environmental, security, and electrical facilities should be part of the architectural planning.</td>
<td>Task Completed: Eden Prairie’s environmental, security, and electrical facilities are adequate to host Minnetonka’s PSAP needs.</td>
<td>Task Completed: HC ECF’s environmental, security, and electrical facilities are adequate to host Minnetonka’s PSAP needs.</td>
</tr>
<tr>
<td>Estimate leased lines and other site dependent interconnecting costs.</td>
<td>Task Completed: No change anticipated if dispatch remains with Minnetonka.</td>
<td>Task Completed: Further dispatch console route redundancy to from EP PSAP to the HC Golden Valley (or ECF) location should be explored.</td>
<td>Task Completed: No changes contemplated.</td>
</tr>
<tr>
<td>Evaluate backup PSAP service delivery options under the outsourced models. Compare to existing City backup strategies.</td>
<td>Task Completed: No change anticipated if dispatch remains with Minnetonka provided that St. Louis Park (existing backup site) continues to partner with Minnetonka for this function.</td>
<td>Task Completed: If Eden Prairie assumes Minnetonka’s PSAP responsibility, additional discussion and planning is needed to properly establish a backup technology plan.</td>
<td>Task Completed: No change contemplated given existence of Hennepin County’s back out (backup) facility in Golden Valley.</td>
</tr>
<tr>
<td>Focus Area</td>
<td>Minnetonka Internally Provided PSAP Service</td>
<td>Eden Prairie Outsource</td>
<td>Hennepin County Outsource</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
<td>-------------------------------------------</td>
<td>-----------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>TECHNICAL INTERFACES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investigate alternative communications capabilities now available in the Minnetonka PSAP and consider if they may not already exist at Eden Prairie and Hennepin County.</td>
<td>Task Completed: Technologies and services used in Minnetonka are comparable to those used in Eden Prairie. HC ECF does not monitor alarms, monitor video surveillance feeds, or do RMS tasks</td>
<td>Task Completed: Technologies and services used in Eden Prairie are comparable to those used in Minnetonka. Detailed review of software interfaces, if a decision is made to share data between New World CAD and LOGIS Tri-Tech, will be needed. Detailed equipment compatibility for security, video, and alarm systems will need further exploration.</td>
<td>Task Completed: Radio and telephone technology used at Hennepin is the same (manufacturer) as used at Eden Prairie. PSC does not contemplate obstacles to voice communications service delivery from HC ECF to Minnetonka.</td>
</tr>
<tr>
<td>Evaluate dispatch software compatibility for outsourced options. While Eden Prairie and Minnetonka are served by LOGIS, Hennepin County’s PSAP IT functions are handled separately.</td>
<td>Task Completed: No change anticipated if dispatch remains with Minnetonka.</td>
<td>Task Completed: Minnetonka confronts choices. They are: either move RMS/FBR functionality onto Eden Prairie New World software or commission interfaces between New World and existing LOGIS hosted Tri-Tech software. Given recent, time consuming transition that City invested in Tri-Tech, the interface may seem more appealing.</td>
<td>Task Completed: If PSAP service is outsourced to ECF, suitable interfaces to County’s CAD and LOGIS hosted RMS/FBR would be essential to maintain continuity of operations and business process efficiency.</td>
</tr>
<tr>
<td>Establish radio console requirements including integration and control of required Minnetonka capability into the outsourced venues.</td>
<td>Task Completed: No change anticipated if dispatch remains with Minnetonka.</td>
<td>Task Completed: Radio control “folders” now used in Minnetonka could easily be made available to Eden Prairie’s PSAP. A determination will be needed if Minnetonka will retain their own paging infrastructure (fire) or migrate onto Eden Prairie’s low band paging infrastructure in an outsourced environment.</td>
<td>Task Completed: Radio control “folders” now used in Minnetonka could easily be made available to the ECF PSAP. Fire paging would need to migrate to Hennepin’s VHF paging system which would require re-programming MFD pagers. MFD chief believes there may be some advantage in migrating to Hennepin’s paging system due to larger geographic coverage footprint.</td>
</tr>
<tr>
<td>Establish level of compatibility between fixed radio stations, dispatch consoles, microwave/fiber backbones, and mobile/portable radios operating in a single system environment. Estimate lifecycle replacement for key fixed radio infrastructure.</td>
<td>Task Completed: Within 10 years, Minnetonka could anticipate capital expenditures to refresh current PSAP and other non-shared, stationary PSAP systems up to $1,000,000. These costs exclude PSAP remodeling/relocation if a decision is made to continue to house the PSAP locally. These capital equipment expenditures could be substantially reduced if the PSAP service is outsourced.</td>
<td>Task Completed: Within 10 years, Eden Prairie is expected to refresh many of its stationary PSAP systems. Eden Prairie police management has suggested that these costs would be borne by the City but be offset by transferring Minnetonka’s share of the state 9-1-1 fee reimbursement annually.</td>
<td>Task Completed: Within 12 years, the ECF is expected to refresh many of its stationary PSAP systems. Based on past practice, the cost of these capital upgrades would be borne by the County and offset by transferring Minnetonka’s share of the state 9-1-1 fee reimbursement annually.</td>
</tr>
<tr>
<td>Determine what equipment should be used to answer 9-1-1 and administrative calls and establish a disposition strategy if the City determines that it wants to outsource PSAP services.</td>
<td>Task Completed: No change anticipated if dispatch remains with Minnetonka.</td>
<td>Task Completed: See focus area discussion in the next row. If PSAP outsourcing is moved to Eden Prairie, then the City’s investment in VIPER phone equipment will probably be stranded. A few other metro area PSAPs use VIPER but have no known need for parts or additional equipment.</td>
<td>Task Completed: See focus area discussion in the next row. If PSAP outsourcing is moved to the ECF, then the City’s investment in VIPER phone equipment will probably be stranded. A few other metro area PSAPs use VIPER but have no known need for parts or additional equipment.</td>
</tr>
<tr>
<td>Assess if telephone equipment from the City PSAP should be re-purposed.</td>
<td>Task Completed: No change anticipated if dispatch remains with Minnetonka.</td>
<td>Task Completed: If Minnetonka PSAP service is outsourced to Eden Prairie, then calls would be processed on that community’s existing VESTA 9-1-1 system with minor reconfiguration.</td>
<td>Task Completed: If Minnetonka PSAP service is outsourced to the ECF, then calls would be processed on the County’s existing VESTA 9-1-1 system with minor reconfiguration.</td>
</tr>
<tr>
<td>Clarify if upgrades are needed to City answering equipment to implement impending Next Generation compliance mandates.</td>
<td>Task Completed: The City’s VIPER system is expected to be Next Generation compliant when the State of Minnesota implements an interim SMS text solution later in 2017. Some incidental software changes may be needed. Note that the State of Minnesota has not a date for full Next Generation network compliance and so the SMS text approach is considered an interim step.</td>
<td>Task Completed: The Eden Prairie VESTA system is expected to be Next Generation compliant when the State of Minnesota implements an interim SMS text solution later in 2017. A server modification may be needed. Eden Prairie PSAP management is aware of this. Note that the State of Minnesota has not a date for full Next Generation network compliance and so the SMS text approach is considered an interim step.</td>
<td>Task Completed: The ECF VESTA system is expected to be Next Generation compliant when the State of Minnesota implements an interim SMS text solution later in 2017. A server modification will be needed and reprogramming MFD pagers. ECF chief believes there may be some advantage in migrating to Hennepin’s paging system due to larger geographic coverage footprint.</td>
</tr>
</tbody>
</table>
Establish the communications equipment necessary to outfit a backup (alternate) PSAP in the event the primary facility is crippled.

Focus Area

<table>
<thead>
<tr>
<th>STAFF</th>
<th>Minnetonka Internally Provided PSAP Service</th>
<th>Eden Prairie Outsource</th>
<th>Hennepin County Outsource</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identify current and projected 5 (5) year activity levels for law, fire, medical calls.</td>
<td>Task Completed: The narrative report identifies various estimates of work load increase based on known metrics provided by Minnetonka.</td>
<td>Task Completed: The narrative report identifies various estimates of work load increase based on known metrics provided by Eden Prairie.</td>
<td>Task Completed: The narrative report identifies various estimates of work load increase based on known metrics provided by the ECF.</td>
</tr>
<tr>
<td>Compare current staffing levels with work loads; estimate staffing required for an outsourced PSAP by hours of the day and day of the week.</td>
<td>Task Completed: See focus area below and narrative of the report for more descriptive information on current work load metrics.</td>
<td>Task Completed: If Eden Prairie assumes Minnetonka PSAP duties, Minnetonka should contemplate an increase of three (3) FTE positions at Eden Prairie to ensure adequate busy hour staffing and provide for minimum of two on-duty in the PSAP 24 hours per day. Cost allocation of staff to be negotiated by the parties.</td>
<td>Task Completed: If Hennepin County assumes Minnetonka PSAP duties, the ECF staff have indicated that they will need to re-evaluate PSAP work loads and zone assignments. It is unclear if additional Telecommunicator staff would be retained to support Minnetonka at the ECF but, based on past practice, it is assumed that the County would fund these positions.</td>
</tr>
<tr>
<td>Identify number of required work stations in the outsourced environment.</td>
<td>Task Completed: If dispatch remains with Minnetonka, recommend four (4) work stations in the local PSAP room.</td>
<td>Task Completed: If Minnetonka service is outsourced, Eden Prairie’s existing four (4) work stations are adequate.</td>
<td>Task Completed: If Minnetonka service is outsourced, HC ECF’s existing 22 work stations are adequate.</td>
</tr>
<tr>
<td>Identify staff efficiencies/inefficiencies resulting from outsourcing compared to status quo operations.</td>
<td>Task Completed: Based purely on the count of telephone calls and dispatched events having Minnetonka operate its own PSAP is least efficient when compared to outsourcing to Eden Prairie or HC ECF. However the counted calls and dispatched events do not discuss the City’s performance “indicators” and constituent satisfaction, both of which are discussed in further detail in the narrative report.</td>
<td>Task Completed: Based purely on the count of telephone calls and dispatched events having Eden Prairie contract to provide PSAP services to Minnetonka would be more efficient than having Minnetonka operate as it currently does. Minnetonka should consider incorporating measurable “indicators” in any contract for service with Eden Prairie. Indicators and constituent service are discussed in further detail in the narrative report.</td>
<td>Task Completed: Based purely on the count of telephone calls and dispatched events having the ECF assimilate PSAP services for Minnetonka would be the most efficient, and even more efficient (strictly on a cost per transaction basis) than having Minnetonka operate as it currently does. Indicators and constituent service are discussed in further detail in the narrative report and should be a key consideration in policy discussion about outsourcing to Hennepin County.</td>
</tr>
</tbody>
</table>

Minnetonka Outsource

Minnetonka currently uses Minnetonka as a backup venue for 9-1-1 call re-direction in the event that Eden Prairie cannot receive calls at its PSAP. In the event that Minnetonka outsourced PSAP duties to Eden Prairie, the EP staff have discussed possibly using Edina as backup venue. This topic needs more detailed analysis and negotiation. If Minnetonka elected to outsource its PSAP, existing radio consoles could be re-purposed to a backup facility operated by Eden Prairie.

Minnetonka Internally Provided PSAP

If Minnetonka service is outsourced, EDN Prairie’s existing four (4) work stations are adequate. If Eden Prairie assumes Minnetonka PSAP duties, Eden Prairie should contemplate an increase of three (3) FTE positions at Eden Prairie to ensure adequate busy hour staffing and provide for minimum of two on-duty in the PSAP 24 hours per day. Cost allocation of staff to be negotiated by the parties.

Hennepin County Outsource

If Hennepin County assumes Minnetonka PSAP duties, the ECF staff have indicated that they will need to re-evaluate PSAP work loads and zone assignments. It is unclear if additional Telecommunicator staff would be retained to support Minnetonka at the ECF but, based on past practice, it is assumed that the County would fund these positions.

Hennepin PSAP management acknowledge that they need a robust communications backup plan for all of the agencies they serve.

Eden Prairie Outsource

If Eden Prairie assumes Minnetonka PSAP duties, Eden Prairie should contemplate an increase of three (3) FTE positions at Eden Prairie to ensure adequate busy hour staffing and provide for minimum of two on-duty in the PSAP 24 hours per day. Cost allocation of staff to be negotiated by the parties.

Deferred pending Outsourcing decision.

Deferred pending Outsourcing decision.

Deferred pending Outsourcing decision.

Deferred pending Outsourcing decision.
<table>
<thead>
<tr>
<th>Identify impact of process reorganization (i.e. Minnetonka may have some duties now performed by dispatchers that might not easily transition in an outsourced environment).</th>
<th>Task Completed: If PSAP outsourcing occurs, further staffing analysis is warranted to address supplemental records entry (now performed by dispatch), alarm and video monitoring, IT support, radio reconfiguration and maintenance issues, and selected other tasks. This may result in a mix of clerical, community service, and other staff.</th>
<th>Task Completed: A starting point for PSAP outsourcing contract negotiations with Eden Prairie could be to minimize the impact on existing City operations to the extent possible. EP police administration indicate that they would entertain such an approach and work with the City to negotiate the details.</th>
<th>Task Completed: This work focus category is expected to be one of the most significant areas needing understanding and resolution if PSAP services are to be outsourced to the ECF. Communities are generally expected to adhere to/adopt ECF policies as a part of receiving service. Considerable attention should be focused on the existing business process aspects to Minnetonka if service is outsourced to the ECF and the impact on past constituent performance indicator satisfaction should be well understood.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compare existing pay, benefits, and job descriptions of communications personnel. Document areas of consistency and discrepancy and suggest how differences can be reconciled.</td>
<td>Task Completed: Minnetonka’s PSAP job description is most like Eden Prairie’s as are pay and benefits.</td>
<td>Task Completed: Eden Prairie’s PSAP job description is most like Minnetonka’s as are pay and benefits.</td>
<td>Task Completed: The ECF PSAP job description is similar to Minnetonka’s. The work focus for telecommunicators at the ECF is on Emergency Communications call processing. Minnetonka’s PSAP job attributes are more wide ranging.</td>
</tr>
<tr>
<td>Compare existing work rules, schedules, labor considerations, and other factors governing existing staff and make recommendations.</td>
<td>Task Completed: Minnetonka is presently operating on a year-by-year labor contract with the bargaining agent representing dispatchers pending a City decision on the direction of outsourcing. If PSAP services are to be outsourced factors of incumbent employee severance, re-training, and/or outplacement will need to be determined. Generally the pay scales and scheduling of Minnetonka staff is similar to what is used in Eden Prairie and at the ECF.</td>
<td>Task Completed: Eden Prairie PSAP staff are not represented by a collective bargaining group. EP police administration has indicated that incumbent Minnetonka PSAP employees could competitively apply for potential PSAP job openings in EP. EP has hired employees laterally from other agencies in the past.</td>
<td>Task Completed: ECF staff are represented by a collective bargaining group. ECF management has indicated that incumbent Minnetonka PSAP employees could competitively apply for potential PSAP job openings at the ECF. The ECF has hired employees laterally from other agencies in the past.</td>
</tr>
<tr>
<td>Identify appropriate internal PSAP staffing levels for an in-house (Minnetonka operated) PSAP scenario.</td>
<td>Task Completed: If dispatch remains with Minnetonka, PSC recommends that PSAP supervisor position be filled and front line dispatch staff be increased to a total of ten (10) FTE. The best practice objective should be minimum PSAP staffing of two (2) around the clock. This is addition to a supervisor providing dispatch oversight and support. Having ten FTE’s will help achieve a minimum of two (2) staffed workstations around the clock. A shared staff approach to fire and police technology support will continue to be important.</td>
<td>Task Completed: N/A if PSAP remains in Minnetonka.</td>
<td>Task Completed: N/A if PSAP remains in Minnetonka.</td>
</tr>
<tr>
<td>Focus Area</td>
<td>Minnetonka Internally Provided PSAP Service</td>
<td>Eden Prairie Outsource</td>
<td>Hennepin County Outsource</td>
</tr>
<tr>
<td>------------</td>
<td>------------------------------------------</td>
<td>-----------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td><strong>FISCAL</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Estimate capital investment required for each recommendation or combination of recommendations.</td>
<td>Task Completed: PSC recommended that earmarked capital funding for microwave radio equipment replacement (the link between Williston water tank and HC Golden Valley site) be deferred pending a decision on PSAP outsourcing. Minnetonka may also consider moving slowly in replacing budgeted conventional LMR equipment upgrades for the same reason.</td>
<td>Task Completed: See content below and in report narrative.</td>
<td>Task Completed: See content below and in report narrative.</td>
</tr>
<tr>
<td>Estimate recurring and/or maintenance cost for each recommended improvement.</td>
<td>Task Completed: Recurring/maintenance costs expected to continue per past practice.</td>
<td>Task Completed: Generally it is anticipated that recurring/maintenance costs would become the responsibility of Eden Prairie.</td>
<td>Task Completed: Generally it is anticipated that recurring/maintenance costs would become the responsibility of County except as they pertain to the single position (CSO) monitoring position.</td>
</tr>
<tr>
<td>Estimate savings in initial and recurring cost for each recommended change.</td>
<td>Task Completed: Assume that Minnetonka’s contract price for service from Eden Prairie is $300,000/year. Also assume that EP’s service delivery model most closely mirrors services now performed by Minnetonka. A 4-5 year recurring payback is anticipated after capital costs to make the transition are retired.</td>
<td>Task Completed: Assume that Minnetonka’s contract price for service from the ECF is $0/year. Minnetonka would need to consider staffing, or modifying business processes, for certain functions now performed by dispatch (e.g. alarms, video surveillance, supplemental data entry, data entry, etc). Assume recurring cost of $200,000 to support these functions using lower paid, less specialized staff. Consider that existing Minnetonka PSAP business processes would change most significantly under the ECF outsource model.</td>
<td>Task Completed: PSC recommends that $30,000 in software interface development be earmarked to allow for exchange of ECF CAD data with Minnetonka’s RMS and mobile systems (and vice-versa). Minnetonka should also earmark $25,000 to establish a single workstation monitoring facility, perhaps staffed by City CSOs, to deal with video surveillance, alarm monitoring, data entry, and other incidental tasks now handled by City PSAP staff. Ongoing operating costs become an ECF responsibility.</td>
</tr>
</tbody>
</table>
| Describe options and cost allocation for system capital investment and operating cost. | Task Completed: PSC recommended that earmarked capital funding for microwave replacement (the link between Williston water tank and HC Golden Valley site) be deferred pending a decision on PSAP outsourcing. Minnetonka may also consider moving slowly on budgeted conventional LMR upgrades for the same reason. | Task Completed: PSC recommends the $30,000 in one time capital be earmarked to harden Eden Prairie’s primary radio console connectivity. The primary obligation for this cost would be negotiated with Eden Prairie. Capital earmarks, from Minnetonka, for the following should also be considered:  
- Enhance EP backup capability $100,000  
- CAD/RMS/Mobile Interface fees $60,000  
- $40,000 for integration of Minnetonka’s alarms, video surveillance, and other ancillary systems into the Eden Prairie PSAP. | Task Completed: PSC recommends that $30,000 in software interface development be earmarked to allow for exchange of ECF CAD data with Minnetonka’s RMS and mobile systems (and vice-versa). Minnetonka should also earmark $25,000 to establish a single workstation monitoring facility, perhaps staffed by City CSOs, to deal with video surveillance, alarm monitoring, data entry, and other incidental tasks now handled by City PSAP staff. Ongoing operating costs become an ECF responsibility. |
| Estimate impact which joint purchase of equipment, maintenance, and consumables might have on cost versus continued independent purchases by the City. | Task Completed: Nominal impact on purchase of equipment, maintenance, and consumables would occur under a joint purchase scenario. Equipment purchase is already substantially derived from blanket, multi-agency contracts. Maintenance costs are determined by equipment complexity and formulas. Consumable costs are minimal. | Task Completed: Becomes the fiscal responsibility of Eden Prairie as the receiving PSAP. | Task Completed: Becomes the fiscal responsibility of the ECF as the receiving PSAP. |
APPENDICES

- Richfield’s PSAP Contract with Edina
- Hennepin County User Advisory Board Bylaws
  - Graphic Showing Existing Dependent Communities Dispatched by ECF
To: Mayor and City Council

From: Jeff Long, Chief of Police

Date: September 3, 2013

Subject: Agreement to Provide Dispatch Services and Emergency Communications for the City of Richfield

Agenda Item #: IV.J

Action ☒
Discussion ☐
Information ☐

Action Requested:
Approval of agreement to provide dispatch services and emergency communications for the City of Richfield.

Information / Background:

The City of Edina was approached several months ago to provide a proposal for emergency dispatching services for the City of Richfield. Edina, Bloomington, and Hennepin County submitted proposals. Currently, Richfield has its own in-house Emergency Communications Center.

Richfield has informed Edina that they are interested in moving forward with a contract for the provision of emergency dispatching services. Staff has determined a timeline for the transfer of services from Richfield to Edina, and has researched the impact on Edina in the following areas:

The City of Edina was approached several months ago to provide a proposal for:

1. Call Volume
2. Impact on staffing needs
3. Technology needs and costs

Call Volume:

Richfield will handle administrative calls during business hours, therefore only 9-1-1 and non-emergency calls (such as burglar or fire alarms) would be routed to the Edina PSAP during those hours. After hours administrative calls would be routed to the Edina PSAP, but those calls are typically minimal.

- The number of police and fire Computer Aided Dispatch (CAD) events processed annually would be increased by approximately 45,000 per year, including traffic stops and fire calls.
This will expand call volume for all three cities (Edina, Golden Valley and Richfield) to approximately 125,000 per year.

- 9-1-1 trunk line and non-emergency call volume has not yet been received.
- Richfield will handle routine hot files and criminal history checks in-house during business hours and possibly as late as 10pm. The Edina PSAP will handle hot files queries and criminal history checks after-hours.

**Staffing Needs and Costs:**

Based upon the increased call-load generated by consolidation, it is recommended that 2 additional full-time dispatchers be hired to maintain minimum staffing levels as follows:

- Three dispatchers on-duty during peak hours (approximately 2 p.m. to 2 a.m.)
- Two dispatchers on-duty during non-peak hours.
- The staffing minimum ensures that a consistently high level of service is provided.

For this staffing level, Richfield will pay Edina a base charge of $14,058 per month in beginning December 1, 2013 through 2014. For calendar year 2015, and subsequent years, Richfield shall pay Edina, in equal monthly installments the *revised base charge of $12,363 per month, adjusted by Edina on January 1st each year as follows: (1) increased labor costs for operation of the E.C.C. under Edina’s labor Agreements and (2) the rate of increase, if any, over the previous year in the implicit price deflator for government consumption expenditures and gross investment for state and local governments prepared by the Bureau of Economic Analysts of the United States Department of Commerce. Adjustments in the base charge shall be prospective.

The Edina PSAP hopes to hire current Richfield dispatchers to fill the new positions.

*Golden Valley is expected to seek dispatching services from Hennepin County beginning January 1, 2015, resulting in lower overall call volume and reduced staffing needs for the Edina PSAP. The revised base charge is calculated based upon a reduction in staff by 2 full-time positions.*

**Technology Needs and Costs:**

Edina will incur certain up-front costs to provide service to Richfield. These costs include: MCT, AVL (automatic vehicle location) and Resource Monitor licenses and software, CPU and monitor, map conversion or creation, training, radio programming, 911 transition and staff support including IT support. Richfield must pay 100% of the above mentioned costs. Edina will bill Richfield as costs are incurred and Richfield will reimburse Edina within thirty days of receipt of a properly itemized bill. Many transition expenses can be paid for with Richfield 911 funds.

**Contract:**

Staff recommends that the Council approve this contract to provide 911 Dispatching Services to the City of Richfield for the next three years.
AGREEMENT BETWEEN EDINA AND
RICHFIELD FOR THE PROVISION OF DISPATCH
SERVICES AND OPERATION AND MAINTENANCE OF
THE EMERGENCY COMMUNICATIONS CENTER

AGREEMENT made this _______ day of ____________, 2013 by and between the City of
Edina, a Minnesota municipal corporation ("Edina") and the City of Richfield, a Minnesota
municipal corporation ("Richfield").

WHEREAS, the governmental units signatory hereto are empowered by law to provide and
to contract for police, fire and emergency dispatch services, and, by virtue of their respective needs
and geographic proximity, find it in their common interest and for their common benefit and the
benefit of their citizens for Edina to provide dispatch services to Richfield utilizing the Edina
Emergency Communications Center ("E.C.C."); and

WHEREAS, Richfield desires that Edina receive and dispatch Richfield police, fire and
emergency radio calls; and

WHEREAS, Edina desires to handle such police, fire and emergency dispatch calls for
Richfield; and

WHEREAS, this Agreement is made pursuant to Minn. Stat. §§ 436.05 and 471.59 and
should not be construed as creating a joint municipal police department.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties
agree as follows:
1. **Dispatch Services and Operation and Maintenance of the E.C.C.** Commencing on or about December 1, 2013, Edina shall operate the E.C.C. for its own use and shall provide dispatch services to Richfield as follows:

   A. Edina, by using its personnel and facilities, will handle the receiving and dispatching of all police, fire and emergency calls for Richfield and Edina.

   B. Edina will supply police radio dispatch equipment and personnel to operate and maintain the radio dispatch equipment for the E.C.C. On termination of this Agreement, all equipment shall be the property of Edina.

   C. The E.C.C. shall be operated by dispatchers who shall be employees of Edina. Community service officers trained to provide back-up relief may be used to supplement dispatchers. All dispatch personnel needed to staff the E.C.C. shall be hired by Edina through its normal hiring procedures. The E.C.C. shall be supervised and managed by employees of Edina who have been assigned by the Edina Police Chief to these responsibilities. The Police and Fire Chiefs for Richfield and Edina or their designees shall meet as needed to address issues concerning provision of dispatch services or operation of the E.C.C.

   D. Edina and Richfield shall each maintain insurance coverage or equivalent pooled self insurance coverage in the minimum amount of the liability limits established in Minn. Stat. Ch. 466, which shall protect both Cities from any and all claims that might be made against either or both Cities as a result of the operations or the services set forth herein.

2. **Initial Costs.** Edina will incur certain up front costs to provide service to Richfield. These costs include: MCT and CAD Resource Monitor licenses, software, AVL (automobile vehicle location) units, CPU and monitor, conversion or creation, training 911 and radio transition, staff support including IT support. Richfield must pay 100% of the above mentioned costs. Edina will
bill Richfield as costs are incurred and Richfield will reimburse Edina within thirty days of receipt of a properly itemized bill.

3. **Payment for Dispatch Services and Operation and Maintenance of the E.C.C. for 2013.** Subject to the payment of initial costs pursuant to Paragraph 2 herein and any unbudgeted expenses pursuant to Paragraph 5 herein, for calendar year 2013, Richfield shall pay Edina Fourteen Thousand Fifty-eight ($14,058.00) Dollars per month ("Base Charge"). Payment shall be due in advance on or before the first day of each calendar month. For calendar year 2014, and subsequent years, as long as Edina is providing dispatch service for the City of Golden Valley, Richfield shall pay Edina, in equal monthly installments the Base Charge adjusted by Edina on January 1st each year as follows: (1) increased labor costs for operation of the E.C.C. under Edina’s labor Agreements and (2) the rate of increase, if any, over the previous year in the implicit price deflator for government consumption expenditures and gross investment for state and local governments prepared by the Bureau of Economic Analysts of the United States Department of Commerce. Adjustments in the Base Charge shall be prospective.

For calendar year 2015, and subsequent years, if Edina is not providing dispatch service for the City of Golden Valley, Richfield shall pay Edina, in equal monthly installments $12,363 ("Revised Base Charge") adjusted by Edina on January 1st each year as follows: (1) increased labor costs for operation of the E.C.C. under Edina’s labor Agreements and (2) the rate of increase, if any, over the previous year in the implicit price deflator for government consumption expenditures and gross investment for state and local governments prepared by the Bureau of Economic Analysts of the United States Department of Commerce. Adjustments in the Base Charge shall be prospective.
4. **9-1-1 Funds.** As additional compensation for services provided hereunder, effective January 1, 2014 Richfield shall assign to Edina all 9-1-1 funds it is entitled to receive pursuant to Minn. Stat. § 403.11. Edina shall deposit the 9-1-1 funds received from Hennepin County on behalf of Richfield in a separate account established for that purpose. The 9-1-1 funds so deposited shall be the sole property of Edina, and shall be used at the sole discretion of Edina, subject only to the provisions of Minn. Stat. § 403.113. The 9-1-1 funds shall not be credited towards amounts owed by Richfield pursuant to Paragraphs 3 and 4 of this Agreement. Richfield’s 911 funds received in 2013 which are assigned to Edina, however, shall be credited towards Richfield’s costs for map conversion or creation, and transition expenses pursuant to Paragraph 2 of this Agreement.

5. **Unbudgeted Expenses.** Certain expenses for provision of dispatch services, and operation and maintenance of the E.C.C. are not reasonably foreseeable, such as capital expenditures due to equipment failure, equipment repairs and replacement, software upgrades, software licensing, unexpected need for overtime hours, implementation of recommendations made by consultants for unanticipated needs, changes in required services due to new legislation. This listing is for illustrative purposes only, and not intended as a limitation on reimbursement for unanticipated expenses. Edina will notify Richfield in writing of any such unanticipated expenses when the expenses are realized. Within thirty days of receipt of a properly itemized bill, Richfield shall reimburse Edina in the amount of thirty six percent (36%) of such expenses during such time as Edina is also providing dispatch service to Golden Valley and forty three per cent (43%) if Edina is not providing dispatch service to Golden Valley.

6. **F.C.C. Licenses.** Current F.C.C. licenses held by Richfield and Edina shall
remain the property of the license-holder. Richfield and Edina will fully cooperate with each other as necessary for providing for the joint use and sharing of radio frequencies.

7. **Term of Agreement.** This Agreement shall be for an initial term of four (4) years, commencing on or about December 1, 2013, with automatic one-year renewals thereafter. The agreement may be terminated by either party after the initial term upon a twelve (12) month advance written termination notice delivered by either party to the other party.

8. **Termination Fee.** If Richfield terminates this Agreement at the end of the initial term or anytime thereafter, Richfield shall pay to Edina the actual cost incurred by Edina caused by the termination including: unemployment compensation, and termination benefits required by any applicable labor agreement or City Policies.

9. **Indemnity.** Each party is responsible for its own acts and omissions and the results thereof to the extent authorized by law. Minnesota Statutes Chapter 466 and other applicable law govern the parties’ liability. To the full extent permitted by law, this Agreement is intended to be and shall be construed as a “cooperative activity” and it is the intent of the parties that they shall be deemed a “single governmental unit” for the purposes of liability, all as set forth in Minnesota Statutes § 471.59, Subd. 1a (a); provided further that for purposes of that statute, each party to this Agreement expressly declines responsibility for the acts or omissions of the other party. In addition to the foregoing, nothing herein shall be construed to waive or limit any immunity from, or limitation on, liability available to either party, whether set forth in Minnesota Statutes, Chapter 466 or otherwise.
10. **Assignment.** Neither party to this Agreement may assign its interest in the Agreement without prior written approval of the other party and subject to such conditions and provisions as the other party may deem necessary.

11. **Amendments.** This Agreement may be amended from time to time as the parties deem necessary. No amendment shall be effective unless agreed to in writing by the parties.

12. **Entire Agreement.** It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof.

13. **Severability.** If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

**IN WITNESS WHEREOF,** the parties have executed this Agreement the day and year first above written.

**CITY OF EDINA**

BY: ______________________________
James Hovland, Its Mayor

AND ______________________________
Scott Neal, Its City Manager

**CITY OF RICHFIELD**

BY: ______________________________
Debbie Goettel, Its Mayor

AND ______________________________
Stephen Devich, Its City Manager
HENNEPIN COUNTY SHERIFF’S OFFICE
PUBLIC SAFETY COMMUNICATIONS
USER ADVISORY BOARD BYLAWS

General Purpose

The purpose of the Hennepin County Sheriff’s Office Public Safety Communications Users Advisory Board (UAB) is to advise the Sheriff on matters related to the Countywide Public Safety Communications Program including PSAP policies and procedures, enhancements of the Communications Facility and performance of the Communications Systems. The UAB will serve as a forum for reviewing user suggestions for improvements concerns and complaints and for representing the interests of individual users with the Sheriff on such matters.

Duties and Responsibilities

The following shall be the duties and responsibilities as defined by the membership, consistent with County Board Resolution No. 82-3-84 (R) attached as Appendix A.

1. Assist the Sheriff in the development and ongoing review of the communications program policies and procedures to provide maximum support for police, fire and emergency medical service users.

2. Make recommendations regarding the performance of the dispatch center personnel and system users, as appropriate.

3. Advise and assist the Sheriff, other County agencies, and the County Board on matters relating to the enhancement of the Hennepin County Sheriff’s office Communications Facility.

4. To review and vote on whether or not to implement procedural changes as recommended by the respective SOP groups from the Police and Fire Users as well as recommendations that may be brought up before the board.

5. Advise County Administration through their membership and participation in this Board regarding all matters relating to countywide radio issues.

Membership

The members of the UAB shall be made up of the contingent outlined below. The composition is intended to reflect the operational focus of the UAB, and is not intended to preclude additional participation by representatives of dependent and/or independent agencies when issues of concern to all municipalities are considered. Such issues include the development of system enhancements and the joint purchasing and maintenance of communications related equipment.
Appointments:

The Chairperson of the UAB will notify all appointing Associations prior to each Association’s first annual meeting, and indicate to said Associations the requirements for membership. The Chairperson will coordinate between appointing Associations to ensure no single municipality holds more than two voting memberships. The Chairperson position will be rotated between Police and Fire on a yearly basis.

1. **Fire Service**: Two representatives of fire departments, which are dispatched by the Sheriff’s Office, one representative from an independent fire department which would be appointed by the Hennepin County Fire Chiefs Association President.

2. **Police Service**: Two representatives of police departments, which are dispatched by the Sheriff’s Office, one representative from an independent police department would be appointed by the Hennepin County Chiefs of Police Association President.

3. **Municipal Administration**: Two city administrators, whose police or fire service is dispatched by the Sheriff’s Office, will be appointed by the Metropolitan Area Managers Association President.

4. **Sheriff’s Office**: Two representatives of Hennepin County Sheriff’s Office, one from the Communications Division and one from the Sheriff’s administration, will be appointed by the Hennepin County Sheriff.

5. **Past Chairperson**: The previous Chairperson of the UAB will be a voting member for one year.

6. **County Administration**: One representative of County Administration will be appointed by the County Administrator, and will be a non-voting member.

7. **Other Members**: Other members of the UAB would be elected by the eleven existing members (see items 1 through 5 above), and will be non-voting members.

   1. One representative from a municipality which is not dispatched by Hennepin County.
   2. One representative from the Emergency Medical Service Council.
   3. One representative from the police and one representative from the fire Standard Operating Procedure Committee
**Term of Membership**

All Association appointed members (see Membership items 1 through 3 above) shall serve for one year and may be appointed for successive terms. All other members shall serve at the pleasure of the appointing authority.

**Meeting Members**

The UAB will meet on the first Wednesday of the designated month at 9:00 a.m. Evening meetings, special meetings, change, or cancellations of a regular scheduled meeting will be at the call of the Chairperson. Roberts Rules of Order will be followed at all regular meetings.

1. **Quorum:** A majority of voting members will constitute a quorum.

2. **Voting:** Any voting member unable to attend a meeting may delegate his voting rights to his representative. No voting member shall cast more than one vote per motion. No proxy or absentee voting, other than outlined above, will be permitted.

3. **Minutes:** Minutes of all meetings will be recorded by Hennepin County Sheriff’s Office and sent to all Hennepin County Public Safety Departments, dependent and independent.

**Officers**

The officers of the UAB shall consist of Chairperson, Vice-Chairperson, and Past Chairperson. The initial Chairperson and Vice-Chairperson shall be elected by a majority of the voting membership and serve for one year. Thereafter, only the Vice-Chairperson will be elected. The Chairperson for each succeeding year shall be filled by the Vice-Chairperson. The Past Chairperson of each succeeding year shall be filled by the Chairperson. The new Past Chairperson will continue to participate with UAB as a voting member.

1. **Election:** The election of the Vice-Chairperson shall take place at the January regular schedule meeting.

2. **Chairperson Responsibilities:** The Chairperson shall conduct the meeting of the membership, appoint committees, and communicate with appointing authorities and associations.

3. **Vice-Chairperson Responsibilities:** The Vice-Chairperson shall perform the duties of the Chairperson in that officer’s absence.

4. **Past Chairperson Responsibilities:** The Past Chairperson is responsible for providing continuity from one year to the next, and for assisting the other officers in the fulfillment of their duties.
**Vacancy**

Member vacancies shall be filled by the original appointing authority upon written request of the Chairperson. Members failing to attend or be represented at three consecutive regular meetings will result in that member’s seat to be declared vacant.

**Amendments**

Provisions of these bylaws may be altered, amended, or revised at any regular or special meeting if approved by two-thirds of all voting members. Proposed amendments shall be submitted to the membership thirty days prior to the meeting at which such amendment will be voted on.

*These bylaws were initially approved at the April 29, 1987 meeting of the Hennepin County Sheriff’s Office Public Safety Communications Users Advisory Board by unanimous vote of those members present, and subsequently amended June 30, 1993, December 29, 1993, January 25, 1995, March 26, 2003, May 24, 2011 and July 7, 2015. A signed copy of the bylaws is on file with the Sheriff’s Office.*

Dated this 7th day of July 2015.

By _________________________________
Chairperson UAB
HENNEPIN COUNTY SHERIFF’S OFFICE

911 Dispatch Map

- North Main
- South Main
- East Main
- Independent Service Providers
Brief Description: Cooperative agreement regarding public safety related to 2018 National Football League Super Bowl security

Recommended Action: Approve the agreement

Background

The 2018 Super Bowl event will be held at US Bank Stadium in Minneapolis. Multiple events are expected to take place in locations throughout the metropolitan area in connection with the Super Bowl. The City of Minneapolis Police Department has worked with the Minnesota Host Committee to plan for adequate public safety protection at those events and has secured financial commitments from the Host Committee through a separate agreement.

In order to provide adequate public safety, the City of Minneapolis is requesting cities within the metropolitan area to enter into a cooperative agreement for public safety services. The form of the agreement is attached. The agreement has been reviewed by the League of Minnesota Cities Insurance Trust staff, with respect to its liability and insurance provisions. The city attorney has also reviewed the agreement.

The key terms of the agreement include:

- Minneapolis Police Department will be the lead enforcement agency and will make work assignments, utilizing a unified command structure.
- Participating cities must provide a list of their officers at least 90 days prior to the Super Bowl.
- Participating officers must receive training, in advance of the events.
- The participating cities must furnish each of their officers with uniforms and basic equipment, which does not include body cameras.
- The sole source of funds to reimburse cities for their services is money provided by the Host Committee. (Minnetonka has no direct agreement with the Host Committee for the funding, so the city attorney asked what assurance Minnetonka has that Host Committee funds will be sufficient. Minneapolis has represented that in addition to planned expenditures and a contingency fund, its agreement with the Host Committee includes a process for obtaining additional funds. In addition, Minneapolis has indicated that Minneapolis will be the last to obtain reimbursement, after other cities have been reimbursed.)
- If an event is held in a participating city, that city retains the authority to determine the level of staffing needed for that event. However, only officers requested by the unified command will be eligible for reimbursed cost.
- The Host Committee has purchased a $3 million law enforcement liability policy, that will provide coverage for the officers and supervisors of each participating
city acting under the unified command. The policy is primary, which means it provides coverage prior to any other coverage the city may have. If the limits of the Host policy were insufficient to cover claims, the city’s policy with LMCIT would kick in.

- Participating cities may recall their officers at any time, so the city’s ability to respond to incidents within the city should not be limited.
- Participating cities may terminate the agreement upon 45 days’ written notice.

With respect to liability insurance, the LMCIT has indicated that, based upon its investigation regarding the Host-provided policy, cities should be well protected. As mentioned, the city’s normal liability policy provides an additional source of coverage, if needed. In addition, the LMCIT has indicated that it will likely offer excess liability coverage, with charges made on a per-officer basis, but the pricing for the coverage has not been determined. According to Minneapolis, no police liability claims arose from the past two Super Bowls. Minneapolis has also indicated that Minnetonka officers likely would be assigned at perimeter locations. Based on that information, staff does not believe the excess liability coverage will be needed.

**Recommendation**

Approve the agreement.

Submitted through:
- Geralyn Barone, City Manager
- Scott Boerboom, Police Chief

Originated by:
- Corrine Heine, City Attorney
COOPERATIVE AGREEMENT REGARDING PUBLIC SAFETY RELATED TO 2018 NATIONAL FOOTBALL LEAGUE SUPER BOWL SECURITY

THIS INTERGOVERNMENTAL COOPERATIVE AGREEMENT REGARDING PUBLIC SAFETY AND SECURITY RELATED TO THE 2018 NATIONAL FOOTBALL LEAGUE SUPER BOWL (hereinafter referred to as the “Agreement”), is made effective, except as otherwise made operationally effective as set forth in Section 5 herein, on this ____ day of ___, 2017, by and between the CITY OF MINNEAPOLIS, MINNESOTA, a municipal corporation, (hereinafter referred to as the “City”), acting through its Police Department (hereinafter referred to as the “MPD”) and ____________________________, a [insert name of city/county/or other governmental entity acting through its _____________________________, a [insert name of law enforcement organization (hereinafter referred to as the “Provider”). City, MPD, and each Provider may be referred to individually as a “Party” or collectively as the “Parties” to this Agreement.

WHEREAS, the City is the host city for the 2018 National Football League Super Bowl to be held on Sunday, February 4, 2018, and for related events authorized by the National Football League, most of which will take place in the City, City of St. Paul, and City of Bloomington from Friday, January 26, 2018, through Monday, February 5, 2018 (hereinafter referred to collectively as the “Event”); and

WHEREAS, a Unified Command structure (as that term is defined in Section 2.4 ) is needed to ensure the level of security coordination required for the Event; and

WHEREAS, the MPD will be the lead law enforcement agency for those portions of the Event that occur within the City of Minneapolis (Minneapolis Events) and the St. Paul Police Department (SPPD) and the Bloomington Police Department (BPD) will be the lead law enforcement agencies for those portions of the Event that occur within their cities, respectively (St. Paul Events and Bloomington Events) When either BPD or SPPD is the lead law enforcement agency, its duties will not include making staff assignments that will continue to be administered and managed by the MPD as part of the Unified Command; and

WHEREAS, the City has agreed to serve as the fiscal agent for law enforcement costs for the Event by entering into an agreement with the “Host Committee” (as that entity and agreement are referenced in Section 3.1 herein) for the Event; and

WHEREAS, the City is in need of procuring additional law enforcement personnel to provide the public safety and security measures required for such a large and unique Event; and

WHEREAS, at the request of the City, the Provider is willing to provide the services of the law enforcement personnel identified in this Agreement to the City to assist the MPD with Event security; and
NOW THEREFORE, pursuant to the authority contained in Minnesota Statutes Section 471.59 (“Joint Exercise of Powers”) and/or Minnesota Statutes Sections 626.76 and 626.77, and in consideration of the mutual covenants herein contained and the benefits that each party hereto shall derive hereby, the Parties agree as follows:

1. **PURPOSE OF THE AGREEMENT**

1.1 The purpose of this Agreement is to set forth the terms and conditions whereby the Provider will provide the City with Licensed Peace Officers to be assigned to one or more of the Event locations identified on Exhibit A attached hereto to assist the MPD through the use of a unified command center (as further explained in Section 2.4 of this Agreement) to provide law enforcement and security services (“Services”) during the term of the Event.

1.2 Provider will exercise its best efforts to assist with Event security. The Parties acknowledge and agree that resource availability requires Provider to exercise its best judgment in prioritizing and responding to the public safety needs of its jurisdiction including, but not limited to, the Event. That prioritization decision belongs solely to Provider. The Provider may, at any time, recall the Provider’s resources when, it is considered to be in Provider's best interest to do so.

1.3 Provider’s resources shall be full-time, Licensed Peace Officers and each such Licensed Peace Officer must meet the following criteria as defined in Minnesota Statutes Sections 626.84, Subdivision 1(c) and 471.59, Subdivision 12, which reads:

“(1) the peace officer has successfully completed professionally recognized peace officer pre-employment education which the Minnesota Board of Peace Officer Standards and Training has found comparable to Minnesota peace officer pre-employment education; and

(2) the officer is duly licensed or certified by the peace officer licensing or certification authority of the state in which the officer's appointing authority is located.”

1.4 The MPD will coordinate and inform the SPPD and the BPD of staffing assignments for the St. Paul Events and the Bloomington Events based, when possible, on the recommendations of the SPPD and the BPD, respectively.

2. **ADDITIONAL CRITERIA OF LICENSED PEACE OFFICERS; PROVIDER SCOPE OF SERVICE**

2.1 In addition to meeting the criteria set forth in Section 1 of this Agreement, the Provider agrees that each of the Licensed Peace Officers shall also meet the following criteria:
2.1.1. That each Licensed Peace Officer shall by reason of experience, training, and physical fitness be deemed by the Provider of being capable of performing public safety and law enforcement duties for the Event; and

2.1.2 That each Licensed Peace Officer is in good standing with the Provider. Throughout the term of this Agreement, the Provider shall promptly notify the MPD in the event that any licensed peace officer is no longer an officer in good standing with the Provider or shall recall any peace officer that is no longer in good standing; and

2.1.3 That unless otherwise provided or requested by the MPD, each Licensed Peace Officer shall be equipped and/or supplied by Provider at Provider’s own expense, with a seasonally appropriate patrol uniform of the day and equipment, including but not limited to service belts with Provider radio equipment, service weapon and personal soft ballistic body armor, and traffic vest. Additionally, in Provider’s discretion, personnel may be equipped with a cell phone that may be used to download a public safety application to aid in the tracking of law enforcement personnel during operational periods if allowed pursuant to Provider’s policy.

2.2 Provider acknowledges and agrees that at any time during the term of this Agreement the City has the sole discretion to decline to accept and/or use any of Provider’s Licensed Peace Officers or other law enforcement resources without cause or explanation.

2.3 The Provider agrees as follows:

2.3.1 As requested by MPD, Provider shall list information on each of Provider’s Licensed Peace Officers no later than ninety (90) days before the Event that includes, but is not limited to, name, rank, agency, badge number, photo, cell phone number, and emergency contact information. Said information shall be used strictly for law enforcement purposes related to the Event and each Party will hold the data in the same classification as the other does under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (“MGDPA”); and

2.3.2. That upon reasonable advance written notification from the MPD, each of Provider’s Licensed Peace Officers or other law enforcement resources so designated by the MPD shall participate in training activities related to Event security, that are coordinated or conducted by the MPD or its designee; and

2.3.3. That each Licensed Peace Officer shall be assigned by the MPD, as determined and required by the MPD, to any Event-related assignment
based on the Licensed Peace Officer’s skill-set and known duty assignment as well as the needs of the operation; including, but not limited to, foot patrol, motorized patrol, static posts at outdoor perimeters, general security inside or outside venues, and traffic control; and

2.3.4. That Licensed Peace Officers participating in the Event may, if so determined by the MPD, be placed in an “On Assignment” status by MPD in which the Licensed Peace Officer should be physically proximate to the Event location, so as to be able to physically report in a timely manner to such duty post assigned by the MPD and prepared to undertake the specific job task or responsibility assigned by the MPD; and

2.3.5. That at the request of the MPD, Provider will designate personnel that participated in or provided Event security to further participate in and/or provide information to and otherwise cooperate with the MPD in any “after action activities” following the conclusion of a Training Session or actual Event security. “After action activities” may include, but not be limited to post Training Session meetings and revisions of Training protocols and post Event security meetings, evaluations, mediation or court proceedings.

2.4 Provider acknowledges and agrees that at all times during any required training session or during the Event each of Provider’s Licensed Peace Officers or other law enforcement resources and employees, regardless of rank or job title held as an employee of the Provider, shall be subject to a structure of supervision, command and control coordinated through a unified law enforcement command and following unified command principles and practices established throughout the law enforcement community (herein referred to as “Unified Command”).

2.5 The Provider agrees to exercise reasonable efforts to cooperate and provide the City, with any other information reasonably requested by the City that the City deems necessary to facilitate and enable compliance with the terms and conditions contained in this Agreement.

2.6 Event staffing levels will be determined by the MPD as the lead law enforcement agency and fiscal agent, in consultation with the Unified Command and the SPPD for St. Paul Events and the BPD for Bloomington Events, regardless of the location of the Event. Provider may increase the staffing levels at Events located within the Provider’s jurisdiction: (a) at the sole cost of the Provider that hosts an Event; and (b) with the knowledge that the additional Licensed Police Officers and other staff members above the staffing level approved by the MPD and Unified Command are not covered by the Policy as described in Section 9 of this Agreement. The number of Licensed Peace Officers and other law enforcement resources to be deployed within the Provider’s jurisdiction will be communicated to the City as part of the Unified Command. Notwithstanding Section 2.4, the
Provider retains the sole discretion for determining what Provider Licensed Peace Officer and other law enforcement resources will be deployed in its own jurisdiction for events not included under this Agreement and remain under the Provider’s own authority. The Provider’s Licensed Peace Officer and other law enforcement resources deployed in the Provider’s jurisdiction and which are either included above the number of Licensed Peace Officers as determined by the Unified Command or remain under Provider’s authority for events not included under this Agreement, will not be eligible for reimbursement of costs as provided in Section 4.2 of this Agreement.

2.7 The Provider will comply with the statutes and rules requiring the preservation of evidence including, but not limited to, Minnesota Statutes, Section 590.10 and Section 626.04. Each Provider must preserve all handwritten notes, photographs, incident reports, video recordings, statements, audio recordings, personal notes, interview audio, text messages, cell phone videos, removable electronic media, squad car videos, any other video recordings, emails, voice mails, computer files and all Work Product, Supporting Documentation and Business Records as those terms are defined in Section 8.1 of this Agreement.

2.8 The MPD, as the lead law enforcement agency, will maintain a list of Licensed Peace Officers (LPOs) assigned to the Events. Each Provider, including the SPPD and BPD, will be responsible for providing accurate lists of its LPOs that will be assignable to the Events as a result of signing this Agreement.

3 CITY RESPONSIBILITIES

3.1 The City will be solely responsible for all communications with the Minnesota Host Committee (the “Host Committee”). The Host Committee shall be responsible for coordinating each of the events authorized by the National Football League (including St. Paul Events and Bloomington Events) and activities that occur within the term of the Event.

3.2 The City and the Host Committee will prepare and enter into an “Event Support and Funding Agreement for Super Bowl LII” (the “Support Agreement”). The Support Agreement will be the source of funding for the Event including the source of payment for the Services to be provided pursuant to this Joint Exercise of Powers Agreement (“Agreement”) and for the policy of insurance that will pay for the defense and indemnification of claims filed against the City and each Provider during the term of the Event.

3.3 City agrees that it will provide or facilitate any necessary training to prepare for providing Event security. The substance of the training, if necessary; including the locations, dates, and times, shall be detailed in a separate writing provided from the MPD to the Provider.
3.4 The person responsible on behalf of the MPD for the daily operation, coordination and implementation of this Agreement, which responsibilities shall include, but not limited to, determining the assignments of the Provider’s law enforcement resources, shall be Minneapolis Police Department Commander Scott Gerlicher (hereinafter referred to as the “Coordinator”). Except as otherwise provided in this Agreement, all contacts or inquiries made by the Provider with regard to this Agreement shall be made directly to the Coordinator or the Coordinator’s designee.

3.6 The City will develop and provide to each Provider an adequate supply of the standard incident report form to be used by the City and Providers that provide Services at the Event under the direction of the Unified Command.

3.7 The City will obtain from the Host Committee and provide to each Provider, the “claims procedure” as indicated in Exhibit C hereto that will be used by third party claimants who file claims against the City or against any Provider.

4. COMPENSATION AND PAYMENT PROCESS

4.1 The sole source of funds to reimburse each Provider performing under this Agreement shall be funds provided by the Host Committee pursuant to the Support Agreement.

4.2 For and in consideration of the Provider performing under this Agreement, the Provider will be reimbursed for said Services at the rates and in the manner as indicated in attached Exhibit B. All of a Provider’s Licensed Peace Officers and other law enforcement resources that (a) perform law enforcement services within the Provider’s jurisdiction; and (b) are subject only to the Provider’s authority and are therefore not under the Unified Command, are not eligible to have Provider’s costs reimbursed pursuant to this Agreement.

4.3 The MPD will prepare and include in Exhibit B eligibility guidelines for cost reimbursement and a check list for the preparation and submission of the reimbursement request. Exhibit B will include a “Reimbursement Payment Form [To be developed by MPD at a later date] to be completed by the Provider along with the required support documents to be attached by the Provider.

The MPD shall furnish the Provider with a statement which describes all applicable hours performed by the Provider during the term of the Agreement. The Provider shall submit the Reimbursement Payment Form to the MPD for all undisputed amounts within thirty-five (35) days after receipt of the statement of hours.

4.4 Provider may submit any questions regarding the cost reimbursement process to
Robin McPherson or her designee at: robin.mcpherson@minneapolismn.gov.

4.5 For any disputed amounts, the Provider shall provide the MPD with written notice of the dispute, including the date, amount, and reasons for dispute within fifteen (15) days after receipt of the statement of hours. The MPD and Provider shall memorialize the resolution of the dispute in writing and follow the dispute resolution procedure in Section 13 of this Agreement.

5. TERM OF AGREEMENT

5.1 This Agreement shall be effective as of the date indicated on the first page so that the Parties can undertake planning for all Event-related activity and shall expire on March 1, 2018, or the date to which law enforcement resources or Services are extended, whichever is later, unless terminated earlier in accordance with the provisions in Section 6. Except for the provision of Training as discussed and to be scheduled pursuant to Section 3.3 of this Agreement, Services furnished by the Provider for the Event shall begin on January 26, 2018, and shall terminate on February 5, 2018, unless terminated sooner or extended in whole or in part as provided herein.

6. TERMINATION

6.1 Termination by the City-The City may terminate this Agreement upon providing to the Provider not less than forty-five (45) days advance written notice for any of the reasons stated below:

6.1.1 Cancellation of Super Bowl LII;

6.1.2 City and Host Committee fail to enter into the Support Agreement;

6.1.3 Host Committee fails to purchase and provide insurance coverage as described in Section 9.1 of this Agreement; or

6.1.4 Failure by the Provider to perform any material term under this Agreement and failure to cure the default within the time requested by the City.
6.2 Termination by the Provider—The Provider may terminate this Agreement upon providing to the City not less than forty-five (45) days advance written notice for any of the reasons stated below:

6.2.1 Cancellation of Super Bowl LII;

6.2.2 Without cause prior to the initial training session;

6.2.3 City and Host Committee fail to enter into the Support Agreement; or

6.2.4 Host Committee fails to purchase and provide insurance coverage as described in Section 9.1 of this Agreement.

6.3 In the event of a termination, each Party shall fully discharge all obligations owed to the other Party accruing prior to the date of such termination, and, except as otherwise provided herein, each Party shall be released from all obligations, which would otherwise accrue subsequent to the date of termination.

7. AGREEMENT MANAGEMENT

7.1 The Provider has identified the following person[s] as persons to contact only with regard to the following matters regarding the Agreement:

(List names) (List responsibilities)

8. WORK PRODUCTS, RECORDS, DISSEMINATION OF INFORMATION

8.1 For purposes of this Agreement, the following words and phrases shall have the meanings set forth in this section, except where the context clearly indicates that a different meaning is intended.

“Work Product” shall mean any report, including incident reports, recommendation, paper, presentation, drawing, demonstration, or other materials, whether in written, electronic, or other format that are used or belong to MPD or results from Provider's Services under this Agreement.

“Supporting Documentation” shall mean any surveys, questionnaires, notes, research, papers, analyses, whether in written, electronic, or in other format and other evidences used to generate any and all work performed and Work Products generated under this Agreement.

“Business Records” shall mean any books, documents, papers, account records and other evidences, whether written, electronic, or in other format, belonging to
8.2 Subject to applicable law, including but not limited to the Minnesota Official Records Act, Minnesota Statutes Section 15.17, and the MGDPA, all deliverable Work Product, Supporting Documentation and Business Records or copies thereof, that are needed from or result from the Provider's Services under this Agreement shall be delivered to the City either pursuant to this Agreement or upon reasonable request of the City and shall become the property of the City after delivery.

8.3 The City and the Provider each agrees not to release, transmit, disclose or otherwise disseminate information associated with or generated as a result of the work performed (i.e. Work Product, Supporting Documentation and Business Records) under this Agreement without notice to the other. Except as otherwise required by and subject to federal and/or state law, neither the City nor the Provider shall release, transmit, disclose or disseminate any Work Product, Supporting Documentation and Business Records which shall be classified as “security information”, “security service” or “security service data”, defined under Minnesota Statutes Sections 13.37 and 13.861 or any like data, as defined and/or required in all federal, state, and local laws or ordinances, and all applicable rules, regulations, and standards.

8.4 In the event of termination, all Work Product, Supporting Documentation and Business Records prepared by the Provider under this Agreement shall be delivered to the City by the Provider by the termination date.

8.5 Both the City and the Provider agree to maintain all Business Records in such a manner as will readily conform to the terms of this Agreement and to make such materials available at its office at all reasonable times during this Agreement period and for six (6) years from the date of the final payment under the contract for audit or inspection by the City, the Provider, the Auditor of the State of Minnesota, or other duly authorized representative.

8.6 Both the City and the Provider agree to abide strictly by the MGDPA and, in particular, Minnesota Statutes, Sections 13.05, Subd. 6 and 11; 13.37, Subd. 1(b), 138.17, and 15.17. All of the data created, collected, received, stored, used, maintained, or disseminated by the Provider or the City in performing functions under this Agreement is subject to the requirements of the MGDPA and both the City and the Provider must comply with those requirements. If any provision of this Agreement is in conflict with the MGDPA or other Minnesota state laws, state law shall control.

9. INSURANCE; LIABILITY; MUTUAL RESPONSIBILITY; NO WAIVER OF IMMUNITIES
9.1 Insurance Coverage for Event-The Host Committee has purchased a law enforcement liability insurance policy (the “Policy”). The insurance carrier is International Insurance Company of Hannover SE (the “Insurer”). The Policy will provide coverage for claims that each Provider becomes legally obligated to pay as damages due to “bodily injury”, “property damage”, or “personal injury” suffered by third parties. The Policy will require the insurer to have the right and duty to defend and indemnify each Provider against any claim or lawsuit due to Provider acts that occur within the territory of the Events and during the period in which the Policy is in effect. Each Provider’s Law Enforcement Officers and supervisors under the Unified Command will be covered under the Policy by virtue of the Provider being named an “insured” under the Policy.

9.1.1 The limits of liability for all occurrences (claims) during the coverage period is $3,000,000.00 ($3 million). The limit of liability for any third party claim for damage to or loss of personal property is $25,000.

9.1.2 The cost to hire and pay for legal representation to defend the City and any Provider (“defense costs”) are not subject to the $3 million limit of the Policy.

9.1.3 The Policy is not subject to the payment of a deductible by the Host Committee, the City or by any other Provider.

9.1.4 Each Provider agrees to be bound by the terms and conditions contained in the Policy.

9.1.4 Each Provider agrees that it will cooperate with the insurer and with the City by reasonably and timely responding to the insurer’s request for information or to appear at meetings or judicially mandated hearings.

9.2 Insurance as Sole Source for Liability and Indemnity-Each Provider hereto agrees that it will only seek recovery for any liability incurred in carrying out the terms of this Agreement from the insurance to be procured by the Host Committee as set out in Section 9.1 of this Agreement.

9.2.1 If a Party’s liability is not subject to recovery through the Policy, then each Party agrees that it will otherwise be responsible for its own acts and/or omissions and those of its officials, employees, representatives and agents in carrying out the terms of this Agreement, whether those acts or omissions occur within or outside of the jurisdiction or geographic limits of the City of Minneapolis, and the results thereof to the extent authorized by law and shall not be responsible for the acts and/or omissions of the other Party and the results thereof.
9.2.2 In the unlikely event that the aggregate amount of any one or all claims exceeds $3 million, then each Party agrees that it will otherwise be responsible for its own acts and/or omissions and those of its officials, employees, representatives and agents in carrying out the terms of this Agreement, whether those acts or omissions occur within or outside the jurisdiction or geographic limits of the City of Minneapolis, and the results thereof to the extent authorized by law and shall not be responsible for the acts and/or omissions of the other Parties and the results thereof.

9.3 Further Limitation On Provider Liability-It is understood and agreed that the liability of each Provider that is a municipality, county or similar political subdivision shall be limited by the provisions of Minnesota Statutes Chapter 466 (Tort Liability, Political Subdivisions) and the liability of the State of Minnesota as a Provider shall be limited by the provisions of Minnesota Statutes, Section 3.736 and by other applicable law. Nothing contained in this Agreement shall waive or amend, nor shall be construed to waive or amend any defense or immunity that either Party, its respective officials and employees, may have under said Chapter 466, Section 471.59 subd. 1a, and any common-law immunity or limitation of liability, all of which are hereby reserved by the Parties that have entered into this Agreement.

9.4 Provider Workers’ Compensation Insurance Required-Except as expressly provided herein, each Party shall be responsible for injuries or death of its own personnel. Each Party will maintain workers’ compensation insurance or self-insurance coverage, covering its own personnel while they are providing assistance pursuant to this Agreement. Except as expressly provided herein, each Party waives the right to sue any other Party for any workers’ compensation benefits paid to its own employee or volunteer or their dependents.

9.5 Provider Responsible for Own Equipment-Except as expressly provided herein, each Party shall be responsible for damages to or loss of its own equipment. Except as expressly provided herein, each Party waives the right to sue any other Party for any damages to, or loss of its equipment.

9.6 Provider Rendering First Aid-Except for immediate first aid rendered by a Provider at the scene of an accident or occurrence, no other medical assistance, expenses or aid is covered under the Policy.

10. INDEPENDENT CONTRACTORS

Each Provider in its relationship with the City under this Agreement is an independent contractor. No Provider, its Licensed Peace Officers or other law enforcement resources shall be considered an employee of the City. The City, its Licensed Peace Officers or other law enforcement resources shall not be considered employees of the Provider.
11. **SUBCONTRACTING**

   The City and Provider agree that no Services will be subcontracted and agree not to enter into any subcontracts to provide any Services under this Agreement.

12. **ASSIGNMENT**

   Neither the City nor the Provider will assign or transfer any interest in this Agreement without the consent of the other Party.

13. **DISPUTE RESOLUTION**

   The City and the Provider each agree to cooperate and negotiate in good faith to resolve any disputes that arise regarding the terms of this Agreement and the performance of the Services. If good faith negotiations fail to resolve a dispute, then the Parties will use mediation services to attempt to resolve the dispute. The City and Provider will equally share the expense of the mediator.

   The Parties will select a mediator by each submitting three names in rank order of preference to the other Party. If there is no common name on each Party’s list, then a neutral, third party, law enforcement representative that is not a party to this Agreement will select a mediator for the Parties. If mediation fails to resolve a dispute between Parties, then the Parties will resolve the dispute through litigation.

14. **AUDIT OF AGREEMENT RECORDS**

   Pursuant to Minnesota Statutes, Section 16C.05, both the City’s and the Provider’s books, records, documents, and accounting procedures and practices with respect to any matter covered by this Agreement shall be made available to the State of Minnesota Office of the State Auditor upon written notice, at any time during normal business hours, for the purpose of auditing, examining or making excerpts or transcripts of relevant data.

15. **AMENDMENT OR CHANGES TO AGREEMENT**

   15.1 Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by the Parties hereto; after all appropriate and necessary authority has been acquired by each such Party.

   15.2 Modifications or additional schedules shall not be construed to adversely affect vested rights or causes of action which have accrued prior to the effective date of such amendment, modification, or supplement. The term “Agreement” as used
herein shall be deemed to include any future amendments, modifications, and additional schedules made in accordance herewith.

16. **NOTICES**

Except as otherwise stated in this Agreement, all notice or demand to be given under this Agreement shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed as follows:

To City:     To Provider:

Scott Gerlicher
Commander-Minneapolis Police Department
511 11th Avenue South
Suite 401
Minneapolis, MN  55415

17. **INTERPRETATION OF AGREEMENT**

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota.

18. **ENTIRE AGREEMENT**

It is understood and agreed that this entire Agreement supersedes all oral agreements and negotiations between the parties hereto relating to the subject matters herein. All items that are referenced or that are attached are incorporated and made a part of this Agreement. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.

The matters set forth in the “WHEREAS” clauses at the beginning of this Agreement are by this reference incorporated into and made a part of this Agreement.

19. **MISCELLANEOUS PROVISIONS**

19.1 The Parties intend that, with respect to the defense and indemnification provisions in Section 9 hereof, this Agreement may benefit or create rights or causes of action in or on behalf of any other agency providing services for the Event under a similar but separate agreement. Except for the foregoing, the Parties intend that
this Agreement will not benefit or create any right or cause of action in or on behalf of any person or entity other than the Parties.

19.2 The Parties shall cooperate in achieving the objectives of this Agreement pursuant to Minnesota Statutes, Sections 15.51 through 15.57.

19.3 The Parties shall comply with all applicable federal, state, and local statutes, regulations, rules and ordinances currently in force or later enacted including but not limited to the MGDPA, Minnesota Statutes Section 471.425, subd. 4a, and as applicable, non-discrimination and affirmative action laws and policies.

19.4 If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability will not affect any other provision, and this Agreement will be construed and enforced as if such invalid or unenforceable provision had not been included.

19.5 Failure of a Party to enforce any provision of this Agreement does not affect the rights of the Parties to enforce such provision in another circumstance. Failure to enforce a provision does not affect the rights of the Parties to enforce any other provision of the Agreement at any time.

IN WITNESS WHEREOF, the parties hereto are authorized signatories and have executed this Agreement, the day and year first above written.

CITY OF MINNEAPOLIS

By: ___________________________

STATE/CITY/COUNTY OF

By: ___________________________
EXHIBIT A - Super Bowl Events

Event Description
Super Bowl Experience
Media Center/Radio Row
Mall of America Game Day Event
NFL Honors
NFL Friday Night Party
Tailgate Party
Opening Night
NFL on Location
Super Bowl Live
Stadium Interior
Stadium Perimeter
Pre-game Party
AFC Team Hotel
NFC Team Hotel
NFL Headquarters Hotel
AFC Practice Site
NFC Practice Site
Police Escorts
Tactical Squad
Bomb Technical Squad
Bomb K-9s
VACIS
Street Patrol Downtown
Extra Metro Transit Security
Mobile Field Force Square
Fit Team
VPSO
Command Post Security
Staging
Logistics
Credentialing
Dignitary Liaison
Counterfeiting
Human Trafficking
Investigators

The MPD will maintain a list of Licensed Police Officers covered by this Agreement

EXHIBIT B

Super Bowl Special Event Period Reimbursement Guidelines

Reimbursement Period: Friday January 26th, 2018 through Monday February 5th, 2018

1. General Reimbursement Guidelines:
   a. The lead law enforcement agency, Minneapolis Police Department, will serve as fiscal agent for purposes of this agreement.
b. Reimbursement will be for official Super Bowl events sanctioned by the MN Host Committee and/or the NFL only, or for hours worked in direct support of the lead law enforcement agency, Minneapolis Police Department.

c. All hours worked will be considered “on duty” time.

d. Sending agencies are expected to place provided law enforcement officers “on assignment” for the event period and this assignment will be their normal assignment for that period. Personnel should not be expected to work the event week in addition to their normal job at their respective agency.

e. Reimbursement will occur for personnel wage costs only at established straight time or overtime rates pursuant to Section 2, Established Hourly Reimbursement Rates, in this Exhibit B. These rates are all inclusive and will not be adjusted.

f. Reimbursement will occur only for hours worked consistent with official operational plans approved by the core planning team and the lead law enforcement agency, MPD.

g. There will be no reimbursement for non-personnel costs, backfill, pre-event training, equipment, and other expenses including but not limited to travel costs, fuel, mileage, per diem, etc.

h. Reimbursement will occur only for state, county, and local law enforcement personnel participating in official Super Bowl Event security details.

i. There will be no reimbursement for participation of law enforcement command level staff including but not limited to those in the ranks of Chief, Sheriff, Assistant Chief, Deputy Chief, Colonel, Major, Sr. Commander, Captain or other law enforcement officers working in a command position and/or in an exempt payroll status.

j. Generally, participating law enforcement personnel will be expected to work a ten hour shift daily during the event period (This may vary based on specific assignments).

k. For reimbursement purposes, a law enforcement officer’s shift begins and ends when he/she checks in/out on site with the lead law enforcement agency. This will be tracked using an automated system provided by the lead law enforcement agency.

Law enforcement personnel will be notified of their daily and hourly schedule 30-60 days prior to the special event period subject to any changes that may occur. There will be no reimbursement for any changes to the schedule or for any scheduled off days during this period or for off hours where personnel are not actively assigned to an official special event detail.

a. Sending agencies and personnel assigned to the special event week must adhere to all lead law enforcement agency requirements in order to be eligible for reimbursement.

b. Any variation from the above guidelines must be approved by the lead law enforcement agency, Minneapolis Police Department.

2. **Established Hourly Reimbursement Rates:**
a. All hours reimbursed under the terms of Sections 3 and 4 of this Exhibit B, below will be paid at one of the following established hourly rates. These are set rates and will not be adjusted based on specific agency hourly rates. The rates are inclusive of all costs including both payroll and fringe.
   i. $82 per hour overtime rate.
   ii. $55 per hour straight time rate.

3. Specific Agency Reimbursement Guidelines:
   a. For law enforcement personnel working in areas where they have jurisdictional authority:
      i. Reimbursement will occur only for overtime hours worked as a result of established/approved operational plans and hours above and beyond that of their scheduled shifts for that day with approval of incident commander.
      ii. Sending agencies will be reimbursed for overtime hours worked under the Joint Powers Agreement, not to exceed 60% of the total hours worked by that agency at the established overtime rate as specified in Section 2 of this Exhibit B, above.
      iii. Sending agencies are expected to place provided law enforcement officers “on assignment” for the event period and this assignment will be their normal assignment for that period. Personnel should not be expected to work the event week in addition to their normal job at their respective agency.

   b. For law enforcement personnel working in areas where they do not have jurisdictional authority:
      i. Reimbursement will occur for all hours worked to include straight time and overtime at the established rates as specified in Section 2 of this Exhibit B, above however reimbursement for overtime hours worked under this Joint Powers Agreement which will not exceed 60% of the total hours worked by that agency.
      ii. Sending agencies are expected to place provided law enforcement officers “on assignment” for the event period and this assignment will be their normal assignment for that period. Personnel should not be expected to work the event week in addition to their normal job at their respective agency.

4. Reimbursement Process:
   Within 30 days after the special event period, the lead law enforcement agency, MPD will provide the sending agency with a report outlining hours worked for all personnel for that agency.
a. Sending agency will review the personnel report for accuracy and outline which hours constituted straight time versus overtime and submit an invoice with support documentation to the lead law enforcement agency.
b. The lead law enforcement agency will review the invoice and support documentation, and work with the sending agency on addressing any discrepancies.
c. The lead law enforcement agency will issue reimbursement to the sending agency consistent with the guidelines established in this agreement within 45 days of receiving an invoice and the requested support documentation.

Invoices should be sent to:
MPD Chief Financial Officer
C/O Robin McPherson
350 South 5th Street, Room 130
Minneapolis, MN. 55415

EXHIBIT C
CLAIMS PROCEDURE FOR CLAIMS BROUGHT AS A RESULT OF LAW ENFORCEMENT AND SECURITY SERVICES

1. The Host Committee and Insurer will develop a “uniform claim form (the “Form”). The Form will be approved by the insurance broker retained by the Host Committee and by the Insurer.
2. The Host Committee will establish a committee to review each Form submitted by third parties alleging injuries or property damage due to law enforcement activities that occurred during the Event (each completed Form a “Claim”).
3. The committee established to conduct the preliminary review of the Claim Forms ("Claims Committee") will consist of at least the following members:
   (a) A Host Committee representative;
   (b) A Representative of the insurance broker retained by the Host Committee; and
   (c) The City of Minneapolis Risk Manager.
   The Claims Committee may also include other Provider representatives as determined by the three (3) required Claims Committee members.
4. After making a preliminary determination as to the validity of a Claim, the Claims Committee will forward each Form to the Insurer. The Insurer will determine whether Claims are covered by the Law Enforcement Liability Policy and determine when the Policy limits have been reached and exceeded.
5. Once the aggregate amount of Claims exceeds $3 million, then the Insurer will notify the Host Committee, the City and each Provider. Any further Claims brought against each Provider after the date of notification that the $3 million coverage limitation has been exhausted will be the sole responsibility of the Provider or Providers named in the Claim to defend and pay the amount of damages determined by a court of law.
Brief Description: Professional services agreement with Mohagen Hansen Architecture / Interiors

Recommended Action: Approve the contract, subject to final review and approval of terms by the city attorney

Background

In 2016, the city initiated a space planning and office refurbishment analysis for city hall. Under two prior contracts that were within the city manager’s authority, the city retained the firm of Mohagen Hansen Architects / Interiors to perform the planning and analysis. As a result of that preliminary work, staff has recommended a multi-phase improvement project for the city hall facility, to be started in 2017 and completed in 2019. The project is included in the adopted Capital Improvement Plan for 2018-2022 with funding from the Capital Improvement Fund and was discussed at the city council study session on April 17, 2017.

Attached for the council’s consideration and approval is a contract with Mohagen Hansen for services related to design development and construction. The scope of services to be provided includes the development of final designs, preparation of construction documents and construction administration, and oversight of the contracting process for furniture and equipment. Services are to be billed on an hourly basis, with estimated total fees of $280,680. Because fees are only estimated and not capped, staff has included a contingency in the budget, for a total contract allowance of $310,000. The staff will manage the contract within that budgeted amount.

The city council may terminate the contract upon seven days’ notice to the architect, for any reason.

The attached contract incorporates by reference two additional contracts (AIA Document E203 and AIA Document G202). The city attorney has confirmed that those documents are not applicable to this contract, and the final contract document will remove those references. The staff recommendation therefore includes a condition that the city attorney approve the final agreement terms. No other changes to the contract are expected.
**Recommendation**

Approve the contract, subject to final review and approval of terms by the city attorney.

Submitted through:
- Geralyn Barone, City Manager
- Brian Wagstrom, Public Works Director
- Merrill King, Finance Director

Originated by:
- Corrine Heine, City Attorney
AGREEMENT made as of the 22nd day of August in the year 2017
(In words, indicate day, month and year.)

BETWEEN the Architect’s client identified as the Owner:  
(Name, legal status, address and other information)
Mr. Brian J. Wagstrom  
Director  
Public Works Department  
City of Minnetonka  
11522 Minnetonka Boulevard  
Minnetonka, MN  55305

Mr. Kevin Maas  
Facility Manager  
Public Works Department  
City of Minnetonka  
11522 Minnetonka Blvd.  
Minnetonka, MN  55305

and the Architect:  
(Name, legal status, address and other information)
Mohagen Hansen Architecture | Interiors  
1000 Twelve Oaks Center Drive  
Suite 200  
Wayzata, MN  55391

for the following Project:  
(Name, location and detailed description)
City of Minnetonka  
City Hall Interior Remodel Project  
14600 Minnetonka Boulevard  
Minnetonka, MN  55345

The Owner and Architect agree as follows.
TABLE OF ARTICLES

1 INITIAL INFORMATION
2 ARCHITECT'S RESPONSIBILITIES
3 SCOPE OF ARCHITECT'S BASIC SERVICES
4 SUPPLEMENTAL AND ADDITIONAL SERVICES
5 OWNER'S RESPONSIBILITIES
6 COST OF THE WORK
7 COPYRIGHTS AND LICENSES
8 CLAIMS AND DISPUTES
9 TERMINATION OR SUSPENSION
10 MISCELLANEOUS PROVISIONS
11 COMPENSATION
12 SPECIAL TERMS AND CONDITIONS
13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION
§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution").

§ 1.1.1 The Owner's program for the Project:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

See Exhibit A

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

See Exhibit A

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1;
(Provide total and, if known, a line item breakdown.)

See Exhibit A

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:
See Exhibit A

.2 Construction commencement date:

See Exhibit A

.3 Substantial Completion date or dates:

See Exhibit A

.4 Other milestone dates:

N/A

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

See Exhibit A

§ 1.1.6 The Owner’s anticipated Sustainable Objective for the Project:
(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

N/A

(Paragraph Deleted)

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

See Exhibit A

§ 1.1.8 The persons or entities, in addition to the Owner’s representative, who are required to review the Architect’s submittals to the Owner are as follows:
(List name, address, and other contact information.)

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

See Exhibit A
2 Civil Engineer:

See Exhibit A

3 Other, if any:

(List any other consultants and contractors retained by the Owner.)

See Exhibit A

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3;
(List name, address, and other contact information.)

See Exhibit A

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2;
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

1 Structural Engineer:

2 Mechanical Engineer:

See Exhibit A

3 Electrical Engineer:

See Exhibit A

§ 1.1.11.2 Consultants retained under Supplemental Services:

See Exhibit A
§ 1.1.12 Other Initial Information on which the Agreement is based:

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect’s services, schedule for the Architect’s services, and the Architect’s compensation. The Owner shall adjust the Owner’s budget for the Cost of the Work and the Owner’s anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party’s sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT’S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.2.1 Any designs, drawings, or specifications prepared or furnished by Architect that contain errors, conflicts, or omissions will be promptly corrected by Architect at no additional cost to Owner. Owner’s approval, acceptance, use of or payment for all or any part of Architect’s services shall in no way alter Architect’s obligations or Owner rights under this section 2.2.

§ 2.2.2 Architect agrees that all Drawings and Specifications and other documents prepared by Architect for the Project which are utilized by Owner and/or Owner’s contractor or contractors, shall be reasonably accurate and complete as is customary for typical construction documents. Architect shall notify Owner in a prompt and timely manner of any discovered discrepancies, inconsistencies, or missing information necessary to provide reasonably accurate and complete documents.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner’s knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect’s professional judgment with respect to this Project.
§ 2.5 Architect shall maintain in effect during the term of his Agreement the insurance coverages described below, which insurance must be placed with insurance companies authorized to do business in the State of Minnesota and rated A minus VII or better by the current edition of Best’s Key Rating Guide or otherwise approved by Buyer.

1. **Professional Liability Errors and Omissions Insurance** including contractual liability coverage with limits of not less than $1,000,000 aggregate. Architect shall maintain this coverage in effect during the term of this Agreement and for two (2) years after the Date of Substantial Completion. Upon Owner’s request, Architect shall give prompt written notice to Owner of any and all claims made against this policy during the period in which this policy is required to be maintained pursuant to this Agreement.

2. **Worker’s Compensation Insurance** with statutory benefits and limits that fully comply with all state and federal requirements and contain Broad Form All States and Voluntary Compensation Endorsements and have limits not less than $500,000 per accident, $500,000 per disease and $500,000 policy limit on disease.

3. **Comprehensive Automobile Liability Insurance** with limits not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage.

4. **Commercial General Liability Insurance**. A broad form Commercial General Liability Insurance Policy including, without limitation, a waiver of subrogation endorsement in favor of the additional insureds, and appropriate endorsements adding the following coverages: Premises and Operations Liability; Explosion, Collapse and Underground Damage Liability; Personal Injury Liability (with employee and contractual exclusions deleted); Broad Form Property Damage Liability; Broad Form Contractual Liability supporting Architect’s indemnification agreements in favor of the additional insureds; Independent Contractor’s Protective Liability; Completed Operations and products Liability for a period of not less than two (2) years following the date of final payment for all services provided under this Agreement, if insurance is available and affordable. The Commercial General Liability Insurance Policy must be written with a combined single limit of liability of not less than $1,000,000 for each occurrence of bodily injury and or property damage and an annual aggregate of liability of not less than $2,000,000 for bodily injury and or property damages, and an annual aggregate of liability of not less than $1,000,000 for Completed Operations and Product Liability.
Please see Attachment E "Certificate of Insurance"

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect’s negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner’s insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT’S BASIC SERVICES

§ 3.1 The Architect’s Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect’s services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.
Architect shall be fully responsible for coordinating all Architect’s Basic and Additional Services required under this Agreement regardless of whether performed by its own employees or by consultants hired by Architect to perform a portion of its services ("Subconsultants"). The purpose of such coordination is to ensure that the services required are performed in a reasonably efficient, timely and economical manner. Architect shall be responsible to Owner for the services furnished to Architect by any Subconsultant to the same extent as if Architect had furnished the service itself. Architect also agrees to coordinate and resolve any inconsistencies in its work and the work of its consultants. All of Architect’s contracts with its Subconsultant shall be in writing, signed by both parties, and shall include the following provision: "The Owner is intended to be a third party beneficiary of this agreement." Architect must comply with the requirements of Minn. Stat. § 471.425, subd. 4.a regarding any contract with a Subconsultant, and the provisions of that statute are incorporated by reference.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner’s consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner’s consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner’s approval a schedule for the performance of the Architect’s services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner’s review, for the performance of the Owner’s consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner’s approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction. Noted in Exhibit A.

§ 3.1.4 The Architect shall not be responsible for an Owner’s directive or substitution, or for the Owner’s acceptance of non-conforming Work, made or given without the Architect’s written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner’s responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

(Paragraphs Deleted)

§ 3.3 Design Development Phase Services Reference Exhibit A

(Paragraphs Deleted)

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner’s approval of the Design Development Documents, and on the Owner’s authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner’s approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.
§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the
development and preparation of (1) procurement information that describes the time, place, and conditions of
bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3)
the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall
also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and
may include bidding requirements and sample forms.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments
to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner’s
approval.

§ 3.5 Procurement Phase Services
§ 3.5.1 General
The Architect shall assist the Owner in establishing a list of prospective contractors. The Owner to be responsible
for bid process. Architect is limited to tasks outlined in Exhibit A.

§ 3.5.2 Competitive Bidding
§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:
.1 facilitating the distribution of Bidding Documents to prospective bidders;
.2 organizing and conducting a pre-bid conference for prospective bidders;
.3 preparing responses to questions from prospective bidders and providing clarifications and
interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
.4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the
bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner’s written authorization, the Architect shall,
as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved
substitutions to all prospective bidders.

§ 3.5.2.4 In the event the lowest bid (or bids) exceeds the budget for the Project, the Architect, in consultation with
and at the direction of the Owner, shall provide such modifications in the Contract Documents as necessary to bring
the cost of the Project within the budget, unless Owner directs the Architect to bid a project estimated over budget.
§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates at the end of the one-year contractor’s warranty period.

§ 3.6.2 Evaluations of the Work
§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect’s response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not liable for results of interpretations or decisions rendered in good faith. The Architect’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor
§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect’s certification for payment shall constitute a representation to the Owner, based on the Architect’s evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor’s Application for Payment, that, to the best of the Architect’s knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.
§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor’s right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals
§ 3.6.4.1 The Architect shall review the Contractor’s submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect’s action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect’s professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor’s submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor’s responsibility. The Architect’s review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect’s approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor’s design professional, provided the submittals bear such professional’s seal and signature when submitted to the Architect. The Architect’s review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect’s response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work
§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner’s approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion
§ 3.6.6.1 The Architect shall:
.1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
.2 issue Certificates of Substantial Completion;
.3 forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
.4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect’s knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES
§ 4.1 Supplemental Services
§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect’s Supplemental Services and the Owner’s Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

<table>
<thead>
<tr>
<th>Supplemental Services</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 4.1.1.1 Programming</td>
<td>Completed</td>
</tr>
<tr>
<td>§ 4.1.1.2 Multiple preliminary designs</td>
<td>Architect</td>
</tr>
<tr>
<td>§ 4.1.1.3 Measured drawings</td>
<td>Architect</td>
</tr>
<tr>
<td>§ 4.1.1.4 Existing facilities surveys</td>
<td>Owner</td>
</tr>
<tr>
<td>§ 4.1.1.5 Site evaluation and planning</td>
<td>N/A</td>
</tr>
<tr>
<td>§ 4.1.1.6 Building Information Model management</td>
<td>N/A</td>
</tr>
<tr>
<td>responsibilities</td>
<td></td>
</tr>
<tr>
<td>§ 4.1.1.7 Development of Building Information Models for</td>
<td>Owner</td>
</tr>
<tr>
<td>post construction use</td>
<td></td>
</tr>
<tr>
<td>§ 4.1.1.8 Civil engineering</td>
<td>N/A</td>
</tr>
<tr>
<td>§ 4.1.1.9 Landscape design</td>
<td>N/A</td>
</tr>
<tr>
<td>§ 4.1.1.10 Architectural interior design</td>
<td>Architect</td>
</tr>
<tr>
<td>§ 4.1.1.11 Value analysis</td>
<td>Architect</td>
</tr>
<tr>
<td>§ 4.1.1.12 Detailed cost estimating beyond that required</td>
<td>Owner</td>
</tr>
<tr>
<td>in Section 6.3</td>
<td></td>
</tr>
<tr>
<td>§ 4.1.1.13</td>
<td>On-site project representation</td>
</tr>
<tr>
<td>§ 4.1.1.14</td>
<td>Conformed documents for construction</td>
</tr>
<tr>
<td>§ 4.1.1.15</td>
<td>As-designed record drawings</td>
</tr>
<tr>
<td>§ 4.1.1.16</td>
<td>As-constructed record drawings</td>
</tr>
<tr>
<td>§ 4.1.1.17</td>
<td>Post-occupancy evaluation</td>
</tr>
<tr>
<td>§ 4.1.1.18</td>
<td>Facility support services</td>
</tr>
<tr>
<td>§ 4.1.1.19</td>
<td>Tenant-related services</td>
</tr>
<tr>
<td>§ 4.1.1.20</td>
<td>Architect’s coordination of the Owner’s consultants</td>
</tr>
<tr>
<td>§ 4.1.1.21</td>
<td>Telecommunications/data design</td>
</tr>
<tr>
<td>§ 4.1.1.22</td>
<td>Security evaluation and planning</td>
</tr>
<tr>
<td>§ 4.1.1.23</td>
<td>Commissioning</td>
</tr>
<tr>
<td>§ 4.1.1.24</td>
<td>Sustainable Project Services pursuant to Section 4.1.3</td>
</tr>
<tr>
<td>§ 4.1.1.25</td>
<td>Fast-track design services</td>
</tr>
<tr>
<td>§ 4.1.1.26</td>
<td>Multiple bid packages</td>
</tr>
<tr>
<td>§ 4.1.1.27</td>
<td>Historic preservation</td>
</tr>
<tr>
<td>§ 4.1.1.28</td>
<td>Furniture, furnishings, and equipment design</td>
</tr>
<tr>
<td>§ 4.1.1.29</td>
<td>Other services provided by specialty Consultants</td>
</tr>
<tr>
<td>§ 4.1.1.30</td>
<td>Other Supplemental Services</td>
</tr>
</tbody>
</table>

§ 4.1.2 Description of Supplemental Services
§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect’s responsibility is provided below.
(Describe in detail the Architect’s Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect’s Services documents that can be included as an exhibit to describe the Architect’s Supplemental Services.)

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner’s responsibility is provided below.
(Describe in detail the Owner’s Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

§ 4.1.3 If the owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect’s Additional Services
The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner’s written authorization:
.1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

.2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;

.3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;

.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

.5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;

.6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;

.7 Preparation for, and attendance at, a public presentation, meeting or hearing;

.8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

.9 Evaluation of the qualifications of entities providing bids or proposals;

.10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,

.11 Assistance to the Initial Decision Maker, if other than the Architect.

.12 Additional Services shall specifically include Services and Reimbursable regarding Architect responses or actions related to requests under the Minnesota Government Data Practices Act ("MGDPA"). Additional Services related to the MGDPA may be provided by the Architect without the Owner's consent or permission. Owner's obligation to pay Architect for Additional Services regarding the MGDPA shall survive the termination or completion of Services under this Agreement. Architect must notify Owner promptly of any MGDPA request made to Architect and must cooperate with Owner in responding to the request.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

.1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;

.2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;

.4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,

.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

The following paragraph is an addition to 4.2.2

(Paragraph Deleted)

(Paragraph Deleted)
§ 4.2.2 Government Data. Architect acknowledges that, to the extent this Agreement requires Architect to perform a government function, all of the data created, collected, received, stored, used, maintained or disseminated by Architect in performing government functions is subject to the requirements of the Minnesota Government Data Practices Act (Minn. Stat. ch. 13, the “MGDPA”), and that Architect must comply with the MGDPA as if Architect were a government entity, including the remedies in Minn. Stat. §13.08.

§ 4.2.5 If the services covered by this Agreement have not been completed within (18) months of the date of this Agreement, through no fault of the Architect, extension of the Architect’s services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER’S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner’s objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner’s budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner’s other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner’s budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner’s budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project’s scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner’s behalf with respect to the Project. The Owner shall render decisions and approve the Architect’s submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect’s services. The Owner’s representative does not have authority to approve an amendment to this agreement.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner’s responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect’s request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner’s consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.
§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

(Paragraph Deleted)

§ 5.16 Notwithstanding anything to the contrary contained in this Agreement, owner's review and approval of any and all documents or other matters required herein shall be for the purpose of providing Architect with information as to owner's objectives and goals with respect to the Project and not for the purpose of determining the accuracy and completeness of such documents, and in no way should any review and approval alter Architect's responsibilities hereunder and with respect to such documents.

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work, the value of any work performed by the Owner, or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area,
volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect’s responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner’s budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect’s estimate of the Cost of the Work exceeds the Owner’s budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project’s size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner’s budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

1. give written approval of an increase in the budget for the Cost of the Work;
2. authorize rebidding or renegotiating of the Project within a reasonable time;
3. terminate in accordance with Section 9.5;
4. in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or;
5. implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner’s budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner’s budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect’s services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect’s modification of the Construction Documents shall be the limit of the Architect’s responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES
§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

(Paragraph Deleted)

§ 7.2 The Instruments of Service are the property of both the Owner (upon full payment to the Architect) and the Architect and Architect’s Consultants and may be used by both the Owner and the Architect as they deem necessary, in their reasonable discretion. Either the Owner or the Architect may retain copies, reproduce copies, and disseminate copies of the Instruments of Service as are reasonably necessary for the construction, repair, maintenance or alteration of the Project.

(Paragraph Deleted)

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect’s consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner’s use of

Init. [Signature]

User Notes:

AIA Document B101™ – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 12:55:26 on 09/22/2017 under Order No. 1088550511 which expires on 09/22/2018, and is not for resale.
the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. Any unauthorized use of the Instruments of Service shall be at the Owner’s sole risk and without liability to the Architect and the Architect’s consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES
§ 8.1 General

(Paragraph Deleted)

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of this Agreement within the period specified by applicable law.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party’s termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

(Paragraphs Deleted)

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 8.2.2 Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, to be conducted by an individual who is listed on the Minnesota judicial branch’s Statewide ADR Rule 114 Neutral’s Roster, is experienced in construction disputes and is mutually agreeable to both parties. A request for mediation must be made in writing and delivered to the other party to the Agreement. If the parties are unable to agree upon a mediator within 30 days, either party may pursue resolution in accordance with § 8.2.4 of this Article.

§ 8.2.3 The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

[ ] Arbitration pursuant to Section 8.3 of this Agreement

Init.
Init.
[ X ] Litigation in a court of competent jurisdiction

[ ] Other: (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration
§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder
§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

(Paragraphs Deleted)

ARTICLE 9 TERMINATION OR SUSPENSION
§ 9.1 Except for disputed sums, if the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination.
§ 9.2 Upon written notice to Architect, Owner may order that Architect suspend all or any part of the services provided under this Agreement. Owner shall pay Architect all monies otherwise due hereunder to the date of the suspension. Owner shall not have any obligation to pay or reimburse Architect for lost profits and/or unabsorbed overhead or any other consequential or incidental damages, if the Project is suspended in whole or in part for more than three (3) months, and then resumed. Architect shall be compensated for reasonable costs of re-familiarizing itself with the Project.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 This Agreement may be terminated by the Owner upon seven (7) days written notice to Architect in its sole discretion. The Architect may terminate this Agreement only in the event of substantial non-performance by the Owner. In the event the Architect proposes to terminate this Agreement, the Architect shall notify the Owner in writing stating with specificity the alleged non-performance and further stating that the proposed termination shall be effective if the non-performance remains uncorrected for a period not less than 15 days following said notice.

§ 9.5 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

§ 9.6 The Owner’s rights to use the Architect’s Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

§ 9.7 In the event of suspension or termination for convenience, upon request of Owner and payment of all fees pursuant to this Article 9, Architect shall promptly provide Owner with reproducible drawings and digital copies of all documents completed or in progress on the date of suspension or termination. Architect shall not be reimbursed for reproduction costs associated with Architect maintaining or storing Drawings. Specifications and digital data for its own use. Architect and Architect's Consultants shall not be responsible to Owners for issues, claims or causes of action arising from alterations or modifications made to drawings and documents provided by other Architects.

ARTICLE 10 MISCELLANEOUS PROVISIONS
§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction’s choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.
§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect’s promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect’s materials shall not include the Owner’s confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner’s promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

(Paragraphs Deleted)

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, or (4) as required by court order.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties’ intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect’s Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

1. Stipulated Sum

(Insert amount) See Exhibit A

(Paragraph Deleted)

(Paragraphs Deleted)

§ 11.2 For the Architect’s Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

See Exhibit A
§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Hourly per a written agreement between Architect & Owner

§ 11.4 Compensation for Supplemental and Additional Services of the Architect’s consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent (%), or as follows:

(Insert amount of, or basis for computing, Architect’s consultants’ compensation for Supplemental or Additional Services.)

Same as 11.3

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

See Exhibit A

<table>
<thead>
<tr>
<th>Schematic Design Phase</th>
<th>percent (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Development Phase</td>
<td>percent (%)</td>
</tr>
<tr>
<td>Construction Documents Phase</td>
<td>percent (%)</td>
</tr>
<tr>
<td>Procurement Phase</td>
<td>percent (%)</td>
</tr>
<tr>
<td>Construction Phase</td>
<td>percent (%)</td>
</tr>
<tr>
<td>Total Basic Compensation</td>
<td>one hundred percent (100 %)</td>
</tr>
</tbody>
</table>

(Paragraphs Deleted)

§ 11.7 The hourly billing rates for services of the Architect and the Architect’s consultants are set forth below. The rates shall be adjusted in accordance with the Architect’s and Architect’s consultants’ normal review practices.

See Exhibit A

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category

Rate ($0.00)

§ 11.8 Compensation for Reimbursable Expenses

(Paragraphs Deleted)

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect’s consultants plus percent (%) of the expenses incurred.

See Exhibit A

(Paragraphs Deleted)
11.10
PAYMENTS TO THE ARCHITECT
11.10.1
An initial payment of zero ($0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

11.10.2 Unlike otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below. The provisions of Minn. Stat. 471.425 (the "Prompt Pay Act") apply to this Agreement. Architect must itemize its invoices with sufficient detail for Owner to confirm the basis for and calculation of the amount invoiced. For work reimbursed on an hourly basis, Architect must indicate for each employee, his or her name, job title, the number of hours worked, rate of pay, a computation of amounts due for each employee, and the total amount due. Architect must verify all statements submitted for payment in compliance with Minnesota Statutes Section 471.38 and 471.391.

Local rate of interest as set by Minnesota Statute Section 549.09.

11.10.2 Progress Payments
§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)
See Exhibit A

%  

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 The Architect must allow the Owner or its duly authorized agents reasonable access to the Architect's books and records that are pertinent to all services provided under this Agreement, including books and records of any approved Subconsultants, for six years after the effective date of this Agreement. Any reports, information, data, etc. given to, or prepared or assembled by, the Architect and its subcontractors under this Agreement which the City requests to be kept confidential must not be made available to any individual or organization without the City's prior written approval. The Consultant and its

Init.

AIA Document B101™ – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 12:55:26 on 08/22/2017 under Order No. 1088850511 which expires on 08/22/2018, and is not for resale.

User Notes:
subcontractors must abide by the Minnesota Government Data Practices Act to the extent that the Act is applicable to data and documents relevant to the Work.

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

12.1 Architect agrees to indemnify and hold harmless the Owner, its officers, and employees, from liability, claims, damages, costs, judgments, or expenses, including reasonable attorney's fees, resulting directly or indirectly from a negligent act or omission (including without limitation professional errors or omissions) of the Architect, its agents, employees or Subconsultants in the performance of the Work and against losses by reason of the failure of the Architect fully to perform, in any respect, all obligations under this Agreement. Architect is not required to indemnify Owner with respect to damages that are determined to be attributable to the negligence or misconduct of the Owner, its officers or employees.

None at this time

**ARTICLE 13 SCOPE OF THE AGREEMENT**

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

.1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect

(Paragraph Deleted)

See Exhibit A

(Paragraph Deleted)

.3 Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

[ ] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below: (Insert the date of the E204-2017 incorporated into this agreement.)

[ ] Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

.4 Other documents:

(List other documents, if any, forming part of the Agreement.)

See Exhibit A

This Agreement entered into as of the day and year first written above.
City Council Agenda Item #11A
Meeting of August 28, 2017

Brief Description  Resolution approving final site and building plans, with expansion permit, and conditional use permit, with variance, for Midwest MasterCraft at 17717 State Highway 7

Recommendation  Adopt the resolution approving the proposal

Background

Andy Larson, on behalf of Midwest MasterCraft, has submitted plans to redevelop the property at 17717 State Highway 7. As proposed, an existing office building would be removed and new boat showroom/retail building would be constructed. One boat would be displayed outside, north of the new building.

Planning Commission Hearing

The planning commission considered the proposal on August 10, 2017. The commission report and plans are attached. Staff recommended approval of the proposal, noting:

1. The proposed showroom/retail building is appropriate for the site. The subject property is zoned B-2, limited business district. Within this zoning district, indoor showroom and “general retail uses occurring within an enclosed building” are permitted.

2. The outdoor display of one boat is reasonable for two reasons.
   
   • A discrepancy in city code would allow the outdoor storage/display multiple boats, without time limit, by conditional use permit were this use accessory to a different type of retail. Examples of such conditional uses would be auto body shops that sell repaired vehicles or gas stations that rent moving vans.
   
   • The subject property is located near Frattalone’s Ace Hardware. Outdoor storage has been allowed on this site since the mid-1980s.

At its meeting, the planning commission opened a public hearing to take public comment; no comments were received.
Planning Commission Recommendation

On a 7-0 vote, the commission recommended the city council approve the applicant’s request. Meeting minutes are attached. There have been no changes to the proposal since the hearing.

Staff Recommendation

Staff recommends the city council adopt the resolution approving final site and buildings, with expansion permit, and conditional use permit, with variance, for Midwest MasterCraft at 17717 State Highway 7.

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

Originator: Susan Thomas, AICP, Assistant City Planner
**Brief Description**  
Items concerning Midwest MasterCraft at 17717 State Highway 7:

1) Final site and building plans, with expansion permit for non-conforming side yard setback; and

2) Conditional use permit, with variance for time and location of outdoor display.

**Recommendation**  
Recommend the city council approve the proposal.

**Introduction**

Andy Larson, on behalf of Midwest MasterCraft, has submitted plans to redevelop the property at 17717 State Highway 7. As proposed, the existing office building would be removed and new showroom/retail building would be constructed.

**Proposal Summary**

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

- **Existing Site Conditions.** The roughly 1-acre subject property is located between Delton Avenue and Hutchins Drive, near the Highway7/County Road 101 intersection. City records indicate that the site’s existing 6,600 square foot building was constructed in 1968. The building is situated on the north side of the property. It has a non-conforming side yard setback of just under 7 feet. Surface parking lots spaces are located both north and south of the building. Over the last 50 years, the building and site have been occupied by a variety of different uses, including a real estate office, law office, and counseling center.

- **Proposed Building.** As proposed, the existing building would be removed and a new one-story, 11,200 square foot building would be constructed. The building would generally have a north south orientation. Building materials would include metal panels of two different finishes and three different colors, as well as large windows and glass overhead doors on the north and west façades respectively. The majority of the interior space would be occupied by boat showroom and retail area. A small office and storage area would occupy the remaining space.
• **Proposed Site Design.** The proposed building would slightly improve the non-conforming side yard setback of the existing building. The building would meet all other standards as outlined by city code. Proposed surface parking would generally reflect existing conditions, with the exception that one of two existing driveways onto Delton Avenue would be eliminated.

• **Proposed Outdoor Display.** The applicant is proposing the exterior display of one boat within the north parking lot.

**Primary Questions and Analysis**

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

• **Is the proposed indoor showroom/retail use appropriate?**

  Yes. The subject property is zoned B-2, limited business district. Within this zoning district, indoor showroom and “general retail uses occurring within an enclosed building” are permitted.

• **Is the proposed exterior display of one boat reasonable?**

  Yes. Staff finds that the exterior display of one boat is reasonable for two reasons:

  1. **Ordinance Discrepancy**

     By ordinance, “general retail uses occurring within an enclosed building” are permitted uses. Outside storage/display is a conditionally permitted use and, as a conditional use permit standard, such storage/display is allowed for just 20 days per calendar year. Therefore, by ordinance:

     • The proposed showroom/retail building is permitted;
     
     • The proposed outdoor display of one boat requires a conditional use permit; and
     
     • The outdoor display could occur only for significantly short period of time.

     However, in reviewing the applicant’s proposal, staff found an odd ordinance discrepancy. Under the same B-2 ordinance, automobile, truck, trailer or boat sales/rentals that are accessory to another use are allowed by conditional use permit. Examples of such conditional uses would be auto body shops that sell repaired vehicles or gas stations that rent moving vans. In these examples, the sale/rental of vehicles is accessory, or secondary, to the primary use at the site.
Interestingly, such conditionally permitted sales/rentals are not prohibited from storing or displaying vehicles outside. Rather, the display area must simply meet certain setback standards.

Essentially, when it comes to outdoor storage/display, the ordinance gives more “allowances” to a retailer that provides a variety of sales and services than to a retailer that specializes in a certain type of sale. Staff finds this odd. In staff’s opinion, the tasteful display of one boat would be less visually impactful than the storage of a fleet of moving vans.

2. Neighboring Uses

The subject property is located near Frattalone’s Ace Hardware. Outdoor storage has been allowed on this site since the mid-1980s.

- Is the proposed building and site design reasonable?

Yes. The proposed building has been attractively designed. It would improve the non-conforming side yard setback of the existing building and would meet all other standards as outlined by city code. The site design is intuitive and would maintain appropriate access to surrounding properties, as well as reasonable amounts of parking. (For more discussion on parking, see the “Supporting Information” section of this report.

<table>
<thead>
<tr>
<th></th>
<th>Required</th>
<th>Existing</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Height</td>
<td>35 ft max.</td>
<td>Unknown</td>
<td>30 ft</td>
</tr>
<tr>
<td>Building</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Front Yard</td>
<td>35 ft</td>
<td>90 ft (N)</td>
<td>90 ft (N)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>285 ft (S)</td>
<td>130 ft (S)</td>
</tr>
<tr>
<td>Side Yard</td>
<td>35 ft</td>
<td>6.9 ft (E)*</td>
<td>10 ft (E)**</td>
</tr>
<tr>
<td></td>
<td></td>
<td>35 ft (W)</td>
<td>35 ft (W)</td>
</tr>
<tr>
<td>Parking</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Front Yard</td>
<td>20 ft</td>
<td>10 ft (N)*</td>
<td>10 ft (N)**</td>
</tr>
<tr>
<td></td>
<td></td>
<td>15 ft (S)*</td>
<td>30 ft (S)</td>
</tr>
<tr>
<td>Side Yard</td>
<td>10 ft</td>
<td>6.5 ft (E)*</td>
<td>6.5 ft (E)**</td>
</tr>
<tr>
<td></td>
<td></td>
<td>0 ft (W)*</td>
<td>0 ft (W)**</td>
</tr>
<tr>
<td>FAR</td>
<td>0.8</td>
<td>0.14</td>
<td>.24</td>
</tr>
<tr>
<td>Impervious Surface</td>
<td>85%</td>
<td>Roughly 74%</td>
<td>77%</td>
</tr>
<tr>
<td>Parking</td>
<td>12 stalls (proposed use)</td>
<td>74 stalls</td>
<td>38 stalls</td>
</tr>
</tbody>
</table>

* existing non-conformity
** existing non-conformity maintained or improved

Staff Recommendation

Recommend the city council adopt the resolution approving final site and buildings, with expansion permit, and conditional use permit, with variance, for Midwest MasterCraft at 17717 State Highway 7.
Originator: Susan Thomas, AICP, Assistant City Planner
Through: Loren Gordon, AICP, City Planner
Supporting Information

<table>
<thead>
<tr>
<th>Surrounding Land Uses</th>
<th>Northerly: Highway 7</th>
</tr>
</thead>
<tbody>
<tr>
<td>Easterly:</td>
<td>commercial parking lot and office building</td>
</tr>
<tr>
<td>Southerly:</td>
<td>Delton Avenue</td>
</tr>
<tr>
<td>Westerly:</td>
<td>restaurant and office buildings</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Planning</th>
<th>Guide Plan designation: mixed-use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing Zoning:</td>
<td>B-2 limited business district</td>
</tr>
</tbody>
</table>

**Midwest MasterCraft**
The proposed Minnetonka location would be the third Midwest MasterCraft location in the area; other locations are in Victoria and Crystal. Reflecting hours at the existing stores, the Minnetonka location would generally be open:

- Monday – Friday: 10 a.m. to 6:00 p.m.
- Saturday: 10 a.m. to 4:00 p.m.
- Sunday: Closed

The Minnetonka location would offer sales and “pro shop” accessories. No boat servicing would occur onsite. Rather, all service activities would take place at the Crystal location.

**Access and Parking**
The subject property is encumbered by an access easement benefitting the adjacent properties to the west. In addition, the neighboring restaurant property has a lease agreement for 17 parking stalls on the subject property.

The restaurant building, now occupied as Ike’s Food and Cocktails, has been used for restaurant purposes for decades. Though the site does not contain enough parking per current city code requirements, restaurant have continued to use the building and site under the non-conformity provisions of state law and city code. In 2012, Ike’s requested approval for construction of an outdoor seating area. As a condition of that approval, a parking agreement was required for off-site parking spaces. The city required an *agreement* rather than *easement* for two reasons: (1) it did not seem reasonable to now burden a surrounding property with a perpetual encumbrance for what had been a longstanding restaurant use of the site; and (2) on-street parking is available on Delton Avenue.

The applicant is aware of the existing parking agreement and his rights under that agreement. Though the proposed Midwest MasterCraft is required just 12 parking stalls by ordinance, 38 stalls are proposed. The applicant and Ike’s ownership will be
meeting to discuss any changes that may be wanted/needed to the parking lease agreement. This agreement is a private issue and has no bearing on the current request.

**Stormwater**

The subject property was developed prior to current stormwater management requirements. This existing condition would, therefore, be improved under the redevelopment. As proposed, surface runoff and roof runoff would be surface directed to catch basins. From these catch basins, runoff would be directed via pipe to under an underground treatment facility and, ultimately, directed to the city’s storm sewer system. As a condition of approval, final stormwater plans must be approved by both city engineering and Riley-Purgatory-Bluff-Creek Watershed District staff.

**SBP Standards**

By City Code §300.27 Subd.5, in evaluating a site and building plan, the planning commission and city council must consider its compliance with certain standards. The proposal would meet these standards.

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

   **Finding:** The proposal has been reviewed by planning, building, engineer, natural resources, fire, and public works staff. Staff finds it to be generally consistent with the city’s development guides.

2. Consistency with this ordinance;

   **Finding:** The proposed 10-foot building setback would improve the existing, non-conforming 6.9-foot side yard setback. However, it would not meet the required 30-foot setback. An expansion permit is required. As is outlined in the Expansion Permit section of this report, the proposal would meet the expansion permit standard.

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:** The subject property is a developed site. As such, the proposal would not impact natural topography or native-vegetation.
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;

**Finding:** The proposal would result in an intuitive and attractive redevelopment of the existing site.

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.

**Finding:** The proposal would result in an intuitive and attractive redevelopment of an existing site.

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

**Finding:** As new construction, the proposed building would meet minimum energy standards.

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 visually alter the property and surrounding area. However, staff does not anticipate that this change would be negative.

Expansion Permit
By City Code 300.29 Subd.7(c), an expansion permit may be granted, but is not mandated, when the 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-street 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 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.

Reasonableness and Unique Circumstance. The proposed expansion permit to improve the existing side yard setback from 6.9 feet to 10 feet is reasonable, based on the site's unique circumstance. The subject property is 100 feet wide. Given that the current ordinance requires a side yard setback of 35-feet, the buildable area of the property is just 30 feet in width. It is unlikely that any commercial redevelopment of the site could occur without an expansion permit or variance. This is unique circumstance not common to all other commercially-zoned properties in the community.

Neighborhood Character. The removal of a nearly 50-year-old building and redevelopment of the subject property would visually alter that surrounding area. However, the expansion permit, in and of itself, would not.

CUP Standards
City Code §300.21 Subd.2, outlines general standards for conditional uses.

1. The use is consistent with the intent of this 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 section 300.28 of this ordinance; and

6. The use does not have an undue adverse impact on the public health, safety or welfare.

City Code §300.21 Subd.4(a), outlines specific standards for outdoor storage on commercially-zoned property.

1. Shall be allowed for periods not exceeding 20 days per year and shall include only items sold on the premises;

   **Finding:** As proposed, one boat would be stored outside on the site for the majority of the year. As such, a variance is required. See the Variance Standard section of this report.

2. Screening shall be provided from residential and office business property;

   **Finding:** A restaurant use is located directly west of the property and a parking lot to the east. This standard is met.

3. No public address system shall be audible from any residential property;

   **Finding:** No PA system is proposed.

4. Site shall be kept in a neat and orderly fashion;

   **Finding:** One boat would be located in the parking lot north of the building. This standard is met.

5. No uses shall be permitted in required parking or building setback areas; and
Finding: One boat would be located in the parking lot north of the building. It would not meet required building setback and would, therefore, require a variance. See the Variance Standard section of this report.

6. Shall not be permitted within 100 feet of any residential parcel.

Finding: The display boat would be situated roughly 300 feet from the closest residential property, which is located across State Highway 7. This standard is met.

Variance Standard

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.

Intent of Ordinance. The intent of the ordinance as it pertains to time and locational limits on outdoor storage/display is to limit the negative visual impact such storage may have on the surrounding area. The outdoor display of one, new boat would not result in a visual blight, particular as other portions of city code – City Code 300.21 Subd. 4(g) – would allow for continuous display of such boat were it related and accessory to another type of retail establishment.

Comprehensive Plan. The subject property is guided for mixed use. The proposed outdoor display of one boat would not be inconsistent with the designation.

Reasonableness and Unique Circumstance. The display of one boat is reasonable given the unique circumstance caused by an oddity of city code. By city code 300.2 Subd.4(g) the continuous outdoor display of one boat would be allowed if that display was related and accessory to another type of retail establishment. For instance, a store selling boat parts and lifejacket could display a boat outside without time and location limitations. However, since the proposed primary use on the site is boat retailer, code limits outdoor display.
Neighborhood Character. The display of one boat would not negatively impact the essential character of the locality. The subject property is located near a garden/hardware store. Outdoor storage has been allowed on that site since the mid-1980s.

Pyramid of Discretion

Motion Options

The planning commission has three options:

1. Concur with the staff recommendation. In this case a motion should be made recommending the city council adopt the resolution approving the proposal.

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

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.

Neighborhood Comments

The city sent notice to 61 area property owners. No comments have been received.

Deadline for Action

October 23, 2017
Location Map

Project: Midwest Mastercraft
Address: 17717 Hwy 7
Project No. 91011.17a

This map is for illustrative purposes only.
Landscape Symbols Legend:

- Existing Tree To Remain
- Proposed Deciduous Ornamental Tree
- Proposed Large Deciduous Shrub
- Proposed Medium Deciduous Shrub
- New Turf Area
- Rock Mulch Areas
- Wood Mulch Areas
- Tree Protection Fence Boundary

Planting Palette:

<table>
<thead>
<tr>
<th>Number</th>
<th>Symbol</th>
<th>Quantity</th>
<th>Scientific Name</th>
<th>Common Name</th>
<th>Size</th>
<th>Root</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td></td>
<td></td>
<td>Acer x freemanii 'Siberica'</td>
<td>Siberian Elm</td>
<td>2&quot; / 3&quot;</td>
<td>B-91A</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td>Amelanchier canadensis 'Miss. Willmore'</td>
<td>Miss Willmore Serviceberry</td>
<td>2&quot; / 3&quot;</td>
<td>B-91A</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Amelanchier canadensis 'Shadblush'</td>
<td>Shadbush Serviceberry</td>
<td>2&quot; / 3&quot;</td>
<td>B-91A</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Cornus kousa 'Spaethii'</td>
<td>Japanese Knotweed</td>
<td>1&quot; / 2&quot;</td>
<td>B-91A</td>
<td></td>
</tr>
</tbody>
</table>

Shrubs:

<table>
<thead>
<tr>
<th>Symbol</th>
<th>Quantity</th>
<th>Scientific Name</th>
<th>Common Name</th>
<th>Size</th>
<th>Root</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td></td>
<td>Quercus rubra 'Nashville'</td>
<td>Red Oak</td>
<td>2&quot; / 3&quot;</td>
<td>B-91A</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td>Prunus virginiana 'Pink Noise'</td>
<td>Pink Noise Dogwood</td>
<td>2&quot; / 3&quot;</td>
<td>B-91A</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
<td>Viburnum prunifolium 'Compact'</td>
<td>Compact Arrowwood</td>
<td>2&quot; / 3&quot;</td>
<td>B-91A</td>
<td></td>
</tr>
</tbody>
</table>

Landscape Value Basis:

Required Landscape Value: 2% of the Project Cost (5% x $900,000)
Projected Project Cost: $900,000
Projected Landscape Cost: $18,000 (excluding materials)
Required Landscape Cost: $18,000

General Notes:
1. Refer to Sheet LT 2 for Plant Details, Notes, Sewing Info, and Other Landscape Requirements.
2. See Civil Engineer's plans for site plan layout and dimensions.
3. Contractor to coordinate any work in the party-line survey with City of Minnetonka Public Works Department.
4. See Architect's plans for additional requirements regarding site plan layout.
5. Landscape contractor is responsible for watering all trees, shrubs, & grasses outside the irrigation limits for 30 days after installation or until plant establishment.
GENERAL PROJECT NOTES

1. FLOOR SLAB TO BE CONSTRUCTED OF 6" SAND BASE, 15 MIL REINFORCED POLY VAPOR BARRIER, 6" REINFORCED CONCRETE SLAB.
2. TUBE STEEL COLUMNS TO BE DESIGNED AND SIZED BY STRUCTURAL ENGINEER.
3. HIGH BAY LED LIGHTING THROUGHOUT.

DATE: JULY 06, 2017
DRAWN BY: TODD MOHAGEN, AIA, NCARB
CHECKED BY: J.SIMONES
PROJECT NUMBER: 17248.0DVD

MIDWEST MASTERCRAFT
17717 STATE HIGHWAY 7
MINNETONKA, MN 55345

OFFICE SHOWROOM
STORAGE (ELEVATED SLAB; SEE CIVIL)

NOT FOR CONSTRUCTION

THE ARCHITECT SHALL BE DEEMED THE AUTHORS AND OWNERS OF THEIR RESPECTIVE INSTRUMENTS OF SERVICE AND SHALL RETAIN ALL COMMON LAW, STATUTORY AND OTHER RESERVED RIGHTS, INCLUDING COPYRIGHTS OF THE ATTACHED DOCUMENTS.

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT I AM A DULY LICENSED ARCHITECT UNDER THE LAWS OF THE STATE OF MINNESOTA.

REGISTRATION NUMBER: 00-000000

COMPUTER DIRECTORY:
C:\Revit Projects\17248 Minnetonka MasterCraft_jsimones@mohagenhansen.com.rvt

SHEET DESCRIPTION

NOT FOR CONSTRUCTION

NO. DESCRIPTION DATE

CITY SUBMITTAL 7/6/2017
Master Plan Studies

The purpose of the master plan studies for the 7/101 Village Center are to graphically illustrate what could happen with a revitalized district. This approach does not outline a prescriptive plan, but rather a collection of ideas which articulate the key principles of land use, transportation & connectivity and public realm enhancements envisioned for the district.

Southwest Quadrant - Study #1

The southwest quadrant holds the most potential to become a truly mix-use district. The Master Plan Vision Book explores to varying degrees of development magnitude for this area, one a more horizontally mixed development better focused on improved access, circulation and connectivity and a second more intensive pattern of development that may become vertically mixed with a focused area of housing complementing the retail and commercial uses.

The first study is just that, looking at a true urban village comprised of vertical mixed use structures at the intersection of Hutchins and Thimsen. This intersection becomes the 100% intersection and identity, or brand for the neighborhood. Buildings are placed near the street, on-street parking feeds the ground-level retail uses and structured or underground parking is envisioned to serve the residential population and office/commercial uses above. Nestled between the LSS office building and the revitalized Park Nicollet Clinic building, an urban residential village is envisioned. At the high-end, 296 new residential units would be added to the district - a number reflected in the City’s Comprehensive Plan as the planned growth for this village center. The housing in the neighborhood could be a collection of apartments, condominiums, rowhouses, senior co-op buildings, walk-up townhomes, targeting both the empty nester and young professional markets the market overview indicated were lacking in the community. Key to attracting these buyers and renters are a high level of amenities. Creating a walk-able urban district with convenient shopping and restaurants and convenient connections to significant park and open space areas are integral in attracting the right demographics to the area, the community desires.

Moving north toward Highway 7 and C.S.A.H. 101 a more traditional retail environment is envisioned, but becomes an extension of the urban fabric of streets to the south. Again, Thimsen Ave acts as a primary spine of activity with walk-able streets and angled, on-street parking to serve the retail establishments. The smaller footprints allow for visibility into storefronts from Highway 7 and enhancement of the district stormwater pond at the terminus of Thimsen becomes a beacon from the highway to entice patrons into the development. Continuing down Thimsen, the grade separated tunnel directly connects with the retail uses in the northwest quadrant near the Super Target.
Master Plan Studies

Southwest Quadrant - Study #2

Smaller in scale, but in keeping with the similar fabric of access points, streets, infrastructure the second study investigates a smaller scale approach to retail development along C.S.A.H. 101 and creates three prominent office / medical / bank sites along Highway 7. This study effectively creates five legitimate development sites out of what today is a unorganized collection of struggling small office and retail sites and hidden services uses.

Hutchins Drive, Thimsen Ave, Delton Ave and Porter Avenue for the key circulation network and ultimately organize this portion of the southwest quadrant into easily developable parcels. Primarily suburban in character with parking lots in front of buildings, this approach seeks to organize access points, roadways, parking lots, pedestrian connections (walks and trails) and stormwater treatment into an efficient, logical pattern to set the area up for long term success.

Key to the success of the Southwest Quadrant will be the additional access off or eastbound Highway, shown in this concept as a right-in only access point and connecting to Delton Avenue and a realigned Porter Avenue. The circulation network is the most critical element to the success of this quadrant. Aligning the access points from Highway 7 and C.S.A.H. 101 with streets and private drives will improve legibility and provide flexibility in size and number of potential redevelopment sites.

Pedestrian amenities, outdoor gathering, dining, performance spaces should be elements of future redevelopment proposals.

Study #2

| Commercial | 66,900 Sq. Ft. |
| Office     | 66,000 Sq. Ft. |

The urban street areas along Hutchins Drive and where vertical mixed use and higher density residential are present should provide on-street parking, a boulevard area with the potential for stormwater treatment, a broad pedestrian zone, and a buffer or setback where the ground level use is residential to provide separation for the unit.

Retail storefronts should be varied and expansive pedestrian areas should be developed for outdoor seating, dining opportunities.
Hi Susan, thanks for taking the time to meet with me yesterday. As I mentioned I am having work done at home and I’ve been wrapped up in that all day. I hoping I can get the items we discussed into the public record so that folks are aware of our parking situation at Ike’s.

For the record then, we discussed the proposal by Midwest Mastercraft for the new building East of Ike’s. In that the proposal eliminates 30 plus parking spots from the total of the two properties. Ike’s has maintained a parking agreement with this property in the past to satisfy the requirements for our needed parking.

The reality is that due to the ever increasing business at Ike’s, the minimum required parking is simply not enough. A year ago I moved our employee parking off the lot and on the frontage road of Highway 7 (Delton Ave).

As we discussed, some of the ideas floated are to use Midwest Mastercraft parking after they are closed. Connect the Ike’s parking lot with the Primrose school on the West, and to alter the no parking area on Hutchins Drive.

I have had discussions with Primrose in the past and they are open to a discussion.

We have tried a number of times to contact Andy Larson at Midwest Mastercraft to have a conversation about making arrangements during proposed construction and long term afterwards, and have been unable to connect.

Ike’s has seen business grow in each of the 5 years we have been in business. The need for a long term solution that will not damage our business is very important.

I appreciate your assistance.

Let me know If you need anything further.

Greg Pratt
General Manager
Ike’s Minnetonka
17805 Highway 7
Minnetonka, MN 55345
Calvert moved, second by O’Connell, to adopt the resolution approving an expansion permit and shoreland setback variance for a second floor addition to the existing home at 2604 Crosby Road.

Sewall, Calvert, Knight, O’Connell, Powers, Schack, 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. Items concerning Midwest MasterCraft at 17717 State Highway 7.

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

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

Sewall asked if the parking agreement identifies which spaces are included in the agreement. Thomas directed the question to the applicant.

In response to Chair Kirk’s question, Thomas explained that the Ike’s site has had a nonconforming use since the first restaurant opened decades ago. The site has never had enough parking to meet current ordinance requirements. A nonconforming business may continue to operate unless the site has been vacant for at least 12 months. When Ike’s applied to add outdoor seating, the city required Ike’s to obtain a parking agreement for off-site parking. Staff hoped that the parking agreement would continue.

Andy Larson, applicant, stated that he has owned the company for 15 years. He was confident the parking situation would work out. The intention is to reuse the existing signs and make them look nice. He and his architect were available for questions.

Sewall asked how boats would enter and exit the site. Mr. Larson said that there are garage doors on the west side of the property to provide access. The rear of the building has room for a boat inside. The primary storage location will be the Crystal location. Most boats would be delivered on the water. His busy time would be opposite of the restaurant’s busy times.

In response to Chair Kirk’s question, Mr. Larson stated that the boats are 20 feet to 24 feet in length. The products are expensive because of the content, but only
a few of the boats are over 24 feet in length. The showroom would display a boat in the winter instead of having one outside.

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

In response to Calvert’s question, Thomas explained that the proposed use would be required to have 12 parking stalls. The number of spaces provided would meet the demand for this use.

Chair Kirk thought that the proposal would be great. He hoped the business would be successful in the proposed location.

_Sewall moved, second by Powers, to recommend that the city council adopt the resolution approving final site and building plans with an expansion permit, conditional use permit, and variance for Midwest MasterCraft at 17717 State Highway 7._

_Sewall, Calvert, Knight, O’Connell, Powers, Schack, and Kirk voted yes. Motion carried._

This item is scheduled to be reviewed by the city council at its meeting on August 28, 2017.

C. Items concerning Mesaba Capital at 17710 and 17724 Old Excelsior Boulevard.

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

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

Calvert asked about stormwater management. Ingvalson explained that there would be a chamber onsite to accommodate stormwater. Stormwater management requirements would be met. The site’s impervious surface requirement would be met.

Sewall asked for the maximum building height allowed in a B-1 District. Ingvalson explained that the height of the building would be restricted by the setbacks. The height requirement is the same for B-1 and R-5 zoning districts.

Ingvalson noted that the site meets parking requirements.
Resolution No. 2017-

Resolution approving final site and building plans, with expansion permit, and conditional use permit, with variance, for Midwest MasterCraft at 17717 State Highway 7

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

Section 1. Background.

1.01 The subject property is located at 17717 State Highway 7. It is legally described Tract B, Registered Land Survey No. 117, Hennepin County, Minnesota.

1.02 In 1968, an office building and associated parking lots were constructed on the subject property. In 1979, the subject property was rezoned to B-4. Under the B-4 ordinance, no side yard setback was required for structures or parking lots abutting other commercial sites. The respective 6.9-foot and 6.5-foot setback of the existing building and parking lot were, therefore, allowed. In 1986, the B-4 zoning district was eliminated. In 1987, the subject property was rezoned to B-2 and the existing building and parking lots became non-conforming.

1.01 Andy Larson, on behalf of Midwest MasterCraft, is proposing to redevelop the subject property. As proposed, the existing building would be removed and a new showroom and retail building would be constructed. The proposal requires approval of the following:

1. Final Site and Building Plans. By City Code §300.27 Subd.2, site and building plan approval is required prior to construction of any commercial building.

2. Expansion Permit. By City Code §300.29 Subd.3(g), an expansion permit is required for any expansion that would not intrude into one or more setback areas beyond the distance of the existing, non-conforming structure or site feature. Under the applicant's proposal,
the new building would be located 10 feet from the side property line. This is a greater setback than the existing, non-conforming structure, but less than the required 35-foot setback. Under the proposal, the site’s parking lots would maintain their general configuration and existing, non-conforming setbacks.

3. Conditional Use Permit. By City Code §300.18 Subd.4, outdoor display is conditionally-permitted on B-2 zoned properties. The applicant proposes the outdoor display of one boat.

4. Variance. By City Code §300.21 Subd.4(a), outdoor display is permitted for 20 days per calendar year and display areas must meet required building setbacks. The applicant proposes continuous display of one boat within the northerly parking lot.

1.04 On August 10, 2017, 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 final site and building plans, with expansion permit, and conditional use permit, with variance.

Section 2. Standards and Findings

2.01 City Code §300.27 Subd. 5, outlines several items that 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;

Finding: The proposal has been reviewed by planning, building, engineer, natural resources, fire, and public works staff. Staff finds it to be generally consistent with the city’s development guides.

2. Consistency with this ordinance;

Finding: The proposed 10-foot side yard setback would require an expansion permit. As is outlined in Section 2.02 of this resolution, the proposal would meet the expansion permit standard.

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: The subject property is a developed site. As such, the proposal would not impact natural topography or native-vegetation.

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;

Finding: The proposal would result in an intuitive and attractive redevelopment of the existing site.

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.

Finding: The proposal would result in an intuitive and attractive redevelopment of an existing site.

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

Finding: As new construction, the proposed building would meet minimum energy standards.
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 visually alter the property and surrounding area. However, the city does not anticipate that this change would be negative.

2.02 By City Code 300.29 Subd.7(c), an expansion permit may be granted, but is not mandated, when the applicant meets the burden of proving that: (1) the proposed expansion is a reasonable use of the property; (2) the circumstances justifying the expansion are unique to the property, 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.

Finding: Reasonableness and Unique Circumstance. The proposed expansion permit to increase the existing side yard setback from 6.9 feet to 10 feet is reasonable, based on the site's unique circumstance. The subject property is 100 feet wide. Given that the current ordinance requires a side yard setback of 35-feet, the buildable area of the property is just 30 feet wide. It is unlikely that any commercial redevelopment of the site could occur without an expansion permit or variance. This is a unique circumstance not common to all other commercially-zoned properties in the community.

Finding: Neighborhood Character. The removal of a nearly 50-year-old building and redevelopment of the subject property would visually alter that surrounding area. However, the expansion permit, in and of itself, would not.

2.03 City Code §300.21 Subd.2, outlines the following general standards for conditional uses:

1. The use is consistent with the intent of this ordinance;

Finding: The intent of the B-2 ordinance is to facilitate general business activities. The proposal is consistent with this intent.

2. The use is consistent with the goals, policies and objectives of the comprehensive plan;
Finding: The outdoor display of one boat would not be in conflict 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;

Finding: The outdoor display of one boat would not adversely 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: As a condition of this resolution, final stormwater management plans must comply with both city and Riley Purgatory Watershed District rules.

5. The use is in compliance with the performance standards specified in section 300.28 of this ordinance; and

Finding: See Section 2.01 of this resolution.

6. The use does not have an undue adverse impact on the public health, safety or welfare.

Finding: The outdoor display of one boat would not have an adverse impact on the public health, safety or welfare.

2.04 City Code §300.21 Subd.4(a), outlines the following specific standards for outdoor storage on commercially-zoned property.

1. Shall be allowed for periods not exceeding 20 days per year and shall include only items sold on the premises;

Finding: As proposed, one boat would be stored outside on the site for the majority of the year. A variance is required. As outlined in Section 2.05 of this resolution, the proposal would meet the variance standard.

2. Screening shall be provided from residential and office business property;

Finding: A restaurant use is located directly west of the property and a parking lot to the east.
3. No public address system shall be audible from any residential property;

Finding: No PA system is proposed.

4. Site shall be kept in a neat and orderly fashion;

Finding: As a condition of this resolution, outdoor display would be limited to one boat located in the parking lot north of the building.

5. No uses shall be permitted in required parking or building setback areas; and

Finding: The display location would not meet the required building setback. A variance is required. As outlined in Section 2.05 of this resolution, the proposal would meet the variance standard.

6. Shall not be permitted within 100 feet of any residential parcel.

Finding: The display boat would be situated roughly 300 feet from the closest residential property, which is located across State Highway 7.

2.05 By City Code §300.07 Subd. 1(a), 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.

Finding: Consistent with the Comprehensive Plan. The subject property is guided for mixed-use. The proposed outdoor display of one boat would not be inconsistent with the designation.

Finding: Purpose and Intent of the Ordinance. The intent of the ordinance as it pertains to time and locational limits on outdoor storage/display is to limit the negative visual impact such storage/display may have on the surrounding area. The outdoor display of one, new boat would not result in a visual blight, particularly as other portions of city code – City Code
300.21 Subd. 4(g) – would allow for continuous display of such boat were it related and accessory to another type of retail establishment.

Finding: Reasonableness and Unique Circumstance. The display of one boat is reasonable given the unique circumstance caused by an oddity of city code. By City Code §300.2 Subd.4(g) the continuous outdoor display of one boat would be allowed if that display was related and accessory to another type of retail establishment. For instance, a store selling boat parts and lifejackets could display a boat outside without time and location limitations. However, since the proposed primary use on the site is a boat retailer, code limits outdoor display.

Finding: Neighborhood Character. The display of one boat would not negatively impact the essential character of the locality. The subject property is located near a garden/hardware store. Outdoor storage has been allowed on that site since the mid-1980s.

Section 3. City Council Action.

3.01 The above-described site and building plans, with expansion permit, and conditional use permit, with variance, are hereby approved subject to the following conditions:

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

   • Grading, Drainage & Erosion Control Plan dated July 6, 2017
   • Preliminary Landscape Plan dated July 6, 2017
   • Floor Plan dated July 6, 2017
   • Exterior Building Elevations dated July 6, 2017

2. Prior to issuance of a building permit:

   a) Submit the following for staff review and approval:

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

      2) Three full size sets of construction drawings and project specifications.
3) Items associated with site work:

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

1. Final site plan must clearly note that any new concrete apron cannot be integral to the curb.

2. Final stormwater management plan must meet the requirements of the city’s Water Resources Management Plan, as outlined in Appendix A. Design. The treatment required will depend upon the amount of impervious surface disturbed. If more than 50% of the existing impervious surface is disturbed, or if the imperviousness of the site increases by more than 50%, the treatment standards will apply to the entirety of site impervious surface.

The stormwater management plan must include:

- Volume Control: Provide 1-inch of runoff over the entire site’s impervious surface.

- Rate Control: Limit peak runoff flow rates to that of existing conditions for the 2-, 10-, and 100-year storm events at all points where stormwater discharge leaves the parcel.

- Water Quality: provide for all runoff to be treated to at least 60% removal efficiency for total phosphorus and 90% total suspended solids.
3. Final landscaping and tree mitigation plans must:
   
   - comply with requirements as outlined in City Code §300.27.
   - include specific species for each planting location and type of perennials.

b. Stormwater maintenance agreement over the proposed underground stormwater treatment facility.

c. Approved permit from the Riley Purgatory Bluff Creek Watershed District or indication that such permit is not required.

d. 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.

e. Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to construct parking lot and stormwater facility improvements, comply, tree mitigation requirements, landscaping 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. A final as-built survey has been submitted;

   2. An electronic CAD file or certified as-built drawings for public infrastructure in microstation or DXF and PDF format have been submitted;

   3. Vegetated ground cover has been established; and
4. Required landscaping or vegetation has survived one full growing season.

f. 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:

1. 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

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

4) Items associated with building work:

a. A final material and color palate board for staff review and approval.

b. All required hook-up fees.

5) A snow storage/removal plan.

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.

3. The applicant may choose to submit a separate grading permit application to facilitate site work prior to issuance of a building permit. In such case, prior to issuance of a grading permit, the items outlined in preceding condition 2(a)(3) – “Items associated with site work” – must be submitted for staff review and approval and required erosion control must be installed for staff inspection.

4. During construction the street must be kept free of debris and sediment.

5. Prior to issuance of a certificate of occupancy:
a) Submit an updated as-built drawing showing water and sanitary service locations.

6. Outdoor display is limited to one boat within the north parking lot of the site. No jack stands, risers, or other mechanisms may be used to elevate the display boat.

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

8. This resolution does not approve any signs. Separate sign permit applications must be submitted.

9. The approvals granted under this resolution will expire on December 31, 2018 unless: (1) a building permit has been issued for the proposal as outlined; or (2) the city has received and approved a written request for extension of the approvals.

Adopted by the City Council of the City of Minnetonka, Minnesota, on August 28, 2017.

__________________________
Terry Schneider, Mayor

Attest:

__________________________
David E. Maeda, City Clerk

Action on this resolution:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.
I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on August 28, 2017.

______________________________________
David E. Maeda, City Clerk
City Council Agenda Item #12A  
Meeting of August 28, 2017

**Brief Description**  
Ordinance to remove area from floodplain overlay district at 11806 Cedar Lake Road

**Recommendation**  
Introduce the ordinance

**Background**

Richard Lindberry owns the property located at 11806 Cedar Lake Road. The property is approximately 3.25-acres in size. Of this area, roughly 27,600 square feet is considered upland; the remainder of the site is encumbered by large areas of both wetland and floodplain.

In 2014, the city considered a request to remove the existing buildings on the site and subdivide the property into two, conforming, single-family residential parcels. To accomplish this, floodplain area would be filled and compensatory area would be provided on-site. The floodplain fill and compensation would essentially reallocate the property’s upland area. With a positive recommendation from city staff and the planning commission, the city council approved a variety of applications to facilitate the subdivision, including: (1) floodplain alteration permit; (2) conditional use permit; (3) rezoning to remove area from the floodplain overlay zoning district; and (4) preliminary and final plats.

In 2015, the city council granted a twelve-month extension of the preliminary and final plat approvals.

In 2016, the preliminary and final plats approvals expired. Though the floodplain alteration permit and floodplain rezoning technically had no “expiration date,” it is staff’s opinion that the permit and rezoning were also void in 2016, as they were directly related to the preliminary and final plats.

**Current Proposal**

Jeff Martineau, on behalf of the property owner, is again proposing to divide the subject property into two, conforming lots. As previously proposed, floodplain area would be filled and compensatory area would be provided on-site. Initially, staff was of the opinion that the city could simply “reaffirm” the previous approvals. However, upon closer review the areas of fill and compensation vary slightly from those approved in 2016. The variation is based on the most current floodplain regulations and staff’s interpretation of those regulations. As such, staff ultimately determined the new approvals were necessary.
Ordinance Introduction

By city code, an ordinance must be considered by the city council at two separate meetings. Though not required, generally, the first council consideration occurs prior to the planning commission meeting on the subject. Due to the question of “reaffirmation” versus new approvals, the floodplain rezoning associated with the applicant’s proposal was not introduced prior to the planning commission meeting. Timing for the ordinance, alteration permit, conditional use permit, and plats will be as follows:

- Planning Commission – full project consideration: August 24
- City Council – first introduction of the rezoning ordinance: August 28
- City Council – full project consideration, including ordinance adoption: September 11

Staff Recommendation

Conduct the first introduction of an ordinance to remove area from floodplain overlay district at 11806 Cedar Lake Road.

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: Lindberry, Richard
Address: 11806 Cedar Lake Rd
Applicant: Jeff Martineau

This map is for illustrative purposes only.
LEGAL DESCRIPTION OF PREMISES SURVEYED:

Lots 3 and 8, Block 3, GOLDEN ACRES, HENNEPIN COUNTY, MINNESOTA

This survey shows the boundaries of the above described property, and the location of an existing house, two sheds, driveway and topography. It does not purport to show any other improvements or encroachments.

- Iron marker
- Existing contour line
- Denotes wetland delineation marker
Bearings shown are based upon an assumed datum
PROPOSED GRADING PLAN FOR
RICHARD LINDBERRY
OF LOTS 3 AND 8, BLOCK 3, GOLDEN ACRES
HENNEPIN COUNTY, MINNESOTA

LEGAL DESCRIPTION OF PREMISES SURVEYED:
Lots 3 and 8, Block 3, GOLDEN ACRES, HENNEPIN COUNTY, MINNESOTA

This survey shows the boundaries of the above described property, and the location
of an existing house, two sheds, driveway and topography. It does not purport to show
any other improvements or encroachments.

- Iron marker
- Existing contour line
- Proposed contour line
- Proposed spot elevation
- Denotes wetland delineation marker

Bearings shown are based upon an assumed datum.

NOTE:
The west lot has 5,900 SF of proposed impervious surface. One inch of runoff over that area equals
408 CF of treatment required. A trench of 90 ft long,
X 1.5' deep X 3.4' wide or a rain garden of
21.5' X 21.5' X 1' deep would be required.

The east lot has 5,900 SF of proposed impervious
surface. One inch of runoff over that area equals
408 CF of treatment required. A trench of 90' ft long,
X 1.5' deep X 3.4' wide or a rain garden of
22.2' X 22.2' X 1' deep would be required.

CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS
445 N. WILLOW DRIVE LONG LAKE, MN 55356
PHONE: 952-473-4141 FAX: 952-473-4145
PROPOSED GRADING PLAN FOR
RICHARD LINDBERRY
OF LOTS 3 AND 8, BLOCK 3, GOLDEN ACRES
HENNEPIN COUNTY, MINNESOTA

LEGAL DESCRIPTION OF PREMISES SURVEYED:
Lots 3 and 8, Block 3, Golden Acres, Hennepin County, Minnesota

This survey shows the boundaries of the above described property, and the location of an existing house, two sheds, driveway and topography. It does not purport to show any other improvements or encroachments.

- Iron marker
- Existing contour line
- Proposed contour line
- Proposed spot elevation
- Denotes wetland delineation marker

Bearings are relative to an assumed datum.

NOTE:
The west lot has 5500 SF of proposed impervious surface. One inch of runoff over that area equals 450 CF of treatment required. A trench of 90' long x 1.5' deep x 3.4' wide or a rain garden of 21.5' x 21.5' x 1' deep would be required.

The east lot has 5900 SF of proposed impervious surface. One inch of runoff over that area equals 492 CF of treatment required. A trench of 90' long x 1.5' deep x 3.7' wide or a rain garden of 22.2' x 22.2' x 1' deep would be required.
Ordinance No. 2017-

An ordinance removing area from the floodplain overlay district
at 3136 County Road 101

The City Of Minnetonka Ordains:

Section 1.

1.01 LandMark Construction Solutions, Inc. has requested approval of a floodplain alteration to facilitate construction of a new home at 3136 County Road 101.

1.02 The property is legally described as:

Lots 2, Block 1, REEDS ADDITION

1.03 The proposed alteration would remove certain area from the floodplain overlay zoning district.

1.04 By City Code Section 300.24 Subd. 10(b), land may be removed from the floodplain overlay district only:

1. By zoning map amendment; and

2. If water storage will be provided in an amount compensatory to that removed or acceptable hydrologic engineering data must be presented which indicates how conditions have changed so that the floodplain characteristics can be maintained without compensation.

Section 2.

2.01 The proposed floodplain alteration would result in fill of roughly 20 cubic-yards of floodplain; 20 cubic-yards would be created.
2.02 The removal of the area from the overlay district would not compromise the public health, safety, and welfare.

Section 3.

3.01 Floodplain area on the property at 3136 County Road 101, and depicted on Exhibit A of this resolution, is hereby removed from the floodplain overlay district.

Section 4.

4.01 This ordinance is effective immediately.

Adopted by the City Council of the City of Minnetonka, Minnesota, on September 11, 2017.

Terry Schneider, Mayor

ATTEST:

David E. Maeda, City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction: August 28, 2017
Date of adoption:
Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent: Wagner
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 September 11, 2017.

David E. Maeda, City Clerk
EXHIBIT A

AREA REMOVED FROM FLOODPLAIN OVERLAY ZONING DISTRICT
Brief Description  Ordinance to remove area from floodplain overlay district at 3136 County Road 101

Recommendation  Introduce the ordinance and refer it to the planning commission

Background

In 2007, the city council approved a two-lot subdivision, with variances, creating the property at 3136 County Road 101. At that time, the buildable area of the lot was defined by the required setbacks from property lines and a large wetland area. Though there was floodplain on the site, the floodplain elevation was located “below” the delineated wetland edge. In other words, the wetland edge was more restrictive than the floodplain. The property has remained vacant since the 2007 approval.

Over the last several months, city staff has met with several prospective buyers of the vacant lot. In all meetings, staff provided information regarding required setbacks. The lot was recently purchased by LandMark Construction Solutions, Inc. The company worked to design a home that would fit within the tight confines of the lot and checked in with staff at several points during the design process. A building permit application was then submitted. During the review of that permit, staff discovered that recent 2016 floodplain map revisions have raised the floodplain elevation on the property by roughly four feet. The modeled floodplain elevation is now located “above”, and more restrictive than, the delineated wetland edge. The new elevation essentially renders the lot unbuildable.

Current Proposal

After consultation with city staff, LandMark Construction Solutions, Inc. has submitted a plan that will recreate some buildability on the site. The plan proposes fill of 20 cubic yards of floodplain and creation of 20 cubic yards of new floodplain. The plan also proposes a horizontal floodplain setback variance from 20 feet to 7.5 feet. Required vertical separation would be met. By city code, floodplain area may be filled – or removed from the floodplain overlay district – only by rezoning.

Ordinance Introduction

By city code, an ordinance must be considered by the city council at two separate meetings. Generally, the first council consideration occurs prior to the planning commission meeting on the subject. The planning commission will consider the applicant's full proposal on September 7, 2017.
Staff Recommendation

Introduce the ordinance to remove area from floodplain overlay district at 3136 County Road 101 and refer it to the planning commission.

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
Project: Landmark Construction
Address: 3136 Co Rd 101
Project No. 17020.17a

This map is for illustrative purposes only.
Certificate of Survey for
Landmark Construction
Lot 2, Block 1, REEDS ADDITION
City of Minnetonka, Hennepin County, Minnesota

COUNTY ROAD 101

NO EXCAVATION OR CONSTRUCTION CAN BEGIN UNTIL THIS PLAN IS APPROVED BY THE LOCAL BUILDING INSPECTOR.

LOWEST FLOOR ELEVATION IS SUBJECT TO SOIL AND WATER TABLE CONDITIONS.

All bearings and distance information is per the recorded plan.

Elements are shown for proposed plat unless otherwise documented was provided to us.

The lowest floor elevation is subject to the actual depth and elevation of the sewer service in order to any excavation. Excavator must compare survey with house plan and subject to verify type of house and final elevation.

SURVEYOR'S NOTES:
1. Grates/manholes along west side County Road 101 have changed since Advance Surveying & Engineering Co. survey was done in November 28, 2006. For purposes of this survey.
2. "Shaver's Lake" Ordinary High Water Elevation = 934.3 feet per MN/ZNR (NVD029) Highest Recorded Elevation = 934.4 feet per MN/ZNR (NVD029)
3. For the purpose of this house staking, only the eastern portion of the subject lot was surveyed.
4. For the covenants of REEDS ADDITION, the minimum lowest floor elevation = 932.2 feet.
5. Per City, the lowest floor shall be 2 feet above the 100 year flood elevation. The 100 year flood elevation = 934.1 feet (NAD 88) per Minnekhada Creek Watershed District.
6. Proposed lot area in existing Floodplain = 590 S.F. (see cross-hatched area).
7. Proposed lot quantity in existing Floodplain = 20 cubic yards.
8. A variance will be required to reduce the 20 foot floodplain setback to 7.5 feet.

I hereby certify that this survey, map, or report was prepared by me or under my direct supervision, and that I am a licensed land surveyor under the laws of the State of Minnesota.

SIGNED:
Craig A. Wemmer
Land Surveyor

DATE: 11/22/17
WITNESS: 11/22/17
FILE NO.: 17-0240-00

BOGART, PEDERSON
& ASSOCIATES, INC.

Certificate of Survey
Landmark Construction
L2, B1, REEDS ADDITION
Hennepin County, MN
Ordinance No. 2017-

An ordinance removing area from the floodplain overlay district
at 3136 County Road 101

The City Of Minnetonka Ordains:

Section 1.

1.01 LandMark Construction Solutions, Inc. has requested approval of a floodplain alteration to facilitate construction of a new home at 3136 County Road 101.

1.02 The property is legally described as:

Lots 2, Block 1, REEDS ADDITION

1.03 The proposed alteration would remove certain area from the floodplain overlay zoning district.

1.04 By City Code Section 300.24 Subd. 10(b), land may be removed from the floodplain overlay district only:

1. By zoning map amendment; and

2. If water storage will be provided in an amount compensatory to that removed or acceptable hydrologic engineering data must be presented which indicates how conditions have changed so that the floodplain characteristics can be maintained without compensation.

Section 2.

2.01 The proposed floodplain alteration would result in fill of roughly 20 cubic-yards of floodplain; 20 cubic-yards would be created.
2.02 The removal of the area from the overlay district would not compromise the public health, safety, and welfare.

Section 3.

3.01 Floodplain area on the property at 3136 County Road 101, and depicted on Exhibit A of this resolution, is hereby removed from the floodplain overlay district.

Section 4.

4.01 This ordinance is effective immediately.

Adopted by the City Council of the City of Minnetonka, Minnesota, on September 11, 2017.

Terry Schneider, Mayor

ATTEST:

David E. Maeda, City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction: August 28, 2017
Date of adoption:
Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent: Wagner
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 September 11, 2017.

______________________________
David E. Maeda, City Clerk
EXHIBIT A

AREA REMOVED FROM FLOODPLAIN OVERLAY ZONING DISTRICT
City Council Agenda Item #12C  
Meeting of August 28, 2017

**Brief Description:** Ordinance amending section 910.020 of the Minnetonka City Code, relating to recreational fire permits

**Recommended Action:** Introduce the ordinance

**Background**

On May 8, 2017, the city council adopted an ordinance that amended various provisions of the city fire code. The primary purpose of that ordinance was to update the city code to comply with the 2015 Minnesota State Fire Code. In connection with that amendment, members of the city council indicated that they had heard concerns from residents regarding recreational fires, especially those with health issues.

The Fire Department staff followed up by reviewing the city’s regulations and historical community survey information, as well as the regulations adopted by several comparable cities. The staff presented that information to the city council at a study session on June 19, 2017, with recommendations for several changes to the city code. The consensus of the council at that time was to focus on educational efforts rather than add numerous restrictions to the code for recreational fires. The council indicated, however, that the city should shift from a one-time recreational fire permit to an annual permit, which would provide greater opportunity for the city to educate permit holders regarding recreational fire safety and etiquette.

Staff has prepared a proposed ordinance that requires an annual permit for recreational fires. The ordinance also added a provision from the permit website to the code, regarding liability of permit holders. It also adds a grandfather clause that will allow an existing firepit to be used even if it is less than 25 feet from a structure. Lastly, the ordinance reduces the minimum width of wood to be burned in a recreational fire and specifies that the wood must be dry, aged wood.

**Recommendation**

Introduce the ordinance.

Submitted through:  
Geralyn Barone, City Manager  
John Vance, Fire Chief

Originated by:  
Luke Berscheid, Fire Marshal  
Corrine Heine, City Attorney
The City of Minnetonka Ordains:

Section 1. Section 901.020, subdivision 1 of the Minnetonka City Code is amended to read as follows:

910.020. Amendments to the Minnesota state fire code.

The state fire code is amended as follows:

1. Section 307, “Open Burning and Recreational Fires,” is amended to read as follows:

   307.1. General. A person must not kindle or maintain or authorize to be kindled or maintained a recreational fire unless conducted and approved in accordance with this section.

   307.2. Permit required. The person who will be responsible for the recreational fire must obtain a an annual permit from the fire department prior to kindling a recreational fire. The permit holder is responsible for conducting, controlling and extinguishing the fire in compliance with the city fire code. A recreational fire permit does not relieve the applicant from liability due to damage resulting from fire or smoke.

   307.3. Extinguishment authority. The fire chief or designee has the authority to order extinguishment of any fire if: the fire creates or adds to a hazardous situation; the fire chief or designee determines that the smoke from the fire is unreasonably offensive or injurious to others; or, a required permit has not been obtained.

   307.4.2. Recreational fires. Recreational fires must not be conducted within 25 feet (7620 mm) of a structure or combustible material; except that the minimum distance from a structure does not apply to a nonmoveable fire pit that existed prior to June 24, 2017. Conditions which could cause a fire to spread within 25 feet 97620 mm) of a structure must be eliminated prior to ignition. Fire pits must be located a minimum of 10 feet from any property line.
307.4.3. Portable outdoor fireplaces. Portable outdoor fireplaces must be used in accordance with the manufacturer's instructions and must not be operated within 15 feet (3048 mm) of a structure or combustible material.

307.4.4. Materials burned. Wood burned in a recreational fire or portable outdoor fireplace must be dry, aged wood and a minimum of 3 inches one inch in diameter. No trash, brush, leaves or treated lumber may be burned.

307.5. Attendance. Permitted fires must be constantly attended until the fire is extinguished. A minimum of one portable fire extinguisher complying with Section 906 of the state fire code with a minimum 4-A rating or other approved on-site fire-extinguishing equipment, such as dirt, sand, water barrel, garden hose or water truck, must be available for immediate utilization.

Section 2. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 3. This ordinance is effective 30 days after publication.

Adopted by the city council of the City of Minnetonka, Minnesota, on ________________, 2017.

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

Action on this Ordinance:

Date of introduction:
Date of adoption:
Motion for adoption:

The stricken language is deleted; the underlined language is inserted.
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Ordinance adopted.

Date of publication:

I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on __________, 2017.

______________________________
David E. Maeda, City Clerk

The stricken language is deleted; the underlined language is inserted.
City Council Agenda Item #13A
Meeting of August 28, 2017

Brief Description
Temporary on-sale liquor license for Bet Shalom Congregation, 13613 Orchard Road

Recommendation
Hold the public hearing and grant the license

Background

The city has received an application for a temporary on-sale liquor license from Bet Shalom Congregation for their annual block party to be held on Sunday, September 7, 2017, at 13613 Orchard Road. The event will be held in the parking lot from 10:00am – 1:00 pm. The event will include food, an acoustic concert, games for families and an enclosed beer garden.

The event will be open to all members of the congregation. Bet Shalom will ask for identification from guests entering the beer garden. All alcohol will stay within the enclosed beer area so as to prevent underage attendees from picking up an abandoned drink.

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

Arrangements have been made to facilitate excess parking at Hopkins West Junior High in an effort to minimize impact to neighborhood residents. In addition, Bet Shalom has hired police department staff to be onsite to monitor activity throughout the block party.

Staff does not anticipate any difficulties in connection with serving alcohol at the event.

Recommendation

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

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

Originated by:
Kathy Leervig, Community Development Coordinator
DESCRIPTION OF EVENT

Bet Shalom's annual Block Party will be held on September 17, 2017 in the late morning and early afternoon from 10 am - 1 pm at our synagogue at 13613 Orchard Road, Minnetonka, MN. The event will be held in our parking lot and will include food, a one-man acoustic concert, games for families, and an enclosed beer garden. The funds raised from this event go to support Bet Shalom's ongoing program for congregants and outreach in the community.

Liquor served at the event will be purchased from a wholesaler and delivered to the event the week prior. All bottles will be kept in a locked closet to ensure that it is not accessed at all prior to the event and to ensure that only those legally authorized to handle alcohol, do so. The pouring will be done by a member of the Block Party committee who is over the age of 21, or by a professional bartender.

The event will be open to all members of the congregation, and because there is the possibility of having guests under the age of 21, we will be IDing all those wanting to partake as they enter the beer garden to verify that they are of age. All alcohol will stay within the enclosed garden area so as to prevent underage attendees from picking up an abandoned drink.

Additionally, there will be members of the Block Party committee monitoring to ensure that any drinks that might be momentarily set down or abandoned are not picked up and consumed by a guest who is under the legal drinking age.

Additionally, all open bottles that are in the process of being served will be attended to by someone authorized to serve.

Arrangements have been made to facilitate excess parking at Hopkins West Junior High in an effort to minimize impact to the neighborhood residents. Also, police are being hired to be onsite to monitor activity throughout the block party.
Block Party

SEPT 17  10-1

with special guest Dan Nichols!

5K Fun Run - 50 Yard Dashes - Dunk Tank
Bounce House - Obstacle Course - Kitchen Item Sale
Food and Ice Cream for purchase - Beer Garden
Open Mic - Lawn Games - Photo Booth
Blood Drive - Flu Shot

Register for the Fun Run & Yard Dashes at betshalom.org
Beer garden will be walled off and all entrances corded. No beer will leave the garden.
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 and authorizing the execution and delivery of related documents.

Recommendation

Adopt the resolution.

Background

In May, Jay Jensen, the developer for the Music Barn and Elmbrooke Townhome and Golden Valley Townhome rehabilitation project, informed the city that due to the devaluation of the housing tax credits, it is no longer feasible for CHC Affordable Housing to move forward with the Music Barn project. In addition, Mr. Jensen informed city staff that the $500,000 in pooled tax increment that was committed to the Music Barn project was no longer needed. Instead, the Borrower (CHC Affordable Housing) would continue with the acquisition and substantial rehabilitation of the forty-six Elmbrooke Townhome units and eight townhome units in Golden Valley.

As part of the rehabilitation project, CHC Affordable Housing, is now requesting that the City issue permanent financing for the rehabilitation of the Elmbrooke Townhomes and Golden Valley townhomes. The financing is expected to include two series of tax exempt housing revenue bonds in the maximum amount of $7,000,000. The first series of bonds is expected to be secured by a loan from Dougherty Mortgage, secured by Fannie Mae. The second series of bonds is expected to be secured by tax credit investors privately placed through Bridgewater Bank. The issuance of the multifamily housing revenue bonds will not count towards the city’s bank qualification limit of up to $10,000,000 for calendar year 2017. In addition, the Borrower is required to pay all debt service and any other fees incurred by the city in relation to the bonds. The request complies with city council policies 2.5 and 2.16 related to tax-exempt financing for multifamily housing projects and post-issuance compliance.

The attached letter from the city’s bond counsel, Julie Eddington, further explains the request for permanent financing and issuance of bonds. In addition, Jay Jensen of Shelter Corporation provided the attached letter explaining the current tax credit market and status of the project. Both Gina Fiorini (city’s bond counsel from Kennedy and Graven) and Jay Jensen (developer representing CHC affordable housing) will be present at the meeting to answer questions.
The attached resolution authorizes the issuance, sale, and delivery of the multifamily housing revenue bonds for the Elmbrooke and Golden Valley Townhomes and authorizes City officials to execute the loan documents.

**Recommendation**

Staff recommends the city council open the public hearing and adopt the attached resolution authorizing and affirming the issuance, sale, and delivery of multifamily housing revenue obligations for the benefit of CHC Minnetonka Affordable Housing LLC; authorizing the execution and delivery of documents; and authorizing City officials to approve non-substantive changes to the related documents.

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

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

**Supplemental Information:**

- **July 24, 2017 City Council Report**
- **April 10, 2017 City Council Report**
- **December 19, 2016 City Council Report**
- **October 24, 2016 City Council Report**
- **May 9, 2016 City Council Report**
- **May 18, 2015 EDA Report**

**Attachments**

- Julie Eddington Bond Counsel Letter
- A Series Bond Documents
- B Series Bond Documents
Resolution No. 2017-____

Resolution authorizing the issuance, sale, and delivery of multifamily housing revenue obligations for the benefit of CHC Minnetonka Affordable Housing LLC and authorizing the execution and delivery of documents related thereto

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. Pursuant to Minnesota Statutes, Chapter 462C, as amended (the “Act”), the City is authorized to issue revenue obligations to provide funds to finance multifamily rental housing developments located within the City.

1.03. Minnesota Statutes, Section 471.656, as amended, authorizes a municipality to issue obligations to finance the acquisition or improvement of property located outside of the corporate boundaries of such municipality if the obligations are issued under a joint powers agreement between the municipality issuing the obligations and the municipality in which the property to be acquired or improved is located. 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 municipalities may jointly or cooperatively exercise any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised and the joint powers agreement may provide for the exercise of such powers by one or more of the participating governmental units on behalf of the other participating units.

1.04. CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), whose managing member is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, has proposed that the City issue its multifamily housing revenue obligations in the approximate aggregate principal amount of $7,000,000, in one or more series, as taxable or tax-exempt obligations (the “Obligations”), for the benefit of the Borrower for the purposes of (i) financing the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive in the City (the “Elmbrooke Apartments”); (ii) financing 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 together with the Elmbrooke Apartments, the “Project”); (iii) funding of one or more reserve funds to secure the timely payment of the Obligations, if necessary; (iv) paying interest on the Obligations during the construction of the Project, if necessary; and (v) paying the costs of issuing the Obligations.

1.05. In accordance with the Act, the City has prepared a housing program (the “Housing Program”) to authorize the City’s issuance of the Obligations to finance the acquisition and substantial rehabilitation of the Project. The Housing Program was prepared and submitted to the Metropolitan Council for its review and comment.

1.06. On July 24, 2017, the Council adopted Resolution No. 2017-071, authorizing the submission of an application to the office of Minnesota Management & Budget for an allocation of bonding authority with respect to the Obligations to finance the Project in accordance with the requirements of Minnesota Statutes, Chapter 474A, as amended, and providing preliminary approval for the sale and issuance of the Obligations.

1.07. A notice of public hearing (the “Public Notice”) was published in the Lakeshore Weekly News, the official newspaper of and a newspaper of general circulation in the City, with respect to the required public hearing under Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), and Section 462C.04, subdivision 2 of the Act.

1.08. The Public Notice was published at least fifteen (15) days before the regularly scheduled meeting of the Council of the City, and on the date hereof, the Council conducted a public hearing at which a reasonable opportunity was provided for interested individuals to express their views, both orally and in writing.

1.09. The Council has been presented with a form of Cooperative Agreement (the “Cooperative Agreement”) to be entered into between the City and the City of Golden Valley, Minnesota (the "City of Golden Valley"), pursuant to which the City of Golden Valley consents to the issuance of the Obligations to finance, in part, the acquisition and substantial rehabilitation of the Golden Valley Townhomes, all in accordance with Minnesota Statutes, Sections 471.59 and 471.656, as amended.

Section 2. Housing Program. The Housing Program, in the form substantially on file with the City, is hereby approved.
Section 3.  The Series 2017A Bonds.

3.01.  The Borrower has requested that the City issue, sell, and deliver a portion of the Obligations in the approximate principal amount of $5,850,000 (the “Series 2017A Bonds”). The Series 2017A Bonds are proposed to be sold publicly and underwritten by Dougherty & Company LLC, a Delaware limited liability company (the “Bond Underwriter”).

3.02.  The Series 2017A Bonds are proposed to be issued pursuant to this resolution, the Act, and an Indenture of Trust Indenture (the “Bond Indenture”) between the City and U.S. Bank National Association, as trustee (the “Bond Trustee”).

3.03.  The proceeds derived from the sale of the Series 2017A Bonds will be loaned by the City to make a mortgage loan (the “Bond Mortgage Loan”) to the Borrower pursuant to the terms of a Financing Agreement (the “Bond Financing Agreement”) between the City, the Borrower, the Bond Trustee, and Dougherty Mortgage LLC, as mortgage lender (the “Bond Mortgage Lender”). The Bond Mortgage Loan will be secured by Fannie Mae.

3.04.  The Series 2017A Bonds and the interest on the Series 2017A Bonds (i) shall be payable solely from the revenues pledged therefor under the Bond Financing 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 or 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 Bond Financing Agreement; and (v) shall not constitute a general or moral obligation of the City.

3.05.  The loan repayments to be made by the Borrower under the Bond Financing Agreement will be fixed so as to produce revenue sufficient to pay the principal of, premium, if any, and interest on the Series 2017A Bonds when due. Such loan repayments will be assigned to the Bond Trustee under the terms of the Bond Indenture.

3.06.  The Borrower’s repayment obligations in respect of the Bond Mortgage Loan will be evidenced by a Multifamily Note (the “Bond Mortgage Note”) delivered to the City, which Mortgage Note will be endorsed by the City to the Bond Mortgage Lender, and a Multifamily Loan and Security Agreement (Non-Recourse) (the “Bond Loan Agreement”) between the Borrower and the City, which will be assigned by the City to the Bond
Mortgage Lender. To secure the Borrower’s obligations under the Bond Mortgage Note, the Borrower will execute and deliver to the City a mortgage on the Project (the “Bond Mortgage”), which will be assigned to the Bond Mortgage Lender. Additionally, the Borrower may cause one or more guaranties to be delivered to secure the Borrower’s obligations under the Bond Financing Agreement.

3.07. The City acknowledges, finds, determines, and declares that the issuance of the Series 2017A Bonds is authorized by the Act and is consistent with the purposes of the Act and that the issuance of the Series 2017A Bonds, and the other actions of the City under the Bond Indenture, the Bond Financing Agreement, and this resolution constitute a public purpose and are in the interests of the City. In authorizing the issuance of the Series 2017A Bonds to finance a portion 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.

3.08. For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the Series 2017A Bonds in the approximate aggregate principal amount of $5,850,000. The Series 2017A Bonds shall bear interest at the 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 Bond Indenture, 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 Series 2017A Bonds 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 Series 2017A Bonds, 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 Series 2017A Bonds shall be substantially in the form of the Bond Indenture 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 Series 2017A Bonds, the stated maturities of the Series 2017A Bonds, the interest rates on the Series 2017A Bonds and the terms of redemption of the Series 2017A Bonds) as the Mayor and the City Manager, in their discretion, shall determine. The execution of the Series 2017A Bonds with the manual or facsimile signatures of the Mayor and the City Manager and the delivery of
the Series 2017A Bonds by the City shall be conclusive evidence of such
determination.

3.09. The Series 2017A Bonds shall be special, limited obligations of the City
payable solely from the revenues provided by the Borrower pursuant to
the Bond Financing Agreement, the Bond Loan Agreement, and other
funds pledged pursuant to the Bond Indenture.

All of the provisions of the Bond Indenture, 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 Bond
Indenture shall be substantially in the form on file with the City, which is
hereby approved, with such necessary and appropriate variations,
omissions and insertions as do not materially change the substance
thereof, and as the Mayor and the City Manager, in their discretion, shall
determine, and the execution thereof by the Mayor and the City Manager
shall be conclusive evidence of such determination. The Mayor and the
City Manager are hereby authorized and directed to execute the Bond
Indenture, and to deliver the Bond Indenture to the Bond Trustee, and
hereby authorizes and directs the execution of the Series 2017A Bonds in
accordance with the terms of the Bond Indenture, and hereby provides
that the Bond Indenture shall provide the terms and conditions, covenants,
rights, obligations, duties, and agreements of the owners of the
Series 2017A Bonds, the City, and the Bond Trustee as set forth therein.

3.10. The Mayor and the City Manager are hereby authorized and directed to
execute and deliver the Bond Financing Agreement, the Bond Loan
Agreement, an assignment of the Bond Mortgage, an assignment of the
Bond Mortgage Note, a Bond Purchase Agreement between the City, the
Borrower, and the Bond Underwriter, with respect to the Series 2017A
Bonds, and all documents and assignments related to the Bond Mortgage
Loan required to be executed by the City by Fannie Mae. All of the
provisions of such documents, 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
aforementioned documents 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, and as the Mayor and
the City Manager, in their discretion, shall determine, and the execution
thereof by the Mayor and the City Manager shall be conclusive evidence
of such determinations.
3.11. The City will not participate in the preparation of the Preliminary Official Statement or the Official Statement relating to the offer and sale of the Series 2017A Bonds (collectively, the “Official Statements”) and will make no independent investigation with respect to the information contained therein, including the appendices thereto, except for the information set forth in the Official Statements regarding the City and certain matters relating to litigation, and the City assumes no responsibility for the sufficiency, accuracy, or completeness of such information. Subject to the foregoing, the City hereby consents to the distribution and the use by the Bond Underwriter of the Official Statements in connection with the offer and sale of the Series 2017A Bonds. The Official Statements are the sole material consented to by the City for use in connection with the offer and sale of the Series 2017A Bonds.

3.12. The City hereby authorizes the Borrower to provide such security for payment of its obligations under the Bond Financing Agreement and for payment of the Series 2017A Bonds, and the City hereby approves the execution and delivery of such security.

Section 4. The Series 2017B Notes.

4.01. The Borrower has requested that the City issue, sell, and deliver a portion of the Obligations in the approximate principal amount of $1,000,000 (the “Series 2017B Notes”). The Series 2017B Notes are proposed to be purchased by Bridgewater Bank, a Minnesota banking corporation (the “Note Lender”).

4.02. The proceeds derived from the sale of the Series 2017B Notes will be loaned by the City to the Borrower pursuant to the terms of a Loan Agreement (the “Note Loan Agreement”) between the City and the Borrower.

4.03. The Series 2017B Notes will be issued pursuant to this resolution and the Act, and the Series 2017B Notes and the interest thereon (i) shall be payable solely from the revenues pledged therefor under the Note Loan Agreement and additional sources of revenues 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 or 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 Note Loan Agreement; and (v) shall not constitute a general or moral obligation of the City.
4.04. The loan repayments to be made by the Borrower under the Note Loan Agreement will be fixed so as to produce revenue sufficient to pay the principal of, premium, if any, and interest on the Series 2017B Notes when due. The City will assign its rights to the basic payments and certain other rights under the Note Loan Agreement to the Note Lender pursuant to the terms of an Assignment of Loan Agreement (the “Assignment of Note Loan Agreement”) between the City and the Note Lender.

4.05. To secure its obligations under the Note Loan Agreement, the Borrower will pledge to the Note Lender a portion of equity installments attributable to low-income housing tax credits for the Project. Additionally, the Borrower may cause one or more guaranties to be delivered to secure the Borrower’s obligations under the Note Loan Agreement.

4.06. The City acknowledges, finds, determines, and declares that the issuance of the Series 2017B Notes is authorized by the Act and is consistent with the purposes of the Act and that the issuance of the Series 2017B Notes, and the other actions of the City under the Note Loan Agreement and this resolution, constitute a public purpose and are in the interests of the City. In authorizing the issuance of the Series 2017B Notes to finance a portion 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.

4.07. For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the Series 2017B Notes in the approximate aggregate principal amount of $1,000,000. The Series 2017B Notes shall bear interest at the 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 form of Series 2017B Notes now on file with the City, with the amendments referenced herein. The City hereby authorizes the Series 2017B Notes to be issued, in whole or in part, 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 Series 2017B Notes, 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 Series 2017B Notes shall be substantially in the form 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 Series 2017B Notes, the stated maturities of the Series 2017B Notes, the interest rates on the Series 2017B Notes and the terms of redemption of the Series 2017B Notes) as the Mayor and the City Manager, in their discretion, shall determine. The execution of the Series 2017B Notes with the manual or facsimile signatures of the Mayor and the City Manager and the delivery of the Series 2017B Notes by the City shall be conclusive evidence of such determination.

4.08. The Series 2017B Notes shall be special, limited obligations of the City payable solely from the revenues provided by the Borrower pursuant to the Note Loan Agreement, including the equity installments attributable to low-income housing tax credits for the Project. The Council hereby authorizes and directs the Mayor and the City Manager to execute the Series 2017B Notes in accordance with the terms thereof.

4.09. The Mayor and the City Manager are hereby authorized and directed to execute and deliver the Note Loan Agreement and the Assignment of Note Loan Agreement, and all documents and assignments related to the Bond Mortgage Loan required to be executed by the City by Fannie Mae. All of the provisions of the Note Loan Agreement and the Assignment of Note Loan 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 Note Loan Agreement and the Assignment of Note Loan Agreement 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, and as the Mayor and the City Manager, in their discretion, shall determine, and the execution thereof by the Mayor and the City Manager shall be conclusive evidence of such determinations.

4.10. The City hereby authorizes the Borrower to provide such security for payment of its obligations under the Note Loan Agreement and for payment of the Series 2017B Notes, and the City hereby approves the execution and delivery of such security.

Section 5. Additional Findings and Certifications.

5.01. The Obligations are authorized to be issued in an amount not to exceed $7,000,000. On the date hereof the Series 2017A Bonds are expected to be issued in the approximate aggregate principal amount of $5,850,000, and the Series 2017B Notes are expected to be issued in the approximate aggregate principal amount of $1,000,000. However, the final principal
amount of the Obligations may change so long as the total aggregate principal amount of the Obligations does not exceed $7,000,000.

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

5.03. 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 one Regulatory Agreement with respect to each of the Elmbrooke Apartments and the Golden Valley Townhomes (collectively, the “Regulatory Agreements”) between the City, the Borrower, the Bond Trustee, and the Note Lender. 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.

5.04. The Mayor and the City Manager are authorized and directed to execute any additional documents deemed necessary to carry out the intentions of this resolution and to complete the financing described herein, so long as City staff and legal counsel approve such documents.

5.05. The Mayor and the City Manager are hereby authorized to execute and deliver, on behalf of the City, such other documents and certificates as are necessary or appropriate in connection with the issuance, sale, and delivery of the Obligations, including various certificates of the City, one or more Information Returns for Tax-Exempt Private Activity Bond Issues, Form 8038 (Rev. April 2011), one or more endorsements of the City to the tax certificate of the Borrower, and similar documents, and all other documents and certificates as shall be necessary and appropriate in connection with the issuance, sale, and delivery of the Obligations. The City hereby authorizes Kennedy & Graven, Chartered, as bond counsel
5.06. 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, or any officer, agent or employee of the City in that person's individual capacity, and neither the Council nor any officer or employee executing the Obligations shall be personally liable on the Obligations 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 Obligations, or in any other document relating to the Obligations, 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 as described herein which are to be applied to the payment of the Obligations, as provided therein.

5.07. 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 Obligations 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 Obligations issued under the provisions of this resolution.

5.08. In case any one or more of the provisions of this resolution, other than the provisions contained in the first sentence of Sections 3.09 and 4.08 hereof, or of the aforementioned documents, or of the Obligations 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 Obligations, but this resolution, the aforementioned documents, and the Obligations shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

5.09. The Obligations, when executed and delivered, shall contain a recital that they are issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Obligations 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 Obligations, 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.

5.10. The officers of the City, 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 Obligations, for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in the Obligations, 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.

5.11. The Borrower shall pay the administrative fee of the City on the date of issuance of the Obligations in the amount of one-eighth of one percent (0.125%) of the outstanding principal amount of the Obligations. 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 Obligations, whether or not the Obligations are issued, including any costs for attorneys’ fees.

Section 6. 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 28th day of August, 2017.

__________________________
Terry Schneider, Mayor

ATTEST:

__________________________
David E. Maeda, City Clerk

ACTION ON THIS RESOLUTION:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on August 28, 2017.

__________________________
David E. Maeda, City Clerk
August 9, 2017

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 and approving the execution of related documents

Dear Julie,

As you know, CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), has been working with the City of Minnetonka (the “City”) to finance with bonds 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 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, Minnesota (the “Golden Valley Townhomes”).

The Borrower is requesting that the City issue its multifamily housing revenue obligations, in one or more series, as taxable or tax-exempt obligations (the “Obligations”), in the maximum principal amount of $7,000,000, and loan the proceeds thereof to the Borrower to finance the acquisition and substantial rehabilitation of the Elmbrooke Apartments and the Golden Valley Townhomes. One series of the Obligations is expected to be secured by a Fannie Mae-secured mortgage loan from Dougherty Mortgage LLC, and a second series is expected to be secured by tax credit investor contributions. One or more guaranties are also expected to be delivered as security. The series of Obligations to be secured by the Fannie-Mae-secured mortgage loan (the “Series 2017A Bonds”) will be sold publicly and underwritten by Dougherty & Company LLC, as underwriter, and the series of Obligations to be secured by tax credit investor contributions (the “Series 2017B Note”) will be privately placed with Bridgewater Bank, a Minnesota banking corporation.

The Bonds will be considered “housing bonds” issued pursuant to Minnesota Statutes, Chapter 462C, as amended (the “Act”). 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 has been made pursuant to Minnesota Statutes, Chapter 474A, as amended. In addition, the City is required to prepare a housing program providing the information required by Section 462C.03, subdivision 1a of the Act (the “Housing Program”) and conduct
a public hearing as required under the Section 147(f) of the Code and Section 462C.04, subdivision 2 of the Act. The public hearing will be held on August 28, 2017.

The Borrower will be required to pay all debt service on the proposed Obligations and any other fees or expenses of the City incurred in relation to the Obligations, 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 Series 2017A Bonds will be secured by a mortgage and a pledge of revenues from the project. The Series 2017B Note will be secured by tax credit income. The Obligations will not constitute general or moral obligations of the City, 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 agreements), and will not be secured by any taxing power of the City. The Obligations will not be subject to any debt limitation imposed on the City, and the issuance of the Obligations 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 Elmbrooke Apartments or the Golden Valley Townhomes.

The Obligations will be “private activity bonds” 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 2017.

Following the public hearing, the City Council will be asked to consider the enclosed resolution, which provides approval to the issuance of the Bonds, the Housing Program, and the execution of loan documents and related documents, including form documents and assignments, subordination agreements, and intercreditor agreements provided by Fannie Mae. The resolution provides that the Mayor and City Manager may sign these documents in substantially the form on file as of August 28, 2017, which allows modifications of the documents but not substantial changes.

Gina Fiorini from my office will attend the City Council meeting on August 28, 2017 and can answer any questions that may arise during the meeting. Please contact me with any questions you may have prior to the City Council meeting.

Sincerely,

Julie A. Eddington
BOND PURCHASE AGREEMENT

$5,850,000
City of Minnetonka, Minnesota
Multifamily Housing Revenue Bonds
(Elmbrooke and Golden Valley Townhomes Project)
Series 2017A

_________ __, 2017

City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, Minnesota 55345

CHC Minnetonka Affordable Housing LLC
161 St. Anthony Avenue, Suite 820
Saint Paul, Minnesota 55103

Ladies and Gentlemen:

Dougherty & Company LLC (the “Underwriter”), on its own behalf and not as your fiduciary, hereby offers to enter into this Bond Purchase Agreement (this “Bond Purchase Agreement”) with 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”). This offer is made subject to the Issuer’s and the Borrower’s acceptance on or before 10:00 a.m., Minneapolis, Minnesota time, of the date hereof, and, upon such acceptance, this Bond Purchase Agreement shall be in full force and effect in accordance with its terms and shall be binding upon the Issuer, the Borrower and the Underwriter, all as of 12:30 p.m., Minneapolis, Minnesota time, on the date hereof.

The Issuer is authorized to issue the above-captioned bonds (the “Bonds”) pursuant to Minnesota Statutes, Chapters 462C and 474A, as amended (the “Act”) and pursuant to the Bond Resolution. The Bonds shall be as described in and shall be issued pursuant to an Indenture of Trust, dated as of September 1, 2017 (the “Indenture”), by and between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”). Capitalized terms used herein but not defined herein shall have the meanings assigned thereto in the Indenture.

The Bonds are being issued for the purpose of funding a mortgage loan (the “Mortgage Loan”) for the benefit of the Borrower pursuant to a Financing Agreement dated as of September 1, 2017, by and among the Issuer, the Trustee, Dougherty Mortgage LLC, a Delaware limited liability company (the “Lender”) and the Borrower (the “Financing Agreement”) to provide for the financing of a portion of the costs of acquisition and substantial rehabilitation of a scattered site, multifamily rental housing facility consisting of three separate developments. The Elmbrooke Apartments consist of 46 units and are located at 5400 Smetana Drive, Minnetonka, Minnesota (the “Elmbrooke Project”), the Golden Valley Townhomes consist of 8 units, 6 of which are located at 2100 Douglas Drive North, with the remaining 2 located at 3354 Lilac Drive North, each in Golden Valley, Minnesota (the “Golden Valley Project,” and together with the Elmbrooke Project, the “Project”).
Each Project is required to be operated in compliance with a Regulatory Agreement, dated as of the Closing Date (collectively, the “Regulatory Agreements”), each by and among the Issuer, the Borrower, the Trustee and Bridgewater Bank (the “Bank”).

The Bonds will initially be collateralized by (i) the deposit into the Collateral Security Principal Account of the Collateral Security Fund under the Indenture of the proceeds received from the assignment to the Lender of the Mortgage Loan to be made by the Issuer to the Borrower and fully funded in an amount equal to the original principal amount of the Bonds on the date of issuance of the Bonds (such assigned Mortgage Loan being referred to herein as the “Assigned Loan”), and (ii) the deposit to the Collateral Security Interest Account of the Collateral Security Fund of Bond proceeds in an amount sufficient to pay the interest on the Bonds to November 26, 2017 (the “Initial Mandatory Redemption Date”). Upon the satisfaction of certain conditions set forth in the Indenture, the Trustee will use moneys on deposit in the Collateral Security Fund to acquire a Guaranteed Mortgage Pass-Through Certificate (the “Pass-Through Certificate”), backed by the Mortgage Loan on the Project, and to be issued, upon satisfaction of the conditions set forth in the Indenture, by the Federal National Mortgage Association (“Fannie Mae”). It is expected that the Pass-Through Certificate will be acquired by the Trustee prior to October 26, 2017 (the “First Payment Date”), and in any event prior to the Initial Mandatory Redemption Date, unless such Purchase Date is extended as provided in the Indenture. Principal and interest will initially be paid from funds (including accrued interest, if any) on deposit in the Collateral Security Fund until the month following the Purchase Date, at which time payments in an amount equal to the principal and interest paid on the Pass-Through Certificate will be passed through to Bondholders on each Payment Date. “Payment Date” means (i) the First Payment Date, (ii) prior to the Purchase Date and prior to the Initial Mandatory Redemption Date, as such date may be extended pursuant to the Indenture, the 26th day of the month (or the next Business Day if the 26th is not a Business Day), and (iii) after the Purchase Date, one Business Day after each date on which a payment of principal, interest, and/or premium, if any, is made pursuant to the Pass-Through Certificate (which shall be the 25th day of the month, or the next Business Day if the 25th is not a Business Day, after payment is due on the underlying Mortgage Loan). The payment of interest on a Payment Date shall relate to the interest accrued during the preceding calendar month. There shall be no further accrual of interest from the Maturity Date to the final Payment Date. After the Purchase Date, any balance remaining in the Collateral Security Interest Account of the Collateral Security Fund, after application of moneys therein to pay any accrued interest on the Pass-Through Certificate or interest on the Bonds on the next Payment Date, as applicable, will be transferred to the Proceeds Fund. If the Pass-Through Certificate is not acquired by the Trustee prior to the Initial Mandatory Redemption Date, as such date may be extended pursuant to the Indenture, the Bonds will be redeemed at a redemption price of par (the “Original Issue Price”), plus interest accrued on the Bonds to the Initial Mandatory Redemption Date (as such date may be extended under the Indenture) from moneys on deposit in the Collateral Security Fund under the Indenture.


On or prior to the Closing Date, the Underwriter shall have received a copy of each of the following documents, duly executed by all parties thereto or certified to the satisfaction of the Underwriter:

(a) Indenture;
(b) Financing Agreement;
(c) Regulatory Agreements;
(d) Continuing Disclosure Agreement;
(e) Mortgage Note;
(f) Bonds;
(g) Official Statement (as defined below); and
(h) Bond Purchase Agreement.

The foregoing documents are hereinafter collectively referred to as the “Bond Documents.” The Bond Documents executed by the Issuer shall be referred to herein as the “Issuer Documents.” The Bond Documents executed by the Borrower shall be referred to herein as the “Borrower Documents.” The Bond Documents executed by the Trustee shall be referred to herein as the “Trustee Documents.”
SECTION 1. Purchase and Sale of the Bonds

On the basis of the representations, warranties and agreements contained herein, but subject to the terms and conditions herein, the Underwriter hereby agrees to purchase from the Issuer, and the Issuer hereby agrees to sell to the Underwriter, all, but not less than all, of the Bonds for a purchase price of 100% of the principal amount of the Bonds. The Bonds shall bear interest at the rate and mature on the date as provided in Schedule I hereto and have such other terms as provided in the Indenture and described in the Official Statement. The Borrower agrees to pay to the Underwriter, as compensation for its services, an underwriting fee equal to $_________ (the “Underwriting Fee”), from which the Underwriter will pay certain fees and expenses, not including the fees and expenses of its counsel. The Underwriting Fee shall be due and payable in immediately available funds on the Closing Date, solely and exclusively from funds provided by the Borrower.

The Issuer will deliver the Bonds to or for the account of the Underwriter against payment of the purchase price therefor by wire transfer of immediately available funds to the Trustee (the “Closing”) at or prior to 10:00 a.m., Minneapolis, Minnesota time, on _________ __, 2017, or at such other time not later than seven days thereafter as the Underwriter, the Borrower and the Issuer shall mutually agree (the “Closing Date”). One Bond will be delivered, registered in the name of Cede & Co. to the Trustee as agent for The Depository Trust Company on or prior to the Closing Date. The Bonds may be in printed, engraved, typewritten or photocopied form, and each such form shall constitute a “definitive” form.

It shall be a condition (a) to the obligations of the Issuer to sell and deliver the Bonds to the Underwriter, and (b) to the obligations of the Underwriter with respect to the Bonds, to purchase and accept delivery of and to pay for the Bonds, that the entire aggregate principal amount of the Bonds to be sold and delivered by the Issuer in accordance with this Section 1 shall be sold and delivered simultaneously by the Issuer and be purchased, accepted and paid for simultaneously by the Underwriter.

SECTION 2. Official Statement

(a) The Borrower has delivered or will deliver to the Underwriter, without charge, in such quantities as the Underwriter has requested or may hereafter reasonably request, copies of the Preliminary Official Statement dated __________ __, 2017, prepared with respect to the Bonds (the “Preliminary Official Statement”), the final Official Statement dated or to be dated __________ __, 2017, prepared with respect to the Bonds (the “Official Statement”) and any amendments or supplements thereto. The Borrower will be responsible for any costs associated with printing and mailing and the Preliminary Official Statement and the Official Statement.

(b) The Issuer and the Borrower acknowledge that the Underwriter is required to comply with the requirements of Rule 15c2-12 of the Securities Exchange Act of 1934, as amended (the “Rule”) in connection with the offer and sale of the Bonds and each agrees to cooperate (at the cost and expense of the Borrower) with the Underwriter so as to enable the Underwriter to comply with the Rule. To this end, the Borrower has delivered to the Underwriter the Preliminary Official Statement that the Borrower deemed final as of its date for purposes of the Rule, except for the omission of no more than the following information: the offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings, other terms of the Bonds depending on such matters and the identity of the Underwriter. To evidence this, the Borrower will execute and deliver a certificate in the form attached as Exhibit C hereto. The Issuer has complied with all of its previous continuing disclosure obligations under the Rule, if any (except to the extent described in the Preliminary Official Statement and the Official Statement). The Borrower, its members and all entities affiliated with the Borrower and its members have complied with all of their previous continuing disclosure obligations under the Rule, if any (except to the extent described in the Preliminary Official Statement and the
Official Statement). The Borrower has not failed to make the disclosures required by the Rule pursuant to any continuing disclosure undertaking contractually entered into with respect to which the Borrower constitutes an “obligated person” under the Rule. The Borrower is a new entity and has not heretofore been subject to such requirements.

(c) The Issuer and the Borrower have authorized the delivery of the Preliminary Official Statement and the Borrower has authorized the execution and delivery of the Official Statement. The Issuer and the Borrower each hereby approve the use by the Underwriter of the Preliminary Official Statement and the Official Statement in connection with the public offering of the Bonds by the Underwriter.

(d) The Borrower will supply sufficient quantities of the Official Statement to enable the Underwriter (i) to send a single copy of the Official Statement with any confirmation that requests payment for a Bond, and in any event within seven business days after the date hereof, and to any potential customer upon request until the earlier of (A) 90 days after the End of the Underwriting Period (as defined below) or (B) the time when the Official Statement is available to any person from a nationally recognized municipal securities information repository, but in no case less than 25 days following the End of the Underwriting Period, and (ii) to comply with any applicable rules of the Municipal Securities Rulemaking Board. The Underwriter agrees to promptly file the Official Statement with a nationally recognized municipal securities information repository. The “End of the Underwriting Period” means the later of the delivery of the Bonds by the Issuer to the Underwriter or when the Underwriter no longer retains (directly or as a syndicate member) an unsold balance of the Bonds for sale to the public, provided that the “End of the Underwriting Period” will be deemed to be the Closing Date unless the Underwriter otherwise notifies the Issuer and the Borrower in writing prior to such date that there is an unsold balance of the Bonds.

(e) If, during the period from the date hereof and ending on the earlier of (i) 90 days after the End of the Underwriting Period or (ii) the time when the Official Statement is available to any person from a nationally recognized municipal securities information repository, but in no case less than 25 days following the End of the Underwriting Period, any event occurs as a result of which the Official Statement for the Bonds as then amended or supplemented might include an untrue statement of material fact, or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the Issuer, if such event relates to the information included in the Official Statement under the headings “THE ISSUER” and “NO LITIGATION – The Issuer” (insofar as the information under such heading pertains to the Issuer), or the Borrower, if such event relates to the information included in the Official Statement under the headings “THE PROJECT AND THE PRIVATE PARTICIPANTS” and “NO LITIGATION – The Borrower” (insofar as the information under such heading pertains to the Borrower or the Project), shall promptly notify the Underwriter thereof and shall (in either case, at the expense of the Borrower), upon the request of the Underwriter, prepare and deliver to the Underwriter, as many copies of an amendment or supplement which will correct such statement or omission as the Underwriter may reasonably request.

(f) The Issuer and the Underwriter agree to cooperate with the Borrower to minimize any expenses incurred in connection with the preparation and distribution of any amendments or supplements to the Preliminary Official Statement, the Official Statement and/or any remarketing memoranda required by the foregoing provisions.
SECTION 3. Issuer’s Representations and Warranties and Agreements.

The Issuer represents, warrants to, and covenants and agrees with, the Underwriter and the Borrower that:

(a) On the date hereof and on the Closing Date, the statements and information pertaining to the Issuer, including, without limitation, its functions, duties and responsibilities, contained in the Preliminary Official Statement and the Official Statement, are and will be true, correct and complete in all material respects, and the Preliminary Official Statement and the Official Statement do not and will not omit any statement or information which is necessary to make such statements and information pertaining to the Issuer, including without limitation, its functions, duties and responsibilities, in light of the circumstances under which they are made, not misleading in any material respect.

(b) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending or, to the knowledge of the Issuer, threatened against the Issuer in any way:

(i) Affecting the organization of the Issuer, or the legal or corporate existence of the Issuer, or the title of the members of the Issuer to their respective offices, or any powers of the Issuer under the Constitution or the laws of the State pursuant to which the Issuer was created;

(ii) Seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Bonds or the collection of revenues from the Borrower derived from payments under the Financing Agreement, or the pledge thereof;

(iii) Contesting or affecting the validity or enforceability of the Bonds or the Issuer Documents;

(iv) Contesting the power of the Issuer to enter into, execute and deliver the Issuer Documents or to consummate the transactions contemplated by such documents and the Preliminary Official Statement and the Official Statement;

(v) Contesting in any way the completeness or accuracy of the Preliminary Official Statement and the Official Statement or any amendment or supplement thereto (nor to the actual knowledge of the Issuer, is there any basis therefor); or

(vi) Wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Issuer Documents, the financial position or condition of the Issuer or the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(c) The Issuer is a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State, established by and acting pursuant to the Act, and has, and at the Closing Date will have, full legal right, power and authority under the Constitution and the laws of the State: (i) to enter into the Issuer Documents; (ii) to adopt the Bond Resolution; (iii) to issue, sell and deliver the Bonds to the Underwriter under the Indenture and as provided herein; (iv) to pledge and assign the revenue, other money, securities, funds, accounts, guarantees, insurance, and other items pledged under the terms of the Indenture, as provision of and security for the payment of the principal of and interest on the Bonds, and to similarly pledge all money, securities and earnings held in the funds and accounts held under the Indenture, all in the manner described in the Bond Resolution, the Indenture and the Financing Agreement; and (v) to carry out, give
effect to and consummate all the other transactions contemplated by the Issuer Documents, the Bond Resolution, the Preliminary Official Statement and the Official Statement.

(d) The Issuer has duly and validly adopted the Bond Resolution, has duly authorized and approved the execution and delivery of the Bonds, the Issuer Documents, the Preliminary Official Statement and the Official Statement, and has duly authorized and approved the performance by the Issuer of its obligations contained in, and the taking of any and all action as may be necessary to carry out, give effect to and consummate the transactions contemplated by, each of those documents, and at the Closing Date, the Bonds and the Issuer Documents will constitute the valid, legal and binding obligations of the Issuer (assuming due authorization, execution and delivery by the other parties thereto, where necessary) in accordance with their respective terms and the Bond Resolution and will be in full force and effect.

(e) The Issuer’s execution and delivery of the Bonds and the Issuer Documents, the Issuer’s consummation of the transactions contemplated by such documents, and the Issuer’s fulfillment of or compliance with the terms, conditions or provisions thereof will not conflict with, violate or result in the breach of any of the terms, conditions or provisions of any constitutional provision or statute of the State or of any agreement, instrument, statute, governmental rule or regulation, law and order, judgment or decree to which the Issuer is now a party or by which it is bound, and will not constitute a default under any of the foregoing which has not been waived or consented to in writing by the appropriate party or parties, and will not result in the creation or imposition of any lien, charge, security interest or encumbrance of any nature upon any property or assets of the Issuer prohibited under the terms of any such agreement, instrument, statute, governmental rule or regulation, court order, judgment or decree.

(f) Upon delivery of the Bonds, the Issuer will have good right, full power and lawful authority to pledge and assign the Trust Estate described in the Indenture to the Trustee as provided in the Indenture and the Bond Resolution.

(g) The Issuer has complied, and will at the Closing Date be in compliance, in all respects with the Bond Resolution and the Issuer Documents.

(h) All approvals, consents, authorization, elections and orders of or filings or registrations with any governmental authority, board, agency or issuer having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the performance by the Issuer of its obligations hereunder or under the Bonds or any of the Issuer Documents have been obtained and are in full force and effect.

(i) The Bonds, when delivered in accordance with the Indenture and paid for by the Underwriter on the Closing Date as provided herein, will be validly issued and outstanding limited obligations of the Issuer entitled to all the benefits and security of the Indenture.

(j) The Issuer will furnish such information, execute such instruments and take such other action at the expense of the Borrower in cooperation with the Underwriter as the Underwriter may reasonably request to qualify the Bonds for offer and sale under the “blue sky” or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriter may designate, provided that in connection therewith the Issuer shall not be required to file a general consent to service of process in any jurisdiction. In particular, the Issuer will comply with all securities laws, rules and regulations relating to continuing disclosure applicable to the Bonds or the Project, at all times that any of the Bonds are outstanding.
(k) Any certificate related to the issuance and delivery of the Bonds signed by an Attesting Officer or other authorized officer of the Issuer shall be deemed a representation and warranty by the Issuer to the Underwriter as to the statements made therein.

(l) The Issuer will apply the proceeds of the Bonds in accordance with the Indentures and as contemplated by the Official Statements.

(m) The Issuer has not taken or omitted to take on or before the date hereof any action that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

The execution and delivery of this Bond Purchase Agreement by the Issuer shall constitute a representation to the Underwriter that the representations and warranties contained in this Section are true as of the date hereof.

SECTION 4. Representations, Warranties and Agreements of the Borrower.

The Borrower represents and covenants with the Issuer and the Underwriter as follows:

(a) The Borrower is duly organized and existing as a limited liability company under the laws of the State, has full legal right, power and authority to own its properties and to conduct its business as described in the Preliminary Official Statement and the Official Statement and to enter into and to carry out and consummate the transactions contemplated by the Borrower Documents, and is duly qualified to do such business and is in good standing wherever such qualification and/or standing are required, including the State.

(b) The information in the Preliminary Official Statement and the Official Statement under the headings “THE PROJECT AND THE PRIVATE PARTICIPANTS” and “NO LITIGATION – The Borrower” was, on the date thereof, and is, on the date hereof, true and correct and did not, on the date thereof, and does not, on the date hereof, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(c) By all necessary action, the Borrower has duly authorized the Borrower Documents and approved the execution and delivery of the Borrower Documents, and the performance by the Borrower of its obligations in connection with the issuance of the Bonds on its part contained in the Borrower Documents and the consummation by it of all other transactions contemplated by the Indenture and the Borrower Documents in connection with the issuance of the Bonds.

(d) On the Closing Date, the Borrower Documents will constitute the valid, legal and binding obligations of the Borrower (assuming due authorization, execution and delivery by the respective other parties thereto, where necessary), enforceable in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability affecting the enforcement of creditors’ rights and to general principles of equity, regardless of whether such enforceability is considered in equity or in law.

(e) As of the date hereof, the Borrower is not in any material respect in violation of, breach of or default under any applicable constitutional provision or law of any state or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note agreement (including, without limitation, the Borrower Documents) or other agreement or instrument
to which the Borrower is a party or by which the Borrower or any of its property or assets is bound, which
violation or breach of or default would have a material adverse effect upon the transactions contemplated
by this Bond Purchase Agreement, and no event has occurred and is continuing which with the passage of
time or the giving of notice, or both, would constitute such a default or event of default under any such
instruments; and the execution and delivery of the Borrower Documents, and compliance with the
provisions on the Borrower’s part contained therein, to the best of Borrower’s knowledge, do not and will
not conflict with or constitute on the part of the Borrower a violation or breach of or default under any
constitutional provision or law of any state or of the United States, or any order, rule or regulation of any
court or governmental agency or body having jurisdiction over the Borrower or any of its activities,
properties or assets, or any indenture, mortgage, deed of trust, resolution, note agreement (including,
without limitation, the Borrower Documents) or other agreement or instrument to which the Borrower is a
party or by which the Borrower or any of its property or assets is bound which violation, breach or default
would have a material adverse effect upon the transactions contemplated by this Bond Purchase
Agreement, nor will any such execution, delivery or compliance result in the creation or imposition of any
lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property
or assets of the Borrower or under the terms of any such law, regulation or instrument, except as provided
by the Bonds or the Borrower Documents.

(f) All consents, approvals, authorizations, and orders of or filings or registrations with any
governmental authority, board, agency or issuer of any state or of the United States having jurisdiction
required in connection with, or the absence of which would materially adversely affect, the execution and
delivery by the Borrower of the Borrower Documents or the performance by the Borrower of its
obligations thereunder have been obtained or made and are in full force and effect or will be obtained in a
timely manner.

(g) As of the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law
or in equity, before or by any judicial or administrative court or governmental agency or body, state,
federal or other, pending or, to Borrower’s actual knowledge, threatened against the Borrower, affecting
the existence of the Borrower or the titles of its officers executing this Bond Purchase Agreement to their
respective offices, or contesting or affecting as to the Borrower the validity or enforceability of the Act,
the Bonds, any Borrower Document or the execution and delivery or adoption by the Borrower of any
Borrower Document, or in any way contesting or challenging the completeness or accuracy of the
Preliminary Official Statement or the Official Statement or the powers of the Borrower or its authority
with respect to the Borrower Documents or the consummation of the transactions contemplated hereby or
thereby; nor, to the best knowledge of the Borrower, is there any basis for any such action, suit,
proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially
adversely affect the Borrower’s financial condition or operations, the validity of the authorization,
execution, delivery or performance by the Borrower of any Borrower Document or the exclusion from
gross income for federal income tax purposes of the interest on the Bonds.

(h) The Borrower will furnish such information, execute such instruments and take such
other action in cooperation with the Underwriter as the Underwriter may reasonably request in order (i) to
qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such
states and other jurisdictions of the United States as the Underwriter may designate and (ii) to determine
the eligibility of the Bonds for investment under the laws of such states and other jurisdictions, and will
use its best efforts to continue such qualifications in effect so long as required for the distribution of the
Bonds; provided, however, that the Borrower shall not be required to register as a dealer or broker of
securities or execute a general or special consent to service of process or qualify to do business in any
jurisdiction where it is not now so subject.
(i) Any certificate signed by the Borrower and delivered to the Underwriter or the Issuer pursuant to the Indenture or the Borrower Documents shall be deemed a representation and warranty by the Borrower to the Underwriter and the Issuer as to the statements made therein as of the date thereof.

(j) The Borrower will not take or omit to take any action, within its direct or indirect control, which action or omission will adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(k) The Borrower shall honor all other Borrower covenants contained in the Borrower Documents, which agreements are incorporated herein and made a part of this Bond Purchase Agreement.

The execution and delivery of this Bond Purchase Agreement by the Borrower shall constitute a representation to the Underwriter that the representations and warranties contained in this Section are true and correct in all material respects as of the date hereof.

SECTION 5. Indemnification

(a) The Borrower agrees to pay, defend, protect, indemnify, save and hold harmless the Issuer, the Underwriter and each affiliate, member, officer, director, official, supervisor, counsel, employee, attorney and agent past, present and future of the Issuer and the Underwriter and each person, if any, who controls any of the foregoing within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended (collectively referred to herein as the “Indemnified Parties”), against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys’ fees), causes of action (whether in contract, tort or otherwise), suits, claims, demands and judgments of any kind, character and nature (collectively referred to herein as the “Liabilities”), except any Liability arising from the gross negligence or willful misconduct of the Underwriter or the gross negligence or willful misconduct of the Issuer, caused by or directly or indirectly arising from or in any way relating to (i) the Bonds, the Project, the Assigned Loan, the Bond Documents, the Mortgage Loan Documents, this Bond Purchase Agreement, or any document related to the foregoing (the “Transaction Documents”) or any transaction or agreement, written or oral, pertaining to the foregoing or (ii) any untrue or misleading statement or alleged untrue or alleged misleading statement of a material fact contained in the Preliminary Official Statement or the Official Statement under the headings “THE PROJECT AND THE PRIVATE PARTICIPANTS” and “NO LITIGATION – The Borrower,” or caused by any omission or alleged omission from the above-referenced sections of the Preliminary Official Statement or the Official Statement of any material fact necessary to be stated therein in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(b) The Borrower also agrees to pay, defend, protect, indemnify, save and hold harmless the Underwriter and each affiliate, member, officer, director, official, employee and agent of the Underwriter from and against the Liabilities directly or indirectly arising from or relating to any errors or omissions contained in any legal proceedings or other official representation or inducement made by the Issuer pertaining to the Bonds, except any Liabilities arising from gross negligence or willful misconduct.

(c) Any Indemnified Party shall notify the Borrower of the existence of any Liability to which this indemnification obligation would apply and shall give to the Borrower an opportunity to defend the same at the Borrower’s expense and with counsel satisfactory to the Indemnified Party, provided that the Indemnified Party shall at all times also have the right to fully participate in the defense and shall have the right to review and approve or disapprove any compromise or settlement which approval shall not be unreasonably withheld. If there may be legal defenses available to the Indemnified Party that are different from or in addition to those available to the Borrower, if conflicts of interest exist
or arise between the Borrower and the Indemnified Party or if the Borrower shall, after this notice and within a period of time necessary to preserve any and all defenses to any claim asserted, fail to assume the defense or to employ counsel for that purpose satisfactory to the Indemnified Party, the Indemnified Party shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter on behalf of, for the account of, and at the risk and expense of, the Borrower.

(d) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in paragraph (a) or (b) of this Section is for any reason held to be unavailable, the Borrower and the Underwriter shall contribute proportionately to the aggregate Liabilities to which the Borrower and the Indemnified Parties may be subject, so that the Underwriter is responsible for that portion represented by the percentage that the fees paid by the Borrower to the Underwriter in connection with the issuance and administration of the Bonds bear to the aggregate offering price of the Bonds, with the Borrower responsible for the balance; provided, however, that in no case shall the Underwriter be responsible for any amount in excess of the fees paid by the Borrower to the Underwriter in connection with the issuance and administration of the Bonds and provided further that the Borrower shall not be required to contribute for Liabilities arising from the gross negligence or willful misconduct of the Underwriter. No person guilty of fraudulent misrepresentation (within the meaning of Section 10(b) of the Securities Act of 1933) shall be entitled to contribution from any person who was not guilty of such misrepresentation.

(e) The Indemnified Parties, other than the Issuer and the Underwriter, shall be considered to be third-party beneficiaries of this Bond Purchase Agreement for purposes of this Section. The provisions of this Section will be in addition to all liability that the Borrower may otherwise have and shall survive any termination of this Bond Purchase Agreement, the offering and sale of the Bonds and the payment or provisions for payment of the Bonds.

(f) The indemnification hereunder shall be in addition to, and shall not limit, any indemnity granted by the Borrower pursuant to the Financing Agreement, the Regulatory Agreements or any other document.

SECTION 6. Closing

At 10:00 a.m., Minneapolis, Minnesota time, on the Closing Date, or at such time on such earlier or later date as shall be agreed upon in writing by the Issuer, the Borrower and the Underwriter, the Issuer shall direct the Trustee to deliver the Bonds to the Underwriter through the facilities of The Depository Trust Company (“DTC”), New York, New York, in definitive form, duly executed and authenticated by the Trustee. Subject to the terms and conditions hereof, the Issuer shall deliver at the Issuer’s offices the Bond Documents and the Underwriter shall accept delivery of the Bonds and the Bond Documents and pay the purchase price for the Bonds by wire transfer, to the Trustee, in immediately available federal funds, for the account of the Issuer or as the Issuer shall direct. As a condition precedent to such acceptance, the Underwriter shall have received the Underwriting Fee by wire transfer in immediately available federal funds to the order of the Underwriter, in such manner as shall be agreed upon by the Borrower and the Underwriter. If the Underwriter shall make such request, the applicable Bonds shall be made available to the Underwriter one business day before the Closing at the offices of DTC for purposes of inspection and packaging. The ownership of one fully registered Bond in the aggregate principal amount of the Bonds, each bearing a proper, duly assigned CUSIP number will be issued initially in the name of Cede & Co., as nominee of DTC.
SECTION 7. Closing Conditions of the Underwriter

The obligation of the Underwriter to purchase the Bonds and the obligation of the Issuer to sell the Bonds to the Underwriter shall be subject to the following conditions precedent:

(a) The representations of the Issuer and the Borrower in this Bond Purchase Agreement and the representations and warranties made in each of the Bond Documents by the respective parties shall be true and correct on this date and on the Closing Date, as if made on the Closing Date, and each such party to the Bond Documents shall deliver a certificate to such effect. The Issuer and the Borrower shall have performed all of their obligations under this Bond Purchase Agreement, and the Issuer and the Borrower shall deliver certificates to such effect. The Preliminary Official Statement and the Official Statement (as the same may be amended or supplemented with the written approval of the Underwriter) shall be true and correct in all material respects and shall not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(b) Except as may have been agreed to by the Underwriter, as of the Closing Date, each of the Bond Documents and all other official action of the Issuer relating thereto shall be in full force and effect and shall not have been amended, modified or supplemented, and the Preliminary Official Statement and the Official Statement shall not have been amended or supplemented.

(c) The Issuer and the Underwriter shall have received the legal opinion of Bond Counsel, in substantially the form set forth in Appendix E to the Official Statement, and the Underwriter shall have received a supplemental opinion of Bond Counsel dated the Closing Date and addressed to the Underwriter in substantially the form set forth in Exhibit A hereto.

(d) No default or event of default (as defined in any of the Bond Documents) shall have occurred and be continuing, and no event shall have occurred and be continuing which, with the lapse of time or the giving of notice or both, would constitute such a default or event of default.

(e) No material adverse change shall have occurred, nor shall any development involving a prospective material and adverse change in, or affecting the affairs, business, financial condition, results of operations, prospects or properties (including the Project) of, the Issuer or the Borrower have occurred between the date hereof and the Closing Date.

(f) On or prior to the Closing Date, all actions required to be taken as of the Closing Date in connection with the Bonds and the Bond Documents by the Issuer and the Borrower shall have been taken, and the Issuer and the Borrower shall each have performed and complied with all agreements, covenants and conditions required to be performed or complied with by the Bond Documents, and the Issuer and the Borrower shall deliver a certificate to such effect insofar as the foregoing actions, agreements, covenants and conditions apply to each such party, and each of such agreements shall be in full force and effect and shall not have been amended, modified or supplemented, except as has been agreed to by the Underwriter.

(g) Each of the Bond Documents shall have been executed and delivered by each of the respective parties thereto, all such documents shall be in forms exhibited to Underwriter on this date with only such changes as the Underwriter may approve, and each of the Bond Documents shall be in full force and effect.

(h) None of the events referred to in Section 8 of this Bond Purchase Agreement shall have occurred.
(i) The Underwriter shall have received the opinion of counsel to the Borrower covering the points identified in Exhibit B hereto. Borrower hereby authorizes and directs its counsel to render such opinion to and for the benefit of the Underwriter.

(j) The Underwriter shall have received written evidence that Moody’s Investor Service, Inc. has issued its rating of “Aaa” with respect to the Bonds, and as of the Closing Date, the rating shall not have been withdrawn or lowered.

(k) The Underwriter shall have received a certificate dated the Closing Date of the Borrower to the effect that: (A) each of the representations and warranties set forth in the Borrower Documents (including this Bond Purchase Agreement) is true and correct in all material respects on the Closing Date with the same effect as if made on the Closing Date, (B) no event has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purpose for which it is to be used or which is necessary to be disclosed therein in order to make the statements and information therein not misleading in any material respect, and (C) the Borrower has complied with all agreements and satisfied all the conditions on its part to be performed or satisfied under the Borrower Documents at or prior to the Closing Date.

(l) The Underwriter and the Issuer shall have received a certificate dated the Closing Date of Fannie Mae substantially in the form set forth in Exhibit D hereto stating that Fannie Mae has provided the link to the Fannie Mae MBS Prospectus set forth in the first paragraph under the caption “SUMMARY OF THE PASS-THROUGH CERTIFICATE ANTICIPATED TO BE ISSUED IN CONNECTION WITH THE MORTGAGE LOAN” in the Preliminary Official Statement and Official Statement and the form of Prospectus Supplement attached as Appendix H to the Preliminary Official Statement and Official Statement, that to the extent the Pass-Through Certificate is issued by Fannie Mae, Fannie Mae will use the form of Prospectus Supplement attached to the Preliminary Official Statement and Official Statement as the form for the Prospectus Supplement to be provided in connection with the issuance of the Pass-Through Certificate, and that Fannie Mae has authorized the inclusion of such information in the Preliminary Official Statement and the Official Statement for use in connection with the marketing of the Bonds.

(m) The Underwriter shall have received a certificate dated the Closing Date of the Lender stating that the Lender has provided the information under the caption “APPENDIX G – TERM SHEET” in the Preliminary Official Statement and Official Statement, that the information under such caption in the Preliminary Official Statement and the Official Statement is accurate as of the date of the Preliminary Official Statement and as of the date of the Official Statement, respectively, and as of the Closing Date, and that the Lender has authorized the inclusion of such information in the Preliminary Official Statement and the Official Statement for use in connection with the marketing of the Bonds.

(n) The Underwriter shall have received an opinion of its counsel in form and substance acceptable to the Underwriter.

(o) The Underwriter shall have received certificates, dated the Closing Date, and signed by an Attesting Officer of the Issuer, to the effect that the representations and warranties of the Issuer contained in this Bond Purchase Agreement are true and correct in all material respects on the date thereof with the same effect as if made on the date thereof; no event affecting the Issuer has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purpose for which it is to be used or which is necessary to be disclosed therein in order to make the statements and information therein not misleading in any material respect; and that the Issuer has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied under the Bonds and the Issuer Documents at or prior to the date thereof.
(p) The Underwriter shall have received a tax certificate of the Issuer and the Borrower, dated the Closing Date, with respect to the facts, estimates and circumstances and reasonable expectations pertaining to Section 148 of the Code to support the conclusion that, among other things, none of the Bonds will be an “arbitrage bond.”

(q) The Underwriter shall have received a closing certificate from the Trustee in a form acceptable to the Underwriter.

(r) The Underwriter shall have received such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriter or Bond Counsel may reasonably request.

If any conditions to the obligations of the Underwriter or Issuer contained in this Bond Purchase Agreement are not satisfied and the satisfaction of such conditions shall not be waived by the Underwriter and the Issuer, then, at the option of the Underwriter and the Issuer, (i) the Closing Date shall be postponed for such period, not to exceed seven (7) days, as may be necessary for such conditions to be satisfied or (ii) without limiting the generality of Section 8 of this Bond Purchase Agreement, the obligations of the Underwriter and the Issuer under this Bond Purchase Agreement shall terminate, and neither the Underwriter nor Issuer shall have any further obligations or liabilities under this Bond Purchase Agreement.

All of the legal opinions, certificates, proceedings, instruments and other documents mentioned above or elsewhere in this Bond Purchase Agreement shall be deemed to be in compliance with the provisions of this Bond Purchase Agreement if, but only if, they are in form and substance reasonably satisfactory to the Underwriter, the Borrower and the Issuer.

SECTION 8. Termination

The Underwriter may terminate its obligations under this Bond Purchase Agreement by written notice to the Issuer and the Borrower if, at any time subsequent to this date and on or prior to the Closing Date:

(a) (i) Legislation shall have been enacted by the Congress, or recommended to the Congress for passage by the President of the United States of America or the Department of the Treasury of the United States or the Internal Revenue Service or any member of the United States Congress, or favorably reported for passage to either House of the Congress by any Committee of such House to which such legislation has been referred for consideration, or (ii) a decision shall have been rendered by a court established under Article III of the Constitution of the United States, or the United States Tax Court, or (iii) an order, ruling, regulation (final, temporary, or proposed) or communication (including a press release) shall have been issued by the Department of the Treasury of the United States or the Internal Revenue Service or any other governmental agency, in each case referred to in clauses (i), (ii) and (iii), with the purpose or effect, directly or indirectly, of imposing federal income taxation upon interest to be received on obligations of the general character of the Bonds.

(b) Legislation shall have been enacted or a decision by a court of the United States of America shall be rendered or any action taken by the Securities and Exchange Commission or any other governmental agency which, in the opinion of counsel to the Underwriter, has the effect of requiring the offer or sale of the Bonds to be registered under the Securities Act of 1933, as amended, or the Indenture to be qualified under the Trust Indenture Act of 1939, as amended, or any event shall have occurred that, in the judgment of the Underwriter, makes untrue or incorrect in any material respect any statement or information contained in the Official Statement or that, in the judgment of the Underwriter, should be
reflected therein in order to make the statements contained therein not misleading in any material respect and the Official Statement shall not have been supplemented or amended to reflect such event.

(c) (i) In the judgment of the Underwriter, the marketability of the Bonds or the market price of the Bonds is adversely affected because: (A) additional material restrictions not in force as of this date shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange; (B) the New York Stock Exchange or other national securities exchange, or any governmental authority, shall impose, as to the Bonds or similar obligations, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Underwriter; (C) a general banking moratorium shall have been established by federal, New York or State authorities; (D) a state, national or international calamity or crisis in the financial markets shall have occurred, or any conflict involving the armed forces of the United States of America shall have escalated to such a magnitude as to materially affect the ability of the Underwriter to market the Bonds; (E) an amendment to the Constitution of the United States or the Constitution of the State shall have been ratified; (F) any federal or state legislation is proposed, introduced or enacted; (G) any decision of any federal or state court shall have been delivered; (H) any ruling or regulation (final, temporary or proposed) of the Treasury Department of the United States, the Internal Revenue Service or other federal or State authority shall have been issued or promulgated; or (I) any bill shall have been favorably reported out of committee in either House of the Congress of the United States, in any case affecting the tax status of the Issuer, its property or income, its outstanding securities (including the Bonds), or the interest thereon, or any tax exemption granted or authorized by the Act; (ii) any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance or sale of the Bonds or in any way contesting or affecting any authority or security for or the validity of the Bonds, or the existence or powers of the Issuer; (iii) legislation shall have been introduced in or enacted by the Legislature of the State with the purpose or effect, directly or indirectly, of imposing State income taxation upon interest to be received by any owners of the Bonds or that would, in the reasonable judgment of the Underwriter, adversely affect an investment in or the security pledged for the Bonds; (iv) a stop order, ruling, regulation, proposed regulation or statement by or on behalf of the Securities and Exchange Commission has been issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds is in violation of any provisions of the Securities Act of 1933, as amended, or of the Trust Indenture Act of 1939, as amended; or (v) in the Congress of the United States, legislation has been enacted or a bill has been favorably reported out of committee to either House, or a decision by a court of the United States of America is rendered, or a ruling, regulation, proposed regulation or statement by or on behalf of the Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter is made, to the effect that outstanding securities of the Issuer or of any similar public body are not exempt from the registration, qualification or other requirements of the Securities Act of 1933, as amended, or the Trust Indenture Act of 1939, as amended.

(d) There shall have occurred any change that, in the reasonable judgment of the Underwriter, makes unreasonable or unreliable any of the assumptions upon which: (i) yield on the Bonds for purposes of compliance with the Code, (ii) payment of debt service on the Bonds, or (iii) the basis for the exclusion from gross income for federal income tax purposes of interest on the Bonds, is predicated.

(e) The marketability of the Bonds or the market price thereof, in the opinion of the Underwriter, has been materially and adversely affected by disruptive events, occurrences or conditions in the securities or debt markets.

(f) There shall have occurred or any notice shall have been given of any intended downgrading, suspension, withdrawal or negative change in credit watch status by any national rating service to any of the Issuer’s or Borrower’s obligations.
(g) Any state blue sky or securities commission or other governmental agency or body shall have withheld registration, exemption or clearance of the offering of the Bonds as described herein, or issued a stop order or similar ruling relating thereto.

(h) A general suspension of trading in securities on the New York Stock Exchange or the American Stock Exchange, or the establishment of minimum prices on either such exchange.

(i) Any amendment to the federal or State Constitution or action by any federal or state court, legislative body, regulatory body, or other authority materially adversely affecting the tax status of the Issuer, its property, or income securities (or interest thereon).

(j) Any event occurring, or information becoming known which, in the judgment of the Underwriter, makes untrue in any material respect any statement or information contained in the Official Statement, or has the effect that the Official Statement contains any untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(k) There shall have occurred since the date of this Bond Purchase Agreement any materially adverse change in the affairs or financial condition of the Borrower.

(l) The United States of America shall have become engaged in hostilities which have resulted in a declaration of war or a national emergency or there shall have occurred any other outbreak or escalation of hostilities or a national or international calamity or crisis, financial or otherwise.

(m) Any fact or event shall exist or have existed that, in the Underwriter’s judgment, requires or has required an amendment of or supplement to the Official Statement.

SECTION 9. Expenses

The Underwriter shall be under no obligation to pay, and the Borrower hereby agrees to pay, any expenses incidental to the performance of the Issuer’s obligations hereunder, including, but not limited to, (a) the costs of printing and preparation for printing or other reproduction for distribution and use in connection with the public offering of the Bonds such number of copies as may be requested by the Underwriter of the Preliminary Official Statement, the Official Statement, the Indenture, the Bond Resolution and the blue sky survey, as well as any delivery costs incurred in connection with the distribution of the foregoing documents; (b) the cost of preparing the definitive Bonds; (c) the fees and disbursements of Bond Counsel in connection with the authorization and issuance of the Bonds; the fees and expenses of Issuer’s counsel; the fees and expenses of the Trustee and its counsel; any application or administrative fee of the Issuer; and the fees and disbursements of the Issuer’s financial advisor and any other experts or consultants retained by the Issuer; (d) the fees of rating agencies in connection with the rating of the Bonds; (e) the Underwriting Fee and the fees and expenses of counsel to the Underwriter; (f) the expenses relating to the meals, transportation, lodging, and entertainment incidental to implementing this Bond Purchase Agreement; and (g) all other expenses in connection with the public offer and sale of the Bonds. The Issuer shall have no obligation to pay any fees, expenses or costs associated with or resulting from the issuance and delivery of the Bonds. The Borrower shall pay for any expenses incurred on behalf of the Issuer’s employees which are incidental to implementing this Bond Purchase Agreement.

The Issuer and Borrower acknowledge that they have had an opportunity, in consultation with such advisors as it may deem appropriate, if any, to evaluate and consider the fees and expenses being incurred as part of the issuance of the Bonds.
In the event of a failure to satisfy the closing conditions provided in Section 7 herein, the Borrower shall remain obligated for the payment of expenses as provided in this Section 9.

SECTION 10. Notices

Any notice or other communication to be given to the Issuer or the Borrower under this Bond Purchase Agreement may be given by delivering the same in writing to the Issuer or the Borrower at their respective addresses set forth on the first page hereof. Any notice or other communication to be given to the Underwriter under this Bond Purchase Agreement may be given by delivering the same in writing to Dougherty & Company LLC, 90 South 7th Street, Suite 4300, Minneapolis, Minnesota, Attention: Public Finance.

SECTION 11. Parties in Interest

This Bond Purchase Agreement is made solely for the benefit of the Issuer, the Borrower and the Underwriter (including any successor or assignees of the Underwriter), and, except as provided in Section 5 hereof, no other party or person shall acquire or have any right hereunder or by virtue hereof.

SECTION 12. Amendments

This Bond Purchase Agreement may not be amended without the written consent of the Issuer, the Borrower and the Underwriter.

SECTION 13. Survival of Representations and Warranties

The representations and warranties of the Issuer and the Borrower shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing and regardless of any investigations made by or on behalf of the Underwriter (or statements as to the results of such investigations) concerning such representations and statements of the Issuer and the Borrower and regardless of delivery of and payment for the Bonds.

SECTION 14. Execution in Counterparts

This Bond Purchase Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 15. No Prior Agreements

This Bond Purchase Agreement supersedes and replaces all prior negotiations, agreements and understandings between the parties hereto in relation to the sale of Bonds for the Issuer.

SECTION 16. Effective Date

This Bond Purchase Agreement shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by the Issuer and the Borrower and shall be valid and enforceable as of the time of such acceptance.

SECTION 17. Governing Law

This Bond Purchase Agreement shall be governed by the internal laws of the State without giving effect to the conflict of law principles of the State.
SECTION 18. Underwriter Not Acting as Advisor or Fiduciary

The Issuer and the Borrower each acknowledge and agree that (i) the purchase and sale of the Bonds pursuant to this Bond Purchase Agreement is an arm’s-length commercial transaction among the Issuer, the Borrower, and the Underwriter, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriter is and has been acting solely as a principal and is not acting as the agent, advisor, municipal advisor or fiduciary of the Issuer or the Borrower, (iii) the Underwriter has not assumed individually or collectively an advisory or fiduciary responsibility in favor of the Issuer or the Borrower with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has advised or provided other services or is currently advising or providing other services to the Issuer or the Borrower on other matters) and the Underwriter has no obligation to the Issuer or the Borrower with respect to the offering contemplated hereby except the obligations expressly set forth in this Bond Purchase Agreement and (iv) the Issuer and the Borrower have consulted their own legal, financial and other advisors to the extent they deem appropriate in connection with the offering of the Bonds.


(a) The Underwriter agrees to assist the Issuer in establishing the issue price of the Bonds and shall execute and deliver to the Issuer at Closing an “issue price” or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit E, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the Issuer and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds.

(b) Except as otherwise set forth in Schedule I attached hereto, the Issuer will treat the first price at which 10% of each maturity of the Bonds (the “10% test”) is sold to the public as the issue price of that maturity (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% test). At or promptly after the execution of this Bond Purchase Agreement, the Underwriter shall report to the Issuer the price or prices at which it has sold to the public each maturity of Bonds (excluding any Bonds which remain unsold). With respect to the Bonds for which the 10% test has not been satisfied as set forth in Schedule I, the Underwriter will neither offer nor sell unsold Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

(1) the close of the fifth (5th) business day after the sale date; or

(2) the date on which the Underwriter has sold at least 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.

The Underwriter shall promptly advise the Issuer when it has sold 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public, if that occurs prior to the close of the fifth (5th) business day after the sale date.

(c) The Underwriter confirms that any selling group agreement and any retail distribution agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each dealer who is a member of the selling group and each broker-dealer that is a party to such retail distribution agreement, as applicable, to (A) report the prices at which it sells to the public the unsold Bonds of each maturity allotted to it until it is notified by the Underwriter that either the 10% test has been satisfied as to the Bonds of that maturity or all Bonds of that
maturity have been sold to the public and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Underwriter. The Issuer acknowledges that, in making the representation set forth in this subsection, the Underwriter will rely on (i) in the event a selling group has been created in connection with the initial sale of the Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the hold-the-offering-price rule, if applicable, as set forth in a selling group agreement and the related pricing wires, and (ii) in the event that a retail distribution agreement was employed in connection with the initial sale of the Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the hold-the-offering-price rule, if applicable, as set forth in the retail distribution agreement and the related pricing wires. The Issuer further acknowledges that the Underwriter shall not be liable for the failure of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a retail distribution agreement, to comply with its corresponding agreement regarding the hold-the-offering-price rule as applicable to the Bonds.

(d) The Underwriter acknowledges that sales of any Bonds to any person that is a related party to the Underwriter shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(i) “public” means any person other than an underwriter or a related party,

(ii) “underwriter” means (A) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the public),

(iii) a purchaser of any of the Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (A) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (B) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (C) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

(iv) “sale date” means the date of execution of this Bond Purchase Agreement by all parties.
If the foregoing is in accordance with your understanding of the Bond Purchase Agreement, please sign and return to us the enclosed duplicate copies hereof, whereupon it will become a binding agreement among the Issuer, the Borrower and the Underwriter in accordance with its terms.

DOUGHERTY & COMPANY LLC

By: ________________________________
    Craig D. Theis, Vice President
CITY OF MINNETONKA, MINNESOTA

By: ________________________________
Its: Mayor

By: ________________________________
Its: City Manager
CHC MINNETONKA AFFORDABLE HOUSING LLC,
a Minnesota limited liability company

By: CHC Minnetonka Affordable Housing MM LLC,
its Managing Member

By: ___________________________
Name: Richard Martin
Title: Administrative Manager
**SCHEDULE I**

**AMOUNT, MATURITY, INTEREST RATE AND PRICE**

<table>
<thead>
<tr>
<th>Principal Amount</th>
<th>Maturity Date</th>
<th>Interest Rate</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>$5,850,000</td>
<td>October 1, 2034</td>
<td>[___]%</td>
<td>100%</td>
</tr>
</tbody>
</table>
EXHIBIT A

SUPPLEMENTAL OPINION OF BOND COUNSEL

______________, 2017

Dougherty & Company LLC
Minneapolis, Minnesota

$5,850,000
City of Minnetonka, Minnesota
Multifamily Housing Revenue Bonds
(Elmbrooke and Golden Valley Townhomes Project)
Series 2017A

[After appropriate introductory language, the opinion shall state substantially as follows:]

We are of the opinion, as of the date hereof, as follows:

1. The Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

2. The Bond Purchase Agreement has been duly executed and delivered by, and is a valid and binding agreement of, the Issuer.

3. The statements contained in the Official Statement under the captions “DESCRIPTION OF THE BONDS” (excluding the statements under the subheadings, “-Book-Entry System; Limited Obligation,” “-Initial Depository and Nominee,” and “-Representation Letter”), “SECURITY FOR THE BONDS,” “TAX MATTERS,” APPENDIX A − “DEFINITIONS OF CERTAIN TERMS,” APPENDIX B − “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE,” APPENDIX C − “SUMMARY OF CERTAIN PROVISIONS OF THE FINANCING AGREEMENT,” APPENDIX D − “SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENTS,” and APPENDIX E − “PROPOSED FORM OF OPINION OF BOND COUNSEL,” excluding any material that may be treated as included under such captions by cross-reference or reference to other documents or sources, insofar as such statements expressly summarize certain provisions of the Indenture, the Financing Agreement and the Regulatory Agreements, and the form and content of our Bond Opinion, are accurate in all material respects.

Very truly yours,
EXHIBIT B
BORROWER’S COUNSEL OPINION

_________ __, 2017

Dougherty & Company LLC  U.S. Bank National Association

City of Minnetonka, Minnesota

$5,850,000
City of Minnetonka, Minnesota
Multifamily Housing Revenue Bonds
(Elmbrooke and Golden Valley Townhomes Project)
Series 2017A

[After appropriate introductory language, the opinion shall state substantially as follows:]

1. 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 limited liability company power and all material government licenses, authorizations, consents and approvals necessary to own and operate its property and conduct its business. The Borrower is qualified to do business in the State of Minnesota.

2. The Borrower has full legal right, power and authority (a) to own its properties and conduct its business as described in the Official Statement and (b) to enter into and to carry out and consummate the transactions contemplated by the Borrower Documents.

3. The Managing Member 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 limited liability company power and all material government licenses, authorizations, consents and approvals necessary to own and operate its property and conduct its business. The Managing Member is qualified to do business in the State of Minnesota.

4. By all necessary action, the Borrower has duly authorized and adopted the Borrower Documents, and approved the execution and delivery of, and the performance by the Borrower of the obligations in connection with the issuance of the Bonds on its part contained in the Bonds and the Borrower Documents and the consummation by it of all other transactions contemplated by the Indenture and the Borrower Documents in connection with the issuance of the Bonds. The individual[s] who have executed the Borrower Documents on behalf of the Managing Member of the Borrower have the authority to bind the Managing Member and thereby the Borrower to the terms and conditions of the Borrower Documents.

5. The Borrower Documents have been duly executed and delivered by the Borrower and, assuming the due authorization, execution and delivery of such agreements by the respective other parties thereto where necessary, if any, constitute legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability affecting the enforcement of creditors’ rights and to general principles of equity, regardless of whether such enforceability is considered in equity or in law.
6. The execution and delivery of the Borrower Documents, the performance by Borrower of its obligations thereunder and the consummation of the transactions contemplated therein are within the organizational powers of Borrower and will not (i) conflict with or constitute a breach of the Borrower’s organizational documents; (ii) to our knowledge, constitute a default under any indenture, mortgage, deed of trust or other material lien, lease, contract, note, order, judgment, decree or other material agreement, instrument or restriction of any kind to which Borrower is a party or by which any of its properties are bound or affected; or (iii) result in a violation of any constitutional or statutory provision or any material order, rule, regulation, decree or ordinance of any court, government or governmental authority known to us to be applicable to the Borrower or its property.

7. To the best of our knowledge after due and diligent inquiry, as of the Closing Date, the Borrower is not in any material respect in violation of, breach of or default under any applicable constitutional provision or law of any state or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note, agreement (including, without limitation, the Borrower Documents) or other agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property or assets is bound, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instruments; and the execution and delivery of the Bonds and the Borrower Documents, and compliance with the provisions on the Borrower’s part contained therein, do not and will not conflict with, or constitute on the part of the Borrower a violation of, breach of or default under, any applicable constitutional provision or law of any state or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note, agreement or other agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property or assets is bound, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower or under the terms of any such law, regulation or instrument, except as provided by the Bonds or the Borrower Documents.

8. As of the Closing Date, all consents, approvals, authorizations, and orders of or filings or registrations with any governmental authority, board, agency or issuer of any state or of the United States having jurisdiction required in connection with, or the absence of which would materially adversely affect, the execution and delivery by the Borrower of the Borrower Documents or the performance by the Borrower of its obligations thereunder have been obtained or made and are in full force and effect.

9. To the best of our knowledge after due and diligent inquiry, as of the Closing Date, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending or, to the best of our knowledge, threatened against the Borrower, affecting the existence of the Borrower or the titles of its officers to their respective offices, or contesting or affecting as to the Borrower the validity or enforceability of the Act, the Bonds, any Borrower Document or the execution and delivery or adoption by the Borrower of any Borrower Document, or in any way contesting or challenging the completeness or accuracy of the Preliminary Official Statement or the Official Statement or the powers of the Borrower or its authority with respect to the Borrower Documents or the consummation of the transactions contemplated thereby; nor, to the best of our knowledge, is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially adversely affect the financial condition or operations of the Borrower or the validity of the authorization, execution, delivery or performance by the Borrower of any Borrower Document.
10. Nothing has come to our attention that would lead us to believe that the statements and information contained in the Preliminary Official Statement and the Official Statement under the headings “THE PROJECT AND THE PRIVATE PARTICIPANTS,” “CERTAIN BONDHOLDERS’ RISKS” and “NO LITIGATION – The Borrower” (except as to the statistical and financial data included in the Official Statement with respect to which we do not express any opinion), contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

11. The Borrower may not plead the defense of usury or maintain an action for usury with respect to the loan(s) being made under the Transaction Documents.

Very truly yours,
BORROWER’S RULE 15c2-12 CERTIFICATE  

$5,850,000  
City of Minnetonka, Minnesota  
Multifamily Housing Revenue Bonds  
(Elmbrooke and Golden Valley Townhomes Project)  
Series 2017A  

The undersigned hereby certifies and represents to Dougherty & Company LLC (the “Underwriter”) that he/she is authorized to execute and deliver this certificate on behalf of CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), and hereby further certifies to the Underwriter as follows:  

(a) This Certificate is delivered to enable the Underwriter to comply with Securities and Exchange Commission Rule 15c2-12 under the Securities Exchange Act of 1934 (the “Rule”) in connection with the issuance and sale of the above-captioned bonds (the “Bonds”).  

(b) In connection with the issuance and sale of the Bonds, there has been prepared a Preliminary Official Statement, dated the date of this certificate, setting forth information concerning the Bonds and the Borrower (the “Preliminary Official Statement”).  

(c) As used herein, “Permitted Omissions” shall mean the offering price(s), interest rate(s), accreted values, yield to maturity, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings and other terms of the Bonds depending on such matters and the identity of the underwriter(s), all with respect to the issuance and sale of the Bonds.  

(d) The Preliminary Official Statement is, as of the date thereof, deemed final within the meaning of the Rule, except for Permitted Omissions.  

(e) The sections of the Preliminary Official Statement entitled “CONTINUING DISCLOSURE” and “APPENDIX F – FORM OF CONTINUING DISCLOSURE AGREEMENT” describes the agreement the Borrower expects to make for the benefit of the Bondholders in the Continuing Disclosure Agreement, dated as of September 1, 2017, by and between the Borrower and U.S. Bank National Association, in its capacity as dissemination agent, by which the Borrower will undertake to provide continuing disclosure in accordance with the Rule.  

(f) The Borrower, its members and all entities affiliated with the Borrower and its members have complied with all of their previous continuing disclosure obligations under the Rule, if any (except to the extent described in the Preliminary Official Statement).  

Dated: ____________, 2017  

[Remainder of Page Intentionally Left Blank]
IN WITNESS WHEREOF, I have hereunto set my hand this as of the date set forth above.

CHC MINNETONKA AFFORDABLE HOUSING LLC,
a Minnesota limited liability company

By: CHC Minnetonka Affordable Housing MM LLC,
   its Managing Member

By: ____________________________
Name: Richard Martin
Title: Administrative Manager
EXHIBIT D

CERTIFICATE OF FEDERAL NATIONAL MORTGAGE ASSOCIATION

(Bond Purchase Agreement)

This Certificate is being furnished to the City of Minnetonka, Minnesota (the “Issuer”) and Dougherty & Company LLC, as underwriter (the “Underwriter”), pursuant to the terms of the Bond Purchase Agreement dated as of _________ __, 2017 (the “Bond Purchase Agreement”) among the Underwriter, the Issuer and CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), regarding the purchase by the Underwriter of the City of Minnetonka, Minnesota Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project) Series 2017A, issued by the Issuer. All terms not otherwise defined herein shall have the meanings ascribed to such terms in the Bond Purchase Agreement.

The undersigned hereby certifies to the Issuer and the Underwriter that the Federal National Mortgage Association (“Fannie Mae”) (A) has provided the link to the Fannie Mae MBS Prospectus set forth in the first paragraph under the caption “SUMMARY OF THE PASS-THROUGH CERTIFICATE ANTICIPATED TO BE ISSUED IN CONNECTION WITH THE MORTGAGE LOAN” in the Preliminary Official Statement and Official Statement and the form of Prospectus Supplement attached as Appendix H to the Preliminary Official Statement and Official Statement, (B) that to the extent the Pass-Through Certificate is issued by Fannie Mae, Fannie Mae will use the form of Prospectus Supplement attached to the Preliminary Official Statement and Official Statement as the form for the Prospectus Supplement to be provided in connection with the issuance of the Pass-Through Certificate, and (C) that Fannie Mae has authorized the inclusion of such information in the Preliminary Official Statement and the Official Statement for use in connection with the marketing of the Bonds.
EXHIBIT E

ISSUER PRICE CERTIFICATE

$5,850,000
City of Minnetonka, Minnesota
Multifamily Housing Revenue Bonds
(Elmbrooke and Golden Valley Townhomes Project)
Series 2017A

The undersigned, on behalf of Dougherty & Company LLC, as underwriter (“Dougherty”) hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

1. **Sale of the General Rule Maturities.** As of the date of this certificate, for each Maturity of the General Rule Maturities, the first price at which at least 10% of such Maturity was sold to the Public is the respective price listed in Schedule A.

2. **[Initial Offering Price of the Hold-the-Offering-Price Maturities.**

   (a) Dougherty offered the Hold-the-Offering-Price Maturities to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this certificate as Schedule B.

   (b) As set forth in the Bond Purchase Agreement, Dougherty has agreed in writing that, (i) for each Maturity of the Hold-the-Offering-Price Maturities, it would neither offer nor sell any of the Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the-offering-price rule”), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any retail distribution agreement shall contain the agreement of each broker-dealer who is a party to the retail distribution agreement, to comply with the hold-the-offering-price rule. Pursuant to such agreement, no Underwriter (as defined below) has offered or sold any Maturity of the Hold-the-Offering-Price Maturities at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period.

3. **Defined Terms.**

   (a) **General Rule Maturities** means those Maturities of the Bonds listed in Schedule A hereto as the “General Rule Maturities.”

   (b) **[Hold-the-Offering-Price Maturities** means those Maturities of the Bonds listed in Schedule A hereto as the “Hold-the-Offering-Price Maturities.”

   (c) **Holding Period** means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date, or (ii) the date on which Dougherty has sold at least 10% of such Hold-the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.

   (d) **Issuer** means the City of Minnetonka, Minnesota.
(e) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(f) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(g) *[Sale Date]* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is [DATE].

(h) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).]
The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents Dougherty’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer and the Borrower with respect to certain of the representations set forth in the Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Kennedy & Graven, Chartered, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038, and other federal income tax advice that it may give to the Issuer and the Borrower from time to time relating to the Bonds.

Dougherty & Company LLC

By: ________________________________

Name: ______________________________

Dated: [ISSUE DATE]
SCHEDULE A

SALE PRICES OF THE GENERAL RULE MATURITIES [AND INITIAL OFFERING PRICES OF THE HOLD-THE-OFFERING-PRICE MATURITIES]

(Attached)
SCHEDULE B
PRICING WIRE OR EQUIVALENT COMMUNICATION

(Attached)
COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT, dated as of September 1, 2017 (the “Cooperative Agreement”), is made and entered into between the CITY OF GOLDEN VALLEY, MINNESOTA, a statutory city and political subdivision of the State of Minnesota, as host city (the “Host City”), and the CITY OF MINNETONKA, MINNESOTA, a home rule charter city and political subdivision of the State of Minnesota, as issuer city (the “Issuer City”).

RECITALS

WHEREAS, CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), has proposed to finance (i) the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive in the Issuer City (the “Elmbrooke Apartments”); and (ii) 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 in the Host City (the “Golden Valley Townhomes,” and together with the Elmbrooke Apartments, the “Project”);

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

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

WHEREAS, the Host City and the Issuer City are authorized by Minnesota Statutes, Chapter 462C, as amended (the “Act”), to issue revenue obligations to finance multifamily rental housing developments located; and

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

WHEREAS, the revenue obligations (and any refunding obligations) proposed to be issued by the Issuer City for the benefit of the Borrower shall not constitute general or moral obligations of, or pledge the full faith and credit or taxing powers of, the Host City, the Issuer City, the State of Minnesota, or any other agency or political subdivision thereof, but shall be payable solely from the revenues

504952v1 JAE MNI40-185
pledged and assigned thereto pursuant to one or more agreements between the Issuer City and the Borrower; and

WHEREAS, the governing bodies of the Host City and the Issuer City have authorized the execution and delivery of this Cooperative Agreement; and

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

1. The Issuer City will issue its (i) Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Bonds”), in the original aggregate principal amount of $5,850,000; and (ii) Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Note,” and together with the Bonds, the “Obligations”), in the original aggregate principal amount of $900,000. Proceeds of the Obligations will be used to finance the Project, fund any required reserves, and pay the costs of issuing the Obligations.

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

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

4. The Host City hereby consents to and approves (i) the issuance of the Obligations by the Issuer City; and (ii) the financing of the Golden Valley Townhomes by the Issuer City with the proceeds of a portion of the Obligations to be issued by the Issuer City.

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

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

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

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

9. This Cooperative Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement.
IN WITNESS WHEREOF, duly authorized officers of the Host City and the Issuer City have executed this Cooperative Agreement as of the date and year first written above.

CITY OF GOLDEN VALLEY, MINNESOTA,
as Host City

By ______________________________
Its Mayor

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

CITY OF MINNETONKA, MINNESOTA,
as Issuer City

By ________________
Its Mayor

By ________________
Its City Manager
CITY OF MINNETONKA, MINNESOTA

HOUSING PROGRAM FOR A
MULTIFAMILY HOUSING DEVELOPMENT

Pursuant to Minnesota Statutes, Chapter 462C, as amended (the “Housing Act”), the City of Minnetonka, Minnesota (the “City”) is authorized to develop and administer programs to finance the acquisition, construction, rehabilitation, and equipping of multifamily housing developments under the circumstances and within the limitations set forth in the Housing Act. Section 462C.07 of the Housing Act provides that such programs for multifamily housing developments may be financed by revenue bonds issued by the City.

The City has received a proposal that it approve a program providing for (i) 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 (ii) 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 together with the Elmbrooke Apartments, the “Project”). The acquisition and substantial rehabilitation of the Project is to be funded in part through the issuance by the City of one or more series of revenue bonds, as taxable or tax-exempt obligations, in the approximate aggregate principal amount not to exceed $7,000,000 (the “Obligations”), the proceeds of which will be loaned to CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), whose managing member is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company. All or a portion of the dwelling units of the Project will be subject to occupancy limits imposed by federal income tax law and regulations such that only persons and families within designated income limits will be permitted to occupy such units.

The City, in establishing this multifamily housing program (the “Program”), has considered the information contained in the City’s comprehensive plan. The Project will be constructed in accordance with the requirements of Section 462C.05, subdivisions 1 and 2 of the Housing Act. Additionally, the City is authorized and empowered, pursuant to the Housing Act and Minnesota Statutes, Sections 471.59 and 471.656, as amended, to issue the Obligations to finance, in part, the acquisition and substantial rehabilitation of the Golden Valley Townhomes. At the request of the Borrower, the City and the City of Golden Valley, Minnesota (the “City of Golden Valley”) propose to enter into a cooperative agreement pursuant to which the City of Golden Valley will consent to the issuance of the Obligations by the City to finance the rehabilitation of the Golden Valley Townhomes.

Section A. Definitions. The following terms used in this Program shall have the following meanings, respectively:

“Borrower” shall mean CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), whose managing member is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company.

“City” shall mean the City of Minnetonka, Minnesota.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and the treasury regulations promulgated thereunder.
“Housing Act” shall mean Minnesota Statutes, Chapter 462C, as currently in effect and as the same may be from time to time amended.

“Housing Unit” shall mean any one of the dwelling units financed with the Obligations, each located in the Project, occupied by one person or family, and containing complete living facilities.

“Land” shall mean the real property upon which the Project is situated.

“Obligations” shall mean the revenue bonds to be issued by the City to finance the Project.

“Program” shall mean this housing program for the financing of the Project pursuant to the Housing Act.

“Project” shall mean, collectively, the forty-six (46) existing affordable townhome units located at 5400 Smetana Drive in the City to be acquired and substantially rehabilitated by the Borrower and six (6) existing affordable townhome units at 2100 Douglas Drive North and two (2) existing affordable townhome units at 3354 Lilac Drive North in the City of Golden Valley to be acquired and substantially rehabilitated by the Borrower.

Section B. Program for Financing the Project. It is proposed that the City establish this Program to provide financing for the acquisition and substantial rehabilitation of the Project at a cost and upon such other terms and conditions as are set forth herein and as may be agreed upon in writing between the City, the initial purchasers of the Obligations, and the Borrower. The City expects to issue the Obligations in one or more series as soon as the terms of the Obligations have been agreed upon by the City, the Borrower, and the initial purchasers of the Obligations. The proceeds of the Obligations will be loaned to the Borrower to finance the acquisition and substantial rehabilitation of the Project, to fund required reserves, if any, to pay interest on the Obligations during construction of the Project, if needed, and to pay the costs of issuing the Obligations.

It is anticipated that all series of Obligations will have a maturity of approximately forty (40) years or less. It is expected that the Obligations will bear interest at fixed rates, consistent with the market at the time of issuance, or at variable rates.

The City will hire no additional staff for the administration of the Program. Insofar as the City will be contracting with underwriters, legal counsel, bond counsel, trustees, purchasers, and others, all of whom will be reimbursed from bond proceeds and revenues generated by the Program, no administrative costs will be paid from the City’s budget with respect to this Program. The Obligations will not be general obligations of the City or the City of Golden Valley but will be issued as conduit revenue obligations of the City to be paid only from loan repayments by the Borrower and revenues generated by the property pledged to the payment thereof, which may include additional security such as additional collateral, insurance or a letter of credit.

Section C. Standards and Requirements Relating to the Financing of the Project Pursuant to the Program. The following standards and requirements shall apply with respect to the operation of the Project by the Borrower pursuant to this Program:

(1) Substantially all of the proceeds of the sale of the Obligations will be applied to the acquisition and substantial rehabilitation of the Project, the payment of the costs of issuing the Obligations, the financing of interest on the Obligations during the construction of the Project, if
needed, and the funding of any required reserves. The proceeds of the Obligations will be made available to the Borrower pursuant to the terms of one or more loan agreements (or other revenue agreements) which will include certain covenants to be made by the Borrower to the City regarding the use of proceeds and the character and use of the Project.

(2) The Project qualifies as a “multifamily housing development” within the meaning of the Housing Act, since it is comprised of one or more apartment facilities, including an apartment or unit described in Minnesota Statutes, Chapter 515, 515A, or 515B, or a cooperative, or a group of townhouses, which include four or more dwelling units, each to be rented or sold to or occupied by a person or family for use as a residence, or a building or buildings which include one or more dwelling units, each to be rented by a person or family for use as a residence. The Project may include new construction or the acquisition and rehabilitation of an existing building and site or the rehabilitation of and discharge of any interest or lien in an existing building and site.

(3) The Borrower, and any subsequent owner of the Project, will not arbitrarily reject an application from a proposed tenant because of race, color, creed, religion, national origin, sex, marital status, or status with regard to public assistance or disability.

(4) At least forty percent (40%) of the Housing Units will be held for occupancy by families or individuals with adjusted gross income not in excess of sixty percent (60%) of median family income, adjusted for family size. This set aside will satisfy the low-income occupancy requirements of Section 462C.05, subdivision 2 of the Housing Act.

Section D. Evidence of Compliance. The City may require from the Borrower at or before the issuance of the Obligations evidence satisfactory to the City of compliance with the standards and requirements for the financing established by the City, as set forth herein; and in connection therewith, the City or its representatives may inspect the relevant books and records of the Borrower in order to confirm such ability, intention and compliance. In addition, the City may periodically require certification from either the Borrower or such other person deemed necessary concerning compliance with various aspects of this Program.

Section E. Issuance of Obligations. To finance the Project the City will by resolution authorize, issue and sell the Obligations, in one or more series, as taxable or tax-exempt obligations, in the approximate aggregate principal amount not to exceed $7,000,000. The Obligations will be issued pursuant to Section 462C.07, subdivision 1 of the Housing Act, and will be payable primarily from the revenues of the Project. If the costs of the Project, including capitalized interest, if needed, costs of issuance of the Obligations, and required reserve funds, if any, exceed the principal amount of the Obligations, the Borrower will contribute to the Project the difference between the total costs of the Project and the principal amount of the Obligations available to finance the Project. The costs of the Project may change between the date of preparation of this Program and the date of issuance of the Obligations. The Obligations are expected to be issued in fall 2017.

Section F. Severability. The provisions of this Program are severable and if any of its provisions, sentences, clauses or paragraphs shall be held unconstitutional, contrary to statute, exceeding the authority of the City or otherwise illegal or inoperative by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Section G. Amendment. The City shall not amend this Program, while Obligations authorized hereby are outstanding, to the detriment of the holders of such Obligations.
Section H. State Ceiling.

(1) An application for an allocation of a portion of the annual volume cap for private activity bonds to be issued to provide “qualified residential rental projects,” within the meaning of Sections 142(a)(7) and 142(d) of the Code, will be made to the office of Minnesota Management & Budget, pursuant to Section 146 of the Code and Minnesota Statutes, Chapter 474A, as amended (the “Allocation Act”).

(2) Pursuant to the terms and requirements of the Allocation Act: (i) the Project will meet the requirements of Section 142(d) of the Code regarding the incomes of the occupants of the Project; and (ii) the maximum rent for at least twenty percent (20%) of the Housing Units will not exceed the area fair market rent or exception fair market rents for existing housing, if applicable, as established by the United States Department of Housing and Urban Development.

(3) Prior to the issuance of the Obligations, the Borrower will enter into one or more agreements with the City (collectively, the “Regulatory Agreements”) that specify the maximum rental rates of twenty percent (20%) of the Housing Units and the income levels of the residents of the Project occupying the income-restricted units. Such rental rates and income levels must be within the limitations established in accordance with the preceding paragraph (2). The Borrower will be required to annually certify to the City over the term of the agreement that the rental rates for the rent-restricted units are within the limitations under the preceding paragraph (2). The City may request individual certification of the income of residents of the income-restricted units of the Project. The office of Minnesota Management & Budget may request from the City a copy of the annual certification prepared by the Borrower. The office of Minnesota Management & Budget may require the City to request individual certification of all residents of the income-restricted units of the Project.

(4) The City will monitor Project compliance with the rental rate and income level requirements established under the preceding paragraph (2). The City may issue an order of noncompliance if the Project is found by the City to be out of compliance with the rental-rate or income-level requirements established under the preceding paragraph (2). The Borrower shall pay a penalty to the City equal to one-half of one percent (0.5%) of the total amount of the tax-exempt Bonds issued under the Housing Act for the Project if the City issues an order of noncompliance. For each additional year the Project is out of compliance, the annual penalty must be increased by one-half of one percent (0.5%) of the principal amount of the tax-exempt Obligations issued under the Housing Act for the Project. The City may waive insubstantial violations.

(5) The City will enter into the Regulatory Agreements with the Borrower with a term of at least fifteen (15) years in order to ensure that the Project satisfies the requirements of this Program, Section 142(d) of the Code, the Housing Act, and the Allocation Act.
REGULATORY AGREEMENT
(ELMBROOKE APARTMENTS)

between

CITY OF MINNETONKA, MINNESOTA,
as Issuer

CHC MINNETONKA AFFORDABLE HOUSING LLC,
as Borrower

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

and

BRIDGEWATER BANK,
as Bank

Dated September ___, 2017

Relating to:

$5,850,000  
City of Minnetonka, Minnesota  
Multifamily Housing Revenue Bonds  
(Elmbrooke and Golden Valley Townhomes Project)  
Series 2017A

$900,000  
City of Minnetonka, Minnesota  
Multifamily Housing Revenue Note  
(Elmbrooke and Golden Valley Townhomes Project)  
Series 2017B

This Instrument Drafted by:
Kennedy & Graven, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN  55402
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>PARTIES</strong></td>
<td>1</td>
</tr>
<tr>
<td></td>
<td><strong>RECITALS</strong></td>
<td>1</td>
</tr>
<tr>
<td>1</td>
<td>Definitions</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>Representations by the Borrower</td>
<td>5</td>
</tr>
<tr>
<td>3</td>
<td>Qualified Residential Rental Project</td>
<td>6</td>
</tr>
<tr>
<td>4</td>
<td>Low Income Tenants</td>
<td>8</td>
</tr>
<tr>
<td>5</td>
<td>Restrictions Imposed by Minnesota Statutes, Chapter 474A</td>
<td>10</td>
</tr>
<tr>
<td>6</td>
<td>Covenants Run With the Land</td>
<td>11</td>
</tr>
<tr>
<td>7</td>
<td>Indemnification</td>
<td>11</td>
</tr>
<tr>
<td>8</td>
<td>Consideration</td>
<td>11</td>
</tr>
<tr>
<td>9</td>
<td>Reliance</td>
<td>11</td>
</tr>
<tr>
<td>10</td>
<td>Sale or Transfer of the Project</td>
<td>12</td>
</tr>
<tr>
<td>11</td>
<td>Term</td>
<td>12</td>
</tr>
<tr>
<td>12</td>
<td>Burden and Benefit</td>
<td>13</td>
</tr>
<tr>
<td>13</td>
<td>Enforcement</td>
<td>13</td>
</tr>
<tr>
<td>14</td>
<td>The Trustee, the Bank, and the Issuer</td>
<td>13</td>
</tr>
<tr>
<td>15</td>
<td>Amendment</td>
<td>14</td>
</tr>
<tr>
<td>16</td>
<td>Right of Access to the Project and Records</td>
<td>14</td>
</tr>
<tr>
<td>17</td>
<td>No Conflict with Other Documents</td>
<td>14</td>
</tr>
<tr>
<td>18</td>
<td>Severability</td>
<td>14</td>
</tr>
<tr>
<td>19</td>
<td>Notices</td>
<td>14</td>
</tr>
<tr>
<td>20</td>
<td>Governing Law</td>
<td>15</td>
</tr>
<tr>
<td>21</td>
<td>Payment of Fees</td>
<td>16</td>
</tr>
<tr>
<td>22</td>
<td>Limited Liability</td>
<td>16</td>
</tr>
<tr>
<td>23</td>
<td>Actions of Issuer</td>
<td>16</td>
</tr>
<tr>
<td>24</td>
<td>Counterparts</td>
<td>16</td>
</tr>
<tr>
<td>25</td>
<td>Recording and Filing</td>
<td>16</td>
</tr>
<tr>
<td>26</td>
<td>Fannie Mae Rider to Regulatory Agreement</td>
<td>16</td>
</tr>
<tr>
<td>27</td>
<td>Prior Regulatory Agreement Terminated</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td><strong>SIGNATURES</strong></td>
<td>S-1</td>
</tr>
<tr>
<td></td>
<td><strong>EXHIBIT A — LEGAL DESCRIPTION OF PROPERTY</strong></td>
<td>A-1</td>
</tr>
<tr>
<td></td>
<td><strong>EXHIBIT B — FORM OF INCOME CERTIFICATION</strong></td>
<td>B-1</td>
</tr>
<tr>
<td></td>
<td><strong>EXHIBIT C — CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE</strong></td>
<td>C-1</td>
</tr>
<tr>
<td></td>
<td><strong>FANNIE MAE RIDER TO REGULATORY AGREEMENT</strong></td>
<td>Rider-1</td>
</tr>
</tbody>
</table>
REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT, dated September ___, 2017 (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, U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “Trustee”), as trustee for the Series 2017A Bonds (hereinafter defined) and BRIDGEWATER BANK, a Minnesota banking corporation (the “Bank”), as the purchaser of the Series 2017B Note (hereinafter defined).

RECITALS

The Issuer is authorized to issue bonds to finance and refinance multifamily housing developments in accordance with the terms of Minnesota Statutes, Chapters 462C and 474A, as amended (collectively, the “Act”).

The Issuer has agreed to issue the following obligations to finance, in part, the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive, Minnetonka, Minnesota (the “Project”): (i) the Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Series 2017A Bonds”), in the original aggregate principal amount of $5,850,000, pursuant to the terms of a resolution adopted by the City Council of the Issuer on August 28, 2017 (together, the “Bond Resolution”) and an Indenture of Trust, dated as of September 1, 2017 (the “Series 2017A Indenture”), between the Issuer and the Trustee; and (ii) the Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Series 2017B Note”), in the original aggregate principal amount of $900,000, pursuant to the terms of the Bond Resolution.

To finance the Project, the Issuer will (i) loan the proceeds derived from the sale of the Series 2017A Bonds to the Borrower pursuant to a Financing Agreement, dated as of September 1, 2017 (the “Series 2017A Financing Agreement”), between the Issuer, the Borrower, the Trustee, and Dougherty Mortgage LLC, a Delaware limited liability company, as the mortgage lender (the “Mortgage Lender”); and (ii) loan the proceeds derived from the sale of the Series 2017B Note to the Borrower pursuant to a Loan Agreement, dated as of September 1, 2017 (the “Series 2017B Loan Agreement”), between the Issuer and the Borrower.

For good and valuable consideration, the Borrower, the Trustee, the Bank, 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. This Regulatory Agreement supercedes the Regulatory Agreement (Elmbrooke Apartments), dated August 18, 2016.

NOW, THEREFORE, the Borrower, the Trustee, the Bank, 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.

“Act” means, collectively, Minnesota Statutes, Chapters 462C and 474A, 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.

“Bank” means Bridgewater Bank, a Minnesota banking corporation, as the purchaser of the Series 2017B Note, or any successor or assign.

“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 Agreements.

“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 Combined Bonds.

“Combined Bonds” means, collectively, the Series 2017A Bonds and the Series 2017B 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 Agreements” means, collectively, the Series 2017A Financing Agreement and the Series 2017B Loan Agreement.
“Loans” means, collectively, the Loans provided by the Issuer to the Borrower pursuant to the Loan Agreements to provide financing for the Project.

“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.

“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 Combined Bonds.

“Qualified Project Period” means the period beginning on the later of the date of issuance of the Combined Bonds 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 September ___, 2017, between the Issuer, the Borrower, and the Trustee, 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.

“Series 2017A Bonds” means the Issuer’s Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A, issued in the original aggregate principal amount of $5,850,000.


“Series 2017A Indenture” means the Indenture of Trust, dated as of September 1, 2017, between the Issuer and the Trustee, relating to the Series 2017A Bonds.

“Series 2017B Loan Agreement” means the Loan Agreement, dated as of September 1, 2017, between the Issuer and the Borrower, relating to the Series 2017B Note.

“Series 2017B Note” means the Issuer’s Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B, issued in the original aggregate principal amount of $900,000.

“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 successor statute to the Code.

“Trustee” means U.S. Bank National Association, a national banking association, or any successor or assign.

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.
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 Combined Bonds or the use of the proceeds of the Combined Bonds 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 Combined Bonds or this Regulatory Agreement,

(iii) questions the tax-exempt status of the Combined Bonds, 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 Combined Bonds are executed and delivered to the Trustee, 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 Combined Bonds. The Borrower will utilize and operate the Project as a multifamily rental housing project during the term of the Combined Bonds 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 any of the Combined Bonds. The Borrower acknowledges and understands that during any period of time when the Borrower owns the Combined
Bonds, the interest on the Combined Bonds 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 Combined Bonds within two years from the later of (i) the date the Borrower acquires the Project; or (ii) the date of issuance of the Combined Bonds.

(l) The statements made in the various certificates delivered by the Borrower to the Issuer or the Trustee on the date of issuance of the Combined Bonds 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 real 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 Loans 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 Combined Bonds 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 Trustee 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. September 2013), 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 Trustee. 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, 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 Combined Bonds. If requested by the Trustee or Issuer, a copy of such Income Certification shall be filed with the Trustee 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 Trustee 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. September 2013), 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 Trustee, 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 Trustee, 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 Trustee 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 Trustee, 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 Trustee 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 Combined Bonds are issued by the Issuer as residential rental project bonds, as defined in Chapter 474A of the Act (“Chapter 474A”), and have 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 each Project (which shall consist of the same units as meet the requirements of Section 4) to an amount not exceeding 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 Trustee and the Bank and their respective officers, agents, members, directors, officials, and employees as provided in the Loan Agreements. All provisions of the Loan Agreements 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 Combined Bonds in part to provide funds to make the Loans 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 Combined Bonds 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 Combined Bonds and in the exemption from federal income taxation of the interest on the Combined Bonds. In performing their duties and obligations hereunder, the Issuer, the Trustee, and the Bank 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, the Trustee, and the Bank 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, the Trustee, or the Bank hereunder in good faith and in conformity with such written opinion. A copy of any such opinion shall be furnished by the Issuer, the Trustee, or the Bank 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, the Trustee, or the Bank 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, the Trustee, or the Bank 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 Trustee 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 Agreements. 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 Combined Bonds and termination of the Loan Agreements and the Loans
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 Trustee from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Combined Bonds are 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 Combined Bonds have 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 Combined Bonds to become included in gross income for federal income tax purposes or cause interest on the Combined Bonds 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 Combined Bonds were 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, the Bank or the Trustee to the Borrower, then the Issuer, the Trustee, acting upon the direction of the holders of the Series 2017A Bonds pursuant to the Series 2017A Indenture, or the Bank
acting pursuant to the Series 2017B Loan Agreement, 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, the Trustee, the Bank, or the holders of the Combined Bonds 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 consent of the Trustee or the Bank, respectively, declare a default under either of the Loans, accelerate the indebtedness evidenced by either of the Loans, and proceed to redeem the Series 2017A Bonds or the Series 2017B Note in accordance with their terms.

Notwithstanding anything to the contrary contained herein, the Issuer, the Trustee, and the Bank 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 Trustee, the Bank, 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 Trustee, the Bank, or the Issuer, as the case may be, on demand.

After the Combined Bonds have 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 Trustee or the Bank at the direction of the holders of the Combined Bonds.

Section 14. The Trustee, the Bank, and the Issuer. The Trustee is entering into this Regulatory Agreement in its capacity as the Trustee with respect to the Combined Bonds and the Series 2017A Indenture. The Bank is entering into this Regulatory Agreement in its capacity as the purchaser of the Series 2017B Note. The Issuer may, at all times, assume the Borrower’s compliance with this Regulatory Agreement unless otherwise notified in writing by the Trustee or the Bank (but neither the Trustee nor the Bank shall have any obligation to so notify the Issuer), or unless the Issuer has actual knowledge of noncompliance. The Trustee and the Bank can rely on the accuracy of any certificates, instruments, opinions, or reports delivered to them by the Borrower. It is possible that the Combined Bonds will be discharged and the Series 2017A Indenture, the Series 2017A Financing Agreement, and the Series 2017B Loan Agreement will terminate prior to the expiration of the Qualified Project Period. Following the payment in full and the discharge of the Series 2017A Bonds and the termination of the Series 2017A Indenture and the Series 2017A Financing Agreement: (i) all obligations, rights, and duties of the Trustee under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Trustee will instead be undertaken by the Issuer; (iii) all notices to be delivered to the Trustee will instead be delivered to the Issuer and all notices to be delivered by the Trustee will instead be delivered by the Issuer; and (iv) the Trustee shall no longer be parties to this Regulatory Agreement and shall be considered released from all obligations hereunder. Following the payment in full and the discharge of the Series 2017B Note and the termination of the Series 2017B Loan Agreement: (i) all obligations, rights, and duties of the Bank under this Regulatory
Agreement will terminate and be of no further force and effect; (ii) all actions required by the Bank will instead be undertaken by the Issuer; (iii) all notices to be delivered to the Bank will instead be delivered to the Issuer and all notices to be delivered by the Bank will instead be delivered by the Issuer; and (iv) the Bank shall no longer be parties 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 Trustee and the Bank as may be required by the Loan Agreements, and duly recorded. The Issuer’s, the Trustee’s, and the Bank’s consent to any such amendment or revision (whether or not the Combined Bonds shall then be outstanding) shall be given only upon receipt of an opinion of Bond Counsel addressed to the Issuer, the Trustee, and the Bank that such amendment or revision will not adversely affect the exemption from federal income taxation of interest on the Combined Bonds. None of the Issuer, the Trustee, or the Bank 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 Trustee, the Bank, and their duly authorized agents 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 Trustee:  
U.S. Bank National Association  
60 Livingston Avenue, 3rd Floor  
EP-MN-WS3C  
St. Paul, MN 55107-2292  
Attn: Corporate Trust Services
To the Bank:       Bridgewater Bank  
                   3800 American Boulevard, Suite 100 
                   Bloomington, MN  55431  
                   Attn: Nicholas Place  

To the Borrower:  CHC Minnetonka Affordable Housing LLC  
                   c/o Community Housing Corporation of America, Inc.  
                   161 St. Anthony Avenue, Suite 820  
                   St. Paul, MN  55103  
                   Attn: President  

With copies to:    Shelter Corporation  
                   1600 Hopkins Crossroad  
                   Minnetonka, MN  55305  
                   Attn: President  

Winthrop & Weinstine, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402-4629  
Attention: Jeffrey J. Koerselman, Esq.  

To the Investor Member: Wincopin Circle LLLP  
                   c/o Enterprise Asset Management, Inc.  
                   70 Corporate Center  
                   11000 Broken Land Parkway, Suite 700  
                   Columbia, MD  21044  
                   Attn: Asset Management  
                   Telephone: (410) 964-0552  
                   Facsimile: (410) 772-2630  

With a copy to:    Gallagher Evelius & Jones LLP  
                   218 North Charles Street, Suite 400  
                   Baltimore, MD  21201  
                   Attn: Natalie B. Sherman, Esq.  

To the Mortgage Lender: Dougherty Mortgage LLC  
                   90 South Seventh Street, Suite 4300  
                   Minneapolis, MN 55402-4108  
                   Attn: Fannie Mae Servicing  

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 Loans, the termination of the Loan Agreements, and the defeasance or discharge of the Combined Bonds, 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 Combined Bonds and amounts derived by the Issuer from the Loans and the Loan Agreements.

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 Combined Bonds; 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 Combined Bonds; 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 Combined Bonds, the Series 2017A Indenture, the Series 2017A Financing Agreement, the Series 2017B Loan Agreement, or any other instrument or agreement executed in connection with the issuance of the Combined Bonds. 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 Combined Bonds, 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.

Section 26. Fannie Mae Rider to Regulatory Agreement. The Fannie Mae Rider to Regulatory Agreement (the “Fannie Mae Rider”) attached hereto is hereby made a part of this Regulatory Agreement. In the event of a conflict between the provisions of the Fannie Mae Rider and the provisions of this Regulatory Agreement, the provisions of the Fannie Mae Rider shall control.

Section 27. Prior Regulatory Agreement Terminated. The Regulatory Agreement (Elmbrooke Apartments), dated August 18, 2016, is terminated.
IN WITNESS WHEREOF, the Issuer, the Borrower, and the Trustee 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 September, 2017, 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 September, 2017, 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

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
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: Richard Martin
Title: Administrative Manager

STATE OF MINNESOTA )
) ss
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ____ day of September, 2017, by Richard Martin, the Administrative Manager 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

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
Execution page of the Trustee to the Regulatory Agreement, dated the date and year first written above.

U.S. BANK NATIONAL ASSOCIATION

By

Its Vice President

STATE OF MINNESOTA  )
COUNTY OF HENNEPIN   ) ss.

The foregoing instrument was acknowledged before me this ____ day of September 2017, by Dan Sheff, the Vice President of U.S. Bank National Association, a national banking association, on behalf of the Trustee.

________________________________________
Notary Public

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
Execution page of the Bank to the Regulatory Agreement, dated the date and year first written above.

BRIDGEWATER BANK

By ________________________________
Nicholas Place
Its Senior Vice President and Chief Lending Officer

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) ss.

The foregoing instrument was acknowledged before me this ___ day of September, 2017, by Nicholas Place, the Senior Vice President and Chief Lending Officer of Bridgewater Bank, a Minnesota banking corporation, on behalf of the Bank.

______________________________
Notary Public

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Tract B, Registered Land Survey No. 1530, Files of the Registrar of Title, County of Hennepin, State of Minnesota

Torrens Property
Torrens Certificate No. 1051689
### 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>
</tr>
</tbody>
</table>

**PART I. DEVELOPMENT DATA**

<table>
<thead>
<tr>
<th>Property Name: Elmbrooke Apartments</th>
<th>County:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address: 5400 Smetana Drive, Minnetonka, Minnesota</td>
<td>BIN #:</td>
</tr>
</tbody>
</table>

**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>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)**

<table>
<thead>
<tr>
<th>HH Br #</th>
<th>Employment or Wages</th>
<th>Soc. Security / Pensions</th>
<th>Public Assistance</th>
<th>Other Income</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(A)</td>
<td>(B)</td>
<td>(C)</td>
<td>(D)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</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>Type of Asset</th>
<th>Cash Value of Asset</th>
<th>Annual Income from Asset</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(F)</td>
<td>(G) C/I</td>
<td>(H)</td>
</tr>
<tr>
<td>Enter Column (H) Total</td>
<td>Passbook Rate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------</td>
<td>---------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>if over $5,000 $___________</td>
<td>x 2.00%</td>
<td>$ (J) Imputed Income</td>
<td></td>
</tr>
</tbody>
</table>

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)] $

**HOUSEOLD 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**

<table>
<thead>
<tr>
<th>TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES $</th>
<th>Household Meets Income Restriction at:</th>
</tr>
</thead>
<tbody>
<tr>
<td>From Item (L) on page 1</td>
<td>60%  □  50%  □  40%  □  30%  □  ___%</td>
</tr>
</tbody>
</table>

Current Income Limit per Family Size: $__________

Household Income at Move-in $__________

RECERTIFICATION ONLY:

Current Income Limit x 140% $__________________

Household income exceeds 140% at recertification: □ Yes  □ No

Household Size at Move-in: _________
PART VI. RENT

<table>
<thead>
<tr>
<th>Tenant Paid Rent</th>
<th>$</th>
<th>Rent Assistance:</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utility Allowance</td>
<td>$</td>
<td>Other non-optional charges:</td>
<td>$</td>
</tr>
</tbody>
</table>

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)

**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

- □ ≤ 50% AMGI
- □ ≤ 60% AMGI
- □ ≤ 80% AMGI
- □ ≤ 0I **

Income Status

- □ 50% AMGI
- □ 60% AMGI
- □ 80% AMGI
- □ 0I **

Income Status

- □ ≤ 50% AMGI
- □ ≤ 60% AMGI
- □ ≤ 80% AMGI
- □ ≤ 0I **

Income Status

- □ 50% AMGI
- □ 60% AMGI
- □ 80% AMGI
- □ 0I **

** 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 Regulatory Agreement (if applicable), to live in a unit in this Project.
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 S Spouse
A Adult co-tenant O Other family member
C Child F Foster child
L Live-in caretaker 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)
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>Details</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</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 size at move-in</td>
<td></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>Details</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</td>
<td>Enter the maximum allowable gross rent for the unit.</td>
</tr>
</tbody>
</table>
Limit for this 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 Series 2017A Bonds (hereinafter defined))

U.S. Bank National Association
60 Livingston Avenue
EP-MN-WS3C
St. Paul, MN 55107-2292
Attn: Corporate Trust Services

and (prior to the discharge of the Series 2017B Note (hereinafter defined))

Bridgewater Bank
3800 American Boulevard, Suite 100
Bloomington, MN 55431
Attn: Nicholas Place

Re: Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Series 2017A Bonds”) and Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Series 2017B Note,” and together with the Series 2017A Bonds, the “Combined Bonds”)

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 September __, 2017 (the “Regulatory Agreement”), between the Owner, the City of Minnetonka, Minnesota (the “Issuer”), U.S. Bank National Association, as trustee with respect to the Series 2017A Bonds (the “Trustee”), and Bridgewater Bank, as purchaser of the Series 2017B Note; and (2) the Financing Agreement, dated as of September 1, 2017, between the Owner, the Issuer, the Trustee, and Dougherty Mortgage LLC with respect to the Series 2017A Bonds, and the Loan Agreement, dated as of September 1, 2017, between the Owner and the Issuer with respect to the Series 2017B Note (together, the “Loan Agreements”). The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Combined Bonds.
3. A review of the activities of the Owner and of the Owner’s performance under the Regulatory Agreement and the Loan Agreements 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 Combined Bonds, 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 Agreements and, to the knowledge of the undersigned, no Determination of Taxability has occurred with respect to the Combined Bonds.
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 Trustee 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: ____________________________
FANNIE MAE RIDER
TO REGULATORY AGREEMENT

THIS FANNIE MAE RIDER TO REGULATORY AGREEMENT (“Rider”) is attached to and forms a part of the Regulatory Agreement (Elmbrooke Apartments), dated September ___, 2017 (“Regulatory Agreement”), between CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company (“Borrower”), U.S. BANK NATIONAL ASSOCIATION, a national banking association (“Trustee”), BRIDGEWATER BANK, a Minnesota banking corporation (“Bank”), and 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 (“Issuer”).

1. **Definitions.** All capitalized terms used in this Rider have the meanings given to those terms in the Regulatory Agreement, the Series 2017A Indenture, or the Series 2017A Financing Agreement, as applicable.

2. **Applicability.** This Rider shall amend and supplement the Regulatory Agreement. In the event any provision of this Rider conflicts with the Regulatory Agreement, this Rider shall supersede the conflicting provision of the Regulatory Agreement. This Rider shall apply in spite of the fact that the covenants, reservations and restrictions of the Regulatory Agreement run with the land and may be deemed applicable to any successor in interest to the Borrower.

3. **Obligations not Secured by the Mortgaged Property.** The Regulatory Agreement shall not constitute a mortgage, equitable mortgage, deed of trust, deed to secure debt or other lien or security interest in the real property described in the Regulatory Agreement (“Mortgaged Property”). None of the obligations of the Borrower or any subsequent owner of the Mortgaged Property under the Regulatory Agreement shall be secured by a lien on, or security interest in, the Mortgaged Property. All such obligations are expressly intended to be and shall remain unsecured obligations. The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

4. **Subordination.** The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, and 5 and this Rider, are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Mortgage Loan Documents. Upon a conveyance or other transfer of title to the Mortgaged Property by foreclosure, deed in lieu of foreclosure or comparable conversion of the Mortgage Loan, the Person who acquires title to the Mortgaged Property pursuant to such foreclosure, deed in lieu of foreclosure or comparable conversion of the Mortgage Loan (unless such Person is the Borrower or a Person related to the Borrower within the meaning of Section 1.103-10(e) of the Regulations, in which event the Regulatory Agreement shall remain in full force and effect in its entirety) shall acquire such title free and clear of the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, and 5 and this Rider and, from and after the date on which such Person acquires title to the Mortgaged Property, the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, and 5 and this Rider shall automatically terminate and be of no force and effect; provided that Sections 3, 4, and 5 and this Rider shall also terminate and be of no force or effect under the circumstances set forth in Section 11 of the Regulatory Agreement.

5. **Obligations Personal.** The Issuer agrees that no owner of the Mortgaged Property (including Fannie Mae) subsequent to the Borrower will be liable for, assume or take title to the Mortgaged Property subject to:
(a) any failure of any prior owner of the Mortgaged Property to perform or observe any representation or warranty, affirmative or negative covenant or other agreement or undertaking under the Regulatory Agreement; and

(b) the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by any prior owner of the Mortgaged Property under the Regulatory Agreement.

The Borrower and each subsequent owner of the Mortgaged Property shall be responsible under the Regulatory Agreement for its own acts and omissions occurring during the period of its ownership of the Mortgaged Property. All such liability and obligations shall be and remain personal to such person even after such person ceases to be the owner of the Mortgaged Property.

6. **Sale or Transfer.**

(a) **Restrictions Not Applicable to Certain Transfers.** All provisions of the Regulatory Agreement regarding the sale or transfer of the Mortgaged Property or of any interest in the Borrower, including any requirement, limitation or condition precedent for any of (i) the consent of the Issuer or the Trustee to such transfer, (ii) an agreement by any transferee to abide by the requirements and restrictions of the Regulatory Agreement, (iii) transferee criteria or other similar requirements, (iv) an opinion of legal counsel and (v) the payment of any assumption fee, transfer fee, penalty or other charges, shall not apply to any of the following:

   1. any transfer of title to the Mortgaged Property to Fannie Mae or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Mortgaged Property or to any subsequent transfer by Fannie Mae (or a third party) following such foreclosure, deed in lieu of foreclosure or comparable conversion;

   2. any execution and delivery of a mortgage, deed of trust, deed to secure debt or other lien by the Borrower to secure any additional indebtedness of the Borrower which is originated by a lender for sale to Fannie Mae or guaranteed or otherwise credit enhanced by Fannie Mae; and

   3. provided that no Series 2017A Bonds are then Outstanding or all Series 2017A Bonds are to be simultaneously fully paid, redeemed or defeased, any execution and delivery of a mortgage, deed of trust, deed to secure debt or other lien by the Borrower to secure any indebtedness incurred by the Borrower which effectively refinances the Mortgage Loan.

(b) **Fannie Mae Rights to Consent Not Impaired.** Nothing contained in the Regulatory Agreement shall affect any provision of the Mortgage, the Loan Agreement or any Mortgage Loan Document which requires the Borrower to obtain the consent of Fannie Mae as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Mortgaged Property or of any direct or indirect interest in the Borrower, excluding transfers permitted by the Security Instrument.

(c) **Conclusive Evidence.** Any written consent to a sale or transfer obtained from the Issuer shall constitute conclusive evidence that the sale or transfer is not a violation of the transfer provisions of the Regulatory Agreement.

7. **Damage, Destruction or Condemnation of the Mortgaged Property.** In the event that the Mortgaged Property is damaged or destroyed or title to the property, or any part thereof, is taken
through the exercise or the threat of the exercise of the power of eminent domain, the Borrower shall comply with all applicable requirements of the Mortgage and the other Mortgage Loan Documents.

8. **Regulatory Agreement Default.** Notwithstanding anything contained in the Regulatory Agreement to the contrary:

   (a) The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

   (b) The occurrence of an event of default under the Regulatory Agreement shall not be or be deemed to be a default under the Mortgage Loan Documents, except as may be otherwise specified in the Mortgage Loan Documents.

   (c) Upon any default by the Borrower under the Regulatory Agreement, the Loan Agreement shall govern the remedies and other actions which the Issuer may take on account of such default.

9. **Amendments.** So long as the Loan Agreement is in effect, the Issuer shall not consent to any amendment, supplement to, or restatement of the Regulatory Agreement without the prior written consent of Fannie Mae.

10. **Termination.** The Regulatory Agreement may be terminated upon agreement by the Issuer, the Trustee, Fannie Mae, and the Borrower upon receipt of an opinion of a nationally recognized bond counsel acceptable to the Trustee that such termination will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income purposes. So long as the Bonds have been redeemed or are redeemed within a reasonable period thereafter, the Regulatory Agreement shall terminate and be of no further force or effect from and after the date of any transfer of title to the Mortgaged Property by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Mortgaged Property; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained in the Regulatory Agreement 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 Regulations) obtains an ownership interest in the Mortgaged Property for federal income tax purposes.

11. **Third-Party Beneficiary.** The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of Fannie Mae and are entered into for the benefit of various parties, including Fannie Mae. Fannie Mae shall accordingly have contractual rights in the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Issuer and/or the Trustee, or to cause the Issuer or the Trustee to enforce, the terms of the Regulatory Agreement. In addition, the Borrower and the Issuer intend that Fannie Mae be a third-party beneficiary of the Regulatory Agreement.

12. **Copies of Notices under the Regulatory Agreement.** Copies of all notices under the Regulatory Agreement shall be sent to the Dougherty Mortgage LLC (the “Loan Servicer”) at the address set forth below or to such other address as the Loan Servicer may from time to time designate:

    Dougherty Mortgage LLC
    90 South Seventh Street, Suite 4300
    Minneapolis, MN 55402-4108
    Attn: Fannie Mae Servicing
13. **Notices.** Any notice to be given to Fannie Mae shall be sent to Fannie Mae at the address set forth below or to such other address as Fannie Mae may from time to time designate:

Fannie Mae  
3900 Wisconsin Avenue, NW  
Drawer AM  
Washington, DC 20016-2892  
Attention: Director, Multifamily Asset Management  
Telephone: (301) 204-8008  
Facsimile: (301) 280-2065

RE: $5,850,000 City of Minnetonka, Minnesota Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A/Dougherty Mortgage LLC

with a copy to:

Fannie Mae  
3900 Wisconsin Avenue, NW  
Drawer AM  
Washington, DC 20016-2892  
Attention: Vice President, Multifamily Operations  
Telephone: (301) 204-8422  
Facsimile: (202) 752-8369

RE: $5,850,000 City of Minnetonka, Minnesota Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A/Dougherty Mortgage LLC

BORROWER’S INITIALS: ________  
ISSUER’S INITIALS: ________  
TRUSTEE’S INITIALS: ________
REGULATORY AGREEMENT
(GOLDEN VALLEY TOWNHOMES)

between

CITY OF MINNETONKA, MINNESOTA,
as Issuer

CHC MINNETONKA AFFORDABLE HOUSING LLC,
as Borrower

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

and

BRIDGEWATER BANK,
as Bank

Dated September ___, 2017

Relating to:

$5,850,000  $900,000
City of Minnetonka, Minnesota  City of Minnetonka, Minnesota
Multifamily Housing Revenue Bonds  Multifamily Housing Revenue Note
(Elmbrooke and  (Elmbrooke and
Golden Valley Townhomes Project)  Golden Valley Townhomes Project)
Series 2017A  Series 2017B

This Instrument Drafted by:
Kennedy & Graven, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN  55402
# TABLE OF CONTENTS

| PARTIES | .................................................................................................................. 1 |
| RECITALS | ............................................................................................................. 1 |

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1.</td>
<td>Definitions</td>
<td>2</td>
</tr>
<tr>
<td>Section 2.</td>
<td>Representations by the Borrower</td>
<td>5</td>
</tr>
<tr>
<td>Section 3.</td>
<td>Qualified Residential Rental Project</td>
<td>6</td>
</tr>
<tr>
<td>Section 4.</td>
<td>Low Income Tenants</td>
<td>8</td>
</tr>
<tr>
<td>Section 5.</td>
<td>Restrictions Imposed by Minnesota Statutes, Chapter 474A</td>
<td>10</td>
</tr>
<tr>
<td>Section 6.</td>
<td>Covenants Run With the Land</td>
<td>11</td>
</tr>
<tr>
<td>Section 7.</td>
<td>Indemnification</td>
<td>11</td>
</tr>
<tr>
<td>Section 8.</td>
<td>Consideration</td>
<td>11</td>
</tr>
<tr>
<td>Section 9.</td>
<td>Reliance</td>
<td>11</td>
</tr>
<tr>
<td>Section 10.</td>
<td>Sale or Transfer of the Projects</td>
<td>12</td>
</tr>
<tr>
<td>Section 11.</td>
<td>Term</td>
<td>12</td>
</tr>
<tr>
<td>Section 12.</td>
<td>Burden and Benefit</td>
<td>13</td>
</tr>
<tr>
<td>Section 13.</td>
<td>Enforcement</td>
<td>13</td>
</tr>
<tr>
<td>Section 14.</td>
<td>The Trustee, the Bank, and the Issuer</td>
<td>14</td>
</tr>
<tr>
<td>Section 15.</td>
<td>Amendment</td>
<td>14</td>
</tr>
<tr>
<td>Section 16.</td>
<td>Right of Access to the Projects and Records</td>
<td>14</td>
</tr>
<tr>
<td>Section 17.</td>
<td>No Conflict with Other Documents</td>
<td>14</td>
</tr>
<tr>
<td>Section 18.</td>
<td>Severability</td>
<td>14</td>
</tr>
<tr>
<td>Section 19.</td>
<td>Notices</td>
<td>15</td>
</tr>
<tr>
<td>Section 20.</td>
<td>Governing Law</td>
<td>16</td>
</tr>
<tr>
<td>Section 21.</td>
<td>Payment of Fees</td>
<td>16</td>
</tr>
<tr>
<td>Section 22.</td>
<td>Limited Liability</td>
<td>16</td>
</tr>
<tr>
<td>Section 23.</td>
<td>Actions of Issuer</td>
<td>16</td>
</tr>
<tr>
<td>Section 24.</td>
<td>Counterparts</td>
<td>16</td>
</tr>
<tr>
<td>Section 25.</td>
<td>Recording and Filing</td>
<td>16</td>
</tr>
<tr>
<td>Section 26.</td>
<td>Fannie Mae Rider to Regulatory Agreement</td>
<td>16</td>
</tr>
<tr>
<td>Section 27.</td>
<td>Prior Regulatory Agreement Terminated</td>
<td>17</td>
</tr>
</tbody>
</table>

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

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

FANNIE MAE RIDER TO REGULATORY AGREEMENT ...........................................Rider-1
REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT, dated September ___, 2017 (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, U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “Trustee”), as trustee for the Series 2017A Bonds (hereinafter defined) and BRIDGEWATER BANK, a Minnesota banking corporation (the “Bank”), as the purchaser of the Series 2017B Note (hereinafter defined).

RECITALS

The Issuer is authorized to issue bonds to finance and refinance multifamily housing developments in accordance with the terms of Minnesota Statutes, Chapters 462C and 474A, as amended (collectively, the “Act”).

The Issuer has agreed to issue the following obligations to finance, in part, 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 “Projects”): (i) the Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Series 2017A Bonds”), in the original aggregate principal amount of $5,850,000, pursuant to the terms of a resolution adopted by the City Council of the Issuer on August 28, 2017 (the “Bond Resolution”) and an Indenture of Trust, dated as of September 1, 2017 (the “Series 2017A Indenture”), between the Issuer and the Trustee; and (ii) the Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Series 2017B Note”), in the original aggregate principal amount of $900,000, pursuant to the terms of the Bond Resolution.

To finance the Project, the Issuer will (i) loan the proceeds derived from the sale of the Series 2017A Bonds to the Borrower pursuant to a Financing Agreement, dated as of September 1, 2017 (the “Series 2017A Financing Agreement”), between the Issuer, the Borrower, the Trustee, and Dougherty Mortgage LLC, a Delaware limited liability company, as the mortgage lender (the “Mortgage Lender”); and (ii) loan the proceeds derived from the sale of the Series 2017B Note to the Borrower pursuant to a Loan Agreement, dated as of September 1, 2017 (the “Series 2017B Loan Agreement”), between the Issuer and the Borrower.

For good and valuable consideration, the Borrower, the Trustee, the Bank, and the Issuer have determined to enter into this Regulatory Agreement in order to impose on each Project certain requirements of the Internal Revenue Code of 1986, as amended, and of the Act applicable to each Project. This Regulatory Agreement supercedes the Regulatory Agreement (Elmbrooke Apartments), dated August 18, 2016.

NOW, THEREFORE, the Borrower, the Trustee, the Bank, and the Issuer do hereby impose upon each Project the following covenants, restrictions, charges, and easements, which shall run with the land and shall be binding and a burden upon the Projects and all portions thereof, and upon any purchaser, grantee, owner, or lessee of any portion of either 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 either 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.

“Act” means, collectively, Minnesota Statutes, Chapters 462C and 474A, 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.

“Bank” means Bridgewater Bank, a Minnesota banking corporation, as the purchaser of the Series 2017B Note, or any successor or assign.

“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 Agreements.

“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 Combined Bonds.

“Combined Bonds” means, collectively, the Series 2017A Bonds and the Series 2017B 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 Agreements” means, collectively, the Series 2017A Financing Agreement and the Series 2017B Loan Agreement.
“Loans” means, collectively, the Loans provided by the Issuer to the Borrower pursuant to the Loan Agreements to provide financing for the Projects.

“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.

“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 Combined Bonds.

“Qualified Project Period” means, for each Project, the period beginning on the later of the date of issuance of the Combined Bonds 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 September ___, 2017, between the Issuer, the Borrower, and the Trustee, 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.

“Series 2017A Bonds” means the Issuer’s Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A, issued in the original aggregate principal amount of $5,850,000.


“Series 2017A Indenture” means the Indenture of Trust, dated as of September 1, 2017, between the Issuer and the Trustee, relating to the Series 2017A Bonds.

“Series 2017B Loan Agreement” means the Loan Agreement, dated as of September 1, 2017, between the Issuer and the Borrower, relating to the Series 2017B Note.

“Series 2017B Note” means the Issuer’s Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B, issued in the original aggregate principal amount of $900,000.

“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 successor statute to the Code.

“Trustee” means U.S. Bank National Association, a national banking association, or any successor or assign.

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 Combined Bonds or the use of the proceeds of the Combined Bonds 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 Combined Bonds or this Regulatory Agreement,

(iii) questions the tax-exempt status of the Combined Bonds, 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 Combined Bonds are executed and delivered to the Trustee, 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 Combined Bonds. The Borrower will utilize and operate the both Projects as multifamily rental housing projects during the term of the Combined Bonds 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 any of the Combined Bonds. The Borrower acknowledges and understands that during any period of time when the Borrower owns the Combined Bonds, the interest on the Combined Bonds 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 Combined Bonds within two years from the later of (i) the date the Borrower acquires each Project; or (ii) the date of issuance of the Combined Bonds.

(l) The statements made in the various certificates delivered by the Borrower to the Issuer or the Trustee on the date of issuance of the Combined Bonds 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 real 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 Loans 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 Combined Bonds 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 Trustee 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. September 2013), 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 Trustee. 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, 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 Combined Bonds. If requested by the Trustee or Issuer, a copy of such Income Certification shall be filed with the Trustee 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 Trustee 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. September 2013), 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 Trustee, 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 Trustee, 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 Trustee 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 Trustee, 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 Trustee 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 Combined Bonds are issued by the Issuer as residential rental project bonds, as defined in Chapter 474A of the Act (“Chapter 474A”), and have 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 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 Trustee and the Bank and their respective officers, agents, members, directors, officials, and employees as provided in the Loan Agreements. All provisions of the Loan Agreements 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 Combined Bonds in part to provide funds to make the Loans 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 Combined Bonds by the Issuer, the Borrower has entered into this Regulatory 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 Combined Bonds and in the exemption from federal income taxation of the interest on the Combined Bonds. In performing their duties and obligations hereunder, the Issuer, the Trustee, and the Bank 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, the Trustee, and the Bank 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, the Trustee, or the Bank hereunder in good faith and in conformity with such written opinion. A copy of any such opinion shall be furnished by the Issuer, the Trustee, or the Bank 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, the Trustee, or the Bank 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, the Trustee, or the Bank 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 Trustee 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 Agreements. 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 Combined Bonds and termination of the Loan Agreements and the Loans 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 Trustee from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Combined Bonds are 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 Combined Bonds have 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 Combined Bonds to become included in gross income for federal income tax purposes or cause interest on the Combined Bonds 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 Combined Bonds were 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, the Bank or the Trustee to the Borrower, then the Issuer, the Trustee, acting upon the direction of the holders of the Series 2017A Bonds pursuant to the Series 2017A Indenture, or the Bank acting pursuant to the Series 2017B Loan Agreement, 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, the Trustee, the Bank, or the holders of the Combined Bonds hereunder;

(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 consent of the Trustee or the Bank, respectively, declare a default under either of the Loans, accelerate the indebtedness evidenced by either of the Loans, and proceed to redeem the Series 2017A Bonds or the Series 2017B Note in accordance with their terms.

Notwithstanding anything to the contrary contained herein, the Issuer, the Trustee, and the Bank 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 Trustee, the Bank, 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 Trustee, the Bank, or the Issuer, as the case may be, on demand.

After the Combined Bonds have 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 Trustee or the Bank at the direction of the holders of the Combined Bonds.

Section 14. The Trustee, the Bank, and the Issuer. The Trustee is entering into this Regulatory Agreement in its capacity as the Trustee with respect to the Combined Bonds and the Series 2017A Indenture. The Bank is entering into this Regulatory Agreement in its capacity as the purchaser of the Series 2017B Note. The Issuer may, at all times, assume the Borrower’s compliance with this Regulatory Agreement unless otherwise notified in writing by the Trustee or the Bank (but neither the Trustee nor the Bank shall have any obligation to so notify the Issuer), or unless the Issuer has actual knowledge of noncompliance. The Trustee and the Bank can rely on the accuracy of any certificates, instruments, opinions, or reports delivered to them by the Borrower. It is possible that the Combined Bonds will be discharged and the Series 2017A Indenture, the Series 2017A Financing Agreement, and the Series 2017B Loan Agreement will terminate prior to the expiration of the Qualified Project Period. Following the payment in full and the discharge of the Series 2017A Bonds and the termination of the Series 2017A Indenture and the Series 2017A Financing Agreement: (i) all obligations, rights, and duties of the Trustee under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Trustee will instead be undertaken by the Issuer; (iii) all notices to be delivered to the Trustee will instead be delivered to the Issuer and all notices to be delivered by the Trustee will instead be delivered by the Issuer; and (iv) the Trustee shall no longer be
parties to this Regulatory Agreement and shall be considered released from all obligations hereunder. Following the payment in full and the discharge of the Series 2017B Note and the termination of the Series 2017B Loan Agreement: (i) all obligations, rights, and duties of the Bank under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Bank will instead be undertaken by the Issuer; (iii) all notices to be delivered to the Bank will instead be delivered to the Issuer and all notices to be delivered by the Bank will instead be delivered by the Issuer; and (iv) the Bank shall no longer be parties 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 Trustee and the Bank as may be required by the Loan Agreements, and duly recorded. The Issuer’s, the Trustee’s, and the Bank’s consent to any such amendment or revision (whether or not the Combined Bonds shall then be outstanding) shall be given only upon receipt of an opinion of Bond Counsel addressed to the Issuer, the Trustee, and the Bank that such amendment or revision will not adversely affect the exemption from federal income taxation of interest on the Combined Bonds. None of the Issuer, the Trustee, or the Bank 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 Trustee, the Bank, and their duly authorized agents 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 Trustee: U.S. Bank National Association
60 Livingston Avenue, 3rd Floor
EP-MN-WS3C
St. Paul, MN 55107-2292
Attn: Corporate Trust Services

To the Bank: Bridgewater Bank
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 Loans, the termination of the Loan Agreements, and the defeasance or discharge of the Combined Bonds, 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 Combined Bonds and amounts derived by the Issuer from the Loans and the Loan Agreements.

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 Combined Bonds; 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 Combined Bonds; 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 Combined Bonds, the Series 2017A Indenture, the Series 2017A Financing Agreement, the Series 2017B Loan Agreement, or any other instrument or agreement executed in connection with the issuance of the Combined Bonds. 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 Combined Bonds, 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.

Section 26. Fannie Mae Rider to Regulatory Agreement. The Fannie Mae Rider to Regulatory Agreement (the “Fannie Mae Rider”) attached hereto is hereby made a part of this Regulatory Agreement. In the event of a conflict between the provisions of the Fannie Mae Rider and the provisions of this Regulatory Agreement, the provisions of the Fannie Mae Rider shall control.

Section 27. Prior Regulatory Agreement Terminated. The Regulatory Agreement (Golden Valley Townhomes), dated August 18, 2016, is terminated.
IN WITNESS WHEREOF, the Issuer, the Borrower, and the Trustee 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 September, 2017, 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 September, 2017, 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

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
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: Richard Martin
Title: Administrative Manager

STATE OF MINNESOTA )
)
COUNTY OF HENNEPIN ) ss

The foregoing instrument was acknowledged before me this ____ day of September, 2017, by Richard Martin, the Administrative Manager 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

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
Execution page of the Trustee to the Regulatory Agreement, dated the date and year first written above.

**U.S. BANK NATIONAL ASSOCIATION**

By

Its Vice President

STATE OF MINNESOTA  )
       ) ss.
COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this ___ day of September 2017, by Dan Sheff, the Vice President of U.S. Bank National Association, a national banking association, on behalf of the Trustee.

______________________________
Notary Public

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
Execution page of the Bank to the Regulatory Agreement, dated the date and year first written above.

**BRIDGEWATER BANK**

By _________________________________

Nicholas Place

Its  Senior Vice President and Chief Lending Officer

STATE OF MINNESOTA    )
                      ) ss.
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this ____ day of September, 2017, by Nicholas Place, the Senior Vice President and Chief Lending Officer of Bridgewater Bank, a Minnesota banking corporation, on behalf of the Bank.

_______________________________

Notary Public

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Parcel 1:
The West 404 feet of the South Half of Block 14, Yarnall’s Golden Valley Outlots, Hennepin County, Minnesota.

Abstract Property

Parcel 2:
The South Half of Lot 3, Block 3, Dahinden’s 3rd Addition, Hennepin County, Minnesota.

Abstract Property

Parcel 3:
Lot 1, Block 3, Rearrangement of Lots 15, 16 and 17, Yale Garden Homes.

Hennepin County, Minnesota
Torrens Property
Torrens Certificate No. 1051690
EXHIBIT B
FORM OF INCOME CERTIFICATION

TENANT INCOME CERTIFICATION

<table>
<thead>
<tr>
<th>Initial Certification</th>
<th>Recertification</th>
<th>Other</th>
</tr>
</thead>
</table>

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>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>HEAD</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</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></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</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>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### PART V. DETERMINATION OF INCOME ELIGIBILITY

| TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES | $ 
| From Item (L) on page 1 | Household Meets Income Restriction at: | 
| | 60% | 50% | 40% | 30% | ___% | 

| Current Income Limit per Family Size | $ 
| Household Income at Move-in | $ 

| RECERTIFICATION ONLY: | Current Income Limit x 140% | $ 
| Household income exceeds 140% at recertification: | Yes | No |

**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: | 
| | 60% | 50% | 40% | 30% | ___% | 

| Current Income Limit per Family Size | $ 
| Household Income at Move-in | $ 

| RECERTIFICATION ONLY: | Current Income Limit x 140% | $ 
| Household income exceeds 140% at recertification: | Yes | No |

**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: | 
| | 60% | 50% | 40% | 30% | ___% | 

| Current Income Limit per Family Size | $ 
| Household Income at Move-in | $ 

| RECERTIFICATION ONLY: | Current Income Limit x 140% | $ 
| Household income exceeds 140% at recertification: | Yes | No |

**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 VI. RENT**

<table>
<thead>
<tr>
<th>Tenant Paid Rent</th>
<th>$</th>
<th>Rent Assistance:</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utility Allowance</td>
<td>$</td>
<td>Other non-optional charges:</td>
<td>$</td>
</tr>
</tbody>
</table>

**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.

<table>
<thead>
<tr>
<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>☐ ____________</td>
</tr>
<tr>
<td>☐ ≤ 60% AMGI</td>
<td>☐ 60% AMGI</td>
<td>☐ ≤ 80% AMGI</td>
<td>☐ ____________</td>
</tr>
<tr>
<td>☐ ≤ 80% AMGI</td>
<td>☐ 80% AMGI</td>
<td>☐ ≤ 0I **</td>
<td>☐ ≤ 0I **</td>
</tr>
<tr>
<td>☐ ≤ 0I **</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 Regulatory Agreement (if applicable), to live in a unit in this Project.

503454v3 JAE MN140-185
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:

<table>
<thead>
<tr>
<th>Code</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>H</td>
<td>Head of household</td>
</tr>
<tr>
<td>A</td>
<td>Adult co-tenant</td>
</tr>
<tr>
<td>C</td>
<td>Child</td>
</tr>
<tr>
<td>L</td>
<td>Live-in caretaker</td>
</tr>
<tr>
<td>S</td>
<td>Spouse</td>
</tr>
<tr>
<td>O</td>
<td>Other family member</td>
</tr>
<tr>
<td>F</td>
<td>Foster child</td>
</tr>
<tr>
<td>N</td>
<td>None of the above</td>
</tr>
</tbody>
</table>

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)
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

Enter the maximum allowable gross rent for the unit.
Limit for this 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 Series 2017A Bonds (hereinafter defined))

U.S. Bank National Association
60 Livingston Avenue
EP-MN-WS3C
St. Paul, MN 55107-2292
Attn: Corporate Trust Services

and (prior to the discharge of the Series 2017B Note (hereinafter defined))

Bridgewater Bank
3800 American Boulevard, Suite 100
Bloomington, MN 55431
Attn: Nicholas Place

Re: Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Series 2017A Bonds”) and Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Series 2017B Note,” and together with the Series 2017A Bonds, the “Combined Bonds”)

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 September __, 2017 (the “Regulatory Agreement”), between the Owner, the City of Minnetonka, Minnesota (the “Issuer”), U.S. Bank National Association, as trustee with respect to the Series 2017A Bonds (the “Trustee”), and Bridgewater Bank, as purchaser of the Series 2017B Note; and (2) the Financing Agreement, dated as of September 1, 2017, between the Owner, the Issuer, the Trustee, and Dougherty Mortgage LLC with respect to the Series 2017A Bonds, and the Loan Agreement, dated as of September 1, 2017, between the Owner and the Issuer with respect to the Series 2017B Note (together, the “Loan Agreements”). The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Combined Bonds.
3. A review of the activities of the Owner and of the Owner’s performance under the Regulatory Agreement and the Loan Agreements 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 Combined Bonds, 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 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 Agreements and, to the knowledge of the undersigned, no Determination of Taxability has occurred with respect to the Combined Bonds.
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 Trustee 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:  

C-3
FANNIE MAE RIDER
TO REGULATORY AGREEMENT

THIS FANNIE MAE RIDER TO REGULATORY AGREEMENT ("Rider") is attached to and forms a part of the Regulatory Agreement (Elmbrooke Apartments), dated September ___, 2017 ("Regulatory Agreement"), between CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company ("Borrower"), U.S. BANK NATIONAL ASSOCIATION, a national banking association ("Trustee"), BRIDGEWATER BANK, a Minnesota banking corporation ("Bank"), and 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 ("Issuer").

1. **Definitions.** All capitalized terms used in this Rider have the meanings given to those terms in the Regulatory Agreement, the Series 2017A Indenture, or the Series 2017A Financing Agreement, as applicable.

2. **Applicability.** This Rider shall amend and supplement the Regulatory Agreement. In the event any provision of this Rider conflicts with the Regulatory Agreement, this Rider shall supersede the conflicting provision of the Regulatory Agreement. This Rider shall apply in spite of the fact that the covenants, reservations and restrictions of the Regulatory Agreement run with the land and may be deemed applicable to any successor in interest to the Borrower.

3. **Obligations not Secured by the Mortgaged Property.** The Regulatory Agreement shall not constitute a mortgage, equitable mortgage, deed of trust, deed to secure debt or other lien or security interest in the real property described in the Regulatory Agreement ("Mortgaged Property"). None of the obligations of the Borrower or any subsequent owner of the Mortgaged Property under the Regulatory Agreement shall be secured by a lien on, or security interest in, the Mortgaged Property. All such obligations are expressly intended to be and shall remain unsecured obligations. The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

4. **Subordination.** The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, and 5 and this Rider, are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Mortgage Loan Documents. Upon a conveyance or other transfer of title to the Mortgaged Property by foreclosure, deed in lieu of foreclosure or comparable conversion of the Mortgage Loan, the Person who acquires title to the Mortgaged Property pursuant to such foreclosure, deed in lieu of foreclosure or comparable conversion of the Mortgage Loan (unless such Person is the Borrower or a Person related to the Borrower within the meaning of Section 1.103-10(e) of the Regulations, in which event the Regulatory Agreement shall remain in full force and effect in its entirety) shall acquire such title free and clear of the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, and 5 and this Rider and, from and after the date on which such Person acquires title to the Mortgaged Property, the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, and 5 and this Rider shall automatically terminate and be of no force and effect; provided that Sections 3, 4, and 5 and this Rider shall also terminate and be of no force or effect under the circumstances set forth in Section 11 of the Regulatory Agreement.

5. **Obligations Personal.** The Issuer agrees that no owner of the Mortgaged Property (including Fannie Mae) subsequent to the Borrower will be liable for, assume or take title to the Mortgaged Property subject to:
(a) any failure of any prior owner of the Mortgaged Property to perform or observe any representation or warranty, affirmative or negative covenant or other agreement or undertaking under the Regulatory Agreement; and

(b) the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by any prior owner of the Mortgaged Property under the Regulatory Agreement.

The Borrower and each subsequent owner of the Mortgaged Property shall be responsible under the Regulatory Agreement for its own acts and omissions occurring during the period of its ownership of the Mortgaged Property. All such liability and obligations shall be and remain personal to such person even after such person ceases to be the owner of the Mortgaged Property.

6. **Sale or Transfer**

(a) **Restrictions Not Applicable to Certain Transfers.** All provisions of the Regulatory Agreement regarding the sale or transfer of the Mortgaged Property or of any interest in the Borrower, including any requirement, limitation or condition precedent for any of (i) the consent of the Issuer or the Trustee to such transfer, (ii) an agreement by any transferee to abide by the requirements and restrictions of the Regulatory Agreement, (iii) transferee criteria or other similar requirements, (iv) an opinion of legal counsel and (v) the payment of any assumption fee, transfer fee, penalty or other charges, shall not apply to any of the following:

1. any transfer of title to the Mortgaged Property to Fannie Mae or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Mortgaged Property or to any subsequent transfer by Fannie Mae (or a third party) following such foreclosure, deed in lieu of foreclosure or comparable conversion;

2. any execution and delivery of a mortgage, deed of trust, deed to secure debt or other lien by the Borrower to secure any additional indebtedness of the Borrower which is originated by a lender for sale to Fannie Mae or guaranteed or otherwise credit enhanced by Fannie Mae; and

3. provided that no Series 2017A Bonds are then Outstanding or all Series 2017A Bonds are to be simultaneously fully paid, redeemed or defeased, any execution and delivery of a mortgage, deed of trust, deed to secure debt or other lien by the Borrower to secure any indebtedness incurred by the Borrower which effectively refinances the Mortgage Loan.

(b) **Fannie Mae Rights to Consent Not Impaired.** Nothing contained in the Regulatory Agreement shall affect any provision of the Mortgage, the Loan Agreement, or any Mortgage Loan Document which requires the Borrower to obtain the consent of Fannie Mae as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Mortgaged Property or of any direct or indirect interest in the Borrower, excluding transfers permitted by the Security Instrument.

(c) **Conclusive Evidence.** Any written consent to a sale or transfer obtained from the Issuer shall constitute conclusive evidence that the sale or transfer is not a violation of the transfer provisions of the Regulatory Agreement.

7. **Damage, Destruction or Condemnation of the Mortgaged Property.** In the event that the Mortgaged Property is damaged or destroyed or title to the property, or any part thereof, is taken
through the exercise or the threat of the exercise of the power of eminent domain, the Borrower shall comply with all applicable requirements of the Mortgage and the other Mortgage Loan Documents.

8. **Regulatory Agreement Default.** Notwithstanding anything contained in the Regulatory Agreement to the contrary:

   (a) The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

   (b) The occurrence of an event of default under the Regulatory Agreement shall not be or be deemed to be a default under the Mortgage Loan Documents, except as may be otherwise specified in the Mortgage Loan Documents.

   (c) Upon any default by the Borrower under the Regulatory Agreement, the Loan Agreement shall govern the remedies and other actions which the Issuer may take on account of such default.

9. **Amendments.** So long as the Loan Agreement is in effect, the Issuer shall not consent to any amendment, supplement to, or restatement of the Regulatory Agreement without the prior written consent of Fannie Mae.

10. **Termination.** The Regulatory Agreement may be terminated upon agreement by the Issuer, the Trustee, Fannie Mae, and the Borrower upon receipt of an opinion of a nationally recognized bond counsel acceptable to the Trustee that such termination will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income purposes. So long as the Bonds have been redeemed or are redeemed within a reasonable period thereafter, the Regulatory Agreement shall terminate and be of no further force or effect from and after the date of any transfer of title to the Mortgaged Property by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Mortgaged Property; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained in the Regulatory Agreement 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 Regulations) obtains an ownership interest in the Mortgaged Property for federal income tax purposes.

11. **Third-Party Beneficiary.** The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of Fannie Mae and are entered into for the benefit of various parties, including Fannie Mae. Fannie Mae shall accordingly have contractual rights in the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Issuer and/or the Trustee, or to cause the Issuer or the Trustee to enforce, the terms of the Regulatory Agreement. In addition, the Borrower and the Issuer intend that Fannie Mae be a third-party beneficiary of the Regulatory Agreement.

12. **Copies of Notices under the Regulatory Agreement.** Copies of all notices under the Regulatory Agreement shall be sent to the Dougherty Mortgage LLC (the “Loan Servicer”) at the address set forth below or to such other address as the Loan Servicer may from time to time designate:

    Dougherty Mortgage LLC
    90 South Seventh Street, Suite 4300
    Minneapolis, MN 55402-4108
    Attn: Fannie Mae Servicing
13. **Notices.** Any notice to be given to Fannie Mae shall be sent to Fannie Mae at the address set forth below or to such other address as Fannie Mae may from time to time designate:

Fannie Mae  
3900 Wisconsin Avenue, NW  
Drawer AM  
Washington, DC 20016-2892  
Attention: Director, Multifamily Asset Management  
Telephone: (301) 204-8008  
Facsimile: (301) 280-2065

RE: $5,850,000 City of Minnetonka, Minnesota Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A/Dougherty Mortgage LLC

with a copy to:

Fannie Mae  
3900 Wisconsin Avenue, NW  
Drawer AM  
Washington, DC 20016-2892  
Attention: Vice President, Multifamily Operations  
Telephone: (301) 204-8422  
Facsimile: (202) 752-8369

RE: $5,850,000 City of Minnetonka, Minnesota Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A/Dougherty Mortgage LLC

BORROWER’S INITIALS:       ________

ISSUER’S INITIALS:          ________

TRUSTEE’S INITIALS: ________
FINANCING AGREEMENT

between

CITY OF MINNETONKA, MINNESOTA,
as Issuer

U.S. BANK NATIONAL ASSOCIATION,
as Trustee,

DOUGHERTY MORTGAGE LLC,
as Lender

and

CHC MINNETONKA AFFORDABLE HOUSING LLC,
as Borrower

Dated as of September 1, 2017

Relating to:

$5,850,000
City of Minnetonka, Minnesota
Multifamily Housing Revenue Bonds
(Elmbrooke and Golden Valley Townhomes Project)
Series 2017A

This instrument drafted by:
Kennedy & Graven, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN  55402
TABLE OF CONTENTS

ARTICLE I
DEFINITIONS AND INTERPRETATION

Section 1.01. Definitions ................................................................................................................... 2
Section 1.02. Rules of Construction .................................................................................................. 3
Section 1.03. Effective Date .............................................................................................................. 3

ARTICLE II
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.01. Representations, Warranties and Covenants by the Borrower .................................... 4
Section 2.02. Representations, Warranties and Covenants of the Issuer ........................................... 7
Section 2.03. Representations, Warranties and Covenants of the Lender ......................................... 9

ARTICLE III
THE BONDS AND THE PROCEEDS THEREOF

Section 3.01. The Bonds and the Proceeds Thereof ........................................................................ 9

ARTICLE IV
THE MORTGAGE LOAN

Section 4.01. Amount and Source of Mortgage Loan ..................................................................... 10
Section 4.02. Payment of Fees and Expenses ................................................................................. 10
Section 4.03. Notification of Prepayment of Mortgage Note .......................................................... 11
Section 4.04. Term Sheet ................................................................................................................ 12
Section 4.05. Compliance with Issuer’s Private Activity Bond Policy ........................................... 12

ARTICLE V
COVENANTS, UNDERTAKINGS AND OBLIGATIONS OF THE BORROWER

Section 5.01. Taxes, Other Governmental Charges and Utility Charges ........................................ 13
Section 5.02. Compliance With Laws ............................................................................................. 13
Section 5.03. Maintenance of Legal Existence ............................................................................... 13
Section 5.04. Operation of Project .................................................................................................. 13
Section 5.05. Tax Covenants ........................................................................................................... 14
Section 5.06. Further Assurances and Corrective Instruments ....................................................... 16
Section 5.07. Compliance With Other Documents ......................................................................... 16
Section 5.08. Notice of Certain Events ........................................................................................... 16
Section 5.09. Indemnification ........................................................................................................ 17
Section 5.10. Right To Perform Borrower’s Obligations ................................................................. 18
Section 5.11. Nonrecourse Provisions ............................................................................................ 18
Section 5.12. Trust Indenture .......................................................................................................... 18

ARTICLE VI
MORTGAGE LOAN DOCUMENTS

Section 6.01. Assurances ................................................................................................................. 19
Section 6.02. Financial Obligations Personal to the Borrower ....................................................... 19
FINANCING AGREEMENT

THIS FINANCING AGREEMENT is made and entered into as of September 1, 2017 (the “Financing 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 (together with its successors and assigns, the “Issuer”), CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company (together with its successors and assigns, the “Borrower”), the managing member of which is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, U.S. BANK NATIONAL ASSOCIATION, as trustee under the Indenture referred to below (together with its successors and assigns, the “Trustee”), and DOUGHERTY MORTGAGE LLC, a Delaware limited liability company (together with its successors and assigns, the “Lender”).

RECITALS:

A. Pursuant to the Act (as defined herein), the Issuer is authorized to issue revenue bonds for the purpose of, among other things, financing and refinancing the acquisition, construction, rehabilitation, and equipping of multifamily housing developments.

B. As more fully set forth in the Indenture of Trust, dated as of September 1, 2017 (the “Indenture”), between the Issuer and the Trustee, the Issuer is issuing its Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Bonds”), in the original aggregate principal amount of $5,850,000.

C. The parties hereeto acknowledge the matters set forth in the Recitals to the Indenture.

NOW, THEREFORE, the parties hereeto, in consideration of the premises and the mutual covenants and commitments of the parties set forth herein, the receipt and sufficiency of which are hereby acknowledged by the parties hereeto, hereby agree as follows:

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

Section 1.01. Definitions. Capitalized terms used herein without definition shall have the respective meanings set forth in the Indenture. In addition to the terms elsewhere defined in this Financing Agreement, the following terms used in this Financing Agreement (including the Recitals) shall have the following meanings unless the context indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined:

“Act” means collectively, Minnesota Statutes, Chapters 462C and 474A, as amended.

“Bond Documents” means, collectively, this Financing Agreement, the Regulatory Agreements, the Tax Certificate, the Indenture, the Cooperative Agreement, and the Bond Purchase Agreement.

“Bond Purchase Agreement” means the Bond Purchase Agreement, dated August ____, 2017, between the Issuer, the Borrower, and the Underwriter.

“Bond Resolution” means the resolution authorizing the issuance of the Bonds and adopted by the members of the Issuer on July 24, 2017.

“Bonds” means the Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A, issued by the Issuer pursuant to the Indenture in the original aggregate principal amount of $5,850,000.

“Closing Date” means September ____, 2017.

“Combined Bonds” means, collectively, the Bonds and the Note.

“Event of Default” means any event of default specified and defined in Section 8.01 hereof.

“Investor Member” means Wincopin Circle LLLP, a Maryland limited liability limited partnership, its successors and assigns.

“Mortgage Loan Documents” means, collectively, the Mortgage Note, the Mortgage and all other documents evidencing, securing or otherwise relating to the Mortgage Loan, including all amendments, supplements, modifications and restatements thereof, excluding, however, the Bond Documents.

“Mortgage Note Rate” means a per annum rate of interest calculated in accordance with the Mortgage Note.

“Note” means the Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B, issued by the Issuer in the original aggregate principal amount of $900,000.

“Permitted Liens” means any easements and restrictions listed in a schedule of exceptions to coverage in the title insurance policy delivered with respect to the Project as required by the Mortgage Loan Documents.
“Person” means any natural person, firm, partnership, association, limited liability company, corporation or public body.

“Regulatory Agreements” means, collectively, the Regulatory Agreement with respect to the Elmbrooke Apartments, dated the Closing Date, between the Issuer, the Borrower, the Trustee, and the Note Lender, and the Regulatory Agreement with respect to the Golden Valley Townhomes, dated the Closing Date, between the Issuer, the Borrower, the Trustee, and the Note Lender, all as the same may be amended from time to time.

“Tax Certificate” means the Tax Certificate of the Borrower, dated the Closing Date.

“Underwriter” means Dougherty & Company LLC, a Delaware limited liability company, as the original purchaser of the Bonds.

Section 1.02. Rules of Construction.

(a) The singular form of any word used herein, including the terms defined in Section 1.01, shall include the plural, and vice versa, unless the context otherwise requires. The use herein of a pronoun of any gender shall include correlative words of the other genders.

(b) All references herein to “Articles,” “Sections” and other subdivisions hereof are to the corresponding Articles, Sections or subdivisions of this Financing Agreement as originally executed; and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Financing Agreement as a whole and not to any particular Article, Section or subdivision hereof.

(c) The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not limit or otherwise affect the meaning, construction or effect of this Financing Agreement or describe the scope or intent of any provisions hereof.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with applicable generally accepted accounting principles as in effect from time to time.

(e) Every “request,” “order,” “demand,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent,” or similar action hereunder by any party shall, unless the form thereof is specifically provided, be in writing signed by a duly authorized representative of such party with a duly authorized signature.

(f) The parties hereto acknowledge that each such party and their respective counsel have participated in the drafting and revision of this Financing Agreement and the Indenture. Accordingly, the parties agree that any rule of construction which disfavors the drafting party shall not apply in the interpretation of this Financing Agreement or the Indenture or any amendment or supplement or exhibit hereto or thereto.

Section 1.03. Effective Date. The provisions of this Financing Agreement shall be effective on and as of the Closing Date, immediately upon the effectiveness of the Indenture.
ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.01. Representations, Warranties and Covenants by the Borrower. The Borrower represents, warrants and covenants to the Issuer, Trustee and Lender as follows:

(a) The Borrower is a limited liability company and is qualified to do business in the State. The Borrower has full power and authority to own its properties and to carry on its business as now being conducted and as contemplated to be conducted with respect to the Project, and to enter into, and to perform and carry out the transactions provided for in this Financing Agreement, all other Bond Documents contemplated hereby to be executed by the Borrower and the Mortgage Loan Documents. This Financing Agreement, the other Bond Documents to which the Borrower is a party, the Mortgage Loan Documents and all other documents to which the Borrower is a party and contemplated hereby or thereby have been duly authorized, executed and delivered by the Borrower and constitute the legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general equitable principles. The officers of the Borrower executing this Financing Agreement, all other Bond Documents contemplated hereby to be executed by the Borrower and the Mortgage Loan Documents are duly and properly in office and fully authorized to execute the same.

(b) Neither the execution and delivery of this Financing Agreement, all other Bond Documents to be executed by the Borrower, the Mortgage Loan Documents or any other documents contemplated hereby or thereby, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions of this Financing Agreement, all other Bond Documents to be executed by the Borrower, the Mortgage Loan Documents or any other documents contemplated hereby or thereby, will violate any provision of law, any order of any court or other agency of government, or any of the organizational or other governing documents of the Borrower, or any indenture, agreement or other instrument to which the Borrower is now a party or by which it or any of its properties or assets is bound, or be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement or other instrument or any license, judgment, decree, law, statute, order, rule or regulation of any governmental agency or body having jurisdiction over the Borrower or any of its activities or properties, or, except as provided hereunder, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, except for Permitted Liens.

(c) Each portion of the Project, the Elmbrooke Apartments, the Douglas Drive Golden Valley Townhomes, and the Lilac Drive Golden Valley Apartments, comprise three distinct multifamily housing developments as contemplated by the Act. The Borrower has and will have fee simple title to the Project, subject to the Permitted Liens. The Borrower is the sole borrower under the Mortgage Loan. The Borrower enjoys the peaceful and undisturbed possession of all of the premises upon which it is operating the Project.

(d) As of the Closing Date, no litigation or proceeding is pending or, to the knowledge of the Borrower or the Managing Member of the Borrower, threatened against the Borrower or its Managing Member or with respect to the Project which has a reasonable probability of having a material adverse effect on its financial condition or business, or the transactions contemplated by this Financing Agreement, the Indenture, the other Bond
Documents or the Mortgage Loan Documents, or which in any way would adversely affect the validity or enforceability of the Bonds, the Indenture, this Financing Agreement, the other Bond Documents or the Mortgage Loan Documents, or the ability of the Borrower to perform its obligations under this Financing Agreement, the other Bond Documents or the Mortgage Loan Documents executed by the Borrower.

(e) The Project comprises three distinct multifamily rental housing developments as contemplated by the Act. As of the Closing Date, the Project conforms in all material respects with all applicable zoning (or a legal non-conforming use), planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project, all necessary utilities are available to the Project, and the Borrower will obtain all requisite zoning, planning, building and environmental and other permits which may become necessary with respect to the Project. The Borrower has obtained all licenses, permits and approvals necessary for the ownership, operation and management of the Project, including all approvals essential to the transactions contemplated by this Financing Agreement, the Indenture, the other Bond Documents, the Mortgage Loan Documents and any other documents contemplated hereby or thereby.

(f) The financial statements which have been furnished by or on behalf of the Borrower to the Issuer, are complete and accurate in all material respects and present fairly the financial condition of the Borrower as of their respective dates in accordance with generally accepted accounting methods applied by the Borrower on a consistent basis, and since the date of the most recent of such financial statements there has not been any material adverse change, financial or otherwise, in the condition of the Borrower, and there has not been any material transaction entered into by the Borrower other than transactions in the ordinary course of business, and the Borrower does not have any material contingent obligations which are not otherwise disclosed in its financial statements. There (i) is no completed, pending or threatened bankruptcy, reorganization, receivership, insolvency or like proceeding, whether voluntary or involuntary, affecting the Project, the Borrower, or any managing member of the Borrower; and (ii) has been no assertion or exercise of jurisdiction over the Project, the Borrower or any managing member of the Borrower by any court empowered to exercise bankruptcy powers.

(g) No event has occurred and no condition exists with respect to the Borrower or the Project that would constitute an Event of Default or which, with the lapse of time, if not cured, or with the giving of notice, or both, would become an Event of Default. The Borrower is not in default under the any of the Regulatory Agreements.

(h) The Borrower is not in default under the Tax Certificate, including the terms and conditions of the exhibits thereto, and the representations set forth in the Tax Certificate pertaining to the Borrower and the Project are true and accurate.

(i) The Combined Bonds are issued within the exemption provided under Section 142(d) of the Code with respect to residential rental property; and “substantially all” of the proceeds of the Combined Bonds will be used for expenditures chargeable to the capital account of the Project.

(j) Each portion of the Project is, as of the Closing Date, in compliance with all requirements of the respective Regulatory Agreement, including all applicable requirements of the Act and the Code. The Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreements, including all applicable requirements of the Act and the Code. All leases will
comply with all applicable laws and the Regulatory Agreements. The Project meets the requirements of this Financing Agreement, the Regulatory Agreements, the Act and the Code with respect to multifamily rental housing.

(k) No information, statement or report furnished in writing to the Issuer, Fannie Mae, the Lender or the Trustee by the Borrower in connection with this Financing Agreement, the other Bond Documents or the Mortgage Loan Documents or the consummation of the transactions contemplated hereby and thereby (including, without limitation, any information furnished by the Borrower in connection with the preparation of any materials related to the issuance delivery or offering of the Bonds on the Closing Date) contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and the representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower’s closing certificates, as of the Closing Date, are true, correct and complete, do not contain any untrue statement or misleading statement of a material fact, and do not omit to state a material fact required to be stated therein or necessary to make the certifications, representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and the estimates and the assumptions contained herein and in any certificate of the Borrower delivered as of the Closing Date are reasonable and based on the best information available to the Borrower.

(l) To the best knowledge of the Borrower, no member, officer, agent or employee of the Issuer has been or is in any manner interested, directly or indirectly, in that person’s own name or in the name of any other person, in the Bonds, the Bond Documents, the Mortgage Loan Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Bond Documents or the Mortgage Loan Documents.

(m) No authorization, consent, approval, order, registration declaration or withholding of objection on the part of or filing of or with any governmental authority not already obtained or made (or to the extent not yet obtained or made the Borrower has no reason to believe that such authorizations, consents, approvals, orders, registrations or declarations will not be obtained or made in a timely fashion) is required for the execution and delivery or approval, as the case may be, of this Financing Agreement, the other Bond Documents, the Mortgage Loan Documents or any other documents contemplated by this Financing Agreement, the other Bond Documents or the Mortgage Loan Documents, or the performance of the terms and provisions hereof or thereof by the Borrower.

(n) The Borrower is not presently under any cease or desist order or other orders of a similar nature, temporary or permanent, of any federal or state authority which would have the effect of preventing or hindering performance of its duties hereunder, nor are there any proceedings presently in progress or to its knowledge contemplated which would, if successful, lead to the issuance of any such order.

(o) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the refinancing and financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or the Issuer is a party or of which it is a beneficiary including, without limitation, the Indenture; that it approves the initial appointment of the Trustee under the Indenture; that it understands the risks inherent in such transactions, including, without limitation,
the risk of loss of the Project; and that it has not relied on the Issuer, the Lender or Fannie Mae for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Financing Agreement and the Indenture or otherwise relied on the Issuer, the Lender or Fannie Mae in any manner.

(p) The Borrower has not received any notice that it is not in compliance with all provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”); the Resource Conservation and Recovery Act; the Superfund Amendments and Reauthorization Act of 1986; the Toxic Substances Control Act and all environmental laws of the State (the “Environmental Laws”), or with any rules, regulations and administrative orders of any governmental agency, or with any judgments, decrees or orders of any court of competent jurisdiction with respect thereto; and the Borrower has not received any assessment, notice (primary or secondary) of liability or financial responsibility, and no notice of any action, claim or proceeding to determine such liability or responsibility, or the amount thereof, or to impose civil penalties with respect to a site listed on any federal or state listing of sites containing or believed to contain “hazardous materials” (as defined in the Environmental Laws), nor has the Borrower received notification that any hazardous substances (as defined under CERCLA) that it has disposed of have been found in any site at which any governmental agency is conducting an investigation or other proceeding under any Environmental Law.

(q) The Borrower has not received any notice that it is not in full compliance with the Employment Retirement Income Security Act of 1974, as amended, and the Department of Labor regulations thereunder, with the Code and Regulations thereunder and with terms of such plan or plans with respect to each pension or welfare benefit plan to which the Borrower is a party or makes any employer contributions with respect to its employees, for the current or prior plan years of such plans.

(r) The average maturity of the Combined Bonds does not exceed one hundred twenty percent (120%) of the average reasonably expected economic life of the facilities of the Project financed with the original net proceeds of the Combined Bonds.

(s) The Combined Bonds are not and shall not be “federally guaranteed” as defined in Section 149(b) of the Code.

(t) The Borrower intends to hold the Project for its own account and has no current plans to sell and has not entered into any agreement to sell all or any portion of the Project, except for any purchase option at the end of the “compliance period” (as defined in Section 42 of the Code) as set forth in the Borrower’s operating agreement.

(u) All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein.

Section 2.02. Representations, Warranties and Covenants of the Issuer. The Issuer represents, warrants and covenants as follows:

(a) Authority. The Issuer is a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State and is authorized to issue the Bonds to refinance the Project pursuant to the Act and
Minnesota Statutes, Sections 471.59 and 471.656, as amended. The Issuer is authorized and empowered by the provisions of the Bond Resolution to enter into the transactions contemplated by this Financing Agreement and the Indenture and to carry out its obligations hereunder and thereunder, and by proper action of its governing body has been duly authorized to execute and deliver the Bond Documents to which it is a party, and the Bond Documents to which it is a party have been duly executed and delivered by the Issuer and are valid and binding obligations of the Issuer enforceable in accordance with their terms.

(b) **Pledge.** The Bonds are to be issued and secured by the Indenture, pursuant to which certain of the Issuer’s interests in this Financing Agreement and the Indenture, and the revenues and income to be derived by the Issuer pursuant to this Financing Agreement and the Indenture, will be pledged and assigned to the Trustee as security for payment of the principal, premium, if any, and interest on the Bonds. The Issuer covenants that it has not and will not pledge or assign its interest in the Indenture or this Financing Agreement, or the revenues and income derived pursuant to this Financing Agreement or the Indenture, excepting the Reserved Rights of the Issuer, other than to the Trustee under the Indenture to secure the Bonds. The Issuer will comply with all provisions of the Act (and the rules promulgated thereunder) applicable to the Bonds and the transactions contemplated by this Financing Agreement and the Indenture.

(c) **Purpose.** The Issuer finds and determines that the refinancing of the Project will promote the public welfare of the Issuer, the City of Golden Valley, and their residents by providing multifamily housing developments for low and moderate income residents of the Issuer and the City of Golden Valley and otherwise furthering the purposes and policies of the Act.

(d) **Conflicts.** To the best knowledge of the Issuer, neither the execution and delivery of the Bond Documents to which it is a party, the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of or compliance with the terms and conditions of the Bond Documents to which it is a party conflicts with or results in a breach of the terms, conditions or provisions of any material restriction, agreement or instrument to which the Issuer is a party, or by which it or any of its property is bound, or constitutes a default under any of the foregoing.

Section 2.03. **Representations, Warranties and Covenants of the Lender.** The Lender hereby represents, warrants and covenants as follows:

(a) The Lender is a limited liability company organized under the laws of the State of Delaware. The Lender has duly authorized the execution and delivery of this Financing Agreement.

(b) The Lender has complied with the provisions of the laws of the State which are prerequisite to the consummation of, and has all necessary power and authority to consummate, all transactions described in this Financing Agreement and all other agreements relating hereto.

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

THE BONDS AND THE PROCEEDS THEREOF

Section 3.01. The Bonds and the Proceeds Thereof. The Issuer has authorized the issuance of the Bonds in the aggregate principal amount of $________________, and Bonds in such amount shall be issued and Outstanding as of the Closing Date. The obligations of the Issuer, the Trustee and the Borrower under this Financing Agreement are expressly conditioned upon (i) the issuance, sale and delivery of the Bonds, (ii) receipt by the Trustee of the proceeds thereof, and (iii) the making of the Mortgage Loan by the Issuer and the assignment thereof to the Lender (i.e., the Assigned Loan) and the delivery of the payment therefor by the Lender to the Trustee. None of the Issuer, the Lender, the Trustee or Fannie Mae shall have any liability for any fees, costs or expenses, including, without limitation, issuance costs relating to the Bonds; all of such fees, costs and expenses shall be paid by the Borrower.

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

Section 4.01. Amount and Source of Mortgage Loan. Upon the issuance and delivery of the Bonds, pursuant to Sections 2.01 and 2.06 of the Indenture, the Issuer will make the Mortgage Loan to the Borrower, and the Borrower will apply the proceeds of the Bonds as provided in Section 4.02 of the Indenture to pay Project costs. The Trustee shall apply the proceeds of the Assigned Loan as provided in Section 5.13(b)(i) of the Indenture to secure the Bonds until the Purchase Date and then to purchase the Pass-Through Certificate. The Borrower accepts the Mortgage Loan from the Issuer, upon the terms and conditions set forth herein, in the Mortgage Loan Documents and in the Indenture, and subject to the terms and conditions of the Regulatory Agreements. The Issuer has caused the proceeds of the Assigned Loan to be provided to the Trustee for deposit to the Collateral Security Principal Account of the Collateral Security Fund. The Borrower acknowledges its obligation to pay all amounts necessary to pay principal of and interest on the Bonds. The Borrower has made arrangements for the delivery to the Trustee of the Pass-Through Certificate and of certain other Preference Proof Moneys as contemplated herein and in the Indenture. Payments on the Pass-Through Certificate received by the Trustee shall be credited to amounts due from the Borrower for payment of principal of and interest on the Bonds.

Section 4.02. Payment of Fees and Expenses. In addition to all fees, costs, expenses and other amounts required to be paid by the Borrower under the Mortgage Note, the Borrower shall pay, without duplication, the following fees and expenses:

(a) All amounts required to (i) pay the fees of the Trustee for its duties and services as Trustee in connection with the Bonds (as such duties and services are set out in the Indenture), and (ii) reimburse the Trustee for all out-of-pocket expenses, fees, costs and other charges, including reasonable counsel fees and taxes (excluding income, value added and single business taxes), reasonably and necessarily incurred by the Trustee in performing its duties as Trustee under the Indenture. All payments for fees and expenses shall be made by the Borrower not later than ten (10) days after receipt of invoices or other statements rendered to the Borrower by the Trustee.

(b) The administrative fee of the Issuer equal to one-eighth of one percent (0.125%) of the principal amount of the Bonds and which shall be payable by the Borrower on the Closing Date, and the reasonable fees and expenses of the Issuer or any agents, attorneys, accountants, consultants selected by the Issuer to act on its behalf in connection with the Bond Documents, the Loan Agreement, the Mortgage Loan Documents or the Bonds, including, without limitation, any and all reasonable expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds or in connection with any litigation which may at any time be instituted involving the Bond Documents, the Loan Agreement, the Mortgage Loan Documents or the Bonds or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing.

(c) Any costs incurred by the Issuer, including reasonable fees of Issuer’s counsel, as a result of the Issuer’s compliance with an audit or inquiry of any kind, random or otherwise, by the Internal Revenue Service, the Minnesota Department of Revenue, the Minnesota Office of the State Auditor, or any other governmental agency with respect to the Bonds or the Project.

(d) All taxes and assessments of any type or character charged to the Issuer or to the Trustee affecting the amount available to the Issuer or the Trustee from payments to be received
hereunder or under the Loan Agreement or in any way arising due to the transactions contemplated hereby or thereby (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Trustee and taxes based upon or measured by the net income of the Trustee; provided, however, that the Borrower shall have the right to protest any such taxes or assessments and to require the Issuer or the Trustee, at the Borrower’s expense, to protest and contest any such taxes or assessments levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Issuer or the Trustee.

(e) The fees of the rebate monitor as required by the Tax Certificate and, upon receipt of an appropriately completed invoice, all out-of-pocket expenses of the rebate monitor.

(f) The annual rating maintenance fee, if any, of any Rating Agency then rating the Bonds.

(g) All Costs of Issuance of the Bonds, including, but not limited to, Rating Agency fees, printing expenses, attorneys’ fees and underwriters’ fees, and all expenses of originating the Mortgage Loan by the Lender and assigning and delivering the Mortgage Loan to Fannie Mae, the Borrower acknowledging that all such fees, costs and expenses (excluding the portions of the ongoing trust administration fees of the Trustee and the rebate monitor’s fee to the extent included in the Mortgage Note Rate) must be paid by the Borrower separate and apart from payments due under the Mortgage Loan and will not be included in the Mortgage Note Rate.

(h) The Costs of Issuance deposit to be made to the Costs of Issuance Fund on the Closing Date pursuant to Section 4.01 of the Indenture.

(i) These obligations and those in Sections 5.09 and 9.08 shall remain valid and in effect notwithstanding repayment of the Mortgage Loan hereunder or termination of this Financing Agreement or the Indenture.

The Borrower shall either pay the foregoing items directly or, to the extent such items are to be paid by the Trustee under the Indenture, shall pay as Operating Revenue to the Trustee for deposit to the Operating Fund under the Indenture amounts sufficient to enable the Trustee to pay the foregoing items in a timely manner.

The Borrower shall pay through the Lender all fees and expenses not included within the Mortgage Note Rate. All fees and expenses not included in the Mortgage Note Rate shall not be secured by the Mortgage, and shall be subordinate to the Borrower’s obligations under the Mortgage Loan in all respects. No such fees or expenses payable to the Issuer or the Trustee shall be paid from the proceeds of the Pass-Through Certificate, except with respect to the Trustee to the extent set forth in Section 9.02 of the Indenture.

Section 4.03. Notification of Prepayment of Mortgage Note. The Lender shall notify the Trustee promptly of the receipt of any prepayment of the Mortgage Note, whether upon acceleration, by reason of application of insurance or condemnation proceeds, optional prepayment or otherwise, unless the Lender has received written evidence that the Borrower has notified the Trustee of such prepayment. If such prepayment results in revisions to the amortization schedule included in the Term Sheet, Lender shall provide the revised amortization schedule to the Trustee.
Section 4.04. Term Sheet. The Lender has delivered on the Closing Date the Term Sheet in the form attached as EXHIBIT A hereto and certifies that the information set forth therein is accurate as of the Closing Date. The Lender agrees that it will promptly advise the Issuer, the Trustee and the Underwriter in writing of any material changes which occur in the information set forth in the Term Sheet after the Closing Date and before the date on which the Pass-Through Certificate is acquired by the Trustee pursuant to the provisions of Section 4.03 of the Indenture; provided, however, that except as set forth in Section 4.03, such changes may only be made to cure any ambiguity, supply any omission or cure or correct any defect or inconsistent provision in the Term Sheet.

Section 4.05. 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.

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

COVENANTS, UNDERTAKINGS AND OBLIGATIONS OF THE BORROWER

Section 5.01. Taxes, Other Governmental Charges and Utility Charges. The Borrower shall pay, or cause to be paid, promptly as the same become due and payable and prior to delinquency thereof, every lawful cost, expense and obligation of every kind and nature, foreseen or unforeseen, for the payment of which the Issuer, the Trustee, the Lender or Fannie Mae is or shall become liable by reason of its or their estate or interest in the Project or any portion thereof, by reason of any right or interest of the Issuer, the Trustee, the Lender or Fannie Mae in or under this Financing Agreement, or by reason of or in any manner connected with or arising out of the possession, operation, maintenance, alteration, repair, rebuilding, use or occupancy of the Project or any portion thereof, including, without limitation, all taxes (except income and similar taxes of such entities), assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any machinery, equipment or other property installed or brought by the Borrower therein or thereon; provided that any amounts payable hereunder that are also required to be paid by the terms of the Mortgage shall be paid without duplication on the terms provided in the Mortgage.

Upon request, the Borrower shall furnish to the Issuer, the Trustee, Fannie Mae and the Lender proof of the payment of any such tax, assessment or other governmental or similar charge, or any other charge which is payable by the Borrower as set forth above.

Section 5.02. Compliance With Laws. The Borrower shall, throughout the term of this Financing Agreement and at no expense to the Issuer, the Trustee or Fannie Mae promptly comply or cause compliance with all laws, ordinances, rules, regulations and requirements of duly constituted public authorities which may be applicable to the Project or to the repair and alteration thereof, or to the use or manner of use of the Project, including, but not limited to, the applicable provisions of the Americans With Disabilities Act and all applicable federal, State and local environmental, labor, health and safety laws, rules and regulations.

Section 5.03. Maintenance of Legal Existence. During the term of this Financing Agreement, the Borrower shall maintain its existence as set forth in Section 2.01(a) hereof and shall not terminate, dissolve or dispose of all or substantially all of its assets; provided, however, that the Borrower may, with the written permission of the Issuer, consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, or transfer all or substantially all of its assets to another entity, but only on the condition that the assignee entity or the entity resulting from or surviving such merger or consolidation (if other than the Borrower), or the entity to which such transfer shall be made, shall be duly organized and existing, in good standing and qualified to do business under the laws of the State, shall remain so continuously during the term hereof, and shall expressly assume in writing and agree to perform all of the Borrower’s obligations hereunder and under all other documents executed by the Borrower in connection with the issuance of the Bonds; provided, further, that (i) the Borrower delivers an opinion of Bond Counsel to the effect that such consolidation or merger shall not cause interest on the Bonds to be included in gross income for federal income tax purposes, and (ii) any transfer of the Project shall be effected in accordance with the Mortgage. Nothing in this Section 5.03 shall be deemed to relieve the Borrower of its obligations to comply with the provisions of the Mortgage Loan Documents.

Section 5.04. Operation of Project. The Borrower will not sell, transfer or otherwise dispose of the Project except as provided in the Regulatory Agreements, the Mortgage and Section 5.03 hereof.
Section 5.05. Tax Covenants. In order to assure that the interest on the Bonds shall at all times be excluded from gross income for the purposes of federal income taxation, the Borrower represents and covenants with the Issuer, Trustee and all Holders of the Bonds as follows:

(a) The Borrower will fulfill all continuing conditions specified in Section 142 of the Code and Regulation 1.103-8(b) promulgated thereunder, to qualify the Combined Bonds as residential rental property bonds thereunder, and the Borrower shall fulfill its obligations under the Regulatory Agreements.

(b) The Borrower will not use (or permit to be used) the Project or use or invest (or permit to be used or invested) the proceeds of the Combined Bonds or any other sums treated as “bond proceeds” under Section 148 of the Code and applicable federal income tax regulations, including “investment proceeds,” “invested sinking funds” and “replacement proceeds,” in such a manner as to cause the Combined Bonds to be classified “arbitrage bonds” under Section 148 of the Code or “federally guaranteed obligations” under Section 149(b) of the Code.

(c) At least ninety-five percent (95%) of net proceeds of the Combined Bonds will be used to finance costs properly chargeable to the capital account of a qualified residential rental project within the meaning of Section 142(d) and functionally related and subordinate property thereto.

(d) The Borrower has not permitted and will not permit any obligation or obligations other than the Note to be issued within the meaning of Section 103(b) of the Code so as to cause such obligations to become part of the same “issue of obligations” as the Bonds.

(e) No portion of the proceeds of the Combined Bonds is to be used to provide any airplanes, skybox, or other private luxury box, health club facility, facility primarily used for gambling or liquor store.

(f) No portion of the proceeds of the Combined Bonds will be used to acquire (a) property to be leased to the government of the United States of America or to any department, agency or instrumentality of the government of the United States of America, (b) any property not part of the residential rental housing portion of the Project, or (c) any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard and ice-skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility or racetrack.

(g) No portion of the proceeds of the Combined Bonds (including investment earnings thereon) shall be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes, and less than twenty-five percent (25%) of the Combined Bond proceeds (including investment earnings thereon) shall be used (directly or indirectly) for the acquisition of land to be used for purposes other than farming purposes.

(h) 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, and if the requirements for a “qualified residential rental project” are not met, does not allow deduction for interest paid on the Bonds 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.
(i) The average maturity of the Combined Bonds will not exceed one hundred twenty percent (120%) of the average reasonably expected economic life of the Project financed with the proceeds of the Combined Bonds within the meaning of Section 147(b) of the Code.

(j) The Borrower shall provide the Issuer on the Closing Date with all information required to satisfy the informational requirements set forth in Section 149(e) of the Code including the information necessary to complete IRS Form 8038.

(k) No money in any of the Funds shall be invested in investments which cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code. If at any time the moneys in such Funds exceed, within the meaning of Section 149(b), (i) amounts invested for an initial temporary period until the moneys are needed for the purpose for which the Bonds were issued, (ii) investments of a bona fide debt service fund, and (iii) investments of a reserve which meet the requirement of Section 148(c) and (d) of the Code, such excess moneys shall be invested in only those Permitted Investments or Government Obligations, as otherwise appropriate, which are (a) obligations issued by the United States Treasury, (b) other investments permitted under regulations, or (c) obligations which are (a) not issued by, or guaranteed by, or insured by, the United States or any agency or instrumentality thereof or (b) not federally insured deposits or accounts, all within the meaning of Section 149(b)(3)(B) of the Code.

(l) 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 Townhomes, and the Lilac Drive Golden Valley Townhomes will equal or exceed fifteen percent (15%) of the portion of the cost of acquiring each such project financed with proceeds of the Combined Bonds.

(m) 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 Bonds, 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, all within the meaning of Section 148(f) of the Code. The Borrower and the Trustee shall maintain detailed records of the interest rate borne by the Bonds and the investments of the Proceeds Fund and the Bond Fund (and any other Fund created under the Indenture) and earnings thereon. The Borrower shall engage a qualified firm selected by the Borrower (the “Rebate Consultant”) to calculate the amount of any rebate required to be made to the United States at times and in installment which satisfy Section 148(f) of the Code and the Regulations, at least once every five (5) years and within sixty (60) days after the day on which the last of the Bonds is redeemed, and the Trustee shall be immediately furnished with such calculations. If the Trustee is not furnished with such calculations, the Trustee may undertake to have such calculations made by the Rebate Consultant at the expense of the Borrower. Such calculations shall be retained until six (6) years after the retirement of the last Bond. The rebate shall be calculated as provided in Section 148(f) of the Code and Sections 1.148-0 through 1.148-9 of the Regulations, including taking into account the gain or loss on the disposition of nonpurpose investments but not gross earnings of up to $100,000 on the portion, if any, of the Bond Fund constituting a bona fide debt service fund. The Borrower shall acquire, and shall cause the Trustee to acquire all nonpurpose investments at their fair market value in arm’s length transactions.
(n) The Borrower will not permit more than two percent (2%) of the proceeds of the Combined Bonds to be expended (or to be used to reimburse any person for an expenditure) to pay Costs of Issuance as provided by Section 147(g) of the Code.

(o) In order to qualify the Bonds and this Loan Agreement under the “program investment” provisions of Section 1.148-2(d)(2)(iii) of the Regulations, the Borrower (and any Related Person thereto) will take no action the effect of which would be to disqualify this Loan Agreement as a “program investment” as defined in Section 1.148-1(b) of the Regulations, including but not limited to entering into any arrangement, formal or informal, for the Borrower to purchase bonds or notes of the Issuer in an amount related to the amount of the Bonds.

(p) The Borrower will not otherwise use proceeds of the Bonds, including expenses, earnings thereon, or take, or permit or cause to be taken, any action that would adversely affect the exclusion from gross income of the interest on the Bonds, nor otherwise omit to take or cause to be taken any action necessary to maintain such exclusion from gross income; and, if it should take or permit, or omit to take or cause to be taken, as appropriate, any such action, the Borrower shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

(q) The Borrower further covenants and agrees that, pursuant to the requirements of Section 1.148-1(b) of the Regulations, it (or any Related Person contemplated by such Regulations) will not purchase Bonds in an amount related to the amount of the Mortgage Loan.

Section 5.06. Further Assurances and Corrective Instruments. The parties hereto agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and to the other documents contemplated hereby as may reasonably be required to carry out the intention of or to facilitate the performance of this Financing Agreement, the Mortgage Loan Documents or the other Bond Documents or to perfect or give further assurances of any of the rights granted or provided for herein, the Mortgage Loan Documents or the other Bond Documents.

Section 5.07. Compliance With Other Documents. The Borrower shall make all payments and shall observe and perform all covenants, conditions and agreements required to be paid, observed or performed by the Borrower under the Mortgage Note, the Mortgage, the other Mortgage Loan Documents and the Regulatory Agreements. The Indenture has been submitted to the Borrower for examination, and the Borrower, by execution of this Financing Agreement, acknowledges and agrees that it has participated in the negotiation of the Indenture that it has approved and agreed to each of the provisions of the Indenture and that it is bound by, shall adhere to the provisions of, and shall have the rights set forth by the terms and conditions of, the Indenture and covenants and agrees to perform all obligations required of the Borrower pursuant to the terms of the Indenture.

The Borrower hereby grants to the Trustee for the benefit of Fannie Mae and the Bondholders a security interest in all of its rights in and to all funds created or established by the Trustee under the Indenture in the manner and subject to the terms and conditions of the Indenture.

Section 5.08. Notice of Certain Events. The Borrower hereby covenants to advise the Lender, the Issuer and the Trustee promptly in writing of the occurrence of any default by the Borrower in the performance or observance of any covenant, agreement, representation, warranty or obligation of the Borrower set forth in this Financing Agreement, in any of the other Bond Documents or any other documents contemplated hereby or thereby, or of any Event of Default hereunder known to it or of which it has received notice, 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 less than ten (10) Business Days after the Borrower receives notice or has knowledge of the occurrence of any such event. The Borrower further agrees that it will give prompt written notice to the Trustee and the Lender 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.

The Borrower further covenants to provide such parties notice of the Placed in Service Date promptly upon its occurrence.

Section 5.09. Indemnification. The Borrower covenants and agrees to indemnify, hold harmless and defend the Issuer, the Trustee, the Lender and their respective officers, members, directors, officials, agents and employees and each of them (each an “indemnified party”) from and against, (a) any and all claims, joint or several, by or on behalf of any person arising from any cause whatsoever in connection with transactions contemplated hereby or otherwise in connection with the Project, the Bonds or the execution or amendment of any document relating thereto, including, but not limited to, the Bond Documents; (b) any and all claims, joint or several, arising from any cause whatsoever in connection with the approval of financing for the Project or the making of the Mortgage Loan, its assignment to Lender or the execution or amendment of any document related thereto, including, but not limited to, the Loan Agreement and the Mortgage Loan Documents; (c) any and all claims, joint or several, arising from any act or omission of the Borrower or any of its agents, servants, employees or licensees, in connection with the Project or the Mortgage Loan, including but not limited to, the Loan Agreement and the Mortgage Loan Documents; (d) all reasonable costs, counsel fees, expenses or liabilities incurred in connection with any such claim, or proceeding brought thereon; (e) any and all claims arising in connection with the issuance and sale, resale or remarketing of any Bonds or any certifications or representations made by any Person other than the party seeking indemnification in connection therewith and the carrying out by the Borrower of any of the transactions contemplated by the Bonds, the Bond Documents, the Loan Agreement and the Mortgage Loan Documents; (f) any and all claims arising in connection with the operation of the Project, or the conditions thereof, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation or construction of, the Project or any part thereof; and (g) any and all losses, claims, damages, liabilities or expenses, joint or several, arising out of or connected with the Trustee’s acceptance or administration of the trusts created by the Indenture and the exercise of its powers or duties thereunder or under this Financing Agreement, the Regulatory Agreements or any other agreements in connection therewith to which it is a party; except (i) in the case of the foregoing indemnification of the Trustee or the Lender or any of their respective officers, members, directors, officials and employees, to the extent such damages are caused by the negligence or willful misconduct of such Person; or (ii) in the case of the foregoing indemnification of the Issuer or any of its officers, members, directors, officials and employees, to the extent such damages are caused by the willful misconduct of such Person. In the event that any action or proceeding is brought against any indemnified party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Borrower, subject to the approval of the indemnified party in such party’s sole but reasonable discretion, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Trustee and the Lender shall have the right to review and approve or disapprove any such compromise or settlement. Each indemnified party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that unless such separate counsel is employed with the approval of the Borrower, which approval shall not
be unreasonably withheld, the Borrower shall not be required to pay the fees and expenses of such separate counsel.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of the Regulatory Agreements, the Borrower shall remain obligated to indemnify each indemnified party pursuant to this Section if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless such indemnified party has consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

During any period that Fannie Mae owns the Project and that this Section 5.09 is applicable to Fannie Mae, Fannie Mae’s obligations under this Section 5.09 shall be limited to acts and omissions of Fannie Mae occurring during the period of Fannie Mae’s ownership of the Project.

**Section 5.10. Right To Perform Borrower’s Obligations.** In the event the Borrower fails to perform any of its obligations under this Financing Agreement, the Issuer, the Lender, Fannie Mae and/or the Trustee, after giving the requisite notice, if any, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced by the Issuer, the Lender, Fannie Mae or the Trustee shall become an additional obligation of the Borrower hereunder, payable on demand with interest thereon at the default rate of interest payable under the Mortgage Loan Documents.

**Section 5.11. Nonrecourse Provisions.** Notwithstanding anything to the contrary, the obligations of the Borrower pursuant to this Financing Agreement shall not be secured by or create a lien or charge on in any manner the property of the Borrower or its members, including the Project or the rents, issues and profits thereof, and except with respect to Sections 4.02 and 5.09 hereof shall be non-recourse to the Borrower and its members. Sections 4.02 and 5.09 hereof shall be recourse to the Borrower but non-recourse to the members of the Borrower.

**Section 5.12. Trust Indenture.** The provisions of the Indenture concerning the Bonds and other matters therein are an integral part of the terms and conditions of the Mortgage Loan, and this Financing Agreement shall constitute conclusive evidence of approval of the Indenture by the Borrower to the extent it relates to the Borrower. Additionally, the Borrower agrees that, whenever the Indenture by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Indenture, and the Borrower agrees to carry out and perform all of its obligations under the Indenture as fully as if the Borrower were a party to the Indenture.

(The remainder of this page is intentionally left blank.)
ARTICLE VI
MORTGAGE LOAN DOCUMENTS

Section 6.01. Assurances. The Borrower, the Issuer and the Trustee mutually agree that no party hereto shall enter into any contract or agreement, perform any act, or request any other party hereto to enter into any contracts or agreements or perform any acts, which shall adversely affect the Mortgage Loan Documents.

Section 6.02. Financial Obligations Personal to the Borrower. The Issuer acknowledges that the Project shall be encumbered by the Mortgage Loan Documents. Notwithstanding any provisions of this Financing Agreement or the Regulatory Agreements to the contrary, all obligations of the Borrower under this Financing Agreement and the Regulatory Agreements for the payment of money and all claims for damages against the Borrower occasioned by breach or alleged breach by the Borrower of its obligations under any of the Regulatory Agreements or this Financing Agreement, including indemnification obligations, shall not be secured by or in any manner constitute a lien on the Project and no Person shall have the right to enforce such obligations other than directly against the Borrower. No subsequent owner of the Project shall be liable or obligated for the breach or default of any obligation of any prior owner under the Regulatory Agreements or this Financing Agreement, including but not limited to any payment or indemnification obligation. Such obligations are personal to the Person who was the owner at the time the default or breach was alleged to have occurred and such Person shall remain liable for any and all damages occasioned thereby even after such Person ceases to be the owner.

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

TRUSTEE’S INTEREST IN AGREEMENT

Section 7.01. Issuer Assignment of This Financing Agreement.

(a) Pursuant to the Indenture, the Issuer shall pledge, assign and transfer all of its right, title and interest in this Financing Agreement (other than the Reserved Rights of the Issuer), and the revenues, receipts and collections hereunder and thereunder, to the Trustee in the manner and to the extent provided in the Indenture as security for the payment of the principal of, premium, if any, and interest on the Bonds, and the parties hereby acknowledge that the covenants and agreements contained herein are for the benefit of the registered owners from time to time of the Bonds and may be enforced on their behalf by the Trustee. The Issuer shall execute and deliver from time to time, in addition to the instruments of assignment herein specifically provided for, such other and further instruments and documents as may be reasonably requested by the Trustee from time to time to further evidence, effect or perfect such pledge and assignment for the purposes contemplated in the Indenture.

(b) The Borrower hereby acknowledges and consents to the assignment and pledge (subject to the reservation by the Issuer of its Reserved Rights) by the Issuer to the Trustee in the manner and to the extent provided in the Indenture. The Borrower further acknowledges and consents to the right of the Trustee to enforce all rights of the Issuer and the Bondholders assigned under the Indenture.

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

EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default. Each of the following shall constitute an event of default under this Financing Agreement, and the term “Event of Default” shall mean, whenever used in this Financing Agreement, any one or more of the following events:

(a) Failure by the Borrower to pay any amounts due under this Financing Agreement at the times and in the amounts required hereby or thereby; or

(b) Failure by the Borrower to observe or perform any covenants, agreements or obligations in this Financing Agreement on its part to be observed or performed (other than as provided in clause (i) above) for a period of thirty (30) days after receipt of written notice specifying such failure and requesting that it be remedied, given to the Borrower by any party to this Financing Agreement; provided, however, that if said failure shall be such that it cannot be corrected within such period, it shall not constitute an Event of Default if the failure is correctable without material adverse effect on the Bonds and if corrective action is instituted by the Borrower within such period and diligently pursued until the failure is corrected, and provided further that any such failure shall have been cured within ninety (90) days of receipt of notice of such failure; or

(c) Breach of any of the covenants, agreements or obligations of the Borrower under or the occurrence of a default which is continuing under any of the Regulatory Agreements, including any exhibits to any of the foregoing, which breach or default is not cured within the applicable notice and cure period thereunder, if applicable; or

(d) Occurrence of an Event of Default caused by the Borrower under and as defined in the Indenture or under any of the other Bond Documents.

Nothing contained in this Section 8.01 is intended to amend or modify any of the provisions of the Mortgage Loan Documents or to bind the Borrower, the Lender or Fannie Mae to any notice and cure periods other than as expressly set forth in the Mortgage Loan Documents.

Section 8.02. Remedies Upon an Event of Default.

(a) Subject to Section 8.02(d), whenever any Event of Default shall have occurred and be continuing, the Issuer or the Trustee may take any one or more of the following remedial steps:

(i) By any suit, action or proceeding, pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Financing Agreement, to enforce the performance of any covenant, obligation or agreement of the Borrower under this Financing Agreement (subject to the nonrecourse provisions of this Financing Agreement and the Regulatory Agreements) or to enjoin acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee.

(ii) Take whatever other action at law or in equity may appear necessary or desirable to enforce any monetary obligation of the Borrower under this Financing
Agreement or to enforce any other covenant, obligation or agreement of the Borrower under (1) this Financing Agreement, or (2) the Regulatory Agreements.

(iii) Have access to and inspect, examine, audit and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Borrower.

(b) The provisions of subsection (a) hereof are subject to the condition that if, after any Event of Default, except a default under any of the Regulatory Agreements, (i) all amounts which would then be payable hereunder by the Borrower if such Event of Default had not occurred and was not continuing shall have been paid by or on behalf of the Borrower, and (ii) the Borrower shall have also performed all other obligations in respect of which it is then in default hereunder and shall have paid the reasonable charges and expenses of the Issuer and the Trustee, including reasonable attorney fees and expenses paid or incurred in connection with such default, then and in every such case, such Event of Default may be waived and annulled by the Trustee, but no such waiver or annulment shall extend to or affect any subsequent Event of Default or impair any right or remedy consequent thereon.

(c) Subject to the limitations of the Regulatory Agreements and this Financing Agreement, the Issuer, without the consent of the Trustee, but only after written notice to the Trustee, the Borrower, the Lender and Fannie Mae, may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any Reserved Right of the Issuer; provided that, the Issuer may not (i) terminate this Financing Agreement or cause the Mortgage Loan to become due and payable, (ii) cause the Trustee to declare the principal of all Bonds then Outstanding and the interest accrued thereon to be immediately due and payable, or cause the Trustee to accelerate, foreclose or take any other action or seek other remedies under the Bond Documents, the Mortgage Loan Documents or any other documents contemplated hereby or thereby to obtain such performance or observance, (iii) cause the acceleration, foreclosure or taking of any other action or the seeking of any remedies under the Mortgage Loan Documents, (iv) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal, interest and other amounts due under the Mortgage Loan, or (v) interfere with or attempt to influence the exercise by Fannie Mae of any of its rights under the Bond Documents or the Mortgage Loan Documents.

(d) Except as required to be deposited in the Rebate Fund pursuant to the Tax Certificate, any amounts collected pursuant to action taken under this Section 8.02 shall, after the payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, the Issuer, the Lender or Fannie Mae and their respective counsel, be applied in accordance with the provisions of the Indenture. No action taken pursuant to this Section shall relieve the Borrower from the Borrower’s obligations pursuant to Sections 5.09 and 9.08 hereof.

(e) No remedy herein conferred upon or reserved to the Issuer or the Trustee 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 now or hereafter existing pursuant to any other agreement at law or in equity or by statute.

(f) Notwithstanding any other provision of this Financing Agreement to the contrary, after the Purchase Date, so long as Fannie Mae is not in default under the Pass-Through Certificate, none of the Issuer, the Trustee or any Person under their control shall exercise any remedies or direct any proceedings under this Financing Agreement or the Mortgage Loan.
Documents, other than to (i) enforce rights under the Pass-Through Certificate, (ii) enforce the tax covenants in the Indenture and this Financing Agreement, or (iii) enforce rights of specific performance under the Regulatory Agreements; provided, however, that any enforcement under (ii) or (iii) above shall not include seeking monetary damages.

Section 8.03. Default Under Regulatory Agreements.

(a) If the Borrower fails, at any time for any reason, to comply with the requirements of any of the Regulatory Agreements, then within thirty (30) days after the earlier of the date the violation is discovered by the Issuer or the Trustee or the date the Issuer or the Trustee received notice thereof, the Issuer (if necessary to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes) or the Trustee, on behalf and at the request of the Issuer, shall institute an action for specific performance to correct the violation. The Borrower hereby acknowledges and agrees that were money damages a remedy under the Regulatory Agreements, money damages alone would not be an adequate remedy at law for a default by the Borrower arising from a failure to comply with the Regulatory Agreements, and therefore the Borrower agrees that the remedy of specific performance (subject to the provisions of Section 8.02(c) hereof) shall be available to the Issuer and/or the Trustee in any such case.

(b) Notwithstanding the availability of the remedy of specific performance provided for in subsection (a) of this Section, promptly upon determining that a violation of any of the Regulatory Agreements has occurred, the Issuer shall, by notice in writing to the Lender, inform the Lender that a violation of such Regulatory Agreements has occurred; notwithstanding the occurrence of such violation, neither the Issuer nor the Trustee shall have, and each of them acknowledges that they shall not have, any right to cause or direct acceleration of the Mortgage Loan, to enforce the Mortgage Note or to foreclose on the Mortgage.

Section 8.04. Limitation on Waivers.

(a) No delay or omission to exercise any right or power occurring upon any Event of 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 appropriate. The Issuer and the Trustee agree to give only such notices as may be herein expressly required.

(b) In the event any covenant, agreement or condition contained in this Financing Agreement shall be breached by a party and thereafter waived by another party, such waiver shall not bind any party which has not waived the breach and shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder nor be a waiver of the same breach on a future occasion. By reason of the assignment and pledge of certain of the Issuer’s rights and interests in this Financing Agreement to the Trustee, the Issuer shall have no power to waive or release the Borrower from any Event of Default or the performance or observance of any obligation or condition of the Borrower under this Financing Agreement without first requesting and receiving the prior written consent of the Trustee, but shall do so if, requested by the Trustee; provided that the Issuer shall not be required to grant such waiver or release unless it shall have been provided with (i) if deemed necessary in the sole discretion of the Issuer an Opinion of Counsel that such action will not result in any pecuniary liability to it and an opinion of Bond Counsel that such waiver shall not cause interest on the Bonds to be included in the gross income of the Holders thereof for federal income tax purposes, (ii) such indemnification as the Issuer shall deem reasonably necessary, and (iii) written notice from the Trustee of the request for such waiver or release.
Section 8.05. Notice of Default: Rights To Cure. The Issuer and the Trustee shall each give notice to the other and to the Managing Member, the Investor Member, and the Lender of the occurrence of any Event of Default by the Borrower hereunder of which it has actual knowledge. The Lender, the Managing Member, and the Investor Member shall each have the right, but not the obligation, to cure any such default by the Borrower, and upon performance by the Lender, the Managing Member, or the Investor Member to the satisfaction of the Issuer and the Trustee of the covenant, agreement or obligation of the Borrower with respect to which an Event of Default has occurred, the parties hereto shall be restored to their former respective positions, it being agreed that the Lender, the Managing Member, and the Investor Member shall each have the right to repayment from the Borrower of moneys it has expended and any other appropriate redress for actions it has taken to cure any default by the Borrower; provided that the Borrower’s reimbursement obligation shall be nonrecourse to the same extent as the underlying obligation is nonrecourse to the Borrower.

Section 8.06. Rights Cumulative. All rights and remedies herein given or granted to the Issuer and the Trustee are cumulative, nonexclusive and in addition to any and all rights and remedies that the Issuer and the Trustee may have or may be given by reason of any law, statute, ordinance or otherwise. Notwithstanding anything to the contrary contained in this Financing Agreement, neither the Trustee nor the Issuer may commence any action against the Borrower for specific performance or any other remedy at law or in equity, other than to enforce performance and observance of any Reserved Right of the Issuer and its rights under Section 8.03, without first obtaining the prior written consent of Fannie Mae.

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

MISCELLANEOUS

Section 9.01. Notices. All notices, certificates or other communications herein provided shall be given in writing to the Issuer, the Borrower, the Trustee, Fannie Mae, the Lender and, for notices under Section 8.05 only, the Managing Member and the Investor Member, and shall be sufficiently given and shall be deemed given if given in the manner provided in the Indenture. Except as otherwise provided in the preceding sentence, copies of each notice, certificate or other communication given hereunder by any party hereto shall be given to all parties hereto. By notice given hereunder, any party may designate further or different addresses to which subsequent notices, certificates or other communications are to be sent. A duplicate copy of each notice, certificate, request or other communication given hereunder to the Issuer, the Borrower, the Lender or the Trustee shall also be given to Fannie Mae.

Section 9.02. Amendment. This Financing Agreement and all other documents contemplated hereby to which the Issuer is a party may be amended or terminated only if permitted by the Indenture, and no amendment to this Financing Agreement shall be binding upon, any party hereto until such amendment is reduced to writing and executed by the parties hereto; provided that no amendment, supplement or other modification to this Financing Agreement or any other Bond Document shall be effective without the prior written consent of Fannie Mae.

Section 9.03. Entire Agreement. Except as provided in the other Bond Documents and the Mortgage Loan Documents, this Financing Agreement contains all agreements among the parties hereto, and there are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties hereto, unless reference is made thereto in this Financing Agreement or the Indenture.

Section 9.04. Binding Effect. This Financing Agreement shall be binding upon the Issuer, the Borrower and the Trustee and their respective successors and assigns. Notwithstanding anything herein to the contrary, to the extent Fannie Mae or its designee shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure or similar conveyance, Fannie Mae, and its designee, if applicable, shall not be liable for any breach or default or any of the obligations of any prior owner of the Project under this Financing Agreement, and shall only be responsible for defaults and obligations incurred during the period Fannie Mae or its designee, if applicable, is the owner of the Project.

Section 9.05. Severability. If any clause, provision or section of this Financing Agreement shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections.

Section 9.06. Execution in Counterparts. This Financing Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.07. Governing Law. This Financing Agreement shall be construed in accordance with and governed by the laws of the State applicable to contracts made and performed in the State.

Section 9.08. Limited Liability of the Issuer.

(a) Reliance by Issuer on Facts or Certificates. Anything in this Financing Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion,
notice, or other instrument furnished to the Issuer by the Lender, the Trustee or the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer.

(b) **Waiver of Personal Liability.** No member, officer, agent or employee of the Issuer or any of its members or any director, officer, agent or employee of the Borrower shall be individually or personally liable for the payment of any principal (or Redemption Price) or interest on the Bonds or any other sum hereunder or under the Loan Agreement or be subject to any personal liability or accountability by reason of the execution and delivery of this Financing Agreement or the Loan Agreement; but nothing herein contained shall relieve any such member, director, officer, agent or employee from the performance of any official duty provided by law or by this Financing Agreement or the Loan Agreement.

(c) **Non-Liability of Issuer.** The obligations of the Issuer under this Financing Agreement are special, limited obligations of the Issuer, payable solely out of the revenues and income derived under this Financing Agreement and otherwise provided under this Financing Agreement. The obligations of the Issuer hereunder will not be deemed to constitute an indebtedness or an obligation of the Issuer, the State or any other political subdivision thereof within the purview of any constitutional limitation or statutory provision, or a charge against the credit or general taxing powers, if any, of any of them. Neither the Issuer nor any member, director, officer, employee or agent of the Issuer nor any person executing the Bonds will be liable personally for the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds. No recourse will be had for the payment of the principal of, redemption premium, if any, and interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Indenture or this Financing Agreement or a bond purchase agreement against any past, present or future member, officer, agent or employee of the Issuer, or any incorporator, member, officer, employee, director or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, officer, employee, director, agent or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of the Indenture or this Financing Agreement and the issuance of the Bonds.

(d) **Expenses.** The Borrower shall pay and indemnify the Issuer and the Trustee against all reasonable fees, costs and charges, including reasonable fees and expenses of attorneys, accountants, consultants and other experts, incurred in good faith (and with respect to the Trustee, without negligence) and arising out of or in connection with the Bond Documents, the Loan Agreement and the Mortgage Loan Documents. These obligations and those in Section 5.09 hereof shall remain valid and in effect notwithstanding repayment of the Mortgage Loan hereunder or termination of the Financing Agreement, the Loan Agreement or the Indenture.

(e) **No Warranty by Issuer.** The Borrower recognizes that, because the components of the Project have been and are to be designated and selected by it, THE ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, IT BEING AGREED THAT ALL RISKS INCIDENT THEREETO ARE TO BE
BORNE BY THE OWNER. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, THE ISSUER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OF THE STATE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

Section 9.09. Term of This Financing Agreement. This Financing Agreement shall be in full force and effect from its date to and including such date as all of the Bonds shall have been fully paid or retired (or provision for such payment shall have been made as provided in the Indenture); provided, however, that the provisions of Sections 2.01, 5.05, 5.09, and 9.08 hereof shall survive the termination hereof.
IN WITNESS WHEREOF, the Issuer, the Borrower, the Trustee, and the Lender have caused this Financing Agreement to be executed by their duly authorized representatives as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By __________________________________________
Its Mayor

By __________________________________________
Its City Manager

(Signature Page with respect to the Series 2017A Bonds)
Execution page of the Borrower to the Financing Agreement, dated as of the date and year first written above.

CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company

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

By: __________________________
Name: Richard Martin
Title: Administrative Manager

(Signature Page with respect to the Series 2017A Bonds)
Execution page of the Trustee to the Financing Agreement, dated as of the date and year first written above.

U.S. BANK NATIONAL ASSOCIATION

By ________________________________
Its Vice President

(Signature Page with respect to the Series 2017A Bonds)
Execution page of the Lender to the Financing Agreement, dated as of the date and year first written above.

DOUGHERTY MORTGAGE LLC

By ________________________________
Its ________________________________

(Signature Page with respect to the Series 2017A Bonds)
EXHIBIT A

TERM SHEET

[Insert Term Sheet]
INDENTURE OF TRUST

between

CITY OF MINNETONKA, MINNESOTA,
as Issuer

and

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

Dated as of September 1, 2017

Relating to:

$5,850,000
City of Minnetonka, Minnesota
Multifamily Housing Revenue Bonds
(Elmbrooke and Golden Valley Townhomes Project)
Series 2017A

This instrument drafted by:
Kennedy & Graven, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN  55402
# TABLE OF CONTENTS

## ARTICLE I  DEFINITIONS AND INTERPRETATION

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.01</td>
<td>Definitions</td>
<td>5</td>
</tr>
<tr>
<td>1.02</td>
<td>Rules of Construction</td>
<td>13</td>
</tr>
</tbody>
</table>

## ARTICLE II  THE BONDS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.01</td>
<td>Authorization of Bonds</td>
<td>14</td>
</tr>
<tr>
<td>2.02</td>
<td>Terms of Bonds</td>
<td>14</td>
</tr>
<tr>
<td>2.03</td>
<td>Execution; Special, Limited Obligation</td>
<td>15</td>
</tr>
<tr>
<td>2.04</td>
<td>Authentication</td>
<td>16</td>
</tr>
<tr>
<td>2.05</td>
<td>Form of Bonds</td>
<td>16</td>
</tr>
<tr>
<td>2.06</td>
<td>Delivery of Bonds</td>
<td>16</td>
</tr>
<tr>
<td>2.07</td>
<td>Bonds Mutilated, Lost, Destroyed or Stolen</td>
<td>17</td>
</tr>
<tr>
<td>2.08</td>
<td>Registration, Transfer and Exchange of Bonds; Persons Treated as Owners</td>
<td>17</td>
</tr>
<tr>
<td>2.09</td>
<td>Cancellation of Bonds</td>
<td>18</td>
</tr>
<tr>
<td>2.10</td>
<td>Pledge Effected by Indenture</td>
<td>18</td>
</tr>
<tr>
<td>2.11</td>
<td>Book-Entry System; Limited Obligation</td>
<td>18</td>
</tr>
<tr>
<td>2.12</td>
<td>Representation Letter</td>
<td>19</td>
</tr>
<tr>
<td>2.13</td>
<td>Transfers Outside Book-Entry System</td>
<td>20</td>
</tr>
<tr>
<td>2.14</td>
<td>Payments and Notices to the Nominee</td>
<td>20</td>
</tr>
<tr>
<td>2.15</td>
<td>Initial Depository and Nominee</td>
<td>20</td>
</tr>
</tbody>
</table>

## ARTICLE III  REDEMPTION OF BONDS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.01</td>
<td>Terms of Redemption</td>
<td>21</td>
</tr>
<tr>
<td>3.02</td>
<td>Notice of Redemption</td>
<td>21</td>
</tr>
<tr>
<td>3.03</td>
<td>Payment of Redemption Price</td>
<td>22</td>
</tr>
<tr>
<td>3.04</td>
<td>Cancellation</td>
<td>22</td>
</tr>
</tbody>
</table>

## ARTICLE IV  APPLICATION OF BOND PROCEEDS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.01</td>
<td>Initial Deposit</td>
<td>23</td>
</tr>
<tr>
<td>4.02</td>
<td>Proceeds Fund</td>
<td>23</td>
</tr>
<tr>
<td>4.03</td>
<td>Delivery of Pass-Through Certificate</td>
<td>23</td>
</tr>
</tbody>
</table>

## ARTICLE V  REVENUES AND FUNDS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.01</td>
<td>Pledge of Revenues and Assets</td>
<td>25</td>
</tr>
<tr>
<td>5.02</td>
<td>Establishment of Funds</td>
<td>25</td>
</tr>
<tr>
<td>5.03</td>
<td>Application of Revenues</td>
<td>25</td>
</tr>
<tr>
<td>5.04</td>
<td>Application of Operating Fund</td>
<td>25</td>
</tr>
<tr>
<td>5.05</td>
<td>Application of Bond Fund</td>
<td>25</td>
</tr>
<tr>
<td>5.06</td>
<td>Investment of Funds</td>
<td>25</td>
</tr>
<tr>
<td>5.07</td>
<td>Moneys Held for Particular Bonds</td>
<td>26</td>
</tr>
<tr>
<td>5.08</td>
<td>Funds Held in Trust</td>
<td>27</td>
</tr>
<tr>
<td>5.09</td>
<td>Accounting Records</td>
<td>27</td>
</tr>
<tr>
<td>5.10</td>
<td>Amounts Remaining in Funds</td>
<td>27</td>
</tr>
<tr>
<td>5.11</td>
<td>Rebate Fund</td>
<td>27</td>
</tr>
<tr>
<td>5.12</td>
<td>Costs of Issuance Fund</td>
<td>27</td>
</tr>
<tr>
<td>5.13</td>
<td>Collateral Security Fund</td>
<td>27</td>
</tr>
</tbody>
</table>
ARTICLE VI  COVENANTS OF ISSUER

Section 6.01. Payment of Bonds ................................................................. 30
Section 6.02. Performance of Covenants by Issuer ........................................ 30
Section 6.03. Tax Covenants ........................................................................ 31
Section 6.04. Compliance with Conditions Precedent ...................................... 31
Section 6.05. Extension of Payment of Bonds .................................................. 31
Section 6.06. Further Assurances ................................................................. 32
Section 6.07. Powers as to Bonds and Pledge .................................................. 32
Section 6.08. Preservation of Revenues; Amendment of Agreements .................. 32
Section 6.09. Assignment ............................................................................ 32
Section 6.10. Request and Indemnification ...................................................... 32
Section 6.11. Limitations on Liability ............................................................ 33

ARTICLE VII  DISCHARGE OF INDENTURE

Section 7.01. Defeasance ............................................................................ 34
Section 7.02. Unclaimed Moneys ................................................................. 35
Section 7.03. No Release of Pass-Through Certificate ...................................... 35
Section 7.04. Transfer of Pass-Through Certificate .......................................... 35
Section 7.05. Issuance of Additional Obligations ............................................ 35
Section 7.06. Modification of Mortgage Terms .............................................. 35

ARTICLE VIII  DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

Section 8.01. Events of Default ................................................................... 36
Section 8.02. Acceleration; Rescission of Acceleration ..................................... 36
Section 8.03. Other Remedies; Rights of Bondholders .................................... 37
Section 8.04. Representation of Bondholders by Trustee .................................. 38
Section 8.05. Action by Trustee ..................................................................... 38
Section 8.06. Accounting and Examination of Records After Default ............... 38
Section 8.07. Restriction on Bondholder Action ............................................. 38
Section 8.08. Application of Moneys After Default .......................................... 39
Section 8.09. Control of Proceedings ............................................................ 40
Section 8.10. Waivers of Events of Default .................................................... 40
Section 8.11. Subordination .......................................................................... 40
Section 8.12. Termination of Proceedings ...................................................... 41
Section 8.13. No Interference or Impairment of Pass-Through Certificate ........... 41

ARTICLE IX  THE TRUSTEE

Section 9.01. Acceptance of the Trusts ........................................................ 42
Section 9.02. Fees, Charges and Expenses of Trustee ....................................... 44
Section 9.03. Intervention By Trustee ............................................................ 45
Section 9.04. Merger or Consolidation of Trustee ............................................ 45
Section 9.05. Resignation by Trustee .............................................................. 45
Section 9.06. Removal of Trustee ................................................................. 45
Section 9.07. Appointment of Successor Trustee ............................................ 45
Section 9.08. Transfer of Rights and Property to Successor Trustee ................... 46
Section 9.09. Successor Trustee as Bond Registrar, Custodian of Funds and Paying Agent ............................................................... 46
Section 9.11. Requests from Rating Agency .................................................................................................. 47
Section 9.12. Arbitrage Covenants ............................................................................................................. 47
Section 9.13. Compliance of Borrower Under Regulatory Agreements ..................................................... 48

ARTICLE X  SUPPLEMENTAL INDENTURES

Section 10.01. Supplemental Indentures Effective Upon Acceptance ..................................................... 49
Section 10.02. Supplemental Indentures Requiring Consent of Bondholders .............................................. 49
Section 10.03. Consent of Bondholders .................................................................................................... 50
Section 10.04. Modification By Unanimous Consent .................................................................................. 50
Section 10.05. Exclusion of Bonds .......................................................................................................... 51
Section 10.06. Notation on Bonds .......................................................................................................... 51
Section 10.07. Additional Contracts or Indentures ..................................................................................... 51
Section 10.08. Opinion of Bond Counsel Concerning Supplemental Indentures .................................. 51
Section 10.09. Modification to Mortgage Loan Documents ........................................................................ 51

ARTICLE XI  MISCELLANEOUS

Section 11.01. Evidence of Signatures of Bondholders and Ownership of Bonds ........................................ 52
Section 11.02. Details of Documents Delivered to Trustee ......................................................................... 52
Section 11.03. Preservation and Inspection of Documents ........................................................................... 52
Section 11.04. No Recourse on Bonds ..................................................................................................... 52
Section 11.05. Severability ....................................................................................................................... 53
Section 11.06. Notices .............................................................................................................................. 53
Section 11.07. Action Required to be Taken on a Non-Business Day ......................................................... 55
Section 11.08. Parties Interested Herein .................................................................................................. 55
Section 11.09. Counterparts ..................................................................................................................... 55
Section 11.10. Tax Certificate .................................................................................................................. 55
Section 11.11. Applicable Provisions of Law ............................................................................................. 55

SIGNATURES ................................................................................................................................................. S-1
EXHIBIT A FORM OF BOND ................................................................................................................... A-1
EXHIBIT B FORM OF REQUISITION ................................................................................................. B-1
INDENTURE OF TRUST

THIS INDENTURE OF TRUST is made and entered into as of September 1, 2017 (the “Indenture”), 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 U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America and authorized to accept and execute trusts of the character herein set forth, including such entity’s successors or any other corporation or association resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at any time serving as successor trustee hereunder (the “Trustee”).

WITNESSETH:

WHEREAS, Minnesota Statutes, Chapters 462C and 474A, as amended (collectively, the “Act”), authorizes the Issuer to issue revenue obligations to finance and refinance 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, pursuant to the Act, Minnesota Statutes, Sections 471.59 and 471.656, as amended, a resolution adopted by the City Council of the Issuer on August 28, 2017, and this Indenture, the Issuer will issue its Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Bonds”), in the original aggregate principal amount of $5,850,000, to (i) finance a portion of the costs of the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive, Minnetonka, Minnesota (the “Elmbrooke Apartments”); (ii) finance a portion of the costs of 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”); (iii) fund required reserves, if any; (iv) finance capitalized interest, if necessary; and (v) pay costs of issuance of the Bonds; and

WHEREAS, a portion of the costs of the acquisition and substantial rehabilitation of the Elmbrooke Apartments and the Golden Valley Townhomes (together, the “Project”) will be financed with the proceeds of the Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Note”), issued by the Issuer in the original aggregate principal amount of $900,000 pursuant to separate financing with Bridgewater Bank, as purchaser of the Note (the “Note Lender”); and
WHEREAS, the Issuer, the Borrower, Dougherty Mortgage LLC, a Delaware limited liability company (the “Lender”), and the Trustee have entered into a Financing Agreement, dated as of September 1, 2017 (as it may from time to time be amended, the “Financing Agreement”), pursuant to which the Issuer has agreed to use the proceeds of the Bonds to make a mortgage loan (the “Mortgage Loan”) to the Borrower to assist in financing the Project; and

WHEREAS, the Borrower has agreed to use the proceeds of the Mortgage Loan to finance the Project with disbursements of the proceeds of the Mortgage Loan to be made pursuant to the provisions of this Indenture and the Financing Agreement; and

WHEREAS, the Borrower’s repayment obligations in respect of the Mortgage Loan will be evidenced by (i) a Multifamily Note, dated the Closing Date (hereinafter defined) (the “Mortgage Note”), delivered to the Issuer, which Mortgage Note will be endorsed by the Issuer to the Lender; and (ii) a Multifamily Loan and Security Agreement (Non-Recourse), dated the Closing Date (the “Loan Agreement”), between the Borrower and the Issuer, which will be assigned by the Issuer to the Lender; and

WHEREAS, to secure the Borrower’s obligations under the Mortgage Note, the Borrower will execute and deliver to the Issuer a mortgage on the Project, which will be assigned to the Lender and recorded in the real property records of Hennepin County, Minnesota; and

WHEREAS, pursuant to the terms hereof, Fannie Mae, as trustee under the Fannie Mae Trust Indenture, shall provide to the Lender the Pass-Through Certificate for sale to the Trustee at the Pass-Through Certificate Purchase Price (all as such terms are defined herein); and

WHEREAS, the Pass-Through Certificate is to be held in trust by the Trustee and pledged under the terms of this Indenture to secure payment of the Bonds; and

WHEREAS, in connection with the issuance of the Bonds and the Note, the Issuer, the Borrower, the Trustee, and the Note Lender will enter into separate Regulatory Agreements, each dated the Closing Date, related to each of the Elmbrooke Apartments and the Golden Valley Townhomes, relating to compliance with certain federal and state requirements applicable to the Project; and

WHEREAS, the Issuer has authorized the execution of this Indenture in order to secure the payment of the principal of, premium, if any, and interest on the Bonds and the observance of the covenants and conditions herein contained; and

WHEREAS, the Issuer has determined that all things necessary to make the Bonds, when executed by the Issuer and authenticated by the Trustee and issued as provided in this Indenture, the valid, binding and legal obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid assignment and pledge of the Revenues and other amounts pledged to the payment of the principal of and interest on the Bonds and a valid and binding agreement for the uses and purposes herein set forth, have been duly taken, and the creation, execution and delivery of this Indenture and the creation, execution and delivery of the Bonds, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, THIS INDENTURE OF TRUST WITNESSETH:

The Issuer, in order to secure the payment of the principal of, the premium, if any, and the interest on all Bonds at any time issued and outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth,
and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the purchase and acceptance of the Bonds by the owners thereof, and for other valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, warrant, convey, confirm, assign, transfer in trust, grant a security interest in, pledge and set over unto the Trustee, the property of the Issuer, real and personal, hereinafter described, for the benefit of the Bondholders, subject only to the provisions hereof permitting the application thereof for or to the purposes and on the terms and conditions set forth herein (said property being herein sometimes referred to as the “Trust Estate”):

GRANTING CLAUSES

I. All right, title and interest of the Issuer in and to amounts on deposit in the Collateral Security Fund to be funded at closing in an amount equal to the principal amount of the Bonds;

II. The Pass-Through Certificate, if issued by Fannie Mae and acquired by the Trustee in exchange for amounts on deposit in the Collateral Security Fund;

III. All right, title and interest of the Issuer now owned or hereafter acquired in, to and under the Financing Agreement (except Reserved Rights, as hereinafter defined);

IV. All Revenues; and

V. All other property which by the express provisions of this Indenture is required to be subject to the lien hereof, and any additional property that, from time to time, by delivery or by writing of any kind, may be subjected to the lien hereof, by the Issuer or by anyone on its behalf, and the Trustee is hereby authorized to receive the same at any time as additional security hereunder;

TO HAVE AND TO HOLD all and singular with all privileges and appurtenances hereby given, granted, bargained, sold, conveyed, assigned, pledged, mortgaged and transferred or agreed or intended so to be, whether now owned or hereafter acquired, including any and all additional property that by virtue of any provision hereof or of any indenture supplemental hereto shall hereafter become subject to this Indenture and to the trusts hereby created, unto the Trustee and its successors in trust and assigns forever;

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of the registered owners from time to time of any of the Bonds authenticated and delivered under this Indenture and issued by the Issuer and Outstanding, without preference, priority or distinction as to lien, or otherwise of any one Bond over any other Bond by reason of priority in the issue, sale or negotiation thereof, or of any other cause, and for the benefit of Fannie Mae as herein provided;
PROVIDED, HOWEVER, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of, premium, if any, and interest on the Bonds due or to become due thereon, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee the entire amount due or to become due thereon, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay, cause to be paid or make provision for payment to the Trustee of all sums of money due or to become due in accordance with the terms and provisions hereof, then upon such final payment this Indenture and the rights hereby granted shall cease, determine and be void; otherwise this Indenture shall remain in full force and effect;

AND IT IS HEREBY COVENANTED that all of the Bonds shall be issued, authenticated and delivered, and that the Trust Estate shall be held by the Trustee, subject to the further covenants, conditions, uses and trusts hereinafter set forth, and the Issuer agrees and covenants with the Trustee and with the registered owners from time to time of the Bonds, as follows:

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

DEFINITIONS AND INTERPRETATION

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Indenture and of any indenture supplemental hereto, have the following meanings:

“Act” means, collectively, Minnesota Statutes, Chapters 462C and 474A, as amended.

“Actual/360” means a computation of interest accrual on the basis of a three hundred sixty (360) day year and the actual number of calendar days during the applicable month, calculated by multiplying the unpaid principal balance of the Bonds by the Pass-Through Rate, dividing the product by three hundred sixty (360), and multiplying the quotient obtained by the actual number of days elapsed in the applicable month.

“Assigned Loan” means the Mortgage Loan assigned to the Lender by the Issuer on the Closing Date.

“Attesting Officer” means such officer or official of the Issuer who in accordance with the Bond Resolution, the laws of the State, the City’s Charter or practice or custom, regularly certifies official acts and records of the Issuer, and includes any assistant or deputy officer to the principal officer or officers exercising such responsibilities.

“Authorized Borrower Representative” means any officer of the Managing Member of the Borrower and such additional persons or entities duly designated by the Borrower in writing to act on its behalf.

“Authorized Officer” means the Mayor, City Manager, or City Clerk of the Issuer or any other person designated to act on behalf of the Issuer, as evidenced by a written certificate furnished to the Trustee containing the specimen signature of such person and signed for the Issuer by its Mayor, City Manager, or City Clerk.


“Beneficial Owner” means the purchaser of a beneficial interest in the Bonds.

“Bond Counsel” means an attorney at law or a firm of attorneys of recognized expertise in the field of federal income tax matters relating to municipal securities selected by the Issuer.

“Bond Documents” shall have the meaning assigned to such term in the Financing Agreement.

“Bond Fund” means the Fund created and so designated in Section 5.02 hereof.

“Bondholder” or “holder” or “owner” of any Bond or any similar term shall mean the person in whose name any Bond is registered.

“Bond Register” means the registration books of the Issuer maintained by the Trustee as provided in this Indenture on which registration and transfer of the Bonds is to be recorded.

“Bond Registrar” has the meaning given to such term in Section 2.08 hereof.
“Bond Resolution” means the resolution adopted by the City Council of the Issuer on August 28, 2017, authorizing the issuance and sale of the Bonds.

“Bonds” means the Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A, issued by the Issuer in the original aggregate principal amount of $5,850,000, including any bond or bonds, as the case may be, authorized under and secured by this Indenture and issued pursuant to this Indenture.

“Book Entry Bonds” means the Bonds for which a Depository or its Nominee is the Bondholder.

“Borrower” means CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company, its successors and assigns.

“Business Day” means, with respect to the Pass-Through Certificate and the Bonds, any day other than a Saturday or Sunday, a day when the fiscal agent or paying agent for the Pass-Through Certificate is closed, a day when the Federal Reserve Bank of New York is closed, or a day when the Federal Reserve Bank is closed in a district where a certificate account is located if the related withdrawal is being made from that certificate account, and, with respect to the Bonds, any such day that is also a day on which the Trustee is open for business.

“Calculation Date” means ________________________________.

“Closing Date” means September ____, 2017, which is the date the Bonds are initially issued and delivered to the original purchaser or purchasers thereof.

“Code” means the United States Internal Revenue Code of 1986, as amended, and the Regulations thereunder, or any successor statute, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued or amended with respect thereto by the Treasury Department or Internal Revenue Service of the United States.

“Collateral Security Fund” means the fund of that name established by Section 5.02 hereof.

“Collateral Security Interest Account” means the account of that name established by Section 5.13(a) hereof.

“Collateral Security Principal Account” means the account of that name established by Section 5.13(a) hereof.

“Cooperative Agreement” means the Cooperative Agreement, dated as of September 1, 2017, between the Issuer and the City of Golden Valley, Minnesota, entered into in accordance with Minnesota Statutes, Sections 471.59 and 471.656, as amended.

“Costs of Issuance” means costs to the extent incurred in connection with, and allocable to, the issuance of the Bonds within the meaning of Section 147(g) of the Code. For example, “issuance costs” include the following costs, but only to the extent incurred in connection with, and allocable to, the borrowing: underwriters’ spread; counsel fees; financial advisory fees; fees paid to an organization to evaluate the credit quality of an issue; trustee fees; paying agent fees; bond registrar, certification and authentication fees; accounting fees; printing costs for bonds and offering documents; public approval process costs; engineering and feasibility study costs; guarantee fees, other than qualified guarantees; and similar costs.
“Costs of Issuance Fund” means the Fund created and so designated in Section 5.02 hereof.

“Counsel’s Opinion” means a written opinion, including opinions supplemental thereto, signed by an attorney or firm of attorneys (who may be counsel for the Issuer, the Borrower or Fannie Mae) acceptable to the Trustee.

“Depository” means, initially, DTC and any replacement securities depository appointed under this Indenture.

“Douglas Drive Golden Valley Townhomes” means the approximately six (6) existing affordable townhome units located at 2100 Douglas Drive North, Golden Valley, Minnesota.

“DTC” means The Depository Trust Company, New York, New York.

“Electronic Means” means a facsimile transmission or any other electronic means of communication approved in writing by Fannie Mae.

“Elmbrooke Apartments” means the forty-six (46) existing affordable apartment units located at 5400 Smetana Drive, Minnetonka, Minnesota.

“Event of Default” means any occurrence or event specified in Section 8.01 hereof.

“Extension Deposit” means the deposit of Preference Proof Moneys described in Section 5.13(f) hereof.


“Fannie Mae Trust Indenture” means that certain Trust Indenture of Fannie Mae in its corporate capacity and Fannie Mae in its trustee capacity, dated as of October 1, 2010 (for fully fixed rate mortgage loans) as amended and supplemented, pursuant to which the Pass-Through Certificate is issued.

“Financing Agreement” means the Financing Agreement, dated as of September 1, 2017, between the Issuer, the Trustee, the Lender, and the Borrower, as it may be amended from time to time.

“First Payment Date” means ____________, 20___.

“Fund” or “Account” means a fund or account created by or pursuant to this Indenture.

“Golden Valley Townhomes” means the Douglas Drive Golden Valley Townhomes and the Lilac Drive Golden Valley Townhomes.

“Government Obligations” means direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, the full faith and credit of the United States of America.

“Highest Rating Category” has the meaning, with respect to an Investment, given in this definition. If the Bonds are rated by a Rating Agency, the term “Highest Rating Category” means, with respect to an Investment, that the Investment is rated by each Rating Agency in the highest rating given by that Rating Agency for that general category of security. If at any time the Bonds are not rated (and, consequently, there is no Rating Agency), then the term “Highest Rating Category” means, with respect
to an Investment, that the Investment is rated by S&P or Moody’s in the highest rating given by that rating agency for that general category of security. By way of example, the Highest Rating Category for tax-exempt municipal debt established by S&P is “A-1+” for debt with a term of one year or less and “AAA” for a term greater than one year, with corresponding ratings by Moody’s of “MIG-1” (for fixed rate) or “VMIG-1” (for variable rate) for one year or less and “Aaa” for greater than one year. If at any time (i) the Bonds are not rated, (ii) both S&P and Moody’s rate an Investment and (iii) one of those ratings is below the Highest Rating Category, then such Investment will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency. For example, an Investment rated “AAA” by S&P and “Aa3” by Moody’s is rated in the Highest Rating Category. If, however, the lower rating is more than one full rating category below the Highest Rating Category of that rating agency, then the Investment will be deemed to be rated below the Highest Rating Category. For example, an Investment rated “AAA” by S&P and “A1” by Moody’s is not rated in the Highest Rating Category.

“Indenture” means this Indenture of Trust, dated as of September 1, 2017, between the Issuer and the Trustee, as it may from time to time be amended, modified or supplemented by Supplemental Indentures.

“Initial Mandatory Redemption Date” means as provided in Section 3.01(c) hereof.

“Investment” means any Permitted Investment and any other investment held under this Indenture that does not constitute a Permitted Investment.

“Investor Member” means Wincopin Circle LLLP, a Maryland limited liability limited partnership, its permitted successors and assigns.

“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, and any successors and assigns.

“Lender” means Dougherty Mortgage LLC, a Delaware limited liability company, and its successors and assigns.

“Lilac Drive Golden Valley Townhomes” means the approximately two (2) existing affordable townhome units located at 3354 Lilac Drive North, Golden Valley, Minnesota.

“Loan Agreement” means the Multifamily Loan and Security Agreement (Non-Recourse), dated the Closing Date, between the Borrower and the Issuer, which will be assigned by the Issuer to the Lender.

“Managing Member” means CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, its permitted successors and assigns.

“Mandatory Redemption Date” means the date on which the Bonds are subject to mandatory redemption pursuant to Section 3.01 hereof, including the Initial Mandatory Redemption Date, as such date may be extended pursuant to Section 5.13 hereof.

“Maturity Date” means _______________, 20___, subject to final payment of principal with respect to the Pass-Through Certificate (_____________, 20__) which will be passed through to the Bondholders on _______________, 20__. 
“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, and its successors and assigns, or if it is dissolved or no longer assigns credit ratings, then any other nationally recognized statistical rating agency, designated by Fannie Mae, as assigns credit ratings.

“Mortgage” means the Multifamily Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated the Closing Date, together with all riders and exhibits, securing the Mortgage Note, executed by the Borrower with respect to the property described in the Mortgage, as it may be amended, supplemented or restated from time to time, or any security instrument executed in substitution therefor, as such substitute security instrument may be amended, supplemented or restated from time to time.

“Mortgage Loan” means the mortgage loan made to the Borrower by the Issuer with respect to the Project on the Closing Date and assigned to the Lender.

“Mortgage Loan Documents” means, collectively, the Mortgage Note, the Mortgage and all other documents, agreements and instruments evidencing, securing or otherwise relating to the Mortgage Loan, as each such document, agreement or instrument may be amended, supplemented or restated from time to time. Neither the Financing Agreement nor the Regulatory Agreements are Mortgage Loan Documents, and these documents are not secured by the Mortgage.

“Mortgage Note” means that certain note from the Borrower payable to the order of the Issuer and endorsed by the Issuer, without recourse, to the order of the Lender, evidencing the Borrower’s obligation to repay the Mortgage Loan.

“Nominee” means the nominee of the Depository, which may be the Depository, as determined from time to time pursuant hereto.

“Note” means the Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B, issued by the Issuer in the original aggregate principal amount of $900,000.

“Note Lender” means Bridgewater Bank, a Minnesota banking corporation, as the purchaser of the Note.

“Officer’s Certificate” means a certificate signed by an Authorized Officer or, if such certificate pertains to official action taken by the Issuer or official records of the Issuer, by an Attesting Officer.

“Operating Fund” means the Fund created and so designated in Section 5.02 hereof.

“Operating Revenues” means all amounts deposited into the Operating Fund from amounts paid under the Financing Agreement.

“Original Issue Price” means the price of $____________ paid upon the issuance of the Bonds.

“Outstanding” means, when used with reference to the Bonds and as of any particular date, all Bonds theretofore and thereupon being delivered except (a) any Bond cancelled by the Trustee or delivered to the Trustee for cancellation; (b) any Bond for the payment or redemption of which either (i) moneys equal to the principal amount or Redemption Price thereof, as the case may be, with interest to the date of maturity or redemption date, or (ii) specified types of Permitted Investments or moneys in the amounts, of the maturities and otherwise as described and required under the provisions of Sections 3.01 and 3.03 hereof, shall have theretofore been deposited with the Trustee in trust (whether upon or prior to
maturity or the redemption date of such Bond) and, except in the case of a Bond to be paid at maturity, as to which a redemption notice shall have been given or provided for in accordance with Section 3.02 hereof, and (c) any Bond in lieu of or in substitution for which another Bond shall have been delivered pursuant to this Indenture.

“Participant” means a member of, or a participant in, the Depository.

“Pass-Through Certificate” means the Guaranteed Mortgage Pass-Through Certificate with respect to the Mortgage Loan bearing interest at the Pass-Through Rate, to be issued to and registered in the name of the Trustee by Fannie Mae pursuant to Section 4.03 hereof.

“Pass-Through Certificate Purchase Price” means the principal amount outstanding on the Mortgage Loan plus accrued interest on the Pass-Through Certificate at the Pass-Through Rate. Such amount shall equal the original principal amount of the Mortgage Loan ($___________) less any scheduled principal payments on or prepayments of the Mortgage Loan prior to the Purchase Date.

“Pass-Through Certificate Revenues” means all payments made under and pursuant to the Pass-Through Certificate.

“Pass-Through Rate” means the interest rate established with respect to the Pass-Through Certificate, which is ____________% per annum.

“Payment Date” means (i) the First Payment Date, (ii) prior to the Purchase Date and prior to the Initial Mandatory Redemption Date, as such date may be extended pursuant to this Indenture, the 26th day of the month (or the next Business Day if the 26th is not a Business Day), and (iii) after the Purchase Date, one Business Day after each date principal, interest, or premium, if any, payment is made pursuant to the Pass-Through Certificate (which shall be the 25th day of the month (or the next Business Day if the 25th is not a Business Day) after payment is due on the underlying Mortgage Loan). The payment of interest on a Payment Date shall relate to the interest accrued during the preceding calendar month. There shall be no further accrual of interest from the Maturity Date to the final Payment Date.

“Permitted Investments” means, to the extent authorized by law for investment of moneys of the Issuer:

(a) Government Obligations; and

(b) Subject to the ratings requirements set forth in this definition, shares in any money market mutual fund (including those of the Trustee or any of its affiliates) registered under the Investment Company Act of 1940, as amended, that have been rated at the time of investment AAAm-G or AAAm by S&P or Aaa by Moody’s so long as the portfolio of such money market mutual fund is limited to Government Obligations and agreements to repurchase Government Obligations. If the Bonds are rated by a Rating Agency, the money market mutual fund must be rated at the time of investment AAAm-G or AAAm by S&P or Aaa by Moody’s if S&P is a Rating Agency, or Aaa by Moody’s, if Moody’s is a Rating Agency. If at any time the Bonds are not rated (and, consequently, there is no Rating Agency), then the money market mutual fund must be rated at the time of investment AAAm-G or AAAm by S&P or Aaa by Moody’s. If at any time (i) the Bonds are not rated, (ii) both S&P and Moody’s rate a money market mutual fund and (iii) one of those ratings is below the level required by this paragraph, then such money market mutual fund will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency.
“Placed in Service” means the Project having been placed in service for purposes of Section 42 of the Code.

“Placed in Service Date” means the date the Project is Placed in Service.

“Preference Proof Moneys” means (i) moneys drawn on a letter of credit, (ii) proceeds of the Bonds, (iii) proceeds of the Assigned Loan, or (iv) moneys in connection with which the Trustee shall have been delivered an opinion of bankruptcy counsel acceptable to it to the effect that the use of such moneys would not be avoidable as a preference under Section 547 of the United States Bankruptcy Code or give rise to a stay under Section 362(a) of the United States Bankruptcy Code.

“Proceeds Fund” means the Fund created and so designated in Section 4.02 hereof.

“Project” means, collectively, the (a) acquisition and substantial rehabilitation of the Elmbrooke Apartments; and (b) acquisition and substantial rehabilitation of the Golden Valley Townhomes, located on the sites described in the Mortgage.

“Purchase Date” means the date on which funds in the Collateral Security Principal Account are applied by the Trustee to the purchase of the Pass-Through Certificate.

“Qualified Financial Institution” means any of: (i) bank or trust company organized under the laws of any state of the United States of America, (ii) national banking association, (iii) savings bank, a savings and loan association, or an insurance company or association chartered or organized under the laws of any state of the United States of America, (iv) federal branch or agency pursuant to the International Banking Act of 1978 or any successor provisions of law or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, (v) government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, (vi) securities dealer approved in writing by Fannie Mae the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation and (vii) any other entity which is acceptable to Fannie Mae.

“Rating Agency” means _______ or any other nationally recognized securities rating agency rating the Bonds, or such rating agency’s successors or assigns.

“Rebate Fund” means the Fund created and so designated in Section 5.02 hereof.

“Record Date” means the fifteenth day of the month (regardless of whether a Business Day) immediately preceding each Payment Date.

“Redemption Price,” when used with respect to a Bond or portion thereof redeemed pursuant to Section 3.01(b), means the principal amount of the Pass-Through Certificate or portion prepaid, plus premium, if any, paid and interest received pursuant to the Pass-Through Certificate as provided in Section 3.01(b), and with respect to a Bond or portion thereof redeemed pursuant to Section 3.01(c), means the principal amount thereof to be redeemed plus interest thereon as provided in Section 3.01(c) to be paid from amounts in the Collateral Security Interest Account.

“Regulations” means the Income Tax Regulations promulgated or proposed under the Code by the Department of the Treasury, as the same may hereafter be amended, including without limitation regulations promulgated by the Department of the Treasury to implement the requirements of Section 148 of the Code.
“Regulatory Agreements” means, collectively, the Regulatory Agreement with respect to the Elmbrooke Apartments, dated the Closing Date, between the Issuer, the Borrower, the Trustee, and the Note Lender, and the Regulatory Agreement with respect to the Golden Valley Townhomes, dated the Closing Date, between the Issuer, the Borrower, the Trustee, and the Note Lender, all as the same may be amended from time to time.

“Rehabilitation Account” means the Account of that name created within the Proceeds Fund in Section 4.02 hereof.

“Representation Letter” has the meaning given to such term in Section 2.12 hereof.

“Reserved Rights” means those certain rights of the Issuer under the Financing Agreement to indemnification and to payment or reimbursement of fees and expenses of the Issuer, its right to receive notices and to enforce notice and reporting requirements, its right to inspect and audit the books, records and premises of the Borrower and of the Project, its right to collect attorneys’ fees and related expenses, its right to specifically enforce the Borrower’s covenant to comply with applicable federal tax law and State law (including the Act and the rules and regulations of the Issuer, if any), and its right to give or withhold consent to amendments, changes, modifications and alterations to the Financing Agreement relating to the Reserved Rights.

“Responsible Officer” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.


“S&P” means S&P Global Ratings, and its successors and assigns, or if it is dissolved or no longer assigns credit ratings, then any other nationally recognized statistical rating agency, designated by Fannie Mae, that assigns credit ratings.

“State” means the State of Minnesota.

“Substitute Depository” means a securities depository appointed as successor to DTC hereunder.

“Supplemental Indenture” means any indenture hereafter duly authorized and entered into between the Issuer and the Trustee amending or supplementing this Indenture in accordance with the provisions hereof.

“Tax Certificate” means the Borrower Tax Certificate executed by the Borrower as of the Closing Date with the endorsement of the Issuer.

“Term Sheet” means the Term Sheet relating to the terms of the Mortgage Loan, the Assigned Loan and, when and if issued, the Pass-Through Certificate, dated the Closing Date and attached as Exhibit A to the Financing Agreement.

“Trust Estate” means all the property, rights, moneys, securities and other amounts pledged and assigned to the Trustee pursuant to the Granting Clauses hereof.
“Trustee” means U.S. Bank National Association, a national banking association, its successors and assigns.

“Underwriter” means Dougherty & Company LLC, a Delaware limited liability company, its successors and assigns.

Section 1.02. Rules of Construction.

(a) The singular form of any word used herein, including the terms defined in Section 1.01 hereof, shall include the plural, and vice versa, unless the context otherwise requires. The use herein of a pronoun of any gender shall include the correlative words of other genders.

(b) All references herein to “Articles,” “Sections” and other subdivisions hereof are to the corresponding Articles, Sections or subdivisions of this Indenture as originally executed; and the words “herein,” “hereof,” “hereunder,” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

(c) The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not limit or otherwise affect the meaning, construction or effect of this Indenture or describe the scope or intent of any provisions hereof.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time.

(e) Every “request,” “order,” “demand,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent” or similar action hereunder by any party shall, unless the form thereof is specifically provided, be in writing signed by a duly authorized representative of such party with a duly authorized signature.

(f) The parties hereto acknowledge that each such party and their respective counsel have participated in the drafting and revision of this Indenture and the Financing Agreement. Accordingly, the parties agree that any rule of construction which disfavors the drafting party shall not apply in the interpretation of this Indenture or the Financing Agreement or any amendment or supplement or exhibit hereto or thereto.

(g) Whenever Fannie Mae is required to give its consent or approval to any matter, whether stated as “consent,” “written consent,” “prior written consent,” “approval,” “written approval,” “prior written approval” or otherwise, the giving of such consent or approval by Fannie Mae shall be in its sole and complete discretion.

(h) Whenever Fannie Mae shall have any right or option to exercise any discretion, to determine any matter, to accept any presentation or to approve or consent to any matter, such exercise, determination, acceptance, approval or consent shall, without exception, be in Fannie Mae’s sole and absolute discretion.
ARTICLE II

THE BONDS

Section 2.01. Authorization of Bonds. Bonds of the Issuer, to be entitled Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A, are hereby authorized to be issued in an aggregate principal amount of $5,850,000 and shall be issued subject to the terms, conditions and limitations established in this Indenture as hereinafter provided. The Bonds may be executed by or on behalf of the Issuer, authenticated by the Trustee and delivered or caused to be delivered by the Trustee to the original purchasers thereof upon compliance with the requirements set forth in this Indenture.

Section 2.02. Terms of Bonds.

(a) The Bonds shall be dated as of September 1, 2017, and shall bear interest at the Pass-Through Rate in the amounts as accrued and for the periods interest is paid (except as described below in connection with a redemption of Bonds under Section 3.01(c) hereof) pursuant to the terms of the Pass-Through Certificate, payable on each Payment Date, and shall mature (subject to prior redemption as herein set forth) on the Maturity Date. Interest shall be calculated on the basis of a year of Actual/360. The payment of interest on a Payment Date is the interest accrued during the preceding calendar month. There shall be no further accrual of interest on the Bonds during the period from the Maturity Date to the final Payment Date. Notwithstanding anything herein to the contrary, on and after the Purchase Date, the principal, interest and premium, if any, payable on the Bonds will be calculated at the same rate and for the same periods as interest, principal and premium, if any, payable on the Pass-Through Certificate, and will be paid one Business Day following receipt by the Trustee pursuant to the Pass-Through Certificate.

(b) The Bonds shall be issued as registered bonds without coupons in the denominations of $1.00 or any integral multiples of $1.00 in excess thereof. The Bonds shall be lettered “R” and shall be numbered separately from “1” consecutively upwards. The Bonds shall be issued initially as Book Entry Bonds.

(c) Payment of the principal of and interest or premium, if any, on any Bond shall be made to the person appearing on the Bond Register as the registered owner thereof, one Business Day following receipt by the Trustee of the interest, principal and premium, if any, paid on the Pass-Through Certificate at the Pass-Through Rate. The principal of and the interest on the Bonds shall be payable in coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts of the United States of America. Unless the Bonds are Book Entry Bonds, the principal of the Bonds shall be payable to the registered owners thereof upon presentation (except in connection with a redemption of Bonds pursuant to Section 3.01(b) hereof) at the designated corporate trust office of the Trustee or its successors. Unless the Bonds are Book Entry Bonds, payments of interest on the Bonds and redemption of the Bonds pursuant to Section 3.01(b) hereof shall be paid by check or draft mailed to the registered owner thereof at such owner’s address as it appears on the registration books maintained by the Trustee on the applicable Record Date or at such other address as is furnished to the Trustee in writing by such owner. The Trustee shall cause CUSIP number identification with appropriate dollar amounts for each CUSIP number to accompany all payments of interest, principal or Redemption Price made to such owners, whether such payment is made by check or wire transfer. All payments of principal of and interest on Book Entry Bonds shall be made and
given at the times and in the manner set out in the Representation Letter, as more fully specified in Sections 2.11 and 2.12 hereof.

(d) The Bonds shall be subject to redemption prior to maturity as provided in Article III hereof.

(e) The date of authentication of each Bond shall be the date such Bond is registered.

(f) Prior to the Purchase Date, the terms of the Bonds, including, without limitation, the dated date, the Pass-Through Rate, Payment Dates and prepayment provisions, shall be the same as would have been the case if the Pass-Through Certificate had already been purchased by the Trustee and had been in place as of the Closing Date.

Section 2.03. Execution; Special, Limited Obligation. The Bonds shall be executed on behalf of the Issuer by the signatures of the officers of the Issuer designated to sign the Bonds in a resolution of the Issuer and be sealed with the seal of the Issuer; provided, however, that the seal of the Issuer may be a printed facsimile or may be omitted; provided further that all of such signatures may be printed or photocopied facsimiles, in which event the Bonds shall also be executed manually by the Responsible Agent as authenticating agent as provided in Section 2.04 hereof and Minnesota Statutes, Section 475.55, as amended. In case any one or more of the officers of the Issuer who shall have signed any of the Bonds or whose signature appears on any of the Bonds shall cease to be such officer before the Bonds so signed shall have been actually authenticated or delivered or caused to be delivered by the Trustee or issued by the Issuer, such Bonds may, nevertheless, be authenticated and issued and, upon such authentication, delivery and issue, shall be as binding upon the Issuer as if the persons who signed such Bonds or whose signatures appear on any of the Bonds had not ceased to hold such offices until such delivery. Any Bond may be signed on behalf of the Issuer by such persons as at the actual time of execution of the Bonds shall be duly authorized or hold the proper office in the Issuer, although at the date of issuance and delivery of the Bonds such persons may not have been so authorized or have held such office.


The foregoing statement of limitation shall appear on the face of each Bond.
Section 2.04. Authentication. The Bonds shall each bear thereon a certificate of authentication, substantially in the form set forth in EXHIBIT A attached hereto and executed by the Trustee. Only Bonds which bear thereon such executed certificates of authentication shall be entitled to any right or benefit under the Indenture, and no Bond shall be valid for any purpose under this Indenture until such certificate of authentication shall have been duly executed by the Trustee. Such certificate of authentication upon any Bond shall be conclusive evidence that the Bond so authenticated has been duly issued under this Indenture and that the holder thereof is entitled to the benefits of this Indenture. The Trustee’s certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer or signatory of the Trustee, but it shall not be necessary that the same officer or signatory sign the certificate of authentication on all of the Bonds issued hereunder. The certificate of authentication on all Bonds delivered by the Trustee hereunder shall be dated the date of its authentication.

Section 2.05. Form of Bonds. The form of the Bonds issued pursuant to this Indenture shall be in substantially the form set forth in EXHIBIT A attached hereto, with such variations, omissions or insertions as are permitted by this Indenture.

Section 2.06. Delivery of Bonds. After the execution and delivery of this Indenture, the Issuer shall execute and deliver to the Trustee, and the Trustee shall authenticate, the Bonds and deliver them to the original purchaser or purchasers thereof as directed by the Issuer.

Prior to the delivery by the Trustee of any of the Bonds, there shall be filed with the Trustee:

(a) a copy of the Bond Resolution duly certified by an Authorized Officer;

(b) executed counterparts of this Indenture, the Financing Agreement, the Cooperative Agreement, the Regulatory Agreements, and all other financing documents to which the Issuer is a party;

(c) an opinion of Bond Counsel stating that the Issuer has duly adopted the Bond Resolution and has duly executed and delivered this Indenture and that this Indenture and the Bonds each constitute a valid and binding special, limited obligation of the Issuer, subject to any applicable bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors;

(d) an opinion of Bond Counsel to the effect that, except as to any exceptions therein, the interest on the Bonds is not included in gross income for federal income tax purposes under existing laws and is exempt from State income taxation;

(e) an executed Tax Certificate;

(f) an opinion of counsel for the Borrower in form and content acceptable to the Issuer and Bond Counsel;

(g) a request and authorization to the Trustee by the Issuer and signed by an Authorized Officer to authenticate and deliver the Bonds to or at the direction of the purchasers thereof upon payment to the Trustee, but for the account of the Issuer, of a sum specified in such request and authorization, plus accrued interest thereon, if any, to the date of delivery. The proceeds of such payment shall be paid over to the Trustee and deposited in the various Funds and Accounts pursuant to, and as specified in, Article IV hereof; and
Upon receipt of these documents, the Trustee shall authenticate and deliver the Bonds to or upon the order of the purchaser thereof but only upon payment to the Trustee of the purchase price of the Bonds, together with accrued interest thereon, if any.

Section 2.07. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the Issuer, at the expense of the owner of such Bond shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be cancelled by it and delivered to, or upon the order of, the Issuer. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence shall be satisfactory to it and indemnity satisfactory to the Trustee shall be given, the Issuer, at the expense of the owner of such Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor. The Trustee may require payment of a sum not exceeding the actual cost of preparing each new Bond authenticated and delivered under this Section and of the expenses which may be incurred by the Issuer and the Trustee in the premises. Any Bond authenticated and delivered under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Issuer whether or not the Bond so alleged to be lost, destroyed or stolen shall be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds secured by this Indenture. If any such Bond shall have matured, or is about to mature, instead of issuing a new Bond the Trustee may pay the same without surrender thereof upon receipt of the aforementioned indemnity.

Section 2.08. Registration, Transfer and Exchange of Bonds; Persons Treated as Owners. The Issuer shall cause books for the registration, transfer and exchange of the Bonds as provided in this Indenture to be kept by the Trustee, which is hereby constituted and appointed the bond registrar with respect to the Bonds (the “Bond Registrar”). At reasonable times and under reasonable regulations established by the Trustee, said books may be inspected and copied by the Issuer or by owners (or a designated representative thereof) of a majority in aggregate principal amount of the Bonds then Outstanding.

The registration of each Bond is transferable by the registered owner thereof in person or by its attorney duly authorized in writing at the designated corporate trust office of the Trustee. Upon surrender for registration of transfer of any Bond at such office, the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond of the same maturity or maturities and authorized denomination for the same aggregate principal amount. Bonds to be exchanged shall be surrendered at said designated corporate trust office of the Trustee, and the Trustee shall authenticate and deliver in exchange therefore a Bond of equal aggregate principal amount of the same maturity and authorized denomination.

All Bonds presented for registration of transfer, exchange or payment (if so required by the Issuer or the Trustee) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Trustee, duly executed by the registered owner or by its duly authorized attorney.

The Issuer, the Bond Registrar and the Trustee shall not be required (i) to issue, register the transfer of or exchange any Bonds during a period beginning at the Trustee’s opening of business on the applicable Record Date and ending at the Trustee’s close of business on the applicable Payment Date; or (ii) to register the transfer of or exchange any Bond selected, called or being called for redemption as
provided herein. No charge shall be made to any Bondholder for the privilege of registration of transfer as herein provided, but any Bondholder requesting any such registration of transfer shall pay any tax or governmental charge required to be paid therefor.

New Bonds delivered upon any registration of transfer or exchange shall be valid special, limited obligations of the Issuer, evidencing the same debt as the Bonds surrendered, shall be secured by this Indenture and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.

The person in whose name any Bond is registered shall be deemed the owner thereof by the Issuer and the Trustee, and any notice to the contrary shall not be binding upon the Issuer or the Trustee. Notwithstanding anything herein to the contrary, to the extent the Bonds are Book Entry Bonds, the provisions of Section 2.11 shall govern the exchange and registration of Bonds.

Section 2.09. Cancellation of Bonds. Whenever any Outstanding Bond shall be delivered to the Trustee for cancellation pursuant to this Indenture, upon payment of the principal amount and interest represented thereby, for replacement pursuant to Section 2.07 or for transfer or exchange pursuant to Section 2.08, such Bond shall be canceled and destroyed by the Trustee.

Section 2.10. Pledge Effected by Indenture. The Pass-Through Certificate held pursuant to the Indenture, all amounts that may be received under a Fannie Mae trust agreement, all rights of the Issuer or the Trustee under a Fannie Mae trust agreement, the Pass-Through Certificate Revenues and all amounts held in any Fund or Account under this Indenture are hereby ratably pledged to secure the payment of the principal of and the interest on the Bonds, subject only to the provisions of this Indenture permitting the application thereof for other purposes. Such pledge shall be valid and binding and immediately effective, upon its being made or granted, without any physical delivery, filing, recording or further act, and shall be valid and binding as against, and superior to any claims of all others having claims of any kind against the Issuer or any other person, irrespective of whether such other parties have notice of the pledge.

Section 2.11. Book-Entry System; Limited Obligation. The Bonds shall be initially issued in the form of a separate single fully registered Bond (which may be typewritten) for each maturity of the Bonds. Upon initial execution, authentication and delivery, the ownership of each such global Bond shall be registered in the Bond Register in the name of the Nominee as nominee of the Depository. Except as provided in Section 2.13, all of the Outstanding Bonds shall be registered in the Bond Register kept by the Trustee in the name of the Nominee and the Bonds may be transferred, in whole but not in part, only to the Depository, to a Substitute Depository or to another nominee of the Depository or of a Substitute Depository. Each global Bond shall bear a legend substantially to the following effect: “UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AS DEFINED IN THE INDENTURE OF TRUST) TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.”

With respect to Bonds registered in the Bond Register in the name of the Nominee, the Issuer and the Trustee shall have no responsibility or obligation to any Participant or to any person on behalf of which such a Participant holds a beneficial interest in the Bonds. Without limiting the immediately preceding sentence, the Issuer and the Trustee shall have no responsibility or obligation with respect to
(a) the accuracy of the records of the Depository, the Nominee or any Participant with respect to any beneficial ownership interest in the Bonds, (b) the delivery to any Participant, Beneficial Owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any redemption notice with respect to the Bonds, including any redemption notice following a failure to purchase the Pass-Through Certificate, (c) the selection by the Depository and the Participants of the beneficial interests in the Bonds to be redeemed in part, or (d) the payment to any Participant, Beneficial Owner or any other person, other than the Depository, of any amount with respect to principal of, premium, if any, or interest on the Bonds. The Issuer and the Trustee may treat and consider the person in whose name each Bond is registered in the Bond Register as the holder and absolute owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on such Bond, for the purpose of giving redemption notices pursuant to Section 3.02 and other notices with respect to such Bond, and for all other purposes whatsoever, including, without limitation, registering transfers with respect to the Bonds.

The Trustee shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective Bondholders, as shown in the Bond Register kept by the Trustee, or their respective attorneys duly authorized in writing, and all such payments shall be valid hereunder with respect to payment of principal of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No person other than a Bondholder, as shown in the Bond Register, shall receive a Bond evidencing the obligation to make payments of principal of, premium, if any, and interest pursuant to this Indenture. Upon delivery by the Depository to the Trustee and the Issuer of written notice to the effect that the Depository has determined to substitute a new nominee in place of the Nominee, subject to the provisions herein with respect to Record Dates, the word Nominee in this Indenture shall refer to such new nominee of the Depository.

The Issuer and the Trustee will recognize the Depository or its nominee as the Bondholder of Book Entry Bonds for all purposes, including receipt of payments, notices and voting, provided the Trustee may recognize votes by or on behalf of Beneficial Owners as if such votes were made by Bondholders of a related portion of the Bonds when such votes are received in compliance with an omnibus proxy of the Depository or otherwise pursuant to the rules of the Depository or the provisions of the Representation Letter or other comparable evidence delivered to the Trustee by the Bondholders.

**Section 2.12. Representation Letter.** In order to qualify the Bonds for the Depository’s book-entry system, if necessary, any Authorized Officer is hereby authorized to execute, countersign and deliver on behalf of the Issuer a letter from the Issuer in substantially the Depository’s standard form representing such matters as shall be necessary to so qualify the Bonds (the “Representation Letter”). The Representation Letter includes such letter as it may be amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor. The execution by the Issuer and delivery of the Representation Letter shall not in any way limit the provisions of Section 2.11 hereof or in any other way impose upon the Issuer any obligation whatsoever with respect to persons having beneficial interests in the Bonds other than the registered owners, as shown in the Bond Register kept by the Trustee. In addition to the execution and delivery of the Representation Letter, any Authorized Officer is hereby authorized to take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository’s book-entry program.
The terms and provisions of the Representation Letter shall govern in the event of any inconsistency between the provisions of this Indenture and the Representation Letter. The Representation Letter may be amended without Bondholder consent.

Section 2.13. Transfers Outside Book-Entry System. If at any time the Issuer determines that continuation of the book entry system through DTC (or a successor securities Depository) is not in the best interest of the owners of the Bonds, if at any time the Depository notifies the Issuer and the Trustee that it is unwilling or unable to continue as Depository with respect to the Bonds or if at any time the Depository shall no longer be registered or in good standing under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation and a Substitute Depository is not appointed by the Issuer within ninety (90) days after the Issuer and the Trustee receive notice or become aware of such condition, as the case may be, Section 2.11 hereof shall no longer be applicable and the Issuer shall execute and the Trustee shall authorize and deliver bonds representing the Bonds as provided below. In addition, the Issuer may determine at any time that the Bonds shall no longer be represented by global bonds and that the provisions of Section 2.11 hereof shall no longer apply to the Bonds. In any such event, the Issuer shall execute and the Trustee shall authenticate and deliver bonds representing the Bonds as provided below. Bonds issued in exchange for global bonds pursuant to this Section shall be registered in such names and delivered in such authorized denominations as the Depository, pursuant to instructions from the Participants or otherwise, shall instruct the Issuer and the Trustee. The Trustee shall deliver such bonds representing the Bonds to the persons in whose names such Bonds are so registered.

If the Issuer determines to replace the Depository with another qualified securities depository, the Issuer shall prepare or cause to be prepared a new fully registered global bond for each of the maturities of each type of Bond, registered in the name of such successor or substitute securities depository or its nominee, or make such other arrangements as are acceptable to the Issuer, the Trustee and such securities depository and not inconsistent with the terms of this Indenture.

Section 2.14. Payments and Notices to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the Representation Letter or as otherwise instructed by the Depository.

Section 2.15. Initial Depository and Nominee. The initial Depository under this Indenture shall be DTC. The initial Nominee shall be Cede & Co., as nominee of DTC.

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

REDEMPTION OF BONDS

Section 3.01. Terms of Redemption.

(a) Redemption. The Bonds shall be subject to redemption prior to the stated maturity thereof only as set forth in this Section.

(b) Mandatory Redemption from Principal Payments or Prepayments. The Bonds are subject to mandatory redemption, in whole or in part, in the amounts and one Business Day after the dates (i) principal payments are received pursuant to the Pass-Through Certificate at a price equal to one hundred percent (100%) of the principal amount received pursuant to the Pass-Through Certificate, plus interest received pursuant to the Pass-Through Certificate, (ii) prepayments are received with respect to the Pass-Through Certificate, at a price equal to one hundred percent (100%) of the principal amount received pursuant to the Pass-Through Certificate, plus interest and premium, if any, received pursuant to the Pass-Through Certificate, or (iii) prior to the Purchase Date, redemption is otherwise required under the provisions of Section 5.13(h) hereof. Notwithstanding Section 3.02 hereof, no prior notice shall be a prerequisite to the effectiveness of any redemption under Section 3.01(b)(i) or (b)(ii), which redemption shall occur and be effective irrespective of whether the Trustee fulfills its obligation to provide the notice with respect to Section 3.01(b)(ii) required by Section 3.02 hereof.

(c) Mandatory Redemption upon Failure to Purchase the Pass-Through Certificate. The Bonds are subject to mandatory redemption in whole on ______________, 20___ (the "Initial Mandatory Redemption Date") at a redemption price equal to the Original Issue Price plus interest accrued to the Initial Mandatory Redemption Date (as such date may be extended hereunder) upon five Business Days’ notice if (i) a Purchase Date has not occurred by the last date on which timely notice of such redemption may be given preceding such Initial Mandatory Redemption Date (as such date may be extended hereunder) and (ii) an Extension Deposit has not been made pursuant to Section 5.13(f) hereof, such that the balance in the Collateral Security Fund is equal to the Original Issue Price plus interest accrued on the Bonds to the Initial Mandatory Redemption Date (as such date may be extended hereunder). The notice for any such mandatory redemption may be conditional, to the effect that if a Purchase Date occurs not later than the close of business on the second Business Day preceding such Initial Mandatory Redemption Date (as such date may be extended hereunder), the noticed mandatory redemption shall not occur. In the event that the Pass-Through Certificate has not been purchased by the Trustee ten (10) Business Days prior to the Initial Mandatory Redemption Date (as such date may be extended hereunder), the Trustee shall provide written notice to the Borrower and the Issuer of such non-purchase.

Section 3.02. Notice of Redemption.

(a) When the Trustee shall receive notice of a prepayment under Section 3.01(b)(ii) hereof, that the Pass-Through Certificate will be prepaid, the Trustee, in accordance with the provisions of this Indenture, shall use its best efforts to give not less than twenty (20) nor more than thirty (30) days’ notice, in the name of the Issuer, of the redemption of the Bonds, which notice shall specify the following: (i) the maturity and principal amounts of the Bonds to be redeemed; (ii) the CUSIP number, if any, of the Bonds to be redeemed; (iii) the date of such notice; (iv) the issuance date for such Bonds; (v) the interest rate on the Bonds to be redeemed; (vi) the redemption date; (vii) any conditions to the occurrence of the redemption; (viii) the place
or places where amounts due upon such redemption will be payable; (ix) the Redemption Price; (x) the Trustee’s name and address with a contact person and a phone number; and (xi) that on the redemption date, the Redemption Price shall be paid. Neither the giving of such notice by the Trustee nor the receipt of such notice by the Bondholders shall be a condition precedent to the effectiveness of any such redemption.

(b) The Bonds to be redeemed pursuant to Section 3.01 hereof will be selected in accordance with the operational arrangements of DTC or any successor Substitute Depository, and any partial prepayments pursuant thereto shall be made in accordance with the “Pro Rata Pass-Through Distributions of Principal” procedures of DTC or comparable procedures of any successor Substitute Depository.

Section 3.03. Payment of Redemption Price. With respect to any redemption pursuant to Section 3.01(b) hereof, notice having been given in the manner provided in Section 3.02 hereof (or not required to be given as a result of a redemption pursuant to Section 3.01(b)(i) or (b)(ii) hereof), and all conditions to the redemption contained in such notice, if applicable, having been met, the Bonds so called for redemption shall become due and payable on the redemption date so designated at the Redemption Price specified in Section 3.01(b) hereof, and upon presentation and surrender thereof at the offices specified in such notice, together with, in the case of Bonds presented by other than the registered owner, a written instrument of transfer duly executed by the registered owner or its duly authorized attorney; provided, however, that so long as the Bonds are registered in the name of the Depository, payment for such redeemed Bonds shall be made in accordance with the Representation Letter of the Issuer. If, on the redemption date, moneys for the redemption of all the Bond or the Bonds to be redeemed, together with all accrued interest on such Bonds, which shall equal all interest accrued on the Pass-Through Certificate to the redemption date, shall be held by the Trustee so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date, interest on the Bonds so called for redemption shall cease to accrue.

Section 3.04. Cancellation. All Bonds which have been redeemed, paid or retired or received by the Trustee for exchange shall not be reissued but shall be canceled and held by the Trustee in accordance with Section 2.09 hereof.

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

APPLICATION OF BOND PROCEEDS

Section 4.01. Initial Deposit. On the Closing Date, the Trustee shall make the following deposits:

(a) $__________, representing accrued interest on the Bonds, shall be deposited to the Collateral Security Interest Account as provided in Section 5.13(b)(ii); and

(b) $__________, representing a portion of the Bond proceeds loaned to the Borrower pursuant to the Mortgage Loan made by the Issuer in the amounts set forth in Section 5.13(b)(ii) and (iii) hereof, shall be deposited to the Collateral Security Interest Account; and

(c) $__________, representing a portion of the Bond proceeds loaned to the Borrower by the Issuer pursuant to the Mortgage Loan, shall be deposited into the Costs of Issuance Fund; and

(d) $__________, representing funds received by or on behalf of the Borrower, shall be deposited into the Costs of Issuance Fund; and

(e) $__________, representing payment by the Lender for the Assigned Loan in consideration of the assignment by the Issuer to the Lender of the Mortgage Loan in an amount set forth in Section 5.13(b)(i), shall be deposited to the Collateral Security Principal Account pending application to purchase the Pass-Through Certificate by the Trustee.

Section 4.02. Proceeds Fund. The Trustee shall establish, create and maintain a Proceeds Fund under this Indenture, and amounts on deposit in the Proceeds Fund shall be disbursed by the Trustee to fund the costs of the Project pursuant to requisitions executed by an Authorized Borrower Representative in the form of EXHIBIT B attached hereto. The Proceeds Fund shall not be a part of the Trust Estate upon the funding of the Collateral Security Fund. After the initial disbursement from the Proceeds Fund and payment of Costs of Issuance and other disbursements pursuant to the terms of this Indenture on the Closing Date, the balance left in the Proceeds Fund for rehabilitation purposes shall be deposited in the Rehabilitation Account hereby created with the Trustee within the Proceeds Fund. Moneys in the Rehabilitation Account shall be held by the Trustee for reasons of convenience and tax accounting only. Such balance in the Rehabilitation Account shall, pending disbursement to the Borrower at the written direction of the Lender, upon which the Trustee may conclusively rely, be pledged by the Borrower to the Lender until the Purchase Date, and thereafter pledged to Fannie Mae. The Trustee shall hold such funds as custodian for Lender as the pledgee until the Purchase Date and from and after the Purchase Date as custodian for Fannie Mae as the pledgee and not for the Bondholders. Upon the final disbursement from the Rehabilitation Account by the Trustee, the Trustee shall close the Rehabilitation Account.

Section 4.03. Delivery of Pass-Through Certificate. The obligation of the Trustee to purchase the Pass-Through Certificate on the Purchase Date shall be subject to satisfaction of the following conditions:

The Trustee shall have received written notification from the Lender upon which the Trustee may rely and act without further investigation certifying that the Pass-Through Certificate duly executed by
Fannie Mae is available for purchase by the Trustee at the Pass-Through Certificate Purchase Price, has terms consistent with the Term Sheet, and meets the following requirements:

(a) has a Stated Principal Balance (as defined in the Fannie Mae Trust Indenture) which is equal to the outstanding Mortgage Loan balance shown in the amortization schedule on the Purchase Date as included in the Term Sheet;

(b) bears interest at the Pass-Through Rate payable on the _____ day of each month, commencing on the _____ day of the month following the month in which the Trustee purchases the Pass-Through Certificate, or if any such _____ day is not a Business Day, the next succeeding Business Day, and have a final maturity date, which is the same as the Maturity Date of the Bonds; and

(c) provides that timely payment of principal (whether on any scheduled Payment Date or prior thereto upon any mandatory prepayment of the Mortgage Note or upon any optional prepayment of the Mortgage Note or upon declaration of acceleration following a default thereunder upon Fannie Mae’s determination that the Mortgage Loan is or is to be deemed a Fully Prepaid Mortgage Loan (as defined in the Fannie Mae Trust Indenture)) and interest on the Pass-Through Certificate is guaranteed to the record owner of the Pass-Through Certificate, regardless of whether corresponding payments of principal and interest on the Mortgage Loan are paid when due; and

(d) otherwise reflects Assigned Loan terms consistent with the Term Sheet attached as Exhibit A to the Financing Agreement, taking into account any changes in such terms as may be reflected in any written notice delivered to the Issuer and the Trustee by the Lender pursuant to Section 4.04 of the Financing Agreement; provided, however, that except as set forth in Section 4.03 of the Financing Agreement, such changes may only be made to cure any ambiguity, supply any omission or cure or correct any defect or inconsistent provision in the Term Sheet.

Upon purchase of the Pass-Through Certificate on the Purchase Date, the Trustee shall post a notification to this effect on the Electronic Municipal Market Access website of the Municipal Securities Rulemaking Board.

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

REVENUES AND FUNDS

Section 5.01. Pledge of Revenues and Assets. The pledge and assignment of and the security interest granted in the Trust Estate pursuant to the Granting Clauses hereof for the payment of the principal of, premium, if any, and interest on the Bonds, in accordance with their terms and provisions, and for the payment of all other amounts due hereunder, shall attach, be perfected and be valid and binding from and after the time of the delivery of the Bonds by the Trustee or by any person authorized by the Trustee to deliver the Bonds. The Trust Estate so pledged and then or thereafter received by the Trustee shall immediately be subject to the lien of such pledge and security interest without any physical delivery thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Issuer irrespective of whether such parties have notice thereof.

Section 5.02. Establishment of Funds. In addition to the Proceeds Fund established under Section 4.02 hereof, the Trustee shall establish, maintain and hold in trust the following funds, each of which shall be disbursed and applied only as herein authorized:

(a) Bond Fund;
(b) Operating Fund;
(c) Costs of Issuance Fund;
(d) Collateral Security Fund; and
(e) Rebate Fund.

Section 5.03. Application of Revenues. All Pass-Through Certificate Revenues shall be deposited by the Trustee, promptly upon receipt thereof, to the Bond Fund.

Section 5.04. Application of Operating Fund. All Operating Revenues shall be deposited into the Operating Fund. Amounts in the Operating Fund shall be withdrawn by the Trustee and used solely to pay first, any amount required to be deposited in the Rebate Fund to the extent sufficient funds are not otherwise made available to the Trustee for such purposes, second, on each Payment Date the fees and expenses of the Trustee, and third, the fees and expenses incurred in connection with the determination of rebatable arbitrage. In the event the amounts in the Operating Fund are not equal to the amounts payable from the Operating Fund on any date on which such amounts are due and payable to fund such deficiency, the Trustee shall give notice to the Borrower, the Managing Member, and the Investor Member of such deficiency and of the amount of such deficiency and request payment within five Business Days to the Trustee of the amount of such deficiency. No amount shall be charged against the Operating Fund except as expressly provided in this Section.

Section 5.05. Application of Bond Fund. The Trustee shall disburse from the Bond Fund, on each Payment Date an amount equal to the amount of the principal, including prepayments, interest and premium, if any, received on the Pass-Through Certificate or on or immediately prior to such Payment Date.

Section 5.06. Investment of Funds. The moneys held by the Trustee shall constitute trust funds for the purposes hereof. Any moneys attributable to each of the Funds hereunder shall be invested by the Trustee at the written direction of the Borrower in Permitted Investments which mature or are redeemable.
at par on the earlier of (a) one hundred eighty (180) days from the date of investment, or (b) the date on
which such funds are expected to be needed for the purposes for which they are held. Notwithstanding
anything herein to the contrary, all amounts in the Bond Fund and the Proceeds Fund shall be held
uninvested, and all amounts in the Collateral Security Fund shall be uninvested or invested solely in
Permitted Investments described in subparagraph (b) of the definition of Permitted Investments. If the
Trustee does not receive written direction from the Borrower regarding the investment of funds, the
Trustee shall invest solely in Permitted Investments described in subparagraph (b) of the definition of
Permitted Investments, which shall mature or be redeemable at par at the times set forth in the preceding
sentence. The Trustee may make any and all such investments through its own banking department or the
banking department of any affiliate.

Permitted Investments representing an investment of moneys attributable to any Fund shall be
deemed at all times to be a part of such Fund. Such investments shall be sold at the best price obtainable
whenever it shall be necessary to do so in order to provide moneys to make any transfer, withdrawal,
payment or disbursement from such Fund. In the case of any required transfer of moneys to another such
Fund, such investments may be transferred to that Fund in lieu of the required moneys if permitted hereby
as an investment of moneys in that Fund.

All Permitted Investments acquired by the Trustee pursuant hereto shall be purchased in the name
of the Trustee and shall be held for the benefit of the holders of the Bonds and Fannie Mae pursuant to the
terms of this Indenture.

The Trustee shall not be liable or responsible for any loss resulting from any investment made in
accordance herewith. The Trustee has no duty to monitor the yield on any directed investment or any
obligation to limit the yield on any investment the Issuer or the Borrower directs the Trustee to make.
The Trustee shall be entitled to rely on any written direction of the Borrower as to the suitability and
legality of the directed investments. The Trustee shall have no responsibility whatsoever to determine
whether any investments made pursuant to this Indenture are or continue to be Permitted Investments. In
no event shall the Trustee be deemed an investment manager or adviser in respect of any selection of
investments hereunder. In the event of a loss on the sale of such investments, the Trustee shall have no
responsibility in respect of such loss except that the Trustee shall notify the Issuer of the amount of such
loss. The Trustee or its affiliates may act as sponsor, principal or agent in the acquisition or disposition of
investments. The Trustee may commingle investments made under the Funds and Accounts established
hereunder, but shall account for each separately.

In computing for any purpose hereunder the amount in any Fund on any date, obligations so
purchased shall be valued at the lower of cost or par exclusive of accrued interest, and may be so valued
as of any time within four days prior to such date.

The Issuer acknowledges that regulations of the Comptroller of the Currency grant the Borrower
the right to receive brokerage confirmations of the security transactions as they occur. The Borrower
specifically waives such notification to the extent permitted by law and will receive periodic cash
transaction statements that will detail all investment transactions.

Section 5.07. Moneys Held for Particular Bonds. The amounts held by the Trustee for the
payment of the interest, principal or premium, if any, due on any date with respect to particular Bonds
shall, pending such payment, be set aside and held in trust by it for the holders of the Bonds entitled
thereto, and for the purposes hereof such interest, principal or premium, if any, after the due date thereof,
shall no longer be considered to be unpaid.
Section 5.08. **Funds Held in Trust.** All moneys held by the Trustee, as such, at any time pursuant to the terms of this Indenture shall be and hereby are assigned, transferred and set over unto the Trustee in trust for the purposes and under the terms and conditions of this Indenture.

Section 5.09. **Accounting Records.** The Trustee shall maintain accurate books and records for all Funds and Accounts established hereunder.

Section 5.10. **Amounts Remaining in Funds.** After full payment of the Bonds (or provision for payment thereof having been made in accordance with Section 7.01) and full payment of the fees and expenses of the Trustee and other amounts required to be paid hereunder and under the Financing Agreement including fees payable to the Issuer and Fannie Mae, any amounts remaining in any Fund hereunder other than the Rebate Fund shall be paid to the Lender for the payment of any amounts due and payable to the Lender and/or Fannie Mae and thereafter, to the Borrower; provided, however, that if a default shall have occurred and remain uncured under the Mortgage Loan of which the Trustee shall have received written notice from Fannie Mae or the Lender, then any such amounts remaining in any Fund or Account hereunder shall be paid to Fannie Mae.

Section 5.11. **Rebate Fund.** The Rebate Fund shall not be subject to the lien or encumbrance of this Indenture, but shall be held in trust for the benefit of the United States of America, and shall be subject to the claim of no other person, including that of the Trustee and Bondholders. The interest on any Permitted Investments representing an investment of moneys in the Rebate Fund and any profit arising from the sale thereof shall be retained in the Rebate Fund. Any moneys deposited therein in accordance with the provisions of this Indenture shall be used for no other purpose than to make payments to the United States Treasury, at the time and in the manner and amount specified in Section 9.12.

Section 5.12. **Costs of Issuance Fund.** On or before the Closing Date, the Borrower shall deliver to the Trustee for deposit in the Costs of Issuance Fund, amounts to pay Costs of Issuance from sources other than Bond proceeds. The Trustee shall use amounts in the Costs of Issuance Fund to pay the Costs of Issuance on the Closing Date or as soon as practicable thereafter in accordance with written instructions to be given to the Trustee by the Borrower, upon delivery to the Trustee of appropriate invoices for such expenses. Any unexpended amounts attributable to deposits made by the Borrower remaining on deposit in the Costs of Issuance Fund three months after the Closing Date shall be returned to the Borrower and the Costs of Issuance Fund shall be closed.

Section 5.13. **Collateral Security Fund.**

(a) There shall be established within the Collateral Security Fund two Accounts:
(i) a Collateral Security Principal Account, and (ii) a Collateral Security Interest Account.

(b) On the Closing Date, (i) the payment received by the Trustee from the Lender for the Assigned Loan in an amount equal to the principal amount of the Bonds shall be deposited to the Collateral Security Principal Account, (ii) accrued interest on the Bonds shall be deposited to the Collateral Security Interest Account, and (iii) Bond proceeds in an amount equal to the interest on the Bonds for the remainder of the month of September 2017 from the Closing Date shall also be deposited to the Collateral Security Interest Account, and an amount equal to ________ days of interest on the Bonds (e.g., to cover the period from October 1, 2017 to but not including [Initial Mandatory Redemption Date] _________, 20__) shall also be deposited to the Collateral Security Interest Account (for a total deposit to the Collateral Security Interest Account equal to _____ days’ interest on the Bonds).
(c) Moneys on deposit in the Collateral Security Fund (derived from the amount on deposit in the Collateral Security Principal Account and an amount on deposit in the Collateral Security Interest Account equal to the accrued interest on the Pass-Through Certificate) shall be applied by the Trustee to purchase the Pass-Through Certificate on the Purchase Date.

(d) If the Purchase Date occurs in the same month as the Closing Date (i.e., September 2017), or in a subsequent month following the Payment Date for such month, then following the Purchase Date the Trustee shall, in the case of Bond proceeds, transfer the remaining balance in the Collateral Security Interest Account to the Rehabilitation Account of the Proceeds Fund, or otherwise disburse such funds to the Borrower (after application of moneys therein to pay the accrued interest on the Pass-Through Certificate).

(e) If the Purchase Date (i) occurs in a month following the Closing Date (e.g., September 2017) and (ii) on or prior to the Payment Date for such month, then the Trustee shall retain the amount on deposit in the Collateral Security Interest Account and apply moneys from such Account to pay the interest on the Bonds on the next Payment Date. So long as payment has already been made or provided for with respect to the Payment Date in the month in which the Purchase Date occurs, any balance in the Collateral Security Interest Account following such Payment Date shall be, in the case of Bond proceeds, transferred to the Rehabilitation Account of the Proceeds Fund, or otherwise disbursed to the Borrower (after application of moneys therein to pay the accrued interest on the Pass-Through Certificate).

(f) The Borrower may at any time (not later than the last day for which notice of redemption must be given pursuant to Section 3.01(c) hereof) extend the Initial Mandatory Redemption Date by depositing Preference Proof Moneys to the credit of the Collateral Security Interest Account in an amount sufficient to pay the interest on the Bonds from the last Payment Date to the extended Mandatory Redemption Date (an “Extension Deposit”).

(g) Extension Deposits shall continue to be made by the Borrower until the Purchase Date occurs or the Borrower declines to make an Extension Deposit resulting in the mandatory redemption of the Bonds pursuant to Section 3.01(c) hereof.

(h) If a Purchase Date has not yet occurred and the Borrower has deferred the Initial Mandatory Redemption Date or any subsequent Mandatory Redemption Date by making an Extension Deposit, the Trustee shall apply amounts on deposit in the Collateral Security Interest Account to pay the preceding month’s accrual of interest on the Bonds on the next Payment Date. Whether or not the Purchase Date has been extended, on any Payment Date, the Trustee shall also apply amounts on deposit in the Collateral Security Principal Account equal to the amount set forth in the Mortgage Loan amortization schedule on the first day of the month in which such Payment Date occurs as included in the Term Sheet to redeem principal of the Bonds on such Payment Date; such redemption shall be in an amount equal to the preceding month’s principal amortization on the Mortgage Loan as set forth in the Mortgage Loan amortization schedule included in the Term Sheet.

(i) After the Purchase Date, and after making the transfers set forth in Section 5.13(d) and (e) hereof, the Trustee shall remit to the Borrower any moneys on deposit in the Bond Fund deriving from the Mortgage Loan that are not needed to pay debt service on or the Redemption Price of the Bonds due to the operation of the Collateral Security Interest Account.

(j) Moneys on deposit in the Collateral Security Fund shall be uninvested or invested as provided for in Section 5.06 hereof at a yield not exceeding the yield on the Bonds.
Section 5.14. Reports From the Trustee. The Trustee shall furnish to the Borrower (and to Fannie Mae, the Lender, the Investor Member, and the Issuer upon request) quarterly statements of the activity and assets held in each of the Funds and Accounts maintained by the Trustee hereunder.

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

COVENANTS OF ISSUER

Section 6.01. Payment of Bonds. Subject to the other provisions of this Indenture, the Issuer shall duly and punctually pay or cause to be paid from the Revenues the principal of, premium, if any, and interest on the Bonds, at the dates and places and in the manner described in the Bonds, according to the true intent and meaning thereof solely from amounts available in the Trust Estate. The Bonds are not a general obligation of the Issuer, but are payable solely from the Trust Estate.

The payment and other obligations of the Issuer with respect to the Bonds are intended to be, and shall be, independent of the payment and other obligations of the issuer or maker of the Mortgage Note and the Pass-Through Certificate, even though the principal amount of all three instruments is expected to be identical, except in the case of a default with respect to one or more of the instruments.

Section 6.02. Performance of Covenants by Issuer.

(a) In General. The Issuer covenants that it will faithfully perform on its part at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all of its proceedings pertaining thereto; provided, however, that, except for the matters set forth in Section 6.01 hereof relating to payment of the Bonds, the Issuer will not be obligated to take any action or execute any instrument pursuant to any provision hereof until it has been requested to do so by the Borrower or by the Trustee, or has received the instrument to be executed and, at the option of the Issuer, has received from the party requesting such execution assurance satisfactory to the Issuer that the Issuer will be reimbursed for its reasonable expenses incurred or to be incurred in connection with taking such action or executing such instrument. The Issuer covenants that it is duly authorized under the Constitution and the laws of the State, including particularly the Act and the Bond Resolution, to issue the Bonds authorized hereby and to execute this Indenture, to grant the security interest herein provided, to assign and pledge the Trust Estate (except as otherwise provided herein) and to assign and pledge the amounts hereby assigned and pledged in the manner and to the extent herein set forth, that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken and that the Bonds in the hands of the owners thereof are and will be valid and enforceable special, limited obligations of the Issuer according to the terms thereof and hereof. Anything contained in this Indenture to the contrary notwithstanding, it is hereby understood that none of the covenants of the Issuer contained in this Indenture are intended to create a general or primary obligation of the Issuer.

(b) Prohibited Activities. Subject to the limitations on its liability as stated herein, the Issuer represents, warrants, covenants and agrees that it has not knowingly engaged and will not knowingly engage in any activities and that it has not knowingly taken and will not knowingly take any action which might result in any interest on the Bonds becoming includable in the gross income of the owners thereof for purposes of federal income taxation.

(c) Rights Under Financing Agreement. The Financing Agreement sets forth covenants and obligations of the Issuer and the Borrower, and reference is hereby made to the same for a detailed statement of said covenants and obligations. The Issuer agrees to cooperate in the enforcement of all covenants and obligations of the Borrower under the Financing Agreement and agrees that the Trustee, in its name, may enforce all rights of the Issuer (other than the Reserved Rights) and all obligations of the Borrower under and pursuant to the Financing Agreement.
Agreement and on behalf of the Holders, whether or not the Issuer has undertaken to enforce such rights and obligations.

(d) **Issuer’s Further Assurance.** The Issuer covenants that it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered by the parties within its control, such instruments supplemental hereto and such further acts, instruments, and transfers as the Trustee may reasonably require for the better assuring, transferring, mortgaging, conveying, pledging, assigning, and confirming unto the Trustee, the Issuer’s interest in and to all interests, revenues, proceeds, and receipts pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds in the manner and to the extent contemplated herein. The Issuer shall be under no obligation to prepare, record, or file any such instruments or transfers.

(e) **Unrelated Bond Issues.** The Issuer, prior to the issuance of the Bonds, has issued, and subsequent to the issuance of the Bonds, the Issuer expects to issue various series of bonds in connection with the financing of other projects (said bonds together with any bonds issued by the Issuer between the date hereof and issuance of the Bonds shall be referred to herein as the “Other Bonds”). Any pledge, mortgage, or assignment made in connection with any Other Bonds shall be protected, and any funds pledged or assigned for the payment of principal, premium, if any, or interest on the Other Bonds shall not be used for the payment of principal, premium, if any, or interest on the Bonds. Correspondingly, any pledge, mortgage, or assignment made in connection with the Bonds shall be protected, and any funds pledged or assigned for the payment of the Bonds shall not be used for the payment of principal, premium, if any, or interest on the Other Bonds.

Section 6.03. **Tax Covenants.** The Issuer shall not take any action that will cause the interest paid on the Bonds to be includable in gross income for federal income tax purposes or to be subject to personal income taxation by the State. In furtherance of the foregoing covenant, the Issuer hereby particularly covenants and agrees with the holders of the Bonds as follows:

(a) No part of the proceeds of the Bonds or any other funds of the Issuer shall be used by the Issuer at any time directly or indirectly to acquire securities or obligations, the acquisition of which, or which in any other manner, would cause any Bond to be an arbitrage bond as defined in Section 148 of the Code and any applicable Regulations promulgated thereunder.

(b) The Issuer will not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code and any applicable Regulations promulgated thereunder.

Section 6.04. **Compliance with Conditions Precedent.** Upon the Closing Date, all conditions, acts and things required by law regarding the Issuer to exist, to have happened or to have been performed precedent to or in the issuance of such Bonds shall exist, shall have happened and shall have been performed, and such Bonds, together with all other indebtedness of the Issuer, shall be within every debt and other limit prescribed by law.

Section 6.05. **Extension of Payment of Bonds.** The Issuer shall not directly or indirectly extend or assent to the extension of the maturity of the principal due on any of the Bonds or the time of payment of interest due on the Bonds, and if the time for payment of any such claims for interest shall be extended through any other means, such Bonds or claims for interest shall not be entitled in case of any default hereunder to any payment out of the Trust Estate or the funds (except funds held in trust for the payment
of particular Bonds pursuant hereto) held by the Trustee, except subject to the provisions of Section 7.02 hereof and subject to the prior payment of the principal of all Bonds issued and Outstanding the maturity of which has occurred and has not been extended and of such portion of the accrued interest on the Bonds which is not represented by such extended claims for interest.

Section 6.06. Further Assurances. At any time and at all times the Issuer shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances and enter into such further agreements as may be necessary or desirable for the better assuring, conveying, granting, assigning or confirming all and singular the rights in, pledge and grant of a security interest in the Trust Estate hereby pledged or assigned in trust, or intended so to be, or which the Issuer may hereafter become bound to pledge or assign in trust.

Section 6.07. Powers as to Bonds and Pledge. The Issuer is duly authorized pursuant to law to authorize and issue the Bonds, to enter into this Indenture and to pledge, assign, transfer and set over unto the Trustee in trust the Trust Estate herein purported to be so pledged, assigned, transferred and set over unto the Trustee in trust hereby in the manner and to the extent provided herein. The Trust Estate so pledged, assigned, transferred and set over in trust is and will be free and clear of any pledge, lien, charge or encumbrance thereon with respect thereto prior to, or of equal rank with, the pledge and assignment in trust created hereby, and all action on the part of the Issuer to that end has been duly and validly taken. The Bonds and the provisions hereof are and will be the valid and binding limited, special obligations of the Issuer in accordance with their terms and the terms hereof. The Trustee shall at all times, to the extent permitted by law, defend, preserve and protect the pledge and assignment in trust of the Trust Estate created hereby and all the rights of the Bondholders hereunder against all claims and demands of all persons whomsoever. The Bonds shall not be deemed to constitute a debt or liability of the State or any political subdivision thereof, other than the Issuer to the limited extent herein provided, or a pledge of the faith and credit or the taxing power of the Issuer, the State or of any such political subdivision, but shall be payable solely from funds provided therefor pursuant hereto.

Section 6.08. Preservation of Revenues; Amendment of Agreements. The Issuer shall not take any action to interfere with or impair the pledge and assignment hereunder of the Trust Estate, or the Trustee’s enforcement of any rights hereunder or under the Financing Agreement or the Regulatory Agreements without the prior written consent of the Trustee. The Trustee may give such written consent, and may itself take any such action or consent to an amendment or modification to the Financing Agreement, the Regulatory Agreements or the Pass-Through Certificate, only with the written consent of Fannie Mae and following receipt by the Trustee of written confirmation from the Rating Agency that the taking of such action or the execution and delivery of such amendment or modification will not adversely affect the rating then assigned to the Bonds by the Rating Agency, and if the Trustee shall have received an opinion of Bond Counsel to the effect that such action or such amendment or modification will not affect adversely the validity of the Bonds or the exclusion from gross income for federal income tax purposes of interest on the Bonds. Notwithstanding the foregoing, Fannie Mae and the Borrower may amend the Mortgage Note and the Mortgage without the consent of the Issuer, the Trustee or the holders of the Bonds so long as any such amendment does not reduce or modify the payments due under the Pass-Through Certificate.

Section 6.09. Assignment. Any assignment of the Issuer’s rights in favor of the Trustee shall not include Reserved Rights.

Section 6.10. Request and Indemnification. Where the consent of or other action on the part of the Issuer is required in this or any other document, the Issuer shall have no obligation to act unless first
requested to do so, and the Issuer shall have no obligation to expend time or money or to otherwise incur any liability unless indemnity satisfactory to the Issuer has been furnished to it.

Section 6.11. Limitations on Liability. Notwithstanding anything in this Indenture or in the Bonds, the Issuer shall not be required to advance any money derived from any source other than the Revenues and other assets pledged under this Indenture for any of the purposes of this Indenture.

No agreements or provisions contained in this Indenture, nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project, or the issuance, sale and delivery of the Bonds shall give rise to any pecuniary liability of the Issuer or a charge against its general credit or taxing power, or shall obligate the Issuer financially in any way except from the application of Revenues or proceeds pledged to the payment of the Bonds and the proceeds of the Bonds. No failure of the Issuer to comply with any term, condition, covenant or agreement herein or in any document executed by the Issuer in connection with the Project, or the issuance, sale and delivery of the Bonds shall subject the Issuer to liability for any claim for damages, costs or other financial and pecuniary charge except to the extent that the same can be paid or recovered from the Financing Agreement or the Revenues or other assets pledged to the payment of the Bonds or the proceeds of the Bonds.

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

DISCHARGE OF INDENTURE

Section 7.01. Defeasance.

(a) If all Bonds shall be paid and discharged as provided in this Section, then all obligations of the Trustee and the Issuer under this Indenture with respect to all Bonds shall cease and terminate, except only (i) the obligation of the Trustee to pay or cause to be paid to the owners thereof all sums due with respect to the Bonds and to register, transfer and exchange Bonds pursuant to Section 2.08 hereof, (ii) the obligation of the Issuer to pay the amounts owing to the Trustee under Section 9.02 hereof from the Trust Estate, and (iii) the obligation of the Issuer to comply with Sections 6.03 and 9.12 hereof. Any funds held by the Trustee at the time of such termination which are not required for payment to Bondholders or for payment to be made by the Issuer, shall be paid as provided in Section 5.10 hereof.

Any Bond or portion thereof in an authorized denomination shall be deemed no longer Outstanding under this Indenture if paid or discharged in any one or more of the following ways:

(i) by well and truly paying or causing to be paid the principal of and interest on such Bond which have become due and payable; or

(ii) by depositing with the Trustee, in trust, cash which, together with the amounts then on deposit in the Bond Fund and dedicated to this purpose, is fully sufficient to pay when due all principal of, and premium, if any, and interest on such Bond to the maturity or earlier redemption date thereof; or

(iii) by depositing with the Trustee, in trust, any investments listed in subparagraph (a) under the definition of Permitted Investments in such amount as in the written opinion of a certified public accountant will, together with the interest to accrue on such Permitted Investments without the need for reinvestment, be fully sufficient to pay when due all principal of, and premium, if any, and interest on such Bond to the maturity or earlier redemption date thereof, notwithstanding that such Bond shall not have been surrendered for payment; or

(iv) by exchanging such Bond for ownership of a like principal amount of the Pass-Through Certificate, including receipt of premium, if any, and interest due on such Bond to the date of exchange.

(b) Notwithstanding the foregoing, no deposit under clauses (ii) and (iii) of subsection (a) above shall be deemed a payment of such Bond until the earlier to occur of:

(i) if such Bond is by its terms subject to redemption within forty-five (45) days, proper notice of redemption of such Bond shall have been previously given in accordance with Section 3.02 to the holder thereof or, in the event such Bond is not by its terms subject to redemption within forty-five (45) days of making the deposit under clauses (ii) and (iii) of subsection (a) above, the Issuer shall have given the Trustee irrevocable written instructions to mail by first-class mail, postage prepaid, notice to the holder of such Bond as soon as practicable stating that the deposit required by clauses (ii) or (iii) of subsection (a) above, as applicable, has been made with the Trustee and that such Bond is deemed to have been paid and further stating such redemption date or dates.
upon which money will be available for the payment of the principal and accrued interest thereon; or

(ii) the maturity of such Bond.

(c) The Trustee shall receive a report from a nationally recognized accounting firm to provide for the payment of all Bonds to be defeased pursuant to this Section and shall be entitled to receive an opinion of counsel to the effect that payment of principal and redemption premium, if any, and interest on the Bonds then Outstanding and all other amounts required to be paid under the provisions of this Indenture have been provided for in the manner set forth in this Indenture.

Section 7.02. Unclaimed Moneys. Anything herein to the contrary notwithstanding, and subject to applicable escheatment laws of the State, any moneys held by the Trustee in trust for the payment and discharge of any of the Bonds which remain unclaimed for two years after the date when such Bonds have become due and payable, either at maturity or by call for redemption, if such moneys are held by the Trustee at said date, or for two years after the date of deposit of such moneys if deposited with the Trustee after the date when such Bonds became due and payable, shall be paid by the Trustee to the Issuer as its absolute property and free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the holders of such Bonds shall look only to the Issuer for the payment thereof; provided, however, that before being required to make any such payment to the Issuer, the Trustee shall cause to be mailed to the holders of such Bonds, at their addresses shown on the Bond Register, notice that said moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than thirty (30) nor more than sixty (60) days after the date of mailing such notice, the balance of such moneys then unclaimed will be paid to the Issuer; and provided further, that the provisions of this Section shall not apply to the extent disposition of any moneys so held by the Trustee shall be governed by any laws applicable to the Trustee or the Issuer dealing with the disposition of such unclaimed property.

Section 7.03. No Release of Pass-Through Certificate. Except as provided in this Section and in Section 7.04, the Trustee shall not release and discharge the Pass-Through Certificate from the lien of this Indenture until the principal of, premium, if any, and interest on the Bonds shall have been paid or duly provided for under this Indenture. The Trustee shall not release or assign the Pass-Through Certificate to any person other than a successor Trustee so long as Fannie Mae shall not be in default thereunder.

Section 7.04. Transfer of Pass-Through Certificate. While the Bonds are Outstanding, the Trustee shall maintain the Pass-Through Certificate in book entry form in the name of the Trustee and may not sell, assign, transfer or otherwise dispose of the Pass-Through Certificate.

Section 7.05. Issuance of Additional Obligations. The Issuer shall not hereafter create or permit the creation of or issue any obligations or create any additional indebtedness secured by a charge and lien on the Pass-Through Certificate Revenues or other moneys, securities, funds and property pledged by this Indenture, other than the Bonds authorized under Section 2.01 hereof.

Section 7.06. Modification of Mortgage Terms. To the extent allowed by applicable State law, the Issuer shall consent to the modification of, or modify, the amount of time or payment of any installment of principal or interest on any Mortgage Loan or the security for or any terms or provisions of any Mortgage Loan or Mortgage or the security for the same or the rate or rates of interest on the Mortgage Loans, solely to the extent required by federal or State law or regulations.
ARTICLE VIII

DEFAULT PROVISIONS AND REMEDIES
OF TRUSTEE AND BONDHOLDERS

Section 8.01. Events of Default. Each of the following shall constitute an Event of Default under this Indenture:

(a) Failure by Fannie Mae to pay principal, interest or premium, if any, due under the Pass-Through Certificate;

(b) Failure to pay the principal, interest or premium, if any, on the Bonds when the same shall become due; or

(c) Default in the observance or performance of any other covenant, agreement or condition on the part of the Issuer in this Indenture and the continuation of such default for a period of ninety (90) days after written notice to the Issuer from the Trustee or the registered owners of at least seventy-five percent (75%) in aggregate principal amount of the Bonds Outstanding at such time specifying such default and requiring the same to be remedied.

The Trustee, upon any failure by Fannie Mae to distribute to the Trustee any payment required to be made under the terms of the Pass-Through Certificate, shall notify Fannie Mae not later than the next Business Day (all such notices to be promptly confirmed in writing) requiring the failure to be remedied.

The Trustee will immediately notify the Issuer, the Bondholders, the Lender and Fannie Mae after a Responsible Officer obtains knowledge or receives notice of the occurrence of an Event of Default or an event which would become an Event of Default with the passage of time or the giving of notice, or both.

Section 8.02. Acceleration; Rescission of Acceleration. Upon the occurrence of an Event of Default under Section 8.01(a) hereof, the Trustee may, and upon the written request of the holders of not less than seventy-five percent (75%) in aggregate principal amount of the Bonds then Outstanding, which written request shall acknowledge that the amounts due on the Pass-Through Certificate cannot be accelerated solely by virtue of acceleration of the Bonds, and upon receipt of indemnity satisfactory to it, shall, by notice in writing delivered to the Issuer, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable. Subject to Section 8.13 hereof, upon the occurrence of an Event of Default under Section 8.01(b) hereof no action shall be taken by the Trustee, unless an Event of Default has occurred pursuant to Section 8.01(a) hereof in which event the Trustee shall proceed as provided above. An Event of Default under Section 8.01(c) hereof shall not give rise to an acceleration pursuant to this Section, provided, however, that following such an Event of Default and only after the Borrower has notified the Trustee in writing that the Project has been Placed in Service, the holder of one hundred percent (100%) of the Bonds then Outstanding may direct the Trustee in writing to transfer the Pass-Through Certificate to it or its designee, in which case, the Trustee shall cancel the Bonds upon such release and transfer of the Pass-Through Certificate, and upon such transfer, the Bonds will no longer be Outstanding. In the event any payments are received by the Trustee after the transfer of the Pass-Through Certificate and cancellation of the Bonds, all such payments shall belong to and be transferred to the owner of the Pass-Through Certificate.

The acceleration of the Bonds will not constitute a default under, or by itself cause the acceleration of, the Pass-Through Certificate.
If at any time after the Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Issuer, the Borrower or Fannie Mae, as applicable, shall pay to or deposit with the Trustee a sum sufficient to pay all principal of the Bonds then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) on all the Bonds then due with interest at the rate borne by the Bonds on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable expenses of the Trustee shall have been made good or cured or adequate provisions shall have been made thereof, and all other defaults hereunder have been made good or cured or waived in writing by the holders of a majority in principal amount of the Bonds then Outstanding, then and in every case, the Trustee on behalf of the holders of all the Bonds shall rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent Event of Default, nor shall it impair or exhaust any right or power consequent thereon.

Section 8.03. Other Remedies; Rights of Bondholders. Subject to Section 8.13 hereof, upon the happening and continuance of an Event of Default the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the holders of all Bonds, may also proceed to protect and enforce any rights of the Trustee and, to the full extent that the holders of such Bonds themselves might do, the rights of such Bondholders under the laws of the State or under this Indenture by such of the following remedies as the Trustee shall deem most effectual to protect and enforce such rights:

(a) By pursuing any available remedies under the Financing Agreement, the Regulatory Agreements or the Pass-Through Certificate;

(b) Upon an Event of Default under 8.01(a) hereof only, by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder (including the sale or disposition of the Pass-Through Certificate); and

(c) By action or suit in equity, to enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the Bonds and to execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Trustee in order to have the respective claims of the Bondholders against the Issuer allowed in any bankruptcy or other proceeding.

If an Event of Default shall have occurred, and if requested by the holders of not less than seventy-five percent (75%) in aggregate principal amount of the Bonds then Outstanding, and upon being indemnified to its satisfaction, the Trustee shall be obligated to exercise one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem to be in the best interests of the Bondholders subject to the limitations set forth above and in this Indenture.

No right or remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other right or remedy, but each and every such right and remedy shall be cumulative and shall be in addition to any other right or remedy given to the Trustee or to the Bondholders hereunder or under the Financing Agreement, the Regulatory Agreements or the Pass-Through Certificate or now or hereafter existing at law or in equity.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein and every such right and power may be exercised from time to time as often as may be deemed expedient.
No waiver of any default or Event of Default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

Section 8.04. Representation of Bondholders by Trustee. The Trustee is hereby irrevocably appointed (and the Bondholders, by accepting and holding their Bonds, shall be conclusively deemed to have so appointed the Trustee and to have mutually covenanted and agreed, each with the other, not to revoke such appointment) the true and lawful attorney in fact of the Bondholders with power and authority, in addition to any other powers and rights heretofore granted the Trustee, at any time in its discretion to make and file, in any proceeding in bankruptcy or judicial proceedings for reorganization or liquidation of the affairs of the Issuer, either in the respective names of the Bondholders or on behalf of all the Bondholders as a class, any proof of debt, amendment of proof of debt, petition or other document, to receive payment of any sums becoming distributable to the Bondholders, and to execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Trustee in order to have the respective claims of the Bondholders against the Issuer allowed in any bankruptcy or other proceeding.

In the enforcement of any rights and remedies hereunder, the Trustee in its own name and as trustee of an express trust on behalf of and for the benefit of the holders of all Bonds, shall be entitled to sue for, enforce payment on and receive any and all amounts then or during any Event of Default becoming, and at any time remaining, due from the Issuer for principal, premium, if any, interest or other moneys, under any provision hereof or of the Bonds, and unpaid, with interest on overdue payments at the rate or rates of interest specified in such Bonds, together with any and all costs and expenses of collection and of all proceedings hereunder and under such Bonds, without prejudice to any other right or remedy of the Trustee or of the Bondholders.

Section 8.05. Action by Trustee. All rights of action hereunder or upon any of the Bonds enforceable by the Trustee may be enforced by the Trustee without the possession of any of the Bonds, or the production thereof at the trial or other proceedings relative thereto, and any such suit, action or proceeding instituted by the Trustee may be brought in its name for the ratable benefit of the holders of such Bonds subject to the provisions hereof.

In any action, suit or other proceeding by the Trustee, the Trustee shall be paid fees, counsel fees and expenses in accordance with Section 9.02 hereof.

Section 8.06. Accounting and Examination of Records After Default. The Issuer covenants with the Trustee and the Bondholders that, if an Event of Default shall have happened and shall not have been remedied, the books of record and account of the Issuer relating to the Bonds and the Project shall at all times during normal business hours be subject to the inspection and use of the Trustee and of its agents and attorneys.

Section 8.07. Restriction on Bondholder Action. No holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of any provision hereof or for the execution of any trust hereunder or for any other remedy hereunder, unless (a)(i) such holder previously shall have given to the Issuer and the Trustee written notice of the Event of Default on account of which such suit, action or proceeding is to be instituted, and (ii) after the occurrence of such Event of Default, a written request shall have been made of the Trustee to institute such suit, action or proceeding by the holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding and there shall have been offered to the Trustee security and indemnity satisfactory to it against the costs and liabilities to be incurred therein or thereby, and (iii) the Trustee shall have been enjoined or restrained from complying or shall have refused or neglected or otherwise failed to comply
with such request within a reasonable time; or (b)(i) such holder previously shall have obtained the written consent of the Trustee to the institution of such suit, action or proceeding, and (ii) such suit, action or proceeding is brought for the ratable benefit of the holders of all Bonds subject to the provisions hereof.

Nothing in this Article contained shall affect or impair the right of any Bondholder to enforce the payment of the principal of, premium, if any, and interest on his or her Bonds or the obligation of the Issuer to pay the principal of, premium, if any, and interest on each Bond to the holder thereof, at the time and place and from the source expressed in such Bonds and pursuant to the terms of the Bonds and this Indenture.

No holder of any Bond shall have any right in any manner whatever by his or her action to affect, disturb or prejudice the pledge of Revenues or of any other moneys, funds or securities hereunder, or, except in the manner and on the conditions in this Section provided, to enforce any right or duty hereunder.

Section 8.08. Application of Moneys After Default. All moneys collected by the Trustee at any time pursuant to this Article shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by the Trustee to the Bond Fund. Such moneys so credited to the Bond Fund and all other moneys from time to time credited to the Bond Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article V hereof and this Section.

Subject in all instances to the provisions of Section 8.11 hereof, in the event that at any time the moneys credited to the Bond Fund, or any other funds held by the Issuer or the Trustee available for the payment of interest or principal then due with respect to the Bonds, shall be insufficient for such payment, such moneys and funds (other than funds held for the payment or redemption of particular Bonds as provided in Section 5.07 hereof) shall be applied as follows:

(a) Only in the event that there has been an Event of Default hereunder pursuant to Section 8.01(a) hereof as a result of a failure by Fannie Mae to make payments under the Pass-Through Certificate, for payment of all amounts due to the Trustee incurred in performance of its duties under this Indenture and the other documents executed in connection therewith, including, without limitation, the payment of all reasonable fees and expenses of the Trustee incurred in exercising any remedies under this Indenture and the other documents executed in connection herewith;

(b) Unless the principal of all of the Bonds shall have become or have been declared due and payable:

First: To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available is not sufficient to pay in full any installment, then to the payment thereof ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, on any Bonds which shall have become due, whether at maturity or by call for redemption, in the order in which they became due and payable, and, if the amount available is not sufficient to pay in full all the principal of and premium, if any, on the Bonds so due on any date, then to the payment of principal ratably, according to the amounts due on such date, to the persons entitled thereto, without any discrimination
or preference and then to the payment of any premium due on the Bonds, ratably, according to the amounts due on such date, to the persons entitled thereto, without any discrimination or preference; and

(c) If the principal of all of the Bonds shall have become or have been declared due and payable, to the payment of the principal of, premium, if any, and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

Section 8.09. Control of Proceedings. In the case of an Event of Default pursuant to Section 8.01(a) hereof, the holders of a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, subject to the provisions of Section 8.07 hereof, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee; provided, however, that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel that the action or proceeding so directed may not be taken lawfully, or if the Trustee in good faith shall determine that the action or proceeding so directed would involve the Trustee in personal liability or otherwise adversely affect the Trustee or be unjustly prejudicial to Bondholders not parties to such direction.

Section 8.10. Waivers of Events of Default. The Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of, premium, if any, and interest on the Bonds upon the written request of the holders of a majority in aggregate principal amount of all Bonds then Outstanding with respect to which there is an Event of Default; provided, however, that there shall not be waived (a) any default in the payment of the principal amount of any Bonds at the date of maturity specified therein or upon proceedings for mandatory redemption, or (b) any default in the payment when due of the interest or premium, if any, on any such Bonds, unless prior to such waiver or rescission all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds in respect of which such Event of Default shall have occurred on overdue installments of interest or all arrears of payments of principal or premium, if any, when due (whether at the stated maturity thereof or upon proceedings for mandatory redemption) as the case may be, and all expenses of the Trustee in connection with such monetary default, shall have been paid or provided for, and in case of any such waiver or rescission, the Issuer, the Borrower, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder respectively.

No such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto; and no delay or omission of the Trustee or of any Bondholders to exercise any right or power accruing upon any Event of Default shall impair any right or power or shall be construed to be a waiver of any such Event of Default, or acquiescence therein.

Section 8.11. Subordination. No claim for interest on any of the Bonds which claim in any way at or after maturity shall have been transferred or pledged by the holder thereof separate and apart from the Bond to which it relates, unless accompanied by such Bond, shall be entitled in case of an Event of Default hereunder to any benefit by or from this Indenture except after the prior payment in full of the principal of and premium, if any, on all of the Bonds then due and of all claims for interest then due not so transferred or pledged.
Section 8.12. Termination of Proceedings. In case any proceeding taken by the Trustee on account of any Event of Default shall have been discontinued or abandoned for any reason or determined adversely to the Trustee, then in every such case the Issuer, the Borrower, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Trustee shall continue as though no such proceeding had been taken.

Section 8.13. No Interference or Impairment of Pass-Through Certificate. Notwithstanding any other provision of this Indenture to the contrary, so long as the Pass-Through Certificate remains outstanding and Fannie Mae is not in default in its payment obligations thereunder, neither the Issuer, the Trustee nor any person under their control shall, without the prior written consent of Fannie Mae, exercise any remedies or direct any proceedings under the Indenture other than to (a) enforce rights under the Pass-Through Certificate, (b) enforce the tax covenants in this Indenture and the Financing Agreement, or (c) enforce rights of specific performance under the Regulatory Agreements; provided, however, that any enforcement under (b) or (c) above shall not include seeking monetary damages other than actions for Issuer Fees or the Trustee’s fees and expenses.

Nothing contained in this Indenture shall affect or impair the right of any Bondholder to enforce the payment of the principal of, the premium, if any, and interest on any Bond at the maturity thereof or the obligation of the Trustee to pay the principal of, premium, if any, and interest on the Bonds issued hereunder to the respective holders thereof, at the time, in the place, from the sources and in the manner expressed herein and in said Bonds.

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

THE TRUSTEE

Section 9.01. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions and no implied covenants or conditions shall be read into this Indenture against the Trustee:

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a reasonable person would exercise or use under the circumstances in the conduct of his or her own affairs. The Trustee shall not be liable for any action taken or omitted by it in the performance of its duties under this Indenture except for its own negligence or misconduct.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall not be answerable for the conduct of the same if appointed with reasonable care, and shall be entitled to advice of counsel concerning all matters of the trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorneys (who may be the attorney or attorneys for the Issuer, the Borrower or Fannie Mae) approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action taken in good faith in reliance upon such opinion or advice.

(c) The Trustee shall not be responsible for any recital herein, or in the Bonds (except in respect to the certificate of the Trustee endorsed on the Bonds), or for insuring the Project or collecting any insurance moneys, or for the registration, filing or recording or re-registration, re-filing or re-recording of this Indenture or the Mortgage or any financing statements relating hereto or thereto or for the validity of the execution by the Issuer of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value or title of the Project or otherwise as to the maintenance of the security hereof. The Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Issuer or on the part of the Borrower under the Financing Agreement, except as hereinafter set forth; but the Trustee may require of the Issuer or the Borrower full information and advice as to their performance of the covenants, conditions and agreements aforesaid.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee may become the owner of Bonds secured hereby with the same rights which it would have if it were not Trustee hereunder. To the extent permitted by law, the Trustee may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondholders or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Indenture, whether or not any such committee shall represent the holders of a majority in aggregate principal amount of the Bonds Outstanding.

42
(e) The Trustee shall be protected in acting under any notice, request, consent, certificate, order, affidavit, letter, facsimile transmission, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request, authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely (unless other evidence in respect thereof is herein specifically prescribed) upon an Officer’s Certificate as sufficient evidence of the facts therein contained and prior to the occurrence of an Event of Default of which the Trustee has been notified as provided in subsection (h) of this Section, or of which by said subsection it is deemed to have notice, shall also be at liberty to accept an Officer’s Certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate signed by an Attesting Officer of the Issuer as conclusive evidence that a resolution of the governing body of the Issuer has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and it shall not be answerable for other than its own negligence or willful misconduct.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default or Event of Default hereunder except a default in payment when due of the principal of, premium, if any, or interest on any Bond unless the Responsible Officer shall be specifically notified in writing of such default or Event of Default by the Issuer or by the holders of at least seventy-five percent (75%) in aggregate principal amount of Bonds then Outstanding and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the designated office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume there is no default or Event of Default except as aforesaid.

(i) At any and all reasonable times the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right fully to inspect any and all of the property herein conveyed, including the Project and all books, papers and records of the Issuer pertaining to the Project and the Bonds, and to take such memoranda from and in regard thereto as may be desired, provided that such inspection be made and any such memoranda be taken and used on a basis that will insure the confidentiality thereof and of any results thereof.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the trusts and powers or otherwise in respect of the premises granted in this Indenture.

(k) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property or any action whatsoever within the purview of this Indenture (other than enforcement of the Regulatory Agreements), any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in
addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, the release of any property or the taking of any other action by the Trustee, but the resolutions, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warranty, protection and authority to the Trustee for the release of property and the withdrawal of cash hereunder.

(l) Before taking any action under Article VIII hereof the Trustee may require that a satisfactory indemnity bond or other indemnity satisfactory to the Trustee be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default in conjunction with any action so taken.

(m) All moneys received by the Trustee, until used, applied or invested as herein provided, shall be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law.

(n) The immunities extended to the Trustee also extend to its directors, officers, employees and agents.

(o) The Trustee’s rights to immunities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive its resignation or removal and the final payment or the defeasance of the Bonds (or the discharge of the Bonds or the defeasance of the lien of this Indenture).

(p) None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur individual financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

(q) The Trustee shall have no responsibility, opinion or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds.

(r) Whenever reference is made in this Indenture to any action by, consent, or designation by the Trustee, the Trustee shall not be liable for any error in judgment exercised in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

(s) In no event shall the Trustee be liable for incidental, indirect, special, consequential or punitive damages or penalties (including but not limited to lost profits) even if the Trustee has been advised of the likelihood of such damages or penalty and regardless of the form of action.

Section 9.02. Fees, Charges and Expenses of Trustee. Notwithstanding any provision to the contrary herein, the Trustee shall be entitled to payment for reasonable fees for its services rendered hereunder and under the Financing Agreement and reimbursement for all advances, counsel fees and other expenses reasonably made or incurred by the Trustee (including any co-Trustee) in connection with such services which shall be paid from time to time as provided in Section 5.04 hereof from moneys available therefore and as provided in the Financing Agreement; provided that no such amounts shall be paid to the Trustee from the proceeds of the Pass-Through Certificate. Upon an Event of Default under
Section 8.01(a) hereof as a result of a failure by Fannie Mae to make payment under the Pass-Through Certificate, but only upon such an Event of Default, the Trustee shall have a lien upon the Trust Estate for extraordinary fees, charges and expenses incurred by it. The Issuer shall require the Borrower to indemnify and save harmless the Trustee against any liabilities which the Trustee may incur in the exercise and performance of its powers and duties hereunder, under the Financing Agreement and under the Regulatory Agreements which are not due to its own negligence or willful misconduct, and to reimburse the Trustee for any fees and expenses of the Trustee to the extent they exceed funds available under this Indenture for the payment thereof, subject only to the right of the Borrower to contest the reasonableness of any such fees or the necessity for any such expenses. The Trustee shall continue to perform its duties and obligations hereunder until such time as its resignation or removal is effective pursuant to Section 9.05 or Section 9.06, respectively.

Section 9.03. Intervention By Trustee. In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of owners of the Bonds, the Trustee may intervene on behalf of the Bondholders and shall do so if requested in writing by the owners of at least seventy-five percent (75%) in aggregate principal amount of Bonds then Outstanding, subject to receipt of indemnity as provided in Section 9.01(l). The rights and obligations of the Trustee under this Section are subject to receipt of any approval of a court of competent jurisdiction which may be required by law as a condition to such intervention.

Section 9.04. Merger or Consolidation of Trustee. Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto shall be and become successor Trustee hereunder and vested with all of the title to the Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 9.05. Resignation by Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving thirty (30) days' written notice to the Issuer and Fannie Mae, and such resignation shall only take effect upon the appointment, pursuant to Section 9.07, of, and acceptance by, a successor Trustee. The successor Trustee shall give notice of such succession by first class mail, postage prepaid, to each Bondholder at the address of such Bondholder shown on the Bond Register.

Section 9.06. Removal of Trustee. The Trustee may be removed at any time upon thirty (30) days' written notice by an instrument or concurrent instruments in writing delivered to the Trustee and to Fannie Mae, and signed by the Issuer (or if an Event of Default shall have occurred and be continuing, by the owners of a majority in aggregate principal amount of the Bonds then Outstanding, in which event such instrument or instruments in writing shall also be delivered to the Issuer) provided that such removal shall not take effect until the appointment of a successor Trustee by the Issuer (or by the Bondholders).

Section 9.07. Appointment of Successor Trustee. In case at any time the Trustee or any successor thereto shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of such Trustee or of its property shall be appointed, or if any public officer shall take charge or control of such Trustee or of its property or affairs, a successor may be appointed by the Issuer with the approval of Fannie Mae (if it is not in default in its obligations under the Pass-Through Certificate), or if Fannie Mae does not approve a successor the Issuer proposes to appoint, or if the Issuer is in default hereunder, by the holders of a majority in aggregate principal amount of the Bonds then Outstanding, excluding any Bonds held by or
for the account of the Issuer, by an instrument or concurrent instruments in writing signed by such Bondholders, or their attorneys duly authorized in writing, and delivered to such successor Trustee, notification thereof being given to the Issuer, Fannie Mae, the Borrower, the Managing Member, the Investor Member, and the predecessor Trustee. If in a proper case no appointment of a successor Trustee shall have been made pursuant to the foregoing provisions of this Section within forty-five (45) days after the Trustee shall have given to the Issuer written notice as provided in Section 9.05 hereof or after the occurrence of any other event requiring or authorizing such appointment, the Trustee or any Bondholder may apply to any court of competent jurisdiction to appoint a successor. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

Any Trustee appointed under the provisions of this Section shall be a bank, trust company or national banking association, having a designated office within the State, having trust powers, with prior experience as trustee under indentures under which multifamily housing revenue bonds of public agencies or authorities are issued, and having a capital and surplus acceptable to the Issuer and Fannie Mae, willing and able to accept the office on reasonable and customary terms in light of the circumstances under which the appointment is tendered and authorized by law to perform all the duties imposed upon it thereby, if there be such an institution meeting such qualifications willing to accept such appointment.

Section 9.08. Transfer of Rights and Property to Successor Trustee. Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor Trustee, and also to the Issuer and Fannie Mae, an instrument accepting such appointment, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of such predecessor Trustee, with like effect as if named herein as such Trustee, but the Trustee ceasing to act shall nevertheless, on the written request of the Issuer, Fannie Mae or the successor Trustee, execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as reasonably may be required for more fully and certainly vesting and confirming in such successor Trustee all the right, title and interest of the predecessor Trustee in and to any properties held by it under this Indenture, and shall pay over, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Should any deed, conveyance or instrument in writing from the Issuer be required by such successor Trustee for more fully and certainly vesting and confirming to such successor Trustee any such moneys, estates, properties, rights, powers and duties, any and all such deeds, conveyances and instruments in writing, on request, and so far as may be authorized by law, shall be executed, acknowledged and delivered by the Issuer.

Section 9.09. Successor Trustee as Bond Registrar, Custodian of Funds and Paying Agent. In the event of a change in the Trustee, the Trustee which has resigned or been removed shall cease to be bond registrar, custodian of the Funds and Accounts created under this Indenture and paying agent for the Bonds, and the successor Trustee shall become such registrar, custodian and paying agent.

Section 9.10. Collection of Pass-Through Certificate Payments. The Trustee shall cause the Pass-Through Certificate to be registered in the name of the Trustee or in the name of the nominee of the Trustee with such additional recitals as appropriate to indicate that the Pass-Through Certificate is to be held by the Trustee in its capacity as Trustee hereunder subject to the provisions of Sections 7.03 and 7.04 hereof. In the event the Trustee determines in its discretion that payment by Fannie Mae, directly to DTC for the account of the Bondholders is desirable, it can, subject to Fannie Mae’s consent, designate DTC as the address to which payments under the Pass-Through Certificate are to be made; provided that DTC shall have agreed to notify the Trustee in the event that any amount payable under the Pass-Through Certificate is not received by such custodian within one Business Day of the date such payment is due. In the event that any amount payable to the Trustee under the Pass-Through Certificate is not received by the Trustee within one Business Day of the date such payment is due, or if such payment is to be made
directly to the DTC, in the event the Trustee shall receive notice from DTC that such payment has not been received within one Business Day of the date such payment is due, the Trustee shall notify Fannie Mae or (if directed by Fannie Mae) the paying agent for the Pass-Through Certificate by telephone (such notification to be immediately confirmed by telegram, telecopy or other means of instantaneous written communication) that such payment has not been received in a timely manner and request that such payment be made by wire transfer of immediately available funds to the account of the Trustee or such custodian, as the case may be.

Section 9.11. Requests from Rating Agency. The Trustee shall promptly respond in writing, or in such other manner as may be reasonably requested, to requests from the Rating Agency for information deemed necessary by the Rating Agency in order to maintain the rating assigned thereby to the Bonds. The Trustee shall promptly furnish any such requested information in its possession to the Rating Agency and shall, as may be reasonably requested by the Rating Agency, assist in efforts to obtain any necessary information from the Issuer or the Borrower or Fannie Mae as applicable.


(a) Moneys and securities held by the Trustee in the Rebate Fund are not pledged or otherwise subject to any security interest in favor of the Trustee to secure the Bonds or any other payments required to be made hereunder or any other document executed and delivered in connection with the issuance of the Bonds.

(b) Moneys in the Rebate Fund shall be held separate and apart from all other Funds and Accounts established under this Indenture and shall be separately invested and reinvested by the Trustee in Permitted Investments. The interest accruing thereon and any profit realized therefrom shall be credited to the Rebate Fund, and any loss resulting therefrom shall be charged to the Rebate Fund. The Trustee shall sell and reduce to cash a sufficient amount of such Permitted Investments whenever the cash balance in the Rebate Fund is insufficient for its purposes.

(c) The Issuer hereby covenants to provide, or to cause the Borrower to provide, for the calculation of and rebate to the federal government, in accordance with the Code, of excess investment earnings to the extent required by section 148(f) of the Code.

(d) In order to provide for the administration of this Section, the Trustee may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the Trustee may deem appropriate and in addition and without limitation of the provisions of Section 9.01, the Trustee may rely conclusively upon and be fully protected from all liability in relying upon the opinions, determinations, calculations and advice of such attorneys, accountants and consultants employed hereunder.

(e) The Borrower shall be responsible for any fees and expenses incurred by the Issuer or the Trustee under or pursuant to this Section.

(f) Withdrawals from the Rebate Fund may be made to the extent the rebate analyst determines that amounts on deposit therein exceed amounts required to be on deposit therein pursuant to this Section. All amounts so withdrawn shall be transferred to the Bond Fund.

(g) The provisions of this Section may be amended or deleted from this Indenture upon receipt by the Issuer and the Trustee of an opinion of Bond Counsel that such amendment or deletion will not adversely affect the exclusion of the interest on the Bonds from gross income for
federal income tax purposes. Any moneys on deposit in the Rebate Fund may be applied by the Trustee as permitted in such opinion. Fees and expenses incurred in connection with the determination of rebatable arbitrage shall be paid by the Borrower pursuant to the provisions of the Financing Agreement.

Section 9.13. Compliance of Borrower Under Regulatory Agreements. The Trustee shall give written notice to the Issuer, the Lender, the Managing Member, the Investor Member, and Fannie Mae of any failure by the Borrower to comply with the terms of any of the Regulatory Agreements.

(The remainder of this page is intentionally left blank.)
ARTICLE X
SUPPLEMENTAL INDENTURES

Section 10.01. Supplemental Indentures Effective Upon Acceptance. For any one or more of the following purposes and at any time or from time to time, the Issuer and the Trustee may enter into a Supplemental Indenture which, upon the execution and delivery thereof by an Authorized Officer and by the Trustee, and with the prior written consent of Fannie Mae, but without the necessity of consent of the Bondholders, shall be fully effective in accordance with its terms:

(a) To add to the covenants or agreements of the Issuer herein contained other covenants or agreements to be observed by the Issuer or to otherwise revise or amend this Indenture in a manner which are/is not materially adverse to the interests of the Bondholders;

(b) To add to the limitations or restrictions herein contained other limitations or restrictions to be observed by the Issuer which are not contrary to or inconsistent with the provisions hereof as theretofore in effect;

(c) To surrender any right, power or privilege reserved to or conferred upon the Issuer herein, provided that the surrender of such right, power or privilege is not contrary to or inconsistent with the covenants and agreements of the Issuer contained herein and is not materially adverse to the interests of the Bondholders;

(d) To confirm, as further assurance, any pledge of the Trust Estate hereunder and the subjection to any lien on or pledge of the Trust Estate created or to be created hereby;

(e) To appoint a co-trustee or successor Trustee or successor co-trustee;

(f) To cure any ambiguity, supply any omission or cure or correct any defect or inconsistent provision herein;

(g) To insert such provisions clarifying matters or questions arising hereunder as are necessary or desirable and are not materially adverse to the interests of the Bondholders; and

(h) To make such changes and modifications that are necessary or desirable to provide for all interest, principal and premium paid with respect to the Bonds in the exact respective amounts of the payments of interest, principal and premium paid under and pursuant to the Pass-Through Certificate.

Section 10.02. Supplemental Indentures Requiring Consent of Bondholders. In addition to those amendments to the Indenture which are authorized by Section 10.01 hereof, any modification or amendment of the Indenture may be made by a Supplemental Indenture with the written consent, given as hereinafter provided in Section 10.03 hereof, of Fannie Mae and the holders of at least two-thirds in aggregate principal amount of the Bonds Outstanding at the time such consent is given; provided, however, that no such modification or amendment shall (a) permit a change in the terms of redemption or maturity of the principal amount of any Outstanding Bond or an extension of the date for payment of any installment of interest thereon or a reduction in the principal amount of, premium, if any, or the rate of interest on any Outstanding Bond without the consent of the holder of such Bond, (b) reduce the proportion of Bonds the consent of the holders of which is required to effect any such modification or amendment or to effectuate an acceleration of the Bonds prior to maturity, (c) permit the creation of a lien on the Trust Estate pledged under this Indenture prior to or on a parity with the lien of this Indenture,
(d) deprive the holders of the Bonds of the lien created by this Indenture upon the Trust Estate (except as expressly provided in this Indenture), without (with respect to (b) through (d)) the consent of the holders of all Bonds then Outstanding, or (e) change or modify any of the rights or obligations of the Trustee without the written consent thereto of the Trustee.

Section 10.03. Consent of Bondholders. The Issuer and the Trustee may, at any time, execute and deliver a Supplemental Indenture making a modification or amendment permitted by the provisions of Section 10.02 hereof, to take effect when and as provided in this Section. A copy of such Supplemental Indenture (or brief summary thereof or reference thereto), together with a request to Bondholders for their consent thereto in form satisfactory to the Trustee, shall be mailed by the Trustee to the Bondholders. Such Supplemental Indenture shall not be effective unless there shall have been filed with the Trustee (a) the written consents of Fannie Mae and the holders of the proportion of Outstanding Bonds specified in Section 10.02 hereof, and (b) an opinion of Bond Counsel stating that such Supplemental Indenture has been duly and lawfully entered into by the Issuer in accordance with the provisions of this Indenture, is authorized or permitted by the provisions of this Indenture, and, when effective, will be valid and binding upon the Issuer. Each such consent of the Bondholders shall be effective only if accompanied by proof of the holding, at the date of such consent, of the Bonds with respect to which such consent is given, which proof shall be such as is permitted by Section 11.01 hereof. A certificate or certificates by the Trustee that it has examined such proof and that such proof is sufficient under the provisions of Section 11.01 hereof shall be conclusive that the consents have been given by the holders of the Bonds described in such certificate or certificates. Any such consent shall be binding upon the holder of the Bonds giving such consent and upon any subsequent holder of such Bonds and of any Bonds issued in exchange therefor (whether or not such subsequent holder thereof has notice thereof). At any time after the holders of the required proportion of Bonds shall have filed their consents to such Supplemental Indenture, the Trustee shall make and file with the Issuer a written statement that the holders of such required proportion of Bonds have filed and given such consents. Such written statement shall be conclusive that such consents have been so filed and have been given. Within ninety (90) days after filing such statement, the Trustee shall mail to the Bondholders a notice stating in substance that such Supplemental Indenture (which may be referred to as a Supplemental Indenture executed by the Issuer on a stated date, a copy of which is on file with the Trustee) has been consented to by the holders of the required proportion of Bonds and will be effective as provided in this Section, but failure to mail such notice shall not prevent such Supplemental Indenture from becoming effective and binding as in this Section 10.3 provided. The Trustee shall file with the Issuer proof of the mailing of such notice to the Bondholders. A record, consisting of the papers required or permitted by this Section to be filed with the Trustee, shall be proof of the matters therein stated. Such Supplemental Indenture making such modification or amendment shall be deemed conclusively binding upon the Issuer, the Trustee and the holders of all Bonds upon the execution thereof and the filing by the Trustee with the Issuer of the statement that the required proportion of Bondholders have consented thereto.

The Issuer may conclusively rely upon the Trustee’s determination that the requirements of this Section have been satisfied. The Trustee may rely on an opinion of counsel that the requirements of this Section have been satisfied.

Section 10.04. Modification By Unanimous Consent. Notwithstanding anything contained in the foregoing provisions of this Article, the terms and provisions hereof and the rights and obligations of the Issuer and the holders of the Bonds hereunder, in any particular, may be modified or amended in any respect upon execution and delivery of a Supplemental Indenture by the Issuer and the Trustee making such modification or amendment and the consent to such Supplemental Indenture of Fannie Mae and the holders of all of the Bonds then Outstanding, such consent to be given and proved as provided in Section 10.03 hereof except that no notice to Bondholders shall be required; provided, however, that no
such modification or amendment shall change or modify any of the rights or obligations of the Trustee without the written assent thereto of the Trustee, in addition to the consent of the Bondholders.

Section 10.05. Exclusion of Bonds. Bonds owned or held by or for the account of the Issuer or the Borrower shall be excluded and shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Article, unless all of the Bonds are owned or held by or for the account of the Issuer or the Borrower. In the event that not all of the Bonds are owned or held by or for the account of the Issuer or the Borrower, then neither the Issuer nor the Borrower, as the case may be, shall be entitled with respect to such Bonds to give any consent or take any other action provided for in this Article. At the time of any consent or other action under this Article, in the event that any Bonds (but not all of the Bonds) are then owned by or for the account of the Issuer, the Issuer shall furnish to the Trustee an Officer’s Certificate, upon which the Trustee may rely, describing all Bonds so to be excluded. The Trustee shall be obligated to exclude as aforesaid only such Bonds as are shown by the Bond Register or are otherwise known by the Trustee to be so owned or held.

Section 10.06. Notation on Bonds. Bonds delivered after the effective date of any action taken as provided in this Article may, and if the Trustee so determines shall, bear a notation by endorsement or otherwise in form approved by the Issuer and the Trustee as to such action, and in that case upon demand of the holder of any Bond Outstanding at such effective date and presentation of such Bond for such purpose at the principal office of the Trustee, suitable notation shall be made on such Bond by the Trustee as to any such action. If the Issuer or the Trustee shall so determine, new Bonds notated as in the opinion of the Trustee and the Issuer may be required to conform to such action shall be prepared and delivered, and upon demand of the holder of any Bond then Outstanding, shall be exchanged, without cost to such Bondholder, for Bonds of the same series, designation, maturity and interest rate then Outstanding upon surrender of such Bonds.

Section 10.07. Additional Contracts or Indentures. The Issuer, so far as it may be authorized by law, may enter, and if requested by the Trustee, shall enter into additional contracts or indentures with the Trustee giving effect to any modification or amendment of this Indenture as provided in this Article.

Section 10.08. Opinion of Bond Counsel Concerning Supplemental Indentures. The Trustee shall not execute or consent to any Supplemental Indenture unless prior to the execution and delivery thereof the Trustee shall have received the written opinion of Bond Counsel to the effect that the modifications or amendments effected by such Supplemental Indenture will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes or adversely affect the exemption of interest of the Bonds from personal income taxation by the State and are authorized and permitted under the provisions of this Indenture.

Section 10.09. Modification to Mortgage Loan Documents. Notwithstanding anything herein to the contrary each and every Mortgage Loan Document may be amended, modified or restated, without the consent of the Bondholders, but subject to and only in the manner and to the extent such modification, amendment or restatement is permitted and made pursuant to the terms of the Fannie Mae Trust Indenture pursuant to which the Pass-Through Certificate was issued.
ARTICLE XI

MISCELLANEOUS

Section 11.01. Evidence of Signatures of Bondholders and Ownership of Bonds. Any request, consent, revocation of consent or other instrument which this Indenture may require or permit to be signed and executed by Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by such Bondholders in person or by their attorneys duly authorized in writing. Proof of the execution of any such instrument, or of an instrument appointing or authorizing any such attorney, or the holding by any person of any Bonds, shall be sufficient for any purpose hereof if made in the following manner or in any other manner satisfactory to the Trustee which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

(a) The fact and date of the execution by any Bondholder or his or her attorney of any such instrument (other than the Bond) may be proved (i) by the certificate of a notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he or she purports to act that the person signing such instrument acknowledged to him or her the execution thereof, or by the affidavit of a witness of such execution, duly sworn to before such a notary public or other officer, or (ii) by the certificate, which need not be acknowledged or verified, of an officer of a bank, trust company or duly licensed securities broker or dealer satisfactory to the Trustee that the person signing such instrument acknowledged to such bank, trust company, broker or dealer the execution thereof;

(b) The authority of a person or persons to execute any such instrument on behalf of a corporate Bondholder may be established without further proof if such instrument is authorized by a corporate resolution (a copy of which shall be delivered to the Trustee) and signed by a person purporting to be the president or a vice president of such corporation; and

(c) The holding of Bonds, the amount, numbers and other identification thereof, and the date of holding the same, shall be proved by the Bond Register.

Any request, consent or other instrument executed by the registered owner of any Bond shall bind all future owners of such Bond in respect of anything done or suffered to be done hereunder by the Issuer or the Trustee in accordance herewith in reliance on such request, consent or other instrument.

Section 11.02. Details of Documents Delivered to Trustee. Matters required to be stated in any document signed by any Authorized Officer or in any accountant’s certificate, Counsel’s Opinion or Officer’s Certificate may be stated in separate documents of the required description or may be included in one or more thereof.

Section 11.03. Preservation and Inspection of Documents. All reports, certificates, statements and other documents received by the Trustee under the provisions hereof shall be retained in its possession and shall be available at all reasonable times for the inspection of the Issuer, Fannie Mae or any Bondholder and their agents and representatives, any of whom may make copies thereof, but any such reports, certificates, statements or other documents may, at the election of the Trustee, be destroyed or otherwise disposed of at any time six years after such date as the pledge of the Trust Estate created hereby shall be discharged as provided in Section 7.01 hereof.

Section 11.04. No Recourse on Bonds. All covenants, stipulations, promises, agreements and obligations of the Issuer contained in this Indenture shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any of its officers or employees or members
of its governing body, past, present or future, in his or her individual capacity, and no recourse shall be had for the payment of the principal of, premium, if any, or interest on the Bonds or for any claim based thereon or hereunder against any such officer or employee of the Issuer or member of its governing body or any natural person executing the Bonds.

Section 11.05. Severability. If any one or more of the provisions, covenants or agreements in this Indenture on the part of the Issuer or the Trustee to be performed should be illegal, inoperative, unenforceable or contrary to law, then such provision or provisions, covenant or covenants, agreement or agreements, shall be deemed severable from the remaining provisions, covenants and agreements, and shall in no way affect the validity of the other provisions hereof or of the Bonds.

Section 11.06. Notices. Unless otherwise specified in this Indenture, it shall be sufficient service or giving of any notice, request certificate, demand or other communication if the same is sent by (and all notices required to be given by mail will be given by) first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery, or sent by Electronic Means which produces evidence of transmission, and in each case will be deemed to have been given on the date evidenced by the postal or courier receipt or other written evidence of delivery or electronic transmission. Unless a different address is given by any party as provided in this Section, all such communications will be addressed as follows:

To the Issuer: City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, MN 55345
Attn: City Manager

To the Trustee: U.S. Bank National Association
60 Livingston Avenue, 3rd Floor
EP-MN-WS3C
Saint Paul, MN 55107-2292
Attn: Corporate Trust Services

To the Borrower: CHC Minnetonka Affordable Housing LLC
c/o Community Housing Corporation of America, Inc.
161 St. Anthony Avenue, Suite 820
Saint Paul, MN 55103
Attn: President

with copies to: Shelter Corporation
1600 Hopkins Crossroad
Minnetonka, MN 55305
Attn: President

Winthrop & Weinstine, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, MN 55402-4529
Attn: Jeffrey J. Koerselman, Esq.

To the Lender: Dougherty Mortgage LLC
90 South Seventh Street, Suite 4300
Minneapolis, MN 55402-4108
Attn: Fannie Mae Servicing
To the Investor Member:  Wincopin Circle LLLP
c/o Enterprise Asset Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, MD  21044
Attn:  Asset Management
Telephone:  (410) 964-0552
Facsimile:  (410) 772-2630

with a copy to:  Gallagher Evelius & Jones LLP
218 North Charles Street, Suite 400
Baltimore, MD  21201
Attn:  Natalie B. Sherman, Esq.

with a copy to:  Ballard Spahr LLP
1909 K Street, NW, 12th Floor
Washington, DC  20006-1157
Attn:  Rania Samir Galan, Esq.

To the Rating Agency:  Moody’s Investor Service
Public Finance Group
Housing Finance & State Revolving Funds
7 World Trade Center
250 Greenwich Street
New York, NY  10007
Attn:  Lina Grassano, Analyst

To Fannie Mae:  Fannie Mae
3900 Wisconsin Avenue, N.W.
Drawer AM
Washington, DC  20016-2892
Attn:  Director, Multifamily Asset Management
Telephone:  (202) 752-6634
Facsimile:  (240) 699-3880
RE:  $5,850,000 City of Minnetonka, Minnesota
Multifamily Housing Revenue Bonds (Elmbrooke and
Golden Valley Townhomes Project), Series
2017A/Dougherty Mortgage LLC
with a copy to:

Fannie Mae
3900 Wisconsin Avenue, N.W.
Drawer AM
Washington, DC  20016-2892
Attn:  Director, Multifamily Asset Management
Telephone:  (202) 752-6634
Facsimile:  (240) 699-3880
RES$5,850,000 City of Minnetonka, Minnesota Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A/Dougherty Mortgage LLC

Copies of all notices given to Fannie Mae must be given concurrently to the Lender. By notice given under this Indenture, any entity whose address is listed in this Section may designate any different address to which subsequent notices, certificates, requests, demands or other communications shall be sent, but no notice directed to any one such entity (except for Fannie Mae) will be required to be sent to more than two addresses. All approvals required under this Indenture will be given in writing.

Section 11.07. Action Required to be Taken on a Non-Business Day. In any case where any Payment Date, any other date fixed for the payment of interest on or principal of the Bonds, any maturity date or any date fixed for redemption of any Bonds, shall be a day other than a Business Day, then any payment of interest or principal (and premium, if any) required to be made on such date need not be taken or made on such date but may be taken or made on the next succeeding Business Day with the same force and effect as if made or taken on the date herein otherwise provided and, in the case of any Payment Date, no interest shall accrue for the period from and after such date.

Section 11.08. Parties Interested Herein. Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person, other than the Issuer, the Trustee, Fannie Mae and the holders of the Bonds, any right, remedy or claim under or by reason hereof, and any covenants, stipulations, obligations, promises and agreements in this Indenture contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Trustee, Fannie Mae and the holders of the Bonds.

Section 11.09. Counterparts. This Indenture 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 11.10. Tax Certificate. In the event of any conflict between this Indenture and the Tax Certificate, the requirements of the Tax Certificate shall control.

Section 11.11. Applicable Provisions of Law. The laws of the State shall be applicable to the interpretation and construction of this Indenture, except that if the principal office of the Trustee at any time serving as such under this Indenture shall not be located in the State, then matters pertaining to the rights, duties and responsibilities of the Trustee, to the extent not specifically governed by the Act, shall be determined by the laws of the jurisdiction where the principal office of the Trustee is located.
IN WITNESS WHEREOF, the Issuer and the Trustee have caused this Indenture of Trust to be executed and delivered by duly authorized officers thereof as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By

Its Mayor

By

Its City Manager

(Signature Page with respect to the Series 2017A Bonds)
Execution page of the Trustee to the Trust Indenture, dated as of the date and year first written above.

U.S. BANK NATIONAL ASSOCIATION

By

Its Vice President

(Signature Page with respect to the Series 2017A Bonds)
EXHIBIT A

FORM OF BOND

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AS DEFINED IN THE INDENTURE OF TRUST) TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF HENNEPIN
CITY OF MINNETONKA

No. R-1

MULTIFAMILY HOUSING REVENUE BOND
(ELMBROOKE AND GOLDEN VALLEY TOWNHOMES PROJECT)
SERIES 2017A

<table>
<thead>
<tr>
<th>Interest Rate</th>
<th>Stated Maturity</th>
<th>Date of Original Issue</th>
<th>CUSIP Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>%</td>
<td>1, 20</td>
<td>September 1, 2017</td>
<td></td>
</tr>
</tbody>
</table>

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: ________________________________ DOLLARS

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”), for value received, hereby promises to pay by check (but only from the sources specified in the Indenture hereinafter referred to) to the Registered Owner named above or registered assigns, on the Maturity Date stated above subject to the provisions of the Indenture of Trust, dated as of September 1, 2017 (the “Indenture”), between the Issuer and U.S. Bank National Association, a national banking association (the “Trustee”), including, but not limited to, the definition of Payment Date therein and as hereinafter defined (unless this Bond shall have been previously called for redemption and payment of the Redemption Price shall have been made or duly provided for) the Principal Amount stated above in lawful money of the United States of America, and to pay interest thereon in like lawful money at the Pass-Through Rate specified above in the amounts as accrued and for the periods interest is paid (except in connection with a redemption of Bonds upon failure to purchase the Pass-Through Certificate as described in the Indenture) pursuant to the terms of the Pass-Through Certificate, payable on each Payment Date. Interest shall be calculated on the basis of a year of Actual/360. The payment of interest on a Payment Date is the interest accrued during the preceding calendar month. There shall be no further accrual of interest on the Bonds during the period from the Maturity Date to the final Payment Date.
Notwithstanding anything herein to the contrary, on and after the Purchase Date, the principal, interest and premium, if any, payable on the Bonds will be calculated, except with respect to interest payable on the Bonds if redeemed upon failure to purchase the Pass-Through Certificate as described in the Indenture, at the same rate and for the same periods as interest, principal and premium, if any, payable on the Pass-Through Certificate, and will be paid, except with respect to interest payable on the Bonds if redeemed upon failure to purchase the Pass-Through Certificate as described in the Indenture (which will be paid on the redemption date), one Business Day following receipt by the Trustee pursuant to the Pass-Through Certificate. Any capitalized terms used herein that are otherwise not defined shall have the meanings assigned such terms in the Indenture or the Financing Agreement (hereinafter defined).

“Payment Date” means (i) the First Payment Date, (ii) prior to the Purchase Date and prior to the Initial Mandatory Redemption Date, as such date may be extended pursuant to the Indenture, the ______ day of the month (or the next Business Day if the ______ is not a Business Day), and (iii) after the Purchase Date, one Business Day after each date principal, interest, or premium, if any, payment is made pursuant to the Pass-Through Certificate (which shall be the ______ day of the month, or the next Business Day if the ______ is not a Business Day, after payment is due on the underlying Mortgage Loan). The First Payment Date means __________, 2017. There shall be no further accrual of interest from the Maturity Date to the final Payment Date. Interest hereon is payable by the Trustee. Payment of the principal of and interest on the Bonds shall be made to the person appearing on the Bond Register as the registered owner thereof, one Business Day following receipt by the Trustee of the interest, principal and premium, if any, paid on the Pass-Through Certificate at the Pass-Through Rate. The principal of and the interest on the Bonds shall be payable in coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts of the United States of America. Unless the Bonds are Book Entry Bonds, the principal of the Bonds shall be payable to the registered owners thereof upon presentation (except in connection with a redemption of Bonds from principal payments or prepayments on the Pass-Through Certificate) at the designated corporate trust office of the Trustee or its successors. Unless the Bonds are Book Entry Bonds, payments of interest on the Bonds and redemption of Bonds from principal payments or prepayments on the Pass-Through Certificate shall be paid by check mailed to the registered owner thereof at such owner’s address as it appears on the registration books maintained by the Trustee on the applicable Record Date or at such other address as is furnished to the Trustee in writing by such owner. All payments of principal of and interest on Book Entry Bonds shall be made and given at the times and in the manner set out in the representation letter of The Depository Trust Company, New York, New York, or any replacement securities depository appointed under the Indenture.

The date of authentication of each Bond shall be the date such Bond is registered.

The Bonds shall be subject to redemption prior to maturity as follows:

Mandatory Redemption from Principal Payments or Prepayments on Pass-Through Certificate. The Bonds are subject to mandatory redemption in the amounts and one Business Day after the dates (i) principal payments are received pursuant to the Pass-Through Certificate at a price equal to one hundred percent (100%) of the principal amount received pursuant to the Pass-Through Certificate, plus interest received pursuant to the Pass-Through Certificate, (ii) prepayments are received with respect to the Pass-Through Certificate, at a price equal to one hundred percent (100%) of the principal amount received pursuant to the Pass-Through Certificate, plus interest and premium, if any, received pursuant to the Pass-Through Certificate, or (iii) prior to the Purchase Date, redemption is otherwise required on any Payment Date in an amount equal to the Mortgage Loan amortization scheduled on the first day of the month immediately preceding such Payment Date from amounts on deposit in the Collateral Security Fund. No prior notice shall be a prerequisite to the effectiveness of any redemption under (i) or
(ii), which redemption shall occur and be effective irrespective of whether the Trustee fulfills its obligation to provide notice.

**Mandatory Redemption upon Failure to Purchase the Pass-Through Certificate.** The Bonds are subject to mandatory redemption in whole on [Initial Mandatory Redemption Date] __________, 20__ (the “Initial Mandatory Redemption Date”) at a redemption price equal to the Original Issue Price plus interest accrued to the Initial Mandatory Redemption Date (as such date may be extended under the Indenture) upon five Business Days’ notice if (i) a Purchase Date has not occurred by the last date on which timely notice of such redemption may be given preceding such Initial Mandatory Redemption Date (as such date may be extended under the Indenture) and (ii) an Extension Deposit has not been made pursuant to the Indenture, such that the balance in the Collateral Security Fund is equal to the Original Issue Price plus interest accrued on the Bonds to the Initial Mandatory Redemption Date (as such date may be extended under the Indenture). The notice for any such mandatory redemption may be conditional, to the effect that if a Purchase Date occurs not later than the close of business on the second Business Day preceding such Initial Mandatory Redemption Date (as such date may be extended under the Indenture), the noticed mandatory redemption shall not occur.

When the Trustee receives notice of a prepayment on the Pass-Through Certificate under clause (a)(ii) above, the Trustee shall use its best efforts to give not less than twenty (20) nor more than thirty (30) days’ notice, in the name of the Issuer, of the redemption of the Bonds, which notice shall specify the following: (i) the maturity and principal amounts of the Bonds to be redeemed; (ii) the CUSIP number, if any, of the Bonds to be redeemed; (iii) the date of such notice; (iv) the issuance date for such Bonds; (v) the interest rate on the Bonds to be redeemed; (vi) the redemption date; (vii) any conditions to the occurrence of the redemption; (viii) the place or places where amounts due upon such redemption will be payable; (ix) the Redemption Price; (x) the Trustee’s name and address with a contact person and a phone number; and (xi) that on the redemption date, the Redemption Price shall be paid. Neither the giving of such notice by the Trustee nor the receipt of such notice by the Bondholders shall be a condition precedent to the effectiveness of any such redemption.

This Bond is one of the duly authorized bonds of the Issuer designated as Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Bonds”), limited in aggregate principal amount to $5,850,000, issued pursuant to Minnesota Statutes, Chapters 462C and 474A, as amended (the “Act”), and Minnesota Statutes, Sections 471.59 and 471.656, as amended, and pursuant to the Indenture and resolutions duly adopted by the governing body of the Issuer. The Bonds are special, limited obligations of the Issuer payable from and all equally secured by the lien of the Indenture, and the other security pledged thereby, including certain funds and accounts created pursuant thereto. The Bonds are issued for the benefit of CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), whose managing member is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, to finance a portion of the costs of acquiring and substantially rehabilitating multifamily rental housing projects in the City of Minnetonka, Minnesota and the City of Golden Valley, Minnesota.

The payment and other obligations of the Issuer with respect to the Bonds are intended to be, and shall be, independent of the payment and other obligations of the issuer or maker of the Mortgage Note and the Pass-Through Certificate (as hereafter defined), even though the principal amount of all three instruments is expected to be identical, except in the case of a default with respect to one or more of the instruments.

The Bonds are secured by certain funds held under the Indenture as described therein, and after the Purchase Date, if any, by (i) by the pledge of a Guaranteed Mortgage Pass-Through Certificate (the
“Pass-Through Certificate”) issued by the Federal National Mortgage Association (“Fannie Mae”) and delivered to the Trustee, under the terms of which timely payment of principal of and interest on the Pass-Through Certificate is guaranteed by Fannie Mae regardless of whether corresponding payments on the Mortgage Loan are paid when due, and by (ii) amounts payable under the Pass-Through Certificate. After the Purchase Date, the Pass-Through Certificate is held in trust and pledged under the Indenture to secure the payment of the Bonds.

Reference is hereby made to the Act and to the Indenture, a copy of which is on file at the principal office of the Trustee, and all indentures supplemental thereto for a description of the rights thereunder of the registered owners of the Bonds, of the payments and funds pledged and assigned as security for payment of the Bonds and the nature and extent thereof, of the terms on which the Bonds are issued and the terms and conditions on which the Bonds will be deemed to be paid at or prior to maturity or redemption upon provision for payment thereof in the manner set forth in the Indenture, of the rights, duties and immunities of the Trustee and of the rights and obligations of the Issuer thereunder, to all of the provisions of which Indenture the registered owner of this Bond, by acceptance hereof, assents and agrees.


The Bonds are subject to redemption in the amounts and on the dates, in whole or in part, in the event of optional prepayment of amounts payable under the Mortgage Loan and a corresponding prepayment of the Pass-Through Certificate.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute actions to enforce the pledge, assignments in trust or covenants made therein or to take any action with respect to an Event of Default under the Indenture or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture.

If an Event of Default shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture. The Indenture provides that in certain events such declaration and its consequences may be rescinded by the holders of at least a majority in aggregate principal amount of the Bonds then Outstanding.
The Bonds are issuable only as fully registered bonds without coupons in denominations of $1.00 or any integral multiples of $1.00 in excess thereof. Subject to the limitations and conditions and upon payment of the charges, if any, as provided in the Indenture, Bonds may be exchanged at the designated corporate trust office of the Trustee for Bonds in the same aggregate principal amount.

The registration of this Bond is transferable by the registered owner hereof in person or by its attorney duly authorized in writing at the designated corporate trust office of the Trustee. Upon surrender for registration of transfer of this Bond at such office, the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond of the same maturity or maturities and authorized denomination for the same aggregate principal amount. Bonds to be exchanged shall be surrendered at said designated corporate trust office of the Trustee, and the Trustee shall authenticate and deliver in exchange therefore a Bond of equal aggregate principal amount of the same maturity and authorized denomination.

In any case where any Payment Date, any other date fixed for the payment of interest on or principal of the Bonds, any maturity date or any date fixed for redemption of any Bonds, shall be a day other than a Business Day, then any payment of interest or principal (and premium, if any) required to be made on such date need not be taken or made on such date but may be taken or made on the next succeeding Business Day with the same force and effect as if made or taken on the date herein otherwise provided and, in the case of any Payment Date, no interest shall accrue for the period from and after such date.

The Issuer and the Trustee shall treat the registered owner of this Bond as the owner hereof for all purposes, and any notice to the contrary shall not be binding on the Issuer and the Trustee.

The Indenture contains provisions permitting the Issuer and the Trustee, with the written consent of Fannie Mae and the registered owners of not less than two thirds in aggregate principal amount of the Bonds Outstanding, as specified in the Indenture, and in certain instances without such consent, to execute supplemental indentures adding any provisions to, or changing in any manner, or eliminating any of the provisions of, the Indenture; provided, however, that no such supplemental indenture shall (a) permit a change in the terms of redemption or maturity of the principal amount of any Outstanding Bond or an extension of the date for payment of any installment of interest thereon or a reduction in the principal amount of, premium, if any, or the rate of interest on any Outstanding Bond without the consent of the holder of such Bond, (b) reduce the proportion of Bonds the consent of the holders of which is required to effect any such modification or amendment or to effectuate an acceleration of the Bonds prior to maturity, (c) permit the creation of a lien on the Trust Estate pledged under the Indenture prior to or on a parity with the lien of the Indenture, (d) deprive the holders of the Bonds of the lien created by the Indenture upon such Trust Estate (except as expressly provided in the Indenture), without (with respect to clauses (b) through (d)) the consent of the holders of all Bonds then Outstanding, or (e) change or modify any of the rights or obligations of the Trustee without the written consent thereto of the Trustee.

Neither the members of the governing body of the Issuer nor any officer, agent, representative or employee of the Issuer nor any person executing this Bond shall be subject to any personal liability or accountability by reason of the issuance hereof, whether by virtue of any Constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.
It is hereby certified and recited by the Issuer that all conditions, acts and things required by the Indenture or by the laws of the State of Minnesota, including the Act, to exist, to have happened or to have been performed precedent to or in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Bond and the issue of which it forms a part is within every debt and other limit prescribed by said Constitution or statutes.

IN WITNESS WHEREOF, the City of Minnetonka, Minnesota, by its governing body, has caused this Bond to be executed in its name by the manual or facsimile signatures of its duly authorized officials and by the manual signature of a Responsible Agent of the Trustee acting as authenticating agent.

CITY OF MINNETONKA, MINNESOTA

By ________________________________
Its Mayor

By ________________________________
Its City Manager

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds of the series designated therein referred to in the within-mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By ________________________________
Authorized Signature

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto ________________________________ the within Bond and does hereby irrevocably constitute and appoint ________________________________, attorney, to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: ________________________________
PLEASE INSERT SOCIAL SECURITY OR
OTHER IDENTIFYING NUMBER OF
ASSIGNEE ____________________

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever. Signature(s) must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Trustee, which requirements include membership or participation in STAMP or such other “signature guaranty program” as may be determined by the Trustee in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.
EXHIBIT B
FORM OF REQUISITION
(Proceeds Fund)

U.S. Bank National Association

Re: Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A

Ladies and Gentlemen:

You are requested to disburse funds from the Proceeds Fund pursuant to Section 4.02 of the Indenture (defined below) in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the “Requisition”). The terms used in this Requisition shall have the meaning given to those terms in the Indenture of Trust, dated as of September 1, 2017 (the “Indenture”), between the City of Minnetonka, Minnesota and U.S. Bank National Association, as Trustee, securing the above referenced Bonds.

1. REQUISITION NO.:

2. PAYMENT DUE TO:

3. AMOUNT TO BE DISBURSED: $

4. The undersigned certifies that:

   (i) the expenditures for which moneys are requisitioned by this Requisition represent proper charges against the Proceeds Fund, have not been included in any previous requisition, have been properly recorded on the Borrower’s books and are set forth in Schedule I attached to this Requisition, with paid invoices attached for any sums for which reimbursement is requested;

   (ii) the moneys requisitioned are not greater than those necessary to meet obligations due and payable or to reimburse the Borrower for its funds actually advanced for the Project; and

   (iii) the Borrower is not in default under the Financing Agreement, the Regulatory Agreements or the Mortgage Loan Documents and nothing has occurred to the knowledge of the Borrower that would prevent the performance of its obligations under the Financing Agreement, the Regulatory Agreements or the Mortgage Loan Documents.

5. Attached to this Requisition is Schedule I, together with copies of invoices or bills of sale covering all items for which payment is being requested.
DATE OF REQUISITION:

CHC MINNETONKA AFFORDABLE HOUSING
LLC, a Minnesota limited liability company

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

By: ____________________________
Name: Richard Martin
Title: Administrative Manager

APPROVED:

__________________________,
as Lender

__________________________,
Authorized Officer
<table>
<thead>
<tr>
<th>ITEM:</th>
<th>AMOUNT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td></td>
</tr>
</tbody>
</table>
COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT, dated as of September 1, 2017 (the “Cooperative Agreement”), is made and entered into between the CITY OF GOLDEN VALLEY, MINNESOTA, a statutory city and political subdivision of the State of Minnesota, as host city (the “Host City”), and the CITY OF MINNETONKA, MINNESOTA, a home rule charter city and political subdivision of the State of Minnesota, as issuer city (the “Issuer City”).

RECITALS

WHEREAS, CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), has proposed to finance (i) the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive in the Issuer City (the “Elmbrooke Apartments”); and (ii) 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 in the Host City (the “Golden Valley Townhomes,” and together with the Elmbrooke Apartments, the “Project”); and

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

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

WHEREAS, the Host City and the Issuer City are authorized by Minnesota Statutes, Chapter 462C, as amended (the “Act”), to issue revenue obligations to finance multifamily rental housing developments located; and

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

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

WHEREAS, the governing bodies of the Host City and the Issuer City have authorized the execution and delivery of this Cooperative Agreement; and

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

1. The Issuer City will issue its (i) Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Bonds”), in the original aggregate principal amount of $5,850,000; and (ii) Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Note,” and together with the Bonds, the “Obligations”), in the original aggregate principal amount of $900,000. Proceeds of the Obligations will be used to finance the Project, fund any required reserves, and pay the costs of issuing the Obligations.

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

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

4. The Host City hereby consents to and approves (i) the issuance of the Obligations by the Issuer City; and (ii) the financing of the Golden Valley Townhomes by the Issuer City with the proceeds of a portion of the Obligations to be issued by the Issuer City.

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

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

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

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

9. This Cooperative Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement.
IN WITNESS WHEREOF, duly authorized officers of the Host City and the Issuer City have executed this Cooperative Agreement as of the date and year first written above.

CITY OF GOLDEN VALLEY, MINNESOTA,
as Host City

By ________________________________
Its Mayor

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

CITY OF MINNETONKA, MINNESOTA,
as Issuer City

By ____________________________
Its Mayor

By ____________________________
Its City Manager
CITY OF MINNETONKA, MINNESOTA

HOUSING PROGRAM FOR A
MULTIFAMILY HOUSING DEVELOPMENT

Pursuant to Minnesota Statutes, Chapter 462C, as amended (the “Housing Act”), the City of Minnetonka, Minnesota (the “City”) is authorized to develop and administer programs to finance the acquisition, construction, rehabilitation, and equipping of multifamily housing developments under the circumstances and within the limitations set forth in the Housing Act. Section 462C.07 of the Housing Act provides that such programs for multifamily housing developments may be financed by revenue bonds issued by the City.

The City has received a proposal that it approve a program providing for (i) 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 (ii) 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 together with the Elmbrooke Apartments, the “Project”). The acquisition and substantial rehabilitation of the Project is to be funded in part through the issuance by the City of one or more series of revenue bonds, as taxable or tax-exempt obligations, in the approximate aggregate principal amount not to exceed $7,000,000 (the “Obligations”), the proceeds of which will be loaned to CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), whose managing member is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company. All or a portion of the dwelling units of the Project will be subject to occupancy limits imposed by federal income tax law and regulations such that only persons and families within designated income limits will be permitted to occupy such units.

The City, in establishing this multifamily housing program (the “Program”), has considered the information contained in the City’s comprehensive plan. The Project will be constructed in accordance with the requirements of Section 462C.05, subdivisions 1 and 2 of the Housing Act. Additionally, the City is authorized and empowered, pursuant to the Housing Act and Minnesota Statutes, Sections 471.59 and 471.656, as amended, to issue the Obligations to finance, in part, the acquisition and substantial rehabilitation of the Golden Valley Townhomes. At the request of the Borrower, the City and the City of Golden Valley, Minnesota (the “City of Golden Valley”) propose to enter into a cooperative agreement pursuant to which the City of Golden Valley will consent to the issuance of the Obligations by the City to finance the rehabilitation of the Golden Valley Townhomes.

Section A. Definitions. The following terms used in this Program shall have the following meanings, respectively:

“Borrower” shall mean CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), whose managing member is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company.

“City” shall mean the City of Minnetonka, Minnesota.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and the treasury regulations promulgated thereunder.
“Housing Act” shall mean Minnesota Statutes, Chapter 462C, as currently in effect and as the same may be from time to time amended.

“Housing Unit” shall mean any one of the dwelling units financed with the Obligations, each located in the Project, occupied by one person or family, and containing complete living facilities.

“Land” shall mean the real property upon which the Project is situated.

“Obligations” shall mean the revenue bonds to be issued by the City to finance the Project.

“Program” shall mean this housing program for the financing of the Project pursuant to the Housing Act.

“Project” shall mean, collectively, the forty-six (46) existing affordable townhome units located at 5400 Smetana Drive in the City to be acquired and substantially rehabilitated by the Borrower and six (6) existing affordable townhome units at 2100 Douglas Drive North and two (2) existing affordable townhome units at 3354 Lilac Drive North in the City of Golden Valley to be acquired and substantially rehabilitated by the Borrower.

Section B. Program for Financing the Project. It is proposed that the City establish this Program to provide financing for the acquisition and substantial rehabilitation of the Project at a cost and upon such other terms and conditions as are set forth herein and as may be agreed upon in writing between the City, the initial purchasers of the Obligations, and the Borrower. The City expects to issue the Obligations in one or more series as soon as the terms of the Obligations have been agreed upon by the City, the Borrower, and the initial purchasers of the Obligations. The proceeds of the Obligations will be loaned to the Borrower to finance the acquisition and substantial rehabilitation of the Project, to fund required reserves, if any, to pay interest on the Obligations during construction of the Project, if needed, and to pay the costs of issuing the Obligations.

It is anticipated that all series of Obligations will have a maturity of approximately forty (40) years or less. It is expected that the Obligations will bear interest at fixed rates, consistent with the market at the time of issuance, or at variable rates.

The City will hire no additional staff for the administration of the Program. Insofar as the City will be contracting with underwriters, legal counsel, bond counsel, trustees, purchasers, and others, all of whom will be reimbursed from bond proceeds and revenues generated by the Program, no administrative costs will be paid from the City’s budget with respect to this Program. The Obligations will not be general obligations of the City or the City of Golden Valley but will be issued as conduit revenue obligations of the City to be paid only from loan repayments by the Borrower and revenues generated by the property pledged to the payment thereof, which may include additional security such as additional collateral, insurance or a letter of credit.

Section C. Standards and Requirements Relating to the Financing of the Project Pursuant to the Program. The following standards and requirements shall apply with respect to the operation of the Project by the Borrower pursuant to this Program:

(1) Substantially all of the proceeds of the sale of the Obligations will be applied to the acquisition and substantial rehabilitation of the Project, the payment of the costs of issuing the Obligations, the financing of interest on the Obligations during the construction of the Project, if
needed, and the funding of any required reserves. The proceeds of the Obligations will be made available to the Borrower pursuant to the terms of one or more loan agreements (or other revenue agreements) which will include certain covenants to be made by the Borrower to the City regarding the use of proceeds and the character and use of the Project.

(2) The Project qualifies as a “multifamily housing development” within the meaning of the Housing Act, since it is comprised of one or more apartment facilities, including an apartment or unit described in Minnesota Statutes, Chapter 515, 515A, or 515B, or a cooperative, or a group of townhouses, which include four or more dwelling units, each to be rented or sold to or occupied by a person or family for use as a residence, or a building or buildings which include one or more dwelling units, each to be rented by a person or family for use as a residence. The Project may include new construction or the acquisition and rehabilitation of an existing building and site or the rehabilitation of and discharge of any interest or lien in an existing building and site.

(3) The Borrower, and any subsequent owner of the Project, will not arbitrarily reject an application from a proposed tenant because of race, color, creed, religion, national origin, sex, marital status, or status with regard to public assistance or disability.

(4) At least forty percent (40%) of the Housing Units will be held for occupancy by families or individuals with adjusted gross income not in excess of sixty percent (60%) of median family income, adjusted for family size. This set aside will satisfy the low-income occupancy requirements of Section 462C.05, subdivision 2 of the Housing Act.

Section D. Evidence of Compliance. The City may require from the Borrower at or before the issuance of the Obligations evidence satisfactory to the City of compliance with the standards and requirements for the financing established by the City, as set forth herein; and in connection therewith, the City or its representatives may inspect the relevant books and records of the Borrower in order to confirm such ability, intention and compliance. In addition, the City may periodically require certification from either the Borrower or such other person deemed necessary concerning compliance with various aspects of this Program.

Section E. Issuance of Obligations. To finance the Project the City will by resolution authorize, issue and sell the Obligations, in one or more series, as taxable or tax-exempt obligations, in the approximate aggregate principal amount not to exceed $7,000,000. The Obligations will be issued pursuant to Section 462C.07, subdivision 1 of the Housing Act, and will be payable primarily from the revenues of the Project. If the costs of the Project, including capitalized interest, if needed, costs of issuance of the Obligations, and required reserve funds, if any, exceed the principal amount of the Obligations, the Borrower will contribute to the Project the difference between the total costs of the Project and the principal amount of the Obligations available to finance the Project. The costs of the Project may change between the date of preparation of this Program and the date of issuance of the Obligations. The Obligations are expected to be issued in fall 2017.

Section F. Severability. The provisions of this Program are severable and if any of its provisions, sentences, clauses or paragraphs shall be held unconstitutional, contrary to statute, exceeding the authority of the City or otherwise illegal or inoperative by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Section G. Amendment. The City shall not amend this Program, while Obligations authorized hereby are outstanding, to the detriment of the holders of such Obligations.
Section H. State Ceiling.

(1) An application for an allocation of a portion of the annual volume cap for private activity bonds to be issued to provide “qualified residential rental projects,” within the meaning of Sections 142(a)(7) and 142(d) of the Code, will be made to the office of Minnesota Management & Budget, pursuant to Section 146 of the Code and Minnesota Statutes, Chapter 474A, as amended (the “Allocation Act”).

(2) Pursuant to the terms and requirements of the Allocation Act: (i) the Project will meet the requirements of Section 142(d) of the Code regarding the incomes of the occupants of the Project; and (ii) the maximum rent for at least twenty percent (20%) of the Housing Units will not exceed the area fair market rent or exception fair market rents for existing housing, if applicable, as established by the United States Department of Housing and Urban Development.

(3) Prior to the issuance of the Obligations, the Borrower will enter into one or more agreements with the City (collectively, the “Regulatory Agreements”) that specify the maximum rental rates of twenty percent (20%) of the Housing Units and the income levels of the residents of the Project occupying the income-restricted units. Such rental rates and income levels must be within the limitations established in accordance with the preceding paragraph (2). The Borrower will be required to annually certify to the City over the term of the agreement that the rental rates for the rent-restricted units are within the limitations under the preceding paragraph (2). The City may request individual certification of the income of residents of the income-restricted units of the Project. The office of Minnesota Management & Budget may request from the City a copy of the annual certification prepared by the Borrower. The office of Minnesota Management & Budget may require the City to request individual certification of all residents of the income-restricted units of the Project.

(4) The City will monitor Project compliance with the rental rate and income level requirements established under the preceding paragraph (2). The City may issue an order of noncompliance if the Project is found by the City to be out of compliance with the rental-rate or income-level requirements established under the preceding paragraph (2). The Borrower shall pay a penalty to the City equal to one-half of one percent (0.5%) of the total amount of the tax-exempt Bonds issued under the Housing Act for the Project if the City issues an order of noncompliance. For each additional year the Project is out of compliance, the annual penalty must be increased by one-half of one percent (0.5%) of the principal amount of the tax-exempt Obligations issued under the Housing Act for the Project. The City may waive insubstantial violations.

(5) The City will enter into the Regulatory Agreements with the Borrower with a term of at least fifteen (15) years in order to ensure that the Project satisfies the requirements of this Program, Section 142(d) of the Code, the Housing Act, and the Allocation Act.
REGULATORY AGREEMENT
(ELMBROOKE APARTMENTS)

between

CITY OF MINNETONKA, MINNESOTA,
as Issuer

CHC MINNETONKA AFFORDABLE HOUSING LLC,
as Borrower

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

and

BRIDGEWATER BANK,
as Bank

Dated September ___, 2017

Relating to:

$5,850,000
City of Minnetonka, Minnesota
Multifamily Housing Revenue Bonds
(Elmbrooke and
Golden Valley Townhomes Project)
Series 2017A

$900,000
City of Minnetonka, Minnesota
Multifamily Housing Revenue Note
(Elmbrooke and
Golden Valley Townhomes Project)
Series 2017B

This Instrument Drafted by:
Kennedy & Graven, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN  55402
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Definitions</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>Representations by the Borrower</td>
<td>5</td>
</tr>
<tr>
<td>3</td>
<td>Qualified Residential Rental Project</td>
<td>6</td>
</tr>
<tr>
<td>4</td>
<td>Low Income Tenants</td>
<td>8</td>
</tr>
<tr>
<td>5</td>
<td>Restrictions Imposed by Minnesota Statutes, Chapter 474A</td>
<td>10</td>
</tr>
<tr>
<td>6</td>
<td>Covenants Run With the Land</td>
<td>11</td>
</tr>
<tr>
<td>7</td>
<td>Indemnification</td>
<td>11</td>
</tr>
<tr>
<td>8</td>
<td>Consideration</td>
<td>11</td>
</tr>
<tr>
<td>9</td>
<td>Reliance</td>
<td>11</td>
</tr>
<tr>
<td>10</td>
<td>Sale or Transfer of the Project</td>
<td>12</td>
</tr>
<tr>
<td>11</td>
<td>Term</td>
<td>12</td>
</tr>
<tr>
<td>12</td>
<td>Burden and Benefit</td>
<td>13</td>
</tr>
<tr>
<td>13</td>
<td>Enforcement</td>
<td>13</td>
</tr>
<tr>
<td>14</td>
<td>The Trustee, the Bank, and the Issuer</td>
<td>13</td>
</tr>
<tr>
<td>15</td>
<td>Amendment</td>
<td>14</td>
</tr>
<tr>
<td>16</td>
<td>Right of Access to the Project and Records</td>
<td>14</td>
</tr>
<tr>
<td>17</td>
<td>No Conflict with Other Documents</td>
<td>14</td>
</tr>
<tr>
<td>18</td>
<td>Severability</td>
<td>14</td>
</tr>
<tr>
<td>19</td>
<td>Notices</td>
<td>14</td>
</tr>
<tr>
<td>20</td>
<td>Governing Law</td>
<td>15</td>
</tr>
<tr>
<td>21</td>
<td>Payment of Fees</td>
<td>16</td>
</tr>
<tr>
<td>22</td>
<td>Limited Liability</td>
<td>16</td>
</tr>
<tr>
<td>23</td>
<td>Actions of Issuer</td>
<td>16</td>
</tr>
<tr>
<td>24</td>
<td>Counterparts</td>
<td>16</td>
</tr>
<tr>
<td>25</td>
<td>Recording and Filing</td>
<td>16</td>
</tr>
<tr>
<td>26</td>
<td>Fannie Mae Rider to Regulatory Agreement</td>
<td>16</td>
</tr>
<tr>
<td>27</td>
<td>Prior Regulatory Agreement Terminated</td>
<td>16</td>
</tr>
</tbody>
</table>

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

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

FANNIE MAE RIDER TO REGULATORY AGREEMENT ................................................................. Rider-1
REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT, dated September ___, 2017 (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, U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “Trustee”), as trustee for the Series 2017A Bonds (hereinafter defined) and BRIDGEWATER BANK, a Minnesota banking corporation (the “Bank”), as the purchaser of the Series 2017B Note (hereinafter defined).

RECITALS

The Issuer is authorized to issue bonds to finance and refinance multifamily housing developments in accordance with the terms of Minnesota Statutes, Chapters 462C and 474A, as amended (collectively, the “Act”).

The Issuer has agreed to issue the following obligations to finance, in part, the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive, Minnetonka, Minnesota (the “Project”): (i) the Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Series 2017A Bonds”), in the original aggregate principal amount of $5,850,000, pursuant to the terms of a resolution adopted by the City Council of the Issuer on August 28, 2017 (together, the “Bond Resolution”) and an Indenture of Trust, dated as of September 1, 2017 (the “Series 2017A Indenture”), between the Issuer and the Trustee; and (ii) the Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Series 2017B Note”), in the original aggregate principal amount of $900,000, pursuant to the terms of the Bond Resolution.

To finance the Project, the Issuer will (i) loan the proceeds derived from the sale of the Series 2017A Bonds to the Borrower pursuant to a Financing Agreement, dated as of September 1, 2017 (the “Series 2017A Financing Agreement”), between the Issuer, the Borrower, the Trustee, and Dougherty Mortgage LLC, a Delaware limited liability company, as the mortgage lender (the “Mortgage Lender”); and (ii) loan the proceeds derived from the sale of the Series 2017B Note to the Borrower pursuant to a Loan Agreement, dated as of September 1, 2017 (the “Series 2017B Loan Agreement”), between the Issuer and the Borrower.

For good and valuable consideration, the Borrower, the Trustee, the Bank, 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. This Regulatory Agreement supersedes the Regulatory Agreement (Elmbrooke Apartments), dated August 18, 2016.

NOW, THEREFORE, the Borrower, the Trustee, the Bank, 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.

“Act” means, collectively, Minnesota Statutes, Chapters 462C and 474A, 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.

“Bank” means Bridgewater Bank, a Minnesota banking corporation, as the purchaser of the Series 2017B Note, or any successor or assign.

“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 Agreements.

“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 Combined Bonds.

“Combined Bonds” means, collectively, the Series 2017A Bonds and the Series 2017B 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 Agreements” means, collectively, the Series 2017A Financing Agreement and the Series 2017B Loan Agreement.
“Loans” means, collectively, the Loans provided by the Issuer to the Borrower pursuant to the Loan Agreements to provide financing for the Project.

“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.

“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 Combined Bonds.

“Qualified Project Period” means the period beginning on the later of the date of issuance of the Combined Bonds 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 September ____, 2017, between the Issuer, the Borrower, and the Trustee, 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.

“Series 2017A Bonds” means the Issuer’s Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A, issued in the original aggregate principal amount of $5,850,000.


“Series 2017A Indenture” means the Indenture of Trust, dated as of September 1, 2017, between the Issuer and the Trustee, relating to the Series 2017A Bonds.

“Series 2017B Loan Agreement” means the Loan Agreement, dated as of September 1, 2017, between the Issuer and the Borrower, relating to the Series 2017B Note.

“Series 2017B Note” means the Issuer’s Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B, issued in the original aggregate principal amount of $900,000.

“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 successor statute to the Code.

“Trustee” means U.S. Bank National Association, a national banking association, or any successor or assign.

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 Combined Bonds or the use of the proceeds of the Combined Bonds 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 Combined Bonds or this Regulatory Agreement,

(iii) questions the tax-exempt status of the Combined Bonds, 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 Combined Bonds are executed and delivered to the Trustee, 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 Combined Bonds. The Borrower will utilize and operate the Project as a multifamily rental housing project during the term of the Combined Bonds 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 any of the Combined Bonds. The Borrower acknowledges and understands that during any period of time when the Borrower owns the Combined
Bonds, the interest on the Combined Bonds 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 Combined Bonds within two years from the later of (i) the date the Borrower acquires the Project; or (ii) the date of issuance of the Combined Bonds.

(l) The statements made in the various certificates delivered by the Borrower to the Issuer or the Trustee on the date of issuance of the Combined Bonds 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 real 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 Loans 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 Combined Bonds 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 Trustee 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. September 2013), 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 Trustee. 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, 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 Combined Bonds. If requested by the Trustee or Issuer, a copy of such Income Certification shall be filed with the Trustee 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 Trustee 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. September 2013), 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 Trustee, 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 Trustee, 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 Trustee 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 Trustee, 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 Trustee 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 Combined Bonds are issued by the Issuer as residential rental project bonds, as defined in Chapter 474A of the Act (“Chapter 474A”), and have 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 each Project (which shall consist of the same units as meet the requirements of Section 4) to an amount not exceeding 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 Trustee and the Bank and their respective officers, agents, members, directors, officials, and employees as provided in the Loan Agreements. All provisions of the Loan Agreements 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 Combined Bonds in part to provide funds to make the Loans 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 Combined Bonds 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 Combined Bonds and in the exemption from federal income taxation of the interest on the Combined Bonds. In performing their duties and obligations hereunder, the Issuer, the Trustee, and the Bank 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, the Trustee, and the Bank 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, the Trustee, or the Bank hereunder in good faith and in conformity with such written opinion. A copy of any such opinion shall be furnished by the Issuer, the Trustee, or the Bank 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, the Trustee, or the Bank 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, the Trustee, or the Bank 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 Trustee 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 Agreements. 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 Combined Bonds and termination of the Loan Agreements and the Loans
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 Trustee from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Combined Bonds are 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 Combined Bonds have 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 Combined Bonds to become included in gross income for federal income tax purposes or cause interest on the Combined Bonds 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 Combined Bonds were 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, the Bank or the Trustee to the Borrower, then the Issuer, the Trustee, acting upon the direction of the holders of the Series 2017A Bonds pursuant to the Series 2017A Indenture, or the Bank
acting pursuant to the Series 2017B Loan Agreement, 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, the Trustee, the Bank, or the holders of the Combined Bonds 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 consent of the Trustee or the Bank, respectively, declare a default under either of the Loans, accelerate the indebtedness evidenced by either of the Loans, and proceed to redeem the Series 2017A Bonds or the Series 2017B Note in accordance with their terms.

Notwithstanding anything to the contrary contained herein, the Issuer, the Trustee, and the Bank 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 Trustee, the Bank, 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 Trustee, the Bank, or the Issuer, as the case may be, on demand.

After the Combined Bonds have 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 Trustee or the Bank at the direction of the holders of the Combined Bonds.

Section 14. The Trustee, the Bank, and the Issuer. The Trustee is entering into this Regulatory Agreement in its capacity as the Trustee with respect to the Combined Bonds and the Series 2017A Indenture. The Bank is entering into this Regulatory Agreement in its capacity as the purchaser of the Series 2017B Note. The Issuer may, at all times, assume the Borrower’s compliance with this Regulatory Agreement unless otherwise notified in writing by the Trustee or the Bank (but neither the Trustee nor the Bank shall have any obligation to so notify the Issuer), or unless the Issuer has actual knowledge of noncompliance. The Trustee and the Bank can rely on the accuracy of any certificates, instruments, opinions, or reports delivered to them by the Borrower. It is possible that the Combined Bonds will be discharged and the Series 2017A Indenture, the Series 2017A Financing Agreement, and the Series 2017B Loan Agreement will terminate prior to the expiration of the Qualified Project Period. Following the payment in full and the discharge of the Series 2017A Bonds and the termination of the Series 2017A Indenture and the Series 2017A Financing Agreement: (i) all obligations, rights, and duties of the Trustee under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Trustee will instead be undertaken by the Issuer; (iii) all notices to be delivered to the Trustee will instead be delivered to the Issuer and all notices to be delivered by the Trustee will instead be delivered by the Issuer; and (iv) the Trustee shall no longer be parties to this Regulatory Agreement and shall be considered released from all obligations hereunder. Following the payment in full and the discharge of the Series 2017B Note and the termination of the Series 2017B Loan Agreement: (i) all obligations, rights, and duties of the Bank under this Regulatory
Agreement will terminate and be of no further force and effect; (ii) all actions required by the Bank will instead be undertaken by the Issuer; (iii) all notices to be delivered to the Bank will instead be delivered to the Issuer and all notices to be delivered by the Bank will instead be delivered by the Issuer; and (iv) the Bank shall no longer be parties 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 Trustee and the Bank as may be required by the Loan Agreements, and duly recorded. The Issuer’s, the Trustee’s, and the Bank’s consent to any such amendment or revision (whether or not the Combined Bonds shall then be outstanding) shall be given only upon receipt of an opinion of Bond Counsel addressed to the Issuer, the Trustee, and the Bank that such amendment or revision will not adversely affect the exemption from federal income taxation of interest on the Combined Bonds. None of the Issuer, the Trustee, or the Bank 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 Trustee, the Bank, and their duly authorized agents 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 Trustee: U.S. Bank National Association
60 Livingston Avenue, 3rd Floor
EP-MN-WS3C
St. Paul, MN 55107-2292
Attn: Corporate Trust Services
To the Bank:  
Bridgewater Bank  
3800 American Boulevard, Suite 100  
Bloomington, MN  55431  
Attn: Nicholas Place

To the Borrower:  
CHC Minnetonka Affordable Housing LLC  
c/o Community Housing Corporation of America, Inc.  
161 St. Anthony Avenue, Suite 820  
St. Paul, MN  55103  
Attn: President

With copies to:  
Shelter Corporation  
1600 Hopkins Crossroad  
Minnetonka, MN  55305  
Attn: President

Winthrop & Weinstine, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, MN  55402-4629  
Attention: Jeffrey J. Koerselman, Esq.

To the Investor Member:  
Wincopin Circle LLLP  
c/o Enterprise Asset Management, Inc.  
70 Corporate Center  
11000 Broken Land Parkway, Suite 700  
Columbia, MD  21044  
Attn: Asset Management  
Telephone:  (410) 964-0552  
Facsimile:  (410) 772-2630

With a copy to:  
Gallagher Evelius & Jones LLP  
218 North Charles Street, Suite 400  
Baltimore, MD  21201  
Attn: Natalie B. Sherman, Esq.

To the Mortgage Lender:  
Dougherty Mortgage LLC  
90 South Seventh Street, Suite 4300  
Minneapolis, MN  55402-4108  
Attn: Fannie Mae Servicing

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 Loans, the termination of the Loan Agreements, and the defeasance or discharge of the Combined Bonds, 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 Combined Bonds and amounts derived by the Issuer from the Loans and the Loan Agreements.

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 Combined Bonds; 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 Combined Bonds; 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 Combined Bonds, the Series 2017A Indenture, the Series 2017A Financing Agreement, the Series 2017B Loan Agreement, or any other instrument or agreement executed in connection with the issuance of the Combined Bonds. 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 Combined Bonds, 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.

Section 26. Fannie Mae Rider to Regulatory Agreement. The Fannie Mae Rider to Regulatory Agreement (the “Fannie Mae Rider”) attached hereto is hereby made a part of this Regulatory Agreement. In the event of a conflict between the provisions of the Fannie Mae Rider and the provisions of this Regulatory Agreement, the provisions of the Fannie Mae Rider shall control.

Section 27. Prior Regulatory Agreement Terminated. The Regulatory Agreement (Elmbrooke Apartments), dated August 18, 2016, is terminated.
IN WITNESS WHEREOF, the Issuer, the Borrower, and the Trustee 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 September, 2017, 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 September, 2017, 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

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
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: Richard Martin
Title: Administrative Manager

STATE OF MINNESOTA )
) ss
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ___ day of September, 2017, by Richard Martin, the Administrative Manager 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

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
Execution page of the Trustee to the Regulatory Agreement, dated the date and year first written above.

U.S. BANK NATIONAL ASSOCIATION

By

Its Vice President

STATE OF MINNESOTA )
   ) ss.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ____ day of September 2017, by Dan Sheff, the Vice President of U.S. Bank National Association, a national banking association, on behalf of the Trustee.

Notary Public

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
Execution page of the Bank to the Regulatory Agreement, dated the date and year first written above.

BRIDGEWATER BANK

By _________________________________
Nicholas Place
Its Senior Vice President and Chief Lending Officer

STATE OF MINNESOTA    )
COUNTY OF HENNEPIN    ) ss.

The foregoing instrument was acknowledged before me this ____ day of September, 2017, by Nicholas Place, the Senior Vice President and Chief Lending Officer of Bridgewater Bank, a Minnesota banking corporation, on behalf of the Bank.

_______________________________
Notary Public

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Tract B, Registered Land Survey No. 1530, Files of the Registrar of Title, County of Hennepin, State of Minnesota

Torrens Property
Torrens Certificate No. 1051689
# EXHIBIT B

## FORM OF INCOME CERTIFICATION

### TENANT INCOME CERTIFICATION

- Initial Certification
- Recertification
- Other

<table>
<thead>
<tr>
<th>Effective Date: _________________________</th>
</tr>
</thead>
<tbody>
<tr>
<td>Move-in Date: _________________________</td>
</tr>
<tr>
<td>(MM/DD/YY): ____________________________</td>
</tr>
</tbody>
</table>

### PART I. DEVELOPMENT DATA

<table>
<thead>
<tr>
<th>Property Name: Elmbrooke Apartments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address: 5400 Smetana Drive, Minnetonka, Minnesota</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>County:</th>
<th>BIN #:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Unit Number:</th>
<th># Bedrooms:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 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>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

<table>
<thead>
<tr>
<th>HH Br #</th>
<th>Employment or Wages</th>
<th>Soc. Security / Pensions</th>
<th>Public Assistance</th>
<th>Other Income</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(A)</td>
<td>(B)</td>
<td>(C)</td>
<td>(D)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TOTAL</th>
<th>$</th>
<th>$</th>
<th>$</th>
<th>$</th>
</tr>
</thead>
</table>

Add totals from (A) through (D) above

TOTAL INCOME (E): $ ___

### PART IV. INCOME FROM ASSETS

<table>
<thead>
<tr>
<th>HH Mbr#</th>
<th>Type of Asset</th>
<th>C/I</th>
<th>Cash Value of Asset</th>
<th>Annual Income from Asset</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(F)</td>
<td>(G)</td>
<td>(H)</td>
<td>(I)</td>
</tr>
</tbody>
</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) 

**PART V. DETERMINATION OF INCOME ELIGIBILITY**

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES $ From Item (L) on page 1 

Household Meets Income Restriction at: 

<table>
<thead>
<tr>
<th>50%</th>
<th>60%</th>
<th>70%</th>
<th>80%</th>
<th>90%</th>
<th>100%</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

Current Income Limit per Family Size: $ 

Household Income at Move-in $ 

RECERTIFICATION ONLY: 

Current Income Limit x 140% $ 

Household income exceeds 140% at recertification: 

Yes No 

Household Size at Move-in: 

____________________
### PART VI. RENT

<table>
<thead>
<tr>
<th>Tenant Paid Rent</th>
<th>$</th>
<th>Rent Assistance:</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utility Allowance</td>
<td>$</td>
<td>Other non-optional charges:</td>
<td>$</td>
</tr>
</tbody>
</table>

**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)

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.

<table>
<thead>
<tr>
<th>Program</th>
<th>Income Status</th>
<th>Income Status</th>
<th>Income Status</th>
<th>Income Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Tax Credit</td>
<td>≤ 50% AMGI</td>
<td>50% AMGI</td>
<td>≤ 50% AMGI</td>
<td>___</td>
</tr>
<tr>
<td>b. HOME</td>
<td>≤ 60% AMGI</td>
<td>60% AMGI</td>
<td>≤ 80% AMGI</td>
<td>___</td>
</tr>
<tr>
<td>c. Tax Exempt</td>
<td>≤ 80% AMGI</td>
<td>80% AMGI</td>
<td>≤ 0I **</td>
<td>___</td>
</tr>
<tr>
<td>d. AHDP</td>
<td>≤ 0I **</td>
<td>0I **</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e. (Name of Program)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

See Part V above.

** 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 Regulatory Agreement (if applicable), to live in a unit in this Project.
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 S Spouse
A Adult co-tenant O Other family member
C Child F Foster child
L Live-in caretaker 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)
### 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

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Annual Household Income from all sources</strong></td>
<td>Enter the number from item (L).</td>
</tr>
<tr>
<td><strong>Current Income Limit per Family Size</strong></td>
<td>Enter the Current Move-in Income Limit for the household size.</td>
</tr>
<tr>
<td><strong>Household income at move-in</strong></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><strong>Household size at move-in</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Household Meets Income Restriction</strong></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><strong>Current Income Limit x 140%</strong></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>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tenant Paid Rent</strong></td>
<td>Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).</td>
</tr>
<tr>
<td><strong>Rent Assistance</strong></td>
<td>Enter the amount of rent assistance, if any.</td>
</tr>
<tr>
<td><strong>Utility Allowance</strong></td>
<td>Enter the utility allowance. If the owner pays all utilities, enter zero.</td>
</tr>
<tr>
<td><strong>Other non-optional charges</strong></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><strong>Gross Rent for Unit</strong></td>
<td>Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.</td>
</tr>
<tr>
<td><strong>Maximum Rent</strong></td>
<td>Enter the maximum allowable gross rent for the unit.</td>
</tr>
</tbody>
</table>
Limit for this 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 Series 2017A Bonds (hereinafter defined))

U.S. Bank National Association
60 Livingston Avenue
EP-MN-WS3C
St. Paul, MN 55107-2292
Attn: Corporate Trust Services

and (prior to the discharge of the Series 2017B Note (hereinafter defined))

Bridgewater Bank
3800 American Boulevard, Suite 100
Bloomington, MN 55431
Attn: Nicholas Place

Re: Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Series 2017A Bonds”) and Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Series 2017B Note,” and together with the Series 2017A Bonds, the “Combined Bonds”)

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 September __, 2017 (the “Regulatory Agreement”), between the Owner, the City of Minnetonka, Minnesota (the “Issuer”), U.S. Bank National Association, as trustee with respect to the Series 2017A Bonds (the “Trustee”), and Bridgewater Bank, as purchaser of the Series 2017B Note; and (2) the Financing Agreement, dated as of September 1, 2017, between the Owner, the Issuer, the Trustee, and Dougherty Mortgage LLC with respect to the Series 2017A Bonds, and the Loan Agreement, dated as of September 1, 2017, between the Owner and the Issuer with respect to the Series 2017B Note (together, the “Loan Agreements”). The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Combined Bonds.
3. A review of the activities of the Owner and of the Owner’s performance under the Regulatory Agreement and the Loan Agreements 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>Occupied by Low Income Tenants</th>
<th>____ % Units</th>
<th>Nos. ____</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continuously held vacant for occupancy by Low Income Tenants since last occupied by Low Income Tenants</td>
<td>____ % Units</td>
<td>Nos. ____</td>
</tr>
</tbody>
</table>

6. At no time since the date of filing of the last Continuing Program Compliance Certificate (or since the issuance of the Combined Bonds, 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 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 Agreements and, to the knowledge of the undersigned, no Determination of Taxability has occurred with respect to the Combined Bonds.
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 Trustee 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: __________________________

C-3
FANNIE MAE RIDER
TO REGULATORY AGREEMENT

THIS FANNIE MAE RIDER TO REGULATORY AGREEMENT (“Rider”) is attached to and forms a part of the Regulatory Agreement (Elmbrooke Apartments), dated September ___, 2017 (“Regulatory Agreement”), between CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company (“Borrower”), U.S. BANK NATIONAL ASSOCIATION, a national banking association (“Trustee”), BRIDGEWATER BANK, a Minnesota banking corporation (“Bank”), and 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 (“Issuer”).

1. **Definitions.** All capitalized terms used in this Rider have the meanings given to those terms in the Regulatory Agreement, the Series 2017A Indenture, or the Series 2017A Financing Agreement, as applicable.

2. **Applicability.** This Rider shall amend and supplement the Regulatory Agreement. In the event any provision of this Rider conflicts with the Regulatory Agreement, this Rider shall supersede the conflicting provision of the Regulatory Agreement. This Rider shall apply in spite of the fact that the covenants, reservations and restrictions of the Regulatory Agreement run with the land and may be deemed applicable to any successor in interest to the Borrower.

3. **Obligations not Secured by the Mortgaged Property.** The Regulatory Agreement shall not constitute a mortgage, equitable mortgage, deed of trust, deed to secure debt or other lien or security interest in the real property described in the Regulatory Agreement (“Mortgaged Property”). None of the obligations of the Borrower or any subsequent owner of the Mortgaged Property under the Regulatory Agreement shall be secured by a lien on, or security interest in, the Mortgaged Property. All such obligations are expressly intended to be and shall remain unsecured obligations. The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

4. **Subordination.** The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, and 5 and this Rider, are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Mortgage Loan Documents. Upon a conveyance or other transfer of title to the Mortgaged Property by foreclosure, deed in lieu of foreclosure or comparable conversion of the Mortgage Loan, the Person who acquires title to the Mortgaged Property pursuant to such foreclosure, deed in lieu of foreclosure or comparable conversion of the Mortgage Loan (unless such Person is the Borrower or a Person related to the Borrower within the meaning of Section 1.103-10(e) of the Regulations, in which event the Regulatory Agreement shall remain in full force and effect in its entirety) shall acquire such title free and clear of the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, and 5 and this Rider and, from and after the date on which such Person acquires title to the Mortgaged Property, the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, and 5 and this Rider, shall automatically terminate and be of no force and effect; provided that Sections 3, 4, and 5 and this Rider shall also terminate and be of no force or effect under the circumstances set forth in Section 11 of the Regulatory Agreement.

5. **Obligations Personal.** The Issuer agrees that no owner of the Mortgaged Property (including Fannie Mae) subsequent to the Borrower will be liable for, assume or take title to the Mortgaged Property subject to:
(a) any failure of any prior owner of the Mortgaged Property to perform or observe any representation or warranty, affirmative or negative covenant or other agreement or undertaking under the Regulatory Agreement; and

(b) the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by any prior owner of the Mortgaged Property under the Regulatory Agreement.

The Borrower and each subsequent owner of the Mortgaged Property shall be responsible under the Regulatory Agreement for its own acts and omissions occurring during the period of its ownership of the Mortgaged Property. All such liability and obligations shall be and remain personal to such person even after such person ceases to be the owner of the Mortgaged Property.

6. **Sale or Transfer.**

   (a) **Restrictions Not Applicable to Certain Transfers.** All provisions of the Regulatory Agreement regarding the sale or transfer of the Mortgaged Property or of any interest in the Borrower, including any requirement, limitation or condition precedent for any of (i) the consent of the Issuer or the Trustee to such transfer, (ii) an agreement by any transferee to abide by the requirements and restrictions of the Regulatory Agreement, (iii) transferee criteria or other similar requirements, (iv) an opinion of legal counsel and (v) the payment of any assumption fee, transfer fee, penalty or other charges, shall not apply to any of the following:

   (1) any transfer of title to the Mortgaged Property to Fannie Mae or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Mortgaged Property or to any subsequent transfer by Fannie Mae (or a third party) following such foreclosure, deed in lieu of foreclosure or comparable conversion;

   (2) any execution and delivery of a mortgage, deed of trust, deed to secure debt or other lien by the Borrower to secure any additional indebtedness of the Borrower which is originated by a lender for sale to Fannie Mae or guaranteed or otherwise credit enhanced by Fannie Mae; and

   (3) provided that no Series 2017A Bonds are then Outstanding or all Series 2017A Bonds are to be simultaneously fully paid, redeemed or defeased, any execution and delivery of a mortgage, deed of trust, deed to secure debt or other lien by the Borrower to secure any indebtedness incurred by the Borrower which effectively refinances the Mortgage Loan.

   (b) **Fannie Mae Rights to Consent Not Impaired.** Nothing contained in the Regulatory Agreement shall affect any provision of the Mortgage, the Loan Agreement or any Mortgage Loan Document which requires the Borrower to obtain the consent of Fannie Mae as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Mortgaged Property or of any direct or indirect interest in the Borrower, excluding transfers permitted by the Security Instrument.

   (c) **Conclusive Evidence.** Any written consent to a sale or transfer obtained from the Issuer shall constitute conclusive evidence that the sale or transfer is not a violation of the transfer provisions of the Regulatory Agreement.

7. **Damage, Destruction or Condemnation of the Mortgaged Property.** In the event that the Mortgaged Property is damaged or destroyed or title to the property, or any part thereof, is taken
through the exercise or the threat of the exercise of the power of eminent domain, the Borrower shall comply with all applicable requirements of the Mortgage and the other Mortgage Loan Documents.

8. **Regulatory Agreement Default.** Notwithstanding anything contained in the Regulatory Agreement to the contrary:

(a) The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

(b) The occurrence of an event of default under the Regulatory Agreement shall not be or be deemed to be a default under the Mortgage Loan Documents, except as may be otherwise specified in the Mortgage Loan Documents.

(c) Upon any default by the Borrower under the Regulatory Agreement, the Loan Agreement shall govern the remedies and other actions which the Issuer may take on account of such default.

9. **Amendments.** So long as the Loan Agreement is in effect, the Issuer shall not consent to any amendment, supplement to, or restatement of the Regulatory Agreement without the prior written consent of Fannie Mae.

10. **Termination.** The Regulatory Agreement may be terminated upon agreement by the Issuer, the Trustee, Fannie Mae, and the Borrower upon receipt of an opinion of a nationally recognized bond counsel acceptable to the Trustee that such termination will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income purposes. So long as the Bonds have been redeemed or are redeemed within a reasonable period thereafter, the Regulatory Agreement shall terminate and be of no further force or effect from and after the date of any transfer of title to the Mortgaged Property by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Mortgaged Property; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained in the Regulatory Agreement 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 Regulations) obtains an ownership interest in the Mortgaged Property for federal income tax purposes.

11. **Third-Party Beneficiary.** The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of Fannie Mae and are entered into for the benefit of various parties, including Fannie Mae. Fannie Mae shall accordingly have contractual rights in the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Issuer and/or the Trustee, or to cause the Issuer or the Trustee to enforce, the terms of the Regulatory Agreement. In addition, the Borrower and the Issuer intend that Fannie Mae be a third-party beneficiary of the Regulatory Agreement.

12. **Copies of Notices under the Regulatory Agreement.** Copies of all notices under the Regulatory Agreement shall be sent to the Dougherty Mortgage LLC (the “Loan Servicer”) at the address set forth below or to such other address as the Loan Servicer may from time to time designate:

Dougherty Mortgage LLC
90 South Seventh Street, Suite 4300
Minneapolis, MN 55402-4108
Attn: Fannie Mae Servicing
13. **Notices.** Any notice to be given to Fannie Mae shall be sent to Fannie Mae at the address set forth below or to such other address as Fannie Mae may from time to time designate:

Fannie Mae  
3900 Wisconsin Avenue, NW  
Drawer AM  
Washington, DC 20016-2892  
Attention: Director, Multifamily Asset Management  
Telephone: (301) 204-8008  
Facsimile: (301) 280-2065

RE: $5,850,000 City of Minnetonka, Minnesota Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A/Dougherty Mortgage LLC

with a copy to:

Fannie Mae  
3900 Wisconsin Avenue, NW  
Drawer AM  
Washington, DC 20016-2892  
Attention: Vice President, Multifamily Operations  
Telephone: (301) 204-8422  
Facsimile: (202) 752-8369

RE: $5,850,000 City of Minnetonka, Minnesota Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A/Dougherty Mortgage LLC

BORROWER’S INITIALS: ________

ISSUER’S INITIALS: ________

TRUSTEE’S INITIALS: ________
REGULATORY AGREEMENT  
(GOLDEN VALLEY TOWNHOMES)  

between  

CITY OF MINNETONKA, MINNESOTA,  
as Issuer  

CHC MINNETONKA AFFORDABLE HOUSING LLC,  
as Borrower  

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee  

and  

BRIDGEWATER BANK,  
as Bank  

Dated September ___, 2017  

Relating to:  

$5,850,000  
City of Minnetonka, Minnesota  
Multifamily Housing Revenue Bonds  
(Elmbrooke and  
Golden Valley Townhomes Project)  
Series 2017A  

$900,000  
City of Minnetonka, Minnesota  
Multifamily Housing Revenue Note  
(Elmbrooke and  
Golden Valley Townhomes Project)  
Series 2017B  

This Instrument Drafted by:  
Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN  55402
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>PARTIES</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>RECITALS</td>
<td>1</td>
</tr>
<tr>
<td>Section 1. Definitions</td>
<td>2</td>
</tr>
<tr>
<td>Section 2. Representations by the Borrower</td>
<td>5</td>
</tr>
<tr>
<td>Section 3. Qualified Residential Rental Project</td>
<td>6</td>
</tr>
<tr>
<td>Section 4. Low Income Tenants</td>
<td>8</td>
</tr>
<tr>
<td>Section 5. Restrictions Imposed by Minnesota Statutes, Chapter 474A</td>
<td>10</td>
</tr>
<tr>
<td>Section 6. Covenants Run With the Land</td>
<td>11</td>
</tr>
<tr>
<td>Section 7. Indemnification</td>
<td>11</td>
</tr>
<tr>
<td>Section 8. Consideration</td>
<td>11</td>
</tr>
<tr>
<td>Section 9. Reliance</td>
<td>11</td>
</tr>
<tr>
<td>Section 10. Sale or Transfer of the Projects</td>
<td>12</td>
</tr>
<tr>
<td>Section 11. Term</td>
<td>12</td>
</tr>
<tr>
<td>Section 12. Burden and Benefit</td>
<td>13</td>
</tr>
<tr>
<td>Section 13. Enforcement</td>
<td>13</td>
</tr>
<tr>
<td>Section 14. The Trustee, the Bank, and the Issuer</td>
<td>14</td>
</tr>
<tr>
<td>Section 15. Amendment</td>
<td>14</td>
</tr>
<tr>
<td>Section 16. Right of Access to the Projects and Records</td>
<td>14</td>
</tr>
<tr>
<td>Section 17. No Conflict with Other Documents</td>
<td>14</td>
</tr>
<tr>
<td>Section 18. Severability</td>
<td>14</td>
</tr>
<tr>
<td>Section 19. Notices</td>
<td>15</td>
</tr>
<tr>
<td>Section 20. Governing Law</td>
<td>16</td>
</tr>
<tr>
<td>Section 21. Payment of Fees</td>
<td>16</td>
</tr>
<tr>
<td>Section 22. Limited Liability</td>
<td>16</td>
</tr>
<tr>
<td>Section 23. Actions of Issuer</td>
<td>16</td>
</tr>
<tr>
<td>Section 24. Counterparts</td>
<td>16</td>
</tr>
<tr>
<td>Section 25. Recording and Filing</td>
<td>16</td>
</tr>
<tr>
<td>Section 26. Fannie Mae Rider to Regulatory Agreement</td>
<td>16</td>
</tr>
<tr>
<td>Section 27. Prior Regulatory Agreement Terminated</td>
<td>17</td>
</tr>
</tbody>
</table>

SIGNATURES | S-1 |

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 |

FANNIE MAE RIDER TO REGULATORY AGREEMENT | Rider-1 |
REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT, dated September ___, 2017 (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, U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “Trustee”), as trustee for the Series 2017A Bonds (hereinafter defined) and BRIDGEWATER BANK, a Minnesota banking corporation (the “Bank”), as the purchaser of the Series 2017B Note (hereinafter defined).

RECITALS

The Issuer is authorized to issue bonds to finance and refinance multifamily housing developments in accordance with the terms of Minnesota Statutes, Chapters 462C and 474A, as amended (collectively, the “Act”).

The Issuer has agreed to issue the following obligations to finance, in part, 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 “Projects”): (i) the Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Series 2017A Bonds”), in the original aggregate principal amount of $5,850,000, pursuant to the terms of a resolution adopted by the City Council of the Issuer on August 28, 2017 (the “Bond Resolution”) and an Indenture of Trust, dated as of September 1, 2017 (the “Series 2017A Indenture”), between the Issuer and the Trustee; and (ii) the Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Series 2017B Note”), in the original aggregate principal amount of $900,000, pursuant to the terms of the Bond Resolution.

To finance the Project, the Issuer will (i) loan the proceeds derived from the sale of the Series 2017A Bonds to the Borrower pursuant to a Financing Agreement, dated as of September 1, 2017 (the “Series 2017A Financing Agreement”), between the Issuer, the Borrower, the Trustee, and Dougherty Mortgage LLC, a Delaware limited liability company, as the mortgage lender (the “Mortgage Lender”); and (ii) loan the proceeds derived from the sale of the Series 2017B Note to the Borrower pursuant to a Loan Agreement, dated as of September 1, 2017 (the “Series 2017B Loan Agreement”), between the Issuer and the Borrower.

For good and valuable consideration, the Borrower, the Trustee, the Bank, and the Issuer have determined to enter into this Regulatory Agreement in order to impose on each Project certain requirements of the Internal Revenue Code of 1986, as amended, and of the Act applicable to each Project. This Regulatory Agreement supercedes the Regulatory Agreement (Elmbrooke Apartments), dated August 18, 2016.

NOW, THEREFORE, the Borrower, the Trustee, the Bank, and the Issuer do hereby impose upon each Project the following covenants, restrictions, charges, and easements, which shall run with the land and shall be binding and a burden upon the Projects and all portions thereof, and upon any purchaser, grantee, owner, or lessee of any portion of either 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 either 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.

“Act” means, collectively, Minnesota Statutes, Chapters 462C and 474A, 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.

“Bank” means Bridgewater Bank, a Minnesota banking corporation, as the purchaser of the Series 2017B Note, or any successor or assign.

“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 Agreements.

“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 Combined Bonds.

“Combined Bonds” means, collectively, the Series 2017A Bonds and the Series 2017B 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 Agreements” means, collectively, the Series 2017A Financing Agreement and the Series 2017B Loan Agreement.
“Loans” means, collectively, the Loans provided by the Issuer to the Borrower pursuant to the Loan Agreements to provide financing for the Projects.

“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.

“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 Combined Bonds.

“Qualified Project Period” means, for each Project, the period beginning on the later of the date of issuance of the Combined Bonds 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 September ___, 2017, between the Issuer, the Borrower, and the Trustee, 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.

“Series 2017A Bonds” means the Issuer’s Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A, issued in the original aggregate principal amount of $5,850,000.


“Series 2017A Indenture” means the Indenture of Trust, dated as of September 1, 2017, between the Issuer and the Trustee, relating to the Series 2017A Bonds.

“Series 2017B Loan Agreement” means the Loan Agreement, dated as of September 1, 2017, between the Issuer and the Borrower, relating to the Series 2017B Note.

“Series 2017B Note” means the Issuer’s Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B, issued in the original aggregate principal amount of $900,000.

“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 successor statute to the Code.

“Trustee” means U.S. Bank National Association, a national banking association, or any successor or assign.

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 Combined Bonds or the use of the proceeds of the Combined Bonds 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 Combined Bonds or this Regulatory Agreement,

   (iii) questions the tax-exempt status of the Combined Bonds, 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 Combined Bonds are executed and delivered to the Trustee, 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 Combined Bonds. The Borrower will utilize and operate the both Projects as multifamily rental housing projects during the term of the Combined Bonds 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 any of the Combined Bonds. The Borrower acknowledges and understands that during any period of time when the Borrower owns the Combined Bonds, the interest on the Combined Bonds 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 Combined Bonds within two years from the later of (i) the date the Borrower acquires each Project; or (ii) the date of issuance of the Combined Bonds.

(l) The statements made in the various certificates delivered by the Borrower to the Issuer or the Trustee on the date of issuance of the Combined Bonds 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 real 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 Loans 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 Combined Bonds 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 Trustee 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. September 2013), 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 Trustee. 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, 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 Combined Bonds. If requested by the Trustee or Issuer, a copy of such Income Certification shall be filed with the Trustee 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 Trustee 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. September 2013), 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 Trustee, 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 Trustee, 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 Trustee 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 Trustee, 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 Trustee 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 Combined Bonds are issued by the Issuer as residential rental project bonds, as defined in Chapter 474A of the Act (“Chapter 474A”), and have 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 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 Trustee and the Bank and their respective officers, agents, members, directors, officials, and employees as provided in the Loan Agreements. All provisions of the Loan Agreements 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 Combined Bonds in part to provide funds to make the Loans 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 Combined Bonds by the Issuer, the Borrower has entered into this Regulatory 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 Combined Bonds and in the exemption from federal income taxation of the interest on the Combined Bonds. In performing their duties and obligations hereunder, the Issuer, the Trustee, and the Bank 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, the Trustee, and the Bank 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, the Trustee, or the Bank hereunder in good faith and in conformity with such written opinion. A copy of any such opinion shall be furnished by the Issuer, the Trustee, or the Bank 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, the Trustee, or the Bank 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, the Trustee, or the Bank 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 Trustee 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 Agreements. 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 Combined Bonds and termination of the Loan Agreements and the Loans 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 Trustee from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Combined Bonds are 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 Combined Bonds have 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 Combined Bonds to become included in gross income for federal income tax purposes or cause interest on the Combined Bonds 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 Combined Bonds were 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, the Bank or the Trustee to the Borrower, then the Issuer, the Trustee, acting upon the direction of the holders of the Series 2017A Bonds pursuant to the Series 2017A Indenture, or the Bank acting pursuant to the Series 2017B Loan Agreement, 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, the Trustee, the Bank, or the holders of the Combined Bonds hereunder;

(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 consent of the Trustee or the Bank, respectively, declare a default under either of the Loans, accelerate the indebtedness evidenced by either of the Loans, and proceed to redeem the Series 2017A Bonds or the Series 2017B Note in accordance with their terms.

Notwithstanding anything to the contrary contained herein, the Issuer, the Trustee, and the Bank 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 Trustee, the Bank, 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 Trustee, the Bank, or the Issuer, as the case may be, on demand.

After the Combined Bonds have 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 Trustee or the Bank at the direction of the holders of the Combined Bonds.

**Section 14. The Trustee, the Bank, and the Issuer.** The Trustee is entering into this Regulatory Agreement in its capacity as the Trustee with respect to the Combined Bonds and the Series 2017A Indenture. The Bank is entering into this Regulatory Agreement in its capacity as the purchaser of the Series 2017B Note. The Issuer may, at all times, assume the Borrower’s compliance with this Regulatory Agreement unless otherwise notified in writing by the Trustee or the Bank (but neither the Trustee nor the Bank shall have any obligation to so notify the Issuer), or unless the Issuer has actual knowledge of noncompliance. The Trustee and the Bank can rely on the accuracy of any certificates, instruments, opinions, or reports delivered to them by the Borrower. It is possible that the Combined Bonds will be discharged and the Series 2017A Indenture, the Series 2017A Financing Agreement, and the Series 2017B Loan Agreement will terminate prior to the expiration of the Qualified Project Period. Following the payment in full and the discharge of the Series 2017A Bonds and the termination of the Series 2017A Indenture and the Series 2017A Financing Agreement: (i) all obligations, rights, and duties of the Trustee under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Trustee will instead be undertaken by the Issuer; (iii) all notices to be delivered to the Trustee will instead be delivered to the Issuer and all notices to be delivered by the Trustee will instead be delivered by the Issuer; and (iv) the Trustee shall no longer be
parties to this Regulatory Agreement and shall be considered released from all obligations hereunder. Following the payment in full and the discharge of the Series 2017B Note and the termination of the Series 2017B Loan Agreement: (i) all obligations, rights, and duties of the Bank under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Bank will instead be undertaken by the Issuer; (iii) all notices to be delivered to the Bank will instead be delivered to the Issuer and all notices to be delivered by the Bank will instead be delivered by the Issuer; and (iv) the Bank shall no longer be parties 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 Trustee and the Bank as may be required by the Loan Agreements, and duly recorded. The Issuer’s, the Trustee’s, and the Bank’s consent to any such amendment or revision (whether or not the Combined Bonds shall then be outstanding) shall be given only upon receipt of an opinion of Bond Counsel addressed to the Issuer, the Trustee, and the Bank that such amendment or revision will not adversely affect the exemption from federal income taxation of interest on the Combined Bonds. None of the Issuer, the Trustee, or the Bank 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 Trustee, the Bank, and their duly authorized agents 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 Trustee: U.S. Bank National Association
60 Livingston Avenue, 3rd Floor
EP-MN-WS3C
St. Paul, MN 55107-2292
Attn: Corporate Trust Services

To the Bank: Bridgewater Bank
To the Borrower:

CHC Minnetonka Affordable Housing LLC
c/o Community Housing Corporation of America, Inc.
161 St. Anthony Avenue, Suite 820
St. Paul, MN 55103
Attn: President

With copies to:

Shelter Corporation
1600 Hopkins Crossroad
Minnetonka, MN 55305
Attn: President

Winthrop & Weinstine, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, MN 55402-4629
Attention: Jeffrey J. Koerselman, Esq.

To the Investor Member:

Wincopin Circle LLLP
c/o Enterprise Asset Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, MD 21044
Attn: Asset Management
Telephone: (410) 964-0552
Facsimile: (410) 772-2630

With a copy to:

Gallagher Evelius & Jones LLP
218 North Charles Street, Suite 400
Baltimore, MD 21201
Attn: Natalie B. Sherman, Esq.

To the Mortgage Lender:

Dougherty Mortgage LLC
90 South Seventh Street, Suite 4300
Minneapolis, MN 55402-4108
Attn: Fannie Mae Servicing

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 Loans, the termination of the Loan Agreements, and the defeasance or discharge of the Combined Bonds, 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 Combined Bonds and amounts derived by the Issuer from the Loans and the Loan Agreements.

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 Combined Bonds; 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 Combined Bonds; 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 Combined Bonds, the Series 2017A Indenture, the Series 2017A Financing Agreement, the Series 2017B Loan Agreement, or any other instrument or agreement executed in connection with the issuance of the Combined Bonds. 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 Combined Bonds, 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.

Section 26. Fannie Mae Rider to Regulatory Agreement. The Fannie Mae Rider to Regulatory Agreement (the “Fannie Mae Rider”) attached hereto is hereby made a part of this Regulatory Agreement. In the event of a conflict between the provisions of the Fannie Mae Rider and the provisions of this Regulatory Agreement, the provisions of the Fannie Mae Rider shall control.

Section 27. Prior Regulatory Agreement Terminated. The Regulatory Agreement (Golden Valley Townhomes), dated August 18, 2016, is terminated.
IN WITNESS WHEREOF, the Issuer, the Borrower, and the Trustee 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 )

SS.

The foregoing instrument was acknowledged before me this ___ day of September, 2017, 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 )

SS.

The foregoing instrument was acknowledged before me this ___ day of September, 2017, 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

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
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: Richard Martin
Title: Administrative Manager

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) ss

The foregoing instrument was acknowledged before me this ___ day of September, 2017, by Richard Martin, the Administrative Manager 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

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
Execution page of the Trustee to the Regulatory Agreement, dated the date and year first written above.

U.S. BANK NATIONAL ASSOCIATION

By
Its Vice President

STATE OF MINNESOTA )
) ss.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ___ day of September 2017, by Dan Sheff, the Vice President of U.S. Bank National Association, a national banking association, on behalf of the Trustee.

Notary Public

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
Execution page of the Bank to the Regulatory Agreement, dated the date and year first written above.

BRIDGEWATER BANK

By ______________________________
Nicholas Place
Its Senior Vice President and Chief Lending Officer

STATE OF MINNESOTA    )
) ss.
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this ___ day of September, 2017, by Nicholas Place, the Senior Vice President and Chief Lending Officer of Bridgewater Bank, a Minnesota banking corporation, on behalf of the Bank.

____________________________________
Notary Public

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Parcel 1:
The West 404 feet of the South Half of Block 14, Yarnall’s Golden Valley Outlots, Hennepin County, Minnesota.

Abstract Property

Parcel 2:
The South Half of Lot 3, Block 3, Dahinden’s 3rd Addition, Hennepin County, Minnesota.

Abstract Property

Parcel 3:
Lot 1, Block 3, Rearrangement of Lots 15, 16 and 17, Yale Garden Homes.

Hennepin County, Minnesota
Torrens Property
Torrens Certificate No. 1051690
EXHIBIT B
FORM OF INCOME CERTIFICATION

TENANT INCOME CERTIFICATION

<table>
<thead>
<tr>
<th>Initial Certification</th>
<th>Recertification</th>
<th>Other</th>
</tr>
</thead>
</table>

Effective Date: _________________________
Move-in Date: _________________________
(MM/DD/YY): _________________________

PART I. DEVELOPMENT DATA

<table>
<thead>
<tr>
<th>Property Name:</th>
<th>Golden Valley Townhomes</th>
<th>County:</th>
<th>BIN #:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>[2100 Douglas Drive North] [3354 Lilac Drive North], Golden Valley, Minnesota</td>
<td>Unit Number:</td>
<td># Bedrooms:</td>
</tr>
</tbody>
</table>

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>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</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></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</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>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Column (H) Total</td>
<td>Passbook Rate if over $5,000</td>
<td>(J) Imputed Income</td>
<td>TOTAL INCOME FROM ASSETS (K)</td>
<td>TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES</td>
</tr>
<tr>
<td>------------------</td>
<td>-------------------------------</td>
<td>---------------------</td>
<td>-----------------------------</td>
<td>-----------------------------------------------</td>
</tr>
</tbody>
</table>

Enter Column (H) Total: $____________
Passbook Rate if over $5,000: $____________

$____________ \times 2.00\% = (J) Imputed Income: $

Enter the greater of the total column I, or J: imputed income total

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: $

Household Size at Move-in:

---

RECERTIFICATION ONLY: Current Income Limit x 140%

Household income exceeds 140% at recertification:

- Yes
- No

Household Size at Move-in:
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 Enter 1-4

If yes, enter student explanation** (also attach documentation)

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>
</tr>
</thead>
<tbody>
<tr>
<td>☐ ≤ 50% AMGI</td>
<td>☐ 50% AMGI</td>
<td>☐ ≤ 50% AMGI</td>
<td>☐ ____________</td>
</tr>
<tr>
<td>☐ ≤ 60% AMGI</td>
<td>☐ 60% AMGI</td>
<td>☐ ≤ 80% AMGI</td>
<td>☐ ____________</td>
</tr>
<tr>
<td>☐ ≤ 80% AMGI</td>
<td>☐ 80% AMGI</td>
<td>☐ ≤ 0I **</td>
<td>☐ ≤ 0I **</td>
</tr>
<tr>
<td>☐ ≤ 0I **</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 Regulatory Agreement (if applicable), to live in a unit in this Project.

503454v3 JAE MN140-185
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  S  Spouse
A  Adult co-tenant    O  Other family member
C  Child            F  Foster child
L  Live-in caretaker  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)
### 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

<table>
<thead>
<tr>
<th>Description</th>
<th>Notes</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</td>
<td>For recertifications only. Enter the household income from the move-in certification.</td>
</tr>
<tr>
<td>Household size at move-in</td>
<td>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>Notes</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</td>
<td>Enter the maximum allowable gross rent for the unit.</td>
</tr>
</tbody>
</table>
Limit for this 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 Series 2017A Bonds (hereinafter defined))

U.S. Bank National Association
60 Livingston Avenue
EP-MN-WS3C
St. Paul, MN 55107-2292
Attn: Corporate Trust Services

and (prior to the discharge of the Series 2017B Note (hereinafter defined))

Bridgewater Bank
3800 American Boulevard, Suite 100
Bloomington, MN 55431
Attn: Nicholas Place

Re: Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Series 2017A Bonds”) and Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Series 2017B Note,” and together with the Series 2017A Bonds, the “Combined Bonds”) 

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 September __, 2017 (the “Regulatory Agreement”), between the Owner, the City of Minnetonka, Minnesota (the “Issuer”), U.S. Bank National Association, as trustee with respect to the Series 2017A Bonds (the “Trustee”), and Bridgewater Bank, as purchaser of the Series 2017B Note; and (2) the Financing Agreement, dated as of September 1, 2017, between the Owner, the Issuer, the Trustee, and Dougherty Mortgage LLC with respect to the Series 2017A Bonds, and the Loan Agreement, dated as of September 1, 2017, between the Owner and the Issuer with respect to the Series 2017B Note (together, the “Loan Agreements”). The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Combined Bonds.
3. A review of the activities of the Owner and of the Owner’s performance under the Regulatory Agreement and the Loan Agreements 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>Occupied by Low Income Tenants</th>
<th>_____ % Units</th>
<th>Nos.____</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continuously held vacant for occupancy by Low Income Tenants since last occupied by Low Income Tenants</td>
<td>_____ % Units</td>
<td>Nos.____</td>
</tr>
</tbody>
</table>

6. At no time since the date of filing of the last Continuing Program Compliance Certificate (or since the issuance of the Combined Bonds, 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 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 Agreements and, to the knowledge of the undersigned, no Determination of Taxability has occurred with respect to the Combined Bonds.
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 Trustee 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: __________________________________________
FANNIE MAE RIDER
TO REGULATORY AGREEMENT

THIS FANNIE MAE RIDER TO REGULATORY AGREEMENT (“Rider”) is attached to and forms a part of the Regulatory Agreement (Elmbrooke Apartments), dated September __, 2017 (“Regulatory Agreement”), between CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company (“Borrower”), U.S. BANK NATIONAL ASSOCIATION, a national banking association (“Trustee”), BRIDGEWATER BANK, a Minnesota banking corporation (“Bank”), and 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 (“Issuer”).

1. Definitions. All capitalized terms used in this Rider have the meanings given to those terms in the Regulatory Agreement, the Series 2017A Indenture, or the Series 2017A Financing Agreement, as applicable.

2. Applicability. This Rider shall amend and supplement the Regulatory Agreement. In the event any provision of this Rider conflicts with the Regulatory Agreement, this Rider shall supersede the conflicting provision of the Regulatory Agreement. This Rider shall apply in spite of the fact that the covenants, reservations and restrictions of the Regulatory Agreement run with the land and may be deemed applicable to any successor in interest to the Borrower.

3. Obligations not Secured by the Mortgaged Property. The Regulatory Agreement shall not constitute a mortgage, equitable mortgage, deed of trust, deed to secure debt or other lien or security interest in the real property described in the Regulatory Agreement (“Mortgaged Property”). None of the obligations of the Borrower or any subsequent owner of the Mortgaged Property under the Regulatory Agreement shall be secured by a lien on, or security interest in, the Mortgaged Property. All such obligations are expressly intended to be and shall remain unsecured obligations. The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

4. Subordination. The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, and 5 and this Rider, are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Mortgage Loan Documents. Upon a conveyance or other transfer of title to the Mortgaged Property by foreclosure, deed in lieu of foreclosure or comparable conversion of the Mortgage Loan, the Person who acquires title to the Mortgaged Property pursuant to such foreclosure, deed in lieu of foreclosure or comparable conversion of the Mortgage Loan (unless such Person is the Borrower or a Person related to the Borrower within the meaning of Section 1.103-10(e) of the Regulations, in which event the Regulatory Agreement shall remain in full force and effect in its entirety) shall acquire such title free and clear of the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, and 5 and this Rider and, from and after the date on which such Person acquires title to the Mortgaged Property, the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, and 5 and this Rider shall automatically terminate and be of no force and effect; provided that Sections 3, 4, and 5 and this Rider shall also terminate and be of no force or effect under the circumstances set forth in Section 11 of the Regulatory Agreement.

5. Obligations Personal. The Issuer agrees that no owner of the Mortgaged Property (including Fannie Mae) subsequent to the Borrower will be liable for, assume or take title to the Mortgaged Property subject to:
(a) any failure of any prior owner of the Mortgaged Property to perform or observe any representation or warranty, affirmative or negative covenant or other agreement or undertaking under the Regulatory Agreement; and

(b) the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by any prior owner of the Mortgaged Property under the Regulatory Agreement.

The Borrower and each subsequent owner of the Mortgaged Property shall be responsible under the Regulatory Agreement for its own acts and omissions occurring during the period of its ownership of the Mortgaged Property. All such liability and obligations shall be and remain personal to such person even after such person ceases to be the owner of the Mortgaged Property.

6. **Sale or Transfer.**

(a) **Restrictions Not Applicable to Certain Transfers.** All provisions of the Regulatory Agreement regarding the sale or transfer of the Mortgaged Property or of any interest in the Borrower, including any requirement, limitation or condition precedent for any of (i) the consent of the Issuer or the Trustee to such transfer, (ii) an agreement by any transferee to abide by the requirements and restrictions of the Regulatory Agreement, (iii) transferee criteria or other similar requirements, (iv) an opinion of legal counsel and (v) the payment of any assumption fee, transfer fee, penalty or other charges, shall not apply to any of the following:

(1) any transfer of title to the Mortgaged Property to Fannie Mae or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Mortgaged Property or to any subsequent transfer by Fannie Mae (or a third party) following such foreclosure, deed in lieu of foreclosure or comparable conversion;

(2) any execution and delivery of a mortgage, deed of trust, deed to secure debt or other lien by the Borrower to secure any additional indebtedness of the Borrower which is originated by a lender for sale to Fannie Mae or guaranteed or otherwise credit enhanced by Fannie Mae; and

(3) provided that no Series 2017A Bonds are then Outstanding or all Series 2017A Bonds are to be simultaneously fully paid, redeemed or defeased, any execution and delivery of a mortgage, deed of trust, deed to secure debt or other lien by the Borrower to secure any indebtedness incurred by the Borrower which effectively refines the Mortgage Loan.

(b) **Fannie Mae Rights to Consent Not Impaired.** Nothing contained in the Regulatory Agreement shall affect any provision of the Mortgage, the Loan Agreement, or any Mortgage Loan Document which requires the Borrower to obtain the consent of Fannie Mae as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Mortgaged Property or of any direct or indirect interest in the Borrower, excluding transfers permitted by the Security Instrument.

(c) **Conclusive Evidence.** Any written consent to a sale or transfer obtained from the Issuer shall constitute conclusive evidence that the sale or transfer is not a violation of the transfer provisions of the Regulatory Agreement.

7. **Damage, Destruction or Condemnation of the Mortgaged Property.** In the event that the Mortgaged Property is damaged or destroyed or title to the property, or any part thereof, is taken
through the exercise or the threat of the exercise of the power of eminent domain, the Borrower shall comply with all applicable requirements of the Mortgage and the other Mortgage Loan Documents.

8. **Regulatory Agreement Default.** Notwithstanding anything contained in the Regulatory Agreement to the contrary:

   (a) The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

   (b) The occurrence of an event of default under the Regulatory Agreement shall not be or be deemed to be a default under the Mortgage Loan Documents, except as may be otherwise specified in the Mortgage Loan Documents.

   (c) Upon any default by the Borrower under the Regulatory Agreement, the Loan Agreement shall govern the remedies and other actions which the Issuer may take on account of such default.

9. **Amendments.** So long as the Loan Agreement is in effect, the Issuer shall not consent to any amendment, supplement to, or restatement of the Regulatory Agreement without the prior written consent of Fannie Mae.

10. **Termination.** The Regulatory Agreement may be terminated upon agreement by the Issuer, the Trustee, Fannie Mae, and the Borrower upon receipt of an opinion of a nationally recognized bond counsel acceptable to the Trustee that such termination will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income purposes. So long as the Bonds have been redeemed or are redeemed within a reasonable period thereafter, the Regulatory Agreement shall terminate and be of no further force or effect from and after the date of any transfer of title to the Mortgaged Property by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Mortgaged Property; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained in the Regulatory Agreement 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 Regulations) obtains an ownership interest in the Mortgaged Property for federal income tax purposes.

11. **Third-Party Beneficiary.** The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of Fannie Mae and are entered into for the benefit of various parties, including Fannie Mae. Fannie Mae shall accordingly have contractual rights in the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Issuer and/or the Trustee, or to cause the Issuer or the Trustee to enforce, the terms of the Regulatory Agreement. In addition, the Borrower and the Issuer intend that Fannie Mae be a third-party beneficiary of the Regulatory Agreement.

12. **Copies of Notices under the Regulatory Agreement.** Copies of all notices under the Regulatory Agreement shall be sent to the Dougherty Mortgage LLC (the “Loan Servicer”) at the address set forth below or to such other address as the Loan Servicer may from time to time designate:

    Dougherty Mortgage LLC  
    90 South Seventh Street, Suite 4300  
    Minneapolis, MN 55402-4108  
    Attn: Fannie Mae Servicing
13. **Notices.** Any notice to be given to Fannie Mae shall be sent to Fannie Mae at the address set forth below or to such other address as Fannie Mae may from time to time designate:

Fannie Mae  
3900 Wisconsin Avenue, NW  
Drawer AM  
Washington, DC 20016-2892  
Attention: Director, Multifamily Asset Management  
Telephone: (301) 204-8008  
Facsimile: (301) 280-2065

RE: $5,850,000 City of Minnetonka, Minnesota Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A/Dougherty Mortgage LLC

with a copy to:

Fannie Mae  
3900 Wisconsin Avenue, NW  
Drawer AM  
Washington, DC 20016-2892  
Attention: Vice President, Multifamily Operations  
Telephone: (301) 204-8422  
Facsimile: (202) 752-8369

RE: $5,850,000 City of Minnetonka, Minnesota Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A/Dougherty Mortgage LLC

BORROWER’S INITIALS: ________  
ISSUER’S INITIALS: ________  
TRUSTEE’S INITIALS: ________
ASSIGNMENT OF LOAN AGREEMENT

between

CITY OF MINNETONKA, MINNESOTA, as Issuer

and

BRIDGEWATER BANK, as Lender

Dated as of September 1, 2017

Relating to:

$900,000
City of Minnetonka, Minnesota
Multifamily Housing Revenue Note
(Elmbrooke and Golden Valley Townhomes Project)
Series 2017B

This instrument was drafted by:
Kennedy & Graven, Chartered (JAE)
200 South Sixth Street
470 U.S. Bank Plaza
Minneapolis, Minnesota  55402
ASSIGNMENT OF LOAN AGREEMENT

THIS ASSIGNMENT OF LOAN AGREEMENT is made and entered into as of September 1, 2017 (the “Assignment”), 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 (together with its successors and assigns, the “Issuer”), and BRIDGEWATER BANK, a Minnesota banking corporation (the “Lender”).

RECITALS

WHEREAS, 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, and the Issuer have entered into a Loan Agreement, dated as of September 1, 2017 (the “Loan Agreement”), pursuant to which the Issuer will loan to the Borrower the proceeds derived from the sale to the Lender of the Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Note”), issued by the Issuer in the original aggregate principal amount of $900,000; and

WHEREAS, the Note is to be payable from and secured by the loan repayments (the “Loan Repayments”) to be made by the Borrower under the Loan Agreement, and the Lender, as a condition to purchasing the Note, has required the execution by the Issuer of this Assignment;

NOW THEREFORE, as an inducement to the Lender 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 to the Lender under the Loan Agreement, the Issuer does hereby assign to the Lender all of the Issuer’s right, title, and interest in and to the Loan Agreement, including the Loan Repayments payable by the Borrower thereunder, subject to the Issuer’s reserved rights provided in Section 7.10 of the Loan Agreement.

2. The Issuer hereby represents and warrants to the Lender that the Issuer’s right, title, and interest in the Loan Agreement is free and clear of any lien, security interest, or other encumbrance other than that arising under this Assignment.

3. The Issuer hereby authorizes the Lender to exercise, either in the Issuer’s name or the Lender’s name, any and all rights available to the Issuer under the Loan Agreement, subject to the reserved rights of the Issuer set forth in the Loan Agreement and described herein. The Issuer agrees, on request of the Lender, to execute and deliver to the Lender such other documents or instruments as shall be deemed necessary or appropriate by the Lender at any time to confirm or perfect the security interest hereby granted. The Issuer hereby appoints the Lender its attorney-in-fact to execute and/or file or record on behalf of the Issuer, and in its name, any and all such assignments, financing statements, or other documents or instruments which the Lender 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 7.7 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 money under the Loan Agreement (except as permitted under Section 7.10 of the Loan Agreement) or assign, transfer, or hypothecate (other than to the Lender hereunder) any of the same then due or to accrue in the future.

5. The Issuer expressly covenants and agrees that the Lender shall be entitled to receive all Loan Repayments and other payments under the Loan Agreement (except any payments due to the Issuer pursuant to its reserved rights provided in Section 7.10 of the Loan Agreement), and hereby authorizes and directs the Borrower to make such Loan Repayments and other payments directly to the Lender. The Lender covenants and agrees that all payments received by the Lender pursuant to the Loan Agreement shall be applied as provided in the Loan Agreement and the Note.

6. The Lender agrees to advance the purchase price of the Note on behalf of the Borrower as provided in the Note, the Loan Agreement, and the other agreements between the Borrower and the Lender entered into in connection with the issuance and delivery of the Note (collectively, the “Loan Documents”).

7. If an Event of Default shall occur and be continuing after the expiration of any cure rights under the terms of the Loan Agreement, the Lender may exercise any one or more or all, and 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 Lender may, without prior notice of any kind, declare the principal of and interest accrued on the Note immediately due and payable.

(b) The Lender 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, the Pledge of Deposit Account, the Guaranty, or the other Loan Documents securing payment of 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; all the covenants, promises, and agreements in this Assignment contained by or on behalf of the Issuer or the Lender 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 Assignment shall not render any other provision or provisions herein contained unenforceable or invalid.

10. This Assignment shall in all respects be construed in accordance with and governed by the laws of the State of Minnesota. This Assignment may not be amended or modified except in writing signed by the Issuer and the Lender.

11. This Assignment may be executed, acknowledged, and delivered in any number of counterparts and each of such counterparts shall constitute an original but all of which together shall constitute one agreement.
12. Capitalized terms used in this Assignment which are not defined in this Assignment but are defined in the Loan Agreement shall have the meanings specified in the Loan Agreement, unless the context of this Assignment otherwise requires.

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 (specifically the Assigned Capital Contributions).

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Issuer and the Lender have caused this Assignment of Loan Agreement to be duly executed as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By ________________________________
Its Mayor

By ________________________________
Its City Manager

(Signature Page with respect to the Series 2017B Note)
Execution page of the Lender to the Assignment of Loan Agreement, dated as of the date and year first written above.

BRIDGEWATER BANK

By

Nicholas Place
Its Senior Vice President and Chief Lending Officer

(Signature Page with respect to the Series 2017B Note)
LOAN AGREEMENT

between

CITY OF MINNETONKA, MINNESOTA,
   as Issuer

and

CHC MINNETONKA AFFORDABLE HOUSING LLC,
   as Borrower

Dated as of September 1, 2017

Relating to:

$900,000
City of Minnetonka, Minnesota
Multifamily Housing Revenue Note
(Elmbrooke and Golden Valley Townhomes Project)
Series 2017B

Except for certain reserved rights, the interest of the City of Minnetonka, Minnesota (the “Issuer”) in this Loan Agreement, dated as of September 1, 2017, between the Issuer and CHC Minnetonka Affordable Housing LLC, has been pledged and assigned to Bridgewater Bank (the “Lender”), under the terms of an Assignment of Loan Agreement, dated as of September 1, 2017, between the Issuer and the Lender.

This instrument was drafted by:
Kennedy & Graven, Chartered (JAE)
200 South Sixth Street
470 U.S. Bank Plaza
Minneapolis, Minnesota  55402
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>PARTIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARTICLE I DEFINITIONS AND RULES OF INTERPRETATION</td>
</tr>
<tr>
<td>Section 1.1 Definitions</td>
</tr>
<tr>
<td>Section 1.2 Rules of Interpretation</td>
</tr>
<tr>
<td>ARTICLE II REPRESENTATIONS</td>
</tr>
<tr>
<td>Section 2.1 Representations by the Issuer</td>
</tr>
<tr>
<td>Section 2.2 Representations by the Borrower</td>
</tr>
<tr>
<td>ARTICLE III LOAN TO THE BORROWER</td>
</tr>
<tr>
<td>Section 3.1 Amount and Source of Loan</td>
</tr>
<tr>
<td>Section 3.2 Disbursement of the Loan</td>
</tr>
<tr>
<td>Section 3.3 Repayment of the Loan</td>
</tr>
<tr>
<td>Section 3.4 Borrower’s Obligations Unconditional</td>
</tr>
<tr>
<td>Section 3.5 Borrower’s Remedies</td>
</tr>
<tr>
<td>Section 3.6 Administrative Fee</td>
</tr>
<tr>
<td>ARTICLE IV BORROWER’S COVENANTS</td>
</tr>
<tr>
<td>Section 4.1 Financial Statements</td>
</tr>
<tr>
<td>Section 4.2 Indemnity</td>
</tr>
<tr>
<td>Section 4.3 Reports to Governmental Agencies</td>
</tr>
<tr>
<td>Section 4.4 Security for the Loan</td>
</tr>
<tr>
<td>Section 4.5 Preservation of Tax Exemption</td>
</tr>
<tr>
<td>Section 4.6 Lease or Sale of Project</td>
</tr>
<tr>
<td>Section 4.7 Project Operation and Maintenance Expenses</td>
</tr>
<tr>
<td>Section 4.8 Notification of Changes</td>
</tr>
<tr>
<td>Section 4.9 Maintenance of Facility as Qualified Residential Rental Project</td>
</tr>
<tr>
<td>Section 4.10 Compliance with Issuer’s Private Activity Bond Policy</td>
</tr>
<tr>
<td>Section 4.11 Interest Reserve Fund</td>
</tr>
<tr>
<td>ARTICLE V PREPAYMENT OF LOAN</td>
</tr>
<tr>
<td>Section 5.1 Prepayment at Option of Borrower</td>
</tr>
<tr>
<td>Section 5.2 Termination Upon Retirement of the Note</td>
</tr>
<tr>
<td>ARTICLE VI EVENTS OF DEFAULT AND REMEDIES</td>
</tr>
<tr>
<td>Section 6.1 Events of Default</td>
</tr>
<tr>
<td>Section 6.2 Remedies</td>
</tr>
<tr>
<td>Section 6.3 Disposition of Funds</td>
</tr>
<tr>
<td>Section 6.4 Manner of Exercise</td>
</tr>
<tr>
<td>Section 6.5 Attorneys’ Fees and Expenses</td>
</tr>
<tr>
<td>Section 6.6 Effect of Waiver</td>
</tr>
<tr>
<td>ARTICLE VII GENERAL</td>
</tr>
<tr>
<td>Section 7.1 Notices</td>
</tr>
<tr>
<td>Section 7.2 Binding Effect</td>
</tr>
<tr>
<td>Section 7.3</td>
</tr>
<tr>
<td>-------------</td>
</tr>
<tr>
<td>Section 7.4</td>
</tr>
<tr>
<td>Section 7.5</td>
</tr>
<tr>
<td>Section 7.6</td>
</tr>
<tr>
<td>Section 7.7</td>
</tr>
<tr>
<td>Section 7.8</td>
</tr>
<tr>
<td>Section 7.9</td>
</tr>
<tr>
<td>Section 7.10</td>
</tr>
<tr>
<td>Section 7.11</td>
</tr>
</tbody>
</table>

SIGNATURES

S-1
LOAN AGREEMENT

THIS LOAN AGREEMENT is made and entered into as of September 1, 2017 (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 (together with its successors and assigns, the “Issuer”), and CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company (together with its successors and assigns, the “Borrower”), the managing member of which is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company.

WITNESSETH:

WHEREAS, Minnesota Statutes, Chapters 462C and 474A, as amended (collectively, the “Act”), authorizes the Issuer to issue revenue obligations to finance and refinance 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, pursuant to the Act, Minnesota Statutes, Sections 471.59 and 471.656, as amended, and a resolution adopted by the City Council of the Issuer on August 28, 2017, the Issuer will issue its Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Note”), in the original aggregate principal amount of $900,000, to (i) finance a portion of the costs of the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive, Minnetonka, Minnesota (the “Elmbrooke Apartments”); (ii) finance a portion of the costs of 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”); (iii) finance capitalized interest, if necessary; and (iv) pay costs of issuance of the Note; and

WHEREAS, a portion of the costs of the acquisition and substantial rehabilitation of the Elmbrooke Apartments and the Golden Valley Townhomes (together, the “Project”) will be financed with the proceeds of the Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A, issued by the Issuer in the original aggregate principal amount of $5,850,000, pursuant to an Indenture of Trust, dated as of September 1, 2017, between the Issuer and U.S. Bank National Association, as trustee (the “Bond Trustee”); and

WHEREAS, in connection with the issuance of the Note, the Issuer, the Borrower, the Bond Trustee, and the Lender will enter into separate Regulatory Agreements, each dated the Closing Date
(hereinafter defined), related to each of the Elmbrooke Apartments and the Golden Valley Townhomes, relating to compliance with certain federal and state requirements applicable to the Project; 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

WHEREAS, the Issuer will assign its rights under this Loan Agreement to the Lender (except for certain unassigned rights set forth in Section 7.9 hereof) pursuant to the Assignment of Loan Agreement, dated as of September 1, 2017, between the Issuer and the Lender; 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 Lender a Guaranty, dated the Closing Date (hereinafter defined); and

WHEREAS, as additional security for the Borrower’s repayment obligations hereunder, the Borrower will cause to be delivered to the Lender an Assignment of Capital Contributions, dated the Closing Date, relating to the assignment of certain capital contributions of Wincopin Circle LLLP, a Maryland limited liability limited partnership (the “Investor Member”); a Collateral Assignment of Contract Rights, dated the Closing Date, assigning certain contract rights to enforce other capital contributions of the Investor Member; and a Pledge Agreement-Deposit Account, dated the Closing Date, relating to the deposit of the capital contributions by the Investor Member; 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 I
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: collectively, Minnesota Statutes, Chapters 462C and 474A, as amended.

Assigned Capital Contributions: the third installment in the expected amount of $[1,524,018], the fourth installment in the expected amount of $[159,000], and the fifth installment in the expected amount of $[239,810].

Assignment of Capital Contributions: the Assignment of Capital Contributions, dated the Closing Date, from the Borrower and the Managing Member to the Lender, and acknowledged by the Investor Member, as the same may be amended from time to time.

Assignment of Contract Rights: the Collateral Assignment of Contract Rights, dated the Closing Date, from the Borrower and the Managing Member to the Lender, and acknowledged by the Investor Member, as the same may be amended from time to time.

Assignment of Loan Agreement: the Assignment of Loan Agreement, dated as of September 1, 2017, between the Issuer and the Lender, assigning the Issuer’s interest in this Loan Agreement (except for certain retained rights) to the Lender to the extent provided therein, as the same may from time to time be amended or supplemented as herein provided.

Bond Counsel: the firm of Kennedy & Graven, Chartered of Minneapolis, Minnesota, or any other firm of nationally recognized bond counsel experienced in tax-exempt bond financing acceptable to the Issuer. Any opinion of Bond Counsel shall be a written opinion signed by such Bond Counsel.

Bonds: the Multifamily Housing Revenue Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A, issued by the Issuer in the original aggregate principal amount of $5,850,000.

Bond Trustee: U.S. Bank National Association, a national banking association, its successors and assigns, as trustee for the Bonds.

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 Closing Date, executed and delivered by the Borrower in connection with the issuance of the Note.

Closing Date: September ___, 2017, which is the date the Note is initially issued and delivered to the Lender.

Combined Bonds: collectively, the Bonds and the Note.

Construction Costs: all direct costs authorized by the Act and paid or incurred by the Borrower to acquire the Land, construct and complete the Improvements, and acquire and install the Equipment, including, but not limited to, interest on the Note during construction, site preparation costs, architectural fees, engineering fees, contractor’s fees, and all costs of labor, material, and services.

Cooperative Agreement: the Cooperative Agreement, dated as of September 1, 2017, between the Issuer and the City of Golden Valley, Minnesota, entered into in accordance with Minnesota Statutes, Sections 471.59 and 471.656, as amended.

Counsel: an attorney designated by or acceptable to the Lender, 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: this term shall have the meaning ascribed to it in Section 4.5(2) hereof.

Determination of Taxability: this term shall have the meaning ascribed to it in Section 4.5(2) hereof.

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) existing affordable apartment units located at 5400 Smetana Drive, Minnetonka, Minnesota.

Equipment: any and all machinery, equipment, furniture, and other tangible personal property purchased or to be purchased by the Borrower, which will be financed, in part, with the proceeds of the Note.

Event of Default: any of the events described in Section 6.1 hereof.


Guarantor: Community Housing Corporation of America, Inc., a Delaware nonprofit corporation and sole member of the Managing Member, its successors and assigns.

Guaranty: the Guaranty, dated the Closing Date, by the Guarantor in favor of the Lender, as it may be amended from time to time.

Improvements: the Project and any equipment or tangible personal property to be constructed or installed by the Borrower, in accordance with the plans and specifications approved by the Lender.

Intercreditor Agreement: the Intercreditor and Recognition Agreement, dated the Closing Date, between the Issuer, as issuer of the Bonds, the Issuer, as the issuer of the Note, and the Borrower, and their respective successors and assigns, as it may be amended from time to time.

Interest Reserve Fund: the fund of such designation established under Section 4.11 hereof to be held by the Lender.
Investor Member: Wincopin Circle LLLP, a Maryland limited liability limited partnership, its permitted 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 Lender, 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 the 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, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State, and any successors and assigns.

Issuer Documents: collectively, the Note, this Loan Agreement, the Assignment of Loan Agreement, the Cooperative Agreement, the Regulatory Agreements, and the Intercreditor Agreement.

Land: the real property and any other easements and rights legally described in Exhibit A attached to each of the Regulatory Agreements.

Lender: Bridgewater Bank, a Minnesota banking corporation, its successors and assigns.

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 from the Issuer to the Borrower of the proceeds derived from the sale of the Note in accordance with the terms of this Loan Agreement.

Loan Agreement: this Loan Agreement, dated as of September 1, 2017, between the Issuer and the Borrower, as the same may from time to time be amended or supplemented as herein provided.

Loan Disbursement Agreement: the Loan Disbursement Agreement, dated the Closing Date, between the Borrower, the Lender, and the Title Company, as it may be amended from time to time.

Loan Purchase Agreement: the Loan Purchase Agreement, dated the Closing Date, between the Borrower and the Lender, as it may be amended from time to time.

Managing Member: CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, its permitted successors and assigns.

Note: the Multifamily Housing Revenue Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B, issued by the Issuer in the original aggregate principal amount of $900,000.

Note Register: the records kept by the Issuer to provide for the registration of transfer of ownership of the Note.

Plans and Specifications: the Plans and Specifications for the Improvements.
**Pledge Agreement-Deposit Account**: means the Pledge Agreement-Deposit Account, dated the Closing Date, by the Borrower in favor of the Lender, as it may be amended from time to time.

**Principal Balance**: so much of the principal sum of the Note as from time to time remains unpaid.

**Project**: the Land, Improvements, and Equipment as they may at anytime exist, constituting generally of the (a) acquisition and substantial rehabilitation of the Elmbrooke Apartments; and (b) acquisition and substantial rehabilitation of the Golden Valley Townhomes.

**Project Costs**: the total of all Construction Costs and Issuance Expenses to be financed with the proceeds of the Note.

**Regulatory Agreements**: collectively, the Regulatory Agreement with respect to the Elmbrooke Apartments, dated the Closing Date, between the Issuer, the Borrower, the Bond Trustee, and the Lender, and the Regulatory Agreement with respect to the Golden Valley Townhomes, dated the Closing Date, between the Issuer, the Borrower, the Bond Trustee, and the Lender, all as the same may be amended from time to time.

**Related Documents**: this Loan Agreement, the Loan Purchase Agreement, the Assignment of Loan Agreement, the Cooperative Agreement, the Loan Disbursement Agreement, the Regulatory Agreements, the Pledge Agreement-Deposit Account, the Guaranty, the Assignment of Capital Contributions, the Assignment of Contract Rights, the Intercreditor Agreement, and all other documents securing the Note or the Borrower’s obligations under this Loan Agreement.

**Resolution**: the resolution adopted by the City Council of the Issuer on July 24, 2017, authorizing the issuance and sale of the Note.

**State**: the State of Minnesota.

**Title Company**: Commercial Partners Title, LLC, a Minnesota limited liability company, its successors and assigns.

**Treasury Regulations**: all proposed, temporary, or permanent federal income tax regulations then in effect and applicable.

**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 under Section 103(a) of the Code.

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

REPRESENTATIONS

Section 2.1 Representations by the Issuer. The Issuer makes the following representations as the basis for its covenants herein:

(1) The Issuer is a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State.

(2) To the actual knowledge of the undersigned, without inquiry or investigation, there is no pending or threatened suit, action, or proceeding against the Issuer before any court, arbitrator, administrative agency, or other governmental authority that challenges the execution and delivery by the Issuer of the Issuer Documents.

(3) To the actual knowledge of the undersigned, without inquiry or investigation, the execution and delivery of the Issuer Documents will not constitute a breach of or default under any existing (a) provisions of any special legislative act 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 and delivery of the Note or the execution and delivery of the Issuer Documents has been repealed, rescinded, amended, or revoked.

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 limited 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 and all other states where its activities require such authorization, has power to enter into the Related Documents to which it is a party and to use the Project for the purpose set forth in this Loan Agreement, and by proper organizational action has authorized the execution and delivery of the Related Documents to which it is a party.

(2) The execution and delivery of the Related Documents to which it is a party, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and shall 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 is now a party or by which it is bound or to which any property of the Borrower is subject; do not and shall not constitute a default under any of the foregoing or, to the best of the Borrower’s knowledge, 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 Project; and do not and shall 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) Each portion of the Project, the Elmbrooke Apartments, the Douglas Drive Golden Valley Townhomes, and the Lilac Drive Golden Valley Apartments, comprise three distinct multifamily housing developments as contemplated by the Act. Subject to the other provisions of this Loan Agreement, it is presently intended and reasonably expected that any equipment purchased from the proceeds of the Combined Bonds will be permanently located and exclusively used on the Land and that the Borrower shall operate the Project on the Land throughout the term of this Loan Agreement in the normal conduct of the Borrower’s business.

(4) The Note is issued within the exemption provided under Section 142(d) of the Code with respect to qualified residential rental projects. Ninety-five percent (95%) or more of the net proceeds of the Combined Bonds shall be used for expenditures chargeable to the capital account of the Project.

(5) The Project comprises three (3) distinct multifamily housing developments. There is public access to the Project. As of the Closing Date, the use of the Project as designed and proposed to be operated complies, 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 Project is located. 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 Project have been or shall be obtained to acquire, rehabilitate, construct, install, and operate the Project and the Borrower has obtained all necessary approvals to enter into, execute, and perform its obligations under the Related Documents.

(6) The proceeds of the Combined Bonds, together with any other funds to be contributed to the Project by the Borrower or otherwise in accordance with this Loan Agreement, shall be sufficient to pay the cost of completing the Project, and all costs and expenses incidental thereto, and the proceeds of the Combined Bonds shall be used only for the purposes contemplated hereby and allowable under the Act.

(7) The Borrower is not in the trade or business of selling properties such as the Project and is constructing the Project for investment purposes only or otherwise for use by the Borrower in its trade or business 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 Project.

(8) 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.

(9) 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.

(10) The Borrower has filed all federal and state income tax returns which, to the knowledge of the general partner 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.

(11) No public official of the Issuer has either a direct or indirect financial interest in
this Loan Agreement nor shall any public official either directly or indirectly benefit financially
from this Loan Agreement within the meaning of Minnesota Statutes, Sections 412.311 and
471.87, as amended.

(12) Other than the Bonds, no other obligations have been or will be issued under
Section 103 of the Code which are sold at substantially the same time as the Note, under the same
plan of financing, which are reasonably expected to be paid out of substantially the same source
of funds as the Note.

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

LOAN TO THE BORROWER

Section 3.1 Amount and Source of Loan. The Issuer has authorized the issuance of the Note and the making of the Loan of the proceeds thereof to the Borrower to finance a portion of the Project. Upon satisfaction of all terms and conditions set forth herein and in the Related Documents, the Issuer agrees to lend to the Borrower, upon the terms and conditions set forth herein and in the Note, the proceeds of the Note by causing such sums to be advanced to the Borrower to finance a portion of the Project.

Section 3.2 Disbursement of the Loan. Under the terms of this Loan Agreement, the Loan Purchase Agreement, the Loan Disbursement Agreement, and the Act, the Issuer hereby authorizes the Borrower to provide directly for the financing of the Project in such manner as determined by the Borrower and hereby authorizes the Lender to advance the proceeds of the Note to be used to pay Project Costs in accordance with the terms of the Loan Disbursement Agreement.

Section 3.3 Repayment of the Loan. Subject to the prepayment provisions set forth in the Note, the Borrower agrees to repay the Loan by making all payments of principal, interest, and any premium, penalty, or other charge that is 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 Lender for the account of the Issuer. The Borrower shall also pay the reasonable fees and expenses of the Issuer, including the reasonable fees and expenses of Bond Counsel in connection with issuance of the Note. So long as the Note is outstanding, the Borrower shall repay the Loan solely from the Assigned Capital Contributions.

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 shall not suspend or discontinue any payments, and shall perform and observe all of its other agreements in this Loan Agreement, and, except as expressly permitted herein, shall 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 Project, eviction by paramount title, commercial frustration of purpose, bankruptcy or insolvency of the Issuer or the Lender, 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.

Section 3.5 Borrower’s Remedies. Nothing contained in this Article shall be construed to release the Issuer from the performance of any of its agreements in this Loan Agreement.

Section 3.6 Administrative Fee. The Borrower agrees to pay to the Issuer an administrative fee equal to one-eighth of one percent (0.125%) of the principal amount of the Note, which shall be payable by the Borrower on the Closing Date. The administrative fee is not pledged to payment of the Note and may be used by the Issuer for any proper purpose.
ARTICLE IV
BORROWER’S COVENANTS

Section 4.1 Financial Statements. Commencing with the fiscal year ending December 31, 2017, 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 ninety (90) days of the close of each fiscal year will furnish a copy to the Lender.

The Borrower shall provide the Lender a copy of its annually filed tax returns, including all schedules and exhibits, within thirty (30) days of the Borrower filing such tax returns, and in no event later than October 25 of each year.

Commencing with the calendar year ending December 31, 2017, the Borrower shall also furnish to the Lender a rent roll within ninety (90) days after the end of each calendar year for the Project.

The Borrower shall deliver to the Lender any additional financial statements of the Borrower upon such terms and conditions as are imposed by the Lender under the terms of the Loan Purchase Agreement.

Section 4.2 Indemnity. The Borrower shall, to the extent permitted by law, pay and shall protect, indemnify, and save the Issuer, its officers, agents, and employees harmless from and against all liabilities, losses, damages, costs, expenses (including reasonable attorneys’ fees and expenses), causes of action, suits, claims, demands, and judgments of any nature (collectively, “Losses”) arising from:

1. any injury to or death of any person or damage to property in or upon the Project or growing out of or connected with the use, non-use, condition, or occupancy of the Project or any part thereof;

2. violation of any agreement or condition of this Loan Agreement, except by the Issuer;

3. violation of any contract, agreement, or restriction by the Borrower relating to the Project;

4. violation of any law, ordinance, or regulation affecting the Project or a part thereof or the ownership, occupancy, or use thereof, or arising out of this Loan Agreement, the Note, or the transactions contemplated thereby, including any requirements imposed on the Lender as a financial institution or any disclosure or registration requirements imposed by any federal or state securities laws; and

5. any statement or information relating to the expenditure of the proceeds of the Combined Bonds contained in the Borrower Tax Certificate or similar document furnished by the Borrower to the Issuer which, at the time made, is misleading, untrue, or incorrect in any material respect.
Notwithstanding the foregoing, the Borrower shall not be responsible for any Losses arising from the willful misconduct or gross negligence of the Issuer, its officers, agents, or employees.

Section 4.3  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 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 Lender.

Section 4.4 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 the Related Documents and such other documents reasonably requested by the Issuer, the Lender, or Counsel, in such places and in such manner as the Issuer, the Lender, or Counsel deems necessary or desirable to perfect or protect the security interest of the Lender in and to the Project and other collateral referred to in such documents; provided that no such instruments or acts shall change the economic terms of the transactions described herein or expand the liabilities of the parties hereunder without the consent of all the parties hereto.

Section 4.5 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 Lender 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 purchased the Land on or before the Closing Date, and no more than twenty-five percent (25%) of the net proceeds of the Combined Bonds 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 4.6 hereof, and in no event shall the Project be managed in a manner that would cause interest on the Combined Bonds to be includable 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 Combined Bonds as “exempt facility bonds” issued to provide a “qualified residential rental project” thereunder and to qualify the Project as a “qualified residential rental project” thereunder. The Borrower shall fulfill its obligations under the Regulatory Agreements.

(c) 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, does not allow deduction for interest paid on the Combined Bonds 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.

(d) In order to qualify the Combined Bonds 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.

(e) The Borrower has not paid or incurred any costs to be reimbursed from proceeds of the Combined Bonds before the date which is sixty (60) days before April 11, 2016, the date of adoption by the City Council of the Issuer of a written declaration of official intent which complies with the provisions of Section 1.150-2(d) and (e) of the Treasury Regulations, except for “preliminary expenditures” (within the meaning of Section 1.150-2(f)(2) of the Treasury Regulations) 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 Combined Bonds, or expenditures in the de minimis amount of $100,000 (as defined in Section 1.150-2(f)(1) of the Treasury Regulations).

(f) The weighted average maturity of the Combined Bonds 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.

(g) No portion of the proceeds of the Combined Bonds 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.

(h) Any Issuance Expenses financed by the Combined Bonds shall not exceed two percent (2%) of the proceeds of the Combined Bonds.

(i) The Borrower shall not use the proceeds of the Combined Bonds in such manner as to cause either of the Combined Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and applicable Treasury Regulations.

(j) 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 Combined Bonds, 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 rates borne by the Combined Bonds 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 Combined Bonds are 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 Lender shall be furnished with such calculations within sixty (60) days of the time they are made. If the Lender is not furnished with such calculations, the Lender may undertake to have such calculations made at the expense of the Borrower. Such calculations shall be retained until six (6) years after the Combined Bonds are paid in full. The rebate shall be calculated as provided in Section 148(f) of the Code and Sections 1.148-0 through
1.148-9 of the Treasury Regulations, including taking into account the gain or loss on the disposition of nonpurpose investments. The Borrower shall acquire, and shall cause the Lender to acquire, all nonpurpose investments at their fair market value in arm’s length transactions.

(k) 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.

(l) Other than the Bonds, 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 Section 1.50(1)(c)(1) of the Treasury Regulations.

(m) 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.

(n) No proceeds of the Combined Bonds shall be invested in investments which cause the Combined Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code.

(o) The Borrower shall not otherwise use the proceeds of the Combined Bonds, or take or fail to take any action, the effect of which would be to impair the exclusion of interest on the Combined Bonds 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 includable, for federal income tax purposes under Section 103 of the Code, in the gross income of the Lender 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 Lender or any other interested party has expired without any such contest or appeal having been properly instituted by the Lender, 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 Lender 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 Lender or any other holder or prior holder of the Note, as the case may be, for federal income tax purposes.

(3) If the Lender 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.

(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 Lender.
Section 4.6 Lease or Sale of Project. The Borrower shall not lease, sell, convey, or otherwise transfer the Project, in whole or part, without first securing the written consent of the Lender; 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 Combined Bonds be used to provide a qualified residential rental project, or under the Act that no portion of the Project to be financed or refinanced from proceeds of the Combined Bonds 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 Lender of any such sale, transfer, assignment, or lease. Nothing contained in this Section shall prohibit the Borrower from (a) entering into leases with residential tenants in the ordinary course of business, (b) entering into easement or other agreements necessary for the operation of the Project, (c) admitting investor members or transferring investor member interests in the Borrower, or (d) removing a managing member of the Borrower in accordance with the Borrower’s operating agreement, which removal of a managing member shall require Lender consent.

Section 4.7 Project Operation and Maintenance Expenses. The Borrower shall pay all expenses of the operation and maintenance of the Project, including, but without limitation, adequate insurance thereon and insurance against all liability for injury to persons or property arising from the operation thereof.

Section 4.8 Notification of Changes. The Borrower covenants and agrees that it shall promptly notify the Issuer and the Lender of:

1. any litigation which may materially and adversely affect the Borrower and any of its properties;

2. the occurrence of any Event of Default under this Loan Agreement, the occurrence of any event of default under the Related Documents or any other loan agreement, debenture, note, purchase agreement, other agreement providing for the borrowing of money by the Borrower or the occurrence of 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 an event of default under the Related Documents or such other agreements; and

3. any material adverse change in the operations, business, properties, assets, or conditions, financial or otherwise, of the Borrower.

Section 4.9 Maintenance of Facility as Qualified Residential Rental Project. The Borrower covenants that following its acquisition, substantial rehabilitation, and equipping of the Project and subject to the provisions of any recorded document amending, terminating, or deleting such covenants, the Project is to be owned, operated, and managed as three (3) distinct “qualified residential rental projects” within the meaning of Section 142(d) of the Code. To that end, the Borrower further represents, covenants, and agrees that it shall fulfill its obligations under the Regulatory Agreements.

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 Interest Reserve Fund. The Borrower shall maintain an Interest Reserve Fund in the amount of $42,500. The Borrower shall make the initial deposit of $42,500 into the Interest Reserve Fund on the Closing Date with equity of the Borrower. Amounts in the Interest Reserve Fund will be used to pay monthly interest payments on the Note when due and the Lender may automatically deduct interest payments from the Interest Reserve Fund as and when payments are due under the Note.

All income derived from the investment of amounts on hand in the Interest Reserve Fund shall remain in and be credited as received to the Interest Reserve Fund. Amounts in the Interest Reserve Fund, if not previously used as aforesaid, shall be applied against the final installments of principal of and interest due on the Note.

If the principal amount of the Note is still outstanding by the end of the fifteenth month after the Closing Date, the Borrower shall replenish the Interest Reserve Fund prior to the commencement of the sixteenth month with sufficient proceeds to pay the projected debt service through the end of the term of the Loan.

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

PREPAYMENT OF LOAN

Section 5.1  Prepayment at Option of Borrower. The Borrower may, at its option, prepay the Loan, in whole or 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  Termination Upon Retirement of Note. This Loan Agreement shall, by its terms, terminate at such time as: (a) no Principal Balance on the Note remains outstanding; (b) any obligation of the Lender to advance funds under this Loan Agreement, the Note, the Loan Disbursement Agreement, or the Related Documents has expired; and (c) arrangements satisfactory to the Lender and the Issuer have been made for the discharge of all other accrued liabilities, if any, under the Related Documents.

(The remainder of this page is intentionally left blank.)
ARTICLE VI
EVENTS OF DEFAULT AND REMEDIES

Section 6.1 Events of Default. Any one or more of the following events continuing beyond any applicable cure period is an Event of Default under this Loan Agreement:

1. If the Borrower shall fail to make any payments required under this Loan Agreement on or before the date that the payment is due and such default continues for ten (10) days.

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, given to the Borrower by the Issuer or the Lender, 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, unless the Lender shall agree in writing to an extension of such time prior to its expiration.

3. If the Borrower shall file a petition in bankruptcy or for reorganization or for an arrangement under any present or future federal bankruptcy act or under any similar federal or state law, shall consent to the entry of an order for relief under 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 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 of all or substantially all of the assets of the Borrower, or of the Project, shall be appointed in any proceeding brought against the Borrower and shall not be discharged 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 Project 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.

4. If the operating agreement of the Borrower shall expire or be annulled or if the Borrower shall be dissolved or liquidated or shall be merged with or is acquired by another business entity.

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 Lender or the Issuer in connection herewith or therewith or under the terms hereof or thereto, shall prove at any time to be, in any material respect, incorrect or misleading as of the date made, and is not cured within thirty (30) days after a Default Notice, specifying such default and requesting that it be remedied, has given to the Borrower by the Issuer or the Lender.

6. If the Borrower shall default or fail to perform any covenant, condition, or agreement on its part under any of the Related Documents or any other security document securing the Note, and such failure continues beyond the period, if any, set forth in such
documents during which the Borrower may cure the default, or if an event of default occurs under any of the Related Documents.

Any member of the Borrower shall have the right, but not the obligation, to cure any default under this Loan Agreement or any of the Related Documents within the same cure period afforded to the Borrower to cure such default.

Section 6.2 Remedies. Whenever any Event of Default referred to in Section 6.1 hereof shall have happened, any one or more of the following remedial steps to the extent permitted by law may be taken:

(1) The Issuer, upon written direction of the Lender, or the Lender may declare all installments of the Loan (being an amount equal to that necessary to pay in full the Principal Balance plus accrued interest thereon and any premium due thereunder of 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; or

(2) The Lender may exercise all of its rights and remedies under the Related Documents; or

(3) The Issuer, upon written direction of the Lender (except as otherwise provided in Section 7.10 hereof), or the Lender (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.

(4) The Lender’s obligation to advance any further amounts under the Loan Disbursement Agreement may terminate. Notwithstanding anything to the contrary contained herein or in any other instrument evidencing or securing the Loan, the Lender 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.

Section 6.3 Disposition of Funds. Notwithstanding anything to the contrary contained in this Loan Agreement, any amounts collected, up to the amounts due, in accordance with any action taken under Section 6.2 hereof, except for any amounts collected solely for the benefit of the Issuer under any of the provisions set forth in Section 7.10 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 hereof.

Section 6.4 Manner of Exercise. No remedy herein conferred upon or reserved to the Issuer or the Lender 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 Lender 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  **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 Lender 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 shall on demand pay to the Issuer or the Lender the reasonable fees of such attorneys and such other expenses so incurred.

Section 6.6  **Effect of Waiver.** In the event any agreement contained in this Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

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

GENERAL

Section 7.1 Notices. All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given two (2) business days after mailed by certified or registered mail, postage prepaid, with proper address as indicated below. The Issuer, the Borrower, and the Lender may, by ten (10) days’ advance 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 Borrower:
CHC Minnetonka Affordable Housing LLC
c/o Community Housing Corporation of America, Inc.
161 St. Anthony Avenue, Suite 820
Saint Paul, MN  55103
Attn: President

with copies to:
Shelter Corporation
1600 Hopkins Crossroad
Minnetonka, MN  55305
Attn: President

Winthrop & Weinstine, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, MN  55402-4629
Attn: Jeffrey J. Koerselman, Esq.

Wincopin Circle LLLP
c/o Enterprise Community Asset Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, MD  21044
Attn: Asset Management

To the Lender:
Bridgewater Bank
3800 American Boulevard, Suite 100
Bloomington, MN  55431
Attn: Nicholas Place

with a copy to:
Messerli & Kramer, P.A.
100 South Fifth Street, Suite 1400
Minneapolis, MN  55402-1217
Attn: Michelle R. Jester, Esq.
To the mortgage lender for the Bonds: Dougherty Mortgage LLC
90 South Seventh Street, Suite 4300
Minneapolis, MN 55402-4108
Attn: Fannie Mae Servicing

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 or in the Resolution, subsequent to the initial issuance of the Note and before the Note is satisfied and discharged in accordance with their respective terms, this Loan Agreement may not be effectively amended, changed, modified, altered, or terminated without the written consent of the Lender.

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 therefrom 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 Assignment of Loan Agreement. 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. 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 hereinabove provided. It is further understood and agreed by the Borrower and the Lender 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 from the same and will reimburse the Issuer, its officers, employees or agents for any legal or other expenses incurred by the Issuer, its officers, employees or agents in relation thereto; provided, however, that the Borrower shall not be responsible for such losses arising from the willful misconduct or gross negligence of the Issuer. This covenant to indemnify, hold harmless and
reimburse the Issuer, its officers, employees or agents shall survive delivery of and payment for the Note and expiration or termination of this Loan Agreement. The liability of the Issuer is further restricted as provided in the Act.

Section 7.7 Issuer’s Attorneys’ Fees and Costs. If, notwithstanding the provisions of Section 7.6 hereof, 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 shall indemnify and hold harmless the Issuer from the same and shall reimburse the Issuer for any reasonable legal or other expenses incurred by the Issuer in relation thereto; provided, however, that the Borrower shall not be responsible for such losses arising from the willful misconduct or gross negligence of the Issuer. The Borrower shall also reimburse the Issuer for all other costs and expenses including, without limitation, reasonable attorneys’ fees paid or incurred by the Issuer in connection with (i) the discussion, negotiation, preparation, approval, execution, and delivery of the Related Documents and the documents and instruments related hereto or thereto; (ii) any amendments or modifications hereto or to the Note and the Related Documents and any document, instrument, or agreement related hereto or thereto, and the discussion, negotiation, preparation, approval, execution, and delivery of any and all documents necessary or desirable to effect such amendments or modifications; and (iii) the enforcement by the Issuer during the term hereof or thereafter of any of the rights or remedies of the Issuer hereunder or under the Note and the Related 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 reasonable 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 the Lender with respect to this Loan Agreement or the documents and transactions related hereto or contemplated hereby including, without limitation, the exercise by the Lender of any of its rights or remedies under Article VI hereof, the Note, and the Related Documents or any collateral security documents.

Section 7.9. Audit Expenses. The Borrower agrees to pay any costs incurred by the Issuer as a result of the Issuer’s compliance with an audit, random or otherwise, by the Internal Revenue Service or the Minnesota Department of Revenue with respect to the Note, the Borrower, or the Project.

Section 7.10. Assignment by Issuer and Survivorship of Obligations. The Issuer may assign its rights under this Loan Agreement and any related documents to the Lender to secure payment of the principal of and interest and premium, if any, on the Note, 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, 4.2, 4.3, 6.5, 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 Lender (if appropriate), provided that the Issuer shall have the right to enforce any retained rights without the approval of the Lender but only if the Lender 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 the interest thereon.
Section 7.11. **Required Approvals.** Consents and approvals required by this Loan Agreement to be obtained from the Borrower or the Issuer shall be in writing and shall not be unreasonably withheld or delayed.

(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 date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By ________________________________
Its Mayor

By ________________________________
Its City Manager

(Signature Page with respect to the Series 2017B Note)
Execution page of the Borrower to the Loan Agreement, dated as of the date and year first written above.

CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company

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

By: ________________________________
Name: Richard Martin
Title: Administrative Manager

(Signature Page with respect to the Series 2017B Note)
City Council Agenda Item #13C
Meeting of August 28, 2017

Brief Description
Items related to the Cloud 9 Condominium’s Housing Improvement Area

Recommendation
1) Adopt an ordinance establishing the Cloud 9 Sky Flats Housing Improvement Area
2) Adopt a resolution approving a housing improvement fee for the Cloud 9 Sky Flats Housing Improvement Area
3) Adopt a resolution approving a development agreement with respect to the Cloud 9 Sky Flats Housing Improvement Area, including future city financing options

Background
In 2011, the city council adopted a policy establishing criteria that guide the consideration of a Housing Improvement Area (HIA) in the city. A Housing Improvement Area, authorized under the Minnesota Statutes Chapter 428A, allows cities to help arrange and finance rehabilitation for common areas of owner-occupied residential buildings, such as condominiums or townhouses. An HIA is a defined area where private housing improvements are made and where costs associated with the improvements are paid for by fees imposed on property owners. Within an HIA, the city has the authority to finance housing improvements through levying fees and assessments, and may issue bonds to pay for those improvements.

On February 27, 2017 the city council accepted the resident’s petitions to initiate the Cloud 9 HIA, held a public hearing, and approved the introduction of the ordinance and fee resolution establishing the Cloud 9 Sky Flat Condominium’s HIA. The association is now requesting that the city council hold the public hearing and adopt the resolution, adopt the ordinance to establish the HIA, adopt the resolution establishing the fee, and adopt the resolution approving the development agreement.

If approved, the ordinance would become effective forty-five days after ordinance adoption, or 30 days after publication (whichever is later), and is subject to the veto rights of the housing unit owners. In accordance with state statute, unit owners have 45 days to file an objection following the final adoption of the ordinance and establishment of the fee. If more than 45% of the owners (74 units) file an objection after the approval, the HIA is not effective.
Cloud 9 Condominiums – Project History

In 2004, the property located at 5601 Smetana Drive was rezoned to allow for conversion of an office use to 164 condo units. The conversion of the offices was completed in late December 2005. At the time of the conversion, the rezoning approval required that 34 of the units were to be priced at $193,700 or less. In addition, 16 units were required to be priced at $170,000 or less and continue to be subject to resale restrictions to maintain affordability for 30 years. These resale restrictions would remain in place with the proposed establishment of the HIA.

Building Review

In 2011, the association hired the engineering firm Encompass to assess the curtain wall, window systems, and the HVAC systems of the building. The assessment was conducted in response to reports of water leaking into a number of units. The evaluation revealed water and air leakage through the windows and curtain wall that has caused damage to the building envelope. The report noted that the deficiencies, left in the current state, would continue to deteriorate the building.

Following the assessment by Encompass, the association considered options for financing the improvements to correct the building deficiencies. The association met with several lenders and was unable to secure financing to complete the improvements. The association also considered an option to increase the association dues to cover the cost of the improvements but found that this option was too burdensome for the unit owners because it required a substantial upfront collection of dues.

In 2015, a consultant representing the association reached out to the city, on behalf of Cloud 9 condominiums, to discuss the option of establishing an HIA to pay for the improvements. Staff has met with that representative on several occasions to discuss the project and the HIA process. The association formally submitted an HIA application to the city in February and is proposing that the project include repairs to the curtain wall and HVAC improvements, which were identified in the report prepared by Encompass. In addition, the association is seeking funds to assist with elevator upgrades. The proposed project includes the following scope of work:

<table>
<thead>
<tr>
<th>Project</th>
<th>Work to be done</th>
<th>Estimated costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Curtain Wall Repairs</td>
<td>Curtain wall repairs, perimeter seal repairs, window replacement</td>
<td>$2,110,000</td>
</tr>
<tr>
<td>HVAC Repairs</td>
<td>Ductwork damper repairs/improvements, system balancing</td>
<td>$100,000</td>
</tr>
<tr>
<td>Elevator Upgrades</td>
<td>4 elevators in need of upgrades</td>
<td>$925,000</td>
</tr>
<tr>
<td>Related Costs</td>
<td>Engineering fees, construction, contingency</td>
<td>$435,700</td>
</tr>
<tr>
<td>Other Costs</td>
<td>HIA Consultant, Construction Financing, Fees</td>
<td>$359,300</td>
</tr>
<tr>
<td><strong>Total Project Budget:</strong></td>
<td></td>
<td><strong>$3,930,000</strong></td>
</tr>
</tbody>
</table>
Project Construction Timeline

The proposed project timeline is as follows:
- Late September 2017-November 2017 - Curtain wall work
- April 2018 – August 2018 - Curtain wall work
- November 2018 to March 2019 – Monitor HVAC performance
- April 2019 - May 2019 – HVAC system upgrades
- May to September 2019 – Parking structure work (contingent)
- September & October 2019 – Additional HVAC system upgrades (possible)

Financing

The association indicated that it will initially finance the improvements with a construction loan provided by Bell Bank. The city would then provide “take-out” financing following the completion of the construction.

The following are ways for the city to finance the improvements.

1. Issue General Obligation Housing Improvement Bonds (maximum of 20-year term)
   - No prepayment allowed
   - Does not allow prepayment after bond issuance.
   - The assessment would cover annual debt service required to make the bond payments.

2. Explore options to finance the project. Options include in addition to general obligation revenue bonds, negotiated sale of a city issued bond to ourselves as a city investor or potential internal funding as noted in section 3.2 of the development agreement. The objectives of these financing options would be:
   - That the associations note to the city could be repaid at any time so prepayments would not create a problem.
   - That the city would charge interest on the loan/bond that, while still an attractive rate for the HIA, would be higher than the current city investment rate.

Should the city decide to pursue bonds to finance improvements within the Cloud 9 Housing Improvement Area, the bonds must be issued as taxable bonds at a later time. The issuance of these housing improvement bonds does not count toward the city’s bank qualification limit of $10 million annually. The bonds issued would be general obligation housing bonds.

Assessments

The attachment shows maximum HIA fees for 20-year bond options and provides an estimate of each unit’s share of the project budget and each unit’s maximum monthly HIA fee. The interest factor (percent of building) for each unit, which is shown in the schedule, is the interest factor each unit owner’s share of the association that is included in the association’s declaration.
After establishment of the HIA, the fee is added to property taxes as a special service district fee. The HIA fee for each unit generates the revenue to pay back city issued bonds or the association's note to the city. The projected HIA fees are estimated maximums, and it is anticipated that the actual HIA fees will be less. The HIA fees would not appear on unit owners’ property tax statements until 2019.

If the project comes in under budget, then the maximum HIA fees for all units will be reduced proportionately. This means that if the project comes in 7% under budget then all of the HIA fees will be reduced 7%. In addition, when the HIA fees are finalized, the fees will continue to appear on unit owners’ property tax statements for the length of the term.

The table below illustrates a sampling of 2016 dues and the projected additional HIA dues assuming 20-year bond estimates.

<table>
<thead>
<tr>
<th>Example Unit</th>
<th>Owner Share of Association</th>
<th>2016 association monthly dues</th>
<th>Projected 20 years term monthly dues**</th>
<th>Total projected monthly fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>318</td>
<td>.3472</td>
<td>$181</td>
<td>$98</td>
<td>$279</td>
</tr>
<tr>
<td>101</td>
<td>.5783</td>
<td>$302</td>
<td>$163</td>
<td>$465</td>
</tr>
<tr>
<td>109</td>
<td>.6784</td>
<td>$354</td>
<td>$191</td>
<td>$545</td>
</tr>
<tr>
<td>213</td>
<td>.7892</td>
<td>$412</td>
<td>$222</td>
<td>$634</td>
</tr>
</tbody>
</table>

** Projected dues based on 20 year bond issuance (assumes the maximum fee based on bond financing)

**Application Review**

The association formally submitted its application on February 7. The association is required, by state statute, to obtain signed petitions in support of the project from at least 60 percent of the property owners for the proposed HIA. The application included signed petitions from 117 of the 164 unit owners. The association exceeded the 60% threshold by obtaining petitions from 71% of the homeowners. The establishment of the HIA is a request of the Cloud 9 condominium association and is not something the city has proposed to the residents.

In addition to the petitions, the association also submitted the required application fee of $5,000 and the supplemental project information for staff and legal review. This information was necessary to review the project to ensure it met state statutes and the guidelines outlined in the HIA policy, prior to further EDAC and council review.

The city council and EDAC reviewed the eligible uses and evaluation criteria earlier in 2017. In general, both the city council and EDAC concluded that the project complied with eligible uses of funding and the evaluation criteria necessary to establish the HIA. The city council introduced the ordinance on February 27, 2017.
Proposed Schedule for Cloud 9 HIA
The proposed timeline and process for the Cloud 9 HIA request is as follows:

- February 2017 – Cloud 9 submission of application to the city
- February 27, 2017 – Council resolution to accept petition, initiate process, schedule the public hearing and introduce the ordinance and fee resolution
- March 16, 2017 – EDAC review of draft development agreement
- August 15, 2017 – Notice of Fee, ordinance, and public hearing sent to owners.
- August 28, 2017 – City council public hearing regarding ordinance, fee and consideration of the development agreement.
- October 12, 2017 – Effective date of ordinance and fee resolution
- 2018/2019 – City council authorizes sale of bonds (if applicable) or details the internal funding scenario.

Summary of City Council review on February 27, 2017
1. Council member Allendorf inquired about the city’s ability to fund the project using internal funds (rather than bonding) and where the funds would come from if that option was chosen.
   - Finance Director Merrill King noted that she is researching options that include the community investment fund as an option. Staff will continue to explore this option as it would be an opportunity to receive a little higher return outside of the city’s traditional investment options. Because the final financing does not have to occur until more than a year from now, there is additional time to research this option.
   - Staff is anticipating that the debt will be issued as taxable general obligation housing improvement bonds.

2. Mayor Schneider asked for information about the status of the association’s reserves and 15-year plan.
   - In 2014, a company prepared a conservative 30-year reserve plan for Cloud 9. In addition, the association will prepare a new 30-year reserve at the end of 2017 that will be added as a supplemental document to the development agreement.
   - Section 6.5 of the development agreement requires the association to maintain a reserve fund of at least $1,000,000 to cover the costs of maintenance and repairs over the next 30 years. Schedule C of the agreement outlines the association’s 30-year reserve plan.

Summary of January 26, 2017 and March 16, 2017 EDAC review comments
1. Did the EDAC find the request to establish an HIA for Cloud 9 reasonable?
   - The general consensus from the commission indicated that the request to establish an HIA was reasonable. However, one commissioner was not in support of the project.
   - The commissioners asked Mr. Strandness, the consultant representing Cloud 9, about the association’s reserve balance. Mr. Strandness indicated that
there is currently a balance of $1 million in reserves for future repairs. In addition, the board is in the process of completing an updated reserve study in 2017.

2. Did the EDAC have any questions or comments about the project scope of work or preliminary cost estimates?
   - The EDAC reviewed the project budget and commented that the costs seemed reasonable for the scope of work.
     - The commissioners requested clarification on the cost to repair the elevators. Mr. Strandness confirmed that the estimate of $925,000 to repair four elevators was accurate. The estimate assumes all four elevators would receive upgrades. Mr. Strandness clarified that it is possible that two of the four elevators would be placed out of service, which would reduce the overall project costs along with related debt and owner fees.

3. Did the EDAC have any questions or comments regarding the HIA fees being considered for the project?
   - The EDAC was supportive of the 20-year financing term.
   - The board asked if the units would remain in an affordable range with the proposed dues increase that would result from the HIA.
     - The maximum dues increase which would include the estimated 2017 association dues plus the maximum anticipated HIA fee is anticipated to range from approximately $3,000 to $7,500 per unit /per year for a maximum term of 20 years.
     - If a family of four with an annual income of $65,000 purchased a unit at the higher end of the current unit prices ($255,000), the payment including the highest project fees would be considered affordable. The assumption assumes 30% of income allocated to housing expenses.

   - If the city finances the improvements as an internal investment, how would that impact other city projects?
     - If the city were to invest in the project, the finance director would provide guidance on the amount of interest to charge the association. The interest collected could be higher than what is received through traditional investment funds. There is no impact to other city projects that are budgeted in the CIP.

4. Commissioner Happe asked what would happen with the funds gained from the potential sale of the parking ramp.
   - Section 6.12 of the development acknowledges that the association may determine to sell the parking ramp. In the event that the association decides to sell the parking ramp, it must notify the city within 30 days prior to the sale and provide the city with a detailed accounting of how the proceeds will be used. The city shall have the
right to consent to the proposed use of proceeds. The city’s legal counsel, Julie Eddington, confirmed that the funds could be used to prepay the construction loan prior to the city issuing the permanent financing. If a sale occurs during the construction period, Bell Bank (construction lender) will require an escrow of any or all of the proceeds of the sale of the parking ramp as collateral for the construction loan.

5. Commissioner Happe asked if the association would be required to provide annual financial statements.
   o Under section 6.2 of the development agreement, the association must provide a copy of its annual audited financial statements for the previous year, including a balance sheet and operating statements, prepared by an independent certified public accountant.
   o Under Section 6.3 the association must also submit an annual report on excess fee revenues and fund balances.

Recommendation

The city council is requested to finalize steps to establish the Cloud 9 HIA. Within the next year, the appropriate funding mechanism (bonding, city purchased bond or internal funding) will be identified and brought forward for council consideration. Therefore, staff recommends the city council:

1) Adopt an ordinance establishing the Cloud 9 Sky Flats Housing Improvement Area
2) Adopt a resolution approving a housing improvement fee for the Cloud 9 Sky Flats Housing Improvement Area
3) Adopt a resolution approving a development agreement with respect to the Cloud 9 Sky Flats Housing Improvement Area, including future city financing options

Submitted through:

Geralyn Barone, City Manager
Julie Wischnack, AICP, Community Development Director
Merrill King, Finance Director

Originated by:

Alisha Gray, EDFP, Economic Development and Housing Manager

Supplemental Information

- Location Map
- HIA Council Policy
- Public Hearing Notice/Letter to Residents
- Bell Bank Commitment Letter
- 20-Year Bond Estimate
- Development Agreement
o Schedule C: 2014 Long Term Reserve Study

February 27, 2017 – City Council Meeting
March 16, 2017 – EDAC Meeting
Ordinance No. 2017-____

Ordinance establishing the Cloud 9 Sky Flats Housing Improvement Area

The City of Minnetonka Ordains:

Section 1. Background.

1.01. The City of Minnetonka, Minnesota (the “City”) is authorized under Minnesota Statutes, Sections 428A.11 through 428A.21, as amended (the “Act”), to establish by ordinance a housing improvement area within which housing improvements are made or constructed and the costs of the improvements are paid in whole or in part from fees imposed within the area.

1.02. The City Council of the City (the “Council”) adopted a Housing Improvement Area Policy on November 14, 2011 (the “Policy”).

1.03. The City has determined a need to establish the Cloud 9 Sky Flats Housing Improvement Area (the “Area”) as further defined below, in order to facilitate certain improvements to property known as the “Cloud 9 Sky Flats” all in accordance with the Policy.

1.04. The City has consulted with the Cloud 9 Sky Flats Association, Inc., a Minnesota nonprofit corporation (the “Association”), and with residents in the proposed Area regarding the establishment of the Area and the housing improvements to be constructed and financed under this ordinance.

Section 2. Findings.

2.01. The Council finds that, in accordance with Section 428A.12 of the Act and the Policy, owners of at least sixty percent (60%) of the housing units within the proposed Area have filed a petition with the City Clerk requesting a public hearing regarding establishment of such Area.

2.02. On August 28, 2017, the Council conducted a public hearing, duly noticed in accordance with Section 428A.13, subd. 2 of the Act, regarding adoption of this ordinance, at which all persons, including owners of property within the proposed Area, were given an opportunity to be heard.

2.03. The Council finds that, without establishment of the Area, the Housing Improvements (as defined below) could not be made by the Association for, or by the housing unit owners in, the Cloud 9 Sky Flats.
2.04. The Council further finds that designation of the Area is needed to maintain and preserve the housing units within such Area.

2.05. The Council further finds that by Resolution No. 2017-_______ adopted on the date hereof, the City has provided full disclosure of public expenditures, loans, bonds, or other financing arrangements in connection with the Area, and has determined that the Association will contract for the Housing Improvements.

2.06. The City will be the implementing entity for the Area and the improvement fee.

2.07. The Council finds that the Area meets each of the approval criteria contained in the Policy, including the criterion that a majority of the Cloud 9 Sky Flats owners support the project and the Area financing. The Association presented evidence to the Council adequate to demonstrate that these criteria were met, including presentation to the Council of the petitions described in Section 2.01 above.

Section 3. Housing Improvement Area Defined.

3.01. The Area is defined as the area of the City legally described in EXHIBIT A attached hereto.

3.02. The Area contains 163 housing units as of the date of adoption of this ordinance, along with garage units and common areas.

Section 4. Housing Improvements Defined.

4.01. For the purposes of this ordinance and the Area, the term “Housing Improvements” means the following improvements to housing units, garages, and common areas within the Area:

<table>
<thead>
<tr>
<th>Project</th>
<th>Work to be done</th>
<th>Estimated costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Curtain Wall Repairs</td>
<td>Curtain wall repairs; stone panel perimeter seal repairs; operable window replacement; installation of insulation at spandrel glass areas; miscellaneous labor; rigging; mobilization/demobilization</td>
<td>$2,110,000</td>
</tr>
<tr>
<td>HVAC Repairs</td>
<td>Ductwork damper repairs/improvements; system balancing</td>
<td>$100,000</td>
</tr>
<tr>
<td>Elevator Upgrades</td>
<td>Elevator upgrades to all four elevators</td>
<td>$925,000</td>
</tr>
<tr>
<td><strong>TOTAL:</strong></td>
<td></td>
<td><strong>$3,135,000</strong></td>
</tr>
</tbody>
</table>
4.02. Housing Improvements also include the following:

(a) all costs of architectural and engineering services in connection with the activities described in Section 4.01 hereof;

(b) all administration, legal and consultant costs in connection with the Area, including without limitation all costs related to financing or issuance of bonds, if any; and

(c) interest on the internal financing by the City as described in Section 6.01 hereof.

Section 5. Housing Improvement Fee.

5.01. The City may, by resolution adopted in accordance with the hearing and notice procedures required under Section 428A.14 of the Act, impose a fee (the “Housing Improvement Fee”) on the housing units within the Area, at a rate, term or amount sufficient to produce revenues required to provide the Housing Improvements, subject to the terms and conditions set forth in this Section.

5.02. The Housing Improvement Fee (except for the portion allocable to City and Hennepin County administrative costs) will be based on the square footage (percentage of undivided ownership) of each unit, which is consistent with Section 428A.14, subdivision 1 of the Act and with the Common Interest Community Number 1364 (Condominium), Cloud 9 Sky Flats. The City finds that it is more fair and reasonable to impose the fee allocable to City and Hennepin County administrative costs on a per-unit basis, as those costs do not vary with unit size.

5.03. The Housing Improvement Fee will be imposed and payable for a period no greater than 20 years after the first installment is due and payable.

5.04. Housing unit owners will be permitted to prepay the Housing Improvement Fee in accordance with the terms specified in the resolution imposing the fee.

5.05. The Housing Improvement Fee will not exceed the amount specified in the notice of public hearing regarding the approval of such fee; provided, however, that the Housing Improvement Fee may be reduced after approval of the resolution setting the Housing Improvement Fee, in the manner specified in the resolution.

5.06. The Housing Improvement Fee shall be collected at the same time and in the same manner as provided for payment and collection of ad valorem taxes, in accordance with Section 428A.15 of the Housing Improvement
Act and Minnesota Statutes, Section 428A.05. As set forth in Section 428A.14, subdivision 2 of the Housing Improvement Act, the Housing Improvement Fee is not included in the calculation of levies or limits on levies imposed under any law or charter.

Section 6. Housing Improvement Area Loan.

6.01. The Association plans to finance the construction of the Housing Improvements with a construction loan from a bank.

6.02. At any time after a contract with the Association for construction of all or part of the Housing Improvements has been entered into and the construction of the Housing Improvements is complete, the Council will refinance the construction loan obtained by the Association for the Housing Improvements with general obligation bonds or internal financing from available City funds in the principal amounts necessary to refinance the construction loan. Any such financing will be treated as a loan, repayable from the Housing Improvement Fee paid by unit owners, all in accordance with the Council resolution imposing the Housing Improvement Fee.

6.02. If the City chooses to refinance the construction loan with internal financing from available City funds, the City may refinance the internal financing at any time by issuing its general obligation bonds secured by Housing Improvement Fees, as authorized pursuant to Section 428A.16 of the Act.

Section 7. Annual Reports.

7.01. On May 1, 2018, and each May 1, thereafter until the Housing Improvement Fees have been paid in full, the loan described in Section 6.01 hereof, and any bonds issued to refinance the loan, are no longer outstanding (or any later date specified in an agreement between the City and the Association), the Association (and any successor in interest) must submit to the City Clerk a copy of the Association's audited financial statements.

7.02. The Association (and any successor in interest) must also submit to the City any other reports or information at the times and as required by any contract entered into between that entity and the City.

Section 8. Notice of Right to File Objections. Within five days after the adoption of this ordinance, the City Clerk is directed to mail to the owner of each housing unit in the Area the following: a summary of this ordinance; notice that owners subject to the proposed Housing Improvement Fee have a right to veto this ordinance if owners of at least forty-five percent (45%) of
the housing units within the Area file a written objection with the City Clerk before the effective date of this ordinance; and notice that a copy of this ordinance is on file with the City Clerk for public inspection.

Section 9. **Amendment.** This ordinance may be amended by the Council upon compliance with the public hearing and notice requirements set forth in Section 428A.13 of the Act.

Section 10. **Effective Date.** This ordinance is effective forty-five (45) days after adoption, or thirty (30) days after publication, whichever is later, subject to the veto rights of housing unit owners under Section 428A.18 of the Housing Improvement Act.

Adopted by the City Council of the City of Minnetonka, Minnesota, on *.

______________________________
Terry Schneider, Mayor

ATTEST:

______________________________
David E. Maeda, City Clerk

**ACTION ON THIS ORDINANCE:**

Date of introduction: February 27, 2017
Date of adoption: *
Motion for adoption: 
Seconded by: 
Voted in favor of: 
Voted against: 
Abstained: 
Absent: 
Ordinance adopted.

Date of publication:
CERTIFIED COPY:

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 meeting held on *.

__________________________
David E. Maeda, City Clerk
EXHIBIT A

LEGAL DESCRIPTION

Parcel 1:

That Part of the East 665.0 feet of the South 673.6 feet of the North 690.1 feet of the Southeast ¼ of the Northeast ¼ of Section 36, Township 117 North, Range 22, West of the 5th Principal Meridian which lies westerly of the westerly line of County Highway No. 18 as described in final certificate No. 4757011, except that part taken for existing roads.

Parcel 2:

The North 16.5 feet of the West 542.0 feet of the East 632.0 feet of the Southeast ¼ of the Northeast ¼ of Section 36, Township 117 North, Range 22 West of the 5th Principal Meridian.
Resolution No. 2017-____

Resolution approving a housing improvement fee for the Cloud 9 Sky Flats Housing Improvement Area

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

Section 1. Background.

1.01. The City is authorized under Minnesota Statutes, Sections 428A.11 through 428A.21, as amended (the “Act”), to establish by ordinance a housing improvement area within which housing improvements are made or constructed and the costs of the improvements are paid in whole or in part from fees imposed within the area.

1.02. The Council adopted a Housing Improvement Area Policy on November 14, 2011 (the “Policy”).

1.03. By Ordinance No. 2017-____, adopted by the Council on the date hereof (the “Enabling Ordinance”), the Council established the Cloud 9 Sky Flats Housing Improvement Area (the “Housing Improvement Area”) in order to facilitate certain improvements to property known as the “Cloud 9 Sky Flats” all in accordance with the Policy.

1.04. In accordance with Section 428A.12 of the Act and the City’s Housing Improvement Area Policy, owners of at least sixty percent (60%) of the housing units within the Housing Improvement Area have filed a petition with the City Clerk requesting a public hearing regarding imposition of a housing improvement fee for the Housing Improvement Area.

1.05. The City has consulted with the Cloud 9 Sky Flats Association, Inc., a Minnesota nonprofit corporation (the “Association”), and with residents in the proposed Housing Improvement Area regarding the establishment of the Housing Improvement Area and the housing improvements to be constructed and financed under this ordinance.

1.06. On the date hereof, the Council conducted a public hearing, duly noticed in accordance with Section 428A.13 of the Act, regarding adoption of this resolution at which all persons, including owners of property within the Housing Improvement Area were given an opportunity to be heard.

1.07. The Council finds that the Housing Improvement Area meets the criteria provided in the Act and that a majority of the Cloud 9 Sky Flats owners support the project and the financing.
1.08. Prior to this date, the Association submitted to the City an adopted financial plan, verified by Doug Strandness, an independent third party, acceptable to the City and the Association, that provides for the Association to finance maintenance and operation of the common elements in the Cloud 9 Sky Flats and a long-range plan to conduct and finance capital improvements therein, all in accordance with Section 428A.14 of the Act.

1.09. For the purposes of this resolution, the term “Housing Improvements” has the meanings provided in the Enabling Ordinance.

Section 2. Housing Improvement Fee Imposed.

2.01. The total costs of the Housing Improvements are $3,930,000 including construction costs, administrative costs, soft costs, costs of issuing bonds to finance the improvements, and capitalized interest. The City hereby imposes a fee on each housing unit within the Housing Improvement Area (the “Housing Improvement Fee”) based on the square footage (percentage of undivided ownership) of each unit, as specified in EXHIBIT A attached hereto (except for the portion of the fee allocable to City and administrative costs and administrative costs of Hennepin County, Minnesota (the “County”), which are imposed on a per-unit basis). Allocation of the Housing Improvement Fee is consistent with Section 428A.14, subdivision 1 of the Act and with the Common Interest Community Number 1364 (Condominium), Cloud 9 Sky Flats Declaration. The City further finds that it is more fair and reasonable to impose the fee allocable to City and County administrative costs on a per-unit basis, as those costs do not vary with unit size.

2.02. The owner of any housing unit in the Housing Improvement Area may prepay the Housing Improvement Fee in total at any time between the effective date of this resolution (October 12, 2017) and April 12, 2018. The amount of the prepayment is shown under the headings Total Assessment (principal/prepayment amount) in EXHIBIT A attached hereto. Partial prepayment of the Housing Improvement Fee is not permitted. Prepayment must be made to the City. After expiration of the prepayment period on April 12, 2018, owners may not prepay any portion of the Housing Improvement Fee.

2.03. If the Total Prepayment Fee is not prepaid pursuant to Section 2.02 above, the Housing Improvement Fee will be imposed as an annual fee, in the amount shown under the heading Total Annual Fee in EXHIBIT A attached hereto. The Housing Improvement Fee will be imposed in equal annual installments for a period of 20 years, with the first installment
payable in calendar year 2019. Interest at the rate of 5.20% per annum shall accrue on the principal amount of the Housing Improvement Fee for each unit from April 12, 2018. The Total Annual Fee also includes an amount of $10.00 per unit to compensate the City for administrative costs related to the Housing Improvement Area and $190.00 per unit for the City’s ongoing consulting costs relating to the issuance of bonds or internal financing to finance the Housing Improvements. The Total Annual Fee also includes an amount to compensate the County for its administrative costs as described in Section 2.06 hereof.

2.04. Unless prepaid pursuant to Section 2.02 above, the Housing Improvement Fee is a lien against each of the housing units within the Housing Improvement Area and is payable at the same time and in the same manner as provided for payment and collection of ad valorem taxes, pursuant to Section 428A.15 of the Act and Minnesota Statutes, Section 428A.05. As set forth in the Act, the Housing Improvement Fee is not included in the calculation of levies or limits on levies imposed under any law or charter.

2.05. Payment of the Housing Improvement Fee may be deferred in the same manner as the deferment of special assessments pursuant to Section 220.010 of the City Code.

2.06. The County imposes a de minimis annual fee in the amount of $2.50 per unit for services in connection with the administration required in order for the Housing Improvement Fee to be made payable at the same time and in the same manner as provided for payment and collection of ad valorem taxes. Such County fee is included in the Total Annual Fee shown in EXHIBIT A. If the County increases its administrative fee during the term described in Section 2.03 hereof, the Total Annual Fee will be increased by the same amount, but in no event will the total amount payable exceed the amount stated in the notice of hearing regarding this resolution. The City will provide written notice to unit owners of any such increase in the Total Annual Fee caused by an increase in the County administrative fee.

Section 3. Notice of Right to File Objections. Within five days after the adoption of this resolution, the City Clerk is directed to mail the following to the owner of each housing unit in the Housing Improvement Area: a summary of this resolution, notice that owners of at least forty-five percent (45%) of the housing units’ tax capacity subject to the Housing Improvement Fee may veto this resolution by filing a written objection with the City Clerk before the effective date of this resolution, and notice that a copy of this resolution is on file with the City Clerk for public inspection.
Section 4. **Effective Date.** This resolution shall be effective forty-five (45) days after adoption hereof, subject to (a) the veto rights of housing unit owners under Section 428A.18 of the Act and (b) execution in full of a development agreement between the Authority and the Association providing for construction of the Housing Improvements.

Section 5. **Filing of Housing Improvement Fee.** After the effective date of this resolution, the City Clerk is directed to file a certified copy of this resolution with the County to be recorded on the property tax lists of the County for taxes payable in 2019 and thereafter.

Adopted by the City Council of the City of Minnetonka, Minnesota this 28th day of August, 2017.

Terry Schneider, Mayor

ATTEST:

David E. Maeda, City Clerk

ACTION ON THIS RESOLUTION:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.
I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on August 28, 2017.

____________________________________
David E. Maeda, City Clerk
EXHIBIT A

HOUSING IMPROVEMENT FEE BY UNIT

[Insert table]
Resolution No. 2017-____

Resolution approving a development agreement with respect to the Cloud 9 Sky Flats Housing Improvement Area

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

Section 1. Background.

1.01. The City is authorized under Minnesota Statutes, Sections 428A.11 through 428A.21, as amended (the "Act"), to establish by ordinance a housing improvement area within which housing improvements are made or constructed and the costs of the improvements are paid in whole or in part from fees imposed within the area.

1.02. By Ordinance No. 2017-____, adopted by the Council on the date hereof (the "Enabling Ordinance"), the Council established the Cloud 9 Sky Flats Housing Improvement Area (the "Area") in order to facilitate certain housing improvements to property known as the "Cloud 9 Sky Flats."

1.03. By Resolution No. 2017-____, adopted by the Council on the date hereof (the "Fee Resolution"), the City imposed a housing improvement fee on the housing units in the Area (the "Housing Units") in order to finance the housing improvements in the Area.

1.04. Unless timely vetoed by at least forty-five percent (45%) of unit owners in accordance with the Act, the Enabling Ordinance and the Fee Resolution will be effective as of forty-five (45) days after the adoption of the Enabling Ordinance and the Fee Resolution (the "Effective Date").

1.05. There has been presented to this Council a form of Development Agreement (the "Development Agreement") proposed to be entered into between the City and Cloud 9 Sky Flats Association, Inc., a Minnesota nonprofit corporation (the "Association"), setting forth the respective obligations of the City and the Association with respect to the Area.

Section 2. Development Agreement Approved.

2.01. Promptly following the Effective Date of the Fee Resolution and provided that the Enabling Ordinance and the Fee Resolution have not been vetoed as provided in the Act, the Mayor and the City Manager are hereby authorized and directed to execute on behalf of the City the Development Agreement in substantially the form presented to the Council on this date, subject to modifications that do not materially alter the City's rights and
obligations under such agreement and that are approved by the Mayor and the City Manager, which approval shall be conclusively evidenced by execution of the Development Agreement.

2.02. City officials, staff, and consultants are hereby authorized and directed to take any and all steps necessary or convenient in order to carry out the City’s obligations under the Development Agreement.

Section 3. Effective Date. This resolution shall be in full force and effect from and after its approval.

Adopted by the City Council of the City of Minnetonka, Minnesota this 28th day of August, 2017.

Terry Schneider, Mayor

ATTEST:

David E. Maeda, City Clerk

ACTION ON THIS RESOLUTION:

Motion for adoption:  
Seconded by:  
Voted in favor of:  
Voted against:  
Abstained:  
Absent:  
Resolution adopted.
I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on August 28, 2017.

________________________________________

David E. Maeda, City Clerk
Cloud 9 Condominiums
Address: 5601 Smetana Dr

This map is for illustrative purposes only.
Policy Number 2.15
Housing Improvement Areas

Purpose of Policy: This policy establishes evaluation criteria that guide the city council in consideration of a housing improvement area

Introduction

Under the Minnesota Statutes Chapter 428A, cities are given authority to create Housing Improvement Areas (HIA). A HIA is a defined area where private housing improvements are made, including common elements in a common interest community or condominium, and where costs associated with the improvements are paid for by fees imposed on property owners. Within a HIA, the city has the authority to finance housing improvements through levying fees and assessments, and may issue bonds to pay for improvements.

Consideration of a HIA must come from a petition of the owners of at least 60 percent of the housing units where the HIA fee would be imposed. If the city approves a HIA, and if more than 45 percent of the owners file an objection after the approval, then the HIA is not effective.

The council is aware that creation of a HIA may be of benefit to the city and will consider requests subject to this council policy. The council considers the creation of a HIA to be a privilege, not a right.

It is the judgment of the council that the creation of a HIA be used on a selective basis. It is the applicant’s responsibility to demonstrate the benefit to the city, and that they should understand that although approval for another HIA may have been granted previously by the city for a similar project, the council is not bound by that earlier approval.

Eligible Uses of HIA Financing

The City of Minnetonka will consider using HIA financing to assist private property owners only in those circumstances in which the proposed private project addresses one or more of the following goals:

- To promote neighborhood stabilization and revitalization by the removal or prevention of blight and/or the upgrading of the existing housing stock in a neighborhood.

- To correct housing or building code violations as identified by the city’s Building Official, to meet compliance on other regulatory matters, or to improve the livability of the housing stock. Roofs and siding are eligible in order prevent further and/or future deterioration. Improvements done solely for aesthetic purposes are ineligible.
- To maintain or obtain FHA mortgage eligibility for a particular condominium or townhouse association.

- To prevent the loss of the tax base of the City in order to ensure the long-term ability of the City to provide adequate services for its residents.

- To stabilize or increase the owner-occupied level within an association or neighborhood.

- To meet other uses of public policy, as adopted by the City of Minnetonka from time to time, including energy conservation, preservation of affordable units, decreasing the capital and operating costs of local government, etc.

**Evaluation Criteria**

The city will use the following criteria when evaluating a HIA request:

- The HIA funding resolves current capital improvements for the association and the association must show that it has taken measures to remedy the costs of future improvements. The association must submit an adopted financial plan for both the capital and operating budgets, prepared by an independent third party that provides for the maintenance and operation of the common elements within the association and a long-range plan to conduct and finance capital improvements. Compliance with Minnesota Statutes 515B.3-1141 should be maintained.

- The improvements financed by the HIA will help to meet the goals identified in the comprehensive plan and ULI study of preserving existing owner-occupied housing stock and neighborhood character.

- Weight will be given when the values of the housing units are in the affordable to mid-priced range (approximately $350,000 or less).

- Emphasis will be placed on improvements needed to remedy life, safety or other regulatory compliance issues or to prevent future life and safety issues.

- The HIA funds are not intended to provide 100% of the funding for the association’s long range replacement schedule, and that the association’s own current and future funds are being contributed, in addition to the HIA funding.

- All other funding sources have been explored and are not feasible. Evidence that the association has sought other financing must be provided and should include an explanation and verification that an assessment by the association is not feasible along with letters from private lenders or other evidence indicating a lack of financing options. Coordination and partnering among other lending agencies for financing the improvements is allowed and encouraged.
Other Provisions

- The petition with at least 60 percent of the property owners from the proposed housing improvement area must first be received prior to any city review.

- Applications and petitions will be reviewed annually and are due to the city by March 1.

- An administrative fee of $5,000 will be required at the time of application and is non-refundable.

- A fee of one-half percent of a bond issuance will be charged to cover the consulting expenses if a bond is issued. The city will determine if and when a bond may be issued to finance the improvements. Therefore, this fee may not be collected upfront, but would be added to the assessment at the time of bond issuance.

- A surcharge will be assessed with the project assessment to cover day to day costs associated with managing the assessment.

- The commonly owned areas must be current on all fees, charges, taxes, special assessments and other debts or obligations that are payable to the city regarding any matter.

- The applicant will be required to enter into a development agreement with the city outlining the terms of the HIA, which may include, but is not limited to, the following terms:
  - Staffing requirements related to third party involvement on annual reporting requirements
  - Annual reporting requirements, including annual financial audits
  - Conditions of disbursement
  - Required dues increases
  - Notification to new owners levied fees
  - Minimum number of bids to be submitted for the construction work
  - Development and construction of plans relating to the improvements

- The maximum financing term will be for 20 years, unless otherwise approved by the council.

Adopted by Resolution No. 2011-XXX
Council Meeting of XXXX
August 15, 2017

Dear Property Owner/Resident:

Notice is hereby given that the City Council of the City of Minnetonka, Hennepin County, State of Minnesota (the “City”), will hold a public hearing on Monday, August 28, 2017, at or after 6:30 P.M. in the City Council Chambers in City Hall, 14600 Minnetonka Boulevard in the City, regarding the adoption of an ordinance to establish the Cloud 9 Sky Flats Housing Improvement Area (the “HIA”) and adoption of a resolution imposing fees on housing units within the HIA, all under Minnesota Statutes, Sections 428A.11 through 428A.21, as amended (the “Housing Improvement Act”).

The boundaries of the proposed HIA are shown in the map below. Within the HIA, the City proposes to facilitate various improvements to the Cloud 9 Sky Flats.

The improvements would be financed by fees imposed on the owners of units. Details regarding the hearing, the improvements and the fees are described below:

1. Persons to be heard: All interested persons and persons owning housing units in the proposed HIA subject to the fee for housing improvements will be given an opportunity to be heard at the hearing regarding the proposed HIA and the housing improvement fee.

2. Proposed Housing Improvements:
   - A complete renovation of the curtain wall exterior of the building
   - Major repairs to the heating, ventilating, and air conditioning (HVAC) systems of the building
   - Upgrades to the elevator
3. **Estimated Cost of Improvements to be paid in whole or in part by housing improvement fee:** $3,930,000 including construction costs, administrative costs, soft costs, costs of issuing bonds to finance the improvements, and capitalized interest.

4. **Amount to be charged against the owner of each housing unit:** The total costs are allocated based on the share of common costs that the owner of each unit pays under the Cloud 9 Sky Flats documents. Following are estimates of the fee to be imposed on housing units in the HIA:

The Annual Fee includes interest at the rate of 5.20% per annum, and is payable if the unit owner does not prepay the Total Fee as described below.

<table>
<thead>
<tr>
<th>Unit #</th>
<th>Share</th>
<th>Total Fee</th>
<th>Annual Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>101</td>
<td>0.5783%</td>
<td>$22,727.14</td>
<td>$1,957.48</td>
</tr>
<tr>
<td>102</td>
<td>0.5357%</td>
<td>$21,052.96</td>
<td>$1,814.02</td>
</tr>
<tr>
<td>103</td>
<td>0.5458%</td>
<td>$21,449.89</td>
<td>$1,848.03</td>
</tr>
<tr>
<td>104</td>
<td>0.6710%</td>
<td>$26,370.25</td>
<td>$2,269.65</td>
</tr>
<tr>
<td>106</td>
<td>0.9015%</td>
<td>$35,428.90</td>
<td>$3,045.85</td>
</tr>
<tr>
<td>107</td>
<td>0.5693%</td>
<td>$22,373.44</td>
<td>$1,927.17</td>
</tr>
<tr>
<td>108</td>
<td>0.5687%</td>
<td>$22,349.86</td>
<td>$1,925.15</td>
</tr>
<tr>
<td>109</td>
<td>0.6784%</td>
<td>$26,661.07</td>
<td>$2,294.57</td>
</tr>
<tr>
<td>110</td>
<td>0.5629%</td>
<td>$22,121.92</td>
<td>$1,905.61</td>
</tr>
<tr>
<td>111</td>
<td>0.5293%</td>
<td>$20,801.44</td>
<td>$1,792.46</td>
</tr>
<tr>
<td>112</td>
<td>0.5458%</td>
<td>$21,449.89</td>
<td>$1,848.03</td>
</tr>
<tr>
<td>113</td>
<td>0.6667%</td>
<td>$26,201.26</td>
<td>$2,255.17</td>
</tr>
<tr>
<td>114</td>
<td>0.5267%</td>
<td>$20,699.26</td>
<td>$1,783.71</td>
</tr>
<tr>
<td>117</td>
<td>0.6566%</td>
<td>$25,804.33</td>
<td>$2,221.16</td>
</tr>
<tr>
<td>201</td>
<td>0.5778%</td>
<td>$22,707.49</td>
<td>$1,955.79</td>
</tr>
<tr>
<td>202</td>
<td>0.5357%</td>
<td>$21,052.96</td>
<td>$1,814.02</td>
</tr>
<tr>
<td>203</td>
<td>0.5698%</td>
<td>$22,393.09</td>
<td>$1,928.85</td>
</tr>
<tr>
<td>204</td>
<td>0.7892%</td>
<td>$31,015.51</td>
<td>$2,667.70</td>
</tr>
<tr>
<td>205</td>
<td>0.4084%</td>
<td>$16,050.07</td>
<td>$1,385.32</td>
</tr>
<tr>
<td>206</td>
<td>0.4707%</td>
<td>$18,498.46</td>
<td>$1,595.12</td>
</tr>
<tr>
<td>207</td>
<td>0.5671%</td>
<td>$22,286.98</td>
<td>$1,919.76</td>
</tr>
<tr>
<td>208</td>
<td>0.5693%</td>
<td>$22,373.44</td>
<td>$1,927.17</td>
</tr>
<tr>
<td>209</td>
<td>0.6784%</td>
<td>$26,661.07</td>
<td>$2,294.57</td>
</tr>
<tr>
<td>210</td>
<td>0.5687%</td>
<td>$22,349.86</td>
<td>$1,925.15</td>
</tr>
<tr>
<td>211</td>
<td>0.5357%</td>
<td>$21,052.96</td>
<td>$1,814.02</td>
</tr>
<tr>
<td>212</td>
<td>0.5698%</td>
<td>$22,393.09</td>
<td>$1,928.85</td>
</tr>
<tr>
<td>213</td>
<td>0.7892%</td>
<td>$31,015.51</td>
<td>$2,667.70</td>
</tr>
<tr>
<td>214</td>
<td>0.4084%</td>
<td>$16,050.07</td>
<td>$1,385.32</td>
</tr>
<tr>
<td>215</td>
<td>0.4707%</td>
<td>$18,498.46</td>
<td>$1,595.12</td>
</tr>
<tr>
<td>216</td>
<td>0.5693%</td>
<td>$22,373.44</td>
<td>$1,927.17</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Unit #</th>
<th>Share</th>
<th>Total Fee</th>
<th>Annual Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>518</td>
<td>0.3445%</td>
<td>$13,538.80</td>
<td>$1,170.13</td>
</tr>
<tr>
<td>601</td>
<td>0.5788%</td>
<td>$22,746.79</td>
<td>$1,959.16</td>
</tr>
<tr>
<td>602</td>
<td>0.5368%</td>
<td>$21,096.19</td>
<td>$1,817.72</td>
</tr>
<tr>
<td>603</td>
<td>0.5698%</td>
<td>$22,393.09</td>
<td>$1,928.85</td>
</tr>
<tr>
<td>604</td>
<td>0.7913%</td>
<td>$31,098.04</td>
<td>$2,674.77</td>
</tr>
<tr>
<td>605</td>
<td>0.4079%</td>
<td>$16,030.42</td>
<td>$1,383.64</td>
</tr>
<tr>
<td>607</td>
<td>0.8398%</td>
<td>$33,004.09</td>
<td>$2,838.10</td>
</tr>
<tr>
<td>608</td>
<td>0.7791%</td>
<td>$30,618.58</td>
<td>$2,633.69</td>
</tr>
<tr>
<td>609</td>
<td>0.7791%</td>
<td>$30,618.58</td>
<td>$2,633.69</td>
</tr>
<tr>
<td>610</td>
<td>0.5698%</td>
<td>$22,393.09</td>
<td>$1,928.85</td>
</tr>
<tr>
<td>611</td>
<td>0.5368%</td>
<td>$21,096.19</td>
<td>$1,817.72</td>
</tr>
<tr>
<td>612</td>
<td>0.5698%</td>
<td>$22,393.09</td>
<td>$1,928.85</td>
</tr>
<tr>
<td>613</td>
<td>0.7918%</td>
<td>$31,117.69</td>
<td>$2,676.46</td>
</tr>
<tr>
<td>614</td>
<td>0.4079%</td>
<td>$16,030.42</td>
<td>$1,383.64</td>
</tr>
<tr>
<td>616</td>
<td>0.8398%</td>
<td>$33,004.09</td>
<td>$2,838.10</td>
</tr>
<tr>
<td>617</td>
<td>0.8691%</td>
<td>$34,155.58</td>
<td>$2,936.77</td>
</tr>
<tr>
<td>618</td>
<td>0.3424%</td>
<td>$13,456.27</td>
<td>$1,163.06</td>
</tr>
<tr>
<td>701</td>
<td>0.5794%</td>
<td>$22,770.37</td>
<td>$1,961.18</td>
</tr>
<tr>
<td>702</td>
<td>0.5368%</td>
<td>$21,096.19</td>
<td>$1,817.72</td>
</tr>
<tr>
<td>703</td>
<td>0.4606%</td>
<td>$18,101.53</td>
<td>$1,561.11</td>
</tr>
<tr>
<td>704</td>
<td>0.7918%</td>
<td>$31,117.69</td>
<td>$2,676.46</td>
</tr>
<tr>
<td>705</td>
<td>0.4079%</td>
<td>$16,030.42</td>
<td>$1,383.64</td>
</tr>
<tr>
<td>707</td>
<td>0.8403%</td>
<td>$33,023.74</td>
<td>$2,839.78</td>
</tr>
<tr>
<td>708</td>
<td>0.7785%</td>
<td>$30,595.00</td>
<td>$2,633.69</td>
</tr>
<tr>
<td>709</td>
<td>0.7791%</td>
<td>$30,618.58</td>
<td>$2,633.69</td>
</tr>
<tr>
<td>710</td>
<td>0.5698%</td>
<td>$22,393.09</td>
<td>$1,928.85</td>
</tr>
<tr>
<td>711</td>
<td>0.5368%</td>
<td>$21,096.19</td>
<td>$1,817.72</td>
</tr>
<tr>
<td>712</td>
<td>0.4601%</td>
<td>$18,081.88</td>
<td>$1,559.43</td>
</tr>
<tr>
<td>713</td>
<td>0.7913%</td>
<td>$31,098.04</td>
<td>$2,674.77</td>
</tr>
<tr>
<td>714</td>
<td>0.4079%</td>
<td>$16,030.42</td>
<td>$1,383.64</td>
</tr>
</tbody>
</table>
Unit #
217
218
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
501
502
504

Share
0.5421%
0.3621%
0.5778%
0.5357%
0.5698%
0.7886%
0.4084%
0.4707%
0.5666%
0.7780%
0.7780%
0.5693%
0.5357%
0.5693%
0.7886%
0.4084%
0.4707%
0.5666%
0.8680%
0.3472%
0.5783%
0.5357%
0.5698%
0.7892%
0.4084%
0.4707%
0.5661%
0.7780%
0.7780%
0.5693%
0.5357%
0.5693%
0.7892%
0.4084%
0.4707%
0.5661%
0.8685%
0.3467%
0.5788%
0.5368%
1.3616%

Total Fee
Annual Fee
$21,304.48 $1,835.57
$14,230.48 $1,229.40
$22,707.49 $1,955.79
$21,052.96 $1,814.02
$22,393.09 $1,928.85
$30,991.93 $2,665.68
$16,050.07 $1,385.32
$18,498.46 $1,595.12
$22,267.33 $1,918.07
$30,575.35 $2,629.98
$30,575.35 $2,629.98
$22,373.44 $1,927.17
$21,052.96 $1,814.02
$22,373.44 $1,927.17
$30,991.93 $2,665.68
$16,050.07 $1,385.32
$18,498.46 $1,595.12
$22,267.33 $1,918.07
$34,112.35 $2,933.07
$13,644.91 $1,179.22
$22,727.14 $1,957.48
$21,052.96 $1,814.02
$22,393.09 $1,928.85
$31,015.51 $2,667.70
$16,050.07 $1,385.32
$18,498.46 $1,595.12
$22,247.68 $1,916.39
$30,575.35 $2,629.98
$30,575.35 $2,629.98
$22,373.44 $1,927.17
$21,052.96 $1,814.02
$22,373.44 $1,927.17
$31,015.51 $2,667.70
$16,050.07 $1,385.32
$18,498.46 $1,595.12
$22,247.68 $1,916.39
$34,132.00 $2,934.75
$13,625.26 $1,177.54
$22,746.79 $1,959.16
$21,096.19 $1,817.72
$53,510.83 $4,595.31

Unit #
716
717
718
801
802
803
804
805
807
808
809
810
811
812
813
814
816
817
818
901
902
903
904
905
907
908
909
910
911
912
913
914
916
917
918
1001
1002
1003
1004
1005
1007

Share
0.8403%
0.8696%
0.3477%
0.5788%
0.5368%
0.4606%
0.7918%
0.4079%
0.8392%
0.7785%
0.7791%
0.5698%
0.5368%
0.4606%
0.7913%
0.4079%
0.8398%
0.8696%
0.3483%
0.5794%
0.5373%
0.4606%
0.7918%
0.4079%
0.8392%
0.7785%
0.7791%
0.5698%
0.5368%
0.4606%
0.7913%
0.4079%
0.8430%
0.8696%
0.3477%
0.5788%
0.5368%
0.4601%
0.7918%
0.4079%
0.8430%

Total Fee
Annual Fee
$33,023.74 $2,839.78
$34,175.23 $2,938.45
$13,664.56 $1,180.91
$22,746.79 $1,959.16
$21,096.19 $1,817.72
$18,101.53 $1,561.11
$31,117.69 $2,676.46
$16,030.42 $1,383.64
$32,980.51 $2,836.08
$30,595.00 $2,631.67
$30,618.58 $2,633.69
$22,393.09 $1,928.85
$21,096.19 $1,817.72
$18,101.53 $1,561.11
$31,098.04 $2,674.77
$16,030.42 $1,383.64
$33,004.09 $2,838.10
$34,175.23 $2,938.45
$13,688.14 $1,182.93
$22,770.37 $1,961.18
$21,115.84 $1,819.40
$18,101.53 $1,561.11
$31,117.69 $2,676.46
$16,030.42 $1,383.64
$32,980.51 $2,836.08
$30,595.00 $2,631.67
$30,618.58 $2,633.69
$22,393.09 $1,928.85
$21,096.19 $1,817.72
$18,101.53 $1,561.11
$31,098.04 $2,674.77
$16,030.42 $1,383.64
$33,129.85 $2,848.88
$34,175.23 $2,938.45
$13,664.56 $1,180.91
$22,746.79 $1,959.16
$21,096.19 $1,817.72
$18,081.88 $1,559.43
$31,117.69 $2,676.46
$16,030.42 $1,383.64
$33,129.85 $2,848.88


5. **Collection of fee**: Each housing unit’s share of the housing improvement fees will be levied against the housing unit and are collected in the same manner as property taxes. The housing improvement fee will be subject to the same penalty and interest as in the case of property taxes that are not paid by the due date.

6. **Owner's right to prepay**: Housing unit owners may prepay the Total Fee in full between October 12, 2017 (the effective date of the resolution) and April 12, 2018. *After April 12, 2018, the fee may not be prepaid.* The Total Fee may only be prepaid in full and may not be prepaid in part.

7. **Number of years the fee will be in effect**: If owners do not prepay the Total Fee, the Annual Fee will be imposed in equal installments over a 20 year period. The first installment will be payable in 2019. The annual installments will be in the amount of the Annual Fee, described in paragraph 4 above.

8. **Compliance with Petition Requirement**: Owners of more than 60% of the housing units that would be subject to the proposed fee in the HIA have filed a petition with the City Clerk requesting a public hearing on both the ordinance creating the HIA and the proposed fee, in accordance with Section 428A.12 of the Housing Improvement Act and the City’s housing assistance policy (the policy increases the required percentage from 50% to 60%).

For further information on the proposed HIA and housing improvement fee, contact Alisha Gray at City Hall, by phone at 952-939-8285 or by email at agray@emnnetonka.com.

Sincerely,

Alisha Gray
Economic Development and Housing Manager

<table>
<thead>
<tr>
<th>Unit #</th>
<th>Share</th>
<th>Total Fee</th>
<th>Annual Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>505</td>
<td>0.4079%</td>
<td><strong>$16,030.42</strong></td>
<td>$1,383.64</td>
</tr>
<tr>
<td>507</td>
<td>0.8392%</td>
<td><strong>$32,980.51</strong></td>
<td>$2,836.08</td>
</tr>
<tr>
<td>508</td>
<td>0.7791%</td>
<td><strong>$30,618.58</strong></td>
<td>$2,633.69</td>
</tr>
<tr>
<td>509</td>
<td>0.7791%</td>
<td><strong>$30,618.58</strong></td>
<td>$2,633.69</td>
</tr>
<tr>
<td>510</td>
<td>0.5698%</td>
<td><strong>$22,393.09</strong></td>
<td>$1,928.85</td>
</tr>
<tr>
<td>511</td>
<td>0.5368%</td>
<td><strong>$21,096.19</strong></td>
<td>$1,817.72</td>
</tr>
<tr>
<td>512</td>
<td>0.5703%</td>
<td><strong>$22,412.74</strong></td>
<td>$1,930.53</td>
</tr>
<tr>
<td>513</td>
<td>0.7918%</td>
<td><strong>$31,117.69</strong></td>
<td>$2,676.46</td>
</tr>
<tr>
<td>514</td>
<td>0.4079%</td>
<td><strong>$16,030.42</strong></td>
<td>$1,383.64</td>
</tr>
<tr>
<td>516</td>
<td>0.8398%</td>
<td><strong>$33,004.09</strong></td>
<td>$2,838.10</td>
</tr>
<tr>
<td>517</td>
<td>0.8696%</td>
<td><strong>$34,175.23</strong></td>
<td>$2,938.45</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Unit #</th>
<th>Share</th>
<th>Total Fee</th>
<th>Annual Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1008</td>
<td>0.5906%</td>
<td><strong>$23,210.53</strong></td>
<td>$1,998.90</td>
</tr>
<tr>
<td>1009</td>
<td>0.8312%</td>
<td><strong>$32,666.11</strong></td>
<td>$2,809.14</td>
</tr>
<tr>
<td>1010</td>
<td>0.5698%</td>
<td><strong>$22,393.09</strong></td>
<td>$1,928.85</td>
</tr>
<tr>
<td>1011</td>
<td>0.5368%</td>
<td><strong>$21,096.19</strong></td>
<td>$1,817.72</td>
</tr>
<tr>
<td>1012</td>
<td>0.4606%</td>
<td><strong>$18,101.53</strong></td>
<td>$1,561.11</td>
</tr>
<tr>
<td>1013</td>
<td>0.7918%</td>
<td><strong>$31,117.69</strong></td>
<td>$2,676.46</td>
</tr>
<tr>
<td>1014</td>
<td>0.4084%</td>
<td><strong>$16,050.07</strong></td>
<td>$1,385.32</td>
</tr>
<tr>
<td>1016</td>
<td>0.8430%</td>
<td><strong>$33,129.85</strong></td>
<td>$2,848.88</td>
</tr>
<tr>
<td>1017</td>
<td>0.8691%</td>
<td><strong>$34,155.58</strong></td>
<td>$2,936.77</td>
</tr>
<tr>
<td>1018</td>
<td>0.3477%</td>
<td><strong>$13,664.56</strong></td>
<td>$1,180.91</td>
</tr>
</tbody>
</table>
June 22, 2017

Cloud 9 Sky Flats Association, Inc.
c/o Mr. Matt Greenstein
Bernick Lifson PA
5500 Wayzata Boulevard
Suite 1200
Minneapolis, MN 55416

Dear Matt:

Bell Bank (the “Bank”) is pleased to commit to provide Cloud 9 Sky Flats Association, Inc., a Minnesota nonprofit corporation, a credit facility up to the maximum principal amount of $3,800,000 to provide construction financing for the curtain wall and elevator upgrade project for Cloud 9 Sky Flats located in Minnetonka, MN.

Such loan facility would be provided pursuant to commercial loan documents incorporating provisions deemed by Bank to be customary and appropriate in transactions of this type. A summary of some of the terms and conditions of the loan facility is set forth in the attached “Principal Terms and Conditions”, which is not meant to be all-inclusive. This commitment is based upon the financial and other information provided to the Bank, as well as representations made to the Bank by or on behalf of the Borrower and is conditioned upon the truth and accuracy of such information and representations as of the date of closing. If any other material business or legal issues arise prior to initial funding, such issues may cause changes or additions to the Principal Terms and Conditions and must be resolved to the satisfaction of Bank or this commitment will become null and void. The loan documents shall contain all of the terms of the credit facility, and such terms shall supersede this commitment and the Principal Terms and Conditions.

If the terms outlined in the attached Principal Terms and Conditions are acceptable to you, please execute and return a copy of the Principal Terms and Conditions by facsimile, e-mail or mail to be received by Bank prior to the close of business on July 21, 2017 together with, in addition to any other specified fees previously or hereafter paid, the payment to Bank of a nonrefundable commitment fee of $4,500, or this commitment will automatically expire. In the event the conditions precedent to funding the credit facility are not satisfied on or before September 22, 2017, this commitment shall automatically expire, but any applicable fees, reimbursement and indemnity obligations described above and/or in the Principal Terms and Conditions shall survive such termination.

This commitment is for your benefit only. It is not assignable and may not be disclosed to nor relied upon by any third party other than the City of Minnetonka, Minnesota without the prior written approval of Bank.
We at Bell Bank appreciate your business and look forward to this new opportunity.

Very truly yours,

BELL BANK

By

Name: Mark Lauffenburger
Title: Senior Vice President
## Cloud 9 HIA

**Sources and Uses 1-13-17**  
**20-Year Term**  
**Separate Construction Financing; Bond Issue for Permanent Financing**

<table>
<thead>
<tr>
<th>Sources and Uses of Funds</th>
<th>15-Year Term</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SOURCES OF FUNDS</strong></td>
<td></td>
</tr>
<tr>
<td>Taxable GO Bonds (05-01-2018 Dated Date)</td>
<td>$3,930,000.00</td>
</tr>
<tr>
<td>Prepaid Assessments</td>
<td>$0.00</td>
</tr>
<tr>
<td>Association Funds</td>
<td>$0.00</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$3,930,000.00</strong></td>
</tr>
</tbody>
</table>

| **USES OF FUNDS**         |              |
| Common Costs              | $3,570,700.00 |
| Limited Common Costs      | $0.00        |
| Rebate of prepaids special assessments | $0.00 |
| **Total Project Costs**   | **$3,570,700.00** |
| Underwriters Discount     | $47,160.00   |
| Cost of Issuance          | $47,000.00   |
| Rounding                  | $4,190.00    |
| Capitalized Interest (Bond) | $0.00    |
| Capitalized Interest (Interim Financing) | $182,300.00 |
| City Admin Fee ($5,000 paid at time of application) | $0.00 |
| Soft Costs                | $78,650.00   |
| **Total Soft and Loan Costs** | **$359,300.00** |
| **TOTAL**                 | **$3,930,000.00** |

- Term (years): 20  
- TIC: 5.20%  
- Average Annual Debt Service at 105%: $320,723  
- Required Coverage (105%): $336,759  
- Annual Dues Paid: $336,759

**Breakdown of Soft Costs**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dunbar Strandness (HIA Consultant)</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>Construction Financing Origination Fee</td>
<td>$35,000</td>
</tr>
<tr>
<td>Ongoing Bond Consulting Expenses</td>
<td>$19,650</td>
</tr>
<tr>
<td>Reserve Study</td>
<td>$0</td>
</tr>
<tr>
<td>Legal Fee</td>
<td>$10,000</td>
</tr>
<tr>
<td>Financial Advisor Fee</td>
<td>$4,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$78,650.00</strong></td>
</tr>
</tbody>
</table>
City of Minnetonka
Housing Improvement Area - Cloud 9 - 20 year option
Assessment Allocation January 13, 2017
CLOUD 9 CONDOMINIUM HOUSING IMPROVEMENT AREA - ESTIMATE OF UNIT FEES

#

Unit No.

Percentage
Interest

Total Common Area
Construction Cost

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69

101
102
103
104
106
107
108
109
110
111
112
113
114
117
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
501

0.5783%
0.5357%
0.5458%
0.6710%
0.9015%
0.5693%
0.5687%
0.6784%
0.5629%
0.5293%
0.5458%
0.6667%
0.5267%
0.6566%
0.5778%
0.5357%
0.5698%
0.7892%
0.4084%
0.4707%
0.5671%
0.5693%
0.6784%
0.5687%
0.5357%
0.5698%
0.7892%
0.4084%
0.4707%
0.5693%
0.5421%
0.3621%
0.5778%
0.5357%
0.5698%
0.7886%
0.4084%
0.4707%
0.5666%
0.7780%
0.7780%
0.5693%
0.5357%
0.5693%
0.7886%
0.4084%
0.4707%
0.5666%
0.8680%
0.3472%
0.5783%
0.5357%
0.5698%
0.7892%
0.4084%
0.4707%
0.5661%
0.7780%
0.7780%
0.5693%
0.5357%
0.5693%
0.7892%
0.4084%
0.4707%
0.5661%
0.8685%
0.3467%
0.5788%

$20,649.31
$19,128.20
$19,488.84
$23,959.35
$32,189.82
$20,327.95
$20,306.53
$24,223.58
$20,099.43
$18,899.67
$19,488.84
$23,805.81
$18,806.83
$23,445.17
$20,631.46
$19,128.20
$20,345.80
$28,179.92
$14,582.69
$16,807.24
$20,249.40
$20,327.95
$24,223.58
$20,306.53
$19,128.20
$20,345.80
$28,179.92
$14,582.69
$16,807.24
$20,327.95
$19,356.72
$12,929.46
$20,631.46
$19,128.20
$20,345.80
$28,158.50
$14,582.69
$16,807.24
$20,231.54
$27,780.00
$27,780.00
$20,327.95
$19,128.20
$20,327.95
$28,158.50
$14,582.69
$16,807.24
$20,231.54
$30,993.63
$12,397.43
$20,649.31
$19,128.20
$20,345.80
$28,179.92
$14,582.69
$16,807.24
$20,213.69
$27,780.00
$27,780.00
$20,327.95
$19,128.20
$20,327.95
$28,179.92
$14,582.69
$16,807.24
$20,213.69
$31,011.49
$12,379.57
$20,667.17

Total
Total Costs
Financing & (BEFORE BOND
Soft Costs
SALE)
$2,077.83
$22,727.14
$1,924.77
$21,052.96
$1,961.05
$21,449.89
$2,410.90
$26,370.25
$3,239.09
$35,428.90
$2,045.49
$22,373.44
$2,043.33
$22,349.86
$2,437.49
$26,661.07
$2,022.50
$22,121.92
$1,901.77
$20,801.44
$1,961.05
$21,449.89
$2,395.45
$26,201.26
$1,892.43
$20,699.26
$2,359.16
$25,804.33
$2,076.03
$22,707.49
$1,924.77
$21,052.96
$2,047.29
$22,393.09
$2,835.59
$31,015.51
$1,467.38
$16,050.07
$1,691.22
$18,498.46
$2,037.59
$22,286.98
$2,045.49
$22,373.44
$2,437.49
$26,661.07
$2,043.33
$22,349.86
$1,924.77
$21,052.96
$2,047.29
$22,393.09
$2,835.59
$31,015.51
$1,467.38
$16,050.07
$1,691.22
$18,498.46
$2,045.49
$22,373.44
$1,947.76
$21,304.48
$1,301.02
$14,230.48
$2,076.03
$22,707.49
$1,924.77
$21,052.96
$2,047.29
$22,393.09
$2,833.44
$30,991.93
$1,467.38
$16,050.07
$1,691.22
$18,498.46
$2,035.79
$22,267.33
$2,795.35
$30,575.35
$2,795.35
$30,575.35
$2,045.49
$22,373.44
$1,924.77
$21,052.96
$2,045.49
$22,373.44
$2,833.44
$30,991.93
$1,467.38
$16,050.07
$1,691.22
$18,498.46
$2,035.79
$22,267.33
$3,118.72
$34,112.35
$1,247.49
$13,644.91
$2,077.83
$22,727.14
$1,924.77
$21,052.96
$2,047.29
$22,393.09
$2,835.59
$31,015.51
$1,467.38
$16,050.07
$1,691.22
$18,498.46
$2,033.99
$22,247.68
$2,795.35
$30,575.35
$2,795.35
$30,575.35
$2,045.49
$22,373.44
$1,924.77
$21,052.96
$2,045.49
$22,373.44
$2,835.59
$31,015.51
$1,467.38
$16,050.07
$1,691.22
$18,498.46
$2,033.99
$22,247.68
$3,120.52
$34,132.00
$1,245.69
$13,625.26
$2,079.62
$22,746.79

Annual Fee
(105% of Total
Costs)
$1,947
$1,804
$1,838
$2,260
$3,036
$1,917
$1,915
$2,285
$1,896
$1,782
$1,838
$2,245
$1,774
$2,211
$1,946
$1,804
$1,919
$2,658
$1,375
$1,585
$1,910
$1,917
$2,285
$1,915
$1,804
$1,919
$2,658
$1,375
$1,585
$1,917
$1,826
$1,219
$1,946
$1,804
$1,919
$2,656
$1,375
$1,585
$1,908
$2,620
$2,620
$1,917
$1,804
$1,917
$2,656
$1,375
$1,585
$1,908
$2,923
$1,169
$1,947
$1,804
$1,919
$2,658
$1,375
$1,585
$1,906
$2,620
$2,620
$1,917
$1,804
$1,917
$2,658
$1,375
$1,585
$1,906
$2,925
$1,168
$1,949

Total P & I Paid Per
Unit (105%) - Non
prepaid only
$38,950
$36,080
$36,761
$45,193
$60,718
$38,343
$38,303
$45,691
$37,912
$35,649
$36,761
$44,903
$35,474
$44,223
$38,916
$36,080
$38,377
$53,154
$27,506
$31,702
$38,195
$38,343
$45,691
$38,303
$36,080
$38,377
$53,154
$27,506
$31,702
$38,343
$36,511
$24,388
$38,916
$36,080
$38,377
$53,114
$27,506
$31,702
$38,161
$52,400
$52,400
$38,343
$36,080
$38,343
$53,114
$27,506
$31,702
$38,161
$58,461
$23,384
$38,950
$36,080
$38,377
$53,154
$27,506
$31,702
$38,128
$52,400
$52,400
$38,343
$36,080
$38,343
$53,154
$27,506
$31,702
$38,128
$58,495
$23,351
$38,983

Total Annual Fee
With $10 City
Admin. Charge
$1,957.48
$1,814.02
$1,848.03
$2,269.65
$3,045.88
$1,927.17
$1,925.15
$2,294.57
$1,905.61
$1,792.46
$1,848.03
$2,255.17
$1,783.71
$2,221.16
$1,955.79
$1,814.02
$1,928.85
$2,667.70
$1,385.32
$1,595.12
$1,919.76
$1,927.17
$2,294.57
$1,925.15
$1,814.02
$1,928.85
$2,667.70
$1,385.32
$1,595.12
$1,927.17
$1,835.57
$1,229.40
$1,955.79
$1,814.02
$1,928.85
$2,665.68
$1,385.32
$1,595.12
$1,918.07
$2,629.98
$2,629.98
$1,927.17
$1,814.02
$1,927.17
$2,665.68
$1,385.32
$1,595.12
$1,918.07
$2,933.07
$1,179.22
$1,957.48
$1,814.02
$1,928.85
$2,667.70
$1,385.32
$1,595.12
$1,916.39
$2,629.98
$2,629.98
$1,927.17
$1,814.02
$1,927.17
$2,667.70
$1,385.32
$1,595.12
$1,916.39
$2,934.75
$1,177.54
$1,959.16


<p>| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>151</td>
<td>1004</td>
<td>0.7918%</td>
<td>$28,272.76</td>
<td>$2,844.93</td>
<td>$31,117.69</td>
<td>$2,666</td>
</tr>
<tr>
<td>152</td>
<td>1005</td>
<td>0.4079%</td>
<td>$14,564.84</td>
<td>$1,465.58</td>
<td>$16,030.42</td>
<td>$1,374</td>
</tr>
<tr>
<td>153</td>
<td>1007</td>
<td>0.8430%</td>
<td>$30,100.96</td>
<td>$3,028.89</td>
<td>$33,129.85</td>
<td>$2,639</td>
</tr>
<tr>
<td>154</td>
<td>1008</td>
<td>0.5906%</td>
<td>$21,088.51</td>
<td>$2,122.02</td>
<td>$23,210.53</td>
<td>$1,989</td>
</tr>
<tr>
<td>155</td>
<td>1009</td>
<td>0.8312%</td>
<td>$29,679.61</td>
<td>$2,986.50</td>
<td>$32,666.11</td>
<td>$2,799</td>
</tr>
<tr>
<td>156</td>
<td>1010</td>
<td>0.5658%</td>
<td>$20,345.80</td>
<td>$2,047.29</td>
<td>$22,393.09</td>
<td>$1,919</td>
</tr>
<tr>
<td>157</td>
<td>1011</td>
<td>0.5368%</td>
<td>$15,167.47</td>
<td>$1,528.72</td>
<td>$16,696.19</td>
<td>$1,808</td>
</tr>
<tr>
<td>158</td>
<td>1012</td>
<td>0.4606%</td>
<td>$16,446.60</td>
<td>$1,654.93</td>
<td>$18,101.53</td>
<td>$1,551</td>
</tr>
<tr>
<td>159</td>
<td>1013</td>
<td>0.7918%</td>
<td>$28,272.76</td>
<td>$2,844.93</td>
<td>$31,117.69</td>
<td>$2,666</td>
</tr>
<tr>
<td>160</td>
<td>1014</td>
<td>0.4084%</td>
<td>$14,582.69</td>
<td>$1,467.38</td>
<td>$16,050.07</td>
<td>$1,375</td>
</tr>
<tr>
<td>161</td>
<td>1016</td>
<td>0.8430%</td>
<td>$30,100.96</td>
<td>$3,028.89</td>
<td>$33,129.85</td>
<td>$2,639</td>
</tr>
<tr>
<td>162</td>
<td>1017</td>
<td>0.8891%</td>
<td>$31,052.91</td>
<td>$3,122.87</td>
<td>$34,175.78</td>
<td>$2,927</td>
</tr>
<tr>
<td>163</td>
<td>1018</td>
<td>0.3477%</td>
<td>$12,415.28</td>
<td>$1,249.28</td>
<td>$13,664.56</td>
<td>$1,171</td>
</tr>
</tbody>
</table>

**GRAND TOTAL** 100.0002% $3,570,700.00 $359,300.00 $3,930,000.00 $336,759 $6,735,187 $338,389
DEVELOPMENT AGREEMENT

between

CITY OF MINNETONKA, MINNESOTA

and

CLOUD 9 SKY FLATS ASSOCIATION, INC.

Dated ______________, 2017

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

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>PREAMBLE</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>ARTICLE I</td>
<td></td>
</tr>
<tr>
<td>2.1</td>
<td>Definitions</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>ARTICLE II</td>
<td></td>
</tr>
<tr>
<td>3.1</td>
<td>Representations by the City</td>
<td>5</td>
</tr>
<tr>
<td>3.2</td>
<td>Representations and Warranties by the Association</td>
<td>5</td>
</tr>
<tr>
<td>4</td>
<td>ARTICLE III</td>
<td></td>
</tr>
<tr>
<td>4.1</td>
<td>Construction Financing</td>
<td>7</td>
</tr>
<tr>
<td>4.2</td>
<td>Permanent Financing</td>
<td>7</td>
</tr>
<tr>
<td>4.3</td>
<td>Conditions Precedent to Permanent Financing</td>
<td>8</td>
</tr>
<tr>
<td>4.4</td>
<td>Application of Balances</td>
<td>10</td>
</tr>
<tr>
<td>4.5</td>
<td>City Administrative Costs</td>
<td>10</td>
</tr>
<tr>
<td>5</td>
<td>ARTICLE IV</td>
<td></td>
</tr>
<tr>
<td>5.1</td>
<td>Construction of Housing Improvements</td>
<td>12</td>
</tr>
<tr>
<td>6</td>
<td>ARTICLE V</td>
<td></td>
</tr>
<tr>
<td>6.1</td>
<td>Insurance</td>
<td>15</td>
</tr>
<tr>
<td>7</td>
<td>ARTICLE VI</td>
<td></td>
</tr>
<tr>
<td>7.1</td>
<td>No Warranty of Condition or Suitability, Indemnification</td>
<td>17</td>
</tr>
<tr>
<td>7.2</td>
<td>Financial Statements</td>
<td>17</td>
</tr>
<tr>
<td>7.3</td>
<td>Financial Plan; Annual Reports</td>
<td>18</td>
</tr>
<tr>
<td>7.4</td>
<td>Records and Inspection</td>
<td>18</td>
</tr>
<tr>
<td>7.5</td>
<td>Maintenance of Property; Replacement Reserve Fund</td>
<td>18</td>
</tr>
</tbody>
</table>
Section 6.6. Covenant to Maintain Net Revenues Available for Debt Service.................19
Section 6.7. Assignment of Association Assets .........................................................19
Section 6.8. Association to Maintain Its Existence; Conditions Under
Which Exceptions Permitted .................................................................................20
Section 6.9. Prohibition Against Assignment of Agreement ...........................................20
Section 6.10. Notice of Fee Upon Transfer of Housing Units .........................................21
Section 6.11. Experienced Property Manager ..............................................................21
Section 6.12. Sale of Parking Ramp .............................................................................21
Section 6.13. Affordability Requirements .....................................................................21
Section 6.14. Change in Association’s Bylaws .............................................................21
Section 6.15. Overdue Association Dues .....................................................................22

ARTICLE VII
Events of Default

Section 7.1. Events of Default Defined .................................................................23
Section 7.2. Remedies on Default ...........................................................................23
Section 7.3. No Remedy Exclusive ..........................................................................24
Section 7.4. No Additional Waiver Implied by One Waiver ......................................24

ARTICLE VIII
Additional Provisions

Section 8.1. Conflict of Interests; City Representatives Not Individually Liable ........25
Section 8.2. Equal Employment Opportunity ............................................................25
Section 8.3. Provisions Not Merged With Deed .........................................................25
Section 8.4. Titles of Articles and Sections ...............................................................25
Section 8.5. Notices and Demands ...........................................................................25
Section 8.6. Counterparts ..........................................................................................25
Section 8.7. Recording ...............................................................................................25
Section 8.8. Binding Effect .......................................................................................26
Section 8.9. Amendment ...........................................................................................26

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

SCHEDULE A Description of Property .................................................................A-1
SCHEDULE B Housing Improvements .................................................................B-1
SCHEDULE C Reserve Study Financial Plan .........................................................C-1
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT, made on or as of ____________, 2017 (the “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 “City”), and CLOUD 9 SKY FLATS ASSOCIATION, INC., a Minnesota nonprofit corporation (the “Association”).

WITNESSETH:

WHEREAS, the City is authorized under Minnesota Statutes, Chapter 428A, Sections 11 through 21, as amended (the “Act”), to establish by ordinance a housing improvement area within which housing improvements are made or constructed and the costs of the improvements are paid in whole or in part from fees imposed within the area; and

WHEREAS, by Ordinance No. 2017-______, adopted on August 28, 2017 (the “Enabling Ordinance”), the Council established Cloud 9 Sky Flats Housing Improvement Area in order to facilitate certain improvements to property known as the Cloud 9 Sky Flats, which property is legally described in SCHEDULE A attached hereto and is hereafter referred to as the “Property”; and

WHEREAS, by Resolution No. 2017-______, adopted on August 28, 2017 (the “Fee Resolution”) the City Council imposed a housing improvement fee on Housing Units (as hereinafter defined) in the Cloud 9 Sky Flats Housing Improvement Area in order to finance certain housing improvements in that area; and

WHEREAS, prior to adoption of the Fee Resolution by the City Council, the Association submitted to the City a financial plan in accordance with the Act that provides for the Association to finance maintenance and operation of the common elements in the Association and a long-range plan to conduct and finance capital improvements therein; and

WHEREAS, the City believes that development of the improvements to the Property pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the Cloud 9 Sky Flats Housing Improvement Area has been undertaken.

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

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

“Act” means Minnesota Statutes, Sections 428A.11 through 428A.21, as amended.

“Administrative Costs” means the costs of legal and fiscal consultants’ fees, administration of the City Obligation, city staff services, and inspection fees related to the Housing Improvements.

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

“Assignment” has the meaning given such term is Section 6.7 hereof.

“Association” means Cloud 9 Sky Flats Association, Inc., a Minnesota nonprofit corporation, or its permitted successors and assigns.

“Association’s Authorized Representative” means the Association President, Vice President, or Treasurer or any successor designated by written notice from the Association to the City.

“Certificate of Completion” means the certification provided to the Association, pursuant to Section 4.4 hereof.

“City” means the City of Minnetonka, Minnesota.

“City Building Official” means the City’s chief building inspector.

“City Obligation” means any general obligation bonds or other obligations issued by the City under Section 3.2 hereof to finance the Housing Improvements pursuant to the Act, and any bonds or other obligations issued to refund any such debt obligation issued by the City pursuant to Section 428A.16 of the Act.

“City Obligation Resolution” means the resolution to be approved by the Council awarding the sale and establishing the terms of the City Obligation.

“City’s Authorized Representative” means the Director of Community Development or a person designated in writing by said Director.

“Completion Date” means the date of actual completion of the Housing Improvements as certified by the City Building Official pursuant to Section 4.4 hereof.

“Construction Contract” means the construction contract between the Association and the Contractor.

“Construction Loan” means the loan provided to the Association by Bell Bank in order to provide financing for the construction of the Housing Improvements.
“Construction Manager” has the meaning provided in Section 4.3(b).

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed by the Association on the Property which shall be as detailed as the City may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

“Contractor” means any person, including subcontractors, who shall be engaged to work on, or to furnish materials and supplies for the Housing Improvements.

“Council” means the City Council of the City.

“County” means the County of Hennepin, Minnesota.

“Enabling Ordinance” means Ordinance No. 2017-____, adopted by the Council on August 28, 2017, which establishes the Housing Improvement Area.

“Event of Default” means an action by the Association listed in Article VII hereof.

“Fee” means the housing improvement fee imposed on all Housing Units in the Housing Improvement Area pursuant to the Fee Resolution.

“Fee Resolution” means Resolution No. 2017-____, adopted by the Council on August 28, 2017, which imposes the Fee.

“Fee Revenues” means all proceeds of the Fee payable to the City.

“Financial Plan” means a plan prepared by an independent third party that provides the Association’s plan to finance maintenance and operation of the common elements of the Property and a long-range plan to conduct and finance capital improvements to the Property through the Maturity Date. The Financial Plan prepared by Doug Strandness, dated __________, 20__ is set forth in SCHEDULE C.

“Fiscal Year” means any year commencing January 1 and ending December 31.

“Housing Improvement Area” means the real property located within the Cloud 9 Sky Flats Housing Improvement Area.

“Housing Improvements” has the meaning provided in the Enabling Ordinance and set forth in SCHEDULE B attached hereto.

“Housing Unit” means a Unit, as described in Minnesota Statutes, Chapter 515B, or a Unit as described in the Common Interest Community Number 1364 (Condominium), Cloud 9 Sky Flats Declaration establishing the Cloud 9 Sky Flats Common Interest Community.

“Independent,” when used with reference to an attorney, engineer, architect, certified public accountant, or other professional person, means a person who (i) is in fact independent; (ii) does not have any material financial interest in the Association or the transaction to which his or her
certificate or opinion relates (other than the payment to be received for professional services rendered); and (iii) is not connected with the City or the Association as an officer, director or employee.

“Inspecting Architect” means a professional representative hired by the Association for services in conjunction with enforcement of this Agreement.

“Management Consultant” means a person or entity, experienced in the study and management of condominium housing and having a favorable reputation throughout the United States or the State of Minnesota for skill and experience in such work and, unless otherwise specified herein, retained or employed by the Association and acceptable to the City whose acceptance shall not be unreasonably withheld.

“Maturity Date” means the date the City Obligation has been fully repaid, defeased or redeemed in accordance with their terms.

“Net Revenues Available for Debt Service” means, as of the date of calculation, the Fee Revenues received by the City in the six-month period prior to the relevant Payment Date, together with the balance of Fee Revenues previously received by the City in excess of the amounts needed to pay all prior payments on the City Obligation.

“Payment Date” means when principal of or interest on the City Obligation is due; currently expected to be each February 1 and August 1, commencing August 1, 2019, and continuing through the Maturity Date.

“Property” means the real property described in SCHEDULE A attached hereto.

“Property Manager” means Multiventure Properties, Inc., or another entity approved and designated by the City.

“Replacement Reserve Fund” means the reserve fund to be maintained by the Association in accordance with Section 6.5 hereof.

“State” means the State of Minnesota.

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

Representations and Warranties

Section 2.1. Representations by the City. The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City is a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The undertakings of the Housing Improvements are authorized by the Act.

(c) On August 28, 2017, after receipt of petitions by owners of at least sixty percent (60%) of the Housing Units in the Housing Improvement Area and due publication and mailing of notice of hearing, the Council held a public hearing on the adoption of the Enabling Ordinance and on the adoption of the Fee Resolution, and approved the second reading of the Enabling Ordinance and the Fee Resolution.

(d) The periods for veto of both the Enabling Ordinance and the Fee Resolution have expired without objection by owners of at least forty-five percent (45%) of the Housing Units in the Housing Improvement Area, all in accordance with the Act.

(e) There is no litigation pending or, to the best of its knowledge, threatened against the City relating to the Housing Improvements or to the City Obligation or questioning the powers or authority of the City under the Act, or questioning the corporate existence or boundaries of the City or the title of any of the present officers of the City to their respective offices.

(f) The execution, delivery and performance of this Agreement do not violate any agreement or any court order or judgment in any litigation to which the City is a party or by which it is bound.

Section 2.2. Representations and Warranties by the Association. The Association represents and warrants that:

(a) The Association is a nonprofit corporation, duly organized and in good standing under the laws of the State; is not in violation of any provisions of its articles of incorporation, bylaws or the laws of the State; is duly authorized to transact business within the State; has power to enter into this Agreement; and has duly authorized the execution, delivery and performance of this Agreement by proper action of its board of directors.

(b) The Association will construct, operate and maintain the Housing Improvements in accordance with the terms of this Agreement, the Financial Plan, and all local, State and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations, the City stormwater management plan and watershed district requirements).
(c) The Association has received no notice or communication from any local, State or federal official that the activities of the Association or the City in the Housing Improvement Area may be or will be in violation of any environmental law or regulation (other than those notices or communications of which the City is aware). The Association is aware of no facts the existence of which would cause it to be in violation of or give any person a valid claim under any local, State or federal environmental law, regulation or review procedure. The City and the Association understand and agree that the Housing Improvements, as defined in SCHEDULE B attached hereto, are intended to improve certain physical conditions within the Association, and that the Association makes no representations and warranties pursuant to this Section 2.2(c) regarding any conditions within the Housing Improvement Area or which may be discovered within the Housing Improvement Area, and which the Housing Improvements are intended to cure.

(d) The Association will construct the Housing Improvements in accordance with all local, State or federal energy-conservation laws or regulations.

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

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

(g) Whenever any Event of Default occurs and if the City shall employ attorneys, financial advisors or other consultants, or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Association under this Agreement, the Association agrees that it shall, within ten (10) days of written demand by the City pay to the City the reasonable fees of such attorneys, financial advisors or consultants, and such other expenses so incurred by the City.

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

City Obligation; Disbursement of Proceeds

Section 3.1. Construction Financing. The Association has obtained a commitment from Bell Bank to provide the Construction Loan to finance the Housing Improvements on a temporary basis.

Section 3.2. Permanent Financing.

(a) In order to provide permanent financing for the Housing Improvements, the City will issue the City Obligation pursuant to the Act. The City will issue the City Obligation in the principal amount that will produce an amount sufficient to refinance the Construction Loan and finance the costs of issuance of the City Obligation.

(b) The City will sell the City Obligation within 120 days of the Completion Date, subject to the conditions precedent set forth in Section 3.3, Unavoidable Delays and the City's ability to sell the City Obligation under existing laws and market conditions.

(c) At the time the City Obligation is issued, the City will choose between issuing general obligation bonds secured by the Fee Revenues and further secured by the City’s full faith, credit, and taxing power or using internal funds to provide the permanent financing. The parties agree and understand that interest on any general obligation bonds issued by the City to provide permanent financing for the Housing Improvements will be includable in the gross income of bondholders for purposes of federal and state income taxes, and the City makes no warranty or representation that the City Obligation will be tax-exempt under federal or State law. The interest rate on a general obligation bond will be determined by market conditions. The City shall also have the option to purchase its taxable general obligation bond. If the City chooses to buy the taxable general obligation bond or if the City chooses to use internal funding, the interest rate will be no more than the interest rates of publicly sold similarly situated bond issues (based on market information provided by the City’s municipal bond advisor).

(d) The City will loan the proceeds of the City Obligation to the Association. The Association will use the proceeds of the City Obligation to pay the principal of and all accrued interest on the Construction Loan. The parties agree and understand that the City Obligation will be repaid from Fee Revenues. The Fee will be payable in accordance with the Fee Resolution, and will include the principal amount of the City Obligation allocated to each unit, interest on the City Obligation, and a City administrative fee of $10.00 per Housing Unit per year and a County administrative fee of $2.50 per Housing Unit per year.

(e) The City Obligation Resolution will establish a Project Fund, a Debt Service Fund, a Cost of Issuance Fund, and a Surplus Fund. At closing on the issuance of the City Obligation, proceeds will be applied as follows: into the Debt Service Fund will be deposited accrued interest on the City Obligation (if any); into the Cost of Issuance Fund will be deposited amounts necessary to pay costs of issuance of the City Obligation (including, but not limited to, rating agency fees, the City’s bond issuance fee set forth in Section 3.5 hereof, financial advising fees, bond counsel fee, and other costs directly related to the issuance of the City Obligation); and into the Project Fund will
be deposited the balance of proceeds of the City Obligation together with all prepaid Fee Revenues. Moneys in the Project Fund will be advanced to refinance the Construction Loan.

(f) Under the City Obligation Resolution, on each Payment Date, all Fee Revenues in excess of the amount necessary to pay when due the principal, interest and redemption premium, if any, on the City Obligation will be applied for deposit in the Surplus Fund established under the City Obligation Resolution and maintained by the City until the Maturity Date. Subject to the prior pledge of Fee Revenues to payment of principal and interest on the City Obligation, the City may at its sole discretion apply funds in the Surplus Fund: (i) to pay registrar and paying agent fees, if any, in connection with the City Obligation; (ii) to pay other Administrative Costs in connection with the City Obligation or the Housing Improvement Area; (iii) to pay costs in connection with enforcement by the City of the Association's obligations under this Agreement (provided that nothing in this Section 3.2(f) shall be construed to require the City to pay costs of enforcement in the first instance as provided herein); and (iv) in accordance with Section 3.4 hereof.

(g) The City and Association agree, and the City Obligation Resolution shall so provide, that interest earnings on funds in the Debt Service Fund will be credited to the Debt Service Fund. Interest earnings on all other funds and accounts will be credited to the Surplus Fund described in Section 3.2(f).

(h) Following the issuance of the City Obligation, no prepayment of Fee Revenues by Housing Units will be allowed.

(i) The City may at any time, in its sole discretion, refinance the City Obligation through issuance of a City Obligation issued under the Act.

Section 3.3. Conditions Precedent to Permanent Financing. The obligation of the City to issue the City Obligation hereunder shall be subject to the following conditions precedent:

(a) The City has received a copy of the Construction Plans, approved by the City Building Official in accordance with Section 4.2 hereof, certified by the City Building Official and the Association.

(b) The City has received copies of the Construction Contracts, and such subcontracts as may be reasonably requested from time to time by the City.

(c) The City has received a sworn construction statement duly executed by the Contractors for the Housing Improvements showing estimates of all anticipated Contractors’ contract or subcontracts for specific portions of the work on the Housing Improvements and the amounts anticipated to become due each such Contractor, including all costs and expenses of any kind incurred and to be incurred in construction the Housing Improvements.

(d) The City has received a total project cost statement, incorporating estimates of the construction costs as shown on the sworn construction statement described in clause (c) above and setting forth all other costs and expenses of any kind anticipated to be incurred in completion of the Housing Improvements and sworn to by the Association to be a true, complete and accurate account of all costs actually incurred and a reasonably accurate estimate of all costs to be incurred in the future.
(e) The City has received a copy of the executed contract with the Construction Manager, approved by the City under Section 4.3(b) hereof.

(f) The Housing Improvements have been substantially completed in accordance with the Construction Plans and Article IV hereof, and the City shall have received a Certificate of Completion from the Association’s Authorized Representative and the City Building Official, certifying that to the best of their knowledge (i) work on the Housing Improvements has been completed in accordance with the Construction Plans and all other labor, services, materials and supplies used in such work have been paid for; (ii) the completed Housing Improvements conform with all applicable building laws and regulations of the governmental authorities having jurisdiction over the Housing Improvements; and (iii) lien waivers submitted to the City under Section 3.2(h) hereof cover all labor, services, materials and supplies in connection with the Housing Improvements.

(g) The City’s Authorized Representative shall have received satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities and by the bureau, corporation or office having jurisdiction, and that all requisite certificates of occupancy and other approvals have been issued.

(h) The City’s Authorized Representative shall have received a lien waiver from each Contractor for all work done and for all materials furnished by it for the Housing Improvements.

(i) The City has received a written statement from the Association’s Authorized Representative certifying that the current balance in the Replacement Reserve Fund meets the requirements in Section 6.5 hereof.

(j) No Event of Default under this Agreement or event which would constitute such an Event of Default but for the requirement that notice be given or that a period of grace or time elapse, shall have occurred and be continuing.

(k) If the maximum annual Fee Revenues authorized by the Council pursuant to the Fee Resolution will not support debt service on the City Obligation in an amount adequate to produce net bond proceeds sufficient to refinance the entire Construction Loan and pay costs of issuance of the City Obligation, then the Association has first provided to the City (or the Bank at the City’s direction), a cash deposit sufficient to pay the amount of the difference between the City Obligation supported by Fee Revenues and the amount needed to pay off the Construction Financing and pay costs of issuance of the City Obligation.

(l) The City has received an opinion letter addressed to the City from the Association’s attorney opining that (i) all legal requirements have been complied with in the formation of the Association; (ii) all legal requirements have been completed that are necessary for the Association’s execution of all documents relating to the financing and the Housing Improvements; and (iii) all of the documents relating to the financing and the Housing Improvements are fully enforceable against the Association, subject to reasonable exceptions and qualifications.
Section 3.4. Application of Balances.

(a) In the event that at any time before the Maturity Date, the City has available to it Fee Revenues (excluding amounts allocated to City or County administrative costs), together with amounts on hand in any fund or accounts under the City Obligation Resolution, in an amount sufficient to pay in full the principal and interest on the City Obligation in advance of their maturity (as determined by the City’s municipal advisor), the City may, in its sole discretion:

(i) apply such excess Fee Revenues or fund balance to prepay the City Obligation and cancel any remaining fees; or

(ii) by resolution of the Council, disburse all or any portion of such excess Fee Revenues or fund balance, as the case may be, to the Association for deposit into the replacement reserve fund maintained by the Association. The Association shall establish and maintain a separate subaccount in the Replacement Reserve Fund (the “Excess Revenue Subaccount”) in which excess Fee Revenues or any fund balance deposited hereunder, together with interest earnings thereon, shall be maintained. Amounts in the Excess Revenue Subaccount of the Replacement Reserve Fund shall be expended only for Housing Improvements (as defined in the Enabling Ordinance) that are selected by the Association; provided that before making any disbursement of funds from the Excess Revenue Subaccount, the Association shall submit written plans and cost estimates for such Housing Improvements to the City’s Authorized Representative, which plans shall be deemed approved unless rejected in writing by the City’s Authorized Representative within 30 days after receipt thereof; or

(iii) any combination of clauses (i) and (ii) above.

(b) In the event that, at any time before the Maturity Date the City has available to it Fee Revenues (excluding amounts allocated to City or County administrative costs), together with amounts on hand in any fund or accounts under the City Obligation Resolution and proceeds from the sale of the parking ramp in accordance with Section 6.12 hereof, in an amount sufficient to pay in full the principal and interest on the City Obligation in advance of its maturity (as determined by the City’s municipal advisor), the City will apply such excess Fee Revenues, fund balances, and parking lot sale revenues to prepay the City Obligation.

(c) Any balance remaining after the Maturity Date in the Debt Service Fund or any other fund into which Fee Revenues have been deposited shall be transferred by the City to the Association for deposit into the Excess Revenue Subaccount of the Replacement Reserve Fund. Expenditures from the Excess Revenue Subaccount shall be subject to the conditions described in clause (a)(ii) above. All covenants and obligations of the Association under this Section shall survive the Maturity Date.

Section 3.5. City Administrative Costs. The parties agree and understand that the Association paid an application fee of $5,000.00 to the City upon commencement of the process to form a housing improvement area under the Act. The parties agree and understand that if the City Obligation is issued, a fee of one-half percent (0.50%) will be paid to the City to cover any consulting expense. The Association agrees and understands that a $10.00 per Housing Unit
surcharge will be assessed as part of the Fees to cover day to day costs of the City associated with managing the assessments.

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

Construction of Housing Improvements

Section 4.1. Construction of Housing Improvements. The Association agrees that it will construct the Housing Improvements on the Property in accordance with the approved Construction Plans and at all times prior to the Maturity Date will operate and maintain, preserve and keep the Housing Improvements or cause the Housing Improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition, all in accordance with Article VI hereof.

Section 4.2. Construction Plans.

(a) Before the commencement of construction of the Housing Improvements, the Association shall submit the Construction Plans to the City Building Official, who shall review such plans on behalf of the City. The Construction Plans shall provide for the construction of the Housing Improvements and shall be in conformity with this Agreement, and all applicable State and local laws and regulations. The City Building Official will approve the Construction Plans in writing if: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to all applicable federal, state and local laws, ordinances, rules and regulations; (iii) the Construction Plans are adequate to provide for construction of the Housing Improvements; and (iv) no Event of Default has occurred. No approval by the City Building Official shall relieve the Association of the obligation to comply with the terms of this Agreement, applicable federal, state and local laws, ordinances, rules and regulations, or to construct the Housing Improvements in accordance therewith. No approval by the City Building Official shall constitute a waiver of an Event of Default. If approval of the Construction Plans is requested by the Association in writing at the time of submission, such Construction Plans shall be deemed approved unless rejected in writing by the City Building Official, in whole or in part. Such rejections shall set forth in detail the reasons therefore, and shall be made within thirty (30) days after the date of their receipt by the City Building Official. If the City Building Official rejects any Construction Plans in whole or in part, the Association shall submit new or corrected Construction Plans within thirty (30) days after written notification to the Association of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans shall continue to apply until the Construction Plans have been approved by the City Building Official. The City Building Official’s approval shall not be unreasonably withheld. Said approval shall constitute a conclusive determination that the Construction Plans (and the Housing Improvements, constructed in accordance with said plans) comply to the City Building Official’s satisfaction with the provisions of this Agreement relating thereto.

(b) If the Association desires to make any material change in the Construction Plans after their approval by the City Building Official, the Association shall submit the proposed change to the City Building Official for approval. For the purposes of this Section, a “material change” means any change that (i) increases or decreases the total cost of the Housing Improvements by more than $25,000 or (ii) involves any change in construction materials or design that reasonably requires review for compliance with state and local laws and regulations. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 hereof with respect to such previously approved Construction Plans, the City Building Official shall approve the
proposed change and notify the Association in writing of its approval. Such change in the Construction Plans shall, in any event, be deemed approved by the City Building Official unless rejected, in whole or in part, by written notice by the City Building Official to the Association, setting forth in detail the reasons therefor. Such rejection shall be made within ten (10) days after receipt of the notice of such change. The City Building Official’s approval of any such change in the Construction Plans will not be unreasonably withheld.

Section 4.3. Commencement and Completion of Construction. (a) Subject to Unavoidable Delays, the Association shall complete the construction of the Housing Improvements by December 31, 2018. All work with respect to the Housing Improvements to be constructed or provided by the Association on the Property shall be in conformity with the Construction Plans as submitted by the Association and approved by the City. If the completion of the construction of the Housing Improvements is delayed due to unexpected conditions or Unavoidable Delays, the City will work cooperatively with the Association to extend the completion date.

(b) Prior to commencement of construction, the Association shall retain a professional construction manager (“Construction Manager”) to supervise construction of the Housing Improvements. Before executing a contract with the Construction Manager, the Association shall submit the name of entity and a proposed scope of work and budget. The City’s Authorized Representative shall, within 10 days after receipt, approve the Construction Manager and the scope of work or provide reasons for rejection.

(c) The Association agrees for itself, its successors and assigns, and every successor in interest to the Property, or any part thereof, that the Association, and such successors and assigns, shall promptly begin and diligently prosecute to completion the construction of the Housing Improvements thereon, and that such construction shall in any event be commenced and completed within the period specified in this Section 4.3. Until construction of the Housing Improvements has been completed, the Association shall make reports, in such commercially reasonable detail and at such times as may reasonably be requested by the City as to the actual progress of the Association with respect to such construction.

Section 4.4. Certificate of Completion.

(a) Promptly after substantial completion of the Housing Improvements in accordance with those provisions of the Agreement relating solely to the obligations of the Association to construct the Housing Improvements (including the dates for beginning and completion thereof), the City will furnish the Association with an appropriate instrument so certifying. Such certification by the City shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the Agreement with respect to the obligations of the Association, and its successors and assigns, to construct the Housing Improvements and the dates for the beginning and completion thereof. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Association under Article VI hereof.

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

(c) The construction of the Housing Improvements shall be deemed to be substantially completed as determined by the City Building Official, who may execute the certificate of completion on behalf of the City.

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

Insurance

Section 5.1. Insurance:

(a) The Association will provide and maintain or cause to be provided and maintained at all times during the process of constructing the Housing Improvements an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the City, furnish the City with proof of payment of premiums on policies covering the following:

   (i) In lieu of a Builder’s Risk Policy, a Contractors’ Installation Floater Policy which includes an endorsement covering construction of the Housing Improvements up to $500,000 at any one time during construction, based on the provided work schedule that no more than $250,000 of materials will be on site at any given time. The Policy will name the City and Association as additional insured. The interest of the City shall be protected in accordance with a clause in form and content satisfactory to the City.

   (ii) During construction of the Housing Improvements the Association shall maintain, or cause to be maintained, at its cost and expense, insurance against loss and/or damage to the Property and the Housing Improvements under a policy or policies covering such risks as are ordinarily insured against by similar condominium associations and that names the City as an additional insured. The interest of the City shall be protected in accordance with a clause in form and content satisfactory to the City.

   (iii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner’s Contractor’s Policy with limits against bodily injury and property damage of not less than $1,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used) and that names the City as an additional insured.

   (iv) Workers’ compensation insurance provided by all Contractors.

(b) Upon completion of construction of the Housing Improvements and prior to the Maturity Date, the Association shall maintain, or cause to be maintained, at its cost and expense, at the request of the City but no more often than annually shall furnish proof of the payment of premiums on, insurance as follows:

   (i) Insurance against loss and/or damage to the Property and the Housing Improvements under a policy or policies covering such risks as are ordinarily insured against by similar condominium associations, and that names the City as an additional insured.

   (ii) Comprehensive general public liability insurance, including personal injury liability (with employee exclusion deleted), against liability for injuries to persons and/or property, in the amount for each occurrence and for each year of $1,000,000, and names the City as additional insured.
(iii) Such other insurance, including workers’ compensation insurance respecting all employees of the Association, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Association may be self-insured with respect to all or any part of its liability for workers’ compensation.

(c) All insurance required in this Article V shall be taken out and maintained in responsible insurance companies selected by the Association which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Association will deposit annually with the City policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V each policy shall contain a provision that the insurer shall not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Association and the City at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Association may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Association shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Housing Improvements.

(d) The Association agrees to notify the City immediately in the case of damage exceeding $100,000 in amount to, or destruction of, the Property, the Housing Improvements or any portion thereof resulting from fire or other casualty. In such event the Association will forthwith repair, reconstruct and restore the Housing Improvements to substantially the same or an improved condition or value as it existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Association will apply the net proceeds of any insurance (the “Net Proceeds”) relating to such damage received by the Association to the payment or reimbursement of the costs thereof.

The Association shall complete the repair, reconstruction and restoration of the Housing Improvements and the Property, whether or not the Net Proceeds of insurance received by the Association for such purposes are sufficient to pay for the same. Any Net Proceeds remaining after completion of such repairs, construction and restoration shall be the property of the Association.

(e) The Association and the City agree that all of the insurance provisions set forth in this Article V shall terminate upon the earlier of the Maturity Date or termination of this Agreement.
ARTICLE VI

Special Covenants

Section 6.1. No Warranty of Condition or Suitability, Indemnification.

(a) The City does not make any warranty, either express or implied, as to the design or capacity of the Housing Improvements, as to the suitability for operation of the Housing Improvements or that they will be suitable for the Association’s purposes or needs. The Association releases the City from, agrees that the City shall not be liable for, and agrees to hold the City, its Council and its respective officers and employees, harmless against, any claim, cause of action, suit or liability for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Housing Improvements or the Property or the use thereof, except for those that arise from the actions of the City.

(b) The Association further agrees to indemnify and hold harmless the City, its officers and employees against any and all losses, claims, damages or liability to which the City, its officers and employees may become subject under any law arising out of any act, omission, representation or misrepresentation of the Association in connection with the City Obligation and the carrying out of the transactions contemplated by this Agreement, and to reimburse the City, its officers and employees for any out-of-pocket legal and other expenses (including reasonable counsel fees) incurred by the City, its officers and employees, in connection with investigating any such losses, claims, damages or liabilities or in connection with defending any actions relating thereto. The City agrees, at the request and expense of the Association, 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 which may be available to the City. The provisions of this Section shall survive the Maturity Date.

(c) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity thereof.

Section 6.2. Financial Statements. The Association shall provide a copy of its annual audited financial statements for the preceding Fiscal Year, including a balance sheet and operating statements, audited by an Independent certified public accountant to the City, by no later than May 1 of each year, commencing May 1, 2018 and until the later of the Maturity Date or the date all excess Fee Revenues and fund balances, if any, have been expended in accordance with Section 3.4 hereof. Such financial statements shall be accompanied by a separate written statement from such Independent certified public accountant preparing such report that such Independent accountant has obtained no knowledge of any default by the Association in the fulfillment of any of the terms, covenants, provisions or conditions of this Agreement or if such accountant shall have obtained knowledge of any such default the accountant shall disclose in such statement the default and the nature thereof, but such accountant shall not be liable directly or indirectly to any party for failure to obtain knowledge of any default. The Association and the City agree and understand that compliance with this Section constitutes compliance with Section 7.01 of the Enabling Ordinance.
Section 6.3. Financial Plan; Annual Reports. The Association agrees to furnish the following to the City, by no later than March 1 of each year commencing March 1, 2018, and until the later of the Maturity Date or the date all excess Fee Revenues and fund balances, if any, have been expended in accordance with Section 3.4 hereof:

(a) an updated Financial Plan for the Property prepared by a Management Consultant or another property management professional acceptable to the City, in substantially the form of the Financial Plan set forth in SCHEDULE C; and

(b) a written report by an Independent engineer or another property management professional acceptable to the City, describing the physical condition of the Property and the Housing Improvements as of the end of the preceding Fiscal Year, with detail sufficient to enable the City to evaluate adequacy of compliance with the Association’s obligations under this Agreement.

(c) a certificate certifying compliance with the requirements of Section 6.3(b) hereof.

Section 6.4. Records and Inspection. The Association shall maintain (i) copies of federal, State, municipal and other licenses and permits obtained by the Association relating to the operation of the Property and the Housing Improvements, (ii) financial books and records reflecting the operations of the Property and the Housing Improvements, and (iii) all other documents, instruments, reports and records required by any provision of this Agreement or the Financial Plan or by law relating to the Property or the affairs of the Association. The City shall have the right to inspect all such materials, except any materials made private or confidential by federal or State law or regulation, and the Property at all reasonable times and to make such copies and extracts as it may desire. At the request of the City the Association shall furnish to the City, at the Association’s expense, a copy of any such materials which are required by the City in the performance of its duties under this Agreement, the Enabling Ordinance, the Fee Resolution, or the Act.

Section 6.5. Maintenance of Property; Replacement Reserve Fund.

(a) The Association agrees that prior to the Maturity Date, the Association will keep or cause to be kept the Property and the Housing Improvements in good repair and good operating condition at its own cost.

(b) The Association shall maintain, at all times prior to the Maturity Date, a Replacement Reserve Fund, the moneys in which shall be available to pay the costs of maintenance and repair of the Property and to make any other payment that may be required under this Agreement, including without limitation any payment to the City under Section 6.6 hereof. Prior to issuing the City Obligation under Section 3.2 hereof, in 2018, the balance in the Replacement Reserve Fund shall be at least $1,000,000. By December 31, 2019 and by December 31 of each year thereafter through the Maturity Date, the balance in the Replacement Reserve Fund shall increase in accordance with the Replacement Reserve Fund cash flow projection (set forth in SCHEDULE C attached hereto). The Association shall provide documentation showing compliance with these requirements at the time that the Financial Plan and Annual Reports are furnished to the City as described in Section 6.3 hereof.

(a) In the event that, ten (10) business days before any Payment Date, the Net Revenues Available For Debt Service are less than one hundred and five percent (105%) of the total principal and interest due on the City Obligation (from all unit owners in the aggregate) on such Payment Date, the City will provide written notice to the Association of such fact and the amount of the deficiency. Within ten (10) days after receipt of such notice of deficiency in Net Revenues Available for Debt Service, the Association shall be liable for and shall pay the City such deficiency. Failure on the part of the City to provide the notice of the deficiency at the time specified herein shall not relieve the Association of its obligation to make the required payment ten (10) days after the actual notice of the deficiency is provided by the City to the Association. Failure on the part of the Association to make the required payment under this Section within ten (10) days after receipt of notice thereof shall entitle the City to exercise its remedies under this Agreement, notwithstanding any cure period provided in Article VII hereof.

(b) In the event that the Association makes any payment to the City under clause (a) above and, ten (10) business days before any Payment Date thereafter the City determines that Net Revenues Available for Debt Service, excluding the amount of all prior payments by the Association under clause (a) above, are at least one hundred five percent (105%) of the total principal and interest due on the City Obligation on such Payment Date, the City shall promptly return to the Association the amount of the Net Revenues Available for Debt Service in excess of the amount due on the City Obligation on that Payment Date. Nothing in this Section 6.6(b) shall be construed to relieve the obligation of the Association to make any payment required under clause (a) above.

Section 6.7. Assignment of Association Assets.

(a) As security for the Association’s obligations under Section 6.6 hereof, the Association does hereby bargain, sell, assign and set over unto the City, all the fees and assessments and other income of any type owing to the Association from owners of Housing Units in the Property, together with all cash, investments and securities of any type held by the Association now or hereafter in any operating or reserve accounts (the “Accounts”). The fees, assessments, and Accounts are referred to collectively as the “Association Assets.” This assignment (the “Assignment”) shall constitute a perfected, absolute and present assignment, provided that the Association may, so long as no Event of Default with respect to Section 6.6 hereof occurs, collect, retain, and make appropriate payment from, of all Association Assets.

The provisions of this Section 6.7 are intended to be a mere license in favor of the Association and a mere deferral of the City’s exercise of its perfected, absolute and present rights hereunder, and shall not be construed to be a future assignment thereof.

(b) Other than as described in Section 6.7(f) hereof, the Association hereby covenants and warrants to the City that the Association has not executed any prior assignments of any Association Assets, nor has it performed any act or executed any other instrument that might prevent the Association from operating under any of the terms and conditions of this assignment or that would limit the Association in such operation.
(c) Except as otherwise described in Section 6.7(f) hereof, the Association hereby agrees that, so long as the Association’s obligations under Section 6.6 hereof remain outstanding the Association will not, without the written consent of the City, make any other assignment, pledge or other disposition of any of the Association Assets, or consent in any assignment of same; and any such acts, if done without the written consent of the City, shall be null and void.

(d) Upon the occurrence of an Event of Default with respect to Section 6.6 hereof, the City shall have the right to withdraw funds from, and liquidate any securities in any Accounts, and collect the fees and assessments from the owners of Housing Units, and apply the same for deposit in the Bond Fund. This assignment shall be binding upon the owners of Housing Units in the Property from the date of filing by the City in the office or offices where this Agreement is filed that an Event of Default under Section 6.6 hereof has occurred and is continuing and service of a copy of the notice upon the owners of the Housing Units. The expenses, including any attorneys’ fees, and financial consultants’ fees reasonably incurred pursuant to the powers herein contained shall be deemed to be immediately due and payable by the Association to the City and shall be secured hereby. The City shall not be liable to account to the Association for any action taken pursuant hereto other than to account for any Association Assets actually received by the City.

(e) The City shall not be obligated to perform or discharge, nor does it undertake to perform or discharge, any obligation, duty or liability under any agreement between the Association and owners of Housing Units in the Property, and the Association hereby agrees to defend and indemnify the City and hold it harmless for any and all liability, loss or damage which it may or might incur under or by reason of this assignment and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms or covenants contained in any agreement by and among the Association and the owners of Housing Units in the Property, except such claims and demands that arise out of the negligence or willful misconduct of the City, its officers, employees and agents. Should the City incur any such liability, loss or damage under or by reason of this assignment, or in the defense against any such claims or demands arising out of this assignment, the amount thereof, including costs, expenses and reasonable attorneys’ fees, together with interest thereon at the rate of interest on the City Obligation, shall be secured hereby, and the Association shall reimburse the City therefore immediately upon demand.

(f) This Assignment is subordinate to the [describe security document for Bell Bank] executed by the Association for the benefit of Bell Bank to secure the Construction Loan. The parties agree and understand that on or before the date of issuance of the City Obligation, the [describe security document for Bell Bank] shall be satisfied and released by Bell Bank.

Section 6.8. Association to Maintain Its Existence; Conditions Under Which Exceptions Permitted. The Association agrees that, until the Maturity Date, it will maintain its existence as a nonprofit corporation under the laws of the State; will not dissolve or otherwise dispose of all or substantially all of its assets; will not consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it.

Section 6.9. Prohibition Against Assignment of Agreement. The Association represents and agrees that prior to the Maturity Date the Association has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or any
trust or power, or transfer in any other mode or form of or with respect to the Association’s rights, interests or obligations under this Agreement or any part thereof, or any contract or agreement to do any of the same, without the prior written approval of the City. Notwithstanding the foregoing, the City will agree to an assignment of the Association’s rights under this Agreement to Bell Bank or any other lender providing temporary construction financing for the Housing Improvements under terms and conditions reasonably acceptable to the Authority. Any assignment agreement must be approved by the City Council.

Section 6.10. Notice of Fee Upon Transfer of Housing Units. The Association agrees that it will use its best efforts to ensure that owners of each Housing Unit upon which a Fee is imposed under the Fee Resolution provide notice of the Fee to prospective buyers or transferees upon any sale or transfer of the Housing Unit. Such efforts by the Association shall include, but are not limited to ensuring that Housing Unit owners include a description of the Fee in each disclosure certificate provided to the purchaser as required under Minnesota Statutes, Section 515B.4-107 or any successor statute.

Section 6.11. Experienced Property Manager. At all times prior to the Maturity Date, the Association agrees to maintain “experienced professional property management” for the Property. For purposes of this subsection, “experienced professional management” shall mean Multiventure Properties, Inc., or another property manager acceptable to the City who meets the following criteria:

(a) has demonstrated knowledge of accounting, financial reporting, budgeting and related issues; and

(b) does not have an ownership interest in any Housing Unit and is not the spouse, child, parent or sibling of anyone who has an ownership interest.

Section 6.12. Sale of Parking Ramp. The City acknowledges that the Association may determine to sell its parking ramp and nothing in this Agreement shall prohibit such sale. In the event that the Association determines to sell the parking ramp, the Association shall notify the City of such sale at least thirty (30) days prior to the sale and provide the City with a detailed accounting of how the proceeds of the sale of the parking ramp will be used by the Association. The City shall have the right to consent to the proposed use of such proceeds by the Association. During the period of time that the Construction Loan remains outstanding, the City understands and consents to Bell Bank requiring an escrow of any or all of the proceeds of the sale of the parking ramp as collateral for the Construction Loan.

Section 6.13. Affordability Requirements. The Association agrees that current resale covenants limiting the sale price of 16 Housing Units to $170,000 or less will remain in place until the later of the Maturity Date or the date all excess Fee Revenues and fund balances, if any, have been expended in accordance with Section 3.4 hereof.

Section 6.14. Change in Association’s Bylaws. Until the later of the Maturity Date or the date all excess Fee Revenues and fund balances, if any, have been expended in accordance with Section 3.4 hereof, any changes to the Association’s bylaws must be approved by the City of Minnetonka prior to approval and adoption of the changes to the bylaws.
Section 6.15. **Overdue Association Dues.** At any time twenty percent (20%) or more of the Association dues are past due, the Association shall notify the City with thirty (30) days.

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

Events of Default

Section 7.1. Events of Default Defined. The following will be “Events of Default” under this Agreement and the term “Event of Default” means, whenever it is used in this Agreement, any one or more of the following events, after the non-defaulting party provides thirty (30) days’ written notice to the defaulting party of the event, but only if the event has not been cured within said thirty (30) days or, if the event is by its nature incurable within thirty (30) days, the defaulting party does not, within the 30-day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

(a) Failure by the Association or the Authority to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement;

(b) The Association:

(i) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law;

(ii) makes an assignment for benefit of its creditors;

(iii) admits in writing its inability to pay its debts generally as they become due; or

(iv) is adjudicated as bankrupt or insolvent.

Section 7.2. Remedies on Default. Whenever any Event of Default referred to in Section 7.1 hereof occurs, the non-defaulting party may exercise its rights under this Section 7.2 after providing thirty (30) days’ written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days or, if the Event of Default is by its nature incurable within thirty (30) days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible:

(a) Suspend its performance under the Agreement until it receives assurances that the defaulting party will cure its default and continue its performance under the Agreement.

(b) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

(c) The City may exercise its remedies pursuant to Section 6.7 hereof.

(d) The City may seek specific performance of the obligations of the Association pursuant to this Agreement, including without limitation payments due from the Association.
hereunder, or seek damages to the extent otherwise set forth herein as to any obligation, agreement, or covenant of the Association under this Agreement.

Section 7.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City or Association is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article VII.

Section 7.4. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

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

Additional Provisions

Section 8.1. Conflict of Interests; City Representatives Not Individually Liable. The City and the Association, to the best of their respective knowledge, represent and agree that no member, official, or employee of the City shall have any personal interest, direct or indirect, in the Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the City shall be personally liable to the Association, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Association or successor or on any obligations under the terms of the Agreement.

Section 8.2. Equal Employment Opportunity. The Association, for itself and its successors and assigns, agrees that during the construction of the Housing Improvements provided for in the Agreement it will comply with all applicable federal, state and local equal employment and non-discrimination laws and regulations.

Section 8.3. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 8.4. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 8.5. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) in the case of the Association, is addressed to or delivered personally to the Association at ______________________________; and

(b) in the case of the City, is addressed to or delivered personally to the City at 14600 Minnetonka Boulevard, Minnetonka, MN 55345, Attention: Community Development Director;

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 8.6. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 8.7. Recording. Either party may record this Agreement and any amendments thereto with the County Recorder or Registrar of Titles. The Association shall pay all costs for recording.
Section 8.8. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the City and the Association and their respective successors, heirs and assigns.

Section 8.9. **Amendment.** This Agreement may be amended only by written agreement of the parties hereto.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the City and the Association have caused this Development Agreement to be executed in their respective names and behalf 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 ) SS.

The foregoing instrument was acknowledged before me this ___ day of __________, 2017, by Terry Schneider, the Mayor of the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, on behalf of the City.

____________________________________
Notary Public

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) SS.

The foregoing instrument was acknowledged before me this ___ day of __________, 2017, by Geralyn Barone, the City Manager of the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, on behalf of the City.

____________________________________
Notary Public

S-1
Execution page of the Association to the Development Agreement, dated as of the date and year first written above.

CLOUD 9 SKY FLATS ASSOCIATION, INC.

By ________________________________
Its ________________________________

STATE OF MINNESOTA  )
) SS.
COUNTY OF __________  )

The foregoing instrument was acknowledged before me this ___ day of ________, 2017, by __________________________, the __________________________ of Cloud 9 Sky Flats Association, Inc., a Minnesota nonprofit corporation, on behalf of the Association.

____________________________________
Notary Public
SCHEDULE A

DESCRIPTION OF PROPERTY

Parcel 1:

That Part of the East 665.0 feet of the South 673.6 feet of the North 690.1 feet of the Southeast ¼ of the Northeast ¼ of Section 36, Township 117 North, Range 22, West of the 5th Principal Meridian which lies westerly of the westerly line of County Highway No. 18 as described in final certificate No. 4757011, except that part taken for existing roads.

Parcel 2:

The North 16.5 feet of the West 542.0 feet of the East 632.0 feet of the Southeast ¼ of the Northeast ¼ of Section 36, Township 117 North, Range 22 West of the 5th Principal Meridian.
SCHEDULE B

HOUSING IMPROVEMENTS

**Housing Improvements:** The ordinance specifies the “Housing Improvements” that will be constructed in Cloud 9 Sky Flats Housing Improvement Area and financed with the Housing Improvement Fee. Those improvements are defined as follows:

- A complete renovation of the curtain wall exterior of the building
- Major repairs to the heating, ventilating, and air conditioning (HVAC) systems of the building
- Upgrades to the elevator
- All costs of architectural and engineering services in connection with the activities described above
- All administration, legal and consultant costs in connection with the Housing Improvement Area, including without limitation all costs related to financing or issuance of the City Obligation, if any
SCHEDULE C

RESERVE STUDY FINANCIAL PLAN
# Reserve Component List

## 2014 Reserve Expenditures (asphalt seal coat and misc.)

<table>
<thead>
<tr>
<th>Component Description</th>
<th>Year (near term in red)</th>
<th>Age</th>
<th>Useful Life (years)</th>
<th>Remaining Useful Life (years)</th>
<th>Replacement Cost without Inflation</th>
<th>% Included</th>
<th>$ Included</th>
<th>Prioritization</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Exterior Building Components</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Awning - Front</td>
<td>2016</td>
<td>2005</td>
<td>15</td>
<td>2</td>
<td>$45,000</td>
<td>100%</td>
<td>$45,000</td>
<td>discretionary</td>
</tr>
<tr>
<td>Awning - Rear</td>
<td>2028</td>
<td>2013</td>
<td>15</td>
<td>14</td>
<td>$26,000</td>
<td>100%</td>
<td>$26,000</td>
<td>discretionary</td>
</tr>
<tr>
<td>Curtain Wall - Renovation (subsequent)</td>
<td>2030</td>
<td>2015</td>
<td>15</td>
<td>16</td>
<td>$517,000</td>
<td>100%</td>
<td>$517,000</td>
<td>priority</td>
</tr>
<tr>
<td>Doors at Entrances and Exits</td>
<td>2021</td>
<td>original</td>
<td>35</td>
<td>7</td>
<td>$14,000</td>
<td>100%</td>
<td>$14,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Painting - Metal Framing at Cooling Towers</td>
<td>2015</td>
<td>original</td>
<td>7</td>
<td>1</td>
<td>$9,800</td>
<td>100%</td>
<td>$9,800</td>
<td>priority</td>
</tr>
<tr>
<td>Roofs - Main and Penthouse</td>
<td>2024</td>
<td>2005</td>
<td>20</td>
<td>10</td>
<td>$644,000</td>
<td>100%</td>
<td>$644,000</td>
<td>priority</td>
</tr>
<tr>
<td>Roofs - Bump-outs</td>
<td>2025</td>
<td>2005</td>
<td>20</td>
<td>11</td>
<td>$31,000</td>
<td>100%</td>
<td>$31,000</td>
<td>priority</td>
</tr>
<tr>
<td>Roof - Generator Room and Adjacent Areas</td>
<td>2025</td>
<td>2005</td>
<td>20</td>
<td>11</td>
<td>$80,000</td>
<td>100%</td>
<td>$80,000</td>
<td>priority</td>
</tr>
<tr>
<td><strong>Interior Building Components</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carpet</td>
<td>2023</td>
<td>2013</td>
<td>10</td>
<td>9</td>
<td>$124,800</td>
<td>100%</td>
<td>$124,800</td>
<td>deferrable</td>
</tr>
<tr>
<td>Ceiling Tiles and Grid</td>
<td>2035</td>
<td>2005</td>
<td>30</td>
<td>21</td>
<td>$82,000</td>
<td>100%</td>
<td>$82,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Door and Panel Refinishing</td>
<td>2035</td>
<td>2005</td>
<td>30</td>
<td>21</td>
<td>$55,200</td>
<td>100%</td>
<td>$55,200</td>
<td>deferrable</td>
</tr>
<tr>
<td>Elevator Cab Finishes (see Critical Property Review)</td>
<td>2033</td>
<td>2013</td>
<td>20</td>
<td>19</td>
<td>$135,000</td>
<td>100%</td>
<td>$135,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Exercise Equipment (33% every 5 years)</td>
<td>2018</td>
<td>2013</td>
<td>5</td>
<td>4</td>
<td>$37,000</td>
<td>33%</td>
<td>$12,100</td>
<td>deferrable</td>
</tr>
<tr>
<td>Exercise Room Renovation</td>
<td>2023</td>
<td>2013</td>
<td>10</td>
<td>9</td>
<td>$11,900</td>
<td>100%</td>
<td>$11,900</td>
<td>deferrable</td>
</tr>
<tr>
<td>Light Fixtures - Hallways</td>
<td>2035</td>
<td>2005</td>
<td>30</td>
<td>21</td>
<td>$42,000</td>
<td>100%</td>
<td>$42,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Light Fixtures - Stairwells</td>
<td>2021</td>
<td>original</td>
<td>35</td>
<td>7</td>
<td>$11,000</td>
<td>100%</td>
<td>$11,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Lobby and Foyer Renovation</td>
<td>2033</td>
<td>2013</td>
<td>20</td>
<td>19</td>
<td>$135,000</td>
<td>100%</td>
<td>$135,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Mailboxes</td>
<td>2044</td>
<td>2005</td>
<td>40</td>
<td>30</td>
<td>$16,000</td>
<td>100%</td>
<td>$16,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Office Renovation (25% every 5 years)</td>
<td>2018</td>
<td>2013</td>
<td>5</td>
<td>4</td>
<td>$9,300</td>
<td>25%</td>
<td>$2,325</td>
<td>deferrable</td>
</tr>
<tr>
<td>Painting in the Hallways</td>
<td>2023</td>
<td>2013</td>
<td>10</td>
<td>9</td>
<td>$47,400</td>
<td>100%</td>
<td>$47,400</td>
<td>deferrable</td>
</tr>
<tr>
<td>Painting in the Stairwells</td>
<td>2025</td>
<td>2005</td>
<td>20</td>
<td>11</td>
<td>$17,100</td>
<td>100%</td>
<td>$17,100</td>
<td>deferrable</td>
</tr>
<tr>
<td>Rest Room Renovation (see Critical Property Review)</td>
<td>2025</td>
<td>2005</td>
<td>20</td>
<td>11</td>
<td>$7,300</td>
<td>100%</td>
<td>$7,300</td>
<td>deferrable</td>
</tr>
<tr>
<td>Unit Plaques and Lighting</td>
<td>2025</td>
<td>2005</td>
<td>20</td>
<td>11</td>
<td>$81,500</td>
<td>100%</td>
<td>$81,500</td>
<td>deferrable</td>
</tr>
<tr>
<td><strong>Building System Components</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Air Handling Units - Common Heat Pumps</td>
<td>2035</td>
<td>2005</td>
<td>30</td>
<td>21</td>
<td>$87,000</td>
<td>100%</td>
<td>$87,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Air Handling Unit - Make-up (repairs)</td>
<td>2030</td>
<td>2005</td>
<td>25</td>
<td>16</td>
<td>$48,000</td>
<td>100%</td>
<td>$48,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Boilers - Make-up Air Unit (S)</td>
<td>2030</td>
<td>2005</td>
<td>25</td>
<td>16</td>
<td>$69,000</td>
<td>100%</td>
<td>$69,000</td>
<td>priority</td>
</tr>
<tr>
<td>Boilers - Make-up Air Unit (2)</td>
<td>2031</td>
<td>2005</td>
<td>25</td>
<td>17</td>
<td>$30,000</td>
<td>100%</td>
<td>$30,000</td>
<td>priority</td>
</tr>
<tr>
<td>Boilers - Core Loop</td>
<td>2025</td>
<td>2005</td>
<td>20</td>
<td>11</td>
<td>$112,000</td>
<td>100%</td>
<td>$112,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Building Automation System</td>
<td>2020</td>
<td>2005</td>
<td>15</td>
<td>6</td>
<td>$60,000</td>
<td>100%</td>
<td>$60,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Chiller - Make-up Air Unit</td>
<td>2037</td>
<td>2006</td>
<td>30</td>
<td>23</td>
<td>$97,000</td>
<td>100%</td>
<td>$97,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Cooling Tower Capital Repairs</td>
<td>2024</td>
<td>2014</td>
<td>10</td>
<td>10</td>
<td>$115,000</td>
<td>100%</td>
<td>$115,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Cooling Tower Replacement</td>
<td>2035</td>
<td>2005</td>
<td>30</td>
<td>21</td>
<td>$611,000</td>
<td>100%</td>
<td>$611,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Elevator - Accessibility Lift</td>
<td>2043</td>
<td>2008</td>
<td>35</td>
<td>29</td>
<td>$25,000</td>
<td>100%</td>
<td>$25,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Elevator Traction Controls and Equipment</td>
<td>2016</td>
<td>original</td>
<td>35</td>
<td>2</td>
<td>$711,000</td>
<td>100%</td>
<td>$711,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Fans for Post Fire and Stairwells</td>
<td>2034</td>
<td>varied</td>
<td>35</td>
<td>20</td>
<td>$21,000</td>
<td>100%</td>
<td>$21,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Fans for Bathrooms, Kitchens and Laundry Rooms</td>
<td>2025</td>
<td>2005</td>
<td>20</td>
<td>11</td>
<td>$93,000</td>
<td>100%</td>
<td>$93,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Generator</td>
<td>2035</td>
<td>N/A</td>
<td>30</td>
<td>21</td>
<td>$69,000</td>
<td>100%</td>
<td>$69,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Heat Exchanger for Building Heat</td>
<td>2024</td>
<td>N/A</td>
<td>25</td>
<td>10</td>
<td>$56,000</td>
<td>100%</td>
<td>$56,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Humidifiers</td>
<td>2035</td>
<td>2010</td>
<td>25</td>
<td>21</td>
<td>$15,000</td>
<td>100%</td>
<td>$15,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Intercom Lobby Panel</td>
<td>2030</td>
<td>2005</td>
<td>25</td>
<td>16</td>
<td>$5,000</td>
<td>100%</td>
<td>$5,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Life Safety System</td>
<td>2035</td>
<td>2005</td>
<td>30</td>
<td>21</td>
<td>$71,800</td>
<td>100%</td>
<td>$71,800</td>
<td>priority</td>
</tr>
<tr>
<td>Light Fixtures for Exit Use and Emergency Use</td>
<td>2035</td>
<td>2005</td>
<td>30</td>
<td>21</td>
<td>$7,700</td>
<td>100%</td>
<td>$7,700</td>
<td>priority</td>
</tr>
<tr>
<td>Pumps for Core Heating and Cooling</td>
<td>2026</td>
<td>N/A</td>
<td>40</td>
<td>12</td>
<td>$62,900</td>
<td>100%</td>
<td>$62,900</td>
<td>priority</td>
</tr>
<tr>
<td>Pumps for Domestic Water</td>
<td>2025</td>
<td>N/A</td>
<td>20</td>
<td>11</td>
<td>$27,900</td>
<td>100%</td>
<td>$27,900</td>
<td>priority</td>
</tr>
<tr>
<td>Pumps for Cooling Tower</td>
<td>2026</td>
<td>N/A</td>
<td>40</td>
<td>12</td>
<td>$54,500</td>
<td>100%</td>
<td>$54,500</td>
<td>priority</td>
</tr>
<tr>
<td>Component Description</td>
<td>Pages With Engineering Data</td>
<td>Replacement Year (near term in red)</td>
<td>Age</td>
<td>Useful Life (years)</td>
<td>Remaining Useful Life (years)</td>
<td>Replacement Cost without Inflation</td>
<td>% Included</td>
<td>$ Included</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------------</td>
<td>----------------------------</td>
<td>-------------------------------------</td>
<td>-----</td>
<td>---------------------</td>
<td>-------------------------------</td>
<td>-----------------------------------</td>
<td>------------</td>
<td>------------</td>
</tr>
<tr>
<td>Pump for Fire Suppression</td>
<td>4.661</td>
<td>2036</td>
<td>original</td>
<td>50</td>
<td>22</td>
<td>$68,000</td>
<td>100%</td>
<td>$68,000</td>
</tr>
<tr>
<td>Security System</td>
<td>4.701</td>
<td>2017</td>
<td>2005</td>
<td>12</td>
<td>3</td>
<td>$31,500</td>
<td>100%</td>
<td>$31,500</td>
</tr>
<tr>
<td>Storage Tank for Cooled Water</td>
<td>4.721</td>
<td>2026</td>
<td>original</td>
<td>40</td>
<td>12</td>
<td>$34,600</td>
<td>100%</td>
<td>$34,600</td>
</tr>
<tr>
<td>Valves</td>
<td>4.781</td>
<td>2036</td>
<td>original</td>
<td>50</td>
<td>22</td>
<td>$100,000</td>
<td>100%</td>
<td>$100,000</td>
</tr>
<tr>
<td>Water Softener Systems (see Critical Property Review)</td>
<td>4.821</td>
<td>2025</td>
<td>2010</td>
<td>15</td>
<td>11</td>
<td>$55,000</td>
<td>100%</td>
<td>$55,000</td>
</tr>
</tbody>
</table>

**Garage Components**

<table>
<thead>
<tr>
<th>Component Description</th>
<th>Pages With Engineering Data</th>
<th>Replacement Year (near term in red)</th>
<th>Age</th>
<th>Useful Life (years)</th>
<th>Remaining Useful Life (years)</th>
<th>Replacement Cost without Inflation</th>
<th>% Included</th>
<th>$ Included</th>
<th>Priority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elevated Concrete Floor Restoration (see Critical Property Review)</td>
<td>5.271-2</td>
<td>2017</td>
<td>original</td>
<td>20</td>
<td>3</td>
<td>$971,800</td>
<td>100%</td>
<td>$971,800</td>
<td>priority</td>
</tr>
<tr>
<td>On-grade Concrete Floor Restoration</td>
<td>5.321</td>
<td>2027</td>
<td>original</td>
<td>10</td>
<td>13</td>
<td>$41,900</td>
<td>100%</td>
<td>$41,900</td>
<td>deferrable</td>
</tr>
<tr>
<td>On-grade Asphalt Floor Restoration (see Critical Property Review)</td>
<td>5.322</td>
<td>2017</td>
<td>original</td>
<td>10</td>
<td>3</td>
<td>$213,100</td>
<td>100%</td>
<td>$213,100</td>
<td>deferrable</td>
</tr>
<tr>
<td>Garage Door and Operator - Private North</td>
<td>5.371</td>
<td>2028</td>
<td>2013</td>
<td>15</td>
<td>14</td>
<td>$6,100</td>
<td>100%</td>
<td>$6,100</td>
<td>deferrable</td>
</tr>
<tr>
<td>Garage Door and Operator - Private South</td>
<td>5.372</td>
<td>2015</td>
<td>original</td>
<td>15</td>
<td>1</td>
<td>$6,100</td>
<td>100%</td>
<td>$6,100</td>
<td>deferrable</td>
</tr>
<tr>
<td>Garage Doors and Operators - Main</td>
<td>5.373</td>
<td>2024</td>
<td>2009</td>
<td>15</td>
<td>10</td>
<td>$24,400</td>
<td>100%</td>
<td>$24,400</td>
<td>deferrable</td>
</tr>
<tr>
<td>Garage Doors and Operators - Loading Dock</td>
<td>5.374</td>
<td>2021</td>
<td>original</td>
<td>35</td>
<td>7</td>
<td>$12,200</td>
<td>100%</td>
<td>$12,200</td>
<td>deferrable</td>
</tr>
<tr>
<td>Exhaust System (see Critical Property Review)</td>
<td>5.421</td>
<td>2017</td>
<td>original</td>
<td>30</td>
<td>3</td>
<td>$23,000</td>
<td>100%</td>
<td>$23,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Fences - Chain Link</td>
<td>5.427</td>
<td>2036</td>
<td>original</td>
<td>50</td>
<td>22</td>
<td>$14,000</td>
<td>100%</td>
<td>$14,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Garage Light Fixtures</td>
<td>5.521</td>
<td>2041</td>
<td>2011</td>
<td>30</td>
<td>27</td>
<td>$18,000</td>
<td>100%</td>
<td>$18,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Painting in Garage</td>
<td>5.571</td>
<td>2024</td>
<td>N/A</td>
<td>20</td>
<td>10</td>
<td>$18,000</td>
<td>100%</td>
<td>$18,000</td>
<td>discretionary</td>
</tr>
<tr>
<td>Staircase</td>
<td>5.637</td>
<td>2017</td>
<td>original</td>
<td>60</td>
<td>3</td>
<td>$7,100</td>
<td>100%</td>
<td>$7,100</td>
<td>deferrable</td>
</tr>
</tbody>
</table>

**Site Components**

<table>
<thead>
<tr>
<th>Component Description</th>
<th>Pages With Engineering Data</th>
<th>Replacement Year (near term in red)</th>
<th>Age</th>
<th>Useful Life (years)</th>
<th>Remaining Useful Life (years)</th>
<th>Replacement Cost without Inflation</th>
<th>% Included</th>
<th>$ Included</th>
<th>Priority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concrete Curbs and Gutters (see Critical Property Review)</td>
<td>6.121</td>
<td>2030</td>
<td>2010</td>
<td>60</td>
<td>16</td>
<td>$44,000</td>
<td>100%</td>
<td>$44,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Irrigation System</td>
<td>6.521</td>
<td>2026</td>
<td>original</td>
<td>40</td>
<td>12</td>
<td>$77,600</td>
<td>100%</td>
<td>$77,600</td>
<td>discretionary</td>
</tr>
<tr>
<td>Landscape - Ash Trees</td>
<td>6.542</td>
<td>2019</td>
<td>original</td>
<td>80</td>
<td>5</td>
<td>$41,000</td>
<td>100%</td>
<td>$41,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Light Poles and Fixtures</td>
<td>6.601</td>
<td>2021</td>
<td>original</td>
<td>35</td>
<td>7</td>
<td>$63,000</td>
<td>100%</td>
<td>$63,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Patio Restoration</td>
<td>6.637</td>
<td>2025</td>
<td>2005</td>
<td>20</td>
<td>11</td>
<td>$128,000</td>
<td>100%</td>
<td>$128,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Pavement Crack Repair and Patch (see Critical Property Review)</td>
<td>6.641</td>
<td>2018</td>
<td>2014</td>
<td>4</td>
<td>4</td>
<td>$10,900</td>
<td>100%</td>
<td>$10,900</td>
<td>priority</td>
</tr>
<tr>
<td>Pavement Seal Coat (see Critical Property Review)</td>
<td>6.641</td>
<td>2018</td>
<td>2014</td>
<td>4</td>
<td>4</td>
<td>$16,100</td>
<td>100%</td>
<td>$16,100</td>
<td>deferrable</td>
</tr>
<tr>
<td>Pavement Total Replacement</td>
<td>6.661</td>
<td>2030</td>
<td>2010</td>
<td>20</td>
<td>16</td>
<td>$275,200</td>
<td>100%</td>
<td>$275,200</td>
<td>deferrable</td>
</tr>
<tr>
<td>Signs</td>
<td>6.961</td>
<td>2025</td>
<td>2005</td>
<td>20</td>
<td>11</td>
<td>$30,000</td>
<td>100%</td>
<td>$30,000</td>
<td>deferrable</td>
</tr>
<tr>
<td>Property and Service Summary</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Name:</strong></td>
<td>Cloud 9 Sky Flats Association, Inc.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Location:</strong></td>
<td>Minnetonka, Minnesota</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Property type:</strong></td>
<td>high rise</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Number of buildings:</strong></td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Number of units:</strong></td>
<td>163</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Number of stories:</strong></td>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Year of construction:</strong></td>
<td>1986</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Converted to condominiums:</strong></td>
<td>2005</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Date of inspection:</strong></td>
<td>June 11, 2014</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Reference number:</strong></td>
<td>140138</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Type of service:</strong></td>
<td>reserve study</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Level of service:</strong></td>
<td>Full Study</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Length of analysis:</strong></td>
<td>30 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Exterior features:</strong></td>
<td>curtain wall facade with granite panels, multiple roof levels</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Interior features:</strong></td>
<td>common hallways, exercise room, office, lower garage level</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Building system features:</strong></td>
<td>building heat boilers, 4 elevators, generator</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Site features:</strong></td>
<td>parking lots, elevated open air garage parking</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Completed projects:</strong></td>
<td>interior renovation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Upcoming projects:</strong></td>
<td>major facade restoration (funded separately from reserves)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Critical Property Review

The property is generally in good overall condition. We identify the following repairs and improvements that the property should consider:

Actionable recommendations - near term actions on these items will minimize future costs and maintain the comfort and security (See “Pages with Engineering Data” for more information where applicable):

The Association reports high humidity in the water softener room. The residential size dehumidifier was working satisfactory at the time of our inspection. If humidity persists, the Association should consider insulating the tanks and/or installing a permanent dehumidification system.

Secure patio flashing fasteners along building to prevent water infiltration into garage.

Green ideas - Opportunities for energy efficiency and best practices for sustainability. Acting on these recommendations will provide significant cost savings (See “Pages with Engineering Data” for more information where applicable):

With the exception of the exercise room, the common areas have manual light switches. We recommend the installation of motion sensors on room light switches, such as the rest room, storage rooms and mechanical rooms, to minimize fixture operation. Motion sensing light switches are inexpensive: http://www.homedepot.com/b/Electrical-Dimmers-Switches-Outlets-Motion-Sensors/N-5yc1vZc32r/Ntk-Extended/Ntt-light+switch?Ntx=mode+matchpartialmax&NCNI-5. We recommend hiring an electrician for approximately one day for the installation of these energy saving devices.

Replace rest room faucet with automatic shut offs to use up to 70% less water. Automatic shut offs also minimize the spreading of germs.

Install low flow aerator on the rest room faucet to use approximately 30% less water.

Program thermostats in the common hallways for 68°F in the winter and 78°F in the summer.

Install insulated water heater blanket on water heater for the rest room (payback of approximately one year).

For pavement seal coating: 1) Avoid the use of coal tar based pavement seal coats as they pollute waterways. 2) Consider not applying a seal coat. Seal coating is primarily for aesthetics and is a source of environmental contamination.

The following address provides links to incentives and rebates for energy conservation in your area:
http://www.dsireusa.org/

Engineering solutions - reference this information for proper scope of work and best outcome on upcoming projects (See “Pages with Engineering Data” for more information where applicable):

Replacement of the entire curtain wall is not likely during the next 30 years. Instead, we recommend periodic inspections and partial replacements.

Engineering solutions: The Association is experiencing water infiltration and fogged glass. The Association will conduct major repairs to the curtainwall in 2014 or 2015 and fund these expenses separately from reserves. Our estimated costs are for renovation subsequent to the near term major repairs.

Due to the physical size of the make-up air unit, we do not anticipate its replacement during the next 30 years. Instead, we anticipate periodic repairs and component replacements including the coils, motors, filter racks and variable frequency drives.

Crack repair all joints and patch potholes in the pavement to prevent water infiltration. This will minimize deterioration to the pavement and underlying base.

The upper garage is leaking into the lower garage causing damage to the concrete and adjacent components, such as the garage door operator. The use of a traffic coating atop the concrete minimizes the infiltration of salts and moisture into the concrete, and minimizes future concrete repairs. Therefore, we recommend the use of a traffic coating on all elevated portions of the garage.

Remove all peeling and loose traffic coatings prior to the application of a new coating. We suggest at three part coat (base, intermediate and top coat) system with 15 to 18 pounds of aggregate per gallon in the intermediate coat. Follow the manufacturer’s recommendations for installation, including appropriate weather conditions and curing times.

The building was originally built as an office that required a significant amount of parking spaces for employees and clients. When the building converted to condominiums less parking spaces were necessary. The entire parking deck was empty at the time of our inspection. This unused asset must be maintained to preserve the integrity of the structure. We identify nearly $6,000 per home every 15 years to maintain a traffic coating and conduct concrete repairs for parking spaces that the homeowners are not utilizing. There are also light poles and fixtures that will require replacement and the facade that needs to be maintained. The cost to maintain the elevated parking deck is skewing the reserve contributions. The Association should investigate if the parking spaces can be rented to neighboring properties to aid in the maintenance costs. The Association could also consider alternative functions for the parking deck, such as tennis courts or other recreational activities, so the homeowners can benefit from the maintenance costs.
The asphalt on the lower garage level is in poor condition due to excessive pitting. However, due to the low profile area and considering that the pavement is not exposed to weather, we assume the Association will not repave the entire garage. Instead, we assume the Association will repave limited sections of intense deterioration. The areas that exhibit the most deterioration are at the northeast corner of the garage and at the garage doors. The condition of the pavement at the northeast corner of the garage may be due to a breached subterranean pipe. A near term investigation and repairs are necessary.

The current garage exhaust system serving the private garage area does not include exhaust fans or a sufficient amount of CO detectors. We assume the replacement system will include fans and additional detectors.

Due to pavement overlayment atop the gutter portion of the concrete, we assume total replacement of the curbs and gutters will be necessary with future repaving.

Implementation of these repairs and improvements could increase the useful life of the components, minimize operating costs and provide guidance at the time of component replacement.
Reserve Study Overview

This reserve study is a physical and financial analysis of your property that determines what components of your property will eventually require either major repairs or restoration, or complete replacement. Large, one-time contributions for these projects can be eliminated with development of a reserve through relatively smaller annual contributions. The physical analysis determines the existing quantities, conditions, useful lives and costs of the components. The financial analysis determines the existing financial situation of your property and the reserves necessary to offset the future expenses.

Reserve Component

Components in this reserve study meet the following requirements:

- responsibility of the property
- limited useful life expectancy
- predictable remaining useful life expectancy
- above a minimum threshold cost

Components that do not fulfill the above requirements are not included in this study.

30 Year Analysis

The analysis for this reserve study encompasses the next 30 years. The components of the property age each year. Those who enjoy the use of each component are financially responsible for what they enjoyed. This length of an analysis is necessary to analyze the aging of nearly all the major components of the property. The expectation is not that the current Residents, Board of Directors and/or Management will be present at the property in 30 years. Rather, the future analysis aids in determining the most accurate current contribution for the aging components.

Funding Method

The funding method of this reserve study utilizes the cash flow method. With the cash flow method, contributions to the reserve fund are designed to offset variable annual expenditures. We experiment with different contribution scenarios until an ideal scenario is discovered to offset reserve expenditures. All expenses and contributions are pooled together. Our experience indicates that the cash flow method typically results in lower overall contributions than the component method, which typically segregates funds.

Funding Goal

The funding goal of this reserve study is to maintain a reserve balance above a minimum threshold during the years of major expenditures. We assume a contingency reserve balance of not less than ten percent (10%) of the expenditures in the threshold funding year (The year the reserve balance is at its
lowest point. See Funding Plan Page 1.401 for the identification of this year). The property can
determine if they prefer a higher or lower contingency.

**Funding**

This reserve study assumes an ideal situation where all future costs are offset by annual contributions to
the reserve fund. *We understand that this is not always possible.* Our experience suggests that major
projects are funded through multiple means such as partially through the reserve fund and partial
through either additional assessments or bank loans. The specific funding of the projects is determined
by the property at the time of the event (this is not something we can forecast). The goal of the
property should be to follow the recommended funding plan outlined in this reserve study. If the
recommended reserve contributions are not feasible as determined by the Board of Director’s
judgment, this reserve study should then be used, at a minimum, to justify the need for an *increase* over
the *current* reserve fund contribution.

**Prioritization**

The time of replacement for each component involves a varying degree of deduction. To help
understand the criticality of each replacement time, we provide the following replacement
prioritization:

- **priority** - Replacement time has little, if any, flexibility. Deferring the replacement time
  would have an adverse effect on the property.
- **deferrable** - Replacement time has limited flexibility. Continually deferring the
  replacement time would eventually have an adverse effect on the property and raise
  aesthetic concerns.
- **discretionary** - Replacement time has flexibility. Continually deferring the replacement
  time would raise aesthetic concerns, or the component does not affect the functionality
  of the property.

**Reserve Study Requirements**

Property Declarations occasionally define reserve study requirements. State legislature may also define
reserve study requirements. The following is a link to reserve study requirements in your state (the
property should determine if more recent or pending legislation exists):

[https://www.revisor.mn.gov/statutes/?id=515B.3-1141](https://www.revisor.mn.gov/statutes/?id=515B.3-1141)

It is our intention that this reserve study complies with these requirements. The property should consult with their attorney on discrepancies between reserve study requirements. Contact us for any revision necessary to the reserve study to fulfill these requirements.
Cost estimates

We obtain the cost estimates for replacements from the following sources:

- published sources (*RS Means* based on standard union labor rate)
- historical costs
- proprietary information

Our estimates are not guarantees of actual replacement costs. We base our estimates on our calculation of expected market rate for your specific location and specific situation. Multiple contractor bids will result in multiple cost estimates. *Multiple* contractor estimates will inevitably vary from our *single* estimate. If the property receives an estimate that is higher than the estimate in this reserve study, the property should use this study as a tool to negotiate a lower cost. If the property receives an estimate that is lower than the estimate in this reserve study - congratulations! You have received an estimate that is below the expected market rate. The property should verify the scope of work in the contractor’s estimate is similar to what is noted on the Engineering Data page.

Long Lived Components

There exists components at the property that will not require replacement during the 30 year analysis. Although these long lived components will eventually require replacement, they do not fall within the scope of the analysis. Periodic updates of the study will eventually include their replacement. Frequent updates of the study will ensure the property has up to 30 years to plan for their eventual replacement. The following is a list of *common* long lived components for the property:

- electrical systems
- fire suppression system
- foundations
- pipes within the building walls and subsurface
- structural frames
- trash chute and doors
- wall panels in lobby

Operating Budget

The operating budget provides funds necessary for the daily operation of the property. In general, the operating budget includes expenses that repeat from year to year, such as administrative expenses and cleaning. All the property components require maintenance. *This reserve study does not include maintenance costs that would traditionally fall under an operating budget.* We assume the property will fund normal annual maintenance through the operating budget. We also assume that the property will fund replacement of components below an estimated minimum threshold cost of $6,000.
through the operating budget. The following is a list of components that we assume the property will fund through the operating budget:

- bollard lights (main entrance)
- davit inspections and testing
- irrigation system
- landscape annual maintenance
- landscape lights
- patios and fences serving individual units
- periodic facade inspections
- picnic area
- pond - ornamental
- pumps with a capacity of less than five horsepower
- recessed light fixtures
- screening at lower garage fence
- sidewalks
- siding at the cooling tower
- swing stage (abandoned in place)
- unit heaters
- valves with a small diameter
- water heater (serving the common rest room)

The items in the list above have a minimal (if any) impact on our recommended reserve fund contribution. If the property chooses to fund these expenses through reserves, updates of this reserve study would account for these expenses.

**Homeowner Responsibility**

The property’s Declaration assigns the responsibility of certain components to the homeowners. These are typically components where the use is solely enjoyed by the homeowner. The following is a list of components that are the responsibility of the homeowners as described to us during our meeting at the property:

- electrical systems within the individual homes
- heating, ventilating and air conditioning (HVAC) units serving the individual homes
- interiors of the individual homes
- pipes that branch off the common pipes to the individual home plumbing fixtures
- water heaters
We do not provide an opinion on the accuracy of this list. Historical practices for repairs and replacements occasionally conflict with what is stated in the Declaration. The property should consult with their attorney to verify the accuracy of the information in this list provided to us.

Although these components are maintained by the homeowners, Declarations typically allow the Board of Directors to have architectural control over replacement. This aids in keeping a uniform appearance throughout the property. Homeowner replacement projects with a high dollar value can be managed by the property but the expenses charged back to the homeowners. This simplifies complex projects by having one contractor and further ensures a uniform appearance.

**Responsibility of Others**

We were informed that there are components within the property that are the responsibility of others. The following components are neither the responsibility of the property nor the homeowners:

- pond

**Additional Assessments**

The objective of properly planned operating budgets and reserve contributions is to avoid additional assessments. However, additional assessments are necessary for unplanned costs such as code change requirements, unobservable conditions, property improvements, etc. We do not recommend the property fund these expenses through reserves. The property should consult with their attorney and Declaration to determine if funding these types of expenses through reserves is permissible. Management and the Board inform us of the following anticipated near term additional assessments:

- near term curtain wall restoration

**Definitions and Supporting Information**

Community Associations Institute (CAI) and the Association of Professional Reserve Analysts (APRA) are national organizations that provide requirements for reserve studies. The property should refer to these organizations for reserve study definitions and supporting information. The following are links to these organizations:

[http://www.caionline.org](http://www.caionline.org)

Reserve Fund Status

If the property were to fund all expenditures identified in this study through reserves, an increase in the reserve contributions is necessary. See Funding Plan Page 1.401 for our recommended reserve contribution funding plan.

Sincerely,

Justin J. Maier, RS
Partner
Superior Reserve Engineering & Consulting
justin@superiorreserve.com
888-688-4560
Report submitted on: June 19, 2014
## Recommended Funding Plan

Cloud 9 Sky Flats Association, Inc.

<table>
<thead>
<tr>
<th>Year</th>
<th>Inflated Expenditures</th>
<th>Recommended contributions</th>
<th>Ending reserve balance</th>
<th>Average $ per home per month</th>
<th>$ increase per month from previous year</th>
<th>% increase from previous year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>$(50,000)</td>
<td>$215,900</td>
<td>$635,792</td>
<td>$110.38</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2015</td>
<td>$(16,091)</td>
<td>$375,900</td>
<td>$1,005,392</td>
<td>$192.18</td>
<td>$81.80</td>
<td>74.1%</td>
</tr>
<tr>
<td>2016</td>
<td>$(774,253)</td>
<td>$535,900</td>
<td>$777,669</td>
<td>$273.98</td>
<td>$81.80</td>
<td>42.6%</td>
</tr>
<tr>
<td><strong>2017</strong></td>
<td>($1,291,915)</td>
<td><strong>$695,900</strong></td>
<td><strong>$187,414</strong></td>
<td><strong>$355.78</strong></td>
<td><strong>$81.80</strong></td>
<td><strong>29.9%</strong></td>
</tr>
<tr>
<td>2018</td>
<td>$(43,565)</td>
<td>$360,000</td>
<td>$507,999</td>
<td>$184.05</td>
<td>-$171.73</td>
<td>-48.3%</td>
</tr>
<tr>
<td>2019</td>
<td>$(43,520)</td>
<td>$364,300</td>
<td>$836,799</td>
<td>$186.25</td>
<td>$2.20</td>
<td>1.2%</td>
</tr>
<tr>
<td>2020</td>
<td>$(64,452)</td>
<td>$368,700</td>
<td>$1,152,918</td>
<td>$188.50</td>
<td>$2.25</td>
<td>1.2%</td>
</tr>
<tr>
<td>2021</td>
<td>$(108,926)</td>
<td>$373,100</td>
<td>$1,432,512</td>
<td>$190.75</td>
<td>$2.25</td>
<td>1.2%</td>
</tr>
<tr>
<td>2022</td>
<td>$(40,485)</td>
<td>$377,600</td>
<td>$1,788,837</td>
<td>$193.05</td>
<td>$2.30</td>
<td>1.2%</td>
</tr>
<tr>
<td>2023</td>
<td>$(221,147)</td>
<td>$382,100</td>
<td>$1,972,220</td>
<td>$195.35</td>
<td>$2.30</td>
<td>1.2%</td>
</tr>
<tr>
<td>2024</td>
<td>$(966,026)</td>
<td>$386,700</td>
<td>$1,413,085</td>
<td>$197.70</td>
<td>$2.35</td>
<td>1.2%</td>
</tr>
<tr>
<td>2025</td>
<td>$(744,330)</td>
<td>$391,300</td>
<td>$1,074,894</td>
<td>$200.05</td>
<td>$2.35</td>
<td>1.2%</td>
</tr>
<tr>
<td>2026</td>
<td>$(296,089)</td>
<td>$396,000</td>
<td>$1,188,305</td>
<td>$202.45</td>
<td>$2.40</td>
<td>1.2%</td>
</tr>
<tr>
<td>2027</td>
<td>$(297,774)</td>
<td>$400,800</td>
<td>$1,306,211</td>
<td>$204.91</td>
<td>$2.45</td>
<td>1.2%</td>
</tr>
<tr>
<td>2028</td>
<td>$(55,111)</td>
<td>$405,600</td>
<td>$1,674,480</td>
<td>$207.36</td>
<td>$2.45</td>
<td>1.2%</td>
</tr>
<tr>
<td>2029</td>
<td>$(49,392)</td>
<td>$410,500</td>
<td>$2,057,848</td>
<td>$209.87</td>
<td>$2.51</td>
<td>1.2%</td>
</tr>
<tr>
<td>2030</td>
<td>$(1,199,757)</td>
<td>$415,400</td>
<td>$1,293,481</td>
<td>$212.37</td>
<td>$2.51</td>
<td>1.2%</td>
</tr>
<tr>
<td>2031</td>
<td>$(91,861)</td>
<td>$420,400</td>
<td>$1,639,510</td>
<td>$214.93</td>
<td>$2.56</td>
<td>1.2%</td>
</tr>
<tr>
<td>2032</td>
<td>$0</td>
<td>$425,400</td>
<td>$2,087,140</td>
<td>$217.48</td>
<td>$2.56</td>
<td>1.2%</td>
</tr>
<tr>
<td>2033</td>
<td>$(493,769)</td>
<td>$430,500</td>
<td>$2,048,541</td>
<td>$220.09</td>
<td>$2.61</td>
<td>1.2%</td>
</tr>
<tr>
<td>2034</td>
<td>$(60,933)</td>
<td>$435,700</td>
<td>$2,450,139</td>
<td>$222.75</td>
<td>$2.66</td>
<td>1.2%</td>
</tr>
<tr>
<td>2035</td>
<td>$(1,414,034)</td>
<td>$440,900</td>
<td>$1,500,565</td>
<td>$225.41</td>
<td>$2.66</td>
<td>1.2%</td>
</tr>
<tr>
<td>2036</td>
<td>$(249,356)</td>
<td>$446,200</td>
<td>$1,716,599</td>
<td>$228.12</td>
<td>$2.71</td>
<td>1.2%</td>
</tr>
<tr>
<td>2037</td>
<td>$(1,741,703)</td>
<td>$451,600</td>
<td>$439,356</td>
<td>$230.88</td>
<td>$2.76</td>
<td>1.2%</td>
</tr>
<tr>
<td>2038</td>
<td>$(55,303)</td>
<td>$457,000</td>
<td>$848,733</td>
<td>$233.64</td>
<td>$2.76</td>
<td>1.2%</td>
</tr>
<tr>
<td>2039</td>
<td>$(32,878)</td>
<td>$462,500</td>
<td>$1,291,115</td>
<td>$236.45</td>
<td>$2.81</td>
<td>1.2%</td>
</tr>
<tr>
<td>2040</td>
<td>$(74,999)</td>
<td>$468,100</td>
<td>$1,702,066</td>
<td>$239.31</td>
<td>$2.86</td>
<td>1.2%</td>
</tr>
<tr>
<td>2041</td>
<td>$(68,309)</td>
<td>$473,700</td>
<td>$2,130,317</td>
<td>$242.18</td>
<td>$2.86</td>
<td>1.2%</td>
</tr>
<tr>
<td>2042</td>
<td>$(37,707)</td>
<td>$479,400</td>
<td>$2,600,220</td>
<td>$245.09</td>
<td>$2.91</td>
<td>1.2%</td>
</tr>
<tr>
<td>2043</td>
<td>$(375,281)</td>
<td>$485,200</td>
<td>$2,741,999</td>
<td>$248.06</td>
<td>$2.97</td>
<td>1.2%</td>
</tr>
<tr>
<td>2044</td>
<td>$(1,134,197)</td>
<td>$491,000</td>
<td>$2,127,842</td>
<td>$251.02</td>
<td>$2.97</td>
<td>1.2%</td>
</tr>
</tbody>
</table>

*2017 is the THRESHOLD FUNDING YEAR. To reduce reserve contributions, identify items to defer beyond this year.*
Cloud 9 Sky Flats Association, Inc.

Financial Analysis Chart

- Recommended contributions
- Inflated Expenditures
### REVENUES

<table>
<thead>
<tr>
<th>Acct #</th>
<th>Account Description</th>
<th>Annual Revenues</th>
<th>Home/Year Revenues</th>
</tr>
</thead>
<tbody>
<tr>
<td>40000</td>
<td>Association Assessments - Operating</td>
<td>$612,827</td>
<td>$3,759.67</td>
</tr>
<tr>
<td>40001</td>
<td>Satellite</td>
<td>$54,768</td>
<td>$336.00</td>
</tr>
<tr>
<td>40002</td>
<td>Internet</td>
<td>$62,400</td>
<td>$382.82</td>
</tr>
<tr>
<td>48000</td>
<td>Association Assessments - Reserves</td>
<td>$215,900</td>
<td>$1,324.54</td>
</tr>
</tbody>
</table>

**Total Revenue:** $945,895 $5,803.03

### EXPENSES

<table>
<thead>
<tr>
<th>Acct #</th>
<th>Account Description</th>
<th>Annual Expenses</th>
<th>Home/Year Expenses</th>
</tr>
</thead>
<tbody>
<tr>
<td>50100</td>
<td>Review/Tax Return</td>
<td>$1,260</td>
<td>$7.73</td>
</tr>
<tr>
<td>50200</td>
<td>Legal/Collections</td>
<td>$10,000</td>
<td>$61.35</td>
</tr>
<tr>
<td>50250</td>
<td>Bad Debt</td>
<td>$0</td>
<td>$0.00</td>
</tr>
<tr>
<td>50260</td>
<td>Engineering Fees</td>
<td>$7,000</td>
<td>$42.94</td>
</tr>
<tr>
<td>51300</td>
<td>Trash Removal</td>
<td>$8,496</td>
<td>$52.12</td>
</tr>
<tr>
<td>51400</td>
<td>Fire Suppression</td>
<td>$7,960</td>
<td>$48.83</td>
</tr>
<tr>
<td>51450</td>
<td>Telephone</td>
<td>$6,178</td>
<td>$37.90</td>
</tr>
<tr>
<td>51500</td>
<td>Gas</td>
<td>$55,008</td>
<td>$337.47</td>
</tr>
<tr>
<td>51600</td>
<td>Electricity</td>
<td>$126,000</td>
<td>$773.01</td>
</tr>
<tr>
<td>51610</td>
<td>Water</td>
<td>$43,890</td>
<td>$269.26</td>
</tr>
<tr>
<td>51630</td>
<td>Satellite</td>
<td>$58,680</td>
<td>$360.00</td>
</tr>
<tr>
<td>51635</td>
<td>Internet</td>
<td>$39,600</td>
<td>$242.94</td>
</tr>
<tr>
<td>51650</td>
<td>Governance</td>
<td>$10,000</td>
<td>$61.35</td>
</tr>
<tr>
<td>51670</td>
<td>Insurance Package</td>
<td>$36,391</td>
<td>$223.26</td>
</tr>
<tr>
<td>51700</td>
<td>Insurance Claim Deductible</td>
<td>$10,000</td>
<td>$61.35</td>
</tr>
<tr>
<td>51800</td>
<td>Repairs &amp; Maintenance</td>
<td>$28,000</td>
<td>$171.78</td>
</tr>
<tr>
<td>51801</td>
<td>Building Common Area Maintenance</td>
<td>$43,860</td>
<td>$269.08</td>
</tr>
<tr>
<td>51850</td>
<td>Mechanical HVAC</td>
<td>$21,153</td>
<td>$129.77</td>
</tr>
<tr>
<td>51865</td>
<td>Electrical Repairs</td>
<td>$8,850</td>
<td>$54.29</td>
</tr>
<tr>
<td>51875</td>
<td>Elevator</td>
<td>$16,800</td>
<td>$103.07</td>
</tr>
<tr>
<td>51885</td>
<td>Supplies and Parts</td>
<td>$18,000</td>
<td>$110.43</td>
</tr>
<tr>
<td>51900</td>
<td>Landscape &amp; Irrigation Contract</td>
<td>$18,846</td>
<td>$115.62</td>
</tr>
<tr>
<td>51950</td>
<td>Landscape &amp; Irrigation Requested Services</td>
<td>$6,500</td>
<td>$39.88</td>
</tr>
<tr>
<td>55250</td>
<td>Snow Removal Contract</td>
<td>$12,675</td>
<td>$77.76</td>
</tr>
<tr>
<td>59000</td>
<td>Community Management</td>
<td>$28,848</td>
<td>$176.98</td>
</tr>
<tr>
<td>59100</td>
<td>Payroll</td>
<td>$106,000</td>
<td>$650.31</td>
</tr>
<tr>
<td>60350</td>
<td>Capital Replacement Reserves</td>
<td>$214,400</td>
<td>$1,315.34</td>
</tr>
<tr>
<td>60600</td>
<td>Reserve Study (Reserves)</td>
<td>$1,500</td>
<td>$9.20</td>
</tr>
</tbody>
</table>

**Total Expenses:** $945,895 $5,803.03

**Excess of Revenue Over Expenses:** $0 $0.00

**Annual Assessment:** $828,728

**Total Number of Homes:** 163
<table>
<thead>
<tr>
<th>Acct Desc</th>
<th>Operating</th>
<th>Reserves</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Union Bank Operating Cash</td>
<td>$103,446.04</td>
<td>$0.00</td>
<td>$103,446.04</td>
</tr>
<tr>
<td>Crown Bank CD</td>
<td>20,341.42</td>
<td>0.00</td>
<td>20,341.42</td>
</tr>
<tr>
<td>Union Bank Reserves</td>
<td>0.00</td>
<td>417,198.97</td>
<td>417,198.97</td>
</tr>
<tr>
<td>Crown Bank CD</td>
<td>0.00</td>
<td>101,808.62</td>
<td>101,808.62</td>
</tr>
<tr>
<td>Assessments Receivable</td>
<td>132,261.57</td>
<td>0.00</td>
<td>132,261.57</td>
</tr>
<tr>
<td>Homeowner Chargebacks</td>
<td>944.53</td>
<td>0.00</td>
<td>944.53</td>
</tr>
<tr>
<td>Allowance for Bad Debt</td>
<td>(58,000.00)</td>
<td>0.00</td>
<td>(58,000.00)</td>
</tr>
<tr>
<td>Unfunded Reserves - Current Year</td>
<td>0.00</td>
<td>17,991.67</td>
<td>17,991.67</td>
</tr>
<tr>
<td>Common Property</td>
<td>142,842.00</td>
<td>0.00</td>
<td>142,842.00</td>
</tr>
<tr>
<td>Accumulated Depr.- Grounds &amp; Improvement</td>
<td>(25,971.00)</td>
<td>0.00</td>
<td>(25,971.00)</td>
</tr>
<tr>
<td>TOTAL ASSETS</td>
<td>$315,864.56</td>
<td>$536,999.26</td>
<td>$852,863.82</td>
</tr>
</tbody>
</table>

**LIABILITIES & EQUITY**

<table>
<thead>
<tr>
<th>Acct Desc</th>
<th>Operating</th>
<th>Reserves</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts Payable</td>
<td>$18,981.52</td>
<td>$0.00</td>
<td>$18,981.52</td>
</tr>
<tr>
<td>Accrued Payables</td>
<td>4,984.00</td>
<td>0.00</td>
<td>4,984.00</td>
</tr>
<tr>
<td>Prepaid Owner Assessments</td>
<td>25,531.75</td>
<td>0.00</td>
<td>25,531.75</td>
</tr>
<tr>
<td>Collection Fees Payable</td>
<td>9,780.12</td>
<td>0.00</td>
<td>9,780.12</td>
</tr>
<tr>
<td>Security Deposit</td>
<td>5,000.00</td>
<td>0.00</td>
<td>5,000.00</td>
</tr>
<tr>
<td>Crown Bank Mortgage Payable</td>
<td>51,247.41</td>
<td>0.00</td>
<td>51,247.41</td>
</tr>
<tr>
<td>Unfunded Reserves - Current Year</td>
<td>17,991.67</td>
<td>0.00</td>
<td>17,991.67</td>
</tr>
<tr>
<td>Current Liabilities</td>
<td>$133,516.47</td>
<td>$0.00</td>
<td>$133,516.47</td>
</tr>
</tbody>
</table>

**MEMBERS' EQUITY (DEFICIT)**

<table>
<thead>
<tr>
<th>Acct Desc</th>
<th>Operating</th>
<th>Reserves</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beg. of Yr. Members' Equity (Deficit)</td>
<td>$208,999.06</td>
<td>$542,534.85</td>
<td>$751,533.91</td>
</tr>
<tr>
<td>Current Year Excess/(Deficit)</td>
<td>(26,650.97)</td>
<td>(5,535.59)</td>
<td>(32,186.56)</td>
</tr>
<tr>
<td>Total Members' Equity</td>
<td>$182,348.09</td>
<td>$536,999.26</td>
<td>$719,347.35</td>
</tr>
<tr>
<td>TOTAL LIABILITIES &amp; EQUITY</td>
<td>$315,864.56</td>
<td>$536,999.26</td>
<td>$852,863.82</td>
</tr>
</tbody>
</table>
Summary of Qualifications
Justin J. Maier, P.E., RS
Partner

Services
Justin J. Maier is a partner and co-founder of Superior Reserve Engineering and Consulting. Justin J. Maier provides expert reserve and transition studies, and critical property reviews. Properties that have benefited from his experience include townhome associations, condominium associations, planned unit developments, marinas, resorts, hotels, churches and country clubs. These properties vary from complex high rise buildings to vintage buildings of historical significance. He has provided these services to more than 1,200 properties throughout the United States and worldwide.

Prior Experience
Prior to co-founding Superior Reserve with Nik J. Clark, Mr. Maier had conducted reserve and transitions studies with Reserve Advisors for 14 years. During this time, he was the Director of Product Development where he oversaw the development, improvement and production efficiency of reserve and transition studies for the firm. He was the leading producer of reserve and transition studies. Mr. Maier was instrumental in improving the quality of reports both in content, clarity and appearance. Reserve Advisors experienced tremendous success based on the standard of reserve and transition study quality that he implemented.

Mr. Maier was a structural engineer for Wausau Window and Wall Systems. There he analyzed stresses in horizontal and vertical components of aluminum frame curtain wall window systems in projects throughout the United States for both wind pressure and suction loads. He was involved in field work to correct improperly installed system components.

Mr. Maier was an Assistant Engineer for Crest Consulting Engineers. His services required on-site field investigation of architectural and structural failures, analysis of the preexisting design and conditions, and determination of the design shortfalls or owner modifications that caused the failures. He designed remedial repairs, produced cost estimates for the repairs, prepared the specifications and oversaw the implementation of the repairs.

Expert Witness
Through the expert witness of Mr. Maier, the Villages at Cumberland Trail in Columbus, Ohio and The Retreat Homeowners Association in Indianapolis, Indiana were able to successfully negotiate a settlement for their construction defects.

Education
Milwaukee School of Engineering (MSOE)

Professional Affiliations
Professional Engineer (P.E.) - licenses held in WI, IL, OH, NY, TX, DC, VA, MD, MI, MN, PA
Reserve Specialist (RS) - credential awarded by Community Association’s Institute (CAI)
Terms, Conditions and Limitations

1) Superior Reserve Engineering & Consulting (SREC) will perform a visual inspection of the property. While due diligence will be exercised during the onsite inspection, we make no representations regarding latent or hidden defects not observable from a visual inspection. We do not conduct invasive or destructive testing nor provide an exhaustive review of building code compliance. Material testing, core sampling, performance testing of building or site elements and equipment is not part of the scope of work.

2) Our opinions of estimated costs and remaining useful lives are not a guarantee of the actual costs of replacement, a warranty of the common elements or other property elements, or a guarantee of remaining useful lives.

3) SREC may rely on information provided to us, by the client named in this contract, in our report. We assume information provided to us by the client to be correct and assume no liability for the accuracy of information provided to us by the client. You agree to indemnify and hold us harmless against and from any and all losses, claims, actions, damages, expenses or liabilities, including reasonable attorneys' fees, to which we may become subject in connection with this engagement, because of any false, misleading or incomplete information which we have relied upon as supplied by you or others under your direction, or which may result from any improper use or reliance on the report by you or third parties under your control or direction.

4) Our Reserve Study Report in whole or part is not and cannot be used as a design specification, design engineering services or an appraisal.

5) Substances such as asbestos, urea-formaldehyde foam insulation, other chemicals, toxic wastes, environmental mold or other potentially hazardous materials could, if present, adversely affect the validity of this study. Unless otherwise stated in this report, the existence of hazardous substance, that may or may not be present on or in the property, was not considered. Our opinions are predicated on the assumption that there are no hazardous materials on or in the property. We assume no responsibility for any such conditions. We are not qualified to detect such substances, quantify the impact, or develop the remedial cost.

6) In the event of errors in our report, SREC's liability is limited to the cost of this study.
2014
Hybrid Reserve Expenditures and Funding Plan
January 1, 2014 through December 31, 2014

Year of forecast: 0
Annual inflation rate: 1.2%
Compounded inflation in 2014: 100.0%

Unaudited, provided, beginning reserve balance as of April 30, 2014: $536,999

Budgeted reserve contribution (8 remaining months of $215,900 contribution): + $143,933
Estimated interest earned (8 months of remaining interest at 1.2% yield rate): + $4,900

Total contributions: = $148,833

Cloud 9 Sky Flats Association, Inc.

2014 Expenditures

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014 Reserve Expenditures (asphalt seal coat and misc.)</td>
<td>priority 2.101</td>
</tr>
</tbody>
</table>

Total expenditures: ($50,000)

Ending reserve balance: $635,792
2015
Hybrid Reserve Expenditures and Funding Plan
January 1, 2015 through December 31, 2015

Year of forecast: 1
Annual inflation rate: 1.2%
Compounded inflation in 2015: 101.2%

Beginning reserve balance: $635,792
Recommended reserve contribution: + $375,900
Estimated interest earned (1.2% yield rate): + $7,200
Total contributions: = $383,100

Cloud 9 Sky Flats Association, Inc.
2015 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Painting - Metal Framing at Cooling Towers</td>
<td>priority 2.431 ($9,918)</td>
</tr>
<tr>
<td>Garage Door and Operator - Private South</td>
<td>deferrable 5.372 ($6,173)</td>
</tr>
<tr>
<td>Total expenditures:</td>
<td>($16,091)</td>
</tr>
</tbody>
</table>

Ending reserve balance: $1,005,392
Year of forecast: 2
Annual inflation rate: 1.2%
Compounded inflation in 2016: 102.4%

Beginning reserve balance: $1,005,392
Recommended reserve contribution: + $535,900
Estimated interest earned (1.2% yield rate): + $6,600
Total contributions: = $542,500

Cloud 9 Sky Flats Association, Inc.

2016 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Description</th>
<th>Prioritization</th>
<th>Engineering Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awning - Front</td>
<td>discretionary</td>
<td>2.101</td>
</tr>
<tr>
<td>Elevator Traction Controls and Equipment</td>
<td>deferrable</td>
<td>4.401</td>
</tr>
<tr>
<td>Total expenditures:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Ending reserve balance: $777,669
Hybrid Reserve Expenditures and Funding Plan
January 1, 2017 through December 31, 2017

- Year of forecast: 3
- Annual inflation rate: 1.2%
- Compounded inflation in 2017 (Threshold): 103.6%

Beginning reserve balance: $777,669
Recommended reserve contribution: + $695,900
Estimated interest earned (1.2% yield rate): + $2,600
Total contributions: = $698,500

---

Cloud 9 Sky Flats Association, Inc.

2017 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
<th>Security System</th>
<th>4.701</th>
<th>($32,648)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elevated Concrete Floor Restoration (see Critical Property Review)</td>
<td>priority</td>
<td>5.271-2</td>
<td>($1,007,206)</td>
<td></td>
</tr>
<tr>
<td>On-grade Asphalt Floor Restoration (see Critical Property Review)</td>
<td>deferrable</td>
<td>5.322</td>
<td>($220,864)</td>
<td></td>
</tr>
<tr>
<td>Exhaust System (see Critical Property Review)</td>
<td>deferrable</td>
<td>5.421</td>
<td>($23,838)</td>
<td></td>
</tr>
<tr>
<td>Staircase</td>
<td>deferrable</td>
<td>5.637</td>
<td>($7,359)</td>
<td></td>
</tr>
<tr>
<td>Total expenditures:</td>
<td></td>
<td></td>
<td>($1,291,915)</td>
<td></td>
</tr>
</tbody>
</table>

Ending reserve balance: $187,414
### 2018 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Description</th>
<th>Prioritization</th>
<th>Engineering Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exercise Equipment (33% every 5 years)</td>
<td>deferrable</td>
<td>3.221 ($12,807)</td>
</tr>
<tr>
<td>Office Renovation (25% every 5 years)</td>
<td>deferrable</td>
<td>3.581 ($2,439)</td>
</tr>
<tr>
<td>Pavement Crack Repair and Patch (see Critical Property Review)</td>
<td>priority</td>
<td>6.641 ($11,433)</td>
</tr>
<tr>
<td>Pavement Seal Coat (see Critical Property Review)</td>
<td>deferrable</td>
<td>6.641 ($16,887)</td>
</tr>
</tbody>
</table>

Total expenditures: ($43,565)

Ending reserve balance: $507,999
2019
Hybrid Reserve Expenditures and Funding Plan
January 1, 2019 through December 31, 2019

Year of forecast: 5
Annual inflation rate: 1.2%
Compounded inflation in 2019: 106.1%

Beginning reserve balance: $507,999
Recommended reserve contribution: + $364,300
Estimated interest earned (1.2% yield rate): + $6,000
Total contributions: = $370,300

Cloud 9 Sky Flats Association, Inc.

2019 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landscape - Ash Trees</td>
<td>deferrable 6.542</td>
</tr>
</tbody>
</table>

Total expenditures: ($43,520)
Ending reserve balance: $836,799
Year of forecast: 6
Annual inflation rate: 1.2%
Compounded inflation in 2020: 107.4%

Beginning reserve balance: $836,799
Recommended reserve contribution: + $368,700
Estimated interest earned (1.2% yield rate): + $8,500
Total contributions: = $377,200

Cloud 9 Sky Flats Association, Inc.

2020 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Automation System</td>
<td>discretionary</td>
</tr>
</tbody>
</table>

Total expenditures: $(64,452)

Ending reserve balance: $1,152,918
**2021**

**Hybrid Reserve Expenditures and Funding Plan**  
January 1, 2021 through December 31, 2021

- **Year of forecast:** 7  
- **Annual inflation rate:** 1.2%  
- **Compounded inflation in 2021:** 108.7%

- **Beginning reserve balance:** $1,152,918  
- **Recommended reserve contribution:** + $373,100  
- **Estimated interest earned (1.2% yield rate):** + $10,800  

**Total contributions:** = $383,900

---

**Cloud 9 Sky Flats Association, Inc.**

**2021 Expenditures (inflated)**

<table>
<thead>
<tr>
<th>Engineering Data</th>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
<th>Total expenditures:</th>
<th>Ending reserve balance:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doors at Entrances and Exits</td>
<td>deferrable</td>
<td>2.281</td>
<td>($15,219)</td>
<td></td>
</tr>
<tr>
<td>Light Fixtures - Stairwells</td>
<td>deferrable</td>
<td>3.422</td>
<td>($11,958)</td>
<td></td>
</tr>
<tr>
<td>Garage Doors and Operators - Loading Dock</td>
<td>deferrable</td>
<td>5.374</td>
<td>($13,262)</td>
<td></td>
</tr>
<tr>
<td>Light Poles and Fixtures</td>
<td>deferrable</td>
<td>6.601</td>
<td>($68,486)</td>
<td></td>
</tr>
</tbody>
</table>

**Total expenditures:** ($108,926)  
**Ending reserve balance:** $1,432,512
Cloud 9 Sky Flats Association, Inc.

**2022 Expenditures (inflated)**

<table>
<thead>
<tr>
<th>Description</th>
<th>Prioritization</th>
<th>Engineering Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Painting - Metal Framing at Cooling Towers</td>
<td>priority</td>
<td>2.431 ($10,781)</td>
</tr>
<tr>
<td>Pavement Crack Repair and Patch (see Critical Property Review)</td>
<td>priority</td>
<td>6.641 ($11,991)</td>
</tr>
<tr>
<td>Pavement Seal Coat (see Critical Property Review)</td>
<td>deferrable</td>
<td>6.641 ($17,712)</td>
</tr>
<tr>
<td><strong>Total expenditures:</strong></td>
<td></td>
<td>($40,485)</td>
</tr>
</tbody>
</table>

Ending reserve balance: $1,788,837
2023
Hybrid Reserve Expenditures and Funding Plan
January 1, 2023 through December 31, 2023

Year of forecast: 9
Annual inflation rate: 1.2%
Compounded inflation in 2023: 111.3%

Beginning reserve balance: $1,788,837

Recommended reserve contribution: + $382,100
Estimated interest earned (1.2% yield rate): + $15,300
Total contributions: = $397,400

Cloud 9 Sky Flats Association, Inc.

2023 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
<th>Description</th>
<th>Inflated Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>deferrable</td>
<td>3.101</td>
<td>Carpet</td>
<td>($138,944)</td>
</tr>
<tr>
<td>deferrable</td>
<td>3.221</td>
<td>Exercise Equipment (33% every 5 years)</td>
<td>($13,594)</td>
</tr>
<tr>
<td>deferrable</td>
<td>3.261</td>
<td>Exercise Room Renovation</td>
<td>($13,249)</td>
</tr>
<tr>
<td>deferrable</td>
<td>3.581</td>
<td>Office Renovation (25% every 5 years)</td>
<td>($2,588)</td>
</tr>
<tr>
<td>discretionary</td>
<td>3.601</td>
<td>Painting in the Hallways</td>
<td>($52,772)</td>
</tr>
<tr>
<td>----------------</td>
<td>-----------------------------</td>
<td>-------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Total expenditures:</td>
<td></td>
<td></td>
<td>($221,147)</td>
</tr>
</tbody>
</table>

Ending reserve balance: $1,972,220
**2024**

Hybrid Reserve Expenditures and Funding Plan
January 1, 2024 through December 31, 2024

- **Year of forecast:** 10
- **Annual inflation rate:** 1.2%
- **Compounded inflation in 2024:** 112.7%

**Beginning reserve balance:** $1,972,220

**Recommended reserve contribution:** + $386,700
**Estimated interest earned (1.2% yield rate):** + $12,300

**Total contributions:** = $399,000

---

Cloud 9 Sky Flats Association, Inc.

**2024 Expenditures (inflated)**

<table>
<thead>
<tr>
<th>Item</th>
<th>Prioritization</th>
<th>Priority</th>
<th>Pages With Engineering Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roofs - Main and Penthouse</td>
<td>priority</td>
<td>2.461</td>
<td>($725,590)</td>
</tr>
<tr>
<td>Cooling Tower Capital Repairs</td>
<td>deferrable</td>
<td>4.321</td>
<td>($129,570)</td>
</tr>
<tr>
<td>Heat Exchanger for Building Heat</td>
<td>deferrable</td>
<td>4.461</td>
<td>($63,095)</td>
</tr>
<tr>
<td>Garage Doors and Operators - Main</td>
<td>deferrable</td>
<td>5.373</td>
<td>($27,491)</td>
</tr>
<tr>
<td>Painting in Garage</td>
<td>discretionary</td>
<td>5.571</td>
<td>($20,280)</td>
</tr>
</tbody>
</table>

**Total expenditures:** ($966,026)

**Ending reserve balance:** $1,413,085
2025
Hybrid Reserve Expenditures and Funding Plan
January 1, 2025 through December 31, 2025

<table>
<thead>
<tr>
<th>Year of forecast:</th>
<th>11</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual inflation rate:</td>
<td>1.2%</td>
</tr>
<tr>
<td>Compounded inflation in 2025:</td>
<td>114.0%</td>
</tr>
</tbody>
</table>

Beginning reserve balance: $1,413,085

Recommended reserve contribution: + $391,300

Estimated interest earned (1.2% yield rate): + $9,200

Total contributions: = $400,500

Cloud 9 Sky Flats Association, Inc.

2025 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roofs - Bump-outs</td>
<td>priority</td>
</tr>
<tr>
<td>Roof - Generator Room and Adjacent Areas</td>
<td>priority</td>
</tr>
<tr>
<td>Painting in the Stairwells</td>
<td>discretionary</td>
</tr>
<tr>
<td>Rest Room Renovation (see Critical Property Review)</td>
<td>deferrable</td>
</tr>
<tr>
<td>Unit Plaques and Lighting</td>
<td>discretionary</td>
</tr>
<tr>
<td>Boilers - Core Loop</td>
<td>priority</td>
</tr>
<tr>
<td>Fans for Bathrooms, Kitchens and Laundry Rooms</td>
<td>deferrable</td>
</tr>
<tr>
<td>Pumps for Domestic Water</td>
<td>priority</td>
</tr>
<tr>
<td>Water Softener Systems (see Critical Property Review)</td>
<td>deferrable</td>
</tr>
<tr>
<td>Patio Restoration</td>
<td>deferrable</td>
</tr>
<tr>
<td>Signs</td>
<td>deferrable</td>
</tr>
</tbody>
</table>

Total expenditures: ($744,330)

Ending reserve balance: $1,074,894
### 2026

**Hybrid Reserve Expenditures and Funding Plan**  
January 1, 2026 through December 31, 2026

- **Year of forecast:** 12
- **Annual inflation rate:** 1.2%
- **Compounded inflation in 2026:** 115.4%

**Beginning reserve balance:** $1,074,894

**Recommended reserve contribution:** + $396,000  
**Estimated interest earned (1.2% yield rate):** + $9,200

**Total contributions:** = $405,200

---

Cloud 9 Sky Flats Association, Inc.

### 2026 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Priority</th>
<th>Pages With Engineering Data</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>priority</td>
<td>4.641</td>
<td>Pumps for Core Heating and Cooling</td>
<td>($72,580)</td>
</tr>
<tr>
<td>priority</td>
<td>4.643</td>
<td>Pumps for Cooling Tower</td>
<td>($62,887)</td>
</tr>
<tr>
<td>deferrable</td>
<td>4.721</td>
<td>Storage Tank for Cooled Water</td>
<td>($39,925)</td>
</tr>
<tr>
<td>discretionary</td>
<td>6.521</td>
<td>Irrigation System</td>
<td>($89,542)</td>
</tr>
<tr>
<td>priority</td>
<td>6.641</td>
<td>Pavement Crack Repair and Patch (see Critical Property Review)</td>
<td>($12,577)</td>
</tr>
<tr>
<td>deferrable</td>
<td>6.641</td>
<td>Pavement Seal Coat (see Critical Property Review)</td>
<td>($18,578)</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Total expenditures:</strong></td>
<td>($296,089)</td>
</tr>
</tbody>
</table>

**Ending reserve balance:** $1,188,305
2027
Hybrid Reserve Expenditures and Funding Plan
January 1, 2027 through December 31, 2027

Year of forecast: 13
Annual inflation rate: 1.2%
Compounded inflation in 2027: 116.8%

Beginning reserve balance: $1,188,305

Recommended reserve contribution: + $400,800
Estimated interest earned (1.2% yield rate): + $10,100
Total contributions: = $410,900

Cloud 9 Sky Flats Association, Inc.
2027 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-grade Concrete Floor Restoration</td>
<td>deferrable</td>
</tr>
<tr>
<td>On-grade Asphalt Floor Restoration (see Critical Property Review)</td>
<td>deferrable</td>
</tr>
</tbody>
</table>

Total expenditures:

Ending reserve balance: $1,306,211
**2028**

Hybrid Reserve Expenditures and Funding Plan  
January 1, 2028 through December 31, 2028

- Year of forecast: 14
- Annual inflation rate: 1.2%
- Compounded inflation in 2028: 118.2%

Beginning reserve balance: $1,306,211

- Recommended reserve contribution: + $405,600
- Estimated interest earned (1.2% yield rate): + $12,600

Total contributions: = $418,200

### Cloud 9 Sky Flats Association, Inc.

#### 2028 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Description</th>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awning - Rear</td>
<td>discretionary</td>
<td>2.102</td>
<td>($30,726)</td>
</tr>
<tr>
<td>Exercise Equipment (33% every 5 years)</td>
<td>deferrable</td>
<td>3.221</td>
<td>($14,429)</td>
</tr>
<tr>
<td>Office Renovation (25% every 5 years)</td>
<td>deferrable</td>
<td>3.581</td>
<td>($2,748)</td>
</tr>
<tr>
<td>Garage Door and Operator - Private North</td>
<td>deferrable</td>
<td>5.371</td>
<td>($7,209)</td>
</tr>
</tbody>
</table>

Total expenditures: ($55,111)  

Ending reserve balance: $1,674,480
Hybrid Reserve Expenditures and Funding Plan
January 1, 2029 through December 31, 2029

Year of forecast: 15
Annual inflation rate: 1.2%
Compounded inflation in 2029: 119.6%

Beginning reserve balance: $1,674,480

Recommended reserve contribution: + $410,500
Estimated interest earned (1.2% yield rate): + $15,600

Total contributions: = $426,100

Cloud 9 Sky Flats Association, Inc.

2029 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Painting - Metal Framing at Cooling Towers</td>
<td>priority</td>
</tr>
<tr>
<td>Security System</td>
<td>discretionary</td>
</tr>
<tr>
<td>Total expenditures:</td>
<td></td>
</tr>
</tbody>
</table>

Ending reserve balance: $2,057,848
2030
Hybrid Reserve Expenditures and Funding Plan
January 1, 2030 through December 31, 2030

<table>
<thead>
<tr>
<th>Year of forecast:</th>
<th>16</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual inflation rate:</td>
<td>1.2%</td>
</tr>
<tr>
<td>Compounded inflation in 2030:</td>
<td>121.0%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Beginning reserve balance:</th>
<th>$2,057,848</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommended reserve contribution:</td>
<td>+ $415,400</td>
</tr>
<tr>
<td>Estimated interest earned (1.2% yield rate):</td>
<td>+ $11,800</td>
</tr>
<tr>
<td>Total contributions:</td>
<td>= $427,200</td>
</tr>
</tbody>
</table>

Cloud 9 Sky Flats Association, Inc.

### 2030 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Description</th>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
<th>Cost (inflated)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Curtain Wall - Renovation (subsequent)</td>
<td>priority</td>
<td>2.261-2</td>
<td>($625,718)</td>
</tr>
<tr>
<td>Air Handling Unit - Make-up (repairs)</td>
<td>deferrable</td>
<td>4.161</td>
<td>($58,094)</td>
</tr>
<tr>
<td>Boilers - Make-up Air Unit (5)</td>
<td>priority</td>
<td>4.221</td>
<td>($83,510)</td>
</tr>
<tr>
<td>Intercom Lobby Panel</td>
<td>deferrable</td>
<td>4.501</td>
<td>($6,051)</td>
</tr>
<tr>
<td>Garage Door and Operator - Private South</td>
<td>deferrable</td>
<td>5.372</td>
<td>($7,383)</td>
</tr>
<tr>
<td>Concrete Curbs and Gutters (see Critical Property Review)</td>
<td>deferrable</td>
<td>6.121</td>
<td>($53,253)</td>
</tr>
<tr>
<td>Pavement Crack Repair and Patch (see Critical Property Review)</td>
<td>priority</td>
<td>6.641</td>
<td>($13,192)</td>
</tr>
<tr>
<td>Pavement Seal Coat (see Critical Property Review)</td>
<td>deferrable</td>
<td>6.641</td>
<td>($19,486)</td>
</tr>
<tr>
<td>Pavement Total Replacement</td>
<td>deferrable</td>
<td>6.661</td>
<td>($333,071)</td>
</tr>
</tbody>
</table>

**Total expenditures:** ($1,199,757)

**Ending reserve balance:** $1,293,481
2031
Hybrid Reserve Expenditures and Funding Plan
January 1, 2031 through December 31, 2031

Year of forecast: 17
Annual inflation rate: 1.2%
Compounded inflation in 2031: 122.5%

Beginning reserve balance: $1,293,481

Recommended reserve contribution: + $420,400
Estimated interest earned (1.2% yield rate): + $12,300

Total contributions: = $432,700

Cloud 9 Sky Flats Association, Inc.

2031 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
<th>Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awning - Front</td>
<td>discretionary</td>
<td>$55,116</td>
</tr>
<tr>
<td>Boilers - Make-up Air Unit (2)</td>
<td>priority</td>
<td>$36,744</td>
</tr>
<tr>
<td><strong>Total expenditures:</strong></td>
<td></td>
<td><strong>($91,861)</strong></td>
</tr>
</tbody>
</table>

Ending reserve balance: $1,639,510
Hybrid Reserve Expenditures and Funding Plan
January 1, 2032 through December 31, 2032

Year of forecast: 18
Annual inflation rate: 1.2%
Compounded inflation in 2032: 124.0%

Beginning reserve balance: $1,639,510
Recommended reserve contribution: + $425,400
Estimated interest earned (1.2% yield rate): + $15,700

Total contributions: = $441,100

Cloud 9 Sky Flats Association, Inc.

2032 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total expenditures:</td>
<td>$0</td>
</tr>
<tr>
<td>Ending reserve balance:</td>
<td>$2,087,140</td>
</tr>
</tbody>
</table>
Hybrid Reserve Expenditures and Funding Plan
January 1, 2033 through December 31, 2033

Year of forecast: 19
Annual inflation rate: 1.2%
Compounded inflation in 2033: 125.4%

Beginning reserve balance: $2,087,140

Recommended reserve contribution: + $430,500
Estimated interest earned (1.2% yield rate): + $16,300

Total contributions: = $446,800

Cloud 9 Sky Flats Association, Inc.
2033 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
<th>Carpet</th>
<th>Elevator Cab Finishes (see Critical Property Review)</th>
<th>Exercise Equipment (33% every 5 years)</th>
<th>Exercise Room Renovation</th>
<th>Lobby and Foyer Renovation</th>
<th>Office Renovation (25% every 5 years)</th>
<th>Painting in the Hallways</th>
<th>Total expenditures:</th>
<th>Ending reserve balance:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>($156,547)</td>
<td>($75,263)</td>
<td>($14,927)</td>
<td>($169,342)</td>
<td>($2,916)</td>
<td>($59,458)</td>
<td>($493,769)</td>
<td>$2,048,541</td>
</tr>
</tbody>
</table>

Total expenditures: ($493,769)

Ending reserve balance: $2,048,541
**2034**

**Hybrid Reserve Expenditures and Funding Plan**
January 1, 2034 through December 31, 2034

- Year of forecast: 20
- Annual inflation rate: 1.2%
- Compounded inflation in 2034: 126.9%

**Beginning reserve balance:** $2,048,541

- Recommended reserve contribution: + $435,700
- Estimated interest earned (1.2% yield rate): + $18,600

**Total contributions:** = **$454,300**

---

**Cloud 9 Sky Flats Association, Inc.**

**2034 Expenditures (inflated)**

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fans for Post Fire and Stairwells</td>
<td>deferrable</td>
<td>4.421</td>
</tr>
<tr>
<td>Pavement Crack Repair and Patch (see Critical Property Review)</td>
<td>priority</td>
<td>6.641</td>
</tr>
<tr>
<td>Pavement Seal Coat (see Critical Property Review)</td>
<td>deferrable</td>
<td>6.641</td>
</tr>
</tbody>
</table>

**Total expenditures:** = ($60,933)

**Ending reserve balance:** = **$2,450,139**
Hybrid Reserve Expenditures and Funding Plan  
January 1, 2035 through December 31, 2035

Year of forecast: 21  
Annual inflation rate: 1.2%  
Compounded inflation in 2035: 128.5%

Beginning reserve balance: $2,450,139

Recommended reserve contribution: + $440,900  
Estimated interest earned (1.2% yield rate): + $13,800  
Total contributions: = $454,700

Cloud 9 Sky Flats Association, Inc.

2035 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Description</th>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
<th>Engineering Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ceiling Tiles and Grid</td>
<td>deferrable</td>
<td>3.141</td>
<td>($105,343)</td>
</tr>
<tr>
<td>Door and Panel Refinishing</td>
<td>discretionary</td>
<td>3.147</td>
<td>($70,914)</td>
</tr>
<tr>
<td>Light Fixtures - Hallways</td>
<td>deferrable</td>
<td>3.421</td>
<td>($53,956)</td>
</tr>
<tr>
<td>Air Handling Units - Common Heat Pumps</td>
<td>deferrable</td>
<td>4.101</td>
<td>($111,766)</td>
</tr>
<tr>
<td>Building Automation System</td>
<td>discretionary</td>
<td>4.261</td>
<td>($77,080)</td>
</tr>
<tr>
<td>Cooling Tower Replacement</td>
<td>deferrable</td>
<td>4.321</td>
<td>($784,932)</td>
</tr>
<tr>
<td>Generator</td>
<td>deferrable</td>
<td>4.441</td>
<td>($88,642)</td>
</tr>
<tr>
<td>Humidifiers</td>
<td>deferrable</td>
<td>4.467</td>
<td>($19,270)</td>
</tr>
<tr>
<td>Life Safety System</td>
<td>priority</td>
<td>4.541</td>
<td>($92,239)</td>
</tr>
<tr>
<td>Light Fixtures for Exit Use and Emergency Use</td>
<td>priority</td>
<td>4.561</td>
<td>($9,892)</td>
</tr>
</tbody>
</table>

Total expenditures: ($1,414,034)

Ending reserve balance: $1,500,565
## 2036
Hybrid Reserve Expenditures and Funding Plan
January 1, 2036 through December 31, 2036

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
<th>Painting - Metal Framing at Cooling Towers</th>
<th>Pump for Fire Suppression</th>
<th>Valves</th>
<th>Fences - Chain Link</th>
</tr>
</thead>
<tbody>
<tr>
<td>priority</td>
<td>2.431</td>
<td>($12,741)</td>
<td>($88,406)</td>
<td>4.781</td>
<td>($130,008)</td>
</tr>
<tr>
<td>deferrable</td>
<td>5.427</td>
<td></td>
<td></td>
<td></td>
<td>($18,201)</td>
</tr>
</tbody>
</table>

Total expenditures: ($249,356)

Ending reserve balance: $1,716,599
Hybrid Reserve Expenditures and Funding Plan
January 1, 2037 through December 31, 2037

- Year of forecast: 23
- Annual inflation rate: 1.2%
- Compounded inflation in 2037: 131.6%
- Beginning reserve balance: $1,716,599
- Recommended reserve contribution: + $451,600
- Estimated interest earned (1.2% yield rate): + $6,000
- Total contributions: $457,600

Cloud 9 Sky Flats Association, Inc.

2037 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Project Description</th>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
<th>Total Expenditure (inflated)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chiller - Make-up Air Unit</td>
<td>deferrable</td>
<td>4.281</td>
<td>($127,621)</td>
</tr>
<tr>
<td>Elevated Concrete Floor Restoration (see Critical Property Review)</td>
<td>priority</td>
<td>5.271-2</td>
<td>($1,278,582)</td>
</tr>
<tr>
<td>On-grade Concrete Floor Restoration</td>
<td>deferrable</td>
<td>5.321</td>
<td>($55,127)</td>
</tr>
<tr>
<td>On-grade Asphalt Floor Restoration (see Critical Property Review)</td>
<td>deferrable</td>
<td>5.322</td>
<td>($280,372)</td>
</tr>
</tbody>
</table>

Total expenditures: ($1,741,703)

Ending reserve balance: $439,356
Hybrid Reserve Expenditures and Funding Plan
January 1, 2038 through December 31, 2038

Year of forecast: 24
Annual inflation rate: 1.2%
Compounded inflation in 2038: 133.1%

Beginning reserve balance: $439,356
Recommended reserve contribution: + $457,000
Estimated interest earned (1.2% yield rate): + $5,900
Total contributions: = $462,900

Cloud 9 Sky Flats Association, Inc.

2038 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
<th>Cost (inflated)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exercise Equipment (33% every 5 years)</td>
<td>deferrable</td>
<td>3.221</td>
</tr>
<tr>
<td>Office Renovation (25% every 5 years)</td>
<td>deferrable</td>
<td>3.581</td>
</tr>
<tr>
<td>Pavement Crack Repair and Patch (see Critical Property Review)</td>
<td>priority</td>
<td>6.641</td>
</tr>
<tr>
<td>Pavement Seal Coat (see Critical Property Review)</td>
<td>deferrable</td>
<td>6.641</td>
</tr>
</tbody>
</table>

Total expenditures: ($55,303)

Ending reserve balance: $848,733
2039
Hybrid Reserve Expenditures and Funding Plan
January 1, 2039 through December 31, 2039

Year of forecast: 25
Annual inflation rate: 1.2%
Compounded inflation in 2039: 134.7%

Beginning reserve balance: $848,733
Recommended reserve contribution: + $462,500
Estimated interest earned (1.2% yield rate): + $9,400
Total contributions: = $471,900

Cloud 9 Sky Flats Association, Inc.
2039 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Garage Doors and Operators - Main</td>
<td>deferrable</td>
</tr>
</tbody>
</table>

Total expenditures: ($32,878)
Ending reserve balance: $1,291,115
2040
Hybrid Reserve Expenditures and Funding Plan
January 1, 2040 through December 31, 2040

Year of forecast: 26
Annual inflation rate: 1.2%
Compounded inflation in 2040: 136.4%

Beginning reserve balance: $1,291,115
Recommended reserve contribution: + $468,100
Estimated interest earned (1.2% yield rate): + $12,700
Total contributions: = $480,800

Cloud 9 Sky Flats Association, Inc.

2040 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Softener Systems (see Critical Property Review)</td>
<td>deferrable 4.821 ($74,999)</td>
</tr>
</tbody>
</table>

Total expenditures:

Ending reserve balance: $1,702,066
2041
Hybrid Reserve Expenditures and Funding Plan
January 1, 2041 through December 31, 2041

Year of forecast: 27
Annual inflation rate: 1.2%
Compounded inflation in 2041: 138.0%

Beginning reserve balance: $1,702,066
Recommended reserve contribution: + $473,700
Estimated interest earned (1.2% yield rate): + $16,000
Total contributions: = $489,700

Cloud 9 Sky Flats Association, Inc.
2041 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Security System</td>
<td>discretionary 4.701 ($43,469)</td>
</tr>
<tr>
<td>Garage Light Fixtures</td>
<td>deferrable 5.521 ($24,840)</td>
</tr>
<tr>
<td>Total expenditures:</td>
<td>($68,309)</td>
</tr>
</tbody>
</table>

Ending reserve balance: $2,130,317
Hybrid Reserve Expenditures and Funding Plan
January 1, 2042 through December 31, 2042

Year of forecast: 28
Annual inflation rate: 1.2%
Compounded inflation in 2042: 139.7%

Beginning reserve balance: $2,130,317
Recommended reserve contribution: + $479,400
Estimated interest earned (1.2% yield rate): + $19,700
Total contributions: = $499,100

Cloud 9 Sky Flats Association, Inc.

2042 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Priority</th>
<th>Engineering Data</th>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pavement Crack Repair and Patch (see Critical Property Review)</td>
<td>priority</td>
<td>6.641</td>
<td>($15,222)</td>
</tr>
<tr>
<td>Pavement Seal Coat (see Critical Property Review)</td>
<td>deferrable</td>
<td>6.641</td>
<td>($22,484)</td>
</tr>
</tbody>
</table>

Total expenditures: ($37,707)

Ending reserve balance: $2,600,220
Hybrid Reserve Expenditures and Funding Plan
January 1, 2043 through December 31, 2043

- Year of forecast: 29
- Annual inflation rate: 1.2%
- Compounded inflation in 2043: 141.3%

- Beginning reserve balance: $2,600,220
- Recommended reserve contribution: + $485,200
- Estimated interest earned (1.2% yield rate): + $21,500
- Total contributions: = $506,700

Cloud 9 Sky Flats Association, Inc.

### 2043 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Project Description</th>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
<th>Inflated Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awning - Rear</td>
<td>discretionary</td>
<td>2.102</td>
<td>($36,746)</td>
</tr>
<tr>
<td>Painting - Metal Framing at Cooling Towers</td>
<td>priority</td>
<td>2.431</td>
<td>($13,850)</td>
</tr>
<tr>
<td>Carpet</td>
<td>deferrable</td>
<td>3.101</td>
<td>($176,380)</td>
</tr>
<tr>
<td>Exercise Equipment (33% every 5 years)</td>
<td>deferrable</td>
<td>3.221</td>
<td>($17,256)</td>
</tr>
<tr>
<td>Exercise Room Renovation</td>
<td>deferrable</td>
<td>3.261</td>
<td>($16,818)</td>
</tr>
<tr>
<td>Office Renovation (25% every 5 years)</td>
<td>deferrable</td>
<td>3.581</td>
<td>($3,286)</td>
</tr>
<tr>
<td>Painting in the Hallways</td>
<td>discretionary</td>
<td>3.601</td>
<td>($66,990)</td>
</tr>
<tr>
<td>Elevator - Accessibility Lift</td>
<td>deferrable</td>
<td>4.361</td>
<td>($35,333)</td>
</tr>
<tr>
<td>Garage Door and Operator - Private North</td>
<td>deferrable</td>
<td>5.371</td>
<td>($8,621)</td>
</tr>
</tbody>
</table>

**Total expenditures:** ($375,281)

**Ending reserve balance:** $2,741,999
Cloud 9 Sky Flats Association, Inc.

2044 Expenditures (inflated)

<table>
<thead>
<tr>
<th>Prioritization</th>
<th>Pages With Engineering Data</th>
<th>Roofs - Main and Penthouse</th>
<th>2.461</th>
<th>($921,088)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mailboxes</td>
<td>Deferrable</td>
<td>3.541</td>
<td>($22,884)</td>
<td></td>
</tr>
<tr>
<td>Cooling Tower Capital Repairs</td>
<td>Deferrable</td>
<td>4.321</td>
<td>($164,480)</td>
<td></td>
</tr>
<tr>
<td>Painting in Garage</td>
<td>Discretionary</td>
<td>5.571</td>
<td>($25,745)</td>
<td></td>
</tr>
</tbody>
</table>

Total expenditures: ($1,134,197)

Ending reserve balance: $2,127,842
Awning - Front

Awning material: canvas
Frame material: metal
Overall condition: fair to poor
Specific condition: tears in the canvas
Quantity (each): 1
Horizontal area (s.f.): 230
Current total cost: $45,000
Cost per home: $276
### Awning - Rear

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awning material:</td>
<td>canvas</td>
</tr>
<tr>
<td>Frame material:</td>
<td>metal</td>
</tr>
<tr>
<td>Overall condition:</td>
<td>new</td>
</tr>
<tr>
<td>Specific condition:</td>
<td>no visible deterioration</td>
</tr>
<tr>
<td>Quantity (each):</td>
<td>1</td>
</tr>
<tr>
<td>Horizontal area (s.f.):</td>
<td>130</td>
</tr>
<tr>
<td>Current total cost:</td>
<td><strong>$26,000</strong></td>
</tr>
<tr>
<td>Cost per home:</td>
<td><strong>$160</strong></td>
</tr>
</tbody>
</table>

Canvas in good condition
Curtain Wall - Renovation (subsequent)

**Engineering solutions:** Replacement of the entire curtain wall is not likely during the next 30 years. Instead, we recommend periodic inspections and partial replacements.

**Engineering solutions:** The Association is experiencing water infiltration and fogged glass. The Association will conduct major repairs to the curtain wall in 2014 or 2015 and fund these expenses separately from reserves. Our estimated costs are for renovation subsequent to the near term major repairs.

**Components:** aluminum frames
mullions with vision glazings
trim covers
granite spandrel panels
louvers

**Overall condition:** fair to poor

**Specific condition:** finish deterioration, granite panel movement, sealant deterioration, a history of water infiltration and gasket deterioration

**Wall area (square feet):** 76,000

**Quantity also includes:** garage, louvers

**Sealants (linear feet):** 69,000

**Anticipated work:** inspection
replace curtain wall (5%)
replace wet sealants (33%)
frame finish touch up (10%)
invasive openings
sidewalk protection

**Cost ($/square foot):** $6.80

**Current total cost:** $517,000

**Cost per home:** $3,172

**Operating expenses:** replacement of hardware, clearing of weep holes

Engineering solutions: Replacement of the entire curtain wall is not likely during the next 30 years. Instead, we recommend periodic inspections and partial replacements.

Engineering solutions: The Association is experiencing water infiltration and fogged glass. The Association will conduct major repairs to the curtain wall in 2014 or 2015 and fund these expenses separately from reserves. Our estimated costs are for renovation subsequent to the near term major repairs.
2.262

fogged/soiled glass parapet wall deformation should be investigated during near term curtain wall restoration.

Significant sealant deterioration at penthouse include louvers with curtain wall restoration.

Gaps in sealant loose trim pieces at garage.

Fogged/soiled glass parapet wall deformation should be investigated during near term curtain wall restoration.
Doors at Entrances and Exits

Location: front and rear entrance, side exit
Manufacturer: EFCO
Door frame material: aluminum
Glass type: dual pane
Overall condition: good
Specific condition: no visible deterioration
Doors (each): 7
Cost ($/door): $2,000
Current total cost: $14,000
Cost per home: $86
Operating expenses: refinishing, hardware replacement
## Painting - Metal Framing at Cooling Towers

<table>
<thead>
<tr>
<th>Material to paint</th>
<th>metal beams and columns</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall condition</td>
<td>poor</td>
</tr>
<tr>
<td>Specific condition</td>
<td>significant rust</td>
</tr>
<tr>
<td>Current total cost</td>
<td>$9,800</td>
</tr>
<tr>
<td>Cost per home</td>
<td>$60</td>
</tr>
<tr>
<td>Operating expenses</td>
<td>touch up painting</td>
</tr>
</tbody>
</table>
Materials:
- thermoplastic

Equipment curb height:
- 8" or more (proper)

Plumbing vent height:
- 6" or greater (proper)

Scheduled inspections:
- recommended semiannual

Overall condition:
- fair

Specific condition:
- evidence of standing water, patches and cracked pavers

Leaks:
- no history of leaks

Quantity in squares (note 1):
- 230

Per home (squares):
- 1

Cost ($/square):
- $2,800

Current total cost:
- $644,000

Cost per home:
- $3,951

Cost also includes:
- replacement of roof deck insulation

Operating expenses:
- periodic inspections and any necessary repairs

Assumptions:
- Total removal of existing roofing. 45 mils sheet for replacement material.

(note 1) one square equals 100 square feet
Roofs - Bump-outs

Material: thermoplastic
Scheduled inspections: recommended semiannual
Overall condition: fair
Quantity in squares (note 1): 10
Cost ($/square): $3,100
Current total cost: $31,000
Cost per home: $190
Cost also includes: replacement of roof deck insulation
Operating expenses: periodic inspections and any necessary repairs
Assumptions: Total removal of existing roofing. 45 mils sheet for replacement material.

(note 1) one square equals 100 square feet
Roof - Generator Room and Adjacent Areas

Material: thermoplastic

Scheduled inspections: recommended semiannual

Overall condition: fair

Quantity in squares (note 1): 50

Cost ($/square): $1,600

Current total cost: $80,000

Cost per home: $491

Cost also includes: replacement of roof deck insulation

Operating expenses: periodic inspections and any necessary repairs

Assumptions: Total removal of existing roofing. 45 mils sheet for replacement material.

(note 1) one square equals 100 square feet
Carpet

Location: hallways
Pile type: multiple level loop and cut
Pattern: no
Overall condition: good
Specific condition: no visible deterioration
Quantity (square yards): 1,600
Per/ home (square yards): 10
Cost ($/ square yard): $78
Current total cost: $124,800
Cost per home: $766
Coordinate with: other interior replacements
Exclusions: carpet pad
Assumptions: medium traffic weight nylon carpet of 36 ounces of fiber per square yard
Operating expenses: vacuuming, spot removal and schedule periodic cleanings
### Ceiling Tiles and Grid

<table>
<thead>
<tr>
<th>Location:</th>
<th>hallways</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tile size:</td>
<td>two-foot by two-foot tegular</td>
</tr>
<tr>
<td>Overall condition:</td>
<td>good</td>
</tr>
<tr>
<td>Specific condition:</td>
<td>minor damage and isolated stained tiles</td>
</tr>
<tr>
<td>Quantity (square feet):</td>
<td>14,300</td>
</tr>
<tr>
<td>Per/home (square feet):</td>
<td>90</td>
</tr>
<tr>
<td>Cost ($/square foot):</td>
<td>$5.70</td>
</tr>
<tr>
<td>Current total cost:</td>
<td><strong>$82,000</strong></td>
</tr>
<tr>
<td>Cost per home:</td>
<td><strong>$503</strong></td>
</tr>
<tr>
<td>Coordinate with:</td>
<td>replacement of other interior finishes</td>
</tr>
<tr>
<td>Assumptions:</td>
<td>5/8” thick fiberglass ceiling board</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td>interim replacements of damaged tiles</td>
</tr>
</tbody>
</table>
### Door and Panel Refinishing

<table>
<thead>
<tr>
<th>Material</th>
<th>wood</th>
</tr>
</thead>
<tbody>
<tr>
<td>Locations:</td>
<td>common hallways</td>
</tr>
<tr>
<td>Overall condition:</td>
<td>good to fair</td>
</tr>
<tr>
<td>Specific condition:</td>
<td>minor finish imperfections</td>
</tr>
<tr>
<td>Quantity (each):</td>
<td>276</td>
</tr>
<tr>
<td>Cost ($/ each):</td>
<td>$200</td>
</tr>
<tr>
<td>Current total cost:</td>
<td>$55,200</td>
</tr>
<tr>
<td>Cost per home:</td>
<td>$339</td>
</tr>
</tbody>
</table>
Elevator Cab Finishes

**Green ideas:** Install occupancy sensors in the elevator cabs to eliminate light operation when the cabs are not in operation (potential savings of 80% on elevator cab light usage).

**Materials:**
- tile floors
- laminate walls
- metal ceilings with light fixtures

**Overall condition:**
good

**Specific condition:**
no visible deterioration

**Illumination level (lux):**
400 (200 is ideal)

**Quantity (each):**
4

**Cost ($/each):**
$15,000

**Current total cost:**
$60,000

**Cost per home:**
$368

**Coordinate with:**
other interior finishes

**Operating expenses:**
interim replacements, refinishing of hardware
Exercise Equipment

Manufacturer: Life Fitness

Equipment: ellipticals (2)
stationary cycle (1)
television (1)
treadmills (3)
benches
dumbbells
weight training

Overall condition: good

Current total cost (note 1): $37,000
Cost per home: $227
Operating expenses: interim replacements

(note 1) Replacement of all the exercise equipment during a single event is unlikely. Instead, we assume periodic partial replacements.
### Exercise Room Renovation

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total area (square feet):</strong></td>
<td>700</td>
</tr>
<tr>
<td><strong>Components:</strong></td>
<td>paint (1,000 square feet)</td>
</tr>
<tr>
<td></td>
<td>rubber flooring (80 square yards)</td>
</tr>
<tr>
<td></td>
<td>ceiling tiles and grid (700 square feet)</td>
</tr>
<tr>
<td></td>
<td>pictures/decorations</td>
</tr>
<tr>
<td><strong>Overall condition:</strong></td>
<td>good</td>
</tr>
<tr>
<td><strong>Specific condition:</strong></td>
<td>no visible deterioration</td>
</tr>
<tr>
<td><strong>Illumination level (lux):</strong></td>
<td>200-300</td>
</tr>
<tr>
<td></td>
<td>(500 is ideal)</td>
</tr>
<tr>
<td><strong>Cost per square foot ($)</strong></td>
<td>$17</td>
</tr>
<tr>
<td><strong>Current total cost:</strong></td>
<td>$11,900</td>
</tr>
<tr>
<td><strong>Cost per home:</strong></td>
<td>$73</td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
<td>interim replacements, painting</td>
</tr>
</tbody>
</table>

**Exercise Room**

- New rubber floor

**Interior Photos:**

- Exercise room
- New rubber floor
Light Fixtures - Hallways

Location: hallways
Mounted on: ceiling
Bulb type: fluorescent
Overall condition: good
Illumination level (lux): 10-100 (200 is ideal)
Quantity (each): 140
Per home (each): 1
Cost ($/each): $300
Current total cost: $42,000
Cost per home: $258
Coordinate with: other interior replacements
Assumptions: reuse of existing wiring
Operating expenses: bulb replacement
Light Fixtures - Stairwells

Location: stairwells
Mounted on: wall
Bulb type: fluorescent
Overall condition: good
Quantity (each): 44
Cost ($/each): $250
Current total cost: $11,000
Cost per home: $67
Assumptions: reuse of existing wiring
Operating expenses: bulb replacement
Lobby and Foyer Renovation

Area (square feet): 900

Components:
carpet (15 square yards)
paint (500 square feet)
tile (80 square yards)
ceiling tiles and grid (870 square feet)
light fixtures
benches
chairs - upholstered
lamps
pictures/decorations
rugs
sofas
tables - coffee
fireplace

Overall condition: good
Specific condition: no visible deterioration

Cost per square foot ($): 150

Current total cost: $135,000

Cost per home: $828

Operating expenses: interim replacements, painting
Cost also includes: hallway furnishings, allowance for a professional design
<table>
<thead>
<tr>
<th><strong>Mailboxes</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Location:</strong></td>
<td>back hallway</td>
</tr>
<tr>
<td><strong>Manufacturer:</strong></td>
<td>American Device</td>
</tr>
<tr>
<td><strong>Size:</strong></td>
<td>13 inches x 5 inches</td>
</tr>
<tr>
<td><strong>Overall condition:</strong></td>
<td>good</td>
</tr>
<tr>
<td><strong>Specific condition:</strong></td>
<td>no visible deterioration</td>
</tr>
<tr>
<td><strong>Quantity (each):</strong></td>
<td>163</td>
</tr>
<tr>
<td><strong>Cost ($/each):</strong></td>
<td>$100</td>
</tr>
<tr>
<td><strong>Current total cost:</strong></td>
<td>$16,000</td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
<td>lock replacement, refinishing</td>
</tr>
</tbody>
</table>
# Office Renovation

**Total area (square feet):** 200  

**Components:**  
- carpet (30 square yards)  
- paint (800 square feet)  
- ceiling tiles and grid (230 square feet)  
- chairs - office  
- computers  
- desks  
- file cabinets  
- lamps  
- pictures/decorations  
- printers  

**Overall condition:** good to fair  

**Specific condition:** worn furniture  

**Cost per square foot:** $47  

**Current total cost (note 1):** $9,300  

**Cost per home:** $57  

**Operating expenses:** interim replacements, painting

---

(note 1) Total renovation of the office during a single event is unlikely. Instead, we assume periodic partial renovations.
**Painting in the Hallways**

- **Location:** hallway ceilings
- **Color scheme:** single tone
- **Overall condition:** good
- **Specific condition:** no visible deterioration
- **Quantity (square feet):** 47,400
- **Per/ home (square feet):** 290
- **Cost ($/ square foot):** $1.00
- **Current total cost:** $47,400
- **Cost per home:** $291
- **Coordinate with:** replacement of other interior finishes
- **Operating expenses:** interim paint touch ups and wall repairs

---

**Paint finish**
Painting in the Stairwells

Number of stairwells: 2
Overall condition: good to fair
Specific condition: minor scuffs and worn paint
Average cost per stairwell: $8,550
Current total cost: $17,100
Cost per home: $105
Operating expenses: interim paint touch ups and wall repairs
Cost also includes: railings
Rest Room Renovation

**Green ideas:** Install motion sensors on room light switches to minimize fixture operation.

**Green ideas:** Replace faucet with automatic shut offs to use up to 70% less water. Automatic shut offs also minimize the spreading of germs.

**Green ideas:** Install low flow aerators on faucet to use approximately 30% less water.

**Total area (square feet):** 70

**Quantity (each):** 1

**Components:**
- paint (200 square feet)
- tile (20 square yards)
- ceiling tiles and grid (70 square feet)
- plumbing fixtures
- cabinets
- pictures/decorations

**Overall condition:** good

**Specific condition:** no visible deterioration

**Illumination level (lux):** 560 (200 is ideal)

**Faucet hot water temp. (°F):** 94 (120 is ideal)

**Cost per square foot ($):** $104

**Current total cost:** $7,300

**Cost per home:** $45

**Operating expenses:** interim replacements, painting
Unit Plaques and Lighting

Location: hallways
Mounted on: wall
Quantity (each): 163
Overall condition: good
Cost ($/each): $500
Current total cost: $81,500
Assumptions: reuse of existing wiring
Air Handling Units - Common Heat Pumps

**Green ideas:** Program thermostats for 68°F in the winter and 78°F in the summer.

**Manufacturer:** McQuay

**Quantity (each):** 15

**Locations served:** hallways, office, lobby, elevator equipment room, pump room

**Location of units:** ceilings

**Heating source:** hot water from building heating system

**Cooling source:** self contained cooling, heat rejected through cooling tower

**Refrigerant:** R-22 (replacement will require alternative refrigerant)

**Temperature setting on thermostat (°F):** 72

**Temperature we measured at thermostat (°F):** 72 (thermostat is properly calibrated)

**Operational condition:** satisfactory

**Physical condition:** no visible deterioration

**Replacement accessibility:** difficult

**Current total cost:** $87,000

**Cost per home:** $534

**Operating expenses:** interim replacements of coils, motors, bearings and filters, annual, semi annual and quarterly maintenance
Air Handling Unit - Make-up (repairs)

**Engineering solutions:** Due to the physical size of the unit, we do not anticipate its replacement during the next 30 years. Instead, we anticipate periodic repairs and component replacements including the coils, motors, filter racks and variable frequency drives.

**Manufacturer:** Carrier

**Quantity (each):** 1

**Locations served:** common areas and units

**Location of unit:** mechanical room

**Heating source:** hot water from 7 adjacent boilers

**Cooling source:** air-cooled chiller

**Capacity in CFM (note 1):** 25,000

**Operational condition:** satisfactory

**Physical condition:** no visible deterioration

**Replacement accessibility:** difficult

**Current total cost:** $48,000

**Cost per home:** $294

**Operating expenses:** interim replacements of coils, motors, bearings and filters, annual, semi annual and quarterly maintenance
## Boilers - Make-up Air Unit (5)

<table>
<thead>
<tr>
<th>Manufacturer:</th>
<th>Caravan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quantity (each):</td>
<td>5</td>
</tr>
<tr>
<td>Purpose:</td>
<td>make-up air unit building heat</td>
</tr>
<tr>
<td>Location:</td>
<td>mechanical room</td>
</tr>
<tr>
<td>Energy source:</td>
<td>gas-fired</td>
</tr>
<tr>
<td>Type:</td>
<td>fire-tube</td>
</tr>
</tbody>
</table>

### Heating input capacity in MBH (note 1):

<table>
<thead>
<tr>
<th>Value</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>350 (5 each)</td>
<td></td>
</tr>
</tbody>
</table>

### Efficiency:

- 83%

### Operational condition:

- satisfactory

### Physical condition:

- no visible deterioration

### Replacement accessibility:

- relatively easy

### Current total cost:

- $69,000

### Cost per home:

- $423

### Operating expenses:

- interim replacement of expansion tanks, valves and circulation pumps less than five-HP

(note 1) thousand British Thermal Units per hour
<table>
<thead>
<tr>
<th><strong>Boilers - Make-up Air Unit (2)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Manufacturer:</strong></td>
</tr>
<tr>
<td><strong>Quantity (each):</strong></td>
</tr>
<tr>
<td><strong>Purpose:</strong></td>
</tr>
<tr>
<td><strong>Location:</strong></td>
</tr>
<tr>
<td><strong>Energy source:</strong></td>
</tr>
<tr>
<td><strong>Type:</strong></td>
</tr>
<tr>
<td><strong>Heating input capacity in MBH (note 1):</strong></td>
</tr>
<tr>
<td><strong>Efficiency:</strong></td>
</tr>
<tr>
<td><strong>Operational condition:</strong></td>
</tr>
<tr>
<td><strong>Physical condition:</strong></td>
</tr>
<tr>
<td><strong>Replacement accessibility:</strong></td>
</tr>
<tr>
<td><strong>Current total cost:</strong></td>
</tr>
<tr>
<td><strong>Cost per home:</strong></td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
</tr>
</tbody>
</table>

*note 1* thousand British Thermal Units per hour

![boilers serving make-up air unit](image-url)
**Boilers - Core Loop**

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufacturer</td>
<td><em>Patterson-Kelley</em></td>
</tr>
<tr>
<td>Quantity (each)</td>
<td>3</td>
</tr>
<tr>
<td>Purpose</td>
<td>core loop building heat</td>
</tr>
<tr>
<td>Location</td>
<td>mechanical room</td>
</tr>
<tr>
<td>Energy source</td>
<td>gas-fired</td>
</tr>
<tr>
<td>Type</td>
<td>fire-tube</td>
</tr>
<tr>
<td>Heating input capacity in MBH (note 1):</td>
<td>1,050 (3 each)</td>
</tr>
<tr>
<td>Efficiency</td>
<td>94%</td>
</tr>
<tr>
<td>Operational condition</td>
<td>satisfactory</td>
</tr>
<tr>
<td>Physical condition</td>
<td>no visible deterioration</td>
</tr>
<tr>
<td>Replacement accessibility</td>
<td>relatively easy</td>
</tr>
<tr>
<td>Current total cost</td>
<td>$112,000</td>
</tr>
<tr>
<td>Cost per home</td>
<td>$687</td>
</tr>
<tr>
<td>Operating expenses</td>
<td>interim replacement of expansion tanks, valves and circulation pumps less than five-HP</td>
</tr>
</tbody>
</table>

(note 1) thousand British Thermal Units per hour
### Building Automation System

- **Control pts./ sensors(each):** 20 (approximately)
- **Operational condition:** satisfactory
- **Specific condition:** computer issues
- **Current total cost:** $60,000
- **Cost per home:** $368
- **Operating expenses:** interim replacements of sensors and software upgrades
<table>
<thead>
<tr>
<th><strong>Chiller</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Manufacturer:</strong></td>
</tr>
<tr>
<td><strong>Quantity (each):</strong></td>
</tr>
<tr>
<td><strong>Location:</strong></td>
</tr>
<tr>
<td><strong>Refrigerant:</strong></td>
</tr>
<tr>
<td><strong>Type:</strong></td>
</tr>
<tr>
<td><strong>Capacity (tons):</strong></td>
</tr>
<tr>
<td><strong>Operational condition:</strong></td>
</tr>
<tr>
<td><strong>Physical condition:</strong></td>
</tr>
<tr>
<td><strong>Replacement accessibility:</strong></td>
</tr>
<tr>
<td><strong>Total replacement cost:</strong></td>
</tr>
<tr>
<td><strong>Replacement $ per home:</strong></td>
</tr>
<tr>
<td><strong>Replacement cost includes:</strong></td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
</tr>
</tbody>
</table>

(note 1) capital repairs necessary after approximately 20,000 starts
Cooling Towers

Manufacturer: Marley
Quantity (each): 2
Location: rooftop
Capacity (tons): 382 (2 each)
Operational condition: satisfactory
Physical condition: no visible deterioration
Capital repairs to include: replacement of the fill media, spray nozzles, motors, pumps, controls and valves, structural repairs, application of an internal protective coating
Total capital repair cost: $115,000
Replacement accessibility: difficult
Total replacement cost: $611,000
Replacement $ per home: $3,748
Replacement cost includes: helicopter to position units
Operating expenses: inspection, water treatment, repairs and replacements of valves, controls, etc.
Elevator - Accessibility Lift

Manufacturer: Savaria Concord
Quantity (each): 1
Car capacity (lbs.): 750
Operational condition: satisfactory
Specific condition: no known deficiencies
Replacement cost: $25,000
Cost per home: $153
Operating expenses: interim upgrades and replacements
Elevator Traction Controls and Equipment

Manufacturer: Westinghouse Elevator Co.
Quantity (each): 4
Type of hoist mechanism: traction
Control type: electronic
Machine type: geared
Car capacity (lbs.): 3,500
Motor capacity (hp): 30
Number of stops (each): 10
Operational condition: satisfactory
Specific condition: dated controls
Current total cost: $711,000
Cost per home: $4,362
Cost includes: programmable logic computer controls
               cab controls
               call buttons
               door operators
               machines and hoists
               elevator consultant fees
Assumptions: cabs and shafts will not require replacement
Operating expenses: cables, interim upgrades and replacements
**Fans for Post Fire and Stairwells**

**Quantity (each):** 3

**Purpose:** evacuate smoke from hallways, prevent smoke from migration through the stairwells

**Locations served:** hallways and stairwells

**Locations of units:** rooftop and mechanical room

**Operational condition:** satisfactory

**Physical condition:** no visible deterioration

**Replacement accessibility:** relatively easy

**Current total cost:** $21,000

**Cost per home:** $129

**Operating expenses:** interim replacements of belts, motors and bearings
## Fans for Bathrooms, Kitchens and Laundry Rooms

<table>
<thead>
<tr>
<th><strong>Manufacturer:</strong></th>
<th>Greenheck</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Quantity (each):</strong></td>
<td>32</td>
</tr>
<tr>
<td><strong>Type:</strong></td>
<td>roof mounted</td>
</tr>
<tr>
<td><strong>Purpose:</strong></td>
<td>remove used air</td>
</tr>
<tr>
<td><strong>Locations served:</strong></td>
<td>bathrooms, kitchens and laundry rooms</td>
</tr>
<tr>
<td><strong>Locations of units:</strong></td>
<td>rooftop</td>
</tr>
<tr>
<td><strong>Operational condition:</strong></td>
<td>satisfactory</td>
</tr>
<tr>
<td><strong>Physical condition:</strong></td>
<td>no visible deterioration</td>
</tr>
<tr>
<td><strong>Replacement accessibility:</strong></td>
<td>relatively easy</td>
</tr>
<tr>
<td><strong>Current total cost:</strong></td>
<td>$93,000</td>
</tr>
<tr>
<td><strong>Cost per home:</strong></td>
<td>$571</td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
<td>interim replacements of belts, motors and bearings</td>
</tr>
</tbody>
</table>
### Generator

**Manufacturer:** Cummins  
**Quantity (each):** 1  
**Location:** adjacent to patio  
**Capacity (kilowatts):** 225  
**Fuel type:** diesel  
**Primary function:** emergency use only  
**Supplies power to:** critical building systems  
**Hours logged:** 565  
**Operational condition:** satisfactory  
**Physical condition:** no visible deterioration  
**Replacement accessibility:** difficult  
**Current total cost:** $69,000  
**Cost per home:** $423  
**Operating expenses:** testing, replacement of batteries, fluids, etc.
<table>
<thead>
<tr>
<th><strong>ManUFACTURER:</strong></th>
<th><em>Alfa Laval</em></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Quantity (each):</strong></td>
<td>1</td>
</tr>
<tr>
<td><strong>Location:</strong></td>
<td>mechanical room</td>
</tr>
<tr>
<td><strong>Type:</strong></td>
<td>plate</td>
</tr>
<tr>
<td><strong>Incoming heat source:</strong></td>
<td>heat pumps</td>
</tr>
<tr>
<td><strong>Outgoing heat purpose:</strong></td>
<td>reject heat pump heat through the cooling tower</td>
</tr>
<tr>
<td><strong>Operational condition:</strong></td>
<td>satisfactory</td>
</tr>
<tr>
<td><strong>Physical condition:</strong></td>
<td>no visible deterioration</td>
</tr>
<tr>
<td><strong>Replacement accessibility:</strong></td>
<td>relatively easy</td>
</tr>
<tr>
<td><strong>Current total cost:</strong></td>
<td>$56,000</td>
</tr>
<tr>
<td><strong>Cost per home:</strong></td>
<td>$344</td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
<td>interim tube replacement</td>
</tr>
<tr>
<td><strong>Comments:</strong></td>
<td>Heat exchangers transfer heat from the incoming heat source to the outgoing heat purpose. No moving parts are necessary in this process.</td>
</tr>
</tbody>
</table>
### Humidifiers

**Manufacturer:** Dristeem  
**Overall condition:** good  
**Specific condition:** no known deficiencies  
**Purpose:** provide moist air to the units and common areas  
**Quantity (each):** 2  
**Cost ($/each):** $7,500  
**Current total cost:** **$15,000**  
**Cost per home:** $92
Intercom Lobby Panel

Manufacturer: Select Engineering Systems, Inc.
Quantity (each): 1
Location: front lobby
Operational condition: satisfactory
Physical condition: no visible deterioration
Current total cost: $5,000
Cost per home: $31
**Life Safety System**

<table>
<thead>
<tr>
<th>Manufacturer:</th>
<th>Simplex</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location of main panel:</td>
<td>office</td>
</tr>
<tr>
<td>Status of system:</td>
<td>System is Normal</td>
</tr>
</tbody>
</table>
| Types of devices: | detectors (14)  
audio/visual fixtures (42)  
magnetic door holders (22)  
phone jacks (22)  
control panel |
| Operational condition: | satisfactory |
| Current total cost: | $71,800 |
| Cost per home: | $440 |
| Operating expenses: | testing of devices |
| Assumptions: | Reuse of existing wiring, replacement cost includes only that amount necessary to duplicate the same functionality. A betterment would result in a higher replacement cost. |

- Fire alarm panel
- Magnetic door holder
- Phone jack
- Audio device
<table>
<thead>
<tr>
<th>Light Fixtures for Exit Use and Emergency Use</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Exit lights (each):</strong></td>
</tr>
<tr>
<td><strong>Emergency lights (each):</strong></td>
</tr>
<tr>
<td><strong>Operational condition:</strong></td>
</tr>
<tr>
<td><strong>Current total cost:</strong></td>
</tr>
<tr>
<td><strong>Cost per home:</strong></td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
</tr>
<tr>
<td><strong>Assumptions:</strong></td>
</tr>
</tbody>
</table>

exit light

emergency light
Pumps for Core Heating and Cooling

**Purpose:** pump water to heat pumps

**Motor manufacturer:** Emerson

**Quantity (each):** 2

**Type:** centrifugal

**Capacity (horsepower):** 60

**Location:** mechanical room

**Operational condition:** satisfactory

**Physical condition:** one new motor and one original

**Variable frequency drive:** no

**Controls:** no

**Current total cost:** $62,900

**Cost per home:** $386

**Operating expenses:** rebuilding and component replacements
### Pumps for Domestic Water

<table>
<thead>
<tr>
<th>Feature</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Purpose:</strong></td>
<td>distribute cold water</td>
</tr>
<tr>
<td><strong>Motor manufacturer:</strong></td>
<td>Marathon Electric</td>
</tr>
<tr>
<td><strong>Quantity (each):</strong></td>
<td>2</td>
</tr>
<tr>
<td><strong>Type:</strong></td>
<td>centrifugal</td>
</tr>
<tr>
<td><strong>Capacity (horsepower):</strong></td>
<td>7.5</td>
</tr>
<tr>
<td><strong>Location:</strong></td>
<td>fire pump room on first floor</td>
</tr>
<tr>
<td><strong>Operational condition:</strong></td>
<td>satisfactory</td>
</tr>
<tr>
<td><strong>Physical condition:</strong></td>
<td>minor rust</td>
</tr>
<tr>
<td><strong>Variable frequency drive:</strong></td>
<td>yes</td>
</tr>
<tr>
<td><strong>Controls:</strong></td>
<td>no</td>
</tr>
<tr>
<td><strong>Current total cost:</strong></td>
<td>$27,900</td>
</tr>
<tr>
<td><strong>Cost per home:</strong></td>
<td>$171</td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
<td>rebuilding and component replacements</td>
</tr>
</tbody>
</table>
### Pumps for Cooling Tower

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose</td>
<td>circulate water between the heat pumps and cooling tower</td>
</tr>
<tr>
<td>Motor manufacturer</td>
<td><em>Century</em></td>
</tr>
<tr>
<td>Quantity (each)</td>
<td>2</td>
</tr>
<tr>
<td>Type</td>
<td>centrifugal</td>
</tr>
<tr>
<td>Capacity (horsepower)</td>
<td>40</td>
</tr>
<tr>
<td>Location</td>
<td>10th floor pump room</td>
</tr>
<tr>
<td>Operational condition</td>
<td>satisfactory</td>
</tr>
<tr>
<td>Physical condition</td>
<td>no visible deterioration</td>
</tr>
<tr>
<td>Variable frequency drive</td>
<td>yes</td>
</tr>
<tr>
<td>Controls</td>
<td>no</td>
</tr>
<tr>
<td>Current total cost</td>
<td><strong>$54,500</strong></td>
</tr>
<tr>
<td>Cost per home</td>
<td><strong>$334</strong></td>
</tr>
<tr>
<td>Operating expenses</td>
<td>rebuilding and component replacements</td>
</tr>
</tbody>
</table>

**variable frequency drives**

**cooling tower pump**
Pump for Fire Suppression

Manufacturer: Lincoln
Quantity (each): 1
Capacity (horsepower): 50
Location: first floor
Power source: electric
Operational condition: satisfactory
Physical condition: minor rust
Current total cost: $68,000
Cost per home: $417
Cost also includes: backflow prevention assembly
Operating expenses: testing, interim component replacements
Security System

Types of devices:
cameras (14)
multiplexer (1)
recorder (1)
card key system (14 access points)

Operational condition: satisfactory

Current total cost: $31,500

Cost per home: $193

Operating expenses: interim replacements

Assumptions: reuse of existing wiring
### Storage Tank for Cooled Water

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quantity (each):</td>
<td>1</td>
</tr>
<tr>
<td>Capacity (gallons):</td>
<td>1,480</td>
</tr>
<tr>
<td>Location:</td>
<td>10th floor pump room</td>
</tr>
<tr>
<td>Stores:</td>
<td>chilled water for building cooling</td>
</tr>
<tr>
<td>Operational condition:</td>
<td>satisfactory</td>
</tr>
<tr>
<td>Physical condition:</td>
<td>stains from previous leak</td>
</tr>
<tr>
<td>Replacement accessibility:</td>
<td>difficult</td>
</tr>
<tr>
<td>Current total cost:</td>
<td>$34,600</td>
</tr>
<tr>
<td>Cost per home:</td>
<td>$212</td>
</tr>
</tbody>
</table>

*storage tank*
Valves

Quantity (each): 20
Serving: building heating and cooling system
Location: mechanical and pump rooms
Operational condition: satisfactory
Physical condition: no visible deterioration
Current total cost: $100,000
Cost per home: $613
Exclusions: valves serving individual risers
Operating expenses: replacement of valves less than 4" in diameter
Water Softener Systems

**Actionable recommendations:** The Association reports high humidity in the water softener room. The residential size dehumidifier was working satisfactory at the time of our inspection. If humidity persists, the Association should consider insulating the tanks and/or installing a permanent dehumidification system.

Manufacturer: Hill

Number of systems (each): 3

Purpose: conditions incoming water by removing minerals to prevent their deposit in pipes and appliances

Operational condition: satisfactory

Physical condition: no visible deterioration

Current total cost: $55,000

Cost per home: $337

Operating expenses: salt replenishment, dehumidification
Elevated Concrete Floor Restoration

**Engineering solutions:** The upper garage is leaking into the lower garage causing damage to the concrete and adjacent components, such as the garage door operator. The use of a traffic coating atop the concrete minimizes the infiltration of salts and moisture into the concrete, and minimizes future concrete repairs. Therefore, we recommend the use of a traffic coating on all elevated portions of the garage.

**Engineering solutions:** Remove all peeling and loose coatings prior to the application of a new coating. We suggest at three part coat (base, intermediate and top coat) system with 15 to 18 pounds of aggregate per gallon in the intermediate coat. Follow the manufacturer’s recommendations for installation, including appropriate weather conditions and curing times.

**Engineering solutions:** The building was originally built as an office that required a significant amount of parking spaces for employees and clients. When the building converted to condominiums less parking spaces were necessary. The entire parking deck was empty at the time of our inspection. This unused asset still must be maintained to preserve the integrity of the structure. We identify nearly $6,000 per home every 15 years to maintain a traffic coating and conduct concrete repairs for parking spaces that the homeowners are not utilizing. There are also light poles and fixtures that will require replacement and the facade that needs to be maintained. The cost to maintain the elevated parking deck is skewing the reserve contributions. The Association should investigate if the parking spaces can be rented to neighboring properties to aid in the maintenance costs. The Association could also consider alternative functions for the parking deck, such as tennis courts or other recreational activities, so the homeowners can benefit from the maintenance costs.

**Floor type:** cast in place concrete

**Number of floors:** 1

**Existing traffic coating:** partial floor coverage

**Overall condition:** *fair to poor*

**Specific condition:** spalls, cracks, expansion joint deterioration, coating deterioration and leaks

**Floor area (square feet):** 113,000

**Anticipated costs:**
- inspection and consulting fees
- concrete crack repairs (10%)
- topside concrete replacement (0.5%)
- underside concrete replacement (0.25%)
- joint sealant replacement (100%)
- floor drain replacement (25%)
- drain pipe replacement (25%)
- traffic coating
- expansion joint replacement

**Cost ($/ square foot):** $8.60

**Current total cost:** $971,800

**Cost per home:** $5,962

**Operating expenses:** interim repairs and cleaning
significant concrete deterioration

leaks into garage beneath

cracks in concrete

coating beyond its useful life

deterioration at expansion joint
On-grade Concrete Floor Restoration

Floor type: on-grade concrete
Overall condition: good to fair
Specific condition: minor cracks, worn concrete and rust in drain pipe
Floor area (square feet): 13,900

Anticipated work:
- inspection of all floor and wall areas
- concrete crack repairs (10%)
- replace concrete (10%)
- column repairs
- wall repairs
- floor drain replacement (100%)
- drain pipe replacement (50%)

Current total cost (note 1): $41,900
Cost per home: $257
Operating expenses: interim repairs, cleaning, sealer application (only if desired)

(note 1) On-grade garage concrete has a useful life of up to 100 years. Replacement of all the concrete during a single event is unlikely. Instead, we assume periodic replacements of limited quantities.
On-grade Asphalt Floor Restoration

Engineering solutions: The asphalt is in poor condition due to excessive pitting. However, due to the low profile area and considering that the pavement is not exposed to weather, we assume the Association will not repave the entire garage. Instead, we assume the Association will repave limited sections of intense deterioration. The areas that exhibit the most deterioration are at the northeast corner of the garage and at the garage doors. The condition of the pavement at the northeast corner of the garage may be due to a breached subterranean pipe. A near term investigation and repairs are necessary.

Floor type: on-grade asphalt
Overall condition: fair to poor
Specific condition: pits, cracks, possible breached drain pipe at NE corner and spalled concrete at columns
Floor area (square feet): 96,300
Anticipated work: inspection of all floor and wall areas
cracks repairs (10%)
replace asphalt (10%)
column repairs
wall repairs
floor drain replacement (25%)
drain pipe replacement (10%)

Current total cost (note 1): $213,100
Cost per home: $1,307
Operating expenses: interim repairs, cleaning, sealer application (only if desired)

(note 1) On-grade interior garage asphalt has a useful life of up to 60 years. Replacement of all the asphalt during a single event is unlikely. Instead, we assume periodic replacements of limited quantities.
Garage Door and Operator - Private North

Doors (each): 1
Door manufacturer: Wayne Dalton
Door material: composite
Operator manufacturer: Link Controls
Operational condition: good
Physical condition: no visible deterioration
Current total cost: $6,100
Cost per home: $37
Operating expenses: interim operator and panel replacements
Doors (each): 1
Door material: composite
Operator manufacturer: Link Controls
Operational condition: fair to poor
Physical condition: corrosion of operator due to leak
Current total cost: $6,100
Cost per home: $37
Operating expenses: interim operator and panel replacements
**Garage Doors and Operators - Main**

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doors (each):</td>
<td>2</td>
</tr>
<tr>
<td>Door material:</td>
<td>rolling screen</td>
</tr>
<tr>
<td>Operator manufacturer:</td>
<td>LiftMaster</td>
</tr>
<tr>
<td>Operational condition:</td>
<td>good</td>
</tr>
<tr>
<td>Physical condition:</td>
<td>no visible deterioration</td>
</tr>
<tr>
<td>Cost each:</td>
<td>$12,200</td>
</tr>
<tr>
<td>Current total cost:</td>
<td>$24,400</td>
</tr>
<tr>
<td>Cost per home:</td>
<td>$150</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td>interim operator and panel replacements</td>
</tr>
</tbody>
</table>

- garage door
- door operator
**Garage Doors and Operators - Loading Dock**

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doors (each):</td>
<td>2</td>
</tr>
<tr>
<td>Door material:</td>
<td>composite</td>
</tr>
<tr>
<td>Operator manufacturer:</td>
<td>LiftMaster</td>
</tr>
<tr>
<td>Operational condition:</td>
<td>satisfactory</td>
</tr>
<tr>
<td>Physical condition:</td>
<td>no visible deterioration</td>
</tr>
<tr>
<td>Cost each:</td>
<td>$6,100</td>
</tr>
<tr>
<td>Current total cost:</td>
<td>$12,200</td>
</tr>
<tr>
<td>Cost per home:</td>
<td>$75</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td>interim operator and panel replacements</td>
</tr>
</tbody>
</table>
Exhaust System

Engineering solutions: The current garage exhaust system does not include exhaust fans or a sufficient amount of CO detectors. We assume the replacement system will include fans and additional detectors.

- **Louver type:** actuating
- **Operational condition:** satisfactory
- **Physical condition:** no visible deterioration
- **Anticipated replacements:**
  - louvers
  - fans (proposed)
  - CO (note 1) detectors
- **Current total cost:** $23,000
- **Cost per home:** $141
- **Assumptions:** installation of fans and additional CO detectors
- **Operating expenses:** interim belt, bearing, motor and sensor replacements

(note 1) carbon monoxide
Fences - Chain Link

Material: chain link
Locations: garage
Overall condition: satisfactory
Specific condition: no visible deterioration
Quantity (linear feet): 940
Cost ($/linear foot): $15
Current total cost: $14,000
Cost per home: $86
Assumptions: schedule 20, vinyl coated 11 gage wire, 1-5/8" post 10' on center, 1-3/8" top rail, 2" corner posts, galvanized steel
Operating expenses: painting, replacement of screening
Garage Light Fixtures

Lamp type: triple four-foot T8 fluorescent
Quantity (each): 90
Operational condition: good
Physical condition: no visible deterioration
Illumination level (lux): 5-400 (50 is ideal)
Cost each: $200
Current total cost: $18,000
Cost per home: $110
Assumptions: reuse of existing wiring
Operating expenses: bulb replacement
Painting in Garage

Surfaces: walls and columns
Surface area (square feet): 23,100
Overall condition: good
Physical condition: no visible deterioration
Current total cost: $18,000
Cost per home: $110
Operating expenses: cleaning, touch up painting
A staircase is in poor condition. The material is metal, and it has significant rust. The current total cost is $7,100. The cost per home is $44, and the operating expenses are for painting.
**Engineering solutions:** Due to pavement overlayment atop the gutter portion of the concrete, we assume total replacement of the curbs and gutters will be necessary with future repaving.

- **Material:** concrete
- **Size (inches):** 18
- **Overall condition:** good to fair
- **Specific condition:** cracks
- **Locations:** parking areas
- **Quantity (linear feet):** 2,800
- **Per home (linear feet):** 20
- **Cost ($/linear foot):** $16
- **Current total cost:** $44,000
- **Coordinate with:** repaving
- **Assumptions:** 3,500 psi replacement concrete

---

concrete curb cracks

evidence of pavement overlayment
Irrigation System

Locations served: landscape areas
Overall condition: satisfactory
Specific condition: no known deficiencies
Area (square feet): 97,000
Cost ($/ square foot): $0.80
Current total cost: $77,600
Cost per home: $476
Assumptions: 1" supply pipes
Operating expenses: interim component and small section replacements

irrigation system head
Landscape - Ash Trees

Each: 50 (approximately)

Current total cost: $41,000

Cost per home: $252

Assumptions: replace with balled and burlapped tree, 8'-10' in height, 1" caliper

Comments: The emerald ash borer is an invasive species that is destructive to ash trees. The larvae (the immature stage) feed on the inner bark of ash trees, disrupting the tree's ability to transport water and nutrients. The death of tree can take place over a number of years, and the first noticeable sign is usually some die back in the crown of the tree. When adult emerald ash borers emerge from the trees, they have a flattened back and a rounded belly. Their emergence holes have a characteristic "D" shape. These holes are about 1/8 of an inch in diameter. They can appear anywhere on the trunk or upper branches of the ash tree. The harsh 2013-2014 winter has hopefully slowed the progress of the ash borer. The following website provides additional information on the ash borer in Minnesota: http://dnr.state.mn.us/invasives/terrestrial/animals/eab/index.html
### Light Poles and Fixtures

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pole material:</td>
<td>metal</td>
</tr>
<tr>
<td>Fixture material:</td>
<td>metal</td>
</tr>
<tr>
<td>Overall condition:</td>
<td>fair</td>
</tr>
<tr>
<td>Specific condition:</td>
<td>rust</td>
</tr>
<tr>
<td>Locations:</td>
<td>front and rear parking, upper garage</td>
</tr>
<tr>
<td>Quantity (each):</td>
<td>18</td>
</tr>
<tr>
<td>Cost ($/each):</td>
<td>$3,500</td>
</tr>
<tr>
<td>Current total cost:</td>
<td><strong>$63,000</strong></td>
</tr>
<tr>
<td>Cost per home:</td>
<td>$387</td>
</tr>
<tr>
<td>Assumptions:</td>
<td>reuse of existing electrical supply wiring</td>
</tr>
<tr>
<td>Operating expenses:</td>
<td>painting, bulb replacement</td>
</tr>
</tbody>
</table>

**Assumptions:**
- Operating expenses: painting, bulb replacement
- Cost ($/each): $3,500
- Current total cost: **$63,000**
- Cost per home: $387
- Locations: front and rear parking, upper garage
- Quantity (each): 18
- Specific condition: rust
- Overall condition: fair
- Fixture material: metal
- Pole material: metal

**Notes:**
- Significant rust at base
- Light pole and fixture

---

Significant rust at base

Light pole and fixture

Light pole and fixture
**Actionable recommendations:** Secure patio flashing fasteners along building to prevent water infiltration into garage.

<table>
<thead>
<tr>
<th>Location:</th>
<th>adjacent to generator room atop garage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surface type:</td>
<td>concrete and artificial turf</td>
</tr>
<tr>
<td>Supporting structure:</td>
<td>concrete</td>
</tr>
<tr>
<td>Traffic type:</td>
<td>pedestrian</td>
</tr>
<tr>
<td>Overall condition:</td>
<td>good</td>
</tr>
<tr>
<td>Specific condition:</td>
<td>no visible deterioration</td>
</tr>
<tr>
<td>Total area (square feet)</td>
<td>5,500</td>
</tr>
<tr>
<td>Anticipated costs:</td>
<td>turf, waterproof membrane, irrigation system, firepit, planters, flashing, fence, pergola, furniture, design (4%), mobilization (4%)</td>
</tr>
<tr>
<td>Cost ($/square foot):</td>
<td>$21</td>
</tr>
<tr>
<td>Current total cost:</td>
<td>$118,000</td>
</tr>
<tr>
<td>Cost per home:</td>
<td>$724</td>
</tr>
</tbody>
</table>

**Loose fasteners**

**Artificial turf**

**Pergola**

**Patio**
Pavement - Crack Repair, Patch, Seal Coat

Green ideas: 1) Avoid the use of coal tar based pavement seal coats as they pollute waterways. 2) Consider not applying a seal coat. Seal coating is primarily for aesthetics and is a source of environmental contamination.

Engineering solutions: Crack repair all joints and patch potholes to prevent water infiltration. This will minimize deterioration to the pavement and underlying base.

Overall condition: fair to poor
Specific condition: cracks
Locations: front and rear parking areas, main lower garage level
Quantity (square yards): 8,600
Per/ home (square yards): 50
Anticipated costs: crack repair (2%) patch (1%) seal coat

Total cost ($/ square yard): $3.10
Crack repair & patch cost: $10,900
Seal coat cost: $16,100
Total cost per home: $166
Assumptions: asphaltic emulsions type seal coat, repair all open cracks, patch deteriorated pavement

pavement cracks
pavement cracks
pavement cracks at lower main garage level
### Pavement Total Replacement

<table>
<thead>
<tr>
<th>Material:</th>
<th>asphalt</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall condition:</td>
<td>good to fair</td>
</tr>
<tr>
<td>Specific condition:</td>
<td>cracks, settlement, recent overlayment atop concrete gutters and standing water</td>
</tr>
<tr>
<td>Locations:</td>
<td>front and rear parking areas</td>
</tr>
<tr>
<td>Quantity (square yards):</td>
<td>8,600</td>
</tr>
<tr>
<td>Per home (square yards):</td>
<td>53</td>
</tr>
<tr>
<td>Repaving method:</td>
<td>total replacement</td>
</tr>
<tr>
<td>Anticipated costs:</td>
<td>remove pavement, regrade &amp; augment base install 3&quot; of new pavement repairs to catch basins (8 each)</td>
</tr>
<tr>
<td>Cost ($/square yard):</td>
<td>$32.00</td>
</tr>
<tr>
<td>Current total cost:</td>
<td>$275,200</td>
</tr>
<tr>
<td>Cost per home:</td>
<td>$1,688</td>
</tr>
<tr>
<td>Coordinate with:</td>
<td>curbs and gutters</td>
</tr>
</tbody>
</table>
### Signs

<table>
<thead>
<tr>
<th>Overall condition</th>
<th>good to fair</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specific condition</td>
<td>electrical repairs are scheduled for the sign on the building</td>
</tr>
<tr>
<td>Locations</td>
<td>front parking lot, 10th floor of building</td>
</tr>
<tr>
<td>Quantity (each)</td>
<td>2</td>
</tr>
<tr>
<td>Anticipated costs</td>
<td>sign replacement mobilization</td>
</tr>
<tr>
<td>Current total cost</td>
<td><strong>$30,000</strong></td>
</tr>
<tr>
<td>Cost per home</td>
<td>$184</td>
</tr>
</tbody>
</table>
City Council Agenda Item #14A
Meeting of August 28, 2017

Brief Description

Items concerning Mesaba Capital at 17710 and 17724 Old Excelsior Boulevard:

1) Ordinance rezoning properties from B-1 to R-5; and

2) Resolution approving preliminary and final plats and final site and building plans, with variances

Recommendation

Adopt the ordinance and resolution approving the request

Proposal

Mesaba Capital development, working with Walker Methodist, has submitted applications and plans for the combination and redevelopment of two properties. As proposed, a three-story senior rental building would be constructed on the 2.5 acre subject site. The building would consist of 100 units. The units would include a combination of independent living, assisted living, and memory care units. Both underground and surface parking would be provided.

As proposed the project would require multiple variances, as follows:

<table>
<thead>
<tr>
<th>Variance</th>
<th>Required</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Side and Rear Yard Setbacks</td>
<td>69 ft</td>
<td>26 ft (W)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>26 ft (E)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>20 ft (N)</td>
</tr>
<tr>
<td>Parking Lot Setback</td>
<td>10 ft</td>
<td>0 ft</td>
</tr>
<tr>
<td>Parking Lot Aisle Width</td>
<td>26 ft</td>
<td>24 ft</td>
</tr>
</tbody>
</table>

Planning Commission Hearing

The planning commission considered the request on August 10, 2017. At the meeting, staff recommended approval of the proposal noting that:

1. The rezoning of the property is appropriate and consistent with the properties’ 2030 Comprehensive Guide Plan designation and the Highway 7 / County Road 101 Village Center Study.
2. The proposed preliminary and final plat would be compliant with city ordinances.
3. The building setback, parking lot setback and drive aisle width variances were reasonable after considering the subject property, surrounding neighborhood, previously approved city projects; and technical staff review.
Meeting of August 28, 2017
Subject: Mesaba Capital, 17710 and 17724 Old Excelsior Boulevard

At its meeting, the planning commission opened a public hearing to take public comment. One area resident spoke noting concerns regarding traffic, access, and pedestrian improvements.

Planning Commission Recommendation

On a 7-0 vote, the commission recommended that the city council approve the request. Meeting minutes are attached. There have been no changes to the proposal or additional information received since the planning commission’s meeting on this item.

Since the Planning Commission Meeting

Staff Report

There was an error in the planning commission staff report within the “Natural Resources Ordinance” section. The error does not alter the project’s compliance with city ordinance, but is outlined below.

“As proposed, the project would remove eight of the 12 high priority trees on the property. The subject proposal would not meet the tree protection ordinance, however, even if it did not meet the tree ordinance, the project would still be allowed because the proposed project is classified as a “redevelopment,” and not a subdivision and is not required to meet the high priority tree loss standards.”

The city council packet attachments have been updated consistent with this change.

Traffic

A comment raised during the public hearing was drivers making u-turns around the newly constructed median on Old Excelsior Blvd. west of CSAH 101. City staff contacted Hennepin County staff and confirmed that a no u-turn sign will be placed on the median to alert drivers of the illegal maneuver. Since the road project isn’t fully completed, the sign has not been erected.

Staff Recommendation

Staff recommends the city council adopt the following, all associated with Mesaba Capital, at 17710 and 17724 Old Excelsior Boulevard:

1) Ordinance rezoning the properties from B-1 to R-5; and
2) Resolution approving preliminary and final plats and final site and building plans, with variances
Through: Geralyn Barone, City Manager
Julie Wischnack, AICP, Community Development Director
Loren Gordon, AICP, City Planner

Originator: Drew Ingvalson, Planner
Brief Description

Items concerning Mesaba Capital, at 17710 and 17724 Old Excelsior Boulevard:

1) Ordinance rezoning properties from B-1 to R-5;
2) Preliminary and final plats; and
3) Final site and building plans, with variances

Recommendation

Recommend the city council adopt the ordinance and resolution approving the proposal.

Introduction

Mesaba Capital development, working with Walker Methodist, has submitted applications and plans for the combination and redevelopment of two properties. As proposed, a three-story senior rental building would be constructed on the 2.5 acre subject site. The building would consist of 100 units and be a combination of independent living, assisted living, and memory care units. Both underground and surface parking would be provided. (See attached).

Walker Methodist specializes in lifestyle housing and health care services for older adults. They currently own, operate, and manage eleven senior housing facilities within the metro area. (See attached).

Proposal Summary

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

- Existing Site Conditions.

The subject properties are located west of County Road 101, north of Old Excelsior Boulevard. The properties each contain an office building (5,800 and 7,200 square feet). The site’s slopes upward slightly from Old Excelsior Boulevard towards the center of the western property (17724 Old Excelsior Boulevard), then slopes noticeably downward toward the north. The slope has a significant drop-off; however, no portions of this slope area are classified as “steep” by city code definition.
- **Existing Zoning and Guide Plan Designation**

  The property is currently zoned B-1, office. It is designated as mixed-use in the comprehensive guide plan. The requested rezoning, to R-5 (high-density), is an allowed zoning within a guided mixed-use area.

- **Highway 7 / County Road 101 Village Center Study**

  The Highway 7 / County Road 101 Village Center Study identified opportunities for increased retail and residential development in this area. The proposed site was more specifically addressed in the study as an appropriate location to entertain higher density residential development. The study envisions densities will increase on other properties in the neighborhood over time. Existing single-family homes along the south side of Old Excelsior Boulevard are guided for medium-density residential.

- **Proposed Use**

  As proposed, the senior rental building would include 76 independent/assisted living units and 24 memory care units. The building would have a footprint of just under 36,000 square feet and total gross building area of roughly 104,000 gross square feet, excluding underground garage space.

  The building would have a three-story appearance from the south, east, and west and a four-story appearance from the north and entrance to the underground parking space. As designed, the lowest level would be for underground parking, utilities and maintenance. All memory care units, some independent/assisted units, and common spaces would be located on the ground floor, with additional independent/assisted living units and other common spaces occupying the 2nd and 3rd floors.

  The building would be served by 57 parking stalls located in the underground garage, 43 surface parking stalls, and 20 covered parking stalls on the north side of the building. Main access to the site and building would be off Old Excelsior Boulevard and an additional access would be created through a new parking lot on the property north of the subject site, off Hutchins Drive. (See attached).

- **Site impacts.**

  Construction of the building and parking lot would require grading and tree removal. Some excavation would be needed on the north side of the property to accommodate the new parking lot area and within the building area to provide space for the underground parking garage. Large retaining walls would be constructed on the north side of the building, with smaller retaining walls around the perimeter of the site.
This grading and construction of the building and parking areas would result in removal of several trees on the property. However, the applicant has proposed a landscape plan that includes several trees to create screening of the proposed building from Old Excelsior Boulevard and adjacent properties.

Primary Questions and Analysis

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

- **Is the proposed R-5 zoning appropriate?**

  Yes. The subject property is currently zoned B-1, office. Changing the zoning to R-5, high-density residential, would be considered a comparable or lateral zoning change.

  The Highway 7 / County Road 101 Village Center Study identified opportunities for increased residential development in this area. The proposed site was more specifically addressed in the study as an appropriate location to entertain higher density residential development. Currently, there are single-family homes, zoned R-1, located along the south side of Old Excelsior Boulevard. However, these properties are guided for medium-density residential. The high-density/low density residential relationship may be an abrupt land use transition initially, but the city expects redevelopment within the neighborhood based on the Highway 7 / County Road 101 Village Center Study and existing land use designations (medium-density and mixed-use). The future redevelopment of the area would allow the proposed building to serve as a transition from retail uses to medium-density housing.

  The subject property is guided for mixed-use. The subject site has direct access to a neighborhood collector street and is located in close proximity to a state highway/county road interchange. Further, the site is bordered by existing office uses.

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

  Yes. The applicant has proposed a three-story building, with underground parking. The proposed structure would meet the 1.0 floor area ratio (FAR) requirement for R-5 zoned properties. If approved, the proposed structure would have the same number of stories as the adjacent (east) Meditech building and would be one story taller than the adjacent (north) South Lake Pediatrics building. However, it should be noted, that the proposed building would appear taller than these adjacent buildings due to: (1) having underground parking, which raises the height
appearance from the north; and (2) its location on a higher elevation than the adjacent buildings.

The applicant has provided an architecturally attractive building that fits within the general office-use neighborhood. Two types of siding, smooth panels, stone veneer, and simulated wood would be incorporated into the building facade. The building would have a flat roof with varying roof heights and a covered entry over the main drive aisle. Several units would have glass sliding doors with a deck attached to the unit. The applicant has also proposed a landscaping plan that would add screening of the building from Old Excelsior Boulevard and adjacent properties. (See attached).

The proposed project would extend the pedestrian walkway along Old Excelsior Boulevard. The applicant has proposed internal walkways on the west side of the building and around the parking lot (east of the building). Both of these pedestrian walkways would connect to a new sidewalk on the north side of Old Excelsior Boulevard. This new path would travel east to join with the existing sidewalk along County Road 101, which connects to the Hennepin County Library to the east and retail stores to the north.

- **Are the setback (side/rear and parking lot) and drive aisle width variances reasonable?**

Yes. The applicant is requesting variances for:

<table>
<thead>
<tr>
<th>Variance</th>
<th>Required</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Side and Rear Yard Setbacks</td>
<td>69 ft</td>
<td>26 ft (W)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>26 ft (E)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>20 ft (N)</td>
</tr>
<tr>
<td>Parking Lot Setback</td>
<td>10 ft</td>
<td>0 ft</td>
</tr>
<tr>
<td>Parking Lot Aisle Width</td>
<td>26 ft</td>
<td>24 ft</td>
</tr>
</tbody>
</table>

The side/rear property line setback variances are reasonable as the setback distances are similar to the existing setbacks of other multi-story buildings within the neighborhood. Four multi-story buildings within 400 feet of the subject properties have side/rear yard setbacks ranging from 20-33 feet. In addition, in recent years, the city has approved multi-family residential projects with setbacks less than those proposed for the subject project. However, these applications have not required variances because they were within PID or PUD Districts, which allow flexible setbacks based on the city council’s discretion. (See Supporting Information Section).

The applicant is requesting a zero foot parking lot setback for a shared parking lot between the new building and property directly to the north. Staff finds this request to be reasonable because the proposed parking lot would add additional parking
spaces to the medical office building on the northern site, which is currently under parked.

The applicant is requesting a 24-foot wide parking lot aisle, which requires a 2-foot variance from the 26-foot wide requirement. The parking lot aisle width variance is reasonable as the American Planning Association’s Planning and Urban Design Standards manual finds that a 23-foot wide aisle would be adequate width for a low level of service parking area. In addition, the city would permit a 24-foot wide parking aisle if the parking lot were within a structure, such as the underground parking garage.

Summary Comments

Staff acknowledges that the proposed Mesaba Capital project would result in a significant physical change to the subject property and neighborhood. Two office buildings would be removed, as would several of the trees on the property. These changes would alter the visual character of Old Excelsior Boulevard in the immediate area. However, such alteration would most likely occur with any redevelopment on the mixed-use guided property. Additionally, the Highway 7 / County Road 101 Village Center Study found that the subject area has the opportunity for increased retail and residential development, with the specific site being an appropriate location for higher density residential development.

Staff Recommendation

Recommend the city council adopt the following, all associated with Mesaba Capital, at 17710 and 17724 Old Excelsior Boulevard:

1) Ordinance rezoning the properties from B-1 to R-5;
2) Preliminary and final plats; and
3) Final site and building plans, with variances.

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

Surrounding
Northerly: Medical Office property (South Lake Pediatrics); guided mixed-use

Land Uses
Easterly: Office property (Meditech Inc.); guided mixed-use
Westerly: Office property (various small offices); guided mixed-use
Southerly: single-family home properties (KinderCare and single-family home); guided service commercial and medium-density residential

Planning
Guide Plan designation: mixed-use
Existing Zoning: B-1, office

Concept Plans
In November 2016, the city council conducted a concept plan review for the redevelopment of the existing property. The plan contemplated the construction of a four-story, senior housing building. The building would contain 110 units and include a mixture of independent, assisted and memory care units. The council provided comment that the project was:

- a good use for the area;
- an appropriate use of the site; and
- aligned with the Highway 7 / 101 Vision Plan.

In addition, council provided critiques of the plan, which included:

- a need to provide model/illustrations of the project with the surrounding area;
- evaluation of the building size and massing considering the low-density residential neighborhood along Old Excelsior Boulevard; and
- evaluation and possibly scaling back the building height and setbacks.

In February 2017, the applicant submitted a revised concept plan for city council review. The revised plan, which is similar to the application submitted for this request, included the following highlights and responses to the November council review:

- building height was reduced from 4 to 3 stories;
Meeting of August 10, 2017
Subject: Mesaba Capital, 17710 and 17724 Old Excelsior Blvd.

- building size above ground was reduced by 9,000 square feet; and

- general unit count was reduced from 110 units to 100 units.

At the meeting, the council provided comments regarding the plan, which included:

- a request that the applicant work with staff regarding variances required for the project;

- a recommendation that the application investigate affordability options for the project; and

- further review should consider views from the neighborhood.

Introduction

In July 2017, the city council introduced the ordinance rezoning the subject property from B-1 to R-5. At that time, the council generally noted that the formal proposal seems to reflect many of the comments made during the previous concept reviews. However, the council also noted that the project may require setback variances due to the building height.

City Actions

The Mesaba Capital proposal necessitates the following applications:

- **Rezoning.** The subject site is currently zoned B-1, office. The applicant requests that the site be rezoned to R-5, high-density residential. The planning commission makes a recommendation to the city council, which has final authority to approve or deny the rezoning.

- **Preliminary and Final Plat.** The applicant has proposed to combine two lots to create one lot. The city council approves the platting of land. The planning commission makes a recommendation to the city council, which has final authority to approve or deny the platting.

- **Site and Building Plan Review.** By city code, site and building plan review is required in conjunction with construction of a multi-family building. The planning commission makes a recommendation to the city council, which has final authority to approve or deny the site and building plan.
- **Variances.** As proposed, side and rear yard setback variances would be required for the building. Per ordinance, 69-foot side and rear yard setbacks would be required for the building. However, the applicant is proposing side and rear yard setbacks ranging from 26 to 20 feet. Additionally, the applicant is requesting a zero foot parking lot setback variance and a 24-foot parking lot aisle width (26-foot required) variance. Because the variances are required for the approval of the site and building plan, the planning commission makes a recommendation to the city council, which has final authority to approve or deny the site and building plan.

**Preliminary and Final Plat**

The preliminary and final plat combines the two existing parcels into a single parcel. (See attached). Staff has reviewed the request and determined that the proposal meets city ordinance.

**Stormwater**

As proposed, drainage from the site would be managed via an underground chamber facility. This system would capture rainwater on site for storage and infiltration. As a condition of approval, a final stormwater management plan and specifications must be submitted prior to issuance of a grading permit. The plans must meet the standards of the city’s Water Resources Management Plan, incorporating rate control, volume control, and water quality treatment.

Stormwater reuse was considered for the proposed project; however, stormwater reuse was not found to be a reasonable option due to the limited green space on the site.

**Solar Energy**

Solar energy opportunities were reviewed for the site, but significant vegetation towards the south side of the proposed building would limit solar access.

**Utilities**

Public water, sanitary, and storm sewer facilities are available to the site from Plymouth Road.

**Trails**

As proposed, internal walking paths would be constructed for both memory care residents and independent/assisted residents. The independent/assisted walking path would connect a patio on the east side of the building to a future public sidewalk along the north side of Old Excelsior Boulevard. In addition, there would be sidewalks throughout the parking lot, which would also connect to the public sidewalk along Old Excelsior Boulevard. As conditions of approval, a public trail easement would be required for the portion of the Old Excelsior Trail that is on private property.
Traffic and Parking Study

The city commissioned a traffic study to:

1. Understand existing traffic and parking conditions of the site;

2. Evaluate potential impacts of the proposed redevelopment; and

3. Address improvement options for any issues, if necessary.

In evaluating each of these items, the city’s traffic engineering consultants drew on general engineering principles, as well as specific observations of the existing site. (See attached). The study concluded:

1. The proposal is anticipated to generate eight (8) fewer a.m. peak hour trips, one (1) additional p.m. peak hour trip and 101 additional daily drips. Due to the similar number of trips to the redevelopment during the peak hours, future conditions are expected to improve or remain similar to existing conditions.

2. Minor modifications to the site plan and signage were recommended to increase traffic safety on site. Specifically, the study recommends considering adding a traffic stop at the exit of the building and moving the entrance of the site to the west side of the property to extend the distance between the entrance and the County Road 101 intersection. Both of these recommendations were provided for “consideration” and were not provided as traffic hazards of the project.

3. The proposed parking is expected to be adequate to meet parking demand.

Parking

The city code parking requirements do not differentiate between types of senior housing. Specifically, there is no distinction made for independent/assisted living or memory care units. By code, the Mesaba Capital project would be required to provide 100 parking stalls, half of which must be within an enclosed weather controlled structure. The applicant has proposed 120 total parking spaces for the subject site, exceeding the parking requirement by 20 spaces.
### Mesaba Capital Project

<table>
<thead>
<tr>
<th></th>
<th>Number of Spaces Required</th>
<th>Number of Spaces Provided</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Underground</strong></td>
<td>50</td>
<td>57</td>
</tr>
<tr>
<td><strong>Surface</strong></td>
<td>50</td>
<td>63</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>100</td>
<td>120</td>
</tr>
</tbody>
</table>

South Lake Pediatrics is located north of the subject property (17705 Hutchins Drive). As a medical office, this property requires 104 parking spaces. However, this property is currently non-conforming with city ordinance parking requirements, as it has only 52 parking spaces.

The applicant has been working with the owner of South Lake Pediatrics to add parking spaces on their property. As a part of this project, the applicant has proposed adding an additional 36 parking spaces, bringing the total parking spaces on site to 88 spaces. While this would not bring the property into compliance with city code, it would greatly reduce the parking deficit.

<table>
<thead>
<tr>
<th>South Lake Pediatrics Property (17705 Hutchins Drive)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Spaces Required</td>
</tr>
<tr>
<td>Parking</td>
</tr>
</tbody>
</table>

### Building Design

The proposed Mesaba Capital Building would have a three-story appearance from the east, south, and west elevations and four-story appearance from the north and underground parking garage entrance, due to elevation changes and the underground garage. (See attached). The proposed Mesaba Capital building would have a code-defined height of 46 feet; however, the majority of the building would appear 30-35 feet.

<table>
<thead>
<tr>
<th></th>
<th>Code-Defined</th>
<th>To Peak</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Ridge</td>
<td>49 ft</td>
<td>49 ft</td>
</tr>
<tr>
<td>Applewood Pointe</td>
<td>50 ft</td>
<td>60 ft</td>
</tr>
<tr>
<td>Cherrywood Pointe</td>
<td>55 ft</td>
<td>72.5 ft</td>
</tr>
<tr>
<td>The Overlook</td>
<td>62 ft</td>
<td>72 ft</td>
</tr>
</tbody>
</table>
Building materials would include two types of siding, smooth panels, stone veneer, and simulated wood veneer. As a condition of approval, a final materials and color palate board must be submitted for staff review and approval.

**Rezoning**

The subject properties are currently zoned B-1, office. The applicant is proposing to rezone the combined properties to R-5, high-density residential. The new zoning, R-5, is consistent with the guided use for the property, mixed-use. Additionally, the rezoning would be considered a comparable or lateral zoning change. After reviewing the neighborhood, staff recognizes that the zoning change may seem abrupt moving from the subject site, requested to be zoned R-5, to the single-family home properties to the south, currently zoned R-1. However, it is important to acknowledge that the properties south of the subject site, across Old Excelsior Boulevard, are guided for medium-density. Staff finds that the proposed development of the property would serve as an appropriate transition from commercial uses north of Old Excelsior Boulevard to medium-density south of Old Excelsior Boulevard.

**Building Setbacks (Variance Required)**

City code requires that buildings within the R-5 District have a 35-foot front yard setback (local and neighborhood collector streets) and side and rear yard setbacks of a distance not less than 1.5 times the height of the building. As submitted, the subject proposal does not meet the side and rear yard setback requirements. (See table on the next page).

<table>
<thead>
<tr>
<th></th>
<th>Required Setback</th>
<th>Proposed Setback</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front</td>
<td>35 ft</td>
<td>35 ft</td>
</tr>
<tr>
<td>Side (E)</td>
<td>69 ft</td>
<td>26 ft</td>
</tr>
<tr>
<td>Side (W)</td>
<td>69 ft</td>
<td>26 ft</td>
</tr>
<tr>
<td>Rear</td>
<td>69 ft</td>
<td>20 ft</td>
</tr>
</tbody>
</table>

Staff finds that the applicant’s proposal is reasonable as:

1. Purpose and Intent of the Zoning Ordinance:
The proposal, and resulting variance request, would be in keeping with the city’s zoning ordinance. The intent of the ordinance, as it pertains to high-density residential side and rear yard setback requirements, is to ensure an appropriate distance between structures based on the height of the building. As such, the proposed setbacks are consistent with the existing side and rear yard setbacks of several multiple story office buildings within the area.

<table>
<thead>
<tr>
<th>Property</th>
<th>Approximate Side/Rear Yard Setback</th>
</tr>
</thead>
<tbody>
<tr>
<td>5130 County Road 101</td>
<td>23 ft</td>
</tr>
<tr>
<td>17705 Hutchins Drive</td>
<td>33 ft</td>
</tr>
<tr>
<td>17809 Hutchins Drive (one story with pitched roof)</td>
<td>23 ft</td>
</tr>
<tr>
<td>5125 Porter Avenue</td>
<td>20 ft</td>
</tr>
</tbody>
</table>

The proposed building setbacks would have similar property line setbacks as multi-family buildings previously approved by the city council. However, none of these properties were required to obtain a variance as they were zoned in districts (PID or PUD) that allow flexible setbacks based on city council discretion. (See table below).

<table>
<thead>
<tr>
<th>Project</th>
<th>Approved Property Line Setback</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applewood Pointe</td>
<td>20 ft</td>
</tr>
<tr>
<td>The Glen</td>
<td>16 ft</td>
</tr>
<tr>
<td>The Ridge</td>
<td>22 ft</td>
</tr>
</tbody>
</table>

2. Consistent with the Comprehensive Plan:

The proposal would be consistent with the city’s comprehensive plan. The subject property is guided for mixed-use. This designation has been established to allow flexibility in land use and creative site design. The proposed use of this property, high-density residential, would be consistent with this objective.

3. Practical Difficulties: There are practical difficulties in complying with the ordinance.
- Reasonableness: Staff finds that the request for a variance from the required side and rear yard setbacks to be reasonable as:
  
  - The setbacks are consistent with the side and rear yard setbacks of other multiple story buildings within the area.
  
  - The proposed setbacks are similar to the property line setbacks approved for other apartment buildings within the City.

- Circumstance Unique to the Property: The Highway 7 / County Road 101 Village Center study identified the subject property as an appropriate location for high-density residential development. The narrow shape of the lot, combined with the requirement for sheltered parking and adding architectural interest to the roofline (which both raise the height of the building), create a practical difficulty for high-density development on the property without acquiring property line setback variances.

- Neighborhood Character: As stated previously, the side and rear yard setback variance would be consistent with setbacks of other multiple story buildings within the area.

Parking Setbacks
(Variance Required)

City code requires that R-5 district parking lots are setback at least 10 feet from properties guided for office use. As proposed, the rear parking lot would have a zero foot setback because the parking lot would be shared between the two properties. As a condition of approval, the applicant would be required to obtain a cross-access agreement with the adjacent property owner.

Staff finds that the applicant’s proposal is reasonable as:

1. Purpose and Intent of the Zoning Ordinance:

   The proposal, and resulting variance request, would be in keeping with the city’s zoning ordinance. The intent of the ordinance, as it pertains to parking lot setbacks, is to ensure an appropriate separation between structures and parking lots. As such, the proposed zero foot setback would be appropriate as the parking lot would be shared between the adjacent properties.
2. Consistent with the Comprehensive Plan:

The proposal would be consistent with the city's comprehensive plan. The subject property is guided for mixed-use and parking lot setback variance would not create an inconsistency with the comprehensive plan.

3. Practical Difficulties: There are practical difficulties in complying with the ordinance.

- Reasonableness: Staff finds that the request for a zero foot parking lot setback would be appropriate, as the parking lot would be shared between the adjacent properties.

- Circumstance Unique to the Property: The adjacent property (17705 Hutchins Drive) is currently under parked. The proposed project would add parking spaces to the adjacent property and bring the property closer to conformance with city ordinance.

- Neighborhood Character: The zero foot parking lot setback would maintain the existing neighborhood character as the property adjacent to the subject properties currently has a shared parking lot between the two properties (17809 Hutchins Drive and the property directly south).

Aisle Widths (Variance Required)

City code also requires that surface parking drive aisles are at least 26 feet wide if serving two sides of 90 degree parking and 22 feet wide if serving one side of 90 degree parking. As proposed, the northern aisle (on the adjacent property) would be widened from 21 feet wide to nearly 23 feet wide, thus reducing the non-conformity and not requiring a variance. However, the new southern aisle (on the subject property) would be only 24 feet wide and would require a 2-foot variance from city ordinance.

Staff finds that the applicant’s proposal is reasonable as:

1. Purpose and Intent of the Zoning Ordinance:

The proposal, and resulting variance request, would be in keeping with the city’s zoning ordinance. The intent of the ordinance, as it pertains to parking aisle widths, is to ensure safe passage for vehicles as they navigate through parking lots. As such, the proposed 2-foot aisle width
would be appropriate. Per the *Planning and Urban Design Standards* book by the American Planning Association, a 23-foot wide aisle would be adequate width for a low level of service parking area.

2. Consistent with the Comprehensive Plan:

The proposal would be consistent with the city's comprehensive plan. The subject property is guided for mixed-use and parking lot aisle width variance would not create an inconsistency with the comprehensive plan.

3. Practical Difficulties: There are practical difficulties in complying with the ordinance.

   - **Reasonableness:** Staff finds that the request for a 2-foot aisle width variance would be reasonable as:

     - The American Planning Association’s *Planning and Urban Design Standards manual*, finds that a 23-foot wide aisle would be adequate width for a low level of service parking area.

     - City ordinance would permit a 24-foot wide parking aisle if the lot were within a structure.

   - **Circumstance Unique to the Property:** The adjacent property (17705 Hutchins Drive) is currently under parked and has a non-conforming parking lot aisle. The proposed project would add several parking stalls to the adjacent property and bring it closer to conformance with city ordinance. In addition, the proposal would not require a variance if the northern aisle was reduced to the existing 21-foot wide width and the southern aisle was increased to 26 feet wide. However, staff finds that increasing the northern aisle width and creating a 24-foot wide southern aisle width is the safest and most appropriate design.

   - **Neighborhood Character:** The 2-foot drive aisle width variance would not alter the essential character of the neighborhood. The 24-foot wide parking lot drive aisle would be wider than the existing drive aisle currently on the site.
Recreational Facilities

The ordinance requires that each residential development in the R-5 district provide a minimum of 10 percent of the gross project area in private recreational uses for project residents. This area can be for active or passive recreational uses suited to the needs of the residents of the project. The gross project area is approximately 110,236 square feet. The applicant is proposing to provide 11,074 (10%) square feet of active and passive recreational space to meet the ordinance as follows:

- Walking paths with patio - 9,517 sq. ft.
- Outdoor recreation area - 513 sq. ft.
- Outdoor bench area - 1,044 sq. ft.
- **TOTAL RECREATIONAL SPACE = 11,074 sq. ft.**

NR Ordinances

As proposed, the project would remove eight of the 12 high priority trees on the property. The subject proposal would not meet the tree protection ordinance, however, the project would still be allowed because the proposed project is classified as a "redevelopment," and not a subdivision and is not required to meet the high priority tree loss standards.

With the proposed project, there would be no tree mitigation required because the trees being removing are located within the basic tree removal area. Nevertheless, the applicant has still proposed to replant 76 trees on the site.

Affordable Housing

The subject proposal does not include any formal affordable housing units. Often, the city requires that a percentage of units to be affordable housing units if the project is receiving funding from the city. As the subject project does not require city funding, staff is not recommending an affordable housing requirement for the project.

Alternatively, the applicant has informed staff that the Walker Methodist organization does participate in the Elderly Waiver program. The Elderly Waiver program is available to persons age 65 and over who are eligible for Medical Assistance (MA), and who require the nursing facility level of care provided in a nursing home, but choose to reside in the community. Only residents with a rent rate of the predetermined nursing home rate are permitted to participate in the program. Walker Methodist estimates that 4-5 units would receive a reduced unit rent rate so that they can participate in this program. However, the applicant foresees using this program to allow residents to age in place within their building, so they do not plan on having people within this program.
until 3-4 years after opening. The Elderly Waiver program is administered by Hennepin County.

**Motion Options**

The planning commission has four options:

1. Concur with the staff recommendation. In this case, a motion should be made recommending the city council adopt the rezoning ordinance, preliminary and final plat resolution, and site and building plan resolution, with variances.

2. Disagree with staff’s recommendation. In this case, a motion should be made recommending the city council deny the requested rezoning, preliminary and final plat, and final site and building plans, with variances. This motion must include a statement as to why denial is recommended.

3. Concur with some of staff’s recommendations and disagree with the others. In this case, a motion should be made recommending approval of the some and denial of the others. This motion must include a statement as to why denial is recommended.

4. Table the requests. 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.

**Neighborhood Comments**

At the time of publication of this report, the city had received no comments regarding the formal application. Notices were sent to 183 property owners.

**Deadline for Action**

October 23, 2017
LOCATION MAP

Mesaba Capital Development
17710 and 17724 Old Excelsior Blvd.

This map is for illustrative purposes only.
LOCATION MAP

Mesaba Capital Development
17710 and 17724 Old Excelsior Blvd.

This map is for illustrative purposes only.
Master Plan
Village Center
VIEW FROM 17717 EXCELSIOR BLVD

VIEW FROM 17725 EXCELSIOR BLVD
View from Homes South of Old Excelsior Boulevard
View from Driving West on Old Excelsior Boulevard Near Main Entry
GENERAL GRADING NOTES:

1. SITE PLAN FOR HORIZONTAL, UPLAND & SHEET GRADING NOTES.

2. ANY CONSTRUCTION WITHIN 10' OF ANY UNDERGROUND STORM RETENTION/DETENTION SYSTEMS MUST BE ERODED TO A MINIMUM DEPTH OF 6 INCHES.

3. THE CONTRACTOR SHALL PROTECT NEWLY GRADED AREAS FROM TRAFFIC AND EROSION, REPAIR ALL AREAS THAT HAVE BEEN DISTURBED OR DISTURBED BY THE CONTRACTOR’S OPERATIONS.

4. THE BUILDING SUBGRADE FINISHED SURFACE ELEVATION SHALL NOT VARY BY MORE THAN 1/2 INCH OF THE SPECIFIED THICKNESS.

5. MAXIMUM SLOPES IN MAINTAINED AREAS IS 4:1.

6. PROPOSED SLOPES SHALL NOT EXCEED 3:1 UNLESS INDICATED OTHERWISE ON THE DRAWINGS.

7. PROPOSED SPOT GRADES ARE FLOW-LINE FINISHED GRADE ELEVATIONS, UNLESS OTHERWISE NOTED.

8. UNLESS OTHERWISE NOTED) SPOT GRADE ELEVATION GUTTER/FLOW LINE.

9. SCREEN PORCH.

10. THE WARRANTY PERIOD, ERODED AREAS WHERE TURF IS TO BE ESTABLISHED SHALL BE RESTORED TO EQUAL OR BETTER THAN ORIGINAL CONDITION OR TO THE REQUIREMENTS OF THE NEW WORK.

11. THE CONTRACTOR SHALL SALVAGE ENOUGH TOPSOIL FOR RESPREADING ON THE SITE AS SPECIFIED. EXCESS TOPSOIL SHALL BE PLACED IN EMBANKMENT AREAS DESIGNATED ON THE SITE.

12. TRASH WITHIN LIMITS OF GRADING, INCLUDING ADJACENT TRANSITION AREAS. PROVIDE A SMOOTH FINISHED GRADING SHALL BE COMPLETED. THE CONTRACTOR SHALL UNIFORMLY GRADE AREAS BETWEEN POINTS WHERE ELEVATIONS ARE SHOWN, OR BETWEEN SUCH POINTS AND EXISTING MARKERS. THE CONTRACTOR SHALL BE FAMILIARIZED IN A MANNER THAT WAS OBSERVED IN TWO OF THE BORINGS, BUT THE REPORT INDICATED THAT STATIC PER GEOTECHNICAL REPORT BY INTERTEK PSI, INC.

13. a. PROPOSED RETAINING WALLS AND FREE-STANDING WALLS WITHIN 10' OF ANY UNDERGROUND STORM RETENTION/DETENTION SYSTEMS.
   b. ALL SOIL TESTING PERMITS REQUIREMENTS OF THE CITY.
   c. THE CONTRACTOR SHALL BE RESPONSIBLE FOR A FINAL FIELD CHECK OF FINISHED GRADES ACCEPTABLE TO THE SOILS ENGINEER.

14. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTENANCES OF USAGE PAVED THROUGHOUT THE BUILDING SUBGRADE FINISHED SURFACE ELEVATION.
   a. ALL SOIL TESTING PERMITS REQUIREMENTS OF THE CITY.
   b. THE SOILS ENGINEER SHALL DETERMINE WHICH SECTIONS OF THE STREET OR DIRECTION OF THE SOILS ENGINEER AND SHALL BE COMPLETED IN AREAS AS DIRECTED BY THE SOILS ENGINEER.
   c. THE SOILS ENGINEER SHALL DETERMINE WHICH SECTIONS OF THE STREET OR DIRECTION OF THE SOILS ENGINEER AND SHALL BE COMPLETED IN AREAS AS DIRECTED BY THE SOILS ENGINEER.

15. GREATER THAN 4' IN HEIGHT SHALL BE DESIGNED AND ENGINEERED BY A REGISTERED RETAINING WALL ENGINEER.

16. a. ALL SOIL TESTING PERMITS REQUIREMENTS OF THE CITY.
   b. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTENANCES OF USAGE PAVED THROUGHOUT THE BUILDING SUBGRADE FINISHED SURFACE ELEVATION.
   c. ALL SOIL TESTING PERMITS REQUIREMENTS OF THE CITY.

17. GENERAL GRADING NOTES:

   a. THE SOILS ENGINEER SHALL DETERMINE WHICH SECTIONS OF THE STREET OR DIRECTION OF THE SOILS ENGINEER AND SHALL BE COMPLETED IN AREAS AS DIRECTED BY THE SOILS ENGINEER.
   b. THE SOILS ENGINEER SHALL DETERMINE WHICH SECTIONS OF THE STREET OR DIRECTION OF THE SOILS ENGINEER AND SHALL BE COMPLETED IN AREAS AS DIRECTED BY THE SOILS ENGINEER.
   c. THE SOILS ENGINEER SHALL DETERMINE WHICH SECTIONS OF THE STREET OR DIRECTION OF THE SOILS ENGINEER AND SHALL BE COMPLETED IN AREAS AS DIRECTED BY THE SOILS ENGINEER.
Buildings West of Property
EXISTING TREES TO REMAIN, PROVIDE TREE PROTECTION FENCING, TYP. CONTRACTOR TO PROVIDE INLET PROTECTION AT ALL DOWNSTREAM CATCH BASINS.

PERIMETER EROSION CONTROL AT CONSTRUCTION LIMITS, TYP.

1. THIS PROJECT IS GREATER THAN ONE ACRE AND WILL REQUIRE AN MPCA NPDES PERMIT. AN EROSION CONTROL PERMIT IS ALSO REQUIRED FROM THE CITY OF MINNETONKA.

2. SEE SHEETS SW1.0 - SW1.5 FOR ALL EROSION CONTROL NOTES, DESCRIPTIONS, AND PRACTICES.

3. THE CONTRACTOR IS RESPONSIBLE FOR SWPPP IMPLEMENTATION, INSPECTIONS, AND COMPLIANCE WITH NPDES PERMIT.

4. CITY OF MINNETONKA EROSION CONTROL NOTES:

   1. SOIL SURFACES COMPACTED DURING CONSTRUCTION AND REMAINING PERVIOUS UPON COMPLETION OF CONSTRUCTION MUST BE DECOMPACTED THROUGH SOIL AMENDMENT AND/OR RIPPING TO A DEPTH OF 18 INCHES TAKING CARE TO AVOID UTILITIES, TREE ROOTS AND OTHER EXISTING VEGETATION PRIOR TO FINIAL REVEGETATION OR OTHER STABILIZATION.

   2. THE CONTRACTOR MUST INSPECT, MAINTAIN AND REPAIR ALL DISTURBED SURFACES AND ALL EROSION AND SEDIMENT CONTROL FACILITIES AND SOIL STABILIZATION MEASURES EVERYDAY WORK IS PERFORMED ON THE SITE AND AT LEAST WEEKLY UNTIL LAND-DISTURBING ACTIVITY IS CEASED. THEREAFTER, THE CONTRACTOR MUST PERFORM THESE RESPONSIBILITIES AT LEAST WEEKLY UNTIL VEGETATIVE COVER IS ESTABLISHED. THE CONTRACTOR SHALL MAINTAIN A LOG OF ACTIVITIES UNDER THIS SECTION FOR INSPECTION BY THE DISTRICT ON REQUEST.

SWPPP NOTES:

1. ALL SPECIFIED EROSION AND SEDIMENT CONTROL PRACTICES, AND MEASURES CONTAINED IN THIS SWPPP ARE TO BE IMPLEMENTED ACROSS THE SITE TO REDUCE HYDROLOGICALLY VULNERABLE AREAS, PREVENT THE ONSET AND/or REDUCTION OF EROSION, AND TO AVOID ADDITIONAL REQUIREMENTS. ADDITIONAL PRACTICES MAY BE REQUIRED DURING THE COURSE OF CONSTRUCTION.

2. NPDES REQUIREMENTS TO ADDRESS SEDIMENT CONTROL ARE TO BE IMPLEMENTED TO MEET THE DEPARTMENT OF HEALTH REQUIREMENTS.

3. THE CONTRACTOR IS RESPONSIBLE FOR SWPPP IMPLEMENTATION, INSPECTIONS, AND COMPLIANCE WITH NPDES PERMIT.

4. CITY OF MINNETONKA EROSION CONTROL NOTES:

   1. SOIL SURFACES COMPACTED DURING CONSTRUCTION AND REMAINING PERVIOUS UPON COMPLETION OF CONSTRUCTION MUST BE DECOMPACTED THROUGH SOIL AMENDMENT AND/OR RIPPING TO A DEPTH OF 18 INCHES TAKING CARE TO AVOID UTILITIES, TREE ROOTS AND OTHER EXISTING VEGETATION PRIOR TO FINIAL REVEGETATION OR OTHER STABILIZATION.
Memorandum

To: Loren Gordon, AICP, City Planner
City of Minnetonka

From: Emily Gross, PE, Senior Engineer
Brent Clark, EIT, Engineer

Date: August 1, 2017

Subject: Mesaba Capital Traffic and Parking Study

Introduction

As requested, SRF has completed a traffic and parking study for the proposed senior housing redevelopment at 17710 and 17724 Old Excelsior Boulevard, in Minnetonka, MN (see Figure 1: Project Location). The main objectives of the study are to identify existing traffic and parking conditions within the study area, evaluate potential impacts of the proposed redevelopment, and recommend improvements to address any issues, if necessary. The following information provides the assumptions, analysis, and study recommendations offered for consideration.

Existing Conditions

The existing conditions were reviewed to establish a baseline to compare and determine future impacts associated with the proposed redevelopment. The evaluation of existing conditions includes 13-hour intersection turning movement counts, field observations, and an intersection capacity analysis.

Data Collection

Since the County Road (CR) 101/Old Excelsior Boulevard intersection is currently under construction, historical non-construction intersection turning movement counts were utilized. Supplemental weekday 13-hour turning movement counts were collected at the existing site driveways along Old Excelsior Boulevard on June 6, 2017, which included:

1) Sounds of Music Studio Driveway (11724 Old Excelsior)

2) Stubbe and Associates Driveway (11710 Old Excelsior)

Observations were completed to identify various roadway characteristics within the study area (i.e. roadway geometry, posted speed limits, and traffic controls). CR 101 is primarily a four-lane divided roadway that transitions to a three-lane undivided roadway with a two-way left-turn lane (TWLTL) south of Old Excelsior Boulevard. CR 101 has a posted speed limit of 40 miles per hour (mph). Old Excelsior Boulevard is a two-lane undivided roadway with a posted speed limit of 30 mph. The CR 101/Old Excelsior Boulevard intersection is signalized and the Stubbe and Associates/ Sounds of Music Studio driveways are uncontrolled, but operate as side-street stop controlled intersections. It should be noted that the existing Sounds of Music Studio and Stubbe and Associates signage impedes sight distance onto Old Excelsior Boulevard.
Project Location
Mesaba Capital Traffic and Parking Study
Minnetonka, MN

Figure 1
Minnetonka High School
Hutchins Dr
Old Excelsior Blvd
Project Location

Location
Hutchins Dr
7
101

Figure 1
Mesaba Capital Traffic and Parking Study
Minnetonka, MN

01710184
August 2017
Existing geometrics, traffic controls, and volumes within the study area are shown in Figure 2. It should be noted that due to the proximity of the study intersection to Minnetonka High School, the a.m. peak (coincides with the school arrival peak), afternoon peak (coincides with the school departure peak), and p.m. peak (evening commuter peak) hours were evaluated.

**Intersection Operations Analysis**

An operations analysis was conducted to determine how traffic is currently operating at the study intersections. All intersections were analyzed using Synchro/SimTraffic software (V9) and the Highway Capacity Manual (HCM). Capacity analysis results identify a Level of Service (LOS) which indicates how well an intersection is operating. Intersections are ranked from LOS A through LOS F. The LOS results are based on average delay per vehicle, which correspond to the delay threshold values shown in Table 1. LOS A indicates the best traffic operation and LOS F indicates an intersection where demand exceeds capacity. Overall intersection LOS A through LOS D is considered to be acceptable traffic flow conditions in the Twin Cities metropolitan area.

<table>
<thead>
<tr>
<th>LOS Designation</th>
<th>Signalized Intersection Average Delay/Vehicle (seconds)</th>
<th>Unsignalized Intersection Average Delay/Vehicle (seconds)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>≤ 10</td>
<td>≤ 10</td>
</tr>
<tr>
<td>B</td>
<td>&gt; 10 - 20</td>
<td>&gt; 10 - 15</td>
</tr>
<tr>
<td>C</td>
<td>&gt; 20 - 35</td>
<td>&gt; 15 - 25</td>
</tr>
<tr>
<td>D</td>
<td>&gt; 35 - 55</td>
<td>&gt; 25 - 35</td>
</tr>
<tr>
<td>E</td>
<td>&gt; 55 - 80</td>
<td>&gt; 35 - 50</td>
</tr>
<tr>
<td>F</td>
<td>&gt; 80</td>
<td>&gt; 50</td>
</tr>
</tbody>
</table>

For side-street stop controlled intersections, special emphasis is given to providing an estimate for the level of service of the side-street approach. Traffic operations at an unsignalized intersection with side-street stop control can be described in two ways. First, consideration is given to the overall intersection level of service. This takes into account the total number of vehicles entering the intersection and the capability of the intersection to support these volumes.

Second, it is important to consider the delay on the minor approach. Since the mainline does not have to stop, the majority of delay is attributed to the side-street approaches. It is typical of intersections with higher mainline traffic volumes to experience high levels of delay (poor levels of service) on the side-street approaches, but an acceptable overall intersection level of service during peak hour conditions.

The CR 101/Old Excelsior Boulevard intersection was operating under temporary signal timing and had construction lane closures during recent data collection efforts. Therefore, to determine non-construction conditions, all intersections were analyzed with post-construction geometrics (no lane closures) and optimized signal timing.
Existing Conditions
Mesaba Capital Traffic and Parking Study
Minnetonka, MN

Figure 2

LEGEND

XX - A.M. Peak Hour Volume
[XX] - School P.M. Peak Hour Volume
(XX) - P.M. Peak Hour Volume
- Uncontrolled
- Signalized Control
Results of the existing operations analysis shown in Table 2 indicate that all study intersections currently operate at an acceptable overall LOS C or better during the a.m., school p.m. and p.m. peak hours. However, eastbound queues at the CR 101/Old Excelsior Boulevard intersection were observed extending beyond the current site driveways, which may be impacted by the temporary signal timing and lane closures. The queues observed during the peak hours are summarized as follows:

- Eastbound queues extend beyond the Stubbe and Associates driveway approximately two (2) times during the a.m. peak hour.
- Eastbound queues extend beyond the Sounds of Music Studio driveway approximately 50 percent of the school p.m. peak hour.
- Eastbound queues extend to the Sounds of Music Studio driveway approximately two (2) times during the p.m. peak hour.

<table>
<thead>
<tr>
<th>Intersection</th>
<th>A.M. Peak Hour</th>
<th>School P.M. Peak Hour</th>
<th>P.M. Peak Hour</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>LOS</td>
<td>Delay</td>
<td>LOS</td>
</tr>
</tbody>
</table>

(1) Indicates an uncontrolled intersection that was analyzed as an unsignalized intersection with side-street stop control, where the overall LOS is shown followed by the worst approach LOS. The delay shown represents the worst side-street approach delay.

**Proposed Redevelopment**

As shown in Figure 3, the Mesaba Capital redevelopment is located at 17710 and 17724 Old Excelsior Boulevard and consists of a 100-unit senior housing facility. The facility is designed to accommodate a variety of services including independent living (45-units), assisted living (30-units), memory care (24-units), and a care suite. Currently the site is occupied by Sounds of Music Studio and Stubbe and Associates. The site plan indicates that the existing access to the Sounds of Music Studio will be removed and the proposed redevelopment will utilize the Stubbe and Associates access, which is located approximately 150 feet west of the CR 101/Old Excelsior Boulevard intersection.

A total of 105 parking spaces are proposed for the senior housing facility, which includes 48 surface parking spaces and 57 underground garage parking spaces. It should be noted that the South Lake Pediatrics office, located directly north of the proposed redevelopment at 17705 Hutchins Drive, currently uses the Sounds of Music Studio parking lot for staff parking. However, as part of this project, the South Lake Pediatrics parking lot will be expanded, providing a net increase of 38 spaces to their current parking lot.
Trip Generation

To account for traffic impacts associated with the proposed redevelopment, a trip generation estimate for the weekday a.m. and p.m. peak hours and a daily basis was developed. The trip generation estimate for the proposed redevelopment, shown in Table 3, was developed using a combination of existing traffic counts collected at the site access locations and the *ITE Trip Generation Manual, 9th Edition*. For comparison purposes, trips generated by the existing developments are shown in Table 3.

### Table 3. Trip Generation Estimate

<table>
<thead>
<tr>
<th>Land Use Type (ITE Code)</th>
<th>Size</th>
<th>A.M. Peak Hour</th>
<th>P.M. Peak Hour</th>
<th>Daily Trips</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>In</td>
<td>Out</td>
<td>In</td>
</tr>
<tr>
<td><strong>Existing Land Use</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stubbe and Associates</td>
<td>Driveway Counts</td>
<td>5</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Sounds of Music Studio/Southlake Pediatrics Employee Parking (1)</td>
<td>Driveway Counts</td>
<td>17</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total Existing Site Trips</strong></td>
<td></td>
<td>22</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td><strong>Proposed Land Use</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Senior Adult Housing-Attached (252)</td>
<td>45 DU</td>
<td>3</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Assisted Living (254)</td>
<td>55 Beds</td>
<td>5</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total Proposed Site Trips</strong></td>
<td></td>
<td>8</td>
<td>9</td>
<td>11</td>
</tr>
<tr>
<td><strong>Total Change in Site Trips</strong></td>
<td></td>
<td>(-14)</td>
<td>+6</td>
<td>+5</td>
</tr>
</tbody>
</table>

(1) Includes traffic generated by the Sounds of Music Studio and employee parking from the Southlake Pediatrics building.

(2) Daily trips estimated using 13-hour driveway counts.

Results of the trip generation comparison between the proposed redevelopment and the existing land use indicate that the proposed redevelopment will generate approximately eight (8) fewer a.m. peak hour trips, one (1) additional p.m. peak hour trips, and an additional 101 daily trips. Due to the similar number of trips to the redevelopment during the peak hours, future conditions are expected to improve or remain similar to existing conditions. Therefore, future build conditions were not evaluated as part of this study.

Site Review

A review of the proposed redevelopment site plan was completed to identify any issues with regard to intersection sight distance, traffic control, and circulation. As mentioned previously, the Stubbe and Associate signage impedes sight distance onto Old Excelsior Boulevard. Based on a review of the site plan, existing signage is planned to be relocated for Mesaba Capital, which would provide adequate sight distance. However, special consideration should be made to limit any further sight distance impacts from future landscaping and signing, particularly as part of the proposed redevelopment.
State law requires vehicles to yield on driveway approaches and does not require traffic controls to be installed. However, installing stop control at the proposed redevelopment access should be considered. Stop control could minimize driver confusion and provide safety benefits to the intersection.

As noted earlier, eastbound queues on Old Excelsior Boulevard are expected to impact the redevelopment access during the peak hours. If feasible, consider relocating the proposed site access to the west side of the parcel (where the Sounds of Music Studio Access is currently located), approximately 325 feet west of CR 101. Relocating this access would reduce the frequency of Old Excelsior Boulevard queues impacting the driveway and also reduce potential conflicts for entering/exiting vehicles into the site. By shifting this access, additional site plan modifications to parking, driveway aisles, and retaining walls are likely needed.

Parking Review

As previously mentioned, the Mesaba Capital redevelopment is planning to provide a total of 105 parking spaces for the senior housing facility, which includes 48 surface parking spaces and 57 underground garage parking spaces. Also, as part of the redevelopment, the existing South Lake Pediatrics parking lot will be reconstructed to provide a net increase of 38 parking spaces. To determine if the proposed parking supply will meet the demand for the site, a detailed parking review was completed using a combination of existing parking utilization counts, the *ITE Parking Generation Manual, 4th Edition*, and the City of Minnetonka parking requirements.

Pedestrian observations were conducted to determine the number of South Lake Pediatrics staff currently utilizing the Sounds of Music Studio parking lot. Observations indicate that the Sounds of Music Studio parking lot is predominantly used by South Lake Pediatrics employees (i.e. approximately 85 percent or greater). Therefore, to provide a conservative estimate, all Sounds of Music Studio parking was assumed to be affiliated with South Lake Pediatrics.

SRF conducted off-street parking utilization surveys during three (3) time periods (9:00 a.m., 12:00 p.m., 3:00 p.m.) between Monday, June 5, 2017 and Wednesday, June 7, 2017 at the South Lake Pediatrics and Sounds of Music Studio parking lots. These time periods were selected as they represent the typical peak periods for general medical office buildings. The differing days also provide a variety of parking conditions. The purpose of the parking utilization counts was to establish whether 38 additional parking spaces would be sufficient to accommodate the peak parking demand for South Lake Pediatrics. Results of the parking utilization counts, shown in Table 4, indicate that the highest parking utilization occurred on a Monday, when 28 vehicles were parked in the Sounds of Music Studio parking lot. Overall, the additional 38 parking spaces are expected to provide adequate parking for South Lake Pediatrics.
Table 4. Parking Utilization (June 5, 2017 to June 7, 2017)

<table>
<thead>
<tr>
<th>Lot ID</th>
<th>Parking Supply</th>
<th>Monday</th>
<th>Tuesday</th>
<th>Wednesday</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>3:00PM</td>
<td>12:00PM</td>
<td>9:00AM</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Occupied Spaces</td>
<td>Percent Utilized</td>
<td>Occupied Spaces</td>
</tr>
<tr>
<td>South Lake Pediatrics</td>
<td>53</td>
<td>30</td>
<td>57%</td>
<td>27</td>
</tr>
<tr>
<td>Sounds of Music Studio</td>
<td>40</td>
<td>28</td>
<td>70%</td>
<td>22</td>
</tr>
<tr>
<td>Proposed South Lake Pediatrics Parking Spaces</td>
<td>91 (1)</td>
<td>58</td>
<td>64%</td>
<td>49</td>
</tr>
</tbody>
</table>

(1) Parking supply is composed of existing South Lake Pediatrics parking spaces and the additional 38 parking spaces proposed as part of the redevelopment.

The minimum parking requirement for the proposed redevelopment based on Minnetonka City Code (Chapter 3, Section 300.28) states that for a senior citizen housing, the minimum number of parking spaces required is one space per unit. The code also requires that at least 50 percent of the required parking spaces be provided in an enclosed weather controlled structure connected to the principal structure, such as the proposed parking garage. Additional parking should be provided for visitors based on the “anticipated demand for visitor spaces as determined by the City”. Based on this guidance, the proposed redevelopment meets the Minnetonka City Code requirements of 100 total spaces (5 space surplus) and 50 enclosed spaces (7 space surplus).

To further evaluate parking requirements for the proposed redevelopment, the *ITE Parking Generation Manual, 4th Edition* was used. ITE estimates an 85th percentile parking demand based on comparable study sites and includes key inputs such as facility size and travel behavior. The 85th percentile is a statistical measure that represents the point at which 85 percent of the study sites had an observed peak parking demand equal to or less than the value. ITE estimates the parking demand for the proposed redevelopment to be 60 spaces, which is a 45-space surplus from the proposed supply. The proposed redevelopment parking supply and demand based on these two methodologies is summarized in Table 5. The proposed parking supply meets both City Code requirements and the parking demand of the redevelopment based on comparable parking data from ITE.

Table 5. Proposed Redevelopment Parking Supply/Demand

<table>
<thead>
<tr>
<th>Land Use Code</th>
<th>Size</th>
<th>Rate</th>
<th>Demand</th>
<th>Surplus/ (Deficit)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>City Parking Requirement</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Senior Citizen Housing Developments (Ch. 3, Section 300.28)</td>
<td>100-Units</td>
<td>1 space per unit</td>
<td>100 spaces (1)</td>
<td>+5</td>
</tr>
<tr>
<td><strong>ITE Parking Demand Rate – 85th Percentile Demand</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Senior Adult Housing (252)</td>
<td>45-Units</td>
<td>0.66 space per unit</td>
<td>30 spaces</td>
<td>-</td>
</tr>
<tr>
<td>Assisted Living (254)</td>
<td>55-Units</td>
<td>0.54 space per unit</td>
<td>30 spaces</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100-Units</td>
<td>-</td>
<td>60 spaces</td>
<td>+45</td>
</tr>
</tbody>
</table>

(1) Does not include additional required parking for visitors.
Summary and Conclusions

Based on the analysis, the following summary and conclusions are offered for your consideration:

1) Results of the existing operations analysis indicate that all study intersections currently operate at an acceptable overall LOS C or better during the a.m., school p.m., and p.m. peak hours. Eastbound queues occasionally extend beyond the Stubbe and Associates driveway during the a.m. and p.m. peak hours, and frequently extend beyond the Sounds of Music Studio driveway during the school p.m. peak hour.

2) The proposed redevelopment consists of a 100-unit senior housing facility, which provides a variety of services including independent living (45-units), assisted living (30-units), memory care (24-units), and a care suite.

3) The existing Sounds of Music Studio access will be removed and the proposed redevelopment will utilize the Stubbe and Associates access, which is located approximately 150 feet west of the CR 101/Old Excelsior Boulevard intersection.

4) The proposed redevelopment is expected to generate approximately eight (8) fewer a.m. peak hour trips, one (1) additional p.m. peak hour trips, and an additional 101 daily trips compared to the existing land use.

5) Due to the similar amount of trips to the redevelopment, future conditions are expected to improve or remain similar to existing conditions.

6) Special consideration should be made to limit any sight distance impacts from future landscaping and signing, particularly as part of the proposed redevelopment.

7) Consider installing stop control at the proposed redevelopment access Old Excelsior Boulevard to reduce driver confusion.

8) If feasible, consider relocating the proposed site access to the west side of the parcel (where the Sounds of Music Studio access is currently located), approximately 325 feet west of CR 101. By shifting this access, additional site plan modifications to parking, driveway aisles, and retaining walls are likely needed.

9) A total of 105 parking spaces are proposed for the senior housing facility, which includes 48 surface parking spaces and 57 underground garage parking spaces. The existing South Lake Pediatrics parking lot will be reconstructed to provide a net increase of 38 parking spaces.

10) Parking utilization counts indicate that the net increase of 38 parking spaces are expected to provide adequate parking for South Lake Pediatrics.

11) The proposed parking supply meets both City Code requirements and the estimated parking demand for the redevelopment based on comparable parking data from ITE.
Enjoy life fully.

Walker Methodist is a faith-based, not-for-profit organization that specializes in lifestyle, housing and health care services for older adults. We own, operate and manage eleven housing communities, provide rehabilitation services, and operate leading sub-acute transitional care centers that help people recover from hospitalizations or surgeries so they can return home.

At Walker Methodist, our mission is Life. And all the living that goes with it.

Independent and Assisted Living
Ease everyday responsibilities and burdens
• Beautiful apartments
• Life-enhancing social events and outings
• Restaurant-quality dining

Care Suites
Live fully
• Care beyond assisted living
• 5-to-1 resident-to-staff ratio
• 24/7 on-site health care staff

Memory Care
Provide safety for loved ones
• Environments designed for safety
• 24/7 on-site health care staff
• Active social events
• Certified Music & Memory℠ program communities

Transitional Care
Regain your health so you can return home
• Short-term and respite health care services
• Rehabilitation services
• Personalized care plans

Long-Term Care
Delight in an invigorating environment
• Care in a comfortable setting
• Exciting social events and outings
• Quality dining in private dining room

Affordable Housing
Comfortable and relaxed surroundings
• Individual interests are encouraged
• Beautiful apartments and grounds
• Close proximity to local businesses

Rehabilitation Program
Get back up to speed
• Physical, occupational and speech therapies
• Options for inpatient or outpatient care
• Services available seven days per week

Adult Day Program
Enjoy an active social life with conveniences
• Enriching activities and healthy meals
• Access to rehabilitation and health services
• Health and medication monitoring

Fitness Center
Achieve optimal health and well-being
• Varied membership options and programs
• Access to fitness center and training classes
• Fitness specialists and nutritionists on staff

Respite Care
Take a break
• Beautifully furnished suite
• Daily rates available
• Access to rehabilitation and health services

Spiritual Life
Find hope, peace and meaning
• Chaplains on site
• Worship services
• Bible studies
• Pastoral care for residents and families
• End-of-life care and support

Dental Clinic
Comfort, convenience, and complete services
• Nationally recognized leader in oral care
• The only full service clinic in MN designed for 55+ population
• All major dental insurance and state health plans accepted
A Care Suites
Edina, MN
(952) 835-8351
• Assisted Living
• Care Suites
• Memory Care
• Respite Care

B Hazel Ridge
Maplewood, MN
(651) 779-9779
• Independent Living
• Light Assisted Living

C Health Center
Minneapolis, MN
(612) 827-5931
• Transitional Care
• Long-Term Care
• Long-Term Memory Care

D Highview Hills
Lakeville, MN
(952) 985-9000
• Independent Living
• Assisted Living
• Care Suites
• Memory Care
• Respite Care

E Kenzie
St. Anthony, MN
(612) 781-0755
• Affordable Housing

F Lyndale
Minneapolis, MN
(612) 869-8484
• Affordable Housing

G Place
Minneapolis, MN
(612) 827-8500
• Independent Living
• Assisted Living

H Plaza
Anoka, MN
(763) 453-7125
• Independent Living
• Assisted Living
• Care Suites
• Memory Care
• Respite Care

I River
Anoka, MN
(763) 421-0434
• Affordable Housing

J Westwood Ridge
West St. Paul, MN
(651) 259-2701
• Independent Living
• Assisted Living
• Care Suites
• Memory Care
• Respite Care
• Transitional Care

K Levande Coming Soon
Cambridge, MN
(612) 827-8409
• Assisted Living
• Memory Care

Outside the Twin Cities Metro Area

Summit Pointe Senior Living
3505 English Glen Avenue
Marion, IA 52302
(319) 373-4242
• Independent Living
• Assisted Living
• Memory Care
a few of the boats are over 24 feet in length. The showroom would display a boat in the winter instead of having one outside.

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

In response to Calvert’s question, Thomas explained that the proposed use would be required to have 12 parking stalls. The number of spaces provided would meet the demand for this use.

Chair Kirk thought that the proposal would be great. He hoped the business would be successful in the proposed location.

_Sewall moved, second by Powers, to recommend that the city council adopt the resolution approving final site and building plans with an expansion permit, conditional use permit, and variance for Midwest MasterCraft at 17717 State Highway 7._

_Sewall, Calvert, Knight, O’Connell, Powers, Schack, and Kirk voted yes._  
_Motion carried._

This item is scheduled to be reviewed by the city council at its meeting on August 28, 2017.

C. Items concerning Mesaba Capital at 17710 and 17724 Old Excelsior Boulevard.

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

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

Calvert asked about stormwater management. Ingvalson explained that there would be a chamber onsite to accommodate stormwater. Stormwater management requirements would be met. The site’s impervious surface requirement would be met.

Sewall asked for the maximum building height allowed in a B-1 District. Ingvalson explained that the height of the building would be restricted by the setbacks. The height requirement is the same for B-1 and R-5 zoning districts.

Ingvalson noted that the site meets parking requirements.
Della Kolpin of Mesaba Capital Development, applicant, introduced herself and Walker Methodist Vice President of Operations Anneliese Peterson. Ms. Kolpin stated that Ingvalson did such an amazing job that she could shorten her presentation. She stated that:

- The proposal would have 97 units including studio to two-bedroom and two-bath apartments.
- There would be common areas and support spaces.
- The site has many attributes including being located near a major intersection, commercial uses, families, schools, churches, and medical facilities.
- She explained the parking plan and parking agreement with South Lake Pediatrics.
- She provided photos of examples of the common spaces, bistro, coffee shop, library, screen porch, dining room, and wellness center. The wellness center would be open to the public.
- The outdoor spaces would be landscaped with pockets of landscape architecture. There would be wild flowers and stone benches. This would set the tone for future developments.

Ms. Peterson stated that:

- Walker Methodist has been providing services to seniors for 71 years. Their mission is to enhance the lives of older adults through care, respect, and service.
- They currently operate 12 properties.
- They provide independent living. The average age is in the 80s.
- The apartment is leased month to month and services can be increased as needed.
- Care suites are an enhanced assisted living product. There would be a one to five staffing ratio. This can be an alternate to skilled care. Apartments would be in a circle with a common space in between. That staff person is always within earshot.
- The units would be market rate. Each unit pays for rent and care. If a resident runs out of funds due to the increased need for care, residents can apply for an elderly waiver which helps the resident cover the cost of services. The goal is to keep residents in the same environment until the end of their life.
- Walker Methodist is 100 percent certified in the memory and music program. This program reduces residents’ anxiety and enhances their ability to communicate.
• The facility is part of the Struthers Parkinson’s network so staff are trained in the protocols to care for someone with Parkinson’s.
• The Minneapolis office has a dental clinic which is open to all residents in all properties.
• Seventy percent of residents belong to the fitness center. The equipment is designed for older adults.

Calvert asked where the enclosed garden space would be located. Ms. Kolpin pointed out the location on the site plan. Walking trails would be attached to the garden.

Chair Kirk asked how many staff would typically be at the facility. Ms. Peterson answered that 10 additional administrative staff would be at the facility Monday through Friday. There would be 10 to 15 staff members during the day, 8 to 10 staff members in the evening, and 3 to 5 staff members overnight depending on the amount of needed care. Staff would park in the most inconvenient spots. The independent residents would have the indoor parking stalls. Parking would be available in the South Lake Pediatrics Lot half of the day on Saturdays, all day Sundays, and weekdays after 6 p.m.

Sewall asked what percent of residents have vehicles. Ms. Peterson stated that all of their properties have available indoor parking spaces for residents. The facilities range from 10 percent (in buildings operating for 5 years or more) to 50 percent (in newer buildings) of residents who have vehicles. A shuttle is provided for weekly trips to Target, grocery stores, and other outings. Sewall liked the shuttle option.

Gordon noted that the traffic study and parking study evaluated assisted and care residents to determine the number of trips. St. Therese has been a good comparison.

Powers asked why so much parking would be included if it would not be needed. Ms. Kolpin stated that the proposal meets ordinance requirements and prefers to error on the side of having too much parking rather than not enough. Gordon added that parking for an apartment building is required by ordinance to plan for possible future use of the facility.

Chair Kirk asked how many ambulance runs to the site would be typical. Ms. Peterson estimated zero to three a month. The model allows for residents to take advantage of homecare which can handle falls to prevent the emergency call. The goal, as a provider, is to have as few emergency calls as possible.
The public hearing was opened.

Karen McGowen, 17809 Old Excelsior Boulevard, stated that:

- The proposed development is not suited to the area because of the infrastructure around it. She is concerned with the traffic and high school traffic. Drivers make a u-turn around a divider to enter the daycare. Bottlenecks happen often.
- There would only be one access to the site. She did not see how a vehicle would turn around to exit the same access.
- There is no sidewalk on the side of the street that the building would be located. The area is landlocked.

No testimony was submitted and the hearing was closed.

Ingvalson explained that the proposal includes adding a sidewalk on the north side of Old Excelsior Boulevard. Gordon noted that there is no sign preventing a u-turn into Kinderkare. He will look into that.

Gordon noted that the proposal would rezone the site from office to residential. The proposed use would create less traffic than an office use.

Schack asked if a traffic study was done to evaluate St. Therese’s impact on traffic. Gordon stated that the traffic and spill over parking concerns expressed for St. Therese at the time it was proposed did not come to fruition. No traffic generation complaints have been received.

Schack asked if Applewood Pointe created any traffic complaints. Thomas explained that the only complaint received occurred when the facility first opened and numerous residents moved in at the same time. Those units are all owner occupied, so residents moved in all of their belongings.

O’Connell is in favor of the proposal. The rezoning would decrease the site’s density. An office use would generate a lot more traffic at the wrong time of day given the high school issue. The proposal fits the long-term plan. He confirmed with Gordon that the sidewalk and landscaping are conditions of approval.

Sewall frequents South Lake Pediatric and he has never had a parking problem.

Calvert thought the design would be very attractive.
Chair Kirk thought the size of the building might be a little large for the view from the single-family residences. The proposal would be an appropriate transition. It would be very attractive and a relatively quiet one. He supports the proposal.

Calvert shared his concern. She took pictures of the property from across the street to help visualize how the proposal would look. She was concerned with the mass. The building would be very attractive and is needed by a fast-growing demographic in the community.

Powers moved, second by Knight, to recommend that the city council adopt an ordinance rezoning the properties from B-1 to R-5; approving preliminary and final plats; and approving final site and building plans with a variance associated with Mesaba Capital at 17710 and 17724 Old Excelsior Boulevard.

Sewall, Calvert, Knight, O’Connell, Powers, Schack, and Kirk voted yes. Motion carried.

This item is tentatively scheduled to be reviewed by the city council at its meeting on August 28, 2017.

9. Other Business

A. Concept plan review for Villa West at 16913 and 17101 State Highway 7.

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

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

Schack noted that exiting the site and getting on Highway 7 was difficult. Thomas explained the proposed traffic pattern. Schack was concerned with traffic safety related to entering and exiting the site. Chair Kirk suggested switching the entrance and exit.

Powers preferred two entrances from Highway 7 to provide another opportunity if a driver missed the first entrance.

Sewall asked if it would be possible to access Sandy Lane or Clear Spring Road. Thomas stated that had been considered, but deemed unfeasible.
The City Of Minnetonka Ordains:

Section 1.

1.01 The properties at 17710 and 17724 Old Excelsior Boulevard are hereby rezoned from B-1, office, to R-5, high-density residential.

1.02 The properties are legally described as EXHIBIT A.

Section 2.

2.01 This ordinance is based on the following findings:

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

2. The rezoning would be consistent with 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:

   • Preliminary Plat, date received June 28, 2017
   • Revised Site Plan, date received August 1, 2017
   • Site Plan Enlargement, date received June 28, 2017
   • Grading Plan, date received June 28, 2017
• Utility Plan, date received June 28, 2017
• Landscape Plan, date received June 28, 2017
• Landscape Plan Nots and Details, date received June 28, 2017
• SWPPP- Proposed Conditions, date received June 28, 2017
• SWPPP- Details, date received June 28, 2017
• Architectural Plans (A.01, A1.1, A1.2, A3.1, A3.2, A3.3), date received June 28, 2017


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 August 28, 2017.

Terry Schneider, Mayor

ATTEST:

David E. Maeda, City Clerk

ACTION ON THIS ORDINANCE:

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

Date of publication:
I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on August 28, 2017.

David E. Maeda, City Clerk
Date:
EXHIBIT A

PARCEL A (17710 Old Excelsior Blvd (per Title Commitment No. 324.39)):

Tract E, REGISTERED LAND SURVEY No. 149G, Hennepin County, Minnesota.
(Torrens Property)
(Torrens Certificate No. 1118134)

PARCEL B (17724 Old Excelsior Blvd (per Title Commitment No. 52871)):

That part of the Southeast Quarter of Section 30, Township 117, Range 22, described as follows:

Beginning at the intersection of the West line of the East 544.42 feet of the Southeast Quarter of said Section 30, and the Northeasterly line of Excelsior Boulevard, now known as County Road No. 3; thence north along said West line of said East 544.42 feet a distance of 300.00 feet; thence East at right angles a distance of 145.00 feet; thence South on a line 145.00 feet East of, measured at right angles to and parallel with, said West line to the Northeasterly line of said County Road No. 3; thence Northwesterly along the Northeasterly line of said County Road to place of beginning. Hennepin County, Minnesota.
Resolution No. 2017-

Resolution approving preliminary and final plats and final site and building plans, with variances, for Mesaba Capital at 17710 and 17724 Old Excelsior Boulevard

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

Section 1. Background.

1.01 Mesaba Capital has requested approval of preliminary and final plats and final site and building plans, with variances, for a senior housing building.

1.02 The properties are located at 17710 and 17724 Old Excelsior Boulevard. They are legally described on EXHIBIT A of this resolution.

1.03 On August 10, 2017, 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 preliminary and final plat and final site and building plans, with variances.

Section 2. Preliminary and Final Plat Standards and Findings.

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

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

Section 3. Site Plan Standards and Findings.

3.01 City Code §300.27, Subd. 5, outlines several items that must be considered in the evaluation of site and building plans. Those items are incorporated by reference into this resolution.
3.02 The proposal would meet site and building plan standards outlined in the City Code §300.27, Subd.5.

1. The proposal would result in a high-density residential development consistent with the site’s mixed-use designation. Further, the proposal has been reviewed by city planning, public works, engineering, and natural resources staff and found to be generally consistent with the city’s development guides, including the water resources management plan.

2. The proposal requires variances from the zoning ordinance standards. As outlined in Section 4.01 of this report, the requests meet the variance standards.

3. The proposed building and parking lot would be appropriately located with reference to both existing constructed and natural features. The proposed building would fit with the existing office neighborhood by using similar architecture and having a similar building height. Additionally, the proposed building location would work with the existing topography and vegetation.

4. The proposal would visually and physically alter the site and Old Excelsior Boulevard corridor. However, any redevelopment of the subject property consistent with its mixed-use designation or high-density residential, as recommended in the Highway 7 / County Road 101 Village Center Study, would result in such changes.

5. The proposal addresses protections of adjacent and neighboring properties through reasonable provisions. The proposed building would mitigate for runoff on site, using a stormwater chamber. Additionally, the proposal would buffer views of the proposed structure through landscaping along Old Excelsior Boulevard and neighboring property lines.

Section 4. Variance Standards and Findings.

4.01 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.

4.02 The applicant has requested the following variances:

<table>
<thead>
<tr>
<th>Variance</th>
<th>Required</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Side and Rear Yard Setbacks</td>
<td>69 ft</td>
<td>26 ft (W)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>26 ft (E)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>20 ft (N)</td>
</tr>
<tr>
<td>Parking Lot Setback</td>
<td>10 ft</td>
<td>0 ft</td>
</tr>
<tr>
<td>Parking Lot Aisle Width</td>
<td>26 ft</td>
<td>24 ft</td>
</tr>
</tbody>
</table>

Separate findings have been included for each of the three variance categories. Please see the sections below.

4.03 The proposed side and rear yard setbacks would meet the variance standards outlined in the City Code §300.07 Subd. 1.

1. Purpose and Intent of the Zoning Ordinance:

The proposal, and resulting variance request, would be in keeping with the city’s zoning ordinance. The intent of the ordinance, as it pertains to high-density residential side and rear yard setback requirements, is to ensure an appropriate distance between structures based on the height of the building. As such, the proposed setbacks are consistent with the existing side and rear yard setbacks of several multiple story office buildings within the area.

<table>
<thead>
<tr>
<th>Property</th>
<th>Approximate Side/Rear Yard Setback</th>
</tr>
</thead>
<tbody>
<tr>
<td>5130 County Road 101</td>
<td>23 ft</td>
</tr>
<tr>
<td>17705 Hutchins Drive</td>
<td>33 ft</td>
</tr>
<tr>
<td>17809 Hutchins Drive (one story with pitched roof)</td>
<td>23 ft</td>
</tr>
<tr>
<td>5125 Porter Avenue</td>
<td>20 ft</td>
</tr>
</tbody>
</table>

The proposed building setbacks would have similar property line setbacks as multi-family buildings previously approved by the city. However, none of these properties were required to obtain a variance as they were zoned in districts (PID or PUD) that allow flexible setbacks based on city council discretion.
2. Consistent with the Comprehensive Plan:

The proposal would be consistent with the city’s comprehensive plan. The subject property is guided for mixed-use. This designation has been established to allow flexibility in land use and creative site design. The proposed use of this property, high-density residential, would be consistent with this objective.

3. Practical Difficulties: There are practical difficulties in complying with the ordinance.

   a) Reasonableness and Neighborhood Character: The request for a variance from the required side and rear yard setbacks to be reasonable as:

      1) The proposed setbacks are consistent with the side and rear yard setbacks of other multiple story buildings within the area.

      2) The proposed setbacks are similar to the property line setbacks approved for other apartment buildings within the city.

   b) Circumstance Unique to the Property: The Highway 7 / County Road 101 Village Center study identified the subject property as an appropriate location for high-density residential development. The narrow shape of the lot, combined with the requirement for sheltered parking and adding architectural interest to the roofline (which both raise the height of the building), create a practical difficult for high-density development on the property without acquiring property line setback variances.

4.04 The proposed parking lot setback would meet the variance standards outlined in the City Code §300.07 Subd. 1.

1. Purpose and Intent of the Zoning Ordinance:
The proposal, and resulting variance request, would be in keeping with the city’s zoning ordinance. The intent of the ordinance, as it pertains to parking lot setbacks, is to ensure an appropriate separation between structures and parking lots. The proposed zero foot setback would be appropriate as the parking lot would be shared between the adjacent properties.

2. Consistent with the Comprehensive Plan:

The proposal would be consistent with the city’s comprehensive plan. The subject property is guided for mixed-use and parking lot setback variance would not create an inconsistency with the comprehensive plan.

3. Practical Difficulties: There are practical difficulties in complying with the ordinance.

- Reasonableness: The request for a zero-foot parking lot setback would be appropriate, as the parking lot would be shared between the adjacent properties.

- Circumstance Unique to the Property: The adjacent property (17705 Hutchins Drive) is currently under parked. The proposed project would add parking spaces to the adjacent property and bring the property closer to conformance with city ordinance.

- Neighborhood Character: The zero-foot parking lot setback would maintain the existing neighborhood character, as the property adjacent to the subject properties currently has a shared parking lot between the two properties (17809 Hutchins Drive and the property directly south).

4.05 The proposed parking lot aisle width would meet the variance standards outlined in the City Code §300.07 Subd. 1.

1. Purpose and Intent of the Zoning Ordinance:

The proposal, and resulting variance request, would be in keeping with the city’s zoning ordinance. The intent of the ordinance, as it pertains to parking aisle widths, is to ensure safe passage for vehicles as they navigate through parking lots. The proposed 2-foot aisle width would be appropriate. The American Planning Association’s *Planning and Urban Design Standards* manual finds that a 23-foot wide aisle would be adequate width for a low level of service parking area.
2. Consistent with the Comprehensive Plan:

The proposal would be consistent with the city’s comprehensive plan. The subject property is guided for mixed-use and parking lot aisle width variance would not create an inconsistency with the comprehensive plan.

3. Practical Difficulties: There are practical difficulties in complying with the ordinance.

   a) Reasonableness: The request for a 2-foot aisle width variance would be reasonable as:

      1) The American Planning Association’s *Planning and Urban Design Standards* manual finds that a 23-foot wide aisle would be adequate width for a low level of service parking area.

      2) City ordinance would permit a 24-foot wide parking aisle if the lot were within a parking structure.

   b) Circumstance Unique to the Property: The adjacent property (17705 Hutchins Drive) is currently under parked and has a non-conforming parking lot aisle. The proposed project would add several parking stalls to the adjacent property and bring it closer to conformance with city ordinance. In addition, the proposal would not require a variance if the northern aisle was reduced to the existing 21-foot wide width and the southern aisle was increased to 26 feet wide. However, increasing the northern aisle width and creating a 24-foot wide southern aisle width is the safest and most appropriate design.

   c) Neighborhood Character: The 2-foot drive aisle width variance would not alter the essential character of the neighborhood. The 24-foot wide parking lot drive aisle would be wider than the existing drive aisle currently on the site.

Section 5. City Council Action.

5.01 The above-described preliminary and final plats and site and building plans, with variances, are hereby approved subject to the following conditions:

1. Subject to staff approval, Mesaba Capital Project must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:
• Preliminary Plat, date received June 28, 2017
• Revised Site Plan, date received August 1, 2017
• Site Plan Enlargement, date received June 28, 2017
• Grading Plan, date received June 28, 2017
• Utility Plan, date received June 28, 2017
• Landscape Plan, date received June 28, 2017
• Landscape Plan Notes and Details, date received June 28, 2017
• SWPPP- Proposed Conditions, date received June 28, 2017
• SWPPP- Details, date received June 28, 2017
• Architectural Plans (A.01, A1.1, A1.2, A3.1, A3.2, A3.3), date received June 28, 2017

2. Prior to the release of the final plat for recording purposes:
   
a) Submit the following:
   
   1) Final plat drawing with easement legend and easement dedication clause.
   
   2) Two sets of mylars for city signatures.
   
   3) An electronic CAD file of the plat in microstation or DXF.
   
   4) Title evidence that is current within thirty days before release of the final plat for the city attorney’s review and approval.
   
   5) A trail easement document that provides a trail easement over the proposed sidewalk along Old Excelsior Boulevard.

b) This resolution must be recorded with Hennepin County.

3. Prior to issuance of a building permit:
   
a) Submit the following for staff review and approval:
   
   1) An electronic PDF copy of all required plans and specifications.
2) One full size set of construction drawings and project specifications.

3) Items associated with site work:
   a. Final site, grading, stormwater management, utility, landscape, tree mitigation, and natural resource protection plans, and a stormwater pollution prevention plan (SWPPP) for staff approval.

1. Final site plan:
   - Must include structural plans for retaining walls over four feet in height; a licensed structural engineer must design these plans.
   - Show drive lane width of 26 feet with minimum inside turning radius of 22 feet for fire apparatus. This submittal must include an exhibit illustrating truck turning movements/templates.

2. Final stormwater management plan must meet the requirements of the city’s Water Resources Management Plan, Appendix A. Design. The plan must include a narrative, impervious surface information, soil boring data, and modeling demonstrating rate control and water quality treatment.
   - Underground stormwater chambers must be able to support 83,000 lb. fire apparatus and 10,800 psf outrigger load.

3. Final utility plan must include:
   - Looped water feed.
   - Utility information. Provided information indicates two sewer and two water services to the site. Service
sizes must be confirmed. If possible, the water services must be utilized and tied together. If not, new services must be tapped to the main and the old services removed back to the main, turn off the corp. or cut out tee and sleeve. Excavations into the new roadway will require road replacement of the utility trench. The surface will further be required to be milled full width between existing street saw cuts for a 2-inch overlay.

- Note that unused sewer services will be removed back to the main and the wye will be cut out and sleeved. Excavations into the new roadway will require road replacement of the utility trench. The surface will further be required to be milled full width between existing street saw cuts for a 2” overlay.

4. Final landscaping and tree mitigation plans must:

- Meet minimum landscaping and mitigation requirements as outlined in city code. However, at the sole discretion of natural resources staff, mitigation may be adjusted based on-site conditions.

- Be revised in consultation with staff. Two northern red maples are specified in an area that is only 7 feet wide. The applicant must work with staff to find two trees that are smaller in stature at maturity.

- Include an itemized plant material list to illustrate that the landscape value of the project.
• Not include grading within 10 feet of the west property line in areas adjacent to trees.

b. A sequencing plan for review and approval of the city engineer. The plan must notate the series of construction events that will occur involving driveway construction and sanitary sewer and water main connections and disconnections. The number of events in which disturbances to the street and utilities occur must be minimized. For example, multiple crews may be required to disconnect water services simultaneously.

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

1. Development agreement.

2. Cross-access and cross parking agreements between the subject property and 17705 Hutchins Drive.

3. An encroachment agreement, or language in covenants, is required for retaining walls within the public easements.

4. A trail easement. The easement must cover the newly constructed pedestrian trail on private property along Old Excelsior Boulevard.

5. Stormwater maintenance agreements over all stormwater facilities. This agreement must state that the city will not maintain private structures (stormwater chambers) within public easements.

6. Private maintenance agreement for storm sewer with 17705 Hutchins Drive.

7. A private fire hydrant maintenance agreement.
d. Proof of subdivision registration and transfer of NPDES permit.

e. Evidence of closure/capping of any existing wells, septic systems, and removal of any existing fuel oil tanks.

f. 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.

g. Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to construct parking lot and utility improvements, comply with grading permit, tree mitigation requirements, landscaping 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. A final as-built survey has been submitted;

2. An electronic CAD file or certified as-built drawings for public infrastructure in microstation or DXF and PDF format have been submitted;

3. Vegetated ground cover has been established; and

4. Required landscaping or vegetation has survived one full growing season.

h. 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:

1. The property will be brought into compliance within 48 hours of notification
2. If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion or grading problems.
   i. Any required administration and engineering fees.
   j. Park dedication fees in the amount of $500,000. City staff is authorized to reduce this amount commensurate with the cost of providing a trail easement and associated trail construction.

4) Items associated with building work:
   a. A revised building plan that increases the canopy by the main entry height to 13’6”, per the fire code.
   b. A final material and color palate board for staff review and approval.
   c. All required hook-up fees.

b) Obtain and submit a permit from the Minnesota Department of Health.

c) Obtain and submit a sanitary sewer extension permit from the Minnesota Pollution Control Agency.

d) 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.

e) Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff as determined by city staff.

4. The applicant may choose to submit a separate grading permit application to facilitate site work prior to issuance of a building permit. In such case, prior to issuance of a grading permit, the items outlined
in preceding condition 3(a)(3) – “Items associated with site work” – must be submitted for staff review and approval and required erosion control must be installed for inspection.

5. Retaining walls over four feet in height must be engineered.

6. During construction the street must be kept free of debris and sediment.

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

8. The applicant must work with the city for identification of acceptable street light fixtures.

9. Snow removed from the parking lot and drive aisles must be hauled off site.

Adopted by the City Council of the City of Minnetonka, Minnesota, on August 28, 2017.

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

Action on this resolution:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.
I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on August 28, 2017.

__________________________________________
David E. Maeda, City Clerk
EXHIBIT A

PARCEL A (17710 Old Excelsior Blvd (per Title Commitment No. 32439)):

Tract E, REGISTERED LAND SURVEY NO. 149C, Hennepin County, Minnesota. (Torrens Property)
(Torrens Certificate No. 1116134)

PARCEL B (17724 Old Excelsior Blvd (per Title Commitment No. 52871)):

That part of the Southeast Quarter of Section 30, Township 117, Range 22, described as follows:

Beginning at the intersection of the West line of the East 544.42 feet of the Southeast Quarter of said Section 30, and the Northeasternly line of Excelsior Boulevard, now known as County Road No. 3; thence north along said West line of said East 544.42 feet a distance of 300.00 feet; thence East at right angles a distance of 145.00 feet; thence South on a line 145.00 feet East of, measured at right angles to and parallel with, said West line to the Northeasternly line of said County Road No. 3; thence Northeasterly along the Northeasternly line of said County Road to place of beginning, Hennepin County, Minnesota.
**City Council Agenda Item #14B**
**Meeting of August 28, 2017**

**Brief Description**
Items concerning Minnetonka Hills Apartments at 2800 and 2828 Jordan Avenue:

1) Major amendment to an existing master development plan;

2) Final site and building plans, with parking variance; and

3) Preliminary and final plats

**Recommendation**
Adopt the ordinance and resolutions approving the request

**Background**

On July 10, 2017, the city council considered a proposal for Minnetonka Hills Apartments site. As previously proposed, an existing single-family residential home would be removed and a new, five-story apartment building would be constructed. The building would be served by surface and underground parking. The 78 apartments within the building would range in size from 620 square feet for an alcove – or studio – apartment and 1,200 square feet for a two-bedroom unit. The proposal would also introduce a playground area and a sidewalk connection to serve the proposed apartment building, as well as existing apartment buildings on the site.

The city council discussed the proposal at length and ultimately tabled the requests to allow the developer additional time to reduce the amount of steep slope impact.

**Revised Plans**

Based on the comments received at the July 10 council meeting, and at subsequent meetings with city staff, the applicant has submitted revised plans. These plans address many of the issues raised by the council and the public.

Revisions to the previous plan are shown in red on the image to the left. A full version of the plan is attached. The following table summarizes the revised plans in more detail:
### Meeting of August 28, 2017
**Subject: Minnetonka Hills Apartments**

<table>
<thead>
<tr>
<th>Building Information</th>
<th>Previous Plan</th>
<th>Proposed Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number of Units</strong></td>
<td>78 units</td>
<td>78 units</td>
</tr>
<tr>
<td><strong>Building Height</strong></td>
<td>52.5 ft (five stories)</td>
<td>52.5 ft (five stories)</td>
</tr>
<tr>
<td><strong>Building Location</strong></td>
<td>Centrally located on newly created lot.</td>
<td>Building moved 20-feet northwest on the property to reduce impact to natural resources.</td>
</tr>
</tbody>
</table>

**Parking**

**Surface Parking.** The surface parking lot wrapped around the north and west side of the proposed building.

**Underground Parking.** The underground parking extended beyond the footprint of the proposed building to the north.

**Total Parking.** The plan included 60 underground stalls and 62 surface stalls for a total of 122 parking stalls. This equates to 1.56 stalls per unit. **

**Surface parking.** The surface parking lot is now entirely located west of the proposed building. To accommodate the new building location, the parking lot for the existing apartment building has been reconfigured and eight new stalls are shown on the south end of the site. Through these changes, impact to the woodland preservation area (WPA) is significantly reduced.

**Underground Parking.** Rather than extending north of the proposed building, the underground parking is now located under the north end of the new surface parking lot. The revised proposal includes 72 underground stalls compared to the 60 underground stalls of the previous plan. An increase in underground parking reduces the overall footprint of the proposal.

**Total Parking.** As proposed, 72 of the total 117 parking stalls would be underground. The remainder of the parking stalls would be surface parking stalls.
This equates to 1.5 parking stalls per unit overall. **

<table>
<thead>
<tr>
<th>Site Impacts</th>
<th>Previous Plan</th>
<th>Proposed Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Woodland Preservation Area Impact</strong></td>
<td>24% removal</td>
<td>18% removal</td>
</tr>
<tr>
<td><strong>High Priority Trees</strong></td>
<td>35% removal</td>
<td>33% removal</td>
</tr>
<tr>
<td><strong>Impervious surface</strong></td>
<td>47,538 sf</td>
<td>41,169 sf</td>
</tr>
</tbody>
</table>

Driveway access is moved approximately 100 feet to the west. This reduces conflict at the site entry and increases the amount of screening from Highway 169.

The eastern end of an existing retaining wall is removed and grading and brush clearing would be done to improve site visibility around the curve of Jordan Avenue.

* As measured to the new property line
** Requires variance

Staff Analysis

Initially, staff supported the proposed residential land use but expressed concern related to impacts to natural resources resulting from the proposal. Since the council’s review of the project, the applicant has revised their plans. The following table is intended to summarize staff’s initial findings related to the previous plan and current findings related to the current proposal:

<table>
<thead>
<tr>
<th>Tree Impacts</th>
<th>Previous Plan</th>
<th>Proposed Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The applicant had revised their plans prior to the Planning Commission’s review of the proposal on June 22, 2017 to comply with the city’s tree removal requirements.</td>
<td>The proposed plan further reduces impacts to the site’s WPA and high priority trees. By reconfiguring the proposed parking lot, impact to the WPA from 24% to 18%. Impact to the site’s high priority trees is reduced from 35% to 32% - percent.</td>
</tr>
</tbody>
</table>
Further, the developer has committed to placing the WPA into conservation easement and instituting a stewardship plan to improve the quality of the woodland preservation area by removing buckthorn.

<table>
<thead>
<tr>
<th>Steep Slope Finding One:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The property is physically suitable for the design and siting of the proposed development. The proposed development will preserve significant natural features by minimizing disturbance to existing topographical forms.</td>
<td>While the plan incorporated retaining walls, the proposal would still result in significant slope manipulation of 26-feet and was excessive.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Steep Slope Finding Two:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The development will not result in soil erosion, flooding, severe scarring, reduced water quality, inadequate drainage control or other problems.</td>
<td>The ordinance prohibits construction on slopes exceeding 30-percent. The existing slopes are 26-percent. Runoff from increased impervious surface would be directed to a new catch basin in the southeast corner of the site. Staff was concerned about the intensity of the slope.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Steep Slope Finding 3:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The proposed development provides adequate measures to protect public safety.</td>
<td>Minor modifications would be required to ensure that emergency vehicles could navigate the site.</td>
</tr>
</tbody>
</table>
visibility would be improved.

Summary Comments

Staff acknowledges that any development of the site would result in varying degrees of slope manipulation. Initially, staff was concerned with the amount of impact to the existing trees and slopes. In revising the plan to reconfigure the parking and shift the location of the proposed building, the applicant was able to significantly reduce the amount of impact to the site’s woodland preservation area. Staff finds that this, coupled with the commitment to improve the site’s overall woodland preservation area, outweigh impact to the site’s steep slope.

Staff Recommendation

Recommend the council adopt the following associated with 2800 and 2828 Jordan Avenue:

1) Ordinance approving a major amendment to the existing master development plan;

2) Resolution approving final site and building plan, with a parking variance.

3) Resolution approving preliminary and final plats.

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

Originator: Ashley Cauley, Senior Planner
Project: Minnetonka Hills Apartment 2nd Addn
Applicant: Alliant Engineering
Address: 2800/2828 Jordan Ave
Project No. 86157.17a

This map is for illustrative purposes only.
Lot: Block 7, Minnetonka Hills Apartments, lying North of the North line of Outlot C, said Addition and its Westerly extension, Hennepin County, Minnesota.

And,

Outlot C, Minnetonka Hills Apartments, Hennepin County, Minnesota.

And,

Township 117, Range 22, in Hennepin County, Minnesota,

EXCEPT that part lying Easterly of a line parallel with and distant 25 feet Westerly of the following described line: Commencing at the Southeast corner of Section 12, Township 117, Range 22; thence North along the East line thereof 784.96 feet; thence deflect to the left at an angle of 90 degrees, a distance of 60 feet to the actual point of beginning of the line to be described; thence deflect to the right at an angle of 90 degrees, a distance of 136.28 feet; thence deflect to the left along a 26 degree 16 minutes 46 seconds curve (delta angle 49 degrees 16 minutes 15 seconds, tangent distance 99.98 feet), a distance of 150 feet and there terminating.

1. This survey was prepared from legal descriptions supplied and our in house records and may not depict all easements, appurtenances or encumbrances affecting the property.

2. Transcribed coordinates in survey are derived to information from sources not subject to a Torrens survey. Therefore, survey boundaries may not be identical to a Torrens survey.

3. Verification of this bearing system is based on the Hennepin County Coordinate System NAD83. Coordinates are Hennepin County ground feet, based on the Minnesota Coordinate System, Southern Zone, NAD83, 1986 (non HARN values). Coordinate values dated January, 2005.

4. All distances are in feet.

5. The area of the above described property is 342,105 square feet or 7.850 acres.

6. There are 79 regular striped parking stalls and 2 handicapped parking stalls.

7. The property lies within Zone X (unshaded - areas determined to be outside the 0.2% annual chance floodplain) Zone X (shaded - areas of 0.2% annual chance flood) of Federal Emergency Management Agency (FEMA) Flood Insurance Community Panel No. 27053C0334E, effective September 2, 2004.

8. Bench Mark: City of Saint Louis Benchmark No. P 117 A, is a bench mark disc located on 2.0 miles north of Hopkins, in the southeast corner of County Road 16 (Cedar Lake Road) bridge number 27517 over trunk highway 169. Has an elevation of 945.25 feet NAD83.

9. Bench Mark: TNH located along Jordon Avenue South with a elevation of 929.02 feet NAD83.
GRADING NOTES:
1. All project sites shall be given proper grading.
2. Subsurface drainage systems shall be given due consideration in all siting.
3. Surface water drainage systems shall be aligned to the existing street alignment.
4. The contractor shall use the approved grading plan in the plan and shall comply with the specifications of the plan.
5. All grading shall be at right angles to the street.
6. All construction sites shall be graded at all construction access points.
7. Erosion control systems shall be provided for all construction access points.
8. Grading to project site shall be given due consideration in all siting.
9. Grading shall be in accordance with the approved grading plan.
10. Grading shall be in accordance with the approved grading plan.
11. Grading shall be in accordance with the approved grading plan.
12. Grading shall be in accordance with the approved grading plan.
13. Grading shall be in accordance with the approved grading plan.
14. Grading shall be in accordance with the approved grading plan.
15. Grading shall be in accordance with the approved grading plan.

EROSION CONTROL NOTES:
1. Erosion control systems shall be provided for all construction access points.
2. Erosion control systems shall be provided for all construction access points.
3. Erosion control systems shall be provided for all construction access points.
4. Erosion control systems shall be provided for all construction access points.
5. Erosion control systems shall be provided for all construction access points.
6. Erosion control systems shall be provided for all construction access points.
7. Erosion control systems shall be provided for all construction access points.
8. Erosion control systems shall be provided for all construction access points.
9. Erosion control systems shall be provided for all construction access points.
10. Erosion control systems shall be provided for all construction access points.
11. Erosion control systems shall be provided for all construction access points.
12. Erosion control systems shall be provided for all construction access points.
13. Erosion control systems shall be provided for all construction access points.
14. Erosion control systems shall be provided for all construction access points.
15. Erosion control systems shall be provided for all construction access points.
DBH

Height
(1"=2.5')

Classification

Remove

Removal Notes

Remove
Inches

"Mitigation
(Inch or ft.)"

Tag #

Common Name

Scientific Name

DBH

Height
(1"=2.5')

Classification

Remove

Removal Notes

Remove
Inches

"Mitigation
(Inch or ft.)"

Tag #

Common Name

Scientific Name

DBH

Height
(1"=2.5')

Classification

Remove

Removal Notes

Remove
Inches

"Mitigation
(Inch or ft.)"

SIGNIFICANT TREE INVENTORY

Scientific Name

PUD AMENDMENT

Common Name

MINNETONKA HILLS APARTMENTS

Tag #


PERVIOUS vs. IMPERVIOUS CALCULATIONS - PROPOSED PLAN
MINNETONKA HILLS APARTMENTS, MINNETONKA, MN

CALCULATIONS:
LOT AREA..................340,821 SF / 7.81 ACRES

TOTAL IMPERVIOUS AREA.....126,725 SF / 2.90 ACRES (37.2%)
TOTAL PERVIOUS AREA........214,096 SF / 4.91 ACRES (62.8%)
MINNETONKA HILLS APARTMENTS

MARCH 14, 2017

BUILDING SUMMARY

BUILDING/SITE DATA
- 5 STORIES/78 UNITS
- 14 UNITS FOR 1ST FLOOR
- 16 UNITS PER STORY 2-5
- UNIT MIX
  - ONE BEDROOM/1 BATH = 39 UNITS (50%) 720 SF
  - ALCOVE/1 BATH = 19 UNITS (24%) 589 SF
  - TWO BEDROOM/2 BATH = 19 UNITS (24%) 1062 SF
- TOTAL 78 UNITS
PROPOSED UNDERGROUND PARKING
60 STALLS
GFE 938

DRAWN BY:
DATE:

DEVELOPING REAL ESTATE FOR PEOPLE,
Minneapolis, MN 55415
500 Washington Avenue South, Suite 3000
Bus: (612) 395-7000  Fax: (612) 395-7002

CSM
BUSINESS & COMMUNITIES

MINNETONKA HILLS APARTMENTS
MINNETONKA, MN

MINNETONKA, MN

MARCH 14, 2017

JOHN FERRIER

A-3

GARAGE FLOOR PLAN

NORTH
Traffic Study
Memorandum

To: Ashely Cauley, Senior Planner
   City of Minnetonka
From: Matt Pacyna, PE, Senior Associate
      Tom Sachi, PE, Senior Engineer
Date: May 26, 2017
Subject: 2800 Jordan Avenue Parking and Traffic Study

Introduction

SRF has completed a parking and traffic study for the proposed residential development in the southwest quadrant of the US 169/Cedar Lake Road interchange in Minnetonka (see Figure 1: Project Location). The proposed development would be constructed on a vacant parcel adjacent to the northern apartment building within the Minnetonka Hills residential complex. The main objectives of this study are to review existing operations within the study area, evaluate traffic and parking impacts of the proposed development, and recommend any necessary improvements to accommodate the proposed development. The following information provides the assumptions, analysis, and recommendations offered for consideration.

Existing Conditions

Existing conditions were reviewed to establish a baseline to identify future impacts associated with the proposed development. The evaluation of existing conditions includes intersection turning movement counts, field observations, and an intersection capacity analysis.

Data Collection

Weekday turning movement counts were collected from 6:00 a.m. to 7:00 p.m. at the Jordan Avenue and Minnetonka Hills driveway to identify the existing site trip generation and peak hour turning movement volumes. In addition to the driveway counts, historical peak period intersection turning movement counts and Minnesota Department of Transportation (MnDOT) Loop Detector Ramp data were collected at the following locations as part of a 2016 signal retiming project. The 2016 data was utilized to identify non-construction conditions.

- Cedar Lake Road and Jordan Avenue
- Jordan Avenue and US 169 Southbound Ramps

Observations were completed to identify roadway characteristics (i.e. roadway geometry, posted speed limits, and traffic controls) within the study area and the existing parking supply/demand at the site. Further discussion regarding parking is provided later in this memorandum. Average daily traffic volumes were provided by MnDOT.
Figure 1

Project Location
2800 Jordan Avenue Parking and Traffic Study
City of Minnetonka
Cedar Lake Road is primarily a three-lane (i.e. two-lane with turn lanes) undivided roadway, while Jordan Avenue is primarily a two-lane roadway. The posted speed limit along Cedar Lake Road is 35 miles per hour (mph), while other roadways are assumed to be 30 mph. Jordan Avenue has a 20 mph advisory speed limit south of the US 169 Southbound Ramps due to the limited sight distance within the area. The Cedar Lake Road/Jordan Avenue intersection is signalized, while the remaining study intersections are side-street stop controlled. It should be noted that the Jordan Avenue/US 169 Southbound Ramp intersection has a northbound stop control, southbound free movement, and westbound yield control. Existing geometrics, traffic controls, and volumes are shown in Figure 2.

**Intersection Capacity Analysis**

An existing intersection capacity analysis was completed for the weekday a.m. and p.m. peak hours to establish a baseline condition to which future traffic operations can be compared. The study intersections were analyzed using Synchro/SimTraffic (Version 9).

Capacity analysis results identify a Level of Service (LOS), which indicates the quality of traffic flow through an intersection. Intersections are given a ranking from LOS A through LOS F. The LOS results are based on average delay per vehicle, which correspond to the delay threshold values shown in Table 1. LOS A indicates the best traffic operation, with vehicles experiencing minimal delays. LOS F indicates an intersection where demand exceeds capacity, or a breakdown of traffic flow. Overall intersection LOS A through LOS D is generally considered acceptable in the Twin Cities Metro Area.

**Table 1 Level of Service Criteria for Signalized and Unsignalized Intersections**

<table>
<thead>
<tr>
<th>LOS Designation</th>
<th>Signalized Intersection Average Delay/Vehicle (seconds)</th>
<th>Unsignalized Intersection Average Delay/Vehicle (seconds)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>≤ 10</td>
<td>≤ 10</td>
</tr>
<tr>
<td>B</td>
<td>&gt; 10 - 20</td>
<td>&gt; 10 - 15</td>
</tr>
<tr>
<td>C</td>
<td>&gt; 20 - 35</td>
<td>&gt; 15 - 25</td>
</tr>
<tr>
<td>D</td>
<td>&gt; 35 - 55</td>
<td>&gt; 25 - 35</td>
</tr>
<tr>
<td>E</td>
<td>&gt; 55 - 80</td>
<td>&gt; 35 - 50</td>
</tr>
<tr>
<td>F</td>
<td>&gt; 80</td>
<td>&gt; 50</td>
</tr>
</tbody>
</table>

For side-street stop controlled intersections, special emphasis is given to providing an estimate for the level of service of the side-street approach. Traffic operations at an unsignalized intersection with side-street stop control can be described in two ways. First, consideration is given to the overall intersection level of service. This takes into account the total number of vehicles entering the intersection and the capability of the intersection to support these volumes.
Cedar Lake Road

Jordan Avenue

169

12,200

10,500

Project Location

1,400

Note: Northbound Jordan Avenue is stop controlled, while southbound is a free movement. The westbound off-ramp is yield controlled.

LEGEND

XX - A.M. Peak Hour Volume
(XX) - P.M. Peak Hour Volume
XXXX - Existing Average Daily Traffic Volume
○ - Side-Street Stop Control
■ - Signalized Control

Note: Northbound Jordan Avenue is stop controlled, while southbound is a free movement. The westbound off-ramp is yield controlled.

Figure 2

Existing Conditions

2800 Jordan Avenue Parking and Traffic Study
City of Minnetonka
Second, it is important to consider the delay on the minor approach. Since the mainline does not have to stop, the majority of delay is attributed to the side-street approaches. It is typical of intersections with higher mainline traffic volumes to experience high levels of delay (i.e. poor levels of service) on the side-street approaches, but an acceptable overall intersection level of service during peak hour conditions.

Results of the existing intersection capacity analysis shown in Table 2 indicate that the study intersections currently operate at an acceptable overall LOS B or better during the a.m. and p.m. peak hours with the existing geometric layout and traffic controls. No significant delay or queuing issues were identified.

Table 2 Existing Intersection Capacity Analysis

<table>
<thead>
<tr>
<th>Intersection</th>
<th>A.M. Peak Hour</th>
<th>P.M. Peak Hour</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>LOS</td>
<td>Delay</td>
</tr>
<tr>
<td></td>
<td>B</td>
<td>12 sec.</td>
</tr>
<tr>
<td></td>
<td>B</td>
<td>10 sec.</td>
</tr>
<tr>
<td>Jordan Avenue and US 169 Southbound Ramps</td>
<td>A/B</td>
<td>14 sec.</td>
</tr>
<tr>
<td></td>
<td>A/A</td>
<td>8 sec.</td>
</tr>
<tr>
<td>Jordan Avenue and Minnetonka Hills Driveway</td>
<td>A/A</td>
<td>9 sec.</td>
</tr>
</tbody>
</table>

(1) Indicates an unsignalized intersection with side-street stop control, where the overall LOS is shown followed by the worst approach LOS. The delay shown represents the worst side-street approach delay.

Proposed Development

The proposed development, shown in Figure 3, would occupy a vacant parcel adjacent to the 2828 Jordan Avenue Apartment building. The proposed development would compromise of 78 apartment units, which were assumed to be fully operational by the year 2018. Access to the proposed development is expected to be constructed along the existing driveway to the adjacent Minnetonka Hills apartments. Approximately 62 surface parking spaces and 60 underground parking spaces are proposed. Additional parking information is provided later in this memorandum.

Year 2019 Conditions

To identify potential impacts associated with the proposed development, traffic forecasts for year 2019 conditions (i.e. one-year after opening) were developed. The year 2019 conditions take into account general area background growth, traffic generated by the proposed development, and area travel pattern changes due to the southbound US 169/16th Street Ramp closure planned in fall 2017. The following sections provide details on the background traffic forecasts, estimated trip generation, and intersection capacity analysis for year 2019 conditions.
MINNETONKA HILLS SECOND ADDITION

Figure 3

Site Plan
2800 Jordan Avenue Parking and Traffic Study
City of Minnetonka

May 2017
Background Traffic Growth

To account for general background growth in the area, an annual growth rate of one-half percent was applied to the existing peak hour traffic volumes to develop year 2019 background traffic forecasts. This growth rate is generally consistent with historical trends within the study area.

16th Street Southbound Ramp Closure

Travel pattern changes are expected due to the closure of the southbound US 169 Ramps to/from 16th Street, immediately north of the study area. Leveraging data collected during the Ford Road Before and After Study, currently being completed by SRF, the expected traffic volume changes to the Jordan Avenue/US 169 Southbound Ramp intersection as a result of the closure were included in the year 2019 build conditions.

Trip Generation

To account for traffic impacts associated with the proposed development, a trip generation estimate for the weekday a.m. and p.m. peak hours as well as on a daily basis were developed. The future trip generation estimate for the site, shown in Table 3, was developed using two different approaches. The first approach used a rate based on the existing traffic counts collected at the adjacent apartment driveways, while the second approach used the Institute of Transportation Engineers (ITE) Trip Generation Manual, Ninth Edition.

Table 3 Trip Generation Estimate

<table>
<thead>
<tr>
<th>Land Use Type (ITE Code)</th>
<th>Size</th>
<th>A.M. Peak Hour Trips</th>
<th>P.M. Peak Hour Trips</th>
<th>Daily Trips</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>In</td>
<td>Out</td>
<td>In</td>
</tr>
<tr>
<td>Existing Apartment Rate</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Apartments (1)</td>
<td>78 Units</td>
<td>5</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>ITE Rate</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Apartments (220)</td>
<td>78 Units</td>
<td>8</td>
<td>32</td>
<td>31</td>
</tr>
</tbody>
</table>

(1) Based on actual driveway counts collected April 18, 2017.

The trip generation rate of the existing apartment building is approximately one-third less than the rate from ITE during the a.m. and p.m. peak hours. However, to provide a conservative estimate, the ITE rate approach was carried forward for the future analysis. Results of the trip generation estimate indicate the proposed development is expected to generate 40 weekday a.m. peak hour, 48 p.m. peak hour, and 519 daily trips to/from the site. Trips generated were distributed to the study area based on the directional distribution shown in Figure 4, which was developed based on existing travel patterns. Future year 2019 build conditions are shown in Figure 5.
Note: Northbound Jordan Avenue is stop controlled, while southbound is a free movement. The westbound off-ramp is yield controlled.
Year 2019 Intersection Capacity Analysis

To determine if the existing roadway network can accommodate year 2019 build traffic forecasts, a detailed intersection capacity analysis was completed. Additionally, the proposed development driveway was analyzed to determine if any internal capacity issues are expected. Results of the year 2019 build intersection capacity analysis shown in Table 4 indicate that all of the study intersections and proposed access locations are expected to operate at an acceptable overall LOS B or better during the a.m. and p.m. peak hours with the existing roadway geometry and traffic controls.

Table 4 Year 2019 Build Intersection Capacity Analysis

<table>
<thead>
<tr>
<th>Intersection</th>
<th>A.M. Peak Hour</th>
<th>P.M. Peak Hour</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>LOS</td>
<td>Delay</td>
</tr>
<tr>
<td>Cedar Lake Road and Jordan Avenue</td>
<td>B</td>
<td>14 sec.</td>
</tr>
<tr>
<td>Jordan Avenue and US 169 Southbound Ramps(^{(1)})</td>
<td>A/B</td>
<td>20 sec.</td>
</tr>
<tr>
<td>Jordan Avenue and Minnetonka Hills Driveway(^{(1)})</td>
<td>A/A</td>
<td>9 sec.</td>
</tr>
<tr>
<td>Minnetonka Hills Driveway and New Site Access(^{(1)})</td>
<td>A/A</td>
<td>9 sec.</td>
</tr>
</tbody>
</table>

(1) Indicates an unsignalized intersection with side-street stop control, where the overall LOS is shown followed by the worst approach LOS. The delay shown represents the worst side-street approach delay.

While no mitigation is necessary from an intersection capacity perspective, additional striping enhancements could be considered. In particular, northbound Jordan Avenue approaching Cedar Lake Road could be striped to indicate a dedicated left-turn lane and a shared through/right-turn lane. Although not currently striped this way, this is how motorists were observed driving. The northbound left-turn lane should be approximately 250 feet in length, which would allow for a 100 foot southbound left-turn lane at the Jordan Avenue/US 169 Southbound Ramp intersection. Although not likely to improve intersection capacity, this striping consideration may help reduce confusion for northbound Jordan Avenue/US 169 Southbound Ramp motorists.

In addition to striping, consideration could be given to review the traffic control at the Jordan Avenue/ US 169 Southbound Ramp intersection. A preliminary review indicates that an all-way stop control or modifying the southbound off-ramp to a stop control from a yield control would allow for an acceptable level of service. In either case, 95th percentile queues for the southbound off-ramp are expected to be approximately 75 to 85 feet, which is an increase of 20 to 30 feet. With the expected construction of the southbound off-ramp deceleration lane (currently being built), these queues may be able to be managed without extending to US 169. Both of these alternative traffic control conditions would help motorists identify who has the right-of-way between northbound Jordan Avenue and westbound off-ramp motorists. Further discussions with MnDOT should occur to determine to the appropriate traffic control and timing.
Parking Review

Parking observations were completed to identify the current parking supply and demand (i.e. utilization) for the site to help determine if there will be sufficient parking on-site to accommodate a parking variance for the proposed development. Observations indicate that there are approximately 169 existing parking spaces on site (88 underground, 81 outdoor). The 88 underground spaces are fully leased and are assigned to specific tenants. Four time periods were reviewed to identify the peak parking demand for the site. These time periods were all overnight, when residential land uses are at their peak parking demand. A summary of the parking observations for the entire site is provided in Table 5.

Table 5 Parking Observations

<table>
<thead>
<tr>
<th></th>
<th>April 19, 2017 12:00 a.m.</th>
<th>April 20, 2017 5:00 a.m.</th>
<th>April 20, 2017 12:00 a.m.</th>
<th>April 21, 2017 5:00 a.m.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supply</td>
<td>169</td>
<td>169</td>
<td>169</td>
<td>169</td>
</tr>
<tr>
<td>Demand</td>
<td>132</td>
<td>136</td>
<td>138</td>
<td>137</td>
</tr>
<tr>
<td>Surplus/(Deficit)</td>
<td>37</td>
<td>33</td>
<td>31</td>
<td>32</td>
</tr>
<tr>
<td>Percent Occupied</td>
<td>78%</td>
<td>80%</td>
<td>82%</td>
<td>81%</td>
</tr>
</tbody>
</table>

The proposed development is planning to provide 62 outdoor spaces and 60 underground spaces for a total of 122 spaces. To determine if the proposed parking supply will meet the demand for the site, a detailed parking review was completed using the Minnetonka City Code, the ITE Parking Generation Manual, 4th Edition, and the existing parking demand rate for the existing apartment complex. The following information summarizes the parking demand review.

1) The minimum parking requirement based on Minnetonka City Code (Chapter 3, Section 300.28) states that for a multi-family residential unit, the minimum number of parking spaces required is two spaces per dwelling unit, of which one space is enclosed. Given the proposed development is 78 units, a total of 156 spaces are required, which results in a 34-space deficit.

2) The weekday ITE 85th percentile demand for a 78-unit apartment is 151 spaces, which is expected to occur overnight. This represents a 29-space deficit.

3) Based on observations at the existing Minnetonka Hills apartments, a lower demand was observed. A demand of 1.5 spaces per unit was identified, which equates to a peak demand of 117 spaces for the proposed 78-unit apartment complex. This results in a five (5) space surplus.

Results of the parking demand review and observations indicate that there is approximately a 30-space surplus at the existing 2828 Jordan Avenue Apartment surface lot. If the proposed development has a peak parking demand similar to the adjacent apartments, there would be a 35-space surplus between the two buildings. However, if the proposed development has a peak parking demand similar to ITE, there would be only two (2) space surplus. Based on this parking review, the proposed parking supply is expected to meet the demand for the site.
Site Plan Review

A review of the proposed site plan was completed to identify any issues and recommend potential improvements with regard to access, circulation, and sight distance. In general, there are no major issues with the current site access and circulation. However, taller shrubs/landscaping at the driveways, along with the curvature of the roadway obstruct sight lines to Jordan Avenue from the existing Minnetonka Hills Driveway.

Looking North  
Looking South

In both directions, the sight distance is approximately 140 feet. Based on the AASHTO Policy on Geometric Design of Highways and Streets (2011), the decision sight distance for a 20 mph roadway is 225 feet and for a 30 mph roadway is 335 feet. A vehicle making a left-turn from the existing driveway does not have the appropriate sight distance to make these maneuvers. It should be noted that the stopping sight distance for a vehicle traveling along Jordan Avenue at 20 mph is 115 feet, which is adequate. Since there are no advisory speed signs to the southwest along Jordan Avenue, a 15 mph advisory speed sign on Jordan Avenue should be installed. The existing advisory speed sign for southbound traffic along Jordan Avenue should be reduced to 15 mph to improve decision time for motorists exiting the Minnetonka Hills driveway. Additionally, efforts should be made to trim and reduce any landscaping that obstructs the view from this driveway. The sight distance improvements are shown in Figure 6.
Install a 15 mph speed limit advisory sign.

Update sign to a 15 mph speed limit advisory sign.

Trim/reduce landscaping to minimize sight distance impacts for motorists.
Conclusions and Recommendations

The following study conclusions and recommendations are offered for consideration:

1) Study intersections currently operate at an acceptable overall LOS B or better during the a.m. and p.m. peak hours with the existing geometric layout and traffic controls.

2) The proposed development includes 78 apartment units and would be fully operational by the year 2018. There is expected to be 62 surface parking spaces and 60 underground parking spaces.

3) The proposed development is expected to generate 40 a.m. peak hour, 48 p.m. peak hour, and 519 daily trips to/from the site.

4) Results of the year 2019 build intersection capacity analysis indicate that all of the study intersections and proposed access locations are expected to operate at an acceptable overall LOS B or better during the a.m. and p.m. peak hours with the existing roadway geometry and traffic controls.

5) While no mitigation is necessary from an intersection capacity perspective, the following striping and traffic control modifications could be considered.
   
a. Stripe northbound Jordan Avenue at Cedar Lake Road to include a dedicated left-turn and shared through/right-turn lane. The northbound left-turn lane should be 250 feet in length, which would allow for a 100 foot southbound left-turn lane at the Jordan Avenue/US 169 Southbound Ramp intersection.
   
b. Consider a review of the traffic control at the Jordan Avenue/US 169 Southbound Ramp intersection. A preliminary review indicates that an all-way stop control or modifying the southbound off-ramp to a stop control (from a yield control) would provide acceptable level of services.

6) The proposed parking supply is expected to meet the demand for the site.

7) Install a 15 mph advisory speed sign southwest of the Minnetonka Hills driveway.

8) Reduce the existing advisory speed sign for southbound traffic along Jordan from 20 mph to 15 mph.

9) Trim and reduce any landscaping that obstructs the view from the existing Minnetonka Hills driveway.
Comprehensive Plan
1962 Plan:
Subject property guided for industrial

1973 Plan:
Subject property guided for Medium Density Residential
Subject Property Designation:
1981: High Density Residential
1999: High Density Residential
2008: High Density Residential
Historical Aerials
2016 Concept Plan
B. Concept plan for a 75-unit apartment building at 2828 and 2800 Jordan Avenue.

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

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

John Ferrier of CSM Corporation, applicant, stated that:

- He appreciated the planning commission reviewing the concept plan.
- He agreed that a traffic study is warranted. His company owns additional properties in the area. He wants to make sure the amount of traffic would be appropriate.
- Staff found a previous plan not viable due to a steep slope on the site. The multi-family housing market is on fire right now. The building would be located in an appropriate area to deal with the topography.
- There is a berm on the west side. That is not a naturally occurring slope. It was created when an adjacent site was graded. He explained the grading of the site. There would be tuck-under parking utilizing the topography. The slope preservation ordinance criteria would be followed.
- A lot of the trees are not quality. As many of the trees as possible would be preserved.
- His company has enjoyed 97 percent occupancy rates over the past 10 years. There is a need in this area.
- The exterior would have a modern feel with a flat roof to reduce the height of the building. Stone and metal would be used.
- He was excited to hear the commissioners’ comments.
- The clientele are interested in studio apartments.
- A goal is to incorporate shared amenities with the building to the west. A playground would be great.
- He was open to using the roof of the building as an amenity.
- This type of product typically houses people 30 to 35 years of age.
- The site would remain pretty wooded which is a feeling common in Minnetonka.
- There would be approximately 60 feet between the proposed apartment building and the one to the west.
- Two layers of underground parking would not be possible due to the level of the water table, amount of grading, and cost.
Calvert noted that the architecture of the proposed building is different than the surrounding buildings. She was not sure how she felt about an urban feel. She understood the appeal for a young demographic. It would change the feel of the area. She looked forward to hearing from the natural resources staff. She was concerned for the oak trees. Mr. Ferrier was open to suggestions on the aesthetics of the building. It is a conceptual plan. This product has been successful in other suburban markets.

Calvert stated that a gabled roof would look extremely tall without removing a story. Mr. Ferrier said that could be considered.

Hanson asked if the number of parking stalls could be reduced to save green space. Cauley said staff could evaluate the proposed building’s amount of parking comprehensively with surrounding available parking lots. Mr. Ferrier would be very open to reducing the amount of parking. The amount was reduced slightly from the city’s ordinance requirement after speaking with city staff a year ago.

Rachel Peterson, property manager at Minnetonka Hills, stated that there is always ample outdoor parking space. There may be a waiting list for the underground heated parking.

Mr. Ferrier stated that the applicant will look for the most efficient way to utilize the slope to provide parking.
A. Concept plan for a 75-unit apartment building at 2828 and 2800 Jordan Avenue

Gordon gave the staff report.

John Ferrier, with CSM Corporation, applicant, thanked staff for the opportunity to receive comments on the concept plan. The house on the site is currently vacant. There is a need in the market for the proposal. The new building would have studio apartments with an open floor plan. He agreed that there is a need to complete a traffic study. The slopes would be optimized. As many trees as possible would be saved. There would be tree replacement. Some of the scrub trees would be replaced with quality landscaping. The floor plan would be as compact as possible. That is one reason for the flat roof. Similar colored brick with a contemporary style would attract a different market. He has heard from residents requesting to be on a waiting list. He is excited about the site.

Wagner noted that the area has a lot of high-density housing, but there is no playground at any of the surrounding buildings. The proposal would match what is in the area, but would stick out of the view from Highway 169. He will wait until he sees the engineering plans before commenting on the number of units. He did not have a massive aversion to the proposal.

Schneider agreed with Gordon that one and a half parking stalls for each apartment may be appropriate considering the studio apartments. An apartment building would fit the site. The five-story height does not scare him, but the block nature of the front caused him to pause. He sees a benefit to underground parking, scaling back the number of units, and adding some variety to the appearance. A third of the outside parking may be able to be eliminated. Hopefully some trees and green space could be preserved with a reduction of the parking surface.

Bergstedt concurred with Schneider. He was very comfortable with an apartment building. There would be massive grading and tree loss, but everything possible should be done to minimize it. The building looks like an uninteresting block building. Designing the building to give it more architectural character would be beneficial.

Allendorf liked how the Applewood Pointe building ended up looking. He concurred with Schneider and Bergstedt.
Minutes from the July 10, 2017 city council meeting
14. Other Business:

A. Items concerning Minnetonka Hills Apartments at 2800 and 2828 Jordan Avenue:

1) Major amendment to an existing master development plan;
2) Final site and building plans, with parking variances; and
3) Preliminary and final plats

City Planner Loren Gordon gave the staff report.

Wagner noted that if a person exceeds the 15 miles per hour limit indicated on the sign, they cannot be ticketed for speeding. City Engineer Will Manchester indicated that was correct and that the signs are advisory. Schneider asked why 15 miles per hour is used given it’s so slow. He thought 20-25 miles per hour was more realistic. Manchester said there was a formula used based on the grade of the road.

Wagner noted the property was guided R5 for quite some time, and with the steep slope impacts he asked if the issue was really a design issue or if any R5 plan would have the same issues as this proposal. Gordon said the site had some areas where the R5 ordinance would indicate the area should be avoided. The question was what could be designed for the site that would be economically feasible, meet the city’s ordinances, and would get approved. He said the city had not received an alternative from the developer. No alternatives for the site had been looked at since the 2004 townhouse project. Wagner asked if density was also the issue given the parking limitation. Gordon said anytime there was a multi-story project, parking probably had more impact than the building itself. Wagner asked what parking the developer was proposing for the property. Gordon said the proposal met the city’s parking requirements.

Acomb said that during the concept plan review there was discussion about affordable housing being encouraged as part of the project. She asked if staff had any conversations with the developer about affordable housing. Gordon said there had been a discussion with the applicant and the applicant would address that with the council.

John Ferrier, CSM Corporation, said that while the mass of the building generally stayed the same as what was shown in the concept plan, the placement of the building had been moved around to best fit for slope and tree preservation. He showed the tree buffer to Highway 169. He said this was a market driven plan and market studies had shown there really was a need for this type of housing. Affordable housing was being analyzed. A lot would depend on what type of TIF pool was available. He said the site
was a very expensive site to develop. This would make affordable housing a little more difficult.

Clark Wicklund, Alliant Engineering, said in looking at the city’s steep slope ordinance, there were performance standards that had six objectives. One was to preserve open space and that wasn’t a condition with this property. The remaining five objectives related to risk and maintaining the city’s identity. He said the views surrounding what would be disturbed would be very limited to a small corridor that would primarily be visible to northbound traffic on Highway 169. The site’s location near the ridgeline near the top of the watershed would limit the amount of stormwater that passed through the site. The risk during construction and post-construction before the site becomes stabilized would be limited. He said there was 14 feet of cut in terms of the excavation quantities. This was a manageable amount that was dealt with daily on road projects. Looking at the issue as what is observed, what is maintained, and the feasibility, he said buildings with underground parking are tucked into slopes all the time. The nearby apartment building, which was considerably larger, was also on a 20 percent slope.

Susan Goll, board member with the Cedar Cove Homeowners Association, said the only access in and out for the Cedar Cove residents was on Jordan Avenue. The residents understand the need for high density housing and what a desirable location this property was. She said the association doesn’t believe this is the right project for a number of reasons. The planning commission talked a lot about the impact on the environment. The residents appreciate the environment and it was one of the things they loved about living in the area. Because the trees on the ridgeline would have to be removed, the view would change substantially. She showed a picture of the view from the existing Minnetonka Hills building entrance showing the many trees that would be removed because the area would become part of the parking area. The residents’ biggest concern was the traffic. She said the traffic study indicated there would not be much impact on the existing flow. The concerns however related to the 140 feet sight distance in both directions. The guidelines for a speed limit of 20 miles per hour indicated the appropriate decision sight distance was 225 feet. For 30 miles per hour speed limit the distance was 335 feet. A vehicle making a left turn from the existing driveway does not have the appropriate sight distance to make the maneuver. The traffic study recommended 15 miles per hour speed limit to address the issue. She said another concern was when the Minnetonka Hills plows its parking lot there was no place for the cars to park. Many cars park along Jordan area leaving little room for emergency vehicles to get through. She noted staff indicated they had talked with the developer about this issue. She asked for further study of traffic be done regardless what happened with this proposal because of the existing safety issues.
Allendorf asked if staff looked at straightening the road to keep drivers in their lanes and a no parking situation on the one side of the road. Manchester said staff had looked into the options. He said striping the centerline would be an improvement to keep drivers within their lanes. Adding white fog lines by the curb would also help by making the lanes seem narrower. Adding no parking signs could be looked at but staff wanted to be sure that issues were not being created in other areas by doing so. Allendorf said whether this project were approved or not, adding the centerline striping could help guide drivers.

Wiersum asked if there were meaningful opportunities to do some trimming of the foliage to improve the sight lines. Gordon said looking to the north there was a retaining wall that was preventing possible improvements to the visibility issue. He said the wall could be moved back further into the hillside but it was unlikely it could be moved enough to meet the 335 foot guideline.

Allendorf said in listening to the comments, he questioned if anything could be built on the site. He asked Gordon what the developer could do that would respect the steep slope and ridgeline. Gordon said staff had discussed what could be built that it would recommend for approval. Staff had not seen anything from the developer other than this plan. There may be ways to look at the site with a development on the southern half and also doing something on the northern side. It would take a finely tuned analysis of all the site conditions to figure out what could work.

Wagner said in looking back at the history of the site, even though there was agreement this was a good site for R5, there had been concerns about steep slopes since 1985. The question was if R5 housing could really be built on the site. He was trying to determine if the issue was one of design and density that could be addressed by the developer, or if any R5 proposal would run into the same issues. He couldn’t support the project because of the ordinance.

Wiersum noted there was a disagreement between staff and the developer about steep slope cutting and filling measurement. Assuming the staff measurement was correct, the question was what would need to be done to the design to bring the proposal into compliance. He didn’t think staff knew the answer to the question because there hadn’t been the interaction between staff and the developer. He said he clearly was not in a position to approve the proposal at this point. The developer had to decide if he wanted to move forward, and if he does he will need to work more closely with staff to figure out what was really doable.
Schneider said he didn’t have quite the same degree of concern others have likely because of the history and background of how the steep slope ordinance was developed. This particular site had always had the challenge of wanting something built but not knowing how that could be done. He thought there was some opportunity to reduce the berm and retaining wall. Lowering the grade two or three feet would significantly improve the sightline. He said there were deep discussions when the steep slope ordinance was developed. He thought the consultant captured some of the huge issues like tree preservation, view sheds and safety. That was how some of the language was incorporated. There had been back and forth discussions about how no slope in the city was the same. The idea of building on the pinnacle or ridge was strictly about if someone were going to build a structure, they should not be building on the steepest part of the slope. He pointed to the building on Plymouth Road that was built on the ridge, the peak was removed and part of the slope is gone.

Schneider said in this case the peak was not in the middle but on the edge of the two properties. If the building were put there, there wouldn’t be a second thought about cutting off 14 feet, but the building wouldn’t be there because of the parking. He said whatever high-density building was built on the site would have the same general impact. The question was had the developer sited the building the best way possible. His opinion, seeing the tree preservation on the east side, seeing that the drainage work, and seeing the peak would have gone away anyway, was it seemed like a good solution. Yes, the peak was being removed, but it was for a good reason. If the feeling was the use was right, getting additional diversity, multi-family housing, then he thought the council needed to be open to the idea of managing the slope in order to make it work. He was open to supporting the project.

Acomb said since she wasn’t at the meeting when the concept plan was discussed, she went back and listened to the discussion. She agreed with the mayor’s comments about reducing the size of the building to reduce the amount of surface parking needed. This would have a major impact on the steep slope area. She said the city had its environmental ordinances for a reason and making an exception might mean establishing a precedent. She agreed high density residential was the appropriate use of the property, but she questioned what degree of high density was appropriate. She would be more comfortable having the developer work with staff to address the steep slope issues rather than just disregarding the ordinance.

Allendorf said he didn’t hear the mayor suggest disregarding the ordinance but rather taking a look at approving the removal of the peak. The comments from the homeowners’ association were mainly related to safety and traffic and not the steep slope. He thought staff should look at
addressing those concerns. He also thought staff should work with the 
developer so there was comfort in the changes to the steep slope. If that 
was done, he could support the proposal. As he looked at the alternative, 
nothing would be built. He thought the project merits the council looking 
favorable upon it.

Bergstedt said he would be in favor of tabling the item to allow the 
developer to work with staff. He thought the developer had come back 
with a good effort in preserving trees and trying to deal with the steep 
slopes but he didn’t think the proposal was at a point he could approve. 
There never would be something that would fit perfect on the site. He 
agreed staff should move forward in addressing the safety and traffic 
issues.

Wagner said he supported tabling the item because there were 
fundamental questions about what, if anything, could be done to make the 
project better.

Wiersum said there was general agreement that if something appropriate 
could be built on the site, it should be. He agreed the proposal wasn’t at a 
point he could approve it. He supported tabling the item to allow for more 
collaboration.

Schneider said he didn’t disagree with that approach. His intent was to 
point out the developer was complying with the general intent of the 
ordinance on a difficult site.

Allendorf said the onus should be on the developer to come up with the 
ideas the staff reacts to rather than have staff design the proposal 
differently. He also thought it would be helpful to document the ideas to 
 improve the safety in the area so that the neighbors had the opportunity to 
review and make comments.

Barone noted there was a July 15 deadline for the council to act on the 
item.

Ellingson said during his time on the council, there had never been a 
proposal with a steep slope issue similar to this one. Other proposals 
involved steep slopes that didn’t meet the ordinance’s definition of a steep 
slope. He remembered visiting the site and being surprised at how steep 
the slope actually was.

Ferrier agreed to extend the deadline 60 days. He said he would submit 
that in writing to staff.

Acomb asked that the affordable housing be looked at for the project.
Allendorf moved, Wagner seconded a motion to table the item for a period not to exceed 60 days. All voted “yes.” Motion carried.
Ordinance
Ordinance No. 2017-

An ordinance amending the existing MINNETONKA HILLS master development plan to allow for construction of a five-story, 78-unit apartment building at 2800 and 2828 Jordan Avenue

The City Of Minnetonka Ordains:

Section 1.

1.01 The subject properties are located at 2800 and 2828 Jordan Avenue. The properties are legally described on Exhibit A of this ordinance.

1.02 In 1986, the city approved the MINNETONKA HILLS master development plan. The approved plan, which included the subject properties, allowed for construction of three, 4-story, apartment buildings and two surface lots.

1.03 CSM Corporation has presented a proposal to remove a single family residential home at 2800 Jordan Avenue and construct a new, five-story, 78-unit apartment building with underground parking.

1.04 This ordinance hereby amends the existing master development plan for the site to allow the construction of this new apartment building.

Section 2.

2.01 This ordinance is based on the findings that the proposed development would not negatively impact public health, safety or welfare.

2.02 This ordinance is subject to the following conditions:

1. The site must be developed and maintained in substantial conformance with the following plans, which constitute the master development plan for the subject property:
• Site plan, dated July 31, 2017
• Grading, drainage and erosion plan, dated July 31, 2017
• Utility plan, dated July 31, 2017
• Tree preservation plan, dated July 31, 2017
• Landscape plan, dated July 31, 2017

2. The development must further comply with all conditions outlined in City Council Resolution No. 2017-xx, adopted by the Minnetonka City Council on August 28, 2017.

Section 3. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 4. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on August 28, 2017.

Terry Schneider, Mayor

ATTEST:

David E. Maeda, City Clerk

Action on this ordinance:

Date of introduction: April 24, 2017
Date of adoption:
Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Ordinance adopted.
Date of publication:
I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on August 28, 2017

David E. Maeda, City Clerk
Exhibit A

Lot 1, Block 2, Minnetonka Hills Apartments, Hennepin County, Minnesota, EXCEPT that part of Lot 1, Block 2, Minnetonka Hills Apartments, lying North of the North line of Outlot C, said Addition and its Westerly extension. (Abstract Property)

And,

That part of Lot 1, Block 2, Minnetonka Hills Apartments, lying North line of Outlot C, said Addition and its Westerly extension, Hennepin County, Minnesota. (Torrens property: Certificate of Title No. 1075439)

And,

Outlot C, Minnetonka Hills Apartments, Hennepin County, Minnesota. (Abstract Property)

And,

The South 170 feet of the North 450 feet of the East 265 feet of the Southeast Quarter of the Southeast Quarter (SE ¼ of SE ¼) of Section 12, Township 117, Range 22, in Hennepin County, Minnesota. EXCEPT that part lying Easterly of a line parallel with an distant 25 feet Westerly of the following described line: Commencing at the Southeast corner of Section 12, Township 117, Range 22; thence North along the East line thereof 784.96 feet; thence deflect to the left at an angle of 90 degrees, a distance of 60 feet to the actual point of beginning of the line to be described; thence deflect to the right at an angle of 90 degrees, a distance of 138.28 feet; thence deflect to the left along a 26 degree 16 minutes 46 seconds curve (delta angle 49 degrees 16 minutes 15 seconds, tangent distance 99.98 feet), a distance of 150 feet and there terminating. (Abstract Property)
Resolutions
Resolution No. 2017 -

Resolution approving final site and building plans, with parking variance, for a multi-family residential building at 2800 and 2828 Jordan Avenue

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

Section 1. Background.

1.01 Alliant Engineering, on behalf of CSM Corporation, is requesting approval of final site and building plans for construction of a 28-unit, multi-family residential building at 2800 and 2828 Jordan Avenue. The proposals includes a parking variance from 156 stalls to 117 stalls.

1.02 The properties included in the proposal are legally described on Exhibit A of this resolution.

1.03 On June 22, 2017, the planning commission held a hearing on the proposal. The applicant was provided the opportunity to present information to the planning commission. The planning commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution.

Section 2. Standards.

2.01 City Code §300.27, Subd. 5, states that in evaluating a site and building plan, the city will consider its compliance with the following:

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 the 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.

2.02 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 would meet site and building plan standards outlined in the City Code §300.27, Subd. 5:

1. The proposal would result in a high-density residential development consistent with the site’s high-density residential designation. Further, the proposal has been reviewed by the city planning, engineering, and natural resources staff and has been found to be generally consistent with the city’s development guides, including the water resources management plan.

2. But for the requested parking variance, the proposal is consistent with all ordinance standards and requirements.

3. Any development of the site would result in varying degrees of slope and tree impact. The applicant has located the proposed building and parking lot to reduce impacts to the site’s woodland preservation area and to provide screening of the building from Highway 169.

4. The proposal would result in a harmonious relationship between buildings and open space. The proposal appropriately balances the new building with the woodland preservation of the site and the existing apartment building and parking lots.

5. The proposed site plan provides for a functional layout. The proposal would provide for practical vehicular, and improved pedestrian, circulation throughout the site.

6. As new construction, the building would be constructed to meet the current building and energy codes.

7. The proposal would visually and physically alter the site. However, the proposal reasonably balances site improvements and existing site features. In addition, the proposal would align with the site’s high-density residential designation by the comprehensive guide plan.
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 intent of the ordinance as it pertains to parking requirements is to ensure adequate parking is provided to meet anticipated parking demand. While the proposal would not meet the minimum required number of parking stalls required by ordinance, the proposal would exceed the Institute of Transportation Engineers (ITE) recommended number of parking stalls for similarly sized apartments. By ITE standards, one parking stall should be provided for each bedroom in the building. Using this parking ratio, 78 stalls should be provided. The proposal includes 117 stalls.

2. CONSISTENT WITH THE COMPREHENSIVE PLAN: One of the primary goals of the comprehensive plan is the construction of a variety of housing types that will appeal to a variety of residents at a variety of ages and income levels. The requested variance would be consistent with this goal. The variance would provide parking at a ratio similar to other apartments in the community.

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

   a) REASONABLENESS: It is reasonable to provide flexible parking requirements based on the actual characteristics of a proposal and its context.

   b) UNIQUE CIRCUMSTANCE: The property is encumbered by a large woodland preservation area and is improved with an existing apartment building with an associated parking lot. A parking study was commissioned to better understand the parking needs of the existing apartment building and the proposed building. The proposed 117 stalls aligns with parking demand identified by the parking study.

   c) CHARACTER OF THE LOCALITY: The proposed parking variance would not adversely impact the character of the locality. The site would meet anticipated parking demand based on parking studies of similarly sized buildings. This would prevent overflow parking on adjacent properties.


4.01 The city council approves the above-reference site and building plans and
parking variance, subject to the following conditions:

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

   - Site plan dated July 31, 2017
   - Grading, drainage and erosion plan dated July 31, 2017
   - Utility plan dated July 31, 2017
   - Woodland preservation area dated July 31, 2017
   - Tree preservation plan dated July 31, 2017
   - Landscape plan dated July 31, 2017
   - Illumination plan dated July 31, 2017
   - Floor plans dated March 14, 2017
   - Elevations dated March 14, 2017

2. Prior to issuance of a building permit:
   a) Obsolete drainage and utility easements must be vacated.
   b) Items associated with site work:
      1) Submit the following:
         a. Evidence of the filing of the final plat at Hennepin County and copies of all recorded easements and documents including those described in Section 400.01(2)a(5).
         b. An electronic PDF copy of all required plans and specifications.
         c. Three full size sets of construction drawings and project specifications.
         d. The following legal documents:
            1. An agreement with Minnetonka Hills Apartments, which allows for connection to a private water main.
            2. An easement over the shared portion of the water main and sanitary sewer.
3. Cross-access and cross-parking easements for the two properties.

4. Final stewardship plan, fund and agreement. The stewardship plan must address the details involved with restoration of the natural systems of the property. The program will need an agreement that outlines at a minimum the following:

- An ecological stewardship plan that outlines the different components of restoration for upland and wetland areas including buckthorn control, garlic mustard control and the control of other invasive species. The plan must include technical specifications, which adhere to the city’s standards, extent of work and management schedules, restrictions and protocol for the administration of restoration work. The applicant must hire a qualified ecologist who is approved by the city to prepare this information and implement the plan. The ecologist must meet with city staff a minimum of twice per year to review the annual plan and field inspect the site.

- The plan must identify how the restoration work will be funded, including the establishment of a fund, purpose of the fund, contributions to the fund, and who will be custodian of the fund. The city prefers the property owner be the custodian of the fund.

- The plan must identify how the funds will be expended,
expenditure limitations and procedures.

- A spreadsheet must be included that outlines the annual projected fund contributions and anticipated expenditures must also be included for reference in the agreement.

5. Snow removal agreement. The agreement must address snow removal operations for the parking lot and sidewalks. The city will remove snow from the trail but the property owner will be responsible for all other snow removal. The agreement must outline the plowing schedule and timelines to avoid conflicts with plowing of the public street, and avoid redundancy of sidewalk plowing. The agreement should also outline de-icing needs and provide chloride guidelines that winter snow and ice removal contractor will adhere to. The de-icing practices should minimize salt and chloride use to protect the landscape investments.

6. Stormwater maintenance agreement. The agreement must outline maintenance responsibilities for the underground vault, sump catch basins, etc., and must provide detailed maintenance plan for all specific facilities. The agreement must be filed against the property at Hennepin County.

7. Water maintenance agreement with the city for private water line and hydrant.

8. Conservation easement over the woodland preservation area.
e. 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 for the site, the construction management plan submitted at the time of grading permit may fulfill this requirement.

f. Final site, grading, stormwater management, utility, landscape, tree mitigation and natural resource protection plans, and a stormwater pollution prevention plan (SWPPP) for staff approval:

1. Final site plan must provide 26-foot wide drivelines with a minimum inside turning radius of at least 22-feet.

2. Final grading plans must be revised in coordination with city staff to improve site distance at the entrance intersection.

3. Final utility plans must:
   • Confirm sanitary sewer invert elevation at Jordan Avenue connection.
   • Provide confirmation that the 0.5% grade and construction method shown for the sanitary sewer can be achieved with directional drilling.
   • Confirm the location and depth of the abandoned water main east of the parking garage of the existing Minnetonka Hills Apartments.

4. Final stormwater management plan must:
• Meet the requirements of the city’s Water Resources Management Plan, Appendix A. Design. In addition, supplemental calculations must be submitted detailing conformance with the city’s:
  
  o Rate Control: maintain existing rates leaving the site for the 2-, 10-, and 100-year events.
  o Volume: the storm chambers must capture 1” of the entire site’s impervious surface. Soil borings are required to verify infiltration rates.
  o Water Quality: materials must be submitted (MIDS or p8 model) to demonstrate that 68% of the total phosphorus and 90% of the TSS are removed.

• Be revised in coordination with city staff to eliminate the storm sewer bends and setting one storm manhole if possible.

• Include soil borings to verify that the infiltration rates used in the stormwater report and the sizing of the basin are appropriate.

• Confirm design with engineering details that the storm sewer proposed to extend through the face of the wall is sufficient for prolonged inundation with water.
• Provide fall protecting fencing atop retaining wall for safety and to prevent people from entering the stormwater facility.

5. 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 and landscaping may be decreased based on any of the following: the health of trees removed; the ability to appropriately install trees and other shrubbery given existing vegetation, topography, or site constraints. In addition to the final plans, submit final project cost. In addition, the plan must:

• Ensure that all evergreen trees are planted no closer than 15-feet from the public sidewalk and 20-feet from the public street.

• Ensure that that deciduous trees are planted no closer than 10-feet from the public sidewalk and 15-feet from the public street.

g. Final illumination plan. This plan must comply with the city’s exterior lighting requirements.

h. Manufacturer’s information or confirmation from a structural engineer indicating that the proposed underground storage facility is capable of supporting fire apparatus weighing at least 83,000 pounds and outrigger pressures up to a maximum of 10,800 pounds per square foot.

i. A traffic control plan if the installation of utilities will result in a full road closure of Jordan Avenue.
j. A copy of the approved MPCA NPDES permit.

k. Evidence of closure/capping of any existing wells, septic systems, and removal of any fuel oil tanks.

l. All required administration and engineering fees.

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

n. A letter of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost of all required landscaping.

o. Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost of grading, drainage, stormwater, utility, and site restoration. 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:

- as-built drawings have been submitted;
- a letter certifying that the utilities have been completed according to the plans approved by the city has been submitted;
- vegetated ground cover has been established; and
- required landscaping or vegetation has survived one full growing season.
p. 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.

q. A letter from the surveyor stating that the boundary and lot stakes have been installed as required by ordinance.

r. Proof of subdivision registration and transfer of the NPDES permit.

2) Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff as determined by city staff.

3) 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 through the course of construction.

c) Items associated with building work:

1) Submit a final material and color palate board for staff review and approval.

2) Submit all required hook-up fees.

3. The applicant may choose to submit a separate grading permit application to facilitate site work prior to the issuance of a building
permit. In such a case, prior to issuance of a grading permit, all the items outlined in preceding condition 2(b)(1) – Items associated with site work – must be submitted or accomplished.

4. All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.

5. Permits may be required from other outside agencies including, Hennepin County, the Nine Mile Creek Watershed District, Minnesota Department of Health, and the MPCA. It is the applicant’s and property owner’s responsibility to obtain any necessary permits.

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

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

8. Construction must begin by December 31, 2018, unless the city council grants a time extension.

Adopted by the City Council of the City of Minnetonka, Minnesota, on August 28, 2017.

_______________________________________
Terry Schneider, Mayor

Attest:

_________________________________
David E. Maeda, City Clerk

Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on August 28, 2017.

______________________________
David E. Maeda, City Clerk
Lot 1, Block 2, Minnetonka Hills Apartments, Hennepin County, Minnesota, EXCEPT that part of Lot 1, Block 2, Minnetonka Hills Apartments lying North of the North line of Outlot C, said Addition and its Westerly extension.

And,

That part of Lot 1, Block 2, Minnetonka Hills Apartments, lying North of the North line of Outlot C, said Addition and its Westerly extension, Hennepin County, Minnesota.  
(Torrens property: Certificate of Title No. 1075439)

And,

Outlot C, Minnetonka Hills Apartments, Hennepin County, Minnesota.  
(Abstract property)

And,

The south 170 feet of the North 450 feet of the East 265 feet of the Southeast Quarter of the Southeast Quarter (SE ¼ of Se ¼) of Section 12, Township 117, Range 22, in Hennepin County, Minnesota,  
EXCEPT that part lying Easterly of a line parallel with and distant 25 feet Westerly of the following described line: Commencing at the Southeast corner of Section 12, Township 117, Range 22; thence North along the East line thereof 784.96; thence deflect to the left at an angle of 90 degrees, a distance of 60 feet to the actual point of beginning of the line to be described; thence deflect to the right at an angle of 90 degrees, a distance of 136.28 feet; thence deflect to the left along a 26 degree 16 minutes 46 second curve (delta angle 49 degrees 16 minutes 15 seconds, tangent distance of 99.98 feet), a distance of 150 feet and there terminating.  
(Abstract property)
Resolution No. 2017-

Resolution approving the preliminary and final plats of MINNETONKA HILLS APARTMENTS 2ND ADDITION at 2800 and 2828 Jordan Avenue

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

Section 1. Background.

1.01 Alliant Engineering, on behalf of the property owner, has requested preliminary and final plat approval for MINNETONKA HILLS APARTMENTS 2ND ADDITION (Project 86157.17a)

1.02 The properties involved in the plats are located at 2800 and 2828 Jordan Avenue. They are legally described on Exhibit A of this resolution.

1.03 On June 22, 2017, the planning commission held a hearing on the proposed plat. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution.

Section 2. General Standards.

2.01 City Code §400.030 outlines general plat design requirements. 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.

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

1. Prior to release of the final plat for recording purposes:
   a) Submit a revised final plat drawing that includes a minimum 10-foot wide drainage and utility easements adjacent to the public rights-of-way and minimum 7-foot wide drainage and utility easements along all other lot lines.
   b) Provide the following documents for city attorney review and approval. These documents must be prepared by an attorney knowledgeable in the area of real estate.
      1. Title evidence that is current within thirty days before release of the final plat.
      2. Conservation easements over the woodland preservation area and a drawing of the easement. The easement may allow removal of hazard, diseased, or invasive species.
      3. A common access easement between the public right-of-way and individual lots.
         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 $385,000.

2. This approval will be void on August 28, 2018 if: (1) the final plat has not been recorded with the county within one calendar year of preliminary plat approval; and (2) the city has not received and approved a written application for a time extension.
Adopted by the City Council of the City of Minnetonka, Minnesota, on August 28, 2017.

Terry Schneider, Mayor

Attest:

David E. Maeda, City Clerk

Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on August 28, 2017.

David E. Maeda, City Clerk
Exhibit A

Lot 1, Block 2, Minnetonka Hills Apartments, Hennepin County, Minnesota, EXCEPT that part of Lot 1, Block 2, Minnetonka Hills Apartments lying North of the North line of Outlot C, said Addition and its Westerly extension.

And,

That part of Lot 1, Block 2, Minnetonka Hills Apartments, lying North of the North line of Outlot C, said Addition and its Westerly extension, Hennepin County, Minnesota.

(Torrens property: Certificate of Title No. 1075439)

And,

Outlot C, Minnetonka Hills Apartments, Hennepin County, Minnesota.

(Abstract property)

And,

The south 170 feet of the North 450 feet of the East 265 feet of the Southeast Quarter of the Southeast Quarter (SE ¼ of Se ¼) of Section 12, Township 117, Range 22, in Hennepin County, Minnesota,

EXCEPT that part lying Easterly of a line parallel with and distant 25 feet Westerly of the following described line: Commencing at the Southeast corner of Section 12, Township 117, Range 22; thence North along the East line thereof 784.96; thence deflect to the left at an angle of 90 degrees, a distance of 60 feet to the actual point of beginning of the line to be described; thence deflect to the right at an angle of 90 degrees, a distance of 136.28 feet; thence deflect to the left along a 26 degree 16 minutes 46 second curve (delta angle 49 degrees 16 minutes 15 seconds, tangent distance of 99.98 feet), a distance of 150 feet and there terminating.

(Abstract property)
Brief Description  Concept plan review for Villa West at 16913 and 17101 State Highway 7

Action Requested  Provide comments, feedback, and direction.

Background

In 2015, RTS Development submitted a concept plan for redevelopment of the existing single-family residential properties at 16901, 16913 and 17101 State Highway 7. The plan contemplated construction of 30 detached villa homes accessed directly from Highway 7 via a new, one-way street. During review of the concept, area residents, the planning commission, and the city council raised concerns about density, site design, and the concept’s general lack of information.

In 2016, RTS Development and David Carlson submitted a revised concept plan for redevelopment of just the 16913 State Highway 7 property. The concept contemplated construction of three, two-unit townhomes, accessed directly from Highway 7 via a new roadway. The plan further projected continuation of the concept to the west if that property became available. This second concept was generally well received by area residents, the planning commission, and city council. However, some commission and council members expressed regret that a more coordinated development of sites along Highway 7 could not be achieved.

Revised Concept

David Carlson has now submitted a revised concept plan for redevelopment of the 16913 and 17101 State Highway 7 sites. This concept plan is essentially the “further projected continuation” concept presented in 2016. As illustrated, the concept includes construction of a new street with access from Highway 7, six twinhomes (12 living units) and one single family home.

Key Issues

City staff has identified the following considerations for any development of the subject properties:

- **Access**: MnDOT has jurisdictional control of access from Highway 7. Therefore, the applicant would need to work with MnDOT and the city in order to provide safe access to the development site.

- **Planned Development**: The parcels are part of a larger area that are guided for medium-density residential development. The comprehensive plan anticipates that
this area would be developed as a single, medium-density development. This is especially important due to access constraints. It is not desirable to have separate developments with separate accesses from Highway 7. However, it may be difficult for one developer to assemble all of the properties at one time given that there are multiple property owners involved. In this case, any development of a portion of the properties would need to account and plan for the potential of future development on the other properties that are guided medium-density.

Review Process

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

- **Neighborhood Meeting.** The developer held a neighborhood meeting on August 8. Approximately 10 area residents were in attendance. Residents voiced general support for the density and style of homes presented in the concept plan. However, residents also voiced concern regarding: (1) access and egress locations on Highway 7; and (2) maintenance – or increase – of natural buffer along the perimeter of the site.

- **Planning Commission Concept Plan Review.** The planning commission conducted a review of the concept plan on August 10, 2017. The commission generally expressed support for the concept as presented and concurred with the neighborhood concerns regarding access/egress and buffering. The commission also suggested providing an overlay of proposed access points from Highway 7 for the city council to review. Meeting minutes are attached.

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

Staff Recommendation

Staff recommends the council provide comments, feedback, and direction that may lead to the preparation of more detailed development plans.

Through: Geralyn Barone, City Manager
        Perry Vetter, Assistant City Manager
        Loren Gordon, AICP, City Planner

Originator: Susan Thomas, AICP, Assistant City Planner
ADDITIONAL INFORMATION

Next Steps

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

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

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

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

Roles and Responsibilities

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

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

• **Planning Commission.** The planning commission hosts the primary forum for public input and provides clear and definitive recommendations to the city council. To serve in that role, the commission identifies and attempts to resolve development issues and concerns prior to the council’s consideration by carefully balancing the interests of applicants, neighbors, and the general public.
• **City Council.** As the ultimate decision maker, the city council must be in a position to equitably and consistently weigh all input from their staff, the general public, planning commissioners, applicants and other advisors. Accordingly, council members traditionally keep an open mind until all the facts are received. The council ensures that residents have an opportunity to effectively participate in the process.

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

Applicant: David Carlson
Address: 16913 and 17101 Hwy 7
2015 CONCEPT PLAN
2015 CONCEPT PLAN

CIVIL ENGINEERING
SITE DESIGN
2015 CONCEPT PLAN

VILLA WEST
CONCEPT PLAN

GROSS AREA
4.5 ACRES APPROXIMATE

PROPOSED LOTS
50 SINGLE FAMILY RESIDENTIAL LOTS
MINIMUM 40 FT WIDTH

PROPOSED DENSITY
6.7 UNITS PER ACRE APPROXIMATE

ONE-WAY PRIVATE DRIVE
1,050 FT LENGTH APPROXIMATE
20 FT VEHICLE DRIVE
5 FT SIDEWALK
2 FT SIDEWALK (ONE SIDE)
50 FT TOTAL WIDTH

MUNICIPAL, STATE AND FEDERAL REGULATIONS, INCLUDING COHASSET'S GENERAL ORDINANCES AND RHODE ISLAND STATE LAWS, MUST BE MET PRIOR TO THE CONSTRUCTION OF ANY DEVELOPMENT ON THE PROPERTY COVERED IN THIS CONCEPT PLAN.
Odland was concerned with the water table level and what potential negative changes would occur to provide underground parking. A location closer to light rail might make more sense. There are issues that need to be looked at.

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

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

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

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

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

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

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

- Thomson did a good job explaining the proposal.
- The property owner of the site used to fix his boat props. It was a unique piece of property located off a gravel road on Highway 7.
The plan is wonderful. It would create housing for the aging population.

An association would maintain the grounds.

He developed townhouses on Covington Road in Minnetonka years ago. He built villa-style townhomes in Golden Valley which is a primary example of the proposed development.

This property lends itself to a community development master plan.

He found a way to access the property that MNDot agrees with.

He was available for questions.

Scott Dahlke, civil engineer of site design, stated that:

The site is a long, rectangle shape. The plan proposed an access road to run down the center of the property and be constructed on both sides of the road.

There are currently no sewer or water utilities. The utilities would be extended from the northwest corner down the center of the road.

He has met with MNDot and reviewed many concept plans. MNDot prefers a single access point on the east end. There would be a private drive 20 feet in width with a turn lane on Highway 7 for the entrance. Traffic would enter on the east side, travel west through the site, and then exit on the west end. The reason MNDot prefers this configuration is because of the existing exit from the adjacent townhomes on the west. The nearest city street is Clear Spring Road. A connection to Clear Spring Road would not be beneficial.

Topography and drainage details will be provided as the plan moves forward. He described the drainage pattern, location of wetlands, stormwater management plans, and importance of tree preservation and screening.

Rob Eldrich, of Ridge Creek Custom Homes, stated that he is one of the preferred builders for the project. He is looking to do the detached villa concept, rambler houses, and two-story houses. The targeted market would be looking to downsize or get rid of large yards. There would be main-floor master suites and elevators for some. Minnetonka’s median age is 60 years. These would be nice, new homes for local residents. He is available for questions.

Chair Kirk invited residents to provide input.

David Devins, 17100 Sandy Lane, stated that:
• The project is too dense. The homes would be substantial in size and be priced around $500,000.
• The property is zoned R-1 and guided R-3. He asked for the comprehensive guide plan to be changed to R-1, single-family residential.
• He has concerns about tree preservation and keeping the existing berm. It works as natural drainage control.
• The area has terrible drainage and is full of springs. The whole area is wet.
• There is mixed topography.
• The density seems too big. Houses with 2,800 square feet would be too large to still have room for trees, streets, and driveways.

Lisa Brown, 4926 Clear Spring Road, stated that:

• The small area cannot handle going from 5 houses to 30 houses.
• The issues include loss of trees, wetlands, and springs.
• She has seen a lot of change in 26 years. She remembers Snuffy’s and Lilliput.
• The proposal would be too big and cause the removal of mature trees that are significant.
• Removing buckthorn would eliminate a lot of screening.
• She understood something would be constructed, but this would be too big.
• She encouraged commissioners to visit the site. There is a bike trail along Highway 7.

Beth Frost, 4914 Clear Spring Road, stated that:

• The proposal seems massive.
• Her lot and those in the area are huge, but they would abut 40-foot lots if the proposal would be done. The proposal would be out of character with the neighborhood. She feels strongly about that.
• The elevation would be higher, so the proposed houses would be looking down on the existing surrounding houses and create a privacy issue.
• Access to Highway 7 would be crucial for the neighborhood, because it would create too much traffic for Clear Spring Road.
• She wants more history on Mr. Schmidt and his developments. The judgements against him are extensive, so she hopes those are looked at.
John Eiden, 16821 Highway 7, stated that:

- He declined selling. He does not think the proposal is a good idea. It would create a dead end. It would not be the best use of the property.
- The 2030 comprehensive guide plan is dedicated to preserving Minnetonka’s natural beauty. This proposal would impact the drainage. He explained the drainage pattern.
- This corridor is a gateway to a section of Minnetonka. The property owners have taken care of the land for decades. Trees help preserve the ozone, reduce emissions, and prevent global warming.
- He supports extending the Purgatory Creek area to the site. All 7 properties drain into Purgatory Creek.
- He does not want to live next to all of the construction.
- His living room faces Highway 7. It does not look pretty and is not quiet. He cannot see people paying $700,000 for property that is not quiet. The builder did not say anything about sound barriers. The project would be a “slow seller.” Neighbors would have to watch the construction unless barriers are provided.
- He understood that the property owners want to sell, but that does not mean that the neighborhood should be turned into a senior living center.
- He reviewed the traffic pattern. He did not think it made sense.
- The best use of the property would be to turn it into open space. It would look good as a corridor and bring up the value of surrounding properties.
- The proposal would be a mistake.

Pam Scherling, 4925 West End Lane, stated that:

- She had the same concerns as the previous speakers.
- There is a heavily used trail located in the front of the property. There are many near misses. Construction equipment would create a lot of traffic.
- Resident surveys show that parks and trails are a main priority. Residents do not want neighborhoods leveled or trees removed.
- The development should be much lower density. There is no walkability to shopping.
- The price point would be too high for a high-traffic area.
Ms. Frost added that the wetlands on the northwest side are connected by a tunnel that travels under Highway 7 and the bike path connects to Purgatory Creek.

Knight asked how the proposal compares to the development on the west in terms of density. Thomson said that the proposal would be 6.5 to 7 units per acre. Medium density zoning allows 4 to 12 units per acre. Thomas calculated that the Carlyslle Townhomes next door are 9 units per acre.

Calvert asked what the price point would be. Mr. Eldrich did not know the lot cost yet, so the price has not been determined. The estimate would be $500,000 for one story with 1,400 to 1,700 square feet on the main level and $600,000 for two stories with 1,000 square feet on the main level and 1,500 square feet above. A market study was completed. There is a project in Minnetonka off of County Road 101 and Highway 5 that starts in the upper $700,000 and goes into the $1 million range.

Odland remembered conversations that Groveland Pond would be too big. The proposal looks like 15 lbs. of potatoes would be put into a 5 lb. bag. It would be too large. She thought the price point would be too high for a resident downsizing and considering that the units would be on a highway.

Chair Kirk was concerned that the access on Highway 7 would not be safe. The development would be too dense. The Carlyslle development looks fairly dense. Once the driveways and garages were added to the Groveland Pond proposal, commissioners determined it would be too dense. The houses would have been within 15 feet of each other. There must be a market, because developers are proposing the density. Determining whether the residences would sell is up to the developer. The size, density, and safety of the accesses is within the purview of commissioners.

Knight has been on the trail biking. He did not like the steep hills to the Carlyslle Townhomes. He stops for the stop sign and nearly hits a cyclist that does not stop at that intersection often. He crosses the path on his way to work. Motorists stop in the middle of the road because bicyclists do not stop.

Calvert noted that it seems that the Carlyslle is protected by old trees that provide a buffer. The proposal would have to reduce the number of trees by an enormous amount. That would not be right.
Chair Kirk asked if commissioners would prefer an extension of Carlysle Place. Calvert said that the proposal is hard to visualize. A neighborhood would be significantly changed and commissioners have it in their purview to encourage responsible development that includes meeting demographic need by attracting young people and helping seniors have housing options. She was not convinced if the proposal would achieve either goal. It is hard to see the impact without a tree survey and the actual plans. Minnetonka does not have a lot of the type of housing that Carlysle would provide. There is not a lot of space to build new single-family housing stock in Minnetonka. It is a conundrum.

Chair Kirk said that it is nice to have some amenities when adding single-family houses. This is not a great spot. It would not be an easy place to get in and out of. It is not walkable to the store. Carlysle is full, but has the same traffic issues.

Thomson requested direction from commissioners regarding potential future development of the area as a whole. Chair Kirk asked if waiting for other parcels to be included in the development site would be an option. Thomson stated that the comprehensive guide plan guides the area to be considered as a whole for redevelopment. Planning for future connections would be a reasonable approach.

Chair Kirk thought that two additional lots on the east would be an easy extension of the proposal.

Thomson clarified that the comprehensive guide plan calls for an understanding that redeveloping the area in part would have some impact on future redevelopment of two properties on the east and what would ultimately happen to them.

Chair Kirk stated that the commission could request that the developer to create an extension of the proposal that would incorporate those two additional lots.

Chair Kirk wants tree preservation and a buffer to the Clear Spring Road neighborhood taken into account. To go from low density to high density suggests that there needs to be an area of buffer. Commissioners agree that the proposal is too dense and a buffer is needed between the proposal and Highway 7.

Calvert took to heart the comments regarding the wetlands.

Chair Kirk was interested to see how acceleration and deceleration would work with the access points.
Odland requested statistics on the number of accidents at Carlysle for motor vehicles, bicyclists, and pedestrians. Thomson will request that information from the police department.

O’Connell deferred the access issues to MNDot. He was not so certain that it would not be too dense based on the comprehensive guide plan. The same arguments could be made for Carlysle, but residents like living there.

Magney agreed that the proposal would not be too dense. The site is awkward. Safety is a big concern, but he would defer to MNDot on that.

10. Adjournment

*Odland moved, second by O’Connell, to adjourn the meeting at 9:20 p.m. Motion carried unanimously.*

By: ____________________________

Lois T. Mason
Planning Secretary
Aggarwal said he would not be back before the council asking for another variance. He asked if it mattered to the council if the homes had a full basement or a lookout. Schneider said it did matter. The way the 3,200 square foot was calculated was on all exposed levels. Wischnack said that would be included in the resolution.

Allendorf moved, Wiersum seconded a motion to adopt Res. 2015-083 approving the preliminary plat including the condition that:

- Plat won't be released until the building plans are submitted that meet the specified criteria – Square foot above ground of 3200 or less; FAR of 0.14
- Building permits won't be approved unless the plans submitted with the building permit application substantially conform to the plans approved prior to release of the final plat

All voted “yes.” Motion carried.

Schneider said if the provision worked there may be other opportunities to do the right thing without making things so complicated.

C. Concept plan review for Villa West

Thomas gave the staff report.

Bob Schmidt, president of RTS Development, said the villa concept was designed for Minnetonka residents looking to downsize or not wanting to do yardwork.

Scott Dahlke, civil engineer of site design, said the biggest challenge was the access. He met with MnDOT staff who provided a recommendation about how to maintain access to the properties. The recommendation was to continue down to the east to the most easterly boundary, come off of Highway 7 and circle back through the site with an exit at the west end. This would provide two exit maneuvers that were in close proximity on to Highway 7. He said all of the properties except the most westerly property were on well and septic. The project would extend sewer and water to all the lots. A survey has been completed and wetland delineation has been done. There is a creek that runs through the center of the site. The development plan would take that into consideration.

Rob Eldrich, of Ridge Creek Custom Homes, said one issue that came up during the neighborhood meeting and the planning commission meeting was the tree canopy and the privacy of the neighboring properties. He said he, Schmidt, and Dahlke went out to the property and were confident that the major woods along the south property line would maintain the privacy.
The goal was to maintain a buffer from between the proposed houses and the existing houses so the woodsy feel remains. He said it was likely that none of the homes would be priced above $750,000. Looking at new construction in the city built during the last two years, there were six homes available under $750,000, five were two stories, one was split level. The median age in the city was 60 years old. He was excited to bring this product to the market.

Schneider asked if the homes would be detached or attached. Eldrich said they would be detached with a rambler style. There were some alternative two story styles for young families looking for new construction.

Schneider asked if there was any effort to cooperatively work with the property to the west of the western exit to have the entrance be combined between the two. The tradeoff would be more setback behind the home. Dahike said that had been discussed with MnDot and the recommendation was for the exit to be independent.

Allendorf asked for more information about how the circuitous route exiting on the east side would work. Dahike said traffic coming from the west would go along the entire frontage of the project with a turn lane on Highway 7 coming into the easterly point. Traffic would come back through to the west on the one way private drive that would exit on to Highway 7 continuing to the east. Allendorf asked if there had been any consideration of an internal two way circulation system that would allow entering and exiting on the east to avoid the proximity of the two exits to the west. Dahike said the limited property boundaries led to the narrower one way configuration. There just wasn’t enough space to have a full two way road. Allendorf said that meant no street parking on the property. Dahike confirmed that was correct. He said more work would be done to look at how to handle the parking.

Schneider said this was less of a concept review and more a reaffirmation of the density of housing. There wasn’t enough information to evaluate the pros and cons of the concept.

Wiersum agreed. His natural inclination was to wonder what the houses would look like and that information was not yet available. He recommended that the applicant not come back with an application before doing a more detailed concept review.

Schmidt said the plan began with a single parcel and then the neighbors expressed interest in selling. He said there was a lot of demand and interest for this type of housing. The density would be about half of the density of the neighboring townhouses.
Bergstedt said he attended a neighborhood meeting at the beginning of the process. There were a lot of questions about the concept review process. He noted staff had not seen any type of detailed plans. The area had been planned for medium density since the 1970's so he didn't think anyone should be concerned with a medium density proposal. He said some of the neighbors inquired about the city purchasing the property for park land or open space. This would not happen and he thought the property should be developed but developed sensibly. Along with the existing Carlyle Place townhouses there were six single family parcels, four were under control. Whatever plan that comes forward involving the four parcels should be looked at more broadly to determine how the final two parcels would be integrated in an orderly way. He thought the detached villa townhomes would be very popular but looking at the plan it seemed to be very dense.

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

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

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

Thomas gave the staff report.

Wagner said as the council had discussed the area, the discussion was that it was going to change to a higher density. He thought there was agreement it would be a combination of businesses and residential. It was more logical that the Merchandise Mart area might have more residential, and he had argued for residential on the Datacard site as well but the
2016 CONCEPT PLAN
Odland moved, second by Knight, to recommend that the city council adopt the resolution on pages A18-A25 of the staff report. This resolution approves a conditional use permit and site and building plans for a licensed daycare facility at 10401 Bren Road East.

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

9. Other Business

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

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

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

Kirk noted that the proposal has changed to only include 16913 State Highway 7.

David Carlson, real estate developer with Gatehouse Properties, applicant, stated that the design would be for empty nesters. The houses would be one level with master bedroom, second bedroom, two bathrooms, and sunroom or loft within the roof line. There is little new construction at a reasonable price for empty nesters. The property owner of the adjacent property declined to sell, but a plan was created to show what could be done on the Anderson property. The proposal is at the minimum number of units per acre. The base price would be $489,900 for 1,500 square feet and a 12 x 12-foot sunroom or 700-square-foot loft. Three of the lots could have a basement. A loft is a lot less expensive than a basement.

Knight asked about the different plans. Mr. Carlson explained that six units on the Carlson piece would be done if the Anderson property would not be included. The other plan is an example of what could be done if the Anderson property was included in the proposal.

Scott Dahlke, applicant’s engineer, explained that a small modification could be done to keep the extension if the Anderson property would be included in the project.

Odland asked what would be done to make the site blend in with the neighborhood. Mr. Carlson said that the minimum number of units per acre would
blend in nicely. He provided a clearer rendering to commissioners. The mass would be kept to one level or within the roof line for units with a loft.

Odland asked if there would be a yard. Mr. Carlson answered in the affirmative. All of the units would be end units. The windows would be staggered to provide private backyards.

Calvert said that the proposal feels like it would be part of the neighborhood.

Mr. Carlson said that he received no objections from the neighbors to the south.

Chair Kirk invited those present to provide comments.

David Devins, 17100 Sandy Lane, stated that he objected to the last proposal and favored something like the current proposal. The current proposal would fit into the neighborhood. He preferred one entrance and one exit.

Calvert thought the other concept plan was too dense, but this transitions from the surrounding neighborhood and fits the space better. The homes are attractive. The price point is right. This fits all of the criteria for a down-sizing demographic.

Powers likes the proposal.

Chair Kirk appreciated the proposal taking bicyclists into account and the applicant including an example of what could happen with the Anderson property.

Chair Kirk noted that there would have to be another entrance and exit on Highway 7 if the three parcels to the east would be developed.

Odland asked if it would be possible to add a bridge to mirror what is proposed on the west side and provide safety for bicyclists and pedestrians if all of the parcels would be developed at one time.

The city council will review the concept plan February 8, 2016.

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

Chair Kirk introduced the proposal and called for the staff report.
just get platted to move forward. The lots might just sit there because a builder would not take the chance of building million dollar homes. Eventually a home might get built on one lot with nothing happening on the other lots for a number of years. Then another builder could come in who doesn't think about things like tree cover or drainage.

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

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

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

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

Gordon gave the staff report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Wischnack gave the staff report.

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

15. Appointments and Reappointments:

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

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

16. Adjournment

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

Respectfully submitted,

D. E. Maeda
City Clerk
2017 CONCEPT PLAN
Chair Kirk thought the size of the building might be a little large for the view from the single-family residences. The proposal would be an appropriate transition. It would be very attractive and a relatively quiet one. He supports the proposal.

Calvert shared his concern. She took pictures of the property from across the street to help visualize how the proposal would look. She was concerned with the mass. The building would be very attractive and is needed by a fast-growing demographic in the community.

Powers moved, second by Knight, to recommend that the city council adopt an ordinance rezoning the properties from B-1 to R-5; approving preliminary and final plats; and approving final site and building plans with a variance associated with Mesaba Capital at 17710 and 17724 Old Excelsior Boulevard.

Sewall, Calvert, Knight, O’Connell, Powers, Schack, and Kirk voted yes. Motion carried.

This item is tentatively scheduled to be reviewed by the city council at its meeting on August 28, 2017.

9. Other Business

A. Concept plan review for Villa West at 16913 and 17101 State Highway 7.

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

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

Schack noted that exiting the site and getting on Highway 7 was difficult. Thomas explained the proposed traffic pattern. Schack was concerned with traffic safety related to entering and exiting the site. Chair Kirk suggested switching the entrance and exit.

Powers preferred two entrances from Highway 7 to provide another opportunity if a driver missed the first entrance.

Sewall asked if it would be possible to access Sandy Lane or Clear Spring Road. Thomas stated that had been considered, but deemed unfeasible.
Calvert noted that some of the trees on the site are nice and some are dead. She asked if the trees on Highway 7 would be preserved. Thomas stated that would be a goal.

David Carlson, owner of Gatehouse Properties, applicant, stated that the proposal would address a need for empty nesters with main-floor living. There are very few units of this type on the market. He has done a similar project, Eldorado, across from Big Willow Park on Minnetonka Boulevard. The building has three units which were sold as soon as they hit the market. He was open to whatever access would work best. The proposal was created by a civil design engineer. The development size, density, and scope would be minimal compared to what could be done on the site. Thomas did a nice job describing the concerns expressed at the neighborhood meeting which were traffic access and screening to the adjacent property owners. He was available for questions.

Chair Kirk asked how close units 6 and 7 would be located to the residences on the south side. Mr. Carlson said that the units would be 20 feet from the property line.

In response to Sewall’s question, Mr. Carlson estimated the base price for the units to be $500,000 with an additional $25,000 for a 4-season sunroom and $50,000 for a second story with loft.

Schack asked if he hoped to purchase additional land adjacent to the site. Mr. Carlson stated that the proposal and accesses would need to be approved before purchasing additional property.

Mr. Carlson explained that the cost for new construction is extremely high and it continues to rise. An individual 62 years of age or older may qualify for an FHA program known as a reverse mortgage. A qualifier may sell one’s current, paid-off house for $350,000, put that $350,000 into purchasing a new $600,000 residence, and there are no monthly payments. The interest accrues and gets paid along with the remaining balance when the residence is sold. This is an interesting way to provide affordable housing for a senior with obsolete living conditions or a residence in need of repair through financing instead of the purchase price.

Chair Kirk invited the public to provide input.

David Devins, 17100 Sandy Lane, stated that, generally, the neighborhood is in favor of the proposal. There are not a lot of objections. He agreed with the issues staff mentioned. He talked with the developer and land owner and everyone
seems pretty amenable to work on things. The issues are the exit and entrance on Highway 7. He has lived there 25 years and accessing Highway 7 is not that scary once a driver is used to it. Spacing the in and out accesses would solve a lot of problems. There is a berm that has trees and landscaping between his property and the proposed site. He hoped the berm could be recreated. The developer seemed open to that. It would be in everyone’s best interests. He is the president of the homeowner’s association. The residents of his building are comfortable with the proposal and he is also. It would be a good use of the land. Addressing the Highway 7 accesses and landscaping would make it a good use for everyone.

No one else chose to speak.

Calvert agreed that there is a market for the product. She understood the enthusiasm. It would fit the property. She was glad the neighbors found it acceptable. Maintaining a berm and keeping some mature trees along Highway 7 and providing buffering for the adjacent properties would be important.

Chair Kirk agreed with the importance of preserving the trees along Highway 7. He suggested positioning the residences to make it possible in the future to possibly access Sandy Lane. He agreed that the proposal would be the right product for the area. The density of this proposal is more appropriate than the last proposal’s density.

Powers likes the proposed density and the proposal is attractive. He left the entrance and exit to engineers to find the best solution. He liked the product and the idea of providing one-level living. The developer is well established and reliable.

Schack saw it as a testament to the developer that the neighborhood is now supportive of the proposal. She agreed that avoiding the creation of horseshoes roads would be preferable. A decrease in price for new housing is unrealistic. Residents want different accessibility. These types of units are in high demand. She supports the proposal. She likes the plan. Access to the site is the biggest issue.

Chair Kirk suggested that staff provide the city council with an overlay of the existing neighborhood with the proposed accesses to review at its meeting.

O’Connell did not want to tie up this proposal on the hope that the property owner on the east might sell. He left the traffic issues to the experts.
Knight likes this proposal much better than the previous one. It is ideal. He was confident drivers would learn the location of the entrance and exit after visiting the site a couple times.

This item is tentatively scheduled to be reviewed by the city council at its meeting on August 28, 2017.

10. **Adjournment**

* Sewall moved, second by Calvert, to adjourn the meeting at 8:55 p.m.  
  Motion carried unanimously.

By: ____________________________

Lois T. Mason  
Planning Secretary
PLANNING COMMISSION REQUESTED INFORMATION REGARDING HWY 7 ACESSES
Existing and Proposed Property Access From Hwy 7