

WAYZATA CITY COUNCIL MEETING AGENDA
Wayzata City Hall Community Room, 600 Rice Street
Tuesday, July 7, 2015

4:30 PM Dinner Available for Wayzata City Council - Conference Rm.

WORKSHOP TOPICS FOR DISCUSSION:

- 1. Discuss Long Lake Police Contract (5:00 pm)**
- 2. Discuss S. Highway 12 Frontage Road Right-Of-Way Issues & UUCM Outlot Site Acquisition (5:30 pm or immediately following)**
- 3. Lake West Development Concept (6:30 PM or immediately following)**

7:00 PM - CITY COUNCIL MEETING

ITEM	DESCRIPTION	PRESENTER	JM	AM	KW	BA	ST	VOTE	PAGE #
1	Roll Call								
2	Approve Agenda								
3	Public Forum - 15 Minutes (3 min/person)								
a.									
4	New Agenda Items (3 min/councilmember) - 1. Councilmember suggest item to add; 2. Must be seconded by another Councilmember; 3. Determine staff resources, scheduling & timeframe; 4. Discuss & vote to add to future agenda								
a.									
b.									
5	Consent Agenda								2
a.	Approval of Minutes of June 2, 2015, Workshop Minutes of June 16, 2015 and Minutes of June 16, 2015								
b.	Approval of Check Register								
c.	Municipal Licenses Which Received Administrative Approval (Informational Only)								
d.	Consider Resolution No. 28-2015 Auth Interfund Loan for Advance of Certain Costs in Connection with TIF District #5								
e.	Consider Resolution No. 26-2015 Shoreland CUP, Impervious Surface Variance, and Tennis Court Variances for 532 Ferndale Rd.								
6	New Business								
a.	Consider Approval of Amended and Restated Redevelopment Agreement with Wayzata Bay Redevelopment Company, LLC	Nelson							75
b.	Consider First Reading of an Ordinance Granting a Franchise to Mediacom Minnesota LLC to Construct, Operate and Maintain a Cable System in the City; Setting Conditions; Providing for Regulation and Use of the System; and Prescribing Penalties for the Violation of its Provisions	Nelson							386
c.	Consider Resolution No. 27-2015 250 Bushaway Subdivision and Variances	Gadow							473
d.	Consider Approval of Updated Strategic Plan	Nelson							526
7	City Manager's Report and Discussion Items								
8	Public Forum (as necessary)								
9	Adjournment								

Meeting Rules of Conduct:

Turn in white card for public forum and blue card for agenda item
Give name and address
Indicate if representing a group
Limit remarks to 3 minutes

Upcoming Meetings:

City Council - July 21 & WEDNESDAY, August 5, 2015
Planning Commission - July 20 & August 3, 2015

WAYZATA CITY COUNCIL
DRAFT - MEETING MINUTES
June 2, 2015

AGENDA ITEM 1. Call to Order and Roll Call.

Mayor Willcox called the meeting to order at 7 p.m. Council Members present: Anderson, McCarthy, Mullin and Tyacke. Also present: City Manager Nelson and City Planner Gadow.

AGENDA ITEM 2. Approve Agenda.

Mrs. McCarthy made a motion, seconded by Mr. Tyacke, to approve the agenda, as presented. The motion carried 5/0.

The Council requested to meet with staff to address traffic issues and to meet with Public Works about maintenance of landscaping gardens.

Mr. Willcox reported that downtown parking and Bushaway Road were topics for discussion at the Workshop meeting prior to the Council meeting.

AGENDA ITEM 3. Public Forum – 15 Minutes (3 minutes per person).

a. Trudy Richter – Bushaway Project

This item was postponed to the next Council meeting when Ms. Richter can attend.

AGENDA ITEM 4. Consent Agenda.

The Council inquired about Item d and whether SRF would be the default vendor for the implementation and design of the ramp. Ms. Nelson stated the Assignment Agreement does not endorse that SRF is the implementation partner and covers only the current work with the programming and pre-design phase.

Mr. Tyacke made a motion, seconded by Mrs. McCarthy, to approve the consent agenda:

- a. Approval of Workshop Minutes of May 19, 2015, Minutes of May 19, 2015, and Workshop Minutes of May 21, 2015
- b. Approval of Check Register
- c. Approval of Residential Assessing Contract
- d. Approval of Assignment Agreement from LSA Design, Inc. to SRF Consulting Group, Inc. for Downtown Parking Improvement Project

The motion carried 5/0.

AGENDA ITEM 5. New Business.

a. Consider Development Agreement Amendments for Wayzata Bay Redevelopment LLC

Ms. Nelson reported that the City Council and Housing and Redevelopment Association (HRA) Chair Tom Shaver met for a workshop meeting on May 21, 2015 to review the Wayzata Bay Center Redevelopment Agreement amendments. The HRA met on May 29, 2015 for approval of the term sheet. Ms. Nelson invited Mr. Jay Lindgren, Dorsey and Whitney, to outline the proposed amendments.

Mr. Lindgren reported the proposed amendments relate to the East Block of the Promenade project, and would allow 29-31 condominiums, an 80-90 room hotel, approximately 14,000 square feet of commercial retail space, parking, and additional plans. He reported on the timeline of the project, the modified tax-increment proposal, the TIF note, and the remnant parcel.

Mr. Lindgren reported the developer, Presbyterian Homes, agrees to participate in the downtown parking district, to provide a workforce parking and project access plan, to provide landscaping of the East Buffer area, to provide a lump sum payment of \$25,000 for additional landscaping, and will allow public parking within the project after occupancy of the West Block.

1 The Council asked if there is a current fee schedule of fines for workers parked in non-
2 designated area. Mr. Lindgren stated this would be developed and brought before Council at a
3 later date.

4 The Council asked what the existing term expiration date is on the Remnant Parcel for
5 the first right of consideration for development. Mr. John Mehrkens, Presbyterian Homes,
6 reported it was originally a 5-year period that expires in 2016, which then moves to a 5-year
7 notification period.

8 The Council asked for clarification on workforce parking and the future City ramp. Mr.
9 Mehrkens stated his understanding is that if space is available, parking will be made available to
10 the broader public not related to the development itself, and exclude workforce parking. There
11 will be off-site parking for construction. Mr. Mullin suggested the signs be as specific as possible
12 to remove all workforce parking off the site.

13 The Council asked for clarification on Item No. 7. Mr. Lindgren stated this means a
14 special service district will be established and the developer agrees to be a part of that district.

15 The Council inquired about the meaning of a full-service hotel in Item No. 3 and the
16 Available Tax Increment in Item No. 6. Ms. Nelson explained there is a \$22.9 million note
17 issued on the TIF. Over the term of the district, the developer receives the principle amount of
18 that note on an annual basis plus the interest. The benefit to the developer is \$57.4 million and
19 the benefit to the City is \$12.3 million.

20 The Council referred to the table in the packet and asked why around year 2 and 3, the
21 amount the City receives drops by \$3,000 and increases on the developer's share. Ms. Nelson
22 stated the difference is the shift of taking between 50% of the East Block versus 5% of all the
23 blocks. It will be looked at again to make sure the City is in the best position as to when that shift
24 occurs.

25 The Council clarified that street parking is available to the public, the ramp parking is
26 public for those going to retailers and Presbyterian Homes Development. The Council questioned
27 how those differences were going to be communicated to the public if blue public parking signs
28 are used. Mr. Mehrkens stated there will be additional signage in the ramp stating the ramp is for
29 paying patrons of The Promenade, but challenges still remain as to how to enforce this.

30 The Council asked staff about the TIF money and if it can be spent on maintenance of the
31 area. Ms. Nelson said it can only be used for capital improvement projects, not for upkeep and
32 maintenance.

33 The Council stated in previous Workshops, there was discussion that some of this
34 funding could be earmarked for areas around the Eastman Buffer and the storm water
35 management issues. Ms. Nelson stated some amendments need to be made stating who gets what
36 portion of the TIF and the agreements amended as to what type of projects are anticipated with
37 this revenue stream.

38 Mrs. McCarthy made a motion, seconded by Mr. Tyacke, to approve the term sheet of
39 Development Agreement Amendments for Wayzata Bay Redevelopment LLC. The motion
40 carried 5/0.

41 42 **b. Consider Resolution No. 24-2015 Wayzata Bay Center East Block Approvals**

43 Mr. Gadow reported BohLand Development LLC has submitted an application for an amendment
44 to the Planned Unit Development (PUD) and modification design of the East Block of the
45 Promenade project. The Planning Commission recommends approval of the PUD Amendment
46 and Project Design, if the developer agrees to remedy or pay an assessment acceptable to the City
47 to address the significant tree damage that occurred on the east area of the subject property.

48 Mr. Gadow stated in response to the concerns of the residents in that area with the
49 landscaping around the buffer, the City and developer should consider actions that are outlined in
50 the staff report.

1 Mr. Steve Bohl, BohLand Development LLC, expressed gratitude to everyone involved
 2 in the project. He reported that the spa component of the project has decreased in size and moved
 3 from the ground level to the mezzanine level, and the condominiums have from increased from
 4 22 units to 31 units.

5 Mr. David Stahl, Cunningham Group Architecture, reported on and displayed the floor
 6 plans and drawings for parking, landscaping, retail space, condominiums, and hotel included in
 7 this project.

8 The Council asked if there was a way to make a brick façade more interesting with a
 9 pattern on the south side of the project. Mr. Stahl stated there is minimal brick and there are
 10 plans to make it look interesting.

11 By request of the Council, Mr. Stahl explained the attempt to soften the east side of the
 12 building was done through architectural design to pull back the building from the east edge.

13 The Council asked about the holding pond. Ms. Tiffani Navratil, LHB, reported the pond
 14 is meant to function as a storm water capture site.

15 The Council asked about the colors that will be used on the buildings. Mr. Bohl
 16 responded the detail trim will be white, with a deeper gray and stone detail to tie in with the rest
 17 of the buildings and blue signage.

18 The Council expressed appreciation to the developer for listening to the suggestions that
 19 were made for the project. The Council also expressed concern for the west and east elevations
 20 from the Presidential Suites to the end of the building, that appears to be a long, flat façade and
 21 suggested a design with more movement. Mr. Stahl stated that space is about 80-90 feet long and
 22 includes landscaping and trees that help create detail on that wall. Mr. Bohl explained the image
 23 does not capture the detail on the roof that also helps break up the flatness.

24 The Council asked if adding these buildings will affect airflow and create a wind tunnel
 25 in that area. Mr. Stahl responded these building are not tall enough to have a great impact on the
 26 airflow.

27 By request of the Council, Mr. Mehrkens reported on the features of the park stating there
 28 will be an additional stairway into the park, benches, tables, an area for games, and the dog policy
 29 is being reconsidered.

30 The Council stated money has been set aside from the City, the developer, and TIF to
 31 create an eastern buffer vegetative screen. Ms. Navratil stated it is important to do an invasive
 32 removal plan and maintain the removal. Other plantings can then take place and will need to be
 33 maintained. These plantings would possibly include White Pines and Dogwoods to help with
 34 year-round screening.

35 The Council asked about traffic concerns addressed by the Planning Commission. Mr.
 36 Gadow reported they would work with the Hotel to direct traffic down Superior.

37 Mr. Dan Mahoney, Hay Creek Hotels, reported on the restaurant in this development.
 38 The plan for the restaurant includes median prices with higher quality food and service and sees it
 39 as a standalone restaurant that can be used by people in the community.

40 The Council asked for clarification on traffic flow and valet parking around the hotel
 41 entrance.

42 Mr. Dan Gustafson, 1040 E Circle Drive, Wayzata, thanked everyone for all the work
 43 that is being done. He stated three issues are traffic on East Circle Drive, the buffer, and the
 44 round-about. He suggested turning the entire circle into greenspace and creating a larger buffer
 45 between the residential and commercial spaces.

46 Ms. Nelson stated truck traffic is restricted through that area and needs to be enforced.
 47 Staff would be willing to look at design concerns in that area.

48 Mr. Gadow suggested a change in the conditions of approval on page 128, under 4.1A to
 49 read: “The Owner agree to the remedies as defined in the revised Development Agreement”. He
 50 also referenced page 121 and suggested adding a condition that the applicant have a meeting to
 51 communicate with the residents of the east neighborhood ~~to communicate~~ about the landscaping

1 and also the broader conversation about the pedestrian connection so all parties involved can be
 2 kept up to date about what is going on with the landscape buffer and the pedestrian connection.

3 He also stated the number of condominium units should be changed from 29 to 29-31.

4 The Council suggested a condition that the applicant and City would work with the
 5 neighborhood to mitigate traffic concerns. This could be added to 4.1 4 on page 121 of the staff
 6 report.

7 Mrs. Anderson made a motion, seconded by Mrs. McCarthy, to Adopt Resolution No. 24-
 8 2015 Approving PUD Amendment and Revised Project Design for Wayzata Bay Center East
 9 Block as revised to add a condition on page 128, under 4.1 A to read: “The Owner agrees to the
 10 remedies as defined in the revised Development Agreement”; to add a condition stating “The
 11 applicant shall have ~~a~~ meetings to communicate with the residents of the east neighborhood ~~to~~
 12 ~~communicate~~ about the landscaping, ~~about~~ the pedestrian connection and also to discuss traffic
 13 concerns”; and, the number of condominium units shall be changed from 29 to read 29-31. The
 14 motion carried 5/0.

15 16 **c. Consider RFP for Lake Effect Signature Project Design**

17 Mr. Gadow reported the Council met with Ms. Mary deLaitre of Groundworks LLC, to review a
 18 draft of a RFP to solicit design team submissions for the Lake Effect: Signature Project. The idea
 19 is to build off the previous work already done and put it into a form that allows construction on
 20 this project. Staff is requesting approval of the RFP, so it can be sent out for responses starting
 21 on June 3. Applications would be accepted until July 10 and the winning team selected in
 22 September.

23 The Council asked Ms. deLaitre to summarize the changes made to the RFP. Ms.
 24 deLaitre stated there were vocabulary changes and clarifications around schematic design to the
 25 RFP. The Council stated the work already done is to be used as a springboard and wondered how
 26 to emphasize this to the design teams. Ms. deLaitre pointed out it is referenced in several areas.

27 The Council emphasized this is not an additional cost, but is part of the original Lake
 28 Effect plan costs. The Council suggested adding there was money earmarked for this project and
 29 is still under budget.

30 Mrs. Anderson made a motion, seconded by Mr. Mullin, to authorize the RFP for Lake
 31 Effect Signature Project Design. The motion carried 5/0.

32 Mr. Gadow stated at the next City Council meeting on June 16, the Council will be asked
 33 to select individuals that will serve on the Selection Committee.

34 35 **d. Accept Strategic Planning Report and Adoption of Norms of Behavior and** 36 **Parameters for Interaction with Developers, Media**

37 Ms. Nelson presented the report from the Strategic Planning Sessions held on April 30 and May
 38 1. Once accepted, staff anticipates having the Strategic Plan document updated for Council
 39 review in July. Staff is recommending the Council consider adoption of the two policy items: 1)
 40 Norms of Behavior for Wayzata City Council; and, 2) Parameters for Interaction with Public,
 41 Developers, and Media. Staff is also looking to discuss Item No. 4: More involvement by Council
 42 Members.

43 The Council thanked Ms. Nelson and staff for their work on the Strategic Planning
 44 Session.

45 Mrs. Anderson presented a Proposed Diversity and Inclusion Statement and requested it
 46 be included with the Norms of Behavior. Mr. Tyacke stated it is incongruous with the goal of
 47 governing the City. Those that serve on the Council are equals and he does see it as relevant.

48 Mrs. McCarthy stated it would be more appropriate at a City level, not just at the City
 49 Council. She noted it is separate and distinct from the Norms of Behavior that were discussed and
 50 if we chose to implement it, it could be reviewed at the City level and with City Attorney review.

Mr. Mullin thanked Mrs. Anderson for her work and stated this could be addressed at a broader level than just the City Council. He is open to further discussion on it, but feels it does not fit with the Norms of Behaviors for Wayzata City Council.

Mr. Willcox stated the Norms of Behavior address current issues that the Council had and needed to be addressed, and diversity and inclusion are not part of those issues.

Ms. Nelson stated there is a personnel policy that states how the City operates as an employer with provisions that apply to the elected officials. Staff requested to review this Statement with existing policy language.

Mr. Tyacke made a motion, seconded by Mr. Mullin, to approve Norms of Behavior for Wayzata City Council. The motion carried 5/0.

Ms. Nelson clarified Item No. 2, Parameters for Interaction with Public, Developers and Media, refers to bigger issues and anything that has to do with legal matters.

Mr. Mullin stated his is not comfortable with the way it is written. He suggested adding “Notify and inform the City Manager about media inquiries. In situations where legal matters are involved, direct media inquiries to the City Manager”. Mr. Tyacke and Mrs. McCarthy agreed.

Mrs. McCarthy stated Item E should be shortened. Ms. Nelson suggested Council Members use some phrases of Item E at the end of their emails.

Mrs. McCarthy made a motion, seconded by Mr. Mullin, to approve Parameter for Interaction with Public, Developers, and Media with the following revision: “Notify and inform the City Manager about media inquiries. In situations where legal matters are involved, direct media inquiries to the City Manager. ~~Direct media inquiries to City Manager first, especially regarding legal matters.~~” The motion carried 5/0.

AGENDA ITEM 6. City Manager's Report and Discussion Items.

a. Update on Bushaway Project

Ms. Nelson reported the Council toured the Bushaway Road Project corridor and has a better understanding of the inconveniences to the residents. There is a 50/50 chance the railroad bridge will be done this year and staff is working with the County to put pressure on the railroad to get the project finished.

The Bushaway listening session will now be held at City Hall to get updates from the County and Landscape Committee on the progress being made.

b. Lakefront Docks

Ms. Nelson reported the docks are being installed and encouraged people from the south shore to come by boat to visit downtown Wayzata.

c. Upcoming Dates

Emergency Management Training on June 25 from 5:30 – 7:30 p.m. in Corcoran.

d. Announcements

Mrs. Anderson announced beginning on Sunday, June 7, the Trolley will run on Sundays and Thursdays between now and September 3 from 10:00 a.m. to 4:00 p.m. as well as Wednesday evenings in July from 5:00 p.m. to 9:00 p.m. for the concerts at the Depot.

e. Other

Mr. Mullin stated Council never discussed Item No. 4 on page 174. Mr. Willcox recommended staff send an email that lists major City projects so that Council Members can indicate which ones they would like to be more involved in.

Mr. Mullin asked staff to look at the timing of the pedestrian light near Walgreens on Wayzata Boulevard.

AGENDA ITEM 7. Public Forum Continued (if necessary).

There were no comments.

AGENDA ITEM 8. Adjournment.

Mrs. McCarthy made a motion, seconded by Mr. Mullin to adjourn. There being no further business, Mr. Willcox adjourned the meeting at 10:03 p.m.

Respectfully submitted,

Becky Malone
Deputy City Clerk

Drafted by Shannon Schmidt
TimeSaver Off Site Secretarial, Inc.

DRAFT

WAYZATA CITY COUNCIL
DRAFT - WORKSHOP MEETING MINUTES
June 16, 2015

5:45 PM WORKSHOP WITH PLANNING COMMISSION TO REVIEW ZONING STANDARDS FOR NEIGHBORHOODS

Mayor Willcox called the workshop meeting to order at 5:45 pm in the Community Room at Wayzata City Hall. Council Members present: Anderson, McCarthy, Mullin, and Tyacke. Planning Commissioners Present: Gonzalez, Gruber, and Iverson. Also present: City Manager Nelson, Director of Planning and Building Gadow, Director of Administrative Services Uram, Management/Planning Intern Peters, City Attorney Schelzel, Heritage Preservation Board Member Sorrentino, and Parks and Trails Board Member Borg Babcock.

Mr. Gadow stated that as part of their 2015 Strategic Plan Update, the City Council expressed a desire to undertake a study of the City's residential zoning district regulations to determine if they were in keeping with the existing character and "rhythm of elements" of the neighborhoods. Staff has requested a joint Planning Commission and City Council workshop on this topic, so that staff can better understand the proposed scope of the study, in order to determine the resources and time that would be required.

Mr. Gadow stated that in 2007, planning staff and the Planning Commission undertook a 12 month study of the zoning requirements for the "Old Wayzata Plat", the "Old Holdridge", and North Wayzata Blvd neighborhoods within the existing R-3 Single and Two Family District. The study, which was undertaken during a moratorium on building height above 30 ft. for new residential construction, evaluated a number of policy tools to address larger new infill residential structures on smaller lots. Mr. Gadow indicated that the policy tools evaluated, included:

- Permitted and conditional uses
- Average Front Yard Setbacks
- Additional impervious surface allowances to incentivize detached garages
- Limits on front-loading garages
- Reduction in peak building height from 35 ft to 32 ft to the peak of the roof
- Inclusion of articulation requirements to limit long unbroken planes along the side walls of structures
- Floor Area Ratio standard to limit the total amount of building square footage based upon the size of the lot (excludes garage, porches, and below grade basement SF).

Mr. Gadow informed the group that the 2007 study generated much public comment on the proposed regulations, both in favor and in opposition to the changes. He said that after much deliberation in 2007, the City Council approved a rezoning of the Old Wayzata Plat, Old Holdridge, and North Wayzata Blvd neighborhoods to a new R-3A Zoning District category, which included a 32 ft peak height limit, and setback allowances to assist narrower corner lots to more closely match the setbacks of adjacent properties. He informed the group that back in 2007, the City Council was concerned about the unintended consequences of adopting the additional policy items into ordinance, and held them over.

After discussion among the Councilmembers and Planning Commissioners present, the Council asked staff to focus specifically on the neighborhoods currently zoned R-3, R-3A, and R-2, and include the following topics as part of the study:

- Building Height
- Front Yard Setbacks
- Side Yard Setbacks
- Scale of buildings

- Amount of tree removal
- Garage location
- Lot Combinations
- One vs Two Family Uses
- Quality of exterior and interior building materials

6:30 PM KC CHERMAK – WISE HOUSE RELOCATION

Mayor Willcox called the workshop meeting to order at 6:30 pm in the Community Room at Wayzata City Hall. Council Members present: Anderson, McCarthy, Mullin, and Tyacke. Planning Commissioners Present: Gonzalez, Gruber, and Iverson. Also present: City Manager Nelson, Director of Planning and Building Gadow, City Engineer/Assistant Director of Public Works Kelly, Director of Administrative Services Uram, Management/Planning Intern Peters, City Attorney Schelzel, Heritage Preservation Board Member Sorrentino, and Parks and Trails Board Member Borg Babcock.

Mr. Gadow stated that on May 4th, the City Council approved a three (3) lot subdivision of the property at 313 Central Ave S submitted by KC Chermak of Pillar Homes and Gary Gravier (collectively, the “Applicant”). One of the conditions of Resolution 20-2015, was that:

“For a period of no less than sixty (60) days from the date of approval of the Proposed Subdivision by the City Council, the Applicant must preserve the existing “1903 Wise House” on the Property and make best efforts to facilitate the relocation of the house to another property. Thereafter, the Applicant must provide the City with public notification no less than ten (10) days prior to the home being demolished, in addition to following all other City processes and permit requirements for demolition.”

Mr. Gadow said that since the Council approval of the subdivision, Mr. Chermak has continued to work with members of the City’s HPB and Wayzata Historical Society, and has found a willing purchaser of the Wise House. Mr. Tim Foster, of the Partners Group and owner of the commercial property at 222 Minnetonka Ave S has expressed an interest and willingness to purchase the Wise House and relocate it to the rear portion of the 222 Minnetonka Ave S property. Mr. Foster desires to utilize the existing Wise House as conference room space for the existing office building on the property (locally known as the “Lorie Line building”).

Mr. Gadow reviewed hardcover, setback and parking requirements necessary to accommodate the addition of the Wise House on the 222 Minnetonka Ave S property. In order to relocate the Wise House, Mr. Chermak and Mr. Foster would be responsible to secure approval of a City Right of Way permit, post a performance security, secure permissions or easements to cross private properties, coordinate the relocation with Public Works and the Police Department, and coordinate any utility line relocations with Xcel at their expense. Mr. Gadow stated the Applicant stated the proposed relocation would occur between the end of June and middle of July.

Mr. Gadow indicated that Mr. Foster expressed a willingness to have the Wise House open to the public for certain City events, such as James J Hill Days.

The Council thanked Mr. Chermak for his efforts in facilitating the relocation of the Wise House.

The Workshop meetings were adjourned at 6:55 pm.

Respectfully submitted,

- 1
- 2 Becky Malone
- 3 Deputy City Clerk

DRAFT

WAYZATA CITY COUNCIL
DRAFT - MEETING MINUTES
June 16, 2015

AGENDA ITEM 1. Call to Order and Roll Call.

Mayor Willcox called the meeting to order at 7 p.m. Council Members present: Anderson, McCarthy, Mullin and Tyacke. Also present: City Manager Nelson, City Planner Gadow, City Engineer Kelly, and City Attorney Schelzel.

AGENDA ITEM 2. Approve Agenda.

Mr. Tyacke made a motion, seconded by Mrs. McCarthy, to approve the agenda, as presented. The motion carried 5/0.

Mr. Willcox announced the Council met in Workshop prior to tonight's meeting to discuss the possibility of reviewing zoning regulations to preclude out of character homes from coming into otherwise harmonious neighborhoods and to discuss a historical house on Wise Avenue that will be moved to another site off Minnetonka Boulevard and preserved by K.C. Chermak, owner of Pillar Homes.

Mr. Willcox commented on an incident that occurred last Thursday during which two of the City's Police squads were damaged, as well as physical injury to the officers and urged residents to not take Wayzata Police Officers for granted. Ms. Nelson extended the thanks of the Police Department for the notes and letters of support and agreed it was fortunate the situation was resolved with all being able to go home at the end of their shifts. Ms. Nelson extended the City's appreciation to the City of Plymouth who has loaned Wayzata a squad car.

AGENDA ITEM 3. Public Forum – 15 Minutes (3 minutes per person).

a. Bushaway Update

Zach Rothstein, Hennepin County Highway Department, provided an update on the Bushaway Road project, answered questions of the Council relating to how the project will improve sight lines and safety, and indicated a 12-foot access lane has been maintained for residents at all time.

Mr. Kelly stated the new watermain is complete on Eastman Lane and Bushaway Road and announced that on the third Thursday of June, a Bushaway Road listening session is scheduled with members of the Chamber and County staff.

b. Tour de Tonka Bike Ride Presentation

Tim Litfin, representing Tour de Tonka Bike Ride, presented Council Members with a bell and thanked the Council, staff, and downtown businesses for their support. He provided an update on the success of last year's Ride and plans for this year. Mr. Litfin also thanked this year's sponsors and encouraged people to volunteer for the August 1, 2015, Ride.

In response to the Council's question, Mr. Kelly indicated that Bushaway Road will be open by August 1, 2015, to accommodate this year's Ride.

c. Presentation of Chamber Exceptional Service Award

Becky Pierson, Greater Area Wayzata Chamber of Commerce, and Mr. Willcox presented the Exceptional Service Award to Billy (Enkhbileg Tserenbat), owner of Sushi Fix. Billy thanked the City and Chamber for this recognition.

d. Introduction of Jason Peters, Management/Planning Intern

Ms. Nelson introduced Management/Planning Intern Jason Peters, a summer intern who will be paid through a grant. Mr. Peters described his personal and professional background as well as

his education. He thanked the Council, staff, and community for this opportunity to serve Wayzata.

AGENDA ITEM 4. New Agenda Items.

None.

AGENDA ITEM 5. Consent Agenda.

Mr. Tyacke asked to remove Item 5b, Cooperative Agreement with Hennepin County.

Dan Gustafson, 1040 Circle Dr. E., requested to remove Item 5a, Minutes of June 2, 2015, to allow for comment. With regard to the eastern buffer, he noted the minutes indicate the traffic and parking study would be a one-time meeting; however, it was his understanding it was an ongoing issue that the City, contractor, and residents would continue to work on.

Mr. Mullin agreed and stated he had added a clause to the resolution to assure an ongoing dialogue between the City, developer, and residents around the issues of landscaping and traffic concerns. Mr. Schelzel recommended the Council remove the minutes from the Consent Agenda, correct the meeting minutes so they are accurate, and if needed correct the resolution.

Mr. Mullin made a motion, seconded by Mrs. Anderson, to approve the consent agenda:

- a. ~~Approval of Workshop Minutes of June 2, 2015 and Minutes of June 2, 2015~~
- b. ~~Consider Cooperative Agreement with Hennepin County for Bushaway/LaSalle Lighting~~
- c. Approval of Check Register
- d. Approval of Municipal Licenses
- e. Municipal licenses which received administrative approval (informational only)
- f. Police Activity Report
- g. Building Activity Report

The motion carried 5/0.

AGENDA ITEM 6. Public Hearing.

- a. **Public Hearing for an On-Sale Intoxicating Liquor License and Sunday On-Sale Intoxicating Liquor License at District Restaurant LLC DBA “District Fresh Kitchen & Bar” at 300 Superior Boulevard**

Ms. Nelson presented the request of District Fresh Kitchen & Bar for an On-Sale Intoxicating Liquor License and Sunday On-Sale Intoxicating Liquor License and recommended approval as the background investigation was in satisfactory order.

In response to Council’s question, Ms. Nelson explained the liquor license is confined to the premise, which comprises indoor as well as outdoor areas that are physically controlled to delineate where liquor service can be provided. The business is responsible for making sure that alcohol is confined to the premises.

Mr. Anoush Ansari, District Fresh Kitchen & Bar, introduced himself and described the locally sourced healthy high-quality foods that will be offered at this location starting August 4, 2015. Mr. Ansari announced the Wine on Wayzata Bay wine tasting event on Friday, June 19, 2015, and invited all to attend.

Mr. Willcox opened the public hearing at 7:43 p.m. There being no comment, Mr. Willcox closed the public hearing at 7:44 p.m.

- b. **Consider Approval of an On-Sale Intoxicating Liquor License and Sunday On-Sale Intoxicating Liquor License at District Restaurant LLC DBA “District Fresh Kitchen & Bar” at 300 Superior Boulevard**

Mrs. Anderson made a motion, seconded by Mr. Tyacke, to approve an On-Sale Intoxicating Liquor License and Sunday On-Sale Intoxicating Liquor License at District Restaurant LLC DBA “District Fresh Kitchen & Bar” at 300 Superior Boulevard. The motion carried 5/0.

AGENDA ITEM 7. New Business.

a. Consider Resolution No. 25-2015 Approving Shoreland CUP and Variances at 532 Ferndale Road W.

Mr. Gadow presented the request for a Front Yard Setback Variance to allow the construction of a new attached garage to replace a detached non-conforming garage; a Shoreland Conditional Use Permit to exceed the 25% hardcover rule; Impervious Surface Variance above 25% hardcover as this property is located in the R-1 District that has a cap on hard cover at 25% even with stormwater mitigation measures; and Front Yard and Side Yard Variances for installation of a tennis court at 532 Ferndale Road West. The Planning Commission reviewed this multi-part application at its June 1, 2015, meeting and unanimously recommended approval of the Front Yard Setback Variance to construct the new garage but tied 3-3 on the votes relating to the Shoreland CUP, Impervious Surface Variance, and tennis court Variances. Thus, there is not a recommendation from the Planning Commission relating to those three items of the application.

The Council noted the existing hardcover is at 25.7%. If the application is approved as proposed the hardcover would be at 38.8%, and if the application is approved without the tennis court the hardcover would then be under the 25% threshold.

With regard to the criteria for granting a Shoreland Impact Plan and CUP, that the overall lot coverage shall not exceed the surplus development capacity for impervious surfaces calculated for Lake Minnetonka, Gleason and Peavy Lakes, Mr. Gadow stated in discussions with Minnehaha Creek Watershed District, the proposal, if approved, is not over that capacity criteria. It was noted that the City Engineering Department has reviewed the proposed stormwater management and infiltration systems. Mr. Gadow stated he is aware of several pervious products for tennis court construction but the challenge is the level of maintenance required to assure they continue to properly function. Mr. Gadow explained the stormwater management system would treat 1.5 inches of rainwater, which is more than required under the Minnehaha Creek Watershed District rules.

Philip Soran, 5625 Interlachen Circle, Edina, applicant, introduced his project team and stated they have designed something that is better than existing conditions, noting the infiltration system is designed to collect 1.5 inches of rain from the roof, driveway, and tennis court, bringing it from 26% down to 16%. Mr. Soran explained the garage is currently a safety concern so they want to move it off the street line.

Chuck Hanna, engineer representing the applicant, stated the 16% was calculated by ADS, the engineers that designed the system to capture 4,500 gallons from the tennis court and 680 gallons from the rooftop. He advised that turf grass is not considered 100% pervious due to grade issues. Mr. Soran stated the stormwater system is similar to what is used at the TCF Bank Stadium and Target Field.

Margaret Soran, 5625 Interlachen Circle, Edina, applicant, stated the tennis court chain link fence would be 10 feet high at the ends and much shorter on the sides, with possibly no fence along the house side. Mr. Soran stated the neighbor to the west has submitted a letter in support, as have four or five other neighbors they contacted.

The Council reviewed standards for setback variances and asked questions of Mr. Gadow. It was acknowledged that the four requests can be considered separately.

Following discussion, a majority of the Council indicated support for the Front Yard Variance to move the garage, as it would eliminate a non-conforming building, but expressed a reluctance to approve the CUP and Variances requested for the tennis court, as it was considered a recreational amenity. Mr. Mullin stated his support for the full application, as it preserves the historical home; pulls the garage away from the lot line, which improves on the existing condition; and, the applicant has gone to great lengths to mitigate the impact of the tennis court. Mr. Willcox stated this is a difficult consideration, as evidenced by the Planning Commission deadlocking in its vote. He noted the current neighbors support the requests and while he has

1 concerns with a chain link fence and wind screen around the tennis court that would appear to be
 2 a wall, he would reluctantly favor the requests to accommodate a tennis court due to the
 3 additional storm water treatment that would be provided and protect the Lake.

4 Mr. Soran clarified the windscreen on the ends of the chain link fence would be rolled up
 5 when not in use.

6 Mr. Gadow stated if the Council supports the garage Setback Variances but not the other
 7 components of the application, the resolution can be revised to strike all language relating to the
 8 tennis court application. Mr. Schelzel concurred and noted because the applicant wants to move
 9 forward with the garage as soon as possible, the resolution could be revised and considered at
 10 tonight's meeting to accommodate the applicant.

11 Messrs. Gadow and Schelzel advised of the tennis court references that would be
 12 removed from Resolution No. 25-2015, including the Title, Background, Sections 1.2A., 1.2C.,
 13 1.2D, 2.1, 2.3, 2.4, Section 3 second and third lines to delete the words '...Shoreland CUP,
 14 Impervious Surface Variance, and Tennis Court Variances...', 3.1, 3.2A. deleting the last two
 15 sentences, 3.2B. revise last line to indicate, '...complying with the front yard setback.' 3.2C
 16 deleting the last sentence, 3.2E deleting words 'tennis court' in second line, 4.1 second and third
 17 lines to delete the words 'Shoreland CUP, Impervious Surface Variance, and Tennis Court
 18 Variances...' and 4.1B.

19 Mr. Tyacke made a motion, seconded by Mrs. Anderson, to Adopt Resolution No. 25-
 20 2015, as revised above, to approve only the Front Yard Setback Variance for the new attached
 21 garage. The motion carried 5/0.

22 A poll of the Council indicated two members (Mullin and Willcox) in support and three
 23 members (Anderson, Tyacke, McCarthy) against the tennis court Variances.

24 Mrs. Anderson made a motion, seconded by Mr. Tyacke, to direct staff to prepare a draft
 25 resolution of denial of the Shoreland CUP, Impervious Surface Variance, and Tennis Court
 26 Variances at 532 Ferndale Road West for consideration at the next Council meeting. Upon a roll
 27 call vote, the motion carried 4/1 (Willcox).

28 29 **b. Review of TIF Analysis for 239-259 Lake Street Concept**

30 Mr. Gadow reviewed that on May 19, 2015, the Council met with three Lake Street property
 31 owners in a Council Workshop to discuss potential redevelopment of their property. At the
 32 conclusion of the Workshop, staff was directed to engage Ehlers & Associates to conduct
 33 preliminary TIF analysis for the potential redevelopment discussed at the Workshop.

34 Jason Aarsvold, Ehlers & Associates, presented his firm's TIF analysis for potential
 35 development, including an 80,000 square foot office building, mixed use that included housing
 36 and retail components, and a redevelopment district. Mr. Aarsvold summarized the analysis for
 37 each of the three properties, including tax rates, base values, tax capacity pre- and post-
 38 development, maximum potential tax increment to offset redevelopment project costs, present
 39 value number on each site, available increment, and development values.

40 In response to questions of the Council, Mr. Aarsvold stated his firm did not look at a
 41 scenario with majority office and retail at ground level, but he expects it would be very close to
 42 the \$3 million number. Mr. Gadow stated the purpose of this analysis is to assist with
 43 consideration of potential public assistance for parking options for the redevelopment of the site.
 44 In addition, staff will engage the Three Rivers Park District for possible additional capital
 45 participation in public parking, given the proximity of the Dakota Rail Trail. He stated at the
 46 Workshop, there was discussion of three office buildings with a parking ramp behind, but there
 47 are other possibilities including mixed use, so Ehlers was asked to analyze other development
 48 scenarios.

49 Ms. Nelson stated the Council adopted a policy relating to public subsidy and one of the
 50 components was to support the demand for public parking. To the extent tax increment can be
 51 utilized to help support the project for the provision of parking, a daytime office use would create

1 the greatest opportunity for a share of public parking. Staff found the site is ready for
 2 redevelopment, and the analysis shows enough increment would be generated to offset parking.
 3 Thus, staff thinks there is a viable project worth further exploration.

4 With regard to the parking agreement and easement with the Boatworks, Mr. Schelzel
 5 stated that easement burdens one of the three properties and will need to be honored unless the
 6 two property owners negotiate something different.

7 Brad Hoyt, 253 East Lake Street, stated Ehlers' analysis did not include office,
 8 apartments, and retail, which he thinks will generate closer to \$4.8 million to \$4.9 million in
 9 increment. Mr. Hoyt clarified they are not proposing a development with TIF assistance but for
 10 the City to issue General Obligation Bonds to build a ramp and own it. Mr. Hoyt felt the parking
 11 ramp would have to be a City initiative, offered to put in whatever resources staff needs to create
 12 a plan, and indicated support to expand the district to include other properties that would benefit.
 13 Mr. Hoyt asked for an indication from the Council that they support buying into that process so
 14 he can decide whether to hold the property.

15 Pat Hughes, 235 and 239 East Lake Street, stated he does not think Ehlers included all of
 16 the property in the analysis. He agreed with Mr. Hoyt that parking is needed on the west side,
 17 there is an opportunity to develop, but without parking it will be a significant challenge. Mr.
 18 Hughes stated he is ready and able to redevelop his two small lots and does not want to lose the
 19 opportunity. He asked for a collective indication from the Council whether they support moving
 20 quickly toward something that works for the three property owners and the City.

21 In response to Council's question, Mr. Aarsvold stated Ehlers' analysis did not calculate
 22 parking needs based on proposed uses or what the source of revenue would be used for (public
 23 parking ramp). The analysis included the addresses of 253, 239 and 259 Lake Street. 235 Lake
 24 Street was not considered and may or may not provide more increment if included. Mr. Aarsvold
 25 stated Ehlers has been before the Council previously about the City issuing General Obligation
 26 Bonds for a parking structure but that was for a parking ramp that was purely public. The
 27 question in this case would be use of publicly funded parking purely to support a developer's gap.

28 The Council acknowledged that if the TIF district expanded to Ferndale Road or included
 29 different parcels and uses, the TIF analysis would be different. It was noted the question was
 30 whether the Council supported using TIF and other partnership dollars to facilitate a partnering
 31 stance for redevelopment on the west end of Wayzata. It would not be just for the benefit of these
 32 three properties but, rather, provide parking for the public as well as an entire development area
 33 on the west side as defined in a Parking District. The Council noted the Three Rivers Park
 34 trailhead has also created a parking need.

35 A poll of the Council acknowledged this is a unique opportunity and supported moving
 36 forward to further explore the project, gather more information, follow the successful 'playbook'
 37 being used on Mill Street, consider public benefit of investing in a parking capacity for the entire
 38 district to avoid having to react to parking needs on a parcel-by-parcel basis, and to look for
 39 parking solutions for the entire west end of Wayzata.

40 41 **c. Discussion of Mill Street Parking Ramp Site Planning**

42 Ms. Nelson stated at the June 2, 2015, Workshop the Council discussed the Mill Street parking
 43 ramp and the intent of this agenda item is to provide an update and gain the Council's direction
 44 on policy.

45 Jim Lasher, SRF Consulting, provided an update on activity since the Council's June 2
 46 discussion, noting two-hour parking enforcement and valet service have begun. He
 47 recommended updating the 2007 traffic projections and suggested a scope of work that should be
 48 included to understand the measurement and functionality of intersections today and determine
 49 whether additional traffic can be accommodated. If approved, the study will also address traffic
 50 patterns, points of access into the parking ramp, and project potential traffic based on future
 51 development within the corridor as a result of the ramp.

1 The Council asked what would be done differently with the updated traffic projections
2 that show an increase in traffic, noting this is an additional budget item. Mr. Lasher explained
3 how the projections will determine impacts of circulation from the ramp that may result in a
4 decision to place the ramp exit onto a different roadway to avoid creating additional congestion
5 during peak times.

6 The Council reviewed the aerial photographs, noting that depending on the location of the
7 entrances and exits of the parking ramp, the preliminary design allowed for traffic on the east side
8 of Mill Street where there is considerable foot traffic to the Muni.

9 The Council discussed whether the traffic projections needed to be updated, noting that in
10 the next two years there will be a dramatic change in traffic levels so a study conducted today
11 would be ephemeral. However, such a study would gather data on potential future uses, address
12 pedestrian traffic east of Mill Street, and increased traffic projections as a result of the ramp.

13 Mr. Lasher stated the analysis included the new restaurant across the street from the
14 Muni, the new intersection at Superior and Wayzata Boulevards, revisions to the Presbyterian
15 Homes plan, and proposed development. He stated with regard to conflicting pedestrian use of
16 the space, if there is not a ramp entrance on Superior Boulevard, it will impact the location of
17 ramp signage within and outside the core area. Mr. Lasher stated he understands the comments of
18 the Council but felt the traffic analysis would gather the data needed to make a wise choice about
19 how to unload and load a 450 car parking structure.

20 Mr. Lasher stated this small site has a significant change in soil qualities so he
21 recommended a geotechnical investigation to drill four borings at a cost of \$9,000. The results of
22 those borings will get directly at the type and cost of construction for the parking structure.
23 Depending on the boring results, another set of soil borings may be required to determine the type
24 of foundation needed.

25 Mr. Lasher described the option to repurpose Mill Street as a Woonerf, a livable and
26 useable street and asked the Council if this is a reasonable approach. Following discussion, the
27 majority of the Council indicated it generally favored exploring this concept as Mill Street is a
28 historic roadway and to consider the parking structure front more as a storefront/street image,
29 subject to better understanding those options. Mr. Tyacke questioned whether creating a
30 Woonerf would be worthwhile as lost parking spaces would have to be replaced with higher cost
31 ramp spaces, it may appear as a 'dark canyon,' and may negatively impact Mill Street businesses.

32 Mr. Lasher next addressed the creation of a green roof, stating they met with the
33 Minnehaha Creek Watershed District, which has \$750,000 per year to fund stormwater
34 management concepts in their District. He asked the Council whether creating a green roof has
35 merit for continued exploration.

36 Mrs. Anderson supported exploration of other grant opportunities as it will benefit the
37 viewshed for residents above. Mr. Tyacke stated while he would not object to further
38 exploration, leans more towards consideration of a solar application that would have cost benefit
39 implications. Mr. Mullin preferred to use the resources instead to address engineering of the
40 parking structure into the hill. Mrs. McCarthy stated overall, she favors any opportunity to soften
41 or integrate the structure as much as possible. She asked if there are opportunities to recreate the
42 hill to better camouflage the structure. Mr. Lasher reviewed diagrams depicting ramp locations
43 and described the view from above depending on how the structure is sited. Mr. Willcox
44 supported making the view as acceptable as possible from above but did not support a green roof,
45 as they are expensive to construct and maintain. He suggested planting short trees or shrubs
46 along the upper slope that would not impact the lake view but still shield the view of the parking
47 structure. A poll of the Council revealed three in support of continued consideration of a green
48 roof.

49 Mr. Tyacke stated his belief there is a good business case for considering a solar roof so
50 he would like to have that discussion with staff. Mr. Lasher clarified that the solar panels will be
51 positioned to not create reflectivity to the north.

1 Mr. Lasher reported on potential future developments including Beltz constructing a
2 20,000 square foot building addition, which will have an impact on the parking ramp and could
3 include a bridge archway entrance to the Woonerf on Mill Street.

4 The Council indicated such an expansion could require 212 parking stalls so the cost
5 would have to be included in the ramp, which may cost more than the property. With the
6 Wayzata Bay development sale, the Council preferred an open green space that is modified for
7 pedestrian use.

8 Mr. Lasher presented additional parking structure concepts, points of access, building
9 footprint, and resulting impact on commercial development. Mr. Lasher stated the parking
10 analysis planned two expansions (70' x 100' Beltz expansion and an additional 15,000 to 20,000
11 square foot use) in the parking ratio. However, it does not allow adding a structure needing an
12 additional 212 parking spaces. He asked whether the Council supported consideration of a retail
13 or commercial building on the Broadway side.

14 The Council discussed the option of locating a commercial building along the west edge
15 of the parking structure. Mr. Tyacke supported considering the concept for the Beltz building to
16 bridge over depending on the mass and scale, as long as the parking capacity is incorporated.

17 Mr. Lasher stated he understands the area is zoned for two stories so Beltz would need a
18 CUP for a three-story structure. He stated the proposal is for some kind of bridge (one-story or
19 two-story) but the grade may force it to be only a one-story bridge to keep down the building
20 mass. He stated they will bring back drawings to show that concept.

21 Mrs. Anderson expressed concern with the mass and scale of such a concept and stated
22 she is not comfortable considering it at this point as it is premature without additional information
23 from the traffic study to determine the best scenario for entrances.

24 Mr. Mullin stated he remained open to the concept of development, noting this parking
25 structure will not fully resolve the City's parking need. He stated why he supported modest
26 development and a modest high-quality ramp and reconfiguring the asphalt on the Muni side to
27 improve aesthetics and functionality.

28 Mrs. McCarthy agreed it is premature to make some of these determinations. She
29 supported commercial and retail but does not yet know whether it is the best option to have a
30 commercial building on the west corner. If the Beltz building is not constructed, Mrs. McCarthy
31 stated she is willing to give up the concept of mixed use and focus on quality and aesthetics and
32 assuring it has a sense of place and purpose within Wayzata.

33 Mr. Willcox stated he will need to be convinced about a commercial building on the
34 corner, noting it started as a parking structure and now mixed use is being considered. He noted
35 that would intensify the need for parking so less of the parking need will be resolved. Mr.
36 Willcox noted with the parking lot area in front of the Muni, it was understood that it would be
37 developed but as Presbyterian Homes has been constructed, he now prefers preserving the
38 parking in that area and leaving it as green open space.

39 A poll of the Council indicated support to reconsider the Superior site by the Muni, to
40 scrape it, and create a different layout with additional green space.

41 Mr. Lasher presented schedule options, noting the tremendous number of decisions that
42 need to be reached in option one (accelerated schedule) to construct in 2016, open the first level
43 by the peak parking season, and complete the structure by August. The Council discussed the
44 schedule options and consensus was reached that option two, extending the schedule by six
45 months, was more realistic.

46 Mr. Lasher requested authorization to engage a geotech engineer to conduct soil borings.
47 Mr. Willcox indicated the Council had already indicated a consensus to conduct that work. Ms.
48 Nelson stated those expenses will be paid as incurred and all costs are being tracked as a project
49 so if, in the future, a bond is issued those costs can be wrapped in.

50 The Council again considered whether the traffic projection needed to be updated. A poll
51 of the Council indicated three did not support updating the traffic projections.

Paul Webster, 726 Widsten Circle and an 85-year resident, suggested the consultant consider whether parking should be at 90 degrees versus 45 degrees. He stated the issues relating to the parking ramp are aesthetics, accessibility, financial stability, and the long-range objectives are to increase parking, tax base, and value of Wayzata real estate. Mr. Webster stated he lives at Widsten, noting those residents contribute \$525,000 in property taxes and when you include Harrington House and the four townhouses the total is well over \$800,000 in property taxes. Those property owners will have to look at the parking ramp. Mr. Webster stated why he does not think the Muni parking lot is being used only by those customers. He stated his concern that aesthetically, some of the residential properties may be damaged if the parking ramp is not tastefully addressed, particularly those towards Walker if another retail building is considered.

Ms. Nelson stated staff will follow the Council's direction to push this forward and return on July 7, 2015, with another update.

d. Council Designation of Council Representatives for Key Initiatives: Parking, Cell Tower Site & Bushaway Road

Ms. Nelson explained that during the 2015 Strategic Planning Session the Council indicated interest in becoming more involved with key initiatives. She reported that former Councilmember Jack Amdal has volunteered to serve on the Bushaway Road initiatives, but not as the Chair. She requested direction on which key initiatives Members wish to serve as the Council's representative.

The Council discussed the key initiatives and consensus was reached on the following assignments: Cell Tower Site – Mrs. McCarthy; Downtown Parking – Mr. Tyacke; and, Bushaway Road Landscape Committee – Mrs. Anderson as Chair and Mrs. McCarthy as backup.

e. Council Selection of Lake Effect Selection Committee Appointments

Mr. Gadow advised of the three design professionals that have expressed interest in serving on the Lake Effect Selection Committee. In addition, membership will include representatives of the Three Rivers Park District, Lake Minnetonka Conservation District, Minnehaha Creek Watershed Board, Hennepin County representative, Planning Commission, Heritage Preservation Board, and the Park and Trails Board. The Railroad has been contacted and Ms. Mary deLaitre of Groundworks LLC will contact the Chamber of Commerce regarding representatives from the business community.

Council Members Mullin, Anderson, and Willcox each explained why they were interested in serving on the Lake Effect Selection Committee.

Mrs. McCarthy made a motion, seconded by Mr. Tyacke, that the Lake Effect Selection Committee be represented by two Council Members. The motion carried 5/0.

The Council Members cast two paper ballots that both resulted in a deadlock with three votes each. Mrs. Anderson clarified she is only interested in serving with the design selection element, not further phases of the Lake Effect. The Council cast a third paper ballot, which Mr. Gadow counted, and announced that Mr. Willcox and Mr. Mullin received the majority of votes.

f. Consider Cooperative Agreement with Hennepin County for Bushaway/LaSalle Lighting

Mr. Tyacke asked that consideration of the two Agreements be separated so he is able to recuse himself from action on the Excel Energy Agreement as he and his law firm have represented Excel Energy.

Mr. Schelzel advised the Agreements can be considered separately. He stated language inconsistencies between the Excel Energy Agreement and the County Agreement relating to indemnification and insurance requirements had been noted, and recommended any approval of the Hennepin County Cooperative Agreement be subject to the necessary revisions to make it consistent with the Excel Energy Agreement.

Mr. Tyacke made a motion, seconded by Mr. Mullin, to approve the Hennepin County Cooperative Agreement, subject to revision to the extent necessary in the view of the City Attorney to be consistent with the terms of the Excel contract. The motion carried 5/0.

Mr. Mullin made a motion, seconded by Mrs. McCarthy, to approve the Excel Energy Cooperative Agreement. The motion carried 4/0/1 (Tyacke).

g. Approval of Workshop Minutes of June 2, 2015 and Minutes of June 2, 2015

Mr. Mullin stated the intent of his motion at the last meeting pertaining to the condition in Resolution No. 24-2015 was not for one meeting but an on-going dialogue around parking and the eastern buffer, and he assumed staff had corrected the resolution to reflect that intent.

Mr. Schelzel asked if the resolution was approved with that added condition. Mr. Gadow answered in the affirmative and stated staff will verify whether the resolution references one meeting or an ongoing conversation to reflect Mr. Mullin's intent.

Mr. Willcox stated his concern is that the Council not reinvent what happened, noting the minutes cannot be changed if it was not actually stated. Mr. Schelzel suggested staff review the recording and submit corrected meeting minutes, if needed.

Mr. Mullin polled the Council and asked if there is any concern with an open dialogue around the eastern buffer. No objection was expressed.

The Council supported the recommendation of Mr. Schelzel and directed staff to review the recording and assure the minutes are an accurate reflection of what happened for consideration at the next Council meeting.

Mr. Mullin made a motion, seconded by Mr. Tyacke, to approve the Workshop Minutes of June 2, 2015. The motion carried 5/0.

AGENDA ITEM 8. City Manager's Report and Discussion Items.

a. Legislative Update on Widsten Amendment

Ms. Nelson provided a legislative update, advising a tax bill was not acted upon so the Widsten amendment was not considered. Because of the legislative impasse, the City has the option to hold certification of the district and ask again during the next session. Ms. Nelson stated this will be discussed during consideration of the budget.

b. Update on Concession Agreement

Ms. Nelson reported on the Concession Agreement and that the project is moving forward.

c. Update on Park Maintenance

Ms. Nelson described staff's difficulty in hiring Parks maintenance workers this summer. She reviewed a list of items that have not yet been addressed and short-term solutions being considered. The Council asked staff to look into contracting with a private landscaping firm to complete some of the maintenance items. It was noted that other options were using volunteers or social programs such as individuals needing to perform community service. Ms. Nelson stated this will be rolled into the budget discussion.

d. Other

Ms. Nelson stated on July 2nd and 30th, 6 Smith will be hosting "Oake on the Water" events and has made application for a special event permit.

Ms. Nelson reported on dock usage and stated staff will continue to track those numbers.

Mr. Willcox reviewed Fourth of July events.

Mr. Mullin announced this weekend is Wine on Wayzata Bay and one of the lead sponsors is the Muni and Wayzata Wine and Spirits.

Mrs. Anderson congratulated the Heritage Preservation Board on its successful event for the Trapper's Cabin.

1
2 **AGENDA ITEM 9. Public Forum Continued (if necessary).**

3 There were no comments.
4

5 **AGENDA ITEM 10. Adjournment.**

6 Mr. Tyacke made a motion, seconded by Mrs. McCarthy to adjourn. There being no further
7 business, Mr. Willcox adjourned the meeting at 11:06 p.m.
8

9 Respectfully submitted,
10

11
12
13 Becky Malone
14 Deputy City Clerk
15

16 Drafted by Carla Wirth
17 *TimeSaver Off Site Secretarial, Inc.*

DRAFT

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
10100 Anchor Bank					
Paid Chk#	099097	6/16/2015	#12 CIDERHOUSE		
E 640-47000-253	Beer For Resale		\$120.00	51	BEER
	Total #12 CIDERHOUSE		\$120.00		
Paid Chk#	099098	6/16/2015	ABSOLUTE MECHANICAL		
E 640-47000-404	Repairs/Maint - Machin/Equip		\$475.00	5246	BAR/STRORE HVAC REPAIRS
E 640-48000-404	Repairs/Maint - Machin/Equip		\$475.00	5246	BAR/STRORE HVAC REPAIRS
	Total ABSOLUTE MECHANICAL		\$950.00		
Paid Chk#	099099	6/16/2015	ARCTIC GLACIER INC.		
E 640-47000-254	Soft Drinks/Mix For Resale		\$165.71	437516312	ICE RESALE
E 640-47000-254	Soft Drinks/Mix For Resale		\$30.18	462515206	ICE RESALE
	Total ARCTIC GLACIER INC.		\$195.89		
Paid Chk#	099100	6/16/2015	ARTISAN BEER COMPANY		
E 640-47000-253	Beer For Resale		\$344.00	3035999	BEER
E 640-47000-254	Soft Drinks/Mix For Resale		(\$39.27)	315400	MISC.BEV.
E 640-47000-254	Soft Drinks/Mix For Resale		(\$3.57)	315401	MISC.BEV.
	Total ARTISAN BEER COMPANY		\$301.16		
Paid Chk#	099101	6/16/2015	BAGY JO, INC.		
E 640-47000-499	Miscellaneous		\$84.00	53079	STORE UNIFORM SHIRTS
	Total BAGY JO, INC.		\$84.00		
Paid Chk#	099102	6/16/2015	BELLBOY BAR SUPPLY CORP.		
E 640-47000-252	Wine For Resale		\$440.00	48523800	WINE
E 640-47000-259	Freight		\$1.55	48523800	FREIGHT
E 640-47000-251	Liquor For Resale		\$1,877.65	48551200	LIQUOR
E 640-47000-259	Freight		\$23.25	48551200	FREIGHT
E 640-47000-259	Freight		\$10.60	48652400	FREIGHT
E 640-47000-251	Liquor For Resale		\$747.74	48652400	LIQUOR
E 640-47000-210	Operating Supplies (GENERAL)		\$181.40	92120300	SUPPLIES
E 640-47000-259	Freight		\$4.85	92120300	FREIGHT
E 640-47000-210	Operating Supplies (GENERAL)		\$28.12	92161300	SUPPLIES
	Total BELLBOY BAR SUPPLY CORP.		\$3,315.16		
Paid Chk#	099103	6/16/2015	BERNICK`S WINE		
E 640-47000-254	Soft Drinks/Mix For Resale		\$129.20	222708	MISC.BEV.
E 640-47000-253	Beer For Resale		\$374.50	222709	BEER
	Total BERNICK`S WINE		\$503.70		
Paid Chk#	099104	6/16/2015	BOURGET IMPORTS		
E 640-47000-252	Wine For Resale		\$1,940.00	126971	WINE
E 640-47000-259	Freight		\$27.00	126971	FREIGHT
	Total BOURGET IMPORTS		\$1,967.00		
Paid Chk#	099105	6/16/2015	CENTERPOINT ENERGY		
E 640-47000-383	Fuel, oil and natural gas		\$178.59		SERVICE
E 610-40000-383	Fuel, oil and natural gas		\$27.84		SERVICE
E 101-42200-383	Fuel, oil and natural gas		\$124.59		SERVICE
E 101-41940-383	Fuel, oil and natural gas		\$9.99		SERVICE
E 101-41940-383	Fuel, oil and natural gas		\$503.28		SERVICE
E 640-48000-383	Fuel, oil and natural gas		\$714.37		SERVICE
	Total CENTERPOINT ENERGY		\$1,558.66		
Paid Chk#	099106	6/16/2015	CLEAR RIVER BEVERAGE CO.		
E 640-47000-253	Beer For Resale		\$233.60	187044	BEER

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
Total	CLEAR RIVER BEVERAGE CO.		\$233.60		
Paid Chk#	099107	6/16/2015	COCA-COLA		
E 640-48000-254	Soft Drinks/Mix For Resale		\$989.68	0198051109	MISC.BEV.
	Total COCA-COLA		\$989.68		
Paid Chk#	099108	6/16/2015	COZZINI BROS., INC.		
E 640-48500-415	Other Equipment Rentals		\$71.34	C1608192	KNIFE EXCHANGE
E 640-48500-415	Other Equipment Rentals		\$73.48	C1759536	KNIFE EXCHANGE
	Total COZZINI BROS., INC.		\$144.82		
Paid Chk#	099109	6/16/2015	DAHLHEIMER DISTRIBUTING CO.		
E 640-48000-253	Beer For Resale		\$874.00	110464	BEER
E 640-47000-253	Beer For Resale		\$544.00	1159461	BEER
E 640-48000-253	Beer For Resale		\$225.00	1159462	BEER
	Total DAHLHEIMER DISTRIBUTING CO.		\$1,643.00		
Paid Chk#	099110	6/16/2015	DAY DISTRIBUTING		
E 640-48000-253	Beer For Resale		\$302.00	805280	BEER
E 640-47000-253	Beer For Resale		\$2,671.75	805281	BEER
E 640-48000-253	Beer For Resale		\$873.00	806299	BEER
E 640-47000-253	Beer For Resale		\$2,322.80	806300	BEER
	Total DAY DISTRIBUTING		\$6,169.55		
Paid Chk#	099111	6/16/2015	DENNYS 5TH AVENUE BAKERY		
E 640-48500-255	FOODIngredients For Resale		\$51.98	559429	FOOD
E 640-48500-255	FOODIngredients For Resale		(\$6.70)	559459	FOOD
E 640-48500-255	FOODIngredients For Resale		\$97.94	559618	FOOD
E 640-48500-255	FOODIngredients For Resale		\$80.35	559937	FOOD
E 640-48500-255	FOODIngredients For Resale		\$285.33	560479	FOOD
	Total DENNYS 5TH AVENUE BAKERY		\$508.90		
Paid Chk#	099112	6/16/2015	ENKI BREWING COMPANY		
E 640-47000-253	Beer For Resale		\$295.20	3998	BEER
	Total ENKI BREWING COMPANY		\$295.20		
Paid Chk#	099113	6/16/2015	EXTREME BEVERAGE, LLC		
E 640-47000-254	Soft Drinks/Mix For Resale		\$139.60	W-1198182	MISC.BEV.
	Total EXTREME BEVERAGE, LLC		\$139.60		
Paid Chk#	099114	6/16/2015	G & K SERVICES		
E 640-48500-210	Operating Supplies (GENERAL)		\$94.64	1013128926	KITCHEN UNIFORMS & SUPPLIES
E 640-48000-210	Operating Supplies (GENERAL)		\$38.51	1013128926	KITCHEN UNIFORMS & SUPPLIES
E 640-48500-217	Uniforms		\$71.80	1013128926	KITCHEN UNIFORMS & SUPPLIES
E 640-48500-210	Operating Supplies (GENERAL)		(\$40.00)	98642	KITCHEN UNIFORMS & SUPPLIES
	Total G & K SERVICES		\$164.95		
Paid Chk#	099115	6/16/2015	GIFTNETWORKS LLC-1		
E 640-47000-254	Soft Drinks/Mix For Resale		\$70.00	4859	GLASSWARE
	Total GIFTNETWORKS LLC-1		\$70.00		
Paid Chk#	099116	6/16/2015	GRAPE BEGINNINGS, INC.		
E 640-47000-259	Freight		\$6.75	182366	FREIGHT
E 640-47000-252	Wine For Resale		\$1,680.00	182366	WINE
E 640-47000-252	Wine For Resale		\$2,070.75	182409	WINE
E 640-47000-259	Freight		\$20.25	182802	FREIGHT
E 640-47000-252	Wine For Resale		\$1,788.00	182802	WINE
	Total GRAPE BEGINNINGS, INC.		\$5,565.75		

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
Paid Chk#	099117	6/16/2015	JJ TAYLOR DISTRIBUTING OF MN		
E 640-48000-253	Beer For Resale		(\$34.30)	2351475	BEER
E 640-47000-253	Beer For Resale		\$1,297.50	2373486	BEER
E 640-48000-253	Beer For Resale		\$490.80	2374722	BEER
E 640-48000-253	Beer For Resale		\$543.80	2374775	BEER
Total JJ TAYLOR DISTRIBUTING OF MN			\$2,297.80		
Paid Chk#	099118	6/16/2015	JOHNSON BROS.-ST.PAUL		
E 640-47000-259	Freight		\$79.30	5176223	FREIGHT
E 640-47000-252	Wine For Resale		\$6,741.65	5176223	WINE
E 640-47000-252	Wine For Resale		\$361.37	5177698	WINE
E 640-47000-251	Liquor For Resale		\$2,293.64	5177699	LIQUOR
E 640-47000-259	Freight		\$32.94	5177699	FREIGHT
E 640-47000-251	Liquor For Resale		\$1,684.00	5177700	LIQUOR
E 640-47000-259	Freight		\$23.18	5177700	FREIGHT
E 640-47000-254	Soft Drinks/Mix For Resale		\$24.00	5177701	MISC.MIXES
E 640-47000-259	Freight		\$1.22	5177701	FREIGHT
E 640-47000-251	Liquor For Resale		\$2,853.01	5181926	LIQUOR
E 640-47000-259	Freight		\$23.19	5181926	FREIGHT
E 640-47000-259	Freight		\$1.22	5181927	FREIGHT
E 640-47000-254	Soft Drinks/Mix For Resale		\$32.25	5181927	MISC.MIXES
E 640-47000-252	Wine For Resale		\$3,678.05	5181929	WINE
E 640-47000-259	Freight		\$65.90	5181929	FREIGHT
E 640-48000-252	Wine For Resale		\$129.22	5183118	WINE
E 640-47000-251	Liquor For Resale		\$391.05	5193359	LIQUOR
E 640-47000-259	Freight		\$3.66	5193359	FREIGHT
E 640-47000-252	Wine For Resale		(\$82.22)	527800	WINE
E 640-47000-252	Wine For Resale		(\$50.82)	528259	WINE
E 640-47000-252	Wine For Resale		(\$59.07)	528260	WINE
E 640-47000-252	Wine For Resale		(\$108.72)	528903	WINE
Total JOHNSON BROS.-ST.PAUL			\$18,118.02		
Paid Chk#	099119	6/16/2015	KARLSBURGER FOODS, INC.		
E 640-48500-255	FOODIngredients For Resale		\$197.10	000380378	FOOD
Total KARLSBURGER FOODS, INC.			\$197.10		
Paid Chk#	099120	6/16/2015	LAKE 360 INC.		
E 640-48000-340	Advertising		\$1,500.00	TROLLEY	STORE/BAR TROLLEY SPONSORSHIP
E 640-47000-340	Advertising		\$1,500.00	TROLLEY	STORE/BAR TROLLEY SPONSORSHIP
Total LAKE 360 INC.			\$3,000.00		
Paid Chk#	099121	6/16/2015	LIBATION PROJECT		
E 640-47000-252	Wine For Resale		\$431.00	1038	WINE
Total LIBATION PROJECT			\$431.00		
Paid Chk#	099122	6/16/2015	M.AMUNDSON LLP		
E 640-47000-256	MISC.MDSE.RESALE		\$1,025.00	197084	CIGARS & CIGARETTES
Total M.AMUNDSON LLP			\$1,025.00		
Paid Chk#	099123	6/16/2015	MARGRON SKOGLUND WINE IMPORTS		
E 640-47000-252	Wine For Resale		\$3,304.00	20018578	WINE
E 640-47000-259	Freight		\$54.00	20018578	FREIGHT
tal MARGRON SKOGLUND WINE IMPORTS			\$3,358.00		
Paid Chk#	099124	6/16/2015	NORTHWESTERN FRUIT COMPANY		
E 640-48000-251	Liquor For Resale		\$26.95	814251	LIQUOR
E 640-48500-255	FOODIngredients For Resale		\$485.10	814251	FOOD
E 640-48000-251	Liquor For Resale		\$54.00	814435	LIQUOR

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
E 640-48000-255	FOOD	Ingredients For Resale	\$311.20	814435	FOOD
Total	NORTHWESTERN FRUIT COMPANY		\$877.25		
Paid Chk#	099125	6/16/2015	PAUSTIS & SONS		
E 640-48000-252	Wine For Resale		\$260.75	8501615	WINE
E 640-47000-252	Wine For Resale		\$1,956.43	8501619	WINE
E 640-47000-259	Freight		\$25.00	8501619	FREIGHT
E 640-47000-259	Freight		\$1.25	8501736	FREIGHT
E 640-47000-251	Liquor For Resale		\$344.00	8501736	LIQUOR
Total	PAUSTIS & SONS		\$2,587.43		
Paid Chk#	099126	6/16/2015	PEPSI -COLA		
E 640-47000-254	Soft Drinks/Mix For Resale		\$237.00	51127671	MISC.BEV.
Total	PEPSI -COLA		\$237.00		
Paid Chk#	099127	6/16/2015	PHILLIPS WINES & SPIRITS		
E 640-47000-252	Wine For Resale		(\$8.00)	214236	WINE
E 640-47000-252	Wine For Resale		(\$22.08)	2765330	WINE
E 640-48000-251	Liquor For Resale		\$421.36	2797254	LIQUOR
E 640-47000-252	Wine For Resale		\$2,084.00	2797452	WINE
E 640-47000-259	Freight		\$18.30	2797452	FREIGHT
E 640-47000-251	Liquor For Resale		\$579.55	2797453	LIQUOR
E 640-47000-259	Freight		\$4.88	2797453	FREIGHT
E 640-47000-252	Wine For Resale		\$1,696.00	2801075	WINE
E 640-47000-259	Freight		\$20.34	2801075	FREIGHT
E 640-47000-251	Liquor For Resale		\$2,628.45	2801076	LIQUOR
E 640-47000-259	Freight		\$19.52	2801076	FREIGHT
Total	PHILLIPS WINES & SPIRITS		\$7,442.32		
Paid Chk#	099128	6/16/2015	PLASTIC BAGMART		
E 640-48000-210	Operating Supplies (GENERAL)		\$203.82	84955	SUPPLIES
Total	PLASTIC BAGMART		\$203.82		
Paid Chk#	099129	6/16/2015	ROTO-ROOTER SERVICES CO.		
E 640-48000-401	Repairs/Maint Buildings		\$259.00	04818377756	BAR PLUMBING REPAIRS
Total	ROTO-ROOTER SERVICES CO.		\$259.00		
Paid Chk#	099130	6/16/2015	SNYDER, DAVE		
E 640-48000-341	General Promotions		\$300.00	6/25/15	BAR MUSIC 6/25/15
Total	SNYDER, DAVE		\$300.00		
Paid Chk#	099131	6/16/2015	SOUTHERN WINE & SPIRITS OF MN		
E 640-47000-259	Freight		\$44.58	1291891	FREIGHT
E 640-47000-252	Wine For Resale		\$3,647.34	1291891	WINE
E 640-47000-259	Freight		\$13.75	1291892	FREIGHT
E 640-47000-251	Liquor For Resale		\$1,606.65	1291892	LIQUOR
E 640-47000-252	Wine For Resale		\$5,411.00	1294401	WINE
E 640-47000-259	Freight		\$73.75	1294401	FREIGHT
Total	SOUTHERN WINE & SPIRITS OF MN		\$10,797.07		
Paid Chk#	099132	6/16/2015	SPENCER JANITORIAL		
E 640-48000-409	Maint services & Improv		\$2,248.22	10327	BAR MONTHLY CLEANING
Total	SPENCER JANITORIAL		\$2,248.22		
Paid Chk#	099133	6/16/2015	STRATEGIC EQUIPMENT AND		
E 640-48500-210	Operating Supplies (GENERAL)		(\$66.63)	143893	KITCHEN SUPPLIES
E 640-48500-210	Operating Supplies (GENERAL)		\$60.19	2429739	KITCHEN SUPPLIES
E 640-48500-210	Operating Supplies (GENERAL)		\$123.28	2429740	KITCHEN SUPPLIES
E 640-48000-210	Operating Supplies (GENERAL)		\$365.43	2429741	BAR SUPPLIES

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
Total	STRATEGIC EQUIPMENT AND		\$482.27		
Paid Chk# 099134	6/16/2015	SUNBURST CHEMICALS, INC.			
E 640-48000-409	Maint services & Improv		\$589.18	0346045	CHEMICALS/SUPPLIES
Total	SUNBURST CHEMICALS, INC.		\$589.18		
Paid Chk# 099135	6/16/2015	SYSCO MINNESOTA			
E 640-48500-255	FOODIngredients For Resale		(\$34.85)	3485820	FOOD
E 640-48500-255	FOODIngredients For Resale		(\$47.25)	3486945	FOOD
E 640-48500-255	FOODIngredients For Resale		(\$45.65)	505260103	FOOD
E 640-48500-255	FOODIngredients For Resale		\$2,941.43	506010800	FOOD
E 640-48000-342	Promotions - Food/Drinks		\$27.95	506010800	PROMO FOOD
E 640-48000-253	Beer For Resale		\$10.07	506010800	BEER
E 640-48000-251	Liquor For Resale		\$38.84	506010800	LIQUOR
E 640-48500-255	FOODIngredients For Resale		(\$56.50)	506020047	FOOD
E 640-48500-255	FOODIngredients For Resale		\$3,815.38	506030812	FOOD
E 640-48500-210	Operating Supplies (GENERAL)		\$66.39	506030812	KITCHEN SUPPLIES
E 640-48000-210	Operating Supplies (GENERAL)		\$95.75	506030812	BAR SUPPLIES
E 640-48000-342	Promotions - Food/Drinks		\$28.17	506030812	PROMO FOOD
E 640-48000-251	Liquor For Resale		\$36.36	506051451	LIQUOR
E 640-48000-342	Promotions - Food/Drinks		\$56.12	506051451	PROMO FOOD
E 640-48000-210	Operating Supplies (GENERAL)		\$45.75	506051451	BAR SUPPLIES
E 640-48500-210	Operating Supplies (GENERAL)		\$114.12	506051451	KITCHEN SUPPLIES
E 640-48500-255	FOODIngredients For Resale		\$5,268.55	506051451	FOOD
Total	SYSCO MINNESOTA		\$12,360.63		
Paid Chk# 099136	6/16/2015	T.D. ANDERSON INC.			
E 640-48000-409	Maint services & Improv		\$115.00	974585	BEER LINES CLEANED
Total	T.D. ANDERSON INC.		\$115.00		
Paid Chk# 099137	6/16/2015	THORPE DISTRIBUTING CO.			
E 640-47000-253	Beer For Resale		\$544.50	00701725	BEER
E 640-48000-253	Beer For Resale		\$475.00	897565	BEER
E 640-47000-253	Beer For Resale		\$54.25	897740	BEER
E 640-47000-253	Beer For Resale		\$1,999.75	897741	BEER
E 640-48000-253	Beer For Resale		\$890.00	899087	BEER
E 640-47000-253	Beer For Resale		\$119.00	899775	BEER
E 640-48000-253	Beer For Resale		\$131.40	900157	BEER
Total	THORPE DISTRIBUTING CO.		\$4,213.90		
Paid Chk# 099138	6/16/2015	TOLL GAS & WELDING SUPPLY			
E 640-48000-210	Operating Supplies (GENERAL)		\$85.18	10082093	SUPPLIES
Total	TOLL GAS & WELDING SUPPLY		\$85.18		
Paid Chk# 099139	6/16/2015	TRUE			
E 640-47000-254	Soft Drinks/Mix For Resale		\$196.02	123045	WINE BAGS RESALE
Total	TRUE		\$196.02		
Paid Chk# 099140	6/16/2015	VINOCOPIA			
E 640-47000-253	Beer For Resale		\$568.00	0125960	WINE
Total	VINOCOPIA		\$568.00		
Paid Chk# 099141	6/16/2015	VORTEX ONE CORPORATION			
E 640-48000-404	Repairs/Maint - Machin/Equip		\$90.00	13721	POS TERMINAL REPAIRS
Total	VORTEX ONE CORPORATION		\$90.00		
Paid Chk# 099142	6/16/2015	WINE COMPANY			
E 640-47000-252	Wine For Resale		\$1,455.80	395001	WINE

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
Total WINE COMPANY			\$1,455.80		
Paid Chk# 099143	6/16/2015	WINE MERCHANT			
E 640-47000-252	Wine For Resale		(\$27.00)	702957	WINE
E 640-47000-252	Wine For Resale		\$2,700.00	7032245	WINE
E 640-48000-252	Wine For Resale		\$234.44	7032981	WINE
E 640-47000-252	Wine For Resale		\$3,676.40	7033012	WINE
E 640-47000-259	Freight		\$15.05	7033012	FREIGHT
E 640-48000-252	Wine For Resale		\$97.22	7033970	WINE
E 640-47000-259	Freight		\$16.27	7034004	FREIGHT
E 640-47000-252	Wine For Resale		\$3,802.08	7034004	WINE
E 640-47000-259	Freight		\$2.44	7034276	FREIGHT
E 640-47000-252	Wine For Resale		\$720.00	7034276	WINE
Total WINE MERCHANT			\$11,236.90		
Paid Chk# 099144	6/16/2015	WIRTZ BEVERAGE MN BEER			
E 640-48000-253	Beer For Resale		\$526.00	1090414276	BEER
E 640-47000-253	Beer For Resale		\$123.00	1090414573	BEER
E 640-47000-253	Beer For Resale		\$63.00	1090414574	BEER
E 640-48000-253	Beer For Resale		\$730.00	1090417983	BEER
Total WIRTZ BEVERAGE MN BEER			\$1,442.00		
Paid Chk# 099145	6/16/2015	WIRTZ BEVERAGE MN WINE & SPIRI			
E 640-47000-259	Freight		\$1.45	1080330747	FREIGHT
E 640-47000-252	Wine For Resale		\$2,211.60	1080330748	WINE
E 640-47000-259	Freight		\$30.81	1080330748	FREIGHT
E 640-47000-259	Freight		\$71.65	1080330749	FREIGHT
E 640-47000-251	Liquor For Resale		\$6,725.61	1080330749	LIQUOR
E 640-47000-252	Wine For Resale		\$4,107.60	1080333735	WINE
E 640-47000-259	Freight		\$48.58	1080333735	FREIGHT
E 640-47000-251	Liquor For Resale		\$1,436.99	1080333736	LIQUOR
E 640-47000-259	Freight		\$15.10	1080333736	FREIGHT
Total WIRTZ BEVERAGE MN WINE & SPIRI			\$14,649.39		
Paid Chk# 099146	6/18/2015	BRIAN STEPHENSON CONSTRUCTION			
E 408-40000-520	Buildings and Structures		\$4,000.00	Const Agreem	Construction Agreement
otal BRIAN STEPHENSON CONSTRUCTION			\$4,000.00		
Paid Chk# 099147	6/24/2015	ACME TOOLS			
E 101-43100-240	Small Tools and Minor Equip		\$13.26	3443313	TOOLS
Total ACME TOOLS			\$13.26		
Paid Chk# 099148	6/24/2015	ADVANTAGE			
E 101-42100-217	Uniforms		\$227.20	0370330	PD UNIFORMS
Total ADVANTAGE			\$227.20		
Paid Chk# 099149	6/24/2015	ALLEGRA PRINT & IMAGING			
E 101-42100-350	Printing & Publishing		\$176.31	111880	PD REPORTS
Total ALLEGRA PRINT & IMAGING			\$176.31		
Paid Chk# 099150	6/24/2015	ANDERSON, KIM			
E 101-41910-492	HPB		\$372.28	HPB REIMB.	HPB EVENT SUPPLIES
Total ANDERSON, KIM			\$372.28		
Paid Chk# 099151	6/24/2015	BANK OF AMERICA			
E 101-42200-323	Radio Units		\$411.73		FD SUPPLIES
E 101-42200-404	Repairs/Maint - Machin/Equip		(\$193.03)		FD SUPPLIES
E 101-42200-217	Uniforms		\$73.82		UNIFORMS
E 101-42200-210	Operating Supplies (GENERAL)		\$226.88		FD SUPPLIES

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
E 101-42200-210	Operating Supplies (GENERAL)		\$128.43		FD SUPPLIES
E 101-42200-306	Personnel Expense		\$280.00		CERTIFICATION
E 101-42200-212	Motor Fuels		\$27.22		FUEL
Total BANK OF AMERICA			\$955.05		
Paid Chk# 099152	6/24/2015	BANK OF AMERICA			
E 101-42200-433	Dues, Licensing & Seminars		\$95.00		FD DUES
E 101-42200-433	Dues, Licensing & Seminars		\$55.00		FD DUES
Total BANK OF AMERICA			\$150.00		
Paid Chk# 099153	6/24/2015	BARCO MUNICIPAL PRODUCTS			
E 610-40000-210	Operating Supplies (GENERAL)		\$46.07	216047	UTILITY MARKING SUPPLIES
E 620-40000-210	Operating Supplies (GENERAL)		\$45.07	216047	UTILITY MARKING SUPPLIES
Total BARCO MUNICIPAL PRODUCTS			\$91.14		
Paid Chk# 099154	6/24/2015	BOTHAM, BRIAN			
E 101-42200-499	Miscellaneous		\$67.00	REIMB.	MTG.FOOD
Total BOTHAM, BRIAN			\$67.00		
Paid Chk# 099155	6/24/2015	BRIAN STEPHENSON CONSTRUCTION			
E 408-40000-520	Buildings and Structures		\$3,200.00	5/13/15	BEACH HOUSE BATHROOM IMPROVEMENT
Total BRIAN STEPHENSON CONSTRUCTION			\$3,200.00		
Paid Chk# 099156	6/24/2015	BROOKDALE CHRYSLER, JEEP,DODGE			
E 101-42100-404	Repairs/Maint - Machin/Equip		\$108.68	264645	PD REPAIRS
E 640-47000-404	Repairs/Maint - Machin/Equip		\$29.56	265176	STORE VAN REPAIRS
Total BROOKDALE CHRYSLER, JEEP,DODGE			\$138.24		
Paid Chk# 099157	6/24/2015	BUDGET PRINTING & AWARDS			
E 404-40000-499	Miscellaneous		\$30.08	8037	BENCH PLAQUES
E 404-40000-499	Miscellaneous		\$15.53	8125	BENCH PLAQUES
Total BUDGET PRINTING & AWARDS			\$45.61		
Paid Chk# 099158	6/24/2015	BUMPS AUTO & MARINE			
E 238-40000-404	Repairs/Maint - Machin/Equip		\$21,006.70	EST.2245	SQUAD REPAIRS - INS.CLAIM
Total BUMPS AUTO & MARINE			\$21,006.70		
Paid Chk# 099159	6/24/2015	CALTRELL			
E 101-42100-404	Repairs/Maint - Machin/Equip		\$154.00	27993	PD REPAIRS
Total CALTRELL			\$154.00		
Paid Chk# 099160	6/24/2015	CARQUEST OF WAYZATA			
E 620-40000-210	Operating Supplies (GENERAL)		\$17.75	6973-253418	PARTS/SUPPLIES
E 610-40000-210	Operating Supplies (GENERAL)		\$16.75	6973-253418	PARTS/SUPPLIES
E 101-43100-210	Operating Supplies (GENERAL)		\$72.92	6973-254332	PARTS/SUPPLIES
E 101-43100-210	Operating Supplies (GENERAL)		\$108.00	6973-254967	PARTS/SUPPLIES
Total CARQUEST OF WAYZATA			\$215.42		
Paid Chk# 099161	6/24/2015	CITY VIEW PLUMBING & HEATING			
E 101-41940-401	Repairs/Maint Buildings		\$148.00	43129	BEACH BATHHOUSE REPAIRS
E 404-40000-309	Contractual Services		\$2,815.00	43142	GRAVEL BED TREE NURSERY
Total CITY VIEW PLUMBING & HEATING			\$2,963.00		
Paid Chk# 099162	6/24/2015	CLAREY S SAFETY EQUIPMENT			
E 101-42200-240	Small Tools and Minor Equip		\$132.50	161334	FD TOOLS
Total CLAREY S SAFETY EQUIPMENT			\$132.50		
Paid Chk# 099163	6/24/2015	CLASSEY, KRISTIN			
E 235-40000-331	Mileage & Expense Account		\$25.58	REIMB.	MILEAGE & MTG.

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
Total CLASSEY, KRISTIN			\$25.58		
Paid Chk# 099164	6/24/2015	CLASSIC CLEANING COMPANY			
E 101-41940-409	Maint services & Improv		\$1,853.00	22319	MONTHLY CLEANING
E 101-41940-409	Maint services & Improv		\$535.00	22320	MONTHLY CLEANING
Total CLASSIC CLEANING COMPANY			\$2,388.00		
Paid Chk# 099165	6/24/2015	CMI, INC.			
E 101-42100-210	Operating Supplies (GENERAL)		\$123.28	811397	PD SUPPLIES
Total CMI, INC.			\$123.28		
Paid Chk# 099166	6/24/2015	COMMERCIAL ASPHALT CO.			
E 430-40000-309	Contractual Services		\$86.98	150615	ASPHALT
Total COMMERCIAL ASPHALT CO.			\$86.98		
Paid Chk# 099167	6/24/2015	CRABTREE CAMPANIES			
E 101-41500-200	Office Supplies (GENERAL)		\$606.00	133199	TONER
Total CRABTREE CAMPANIES			\$606.00		
Paid Chk# 099168	6/24/2015	CULLIGAN-BOTTLED WATER			
E 101-42100-309	Contractual Services		\$149.48	1867168	PD SERVICE
Total CULLIGAN-BOTTLED WATER			\$149.48		
Paid Chk# 099169	6/24/2015	DELTA DENTAL OF MINNESOTA			
G 101-21717	Dental Insurance		\$1,920.25	6051900	DENTAL INS.
Total DELTA DENTAL OF MINNESOTA			\$1,920.25		
Paid Chk# 099170	6/24/2015	DORSEY & WHITNEY LLP			
E 316-40000-304	Legal Fees		\$7,472.50	3206574	BAY CENTER TIF
E 401-40000-304	Legal Fees		\$5,980.16	3206575	DOWNTOWN PARKING
Total DORSEY & WHITNEY LLP			\$13,452.66		
Paid Chk# 099171	6/24/2015	EHLERS			
E 401-40000-304	Legal Fees		\$210.00	67717	253-259 LAKE
E 316-40000-304	Legal Fees		\$4,893.75	67718	BAY CENTER TIF
Total EHLERS			\$5,103.75		
Paid Chk# 099172	6/24/2015	ELECTRIC PUMP, INC.			
E 620-40000-405	Maint/Replac - System		\$2,488.94	0055594	LIFT STATION #16 PUMP
Total ELECTRIC PUMP, INC.			\$2,488.94		
Paid Chk# 099173	6/24/2015	EMERGENCY AUTOMOTIVE			
E 409-42100-550	Vehicles		\$110.60	12197B	NEW SQUAD SETUP
Total EMERGENCY AUTOMOTIVE			\$110.60		
Paid Chk# 099174	6/24/2015	EMERGENCY RESPONSE SOLUTIONS			
E 101-42200-210	Operating Supplies (GENERAL)		\$800.53	4214	FD SUPPLIES
otal EMERGENCY RESPONSE SOLUTIONS			\$800.53		
Paid Chk# 099175	6/24/2015	FASTENAL			
E 101-43100-210	Operating Supplies (GENERAL)		\$52.41	MNPLY77360	SUPPLIES
Total FASTENAL			\$52.41		
Paid Chk# 099176	6/24/2015	GARDELLA, JENNIFER			
R 232-00000-34941	Cemetary Lot Sales		\$200.00	GRAVE LOT	GRAVE LOT BUY BACK
Total GARDELLA, JENNIFER			\$200.00		
Paid Chk# 099177	6/24/2015	GRAINGER, INC.			
E 640-48000-404	Repairs/Maint - Machin/Equip		\$48.00	9760697376	PARTS/SUPPLIES

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
E 640-48000-404	Repairs/Maint - Machin/Equip		(\$20.48)	9762529551	PARTS/SUPPLIES
E 101-43100-226	Sign Repair Materials		\$155.30	9764556396	PARTS/SUPPLIES
E 620-40000-225	Repair & Maint - System		\$55.56	9766294004	PARTS/SUPPLIES
Total GRAINGER, INC.			\$238.38		
Paid Chk# 099178	6/24/2015	GROVES, JAMES			
E 101-42100-331	Mileage & Expense Account		\$23.85	REIMB.	MILEAGE & PARKING
Total GROVES, JAMES			\$23.85		
Paid Chk# 099179	6/24/2015	HAWKINS, INC			
E 610-40000-216	Chemicals and Chem Products		\$804.50	3735721	CHEMICALS
Total HAWKINS, INC			\$804.50		
Paid Chk# 099180	6/24/2015	HD SUPPLY WATERWORKS, LTD			
E 610-40000-225	Repair & Maint - System		\$1,221.15	EO11251	PARTS
E 620-40000-225	Repair & Maint - System		\$29.54	EO11967	PARTS
E 610-40000-225	Repair & Maint - System		\$42.96	EO45582	PARTS
E 610-40000-225	Repair & Maint - System		\$1,776.37	EO46484	PARTS
E 610-40000-225	Repair & Maint - System		\$67.38	EO46725	PARTS
E 610-40000-225	Repair & Maint - System		\$813.72	EO68771	PARTS
Total HD SUPPLY WATERWORKS, LTD			\$3,951.12		
Paid Chk# 099181	6/24/2015	HEITZ, CHRISTOPHER			
E 101-43100-331	Mileage & Expense Account		\$35.65	MILEAGE	MILEAGE
Total HEITZ, CHRISTOPHER			\$35.65		
Paid Chk# 099182	6/24/2015	HENN.CNTY.ACCTG.SERVICES			
E 101-42120-308	Prisoner Care		\$490.72	10000061349	PRISONER PROCESSING
Total HENN.CNTY.ACCTG.SERVICES			\$490.72		
Paid Chk# 099183	6/24/2015	HENN.CNTY.INFO.TECH.DEPT.			
E 101-42100-323	Radio Units		\$839.56	10000061532	PD RADIO CONNECTION
Total HENN.CNTY.INFO.TECH.DEPT.			\$839.56		
Paid Chk# 099184	6/24/2015	HERITAGE SHADE TREE CONSULTANT			
G 101-20310	Escrow		\$115.00	5469	637 HARMONY ESCROW PROJECT
G 101-20310	Escrow		\$57.50	5470	165-213 CENTRAL ESCROW PROJECT
Total HERITAGE SHADE TREE CONSULTANT			\$172.50		
Paid Chk# 099185	6/24/2015	HOLIDAY			
E 101-42100-210	Operating Supplies (GENERAL)		\$6.43		PD SUPPLIES
Total HOLIDAY			\$6.43		
Paid Chk# 099186	6/24/2015	IT STRAPS ON, INC.			
E 101-43100-226	Sign Repair Materials		\$78.98	23687	PARTS
Total IT STRAPS ON, INC.			\$78.98		
Paid Chk# 099187	6/24/2015	JOHN DEERE LANDSCAPES			
E 101-45200-216	Chemicals and Chem Products		\$78.00	72312232	CHEMICALS
E 101-45203-220	Repair/Maint Supply (GENERAL)		\$146.22	72312232	PARTS
Total JOHN DEERE LANDSCAPES			\$224.22		
Paid Chk# 099188	6/24/2015	JONES, REBECCA			
E 101-45200-499	Miscellaneous		\$56.31	REIMB.	PW SUPPLIES & MILEAGE
E 101-45200-331	Mileage & Expense Account		\$9.20	REIMB.	PW SUPPLIES & MILEAGE
Total JONES, REBECCA			\$65.51		
Paid Chk# 099189	6/24/2015	KELLY, MICHAEL JR.			
E 610-40000-331	Mileage & Expense Account		\$48.66	RE-ISSUE	RE-ISSUE CK #99044

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
Total KELLY, MICHAEL JR.			\$48.66		
Paid Chk# 099190	6/24/2015	KNOX COMPANY			
E 101-42200-210	Operating Supplies (GENERAL)		\$918.00	731587	FD SUPPLIES
Total KNOX COMPANY			\$918.00		
Paid Chk# 099191	6/24/2015	KONRAD MATERIAL SALES LLC			
E 408-40000-402	Sidewalk Replacement		\$260.00	1252401	SIDEWALK REPAIRS
Total KONRAD MATERIAL SALES LLC			\$260.00		
Paid Chk# 099192	6/24/2015	LAW ENFORCEMENT LABOR SERVICES			
G 101-21707	Police union dues		\$423.00	JUNE 2015	PD UNION DUES - JUNE 2015
al LAW ENFORCEMENT LABOR SERVICES			\$423.00		
Paid Chk# 099193	6/24/2015	LOFFLER COMPANIES, INC.			
E 101-41500-540	Equipment		\$197.00	1996539	BAR CODE READER
E 409-40000-540	Equipment		\$1,829.00	1996555	ADMIN.COMPUTERS
E 409-40000-540	Equipment		\$1,994.00	1996557	ADMIN.COMPUTERS
Total LOFFLER COMPANIES, INC.			\$4,020.00		
Paid Chk# 099194	6/24/2015	M & J COLLISION LLC			
E 238-40000-404	Repairs/Maint - Machin/Equip		\$5,280.42	WAYZATA	SQUAD REPAIRS - INS.CLAIM
Total M & J COLLISION LLC			\$5,280.42		
Paid Chk# 099195	6/24/2015	M.M.K.R. & COMPANY			
E 101-41500-301	Auditing and Acct g Services		\$5,975.00	38062	2014 AUDIT
Total M.M.K.R. & COMPANY			\$5,975.00		
Paid Chk# 099196	6/24/2015	MADSON, ELISSA			
E 101-41910-492	HPB		\$84.37	HPB EXP.	HPB EVENT SUPPLIES
Total MADSON, ELISSA			\$84.37		
Paid Chk# 099197	6/24/2015	MANSFIELD OIL COMPANY			
E 101-49200-212	Motor Fuels		\$2,191.05	548344	FUEL
Total MANSFIELD OIL COMPANY			\$2,191.05		
Paid Chk# 099198	6/24/2015	MAPLE GROVE, CITY OF			
E 101-42100-434	Training and schools		\$1,670.00	15510	PD TRAINING-GUN RANGE RENTAL
Total MAPLE GROVE, CITY OF			\$1,670.00		
Paid Chk# 099199	6/24/2015	MCCARTHY, TIMOTHY			
E 101-42100-331	Mileage & Expense Account		\$49.57	REIMB.	MILEAGE & MEALS
Total MCCARTHY, TIMOTHY			\$49.57		
Paid Chk# 099200	6/24/2015	MEDIACOM			
E 101-41940-321	Telephone		\$309.95		SERVICE
Total MEDIACOM			\$309.95		
Paid Chk# 099201	6/24/2015	MINNESOTA EQUIPMENT			
E 101-45200-222	Repair & Maint - Equip		\$30.00	P32085	PARTS
Total MINNESOTA EQUIPMENT			\$30.00		
Paid Chk# 099202	6/24/2015	MN BATTERY LLC			
E 101-43100-220	Repair/Maint Supply (GENERAL)		\$99.75	14258	PARTS
E 640-47000-404	Repairs/Maint - Machin/Equip		\$89.75	14283	PARTS
Total MN BATTERY LLC			\$189.50		
Paid Chk# 099203	6/24/2015	MN BUREAU OF CRIMINAL APPREHEN			
E 101-42100-434	Training and schools		\$120.00	7754	PD TRAINING

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
total	MN BUREAU OF CRIMINAL APPREHEN		\$120.00		
Paid Chk#	099204	6/24/2015	MN CHILD SUPPORT PAYMENT CENTE		
	G 101-21710	County WH	\$197.40	0014468629	WITHHOLDING ORDER
	G 101-21710	County WH	\$235.00	0015104841	WITHHOLDING ORDER
total	MN CHILD SUPPORT PAYMENT CENTE		\$432.40		
Paid Chk#	099205	6/24/2015	MN HWY SAFETY & RESEARCH CNTR.		
	E 101-42100-434	Training and schools	\$1,188.00	629430-4482	PD TRAINING
total	MN HWY SAFETY & RESEARCH CNTR.		\$1,188.00		
Paid Chk#	099206	6/24/2015	NAPA AUTO PARTS-WATERTOWN		
	E 640-47000-404	Repairs/Maint - Machin/Equip	\$46.40	438981	DELIVERY VEHICLE REPAIRS
Total	NAPA AUTO PARTS-WATERTOWN		\$46.40		
Paid Chk#	099207	6/24/2015	NEWMAN TRAFFIC SIGNS		
	E 101-43100-226	Sign Repair Materials	\$800.61	TI-0286888	PARKING STUDY SIGNS
Total	NEWMAN TRAFFIC SIGNS		\$800.61		
Paid Chk#	099208	6/24/2015	NITRO GREEN		
	E 101-45200-316	Weed Control	\$2,764.47	121050610	CHEMICALS
Total	NITRO GREEN		\$2,764.47		
Paid Chk#	099209	6/24/2015	NORTH EMS EDUCATION		
	E 101-42200-434	Training and schools	\$300.00	PSA779	FD TRAINING
	E 101-42100-434	Training and schools	\$150.00	PSA782	PD TRAINING
Total	NORTH EMS EDUCATION		\$450.00		
Paid Chk#	099210	6/24/2015	OFFICE DEPOT		
	E 101-45200-200	Office Supplies (GENERAL)	\$42.40	771952027001	SUPPLIES
	E 101-43100-200	Office Supplies (GENERAL)	\$42.40	771952027001	SUPPLIES
	E 610-40000-200	Office Supplies (GENERAL)	\$21.19	771952027001	SUPPLIES
	E 620-40000-200	Office Supplies (GENERAL)	\$21.19	771952027001	SUPPLIES
	E 101-41500-200	Office Supplies (GENERAL)	\$181.47	774309309001	SUPPLIES
	E 101-43300-210	Operating Supplies (GENERAL)	\$5.43	774309309001	SUPPLIES
	E 101-42200-200	Office Supplies (GENERAL)	\$28.89	774309309001	SUPPLIES
	E 101-42100-200	Office Supplies (GENERAL)	\$7.98	774309309001	SUPPLIES
	E 101-41500-200	Office Supplies (GENERAL)	\$13.19	774309489001	SUPPLIES
	E 630-40000-200	Office Supplies (GENERAL)	\$218.72	775276501001	SUPPLIES
	E 101-41500-200	Office Supplies (GENERAL)	\$145.42	775276501001	SUPPLIES
	E 630-40000-200	Office Supplies (GENERAL)	\$39.98	775276727001	SUPPLIES
	E 630-40000-200	Office Supplies (GENERAL)	\$42.99	775276728001	SUPPLIES
Total	OFFICE DEPOT		\$811.25		
Paid Chk#	099211	6/24/2015	PEARSON BROS.,INC.		
	E 430-40000-408	Sealcoating	\$70,974.42	3536	SEALCOATING
Total	PEARSON BROS.,INC.		\$70,974.42		
Paid Chk#	099212	6/24/2015	PLYMOUTH AUTOMOTIVE INC.		
	E 101-42100-499	Miscellaneous	\$180.00	6/10/15	PD TOWING
Total	PLYMOUTH AUTOMOTIVE INC.		\$180.00		
Paid Chk#	099213	6/24/2015	POPP TELECOM		
	E 640-47000-321	Telephone	\$100.00		SERVICE
	E 640-48000-321	Telephone	\$100.00		SERVICE
	E 610-40000-323	Radio Units	\$89.58		SERVICE
	E 620-40000-323	Radio Units	\$32.70		SERVICE
	E 101-42100-309	Contractual Services	\$33.31		SERVICE
	E 101-41940-321	Telephone	\$306.71		SERVICE

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
Total POPP TELECOM			\$662.30		
Paid Chk# 099214	6/24/2015	RANDY S SANITATION			
E 650-47500-384	Refuse/Garbage Disposal		\$1,072.36		DRIVEUP
E 101-41940-386	Other Utilities		\$595.43		PW & CH SERVICE
E 650-47500-386	Other Utilities		\$3,725.47		DISPOSAL
E 640-48000-384	Refuse/Garbage Disposal		\$341.57		BAR
E 640-47000-384	Refuse/Garbage Disposal		\$150.00		STORE
E 650-47800-386	Other Utilities		\$40.50		ORGANICS DISPOSAL
E 650-47600-309	Contractual Services		\$3,938.22		RECYCLING
E 650-47800-384	Refuse/Garbage Disposal		\$6,479.48		ORGANICS
E 650-47500-384	Refuse/Garbage Disposal		\$8,661.96		LABOR
E 650-47500-384	Refuse/Garbage Disposal		\$52.65		STICKERS
E 650-47500-384	Refuse/Garbage Disposal		\$1,600.87		KARTS
Total RANDY S SANITATION			\$26,658.51		
Paid Chk# 099215	6/24/2015	SHERWIN-WILLIAMS CO.			
E 101-43100-210	Operating Supplies (GENERAL)		\$28.94	0216-8	SAIL POSTS
Total SHERWIN-WILLIAMS CO.			\$28.94		
Paid Chk# 099216	6/24/2015	SIGNS NOW			
E 640-47000-341	General Promotions		\$60.94	28081	VEHICLE SIGN
E 101-43100-226	Sign Repair Materials		\$464.75	28135	PARKING SIGNS
E 101-43100-226	Sign Repair Materials		\$48.86	28138	PARKING SIGNS
Total SIGNS NOW			\$574.55		
Paid Chk# 099217	6/24/2015	SRF CONSULTING GROUP, INC.			
E 408-40000-302	Consultants		\$852.10	8758.00-2	PEAVEY BRIDGE
E 401-40000-309	Contractual Services		\$31,346.93	8866.00-1	DOWNTOWN PARKING
Total SRF CONSULTING GROUP, INC.			\$32,199.03		
Paid Chk# 099218	6/24/2015	STREICHER S			
E 101-42100-434	Training and schools		\$3,156.48	I1155461	TRAINING AMMO
E 101-42100-217	Uniforms		\$299.99	I1155544	PD UNIFORMS
E 101-42100-217	Uniforms		\$139.99	I1155545	PD UNIFORMS
Total STREICHER S			\$3,596.46		
Paid Chk# 099219	6/24/2015	TASER INTERNATIONAL			
E 101-42100-434	Training and schools		\$1,006.76	SI1401385	PD TRAINING
Total TASER INTERNATIONAL			\$1,006.76		
Paid Chk# 099220	6/24/2015	TIME SAVER			
E 101-41100-302	Consultants		\$567.00	M21412	MTG.MINUTES
Total TIME SAVER			\$567.00		
Paid Chk# 099221	6/24/2015	UNIFORMS UNLIMITED			
E 101-42100-217	Uniforms		\$193.97	250555	PD UNIFORMS
Total UNIFORMS UNLIMITED			\$193.97		
Paid Chk# 099222	6/24/2015	UPS STORE			
E 101-41500-499	Miscellaneous		\$465.00	0427	WELCOME PACKET
E 401-40000-499	Miscellaneous		\$54.70	0452	VALET PARKING STUDY
Total UPS STORE			\$519.70		
Paid Chk# 099223	6/24/2015	URAM, DON			
G 101-21721	Flex Plan		\$282.00	FLEX REIMB.	FLEX SPENDING REIMB.
Total URAM, DON			\$282.00		
Paid Chk# 099224	6/24/2015	USA SAFETY SUPPLY CORP			

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
G 101-20300	Deposits Payable		\$278.57	99381	SAFETY VESTS FOR VOLUNTEERS
	Total USA SAFETY SUPPLY CORP		\$278.57		
Paid Chk# 099225	6/24/2015	VERIZON WIRELESS			
E 101-42100-323	Radio Units		\$200.09	9747201518	PD SERVICE
	Total VERIZON WIRELESS		\$200.09		
Paid Chk# 099226	6/24/2015	WARNING LITES			
E 101-43100-226	Sign Repair Materials		\$220.00	146928	TRAFFIC CONES
	Total WARNING LITES		\$220.00		
Paid Chk# 099227	6/24/2015	WBC HOLDINGS, INC.			
E 101-43100-499	Miscellaneous		\$7.51	12209	VEHICLE MAINT.
E 101-43100-499	Miscellaneous		\$7.51	12264	VEHICLE MAINT.
	Total WBC HOLDINGS, INC.		\$15.02		
Paid Chk# 099228	6/24/2015	WILSON, DAVID			
E 101-42100-331	Mileage & Expense Account		\$87.45	REIMB.	MILEAGE & MEAL
	Total WILSON, DAVID		\$87.45		
Paid Chk# 099229	6/24/2015	WSB & ASSOCIATES			
E 430-40000-302	Consultants		\$11,624.50	01204-390-5	2015 STREETS
	Total WSB & ASSOCIATES		\$11,624.50		
Paid Chk# 099230	6/24/2015	XCEL ENERGY - OUTDOOR LIGHTING			
E 430-40000-309	Contractual Services		\$26,148.20	LASALLE/101	STREET LIGHT PROJECT/BUSHAWAY RD
	Total XCEL ENERGY - OUTDOOR LIGHTING		\$26,148.20		
Paid Chk# 099231	6/30/2015	ALLEGRA PRINT & IMAGING			
E 404-40000-499	Miscellaneous		\$1,393.92	111898	PARKS & TRAILS MAP
	Total ALLEGRA PRINT & IMAGING		\$1,393.92		
Paid Chk# 099232	6/30/2015	ARCTIC GLACIER INC.			
E 640-47000-254	Soft Drinks/Mix For Resale		\$80.83	385516404	ICE RESALE
E 640-47000-254	Soft Drinks/Mix For Resale		\$137.11	387517708	ICE RESALE
E 640-47000-254	Soft Drinks/Mix For Resale		\$50.20	388515609	ICE RESALE
E 640-47000-254	Soft Drinks/Mix For Resale		\$41.49	439516606	ICE RESALE
E 640-47000-254	Soft Drinks/Mix For Resale		\$159.97	459517307	ICE RESALE
	Total ARCTIC GLACIER INC.		\$469.60		
Paid Chk# 099233	6/30/2015	ARTISAN BEER COMPANY			
E 640-47000-253	Beer For Resale		\$64.00	3038321	BEER
E 640-47000-253	Beer For Resale		\$166.30	3038322	BEER
E 640-47000-253	Beer For Resale		\$161.20	3039588	BEER
	Total ARTISAN BEER COMPANY		\$391.50		
Paid Chk# 099234	6/30/2015	AT&T MOBILITY			
E 101-41940-321	Telephone		\$204.25	287250008232	NELSON, JOHNESON & KELLY
	Total AT&T MOBILITY		\$204.25		
Paid Chk# 099235	6/30/2015	BCLW INVESTMENTS, LLC			
G 101-20310	Escrow		\$392.00	REFUND	310 BUSHAWAY WETLAND DELINEATION REVIEW
	Total BCLW INVESTMENTS, LLC		\$392.00		
Paid Chk# 099236	6/30/2015	BELLBOY BAR SUPPLY CORP.			
E 640-47000-259	Freight		\$2.05	48651900	FREIGHT
E 640-47000-252	Wine For Resale		\$136.00	48651900	WINE
E 640-47000-251	Liquor For Resale		\$1,743.25	48749600	LIQUOR
E 640-47000-254	Soft Drinks/Mix For Resale		\$35.00	48749600	MISC.BEV.

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
E 640-47000-259	Freight		\$18.60	48749600	FREIGHT
E 640-47000-251	Liquor For Resale		\$2,134.55	48875700	LIQUOR
E 640-47000-259	Freight		\$26.61	48880800	FREIGHT
E 640-47000-251	Liquor For Resale		\$2,739.00	48880800	LIQUOR
E 640-47000-254	Soft Drinks/Mix For Resale		\$155.00	92198100	MISC.BEV.
E 640-47000-259	Freight		\$4.73	92198100	FREIGHT
E 640-47000-210	Operating Supplies (GENERAL)		\$115.50	92246200	SUPPLIES
E 640-47000-210	Operating Supplies (GENERAL)		\$214.09	92248400	SUPPLIES
E 640-47000-254	Soft Drinks/Mix For Resale		\$123.24	92248400	MISC.BEV.
E 640-47000-259	Freight		\$5.54	92248400	FREIGHT
Total	BELLBOY BAR SUPPLY CORP.		\$7,453.16		
Paid Chk#	099237	6/30/2015	BERNICK`S WINE		
E 640-47000-254	Soft Drinks/Mix For Resale		\$149.30	225907	MISC.BEV.
Total	BERNICK`S WINE		\$149.30		
Paid Chk#	099238	6/30/2015	BEST & FLANAGAN		
E 101-41500-304	Legal Fees		\$604.20	452361	UNITARIAN CHURCH
E 101-41500-304	Legal Fees		\$37.50	452454	DATA PRACTICES
G 101-20310	Escrow		\$217.50	452455	VERIZON CELL TOWER PROJECT
E 101-41500-304	Legal Fees		\$75.00	452457	JAMES WILSON
E 101-41500-304	Legal Fees		\$337.50	452458	ORDINANCES
E 101-41500-304	Legal Fees		\$75.00	452459	BAR & GRILL
E 101-41500-304	Legal Fees		\$306.40	452460	BURLINGTON NORTHERN
E 233-40000-304	Legal Fees		\$750.00	452461	DOCK EXPANSION
E 401-40000-304	Legal Fees		\$262.50	452462	DOWNTOWN PARKING
G 101-20310	Escrow		\$215.00	452463	AT&T CELL TOWER PROJECT
E 407-40000-304	Legal Fees		\$1,462.50	452464	TELECOM ISSUE
E 401-40000-304	Legal Fees		\$1,575.00	452465	DOWNTOWN PARKING
E 101-41500-304	Legal Fees		\$112.50	452466	BEACH HOUSE CONCESSIONS
G 101-20310	Escrow		\$150.00	452467	637 HARMONY CIRCLE PROJECT
G 101-20310	Escrow		\$750.00	452468	313 CENTRAL PROJECT
G 101-20310	Escrow		\$225.00	452469	532 FERNDAL PROJECT
E 101-41500-304	Legal Fees		\$300.00	452470	253-259 LAKE STREET
G 101-20310	Escrow		\$337.50	452471	236-240 MINNETONA PROJECT
E 101-41500-304	Legal Fees		\$2,512.50	452472	CITY COUNCIL
E 430-40000-304	Legal Fees		\$720.00	452473	2015 STREETS
E 101-41500-304	Legal Fees		\$865.10	452474	RETAINER
E 101-41500-304	Legal Fees		\$1,350.00	452475	LIQUOR LICENSES
Total	BEST & FLANAGAN		\$13,240.70		
Paid Chk#	099239	6/30/2015	BETH, GERALD O		
E 640-48000-341	General Promotions		\$175.00	7/7/15	BAR MUSIC 7/7/15
Total	BETH, GERALD O		\$175.00		
Paid Chk#	099240	6/30/2015	BIFFS, INC.		
E 101-45200-415	Other Equipment Rentals		\$62.50	W564679	PARKS SERVICE
E 101-45200-415	Other Equipment Rentals		\$35.72	W564680	PARKS SERVICE
Total	BIFFS, INC.		\$98.22		
Paid Chk#	099241	6/30/2015	BOURGET IMPORTS		
E 640-47000-252	Wine For Resale		\$528.00	127086	WINE
E 640-47000-259	Freight		\$1.50	127086	FREIGHT
E 640-47000-252	Wine For Resale		\$1,656.00	127388	WINE
E 640-47000-259	Freight		\$21.00	127388	FREIGHT
Total	BOURGET IMPORTS		\$2,206.50		
Paid Chk#	099242	6/30/2015	CINTAS CORPORATION		

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
E 640-48500-210	Operating Supplies (GENERAL)		\$57.99	5003096091	FIRST AID SUPPLIES
	Total CINTAS CORPORATION		\$57.99		
Paid Chk# 099243	6/30/2015	COCA-COLA			
E 640-48000-254	Soft Drinks/Mix For Resale		\$656.44	0198051609	MISC.BEV.
E 640-47000-254	Soft Drinks/Mix For Resale		\$167.36	0198051610	MISC.BEV.
	Total COCA-COLA		\$823.80		
Paid Chk# 099244	6/30/2015	COZZINI BROS., INC.			
E 640-48500-415	Other Equipment Rentals		\$73.48	C1781092	KNIFE EXCHANGE
	Total COZZINI BROS., INC.		\$73.48		
Paid Chk# 099245	6/30/2015	CRABTREE COMPANIES			
E 101-41500-200	Office Supplies (GENERAL)		\$358.54	133230	TONER SUPPLIES
E 630-40000-200	Office Supplies (GENERAL)		\$150.21	133302	TONER SUPPLIES
	Total CRABTREE COMPANIES		\$508.75		
Paid Chk# 099246	6/30/2015	DAHLHEIMER DISTRIBUTING CO.			
E 640-48000-253	Beer For Resale		(\$31.00)	111314	BEER
E 640-47000-253	Beer For Resale		\$1,401.78	1159517	BEER
E 640-47000-253	Beer For Resale		\$470.84	1159570	BEER
E 640-48000-253	Beer For Resale		\$462.00	1159571	BEER
E 640-47000-253	Beer For Resale		\$1,108.30	1162202	BEER
E 640-48000-253	Beer For Resale		\$498.00	1162236	BEER
	Total DAHLHEIMER DISTRIBUTING CO.		\$3,909.92		
Paid Chk# 099247	6/30/2015	DAY DISTRIBUTING			
E 640-47000-253	Beer For Resale		\$714.30	807303	BEER
E 640-48000-253	Beer For Resale		\$444.00	807304	BEER
E 640-47000-253	Beer For Resale		\$256.00	807552	BEER
E 640-47000-253	Beer For Resale		\$338.00	807686	BEER
E 640-47000-253	Beer For Resale		\$4,028.85	808502	BEER
	Total DAY DISTRIBUTING		\$5,781.15		
Paid Chk# 099248	6/30/2015	DENNYS 5TH AVENUE BAKERY			
E 640-48500-255	FOODIngredients For Resale		\$170.68	560148	FOOD
E 640-48500-255	FOODIngredients For Resale		\$85.33	560851	FOOD
E 640-48500-255	FOODIngredients For Resale		\$116.32	561024	FOOD
E 640-48500-255	FOODIngredients For Resale		\$60.99	561235	FOOD
E 640-48500-255	FOODIngredients For Resale		\$150.73	561578	FOOD
E 640-48500-255	FOODIngredients For Resale		\$120.54	561789	FOOD
E 640-48500-255	FOODIngredients For Resale		\$80.89	561910	FOOD
E 640-48500-255	FOODIngredients For Resale		\$133.62	562130	FOOD
E 640-48500-255	FOODIngredients For Resale		\$161.60	562417	FOOD
E 640-48500-255	FOODIngredients For Resale		\$72.48	562508	FOOD
E 640-48500-255	FOODIngredients For Resale		\$86.01	562794	FOOD
E 640-48500-255	FOODIngredients For Resale		\$64.30	562953	FOOD
E 640-48500-255	FOODIngredients For Resale		\$83.67	563085	FOOD
E 640-48500-255	FOODIngredients For Resale		\$82.28	563272	FOOD
E 640-48500-255	FOODIngredients For Resale		\$107.47	563566	FOOD
E 640-48500-255	FOODIngredients For Resale		\$114.26	563627	FOOD
	Total DENNYS 5TH AVENUE BAKERY		\$1,691.17		
Paid Chk# 099249	6/30/2015	DIRECTV			
E 640-48000-415	Other Equipment Rentals		\$355.87	26102468535	SERVICE
	Total DIRECTV		\$355.87		
Paid Chk# 099250	6/30/2015	DMX MUSIC - MINNEAPOLIS			

***Check Detail Register©**

June 2015

		Check Amt	Invoice	Comment
E 640-48000-415	Other Equipment Rentals	\$96.62	51701745	BAR MUSIC
Total DMX MUSIC - MINNEAPOLIS		\$96.62		
Paid Chk# 099251	6/30/2015	DOMACE VINO		
E 640-47000-259	Freight	\$12.00	9621	FREIGHT
E 640-47000-252	Wine For Resale	\$1,164.00	9621	WINE
E 640-47000-259	Freight	\$2.00	9673	FREIGHT
E 640-47000-252	Wine For Resale	\$294.00	9673	WINE
Total DOMACE VINO		\$1,472.00		
Paid Chk# 099252	6/30/2015	EGAN, FIELD & NOWAK, INC.		
G 101-20310	Escrow	\$234.00	REFUND	312 FERNDAL RD WETLAND DELINEATION REVIEW
Total EGAN, FIELD & NOWAK, INC.		\$234.00		
Paid Chk# 099253	6/30/2015	EMERGENCY AUTOMOTIVE		
E 409-42100-550	Vehicles	\$7,490.74	12195	NEW SQUAD SET UPS
E 409-42100-550	Vehicles	\$8,184.12	12196	NEW SQUAD SET UPS
Total EMERGENCY AUTOMOTIVE		\$15,674.86		
Paid Chk# 099254	6/30/2015	ESS BROTHERS & SONS INC.		
E 620-40000-225	Repair & Maint - System	\$330.00	UU3836	SEWER CASTING REPLACEMENT
E 670-40000-409	Maint services & Improv	\$810.00	UU3836	STORMSEWER CASTING REPLACEMENT
Total ESS BROTHERS & SONS INC.		\$1,140.00		
Paid Chk# 099255	6/30/2015	EXCEL DOCUMENT MGMT.		
E 101-41500-200	Office Supplies (GENERAL)	\$372.00	40970	SUPPLIES
Total EXCEL DOCUMENT MGMT.		\$372.00		
Paid Chk# 099256	6/30/2015	EXTREME BEVERAGE, LLC		
E 640-47000-254	Soft Drinks/Mix For Resale	\$174.50	W-1207591	MISC.BEV.
Total EXTREME BEVERAGE, LLC		\$174.50		
Paid Chk# 099257	6/30/2015	FASTENAL		
E 101-43100-210	Operating Supplies (GENERAL)	\$20.49	MNPLY77751	SUPPLIES
Total FASTENAL		\$20.49		
Paid Chk# 099258	6/30/2015	FOREMOST BUSINESS SYSTEMS INC.		
E 640-48000-433	Dues, Licensing & Seminars	\$300.00	18577	POS TRAINING
otal FOREMOST BUSINESS SYSTEMS INC.		\$300.00		
Paid Chk# 099259	6/30/2015	G & J AWNING AND CANVAS INC		
E 404-40000-309	Contractual Services	\$2,406.00	20158	DOGGIE PARK SHADE SAIL
Total G & J AWNING AND CANVAS INC		\$2,406.00		
Paid Chk# 099260	6/30/2015	G & K SERVICES		
E 640-48500-217	Uniforms	\$43.40	1013140223	KITCHEN UNIFORMS & SUPPLIES
E 640-48500-210	Operating Supplies (GENERAL)	\$83.57	1013140223	KITCHEN UNIFORMS & SUPPLIES
E 640-48000-210	Operating Supplies (GENERAL)	\$36.37	1013140223	KITCHEN UNIFORMS & SUPPLIES
E 640-48500-217	Uniforms	\$168.84	1013151655	KITCHEN UNIFORMS & SUPPLIES
E 640-48500-210	Operating Supplies (GENERAL)	\$37.08	1013162995	KITCHEN UNIFORMS & SUPPLIES
E 640-48500-217	Uniforms	\$119.80	1013162995	KITCHEN UNIFORMS & SUPPLIES
E 640-48500-217	Uniforms	\$208.93	1013174326	KITCHEN UNIFORMS & SUPPLIES
E 640-48500-210	Operating Supplies (GENERAL)	\$9.75	1013174326	KITCHEN UNIFORMS & SUPPLIES
Total G & K SERVICES		\$707.74		
Paid Chk# 099261	6/30/2015	GOLDEN VALLEY TCA A LLC		
G 630-20300	Deposits Payable	\$4,271.18	CVR REFUND	CVR REFUND
Total GOLDEN VALLEY TCA A LLC		\$4,271.18		

***Check Detail Register©**

June 2015

		Check Amt	Invoice	Comment
Paid Chk# 099262	6/30/2015	GRAINGER, INC.		
E 640-48500-404	Repairs/Maint - Machin/Equip	\$27.26	9761583443	REPAIRS/PARTS
	Total GRAINGER, INC.	\$27.26		
Paid Chk# 099263	6/30/2015	GRAPE BEGINNINGS, INC.		
E 640-47000-259	Freight	\$9.00	175762	FREIGHT
E 640-47000-252	Wine For Resale	\$576.00	175762	WINE
E 640-47000-259	Freight	\$6.75	183162	FREIGHT
E 640-47000-252	Wine For Resale	\$464.00	183162	WINE
E 640-47000-259	Freight	\$18.00	183507	FREIGHT
E 640-47000-252	Wine For Resale	\$1,038.00	183507	WINE
	Total GRAPE BEGINNINGS, INC.	\$2,111.75		
Paid Chk# 099264	6/30/2015	HINES, WAYNE & KATHLEEN		
G 101-20310	Escrow	\$345.00	REFUND	320 HAMPTON WETLAND DELINEATION REVIEW
	Total HINES, WAYNE & KATHLEEN	\$345.00		
Paid Chk# 099265	6/30/2015	HOHENSTEINS INC.		
E 640-47000-253	Beer For Resale	\$1,107.00	767081	BEER
E 640-47000-253	Beer For Resale	\$1,147.25	769828	BEER
	Total HOHENSTEINS INC.	\$2,254.25		
Paid Chk# 099266	6/30/2015	HOLIDAY		
E 640-47000-212	Motor Fuels	\$46.24		FUEL - DELIVERY VAN
	Total HOLIDAY	\$46.24		
Paid Chk# 099267	6/30/2015	JJ TAYLOR DISTRIBUTING OF MN		
E 640-47000-253	Beer For Resale	\$1,187.05	2373440	BEER
E 640-47000-253	Beer For Resale	\$1,106.25	2373533	BEER
E 640-47000-253	Beer For Resale	\$1,871.70	2373575	BEER
E 640-48000-253	Beer For Resale	\$308.70	2384435	BEER
E 640-48000-253	Beer For Resale	\$703.20	2384496	BEER
	Total JJ TAYLOR DISTRIBUTING OF MN	\$5,176.90		
Paid Chk# 099268	6/30/2015	JOHNSON BROS.-ST.PAUL		
E 640-47000-252	Wine For Resale	\$352.45	5181928	WINE
E 640-47000-259	Freight	\$9.76	5181928	FREIGHT
E 640-47000-259	Freight	\$20.74	5183358	FREIGHT
E 640-47000-252	Wine For Resale	\$1,308.00	5183358	WINE
E 640-47000-251	Liquor For Resale	\$2,098.72	5187589	LIQUOR
E 640-47000-259	Freight	\$19.73	5187589	FREIGHT
E 640-47000-259	Freight	\$1.22	5187590	FREIGHT
E 640-47000-254	Soft Drinks/Mix For Resale	\$82.80	5187590	MISC.MDSE.
E 640-47000-251	Liquor For Resale	\$144.00	5187591	LIQUOR
E 640-47000-259	Freight	\$6.10	5187592	FREIGHT
E 640-47000-252	Wine For Resale	\$267.25	5187592	WINE
E 640-47000-259	Freight	\$2.44	5188997	FREIGHT
E 640-47000-251	Liquor For Resale	\$217.00	5188997	LIQUOR
E 640-47000-252	Wine For Resale	\$496.00	5188998	WINE
E 640-47000-259	Freight	\$10.97	5188998	FREIGHT
E 640-47000-259	Freight	\$12.20	5190263	FREIGHT
E 640-47000-252	Wine For Resale	\$993.20	5190263	WINE
E 640-47000-259	Freight	\$16.36	5193086	FREIGHT
E 640-47000-251	Liquor For Resale	\$2,213.70	5193086	LIQUOR
E 640-47000-252	Wine For Resale	\$1,481.25	5193087	WINE
E 640-47000-259	Freight	\$32.94	5193087	FREIGHT
E 640-47000-252	Wine For Resale	\$2,788.00	5194508	WINE
E 640-47000-259	Freight	\$42.70	5194508	FREIGHT

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
E 640-47000-259	Freight		\$2.44	5194509	FREIGHT
E 640-47000-251	Liquor For Resale		\$204.10	5194509	LIQUOR
E 640-47000-251	Liquor For Resale		\$151.00	5196453	LIQUOR
E 640-47000-259	Freight		\$1.22	5196453	FREIGHT
E 640-47000-251	Liquor For Resale		\$2,786.74	5196455	LIQUOR
E 640-47000-259	Freight		\$24.10	5196455	FREIGHT
E 640-47000-251	Liquor For Resale		\$240.00	5197906	LIQUOR
E 640-47000-259	Freight		\$2.44	5197906	FREIGHT
E 640-47000-251	Liquor For Resale		\$82.22	527800	WINE
E 640-47000-252	Wine For Resale		(\$95.95)	529783	WINE
E 640-47000-251	Liquor For Resale		(\$160.22)	529853	LIQUOR
Total JOHNSON BROS.-ST.PAUL			\$15,855.62		
Paid Chk# 099269	6/30/2015	JORGENSEN, KURT			
E 640-48000-341	General Promotions		\$300.00	7/9/15	BAR MUSIC 7/9/15
Total JORGENSEN, KURT			\$300.00		
Paid Chk# 099270	6/30/2015	KARLSBURGER FOODS, INC.			
E 640-48500-255	FOODIngredients For Resale		\$311.35	000381436	FOOD
E 640-48500-255	FOODIngredients For Resale		\$81.00	000381452	FOOD
Total KARLSBURGER FOODS, INC.			\$392.35		
Paid Chk# 099271	6/30/2015	KOTTKE, DAVID			
E 640-48000-341	General Promotions		\$300.00	7/4/15	BAR MUSIC 7/4/15
Total KOTTKE, DAVID			\$300.00		
Paid Chk# 099272	6/30/2015	KREATZ, DAVID			
E 640-48500-130	Employer Paid Ins		\$275.32	JUNE 2015	JUNE 2015 REIMB.
Total KREATZ, DAVID			\$275.32		
Paid Chk# 099273	6/30/2015	LAKEWEST DEVELOPMENT CO., LLC			
G 101-20310	Escrow		\$382.00	REFUND	1409 HOLD.TER.WETLAND DELINEATION REVIEW
Total LAKEWEST DEVELOPMENT CO., LLC			\$382.00		
Paid Chk# 099274	6/30/2015	LAMBERT, JEFFREY W.			
E 101-42120-304	Legal Fees		\$3,983.00	6/29/15	LEGAL SERVICES
Total LAMBERT, JEFFREY W.			\$3,983.00		
Paid Chk# 099275	6/30/2015	M.AMUNDSON LLP			
E 640-47000-256	MISC.MDSE.RESALE		\$831.16	196580	CIGARS & CIGARETTES
E 640-47000-256	MISC.MDSE.RESALE		\$829.95	197586	CIGARS & CIGARETTES
E 640-47000-256	MISC.MDSE.RESALE		\$1,355.73	198121	CIGARS & CIGARETTES
Total M.AMUNDSON LLP			\$3,016.84		
Paid Chk# 099276	6/30/2015	MEDIACOM			
E 101-41940-321	Telephone		\$592.00		SERVICE
Total MEDIACOM			\$592.00		
Paid Chk# 099277	6/30/2015	METROPOLITAN COUNCIL			
G 101-20310	Escrow		\$335.00	REFUND	WETLAND DELINEATION REVIEW
Total METROPOLITAN COUNCIL			\$335.00		
Paid Chk# 099278	6/30/2015	MILLER, FRED			
E 235-40000-302	Consultants		\$1,525.00	100	WCTV
Total MILLER, FRED			\$1,525.00		
Paid Chk# 099279	6/30/2015	MINNESOTA EQUIPMENT			
E 101-43100-210	Operating Supplies (GENERAL)		\$4.79	P32575	SUPPLIES

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
Total MINNESOTA EQUIPMENT			\$4.79		
Paid Chk# 099280	6/30/2015	MN NCPERS LIFE INSURANCE			
G 101-21715	PERA Term Life		\$48.00	7/2015	LIFE INS.
Total MN NCPERS LIFE INSURANCE			\$48.00		
Paid Chk# 099281	6/30/2015	MORTON EQUITY			
G 101-20310	Escrow		\$350.00	REFUND	1450 LASALLE WETLAND DELINEATION REVIEW
Total MORTON EQUITY			\$350.00		
Paid Chk# 099282	6/30/2015	MOSS & BARNETT			
E 101-41500-304	Legal Fees		\$3,100.50	628681	MEDIACOM FRANCHISE RENEWAL
Total MOSS & BARNETT			\$3,100.50		
Paid Chk# 099283	6/30/2015	NELSON, HEIDI			
E 101-41500-433	Dues, Licensing & Seminars		\$340.20	REIMB.	AIRFARE TO ICMA CONFERENCE
Total NELSON, HEIDI			\$340.20		
Paid Chk# 099284	6/30/2015	NETWORK BUSINESS SUPPLIES			
E 640-48500-210	Operating Supplies (GENERAL)		\$387.12	99213	SUPPLIES
Total NETWORK BUSINESS SUPPLIES			\$387.12		
Paid Chk# 099285	6/30/2015	NEW FRANCE WINE COMPANY			
E 640-47000-259	Freight		\$16.50	100716	FREIGHT
E 640-47000-252	Wine For Resale		\$824.00	100716	WINE
E 640-47000-252	Wine For Resale		\$657.00	101081	WINE
E 640-47000-259	Freight		\$4.50	101081	freight
Total NEW FRANCE WINE COMPANY			\$1,502.00		
Paid Chk# 099286	6/30/2015	NORTHWESTERN FRUIT COMPANY			
E 640-48500-255	FOODIngredients For Resale		(\$30.20)	814353	FOOD
E 640-48500-255	FOODIngredients For Resale		\$493.30	814652	FOOD
E 640-48500-255	FOODIngredients For Resale		\$533.45	814871	FOOD
E 640-48000-251	Liquor For Resale		\$65.85	814871	LIQUOR
E 640-48000-253	Beer For Resale		\$15.20	814871	BEER
E 640-48500-255	FOODIngredients For Resale		\$353.30	815067	FOOD
E 640-48000-251	Liquor For Resale		\$75.55	815268	LIQUOR
E 640-48000-253	Beer For Resale		\$6.00	815268	BEER
E 640-48500-255	FOODIngredients For Resale		\$612.65	815268	FOOD
E 640-48500-255	FOODIngredients For Resale		\$546.75	815433	FOOD
E 640-48000-251	Liquor For Resale		\$8.90	815433	LIQUOR
E 640-48500-255	FOODIngredients For Resale		\$199.25	815633	FOOD
E 640-48500-255	FOODIngredients For Resale		\$884.05	815879	FOOD
E 640-48500-255	FOODIngredients For Resale		\$692.85	816062	FOOD
E 640-48500-255	FOODIngredients For Resale		\$282.50	816236	FOOD
E 640-48500-255	FOODIngredients For Resale		\$455.40	816457	FOOD
E 640-48500-255	FOODIngredients For Resale		\$375.90	816624	FOOD
Total NORTHWESTERN FRUIT COMPANY			\$5,570.70		
Paid Chk# 099287	6/30/2015	NORTON HOMES LLC			
G 101-20310	Escrow		\$382.00	REFUND	297 GLENBROOK WETLAND DELINEATION REVIEW
Total NORTON HOMES LLC			\$382.00		
Paid Chk# 099288	6/30/2015	OENO DISTRIBUTION, LLC			
E 640-47000-252	Wine For Resale		\$362.50	3591	WINE
E 640-47000-259	Freight		\$4.50	3591	FREIGHT
Total OENO DISTRIBUTION, LLC			\$367.00		
Paid Chk# 099289	6/30/2015	OFFICE DEPOT			

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
E 101-41500-200	Office Supplies (GENERAL)		\$40.81	776455546001	SUPPLIES
E 101-42100-200	Office Supplies (GENERAL)		\$127.60	776455546001	SUPPLIES
E 640-48000-200	Office Supplies (GENERAL)		\$72.06	776455546001	SUPPLIES
E 101-41500-200	Office Supplies (GENERAL)		\$69.99	776619036001	SUPPLIES
Total OFFICE DEPOT			\$310.46		
Paid Chk# 099290	6/30/2015	PAKOR INC.			
E 630-40000-210	Operating Supplies (GENERAL)		\$217.70	8013429	PASSPORT SUPPLIES
Total PAKOR INC.			\$217.70		
Paid Chk# 099291	6/30/2015	PAUSTIS & SONS			
E 640-47000-252	Wine For Resale		\$1,584.41	8502550	WINE
E 640-47000-259	Freight		\$17.50	8502550	FREIGHT
E 640-48000-252	Wine For Resale		\$372.50	8503479	WINE
E 640-47000-259	Freight		\$15.00	8503480	FREIGHT
E 640-47000-252	Wine For Resale		\$1,036.91	8503480	WINE
E 640-48000-252	Wine For Resale		\$188.75	8504463	WINE
E 640-47000-259	Freight		\$21.25	8504464	FREIGHT
E 640-47000-252	Wine For Resale		\$1,360.00	8504464	WINE
Total PAUSTIS & SONS			\$4,596.32		
Paid Chk# 099292	6/30/2015	PEPSI -COLA			
E 640-47000-254	Soft Drinks/Mix For Resale		\$173.20	51127783	MISC.BEV.
Total PEPSI -COLA			\$173.20		
Paid Chk# 099293	6/30/2015	PHILLIPS WINES & SPIRITS			
E 640-47000-252	Wine For Resale		\$112.00	2802063	WINE
E 640-47000-259	Freight		\$1.22	2802063	FREIGHT
E 640-47000-259	Freight		\$28.67	2804873	FREIGHT
E 640-47000-252	Wine For Resale		\$2,142.20	2804873	WINE
E 640-47000-259	Freight		\$11.43	2804874	FREIGHT
E 640-47000-251	Liquor For Resale		\$865.72	2804874	LIQUOR
E 640-47000-259	Freight		\$11.59	2808491	FREIGHT
E 640-47000-251	Liquor For Resale		\$1,185.50	2808491	LIQUOR
E 640-47000-259	Freight		\$4.88	2808492	FREIGHT
E 640-47000-252	Wine For Resale		\$211.95	2808492	WINE
E 640-47000-252	Wine For Resale		\$320.00	2809498	WINE
E 640-47000-259	Freight		\$2.44	2809498	FREIGHT
E 640-48000-251	Liquor For Resale		\$421.36	2811592	LIQUOR
E 640-47000-251	Liquor For Resale		\$46.50	2811703	LIQUOR
E 640-47000-259	Freight		\$1.22	2811703	FREIGHT
Total PHILLIPS WINES & SPIRITS			\$5,366.68		
Paid Chk# 099294	6/30/2015	PITNEY BOWES			
E 101-49200-322	Postage		\$481.00	435026	POSTAGE MACHINE MAINT.
Total PITNEY BOWES			\$481.00		
Paid Chk# 099295	6/30/2015	QUALITY SERVICE, INC.			
E 640-48500-404	Repairs/Maint - Machin/Equip		\$149.19	30893	OVEN REPAIRS
E 640-48500-404	Repairs/Maint - Machin/Equip		\$175.50	30894	OVEN REPAIRS
Total QUALITY SERVICE, INC.			\$324.69		
Paid Chk# 099296	6/30/2015	REYCRAFT, TOM			
E 640-48000-341	General Promotions		\$300.00	7/2/15	BAR MUSIC 7/2/15
Total REYCRAFT, TOM			\$300.00		
Paid Chk# 099297	6/30/2015	SCOTT, JEAN			
E 640-48000-130	Employer Paid Ins		\$200.00	MAY & JUNE	MAY & JUNE 2015 REIMB.

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
Total SCOTT, JEAN			\$200.00		
Paid Chk# 099298	6/30/2015	SIGNS NOW			
E 640-47000-341	General Promotions		\$171.21	28179	STORE BANNER
E 640-47000-341	General Promotions		\$194.16	28199	BANNER FOR TROLLEY
Total SIGNS NOW			\$365.37		
Paid Chk# 099299	6/30/2015	SOUTHERN WINE & SPIRITS OF MN			
E 640-47000-259	Freight		\$8.75	1294399	FREIGHT
E 640-47000-252	Wine For Resale		\$870.00	1294399	WINE
E 640-47000-259	Freight		\$37.85	1294400	FREIGHT
E 640-47000-251	Liquor For Resale		\$4,738.80	1294400	LIQUOR
E 640-47000-259	Freight		\$1.25	1296875	FREIGHT
E 640-47000-252	Wine For Resale		\$3,192.00	1296876	WINE
E 640-47000-259	Freight		\$23.75	1296876	FREIGHT
E 640-47000-252	Wine For Resale		\$1,034.00	1296877	WINE
E 640-47000-259	Freight		\$15.00	1296877	FREIGHT
E 640-47000-259	Freight		\$23.75	1299326	FREIGHT
E 640-47000-252	Wine For Resale		\$2,658.00	1299326	WINE
E 640-47000-252	Wine For Resale		(\$36.00)	9057434	WINE
E 640-47000-259	Freight		(\$0.42)	9058733	FREIGHT
E 640-47000-252	Wine For Resale		(\$240.00)	9059067	WINE
E 640-47000-252	Wine For Resale		(\$160.00)	9059524	WINE
Total SOUTHERN WINE & SPIRITS OF MN			\$12,166.73		
Paid Chk# 099300	6/30/2015	STRATEGIC EQUIPMENT AND			
E 640-48000-210	Operating Supplies (GENERAL)		\$77.45	2433474	BAR SUPPLIES
E 640-48500-210	Operating Supplies (GENERAL)		\$476.86	2433475	KITCHEN SUPPLIES
E 640-48000-210	Operating Supplies (GENERAL)		\$37.41	2433475	BAR SUPPLIES
E 640-48500-210	Operating Supplies (GENERAL)		\$345.99	2437847	KITCHEN SUPPLIES
E 640-48000-210	Operating Supplies (GENERAL)		\$100.18	2437847	BAR SUPPLIES
E 640-48000-210	Operating Supplies (GENERAL)		\$252.59	2442878	BAR SUPPLIES
E 640-48500-210	Operating Supplies (GENERAL)		\$358.59	2442878	KITCHEN SUPPLIES
E 640-48000-210	Operating Supplies (GENERAL)		\$245.07	2442879	BAR SUPPLIES
E 640-48000-210	Operating Supplies (GENERAL)		\$188.65	2446794	BAR SUPPLIES
E 640-48500-210	Operating Supplies (GENERAL)		\$260.76	2446794	KITCHEN SUPPLIES
Total STRATEGIC EQUIPMENT AND			\$2,343.55		
Paid Chk# 099301	6/30/2015	SYSCO MINNESOTA			
E 640-48500-255	FOODIngredients For Resale		\$2,826.39	506080724	FOOD
E 640-48000-342	Promotions - Food/Drinks		\$27.99	506080724	PROMO FOOD
E 640-48000-210	Operating Supplies (GENERAL)		\$81.00	506080724	BAR SUPPLIES
E 640-48000-254	Soft Drinks/Mix For Resale		\$22.99	506080724	MISC.BEV.
E 640-48000-251	Liquor For Resale		\$84.99	506080724	LIQUOR
E 640-48500-210	Operating Supplies (GENERAL)		\$122.50	506090431	KITCHEN SUPPLIES
E 640-48000-210	Operating Supplies (GENERAL)		\$45.75	506101416	BAR SUPPLIES
E 640-48000-251	Liquor For Resale		\$72.25	506101416	LIQUOR
E 640-48000-342	Promotions - Food/Drinks		\$28.15	506101416	PROMO FOOD
E 640-48500-255	FOODIngredients For Resale		\$4,178.28	506101416	FOOD
E 640-48000-251	Liquor For Resale		\$43.49	506121467	LIQUOR
E 640-48500-210	Operating Supplies (GENERAL)		\$158.09	506121467	KITCHEN SUPPLIES
E 640-48500-255	FOODIngredients For Resale		\$5,058.74	506121467	FOOD
E 640-48000-342	Promotions - Food/Drinks		\$56.14	506121467	PROMO FOOD
E 640-48500-255	FOODIngredients For Resale		\$3,427.25	506150761	FOOD
E 640-48500-210	Operating Supplies (GENERAL)		\$63.90	506150761	KITCHEN SUPPLIES
E 640-48000-342	Promotions - Food/Drinks		\$56.14	506150761	PROMO FOOD
E 640-48000-251	Liquor For Resale		\$29.47	506150761	LIQUOR
E 640-48500-255	FOODIngredients For Resale		(\$75.75)	506170052	FOOD

***Check Detail Register©**

June 2015

		Check Amt	Invoice	Comment
E 640-48500-255	FOODIngredients For Resale	\$3,939.30	506171019	FOOD
E 640-48000-210	Operating Supplies (GENERAL)	\$40.75	506171019	BAR SUPPLIES
E 640-48000-251	Liquor For Resale	\$38.85	506171019	LIQUOR
E 640-48000-253	Beer For Resale	\$10.00	506171019	BEER
E 640-48500-255	FOODIngredients For Resale	\$5,000.20	506191647	FOOD
E 640-48000-342	Promotions - Food/Drinks	\$56.14	506191647	PROMO FOOD
E 640-48500-210	Operating Supplies (GENERAL)	\$57.50	506191647	KITCHEN SUPPLIES
E 640-48500-255	FOODIngredients For Resale	\$3,854.79	506220932	FOOD
E 640-48000-254	Soft Drinks/Mix For Resale	\$11.89	506220932	MISC.BEV.
E 640-48000-342	Promotions - Food/Drinks	\$28.15	506220932	PROMO FOOD
E 640-48500-210	Operating Supplies (GENERAL)	\$161.89	506220932	KITCHEN SUPPLIES
E 640-48500-255	FOODIngredients For Resale	\$3,917.70	506241128	FOOD
E 640-48000-342	Promotions - Food/Drinks	\$27.99	506241128	PROMO FOOD
E 101-41100-331	Mileage & Expense Account	\$236.90	506251626	MTG.SUPPLIES
E 640-48000-342	Promotions - Food/Drinks	\$45.99	506261563	PROMO FOOD
E 640-48500-255	FOODIngredients For Resale	\$4,436.26	506261563	FOOD
E 640-48500-210	Operating Supplies (GENERAL)	\$167.24	506261563	KITCHEN SUPPLIES
E 640-48500-255	FOODIngredients For Resale	\$82.98	506271757	FOOD
E 640-48500-255	FOODIngredients For Resale	\$3,544.40	506290924	FOOD
E 640-48000-210	Operating Supplies (GENERAL)	\$85.90	506290924	BAR SUPPLIES
E 640-48500-210	Operating Supplies (GENERAL)	\$20.15	506290924	KITCHEN SUPPLIES
E 640-48000-254	Soft Drinks/Mix For Resale	\$42.25	506290924	MISC.BEV.
E 640-48000-342	Promotions - Food/Drinks	\$28.15	506290924	PROMO FOOD
E 640-48000-251	Liquor For Resale	\$36.36	506290924	LIQUOR
Total SYSCO MINNESOTA		\$42,179.49		
Paid Chk# 099302	6/30/2015 T.D. ANDERSON INC.			
E 640-48000-409	Maint services & Improv	\$115.00	513421	BEER LINES CLEANED
Total T.D. ANDERSON INC.		\$115.00		
Paid Chk# 099303	6/30/2015 THORPE DISTRIBUTING CO.			
E 640-47000-253	Beer For Resale	\$541.32	899088	BEER
E 640-47000-253	Beer For Resale	\$1,427.65	899210	BEER
E 640-47000-253	Beer For Resale	\$248.30	899211	BEER
E 640-47000-253	Beer For Resale	\$87.15	899212	BEER
E 640-48000-253	Beer For Resale	\$240.00	900667	BEER
E 640-47000-253	Beer For Resale	\$291.50	900668	BEER
E 640-48000-253	Beer For Resale	(\$16.00)	900669	BEER
E 640-47000-253	Beer For Resale	\$728.72	900743	BEER
E 640-47000-253	Beer For Resale	\$224.94	902182	BEER
E 640-48000-253	Beer For Resale	\$295.00	902183	BEER
E 640-48000-253	Beer For Resale	\$143.30	902184	BEER
E 640-47000-253	Beer For Resale	\$55.65	902239	BEER
E 640-47000-253	Beer For Resale	\$4,189.25	902240	BEER
Total THORPE DISTRIBUTING CO.		\$8,456.78		
Paid Chk# 099304	6/30/2015 TOLL GAS & WELDING SUPPLY			
E 101-43100-210	Operating Supplies (GENERAL)	\$54.14	10086028	SUPPLIES
E 610-40000-210	Operating Supplies (GENERAL)	\$40.21	10086661	SUPPLIES
Total TOLL GAS & WELDING SUPPLY		\$94.35		
Paid Chk# 099305	6/30/2015 TRUE			
E 640-47000-254	Soft Drinks/Mix For Resale	\$8.90	126205	MISC.MDSE.RESALE
Total TRUE		\$8.90		
Paid Chk# 099306	6/30/2015 TRUSTED EMPLOYEES			
E 640-48000-499	Miscellaneous	\$150.00	06201512035S	BACKGROUND CHECKS - BAR

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
Total TRUSTED EMPLOYEES			\$150.00		
Paid Chk# 099307	6/30/2015	UPS STORE			
E 640-47000-200	Office Supplies (GENERAL)		\$23.80	3331	STORE SUPPLIES
Total UPS STORE			\$23.80		
Paid Chk# 099308	6/30/2015	VALLEY-RICH CO., INC.			
E 610-40000-405	Maint/Replac - System		\$10,425.81	21654	BROKEN WATERMAIN-BENTON
Total VALLEY-RICH CO., INC.			\$10,425.81		
Paid Chk# 099309	6/30/2015	VINOCOPIA			
E 640-47000-259	Freight		\$7.50	0126803	FREIGHT
E 640-47000-251	Liquor For Resale		\$479.71	0126803	LIQUOR
E 640-47000-254	Soft Drinks/Mix For Resale		\$37.75	0126803	MISC.BEV.
E 640-47000-252	Wine For Resale		\$360.00	0126804	WINE
E 640-47000-259	Freight		\$5.00	0126804	FREIGHT
E 640-47000-259	Freight		\$15.00	0127343	FREIGHT
E 640-47000-254	Soft Drinks/Mix For Resale		\$195.50	0127343	MISC.BEV.
E 640-47000-251	Liquor For Resale		\$631.96	0127343	LIQUOR
E 640-47000-259	Freight		\$1.50	0127344	FREIGHT
E 640-47000-252	Wine For Resale		\$104.00	0127344	WINE
Total VINOCOPIA			\$1,837.92		
Paid Chk# 099310	6/30/2015	WATER CONSERVATION SERVICE			
E 610-40000-405	Maint/Replac - System		\$284.50	6101	WATERMAIN BREAK LOCATE
Total WATER CONSERVATION SERVICE			\$284.50		
Paid Chk# 099311	6/30/2015	WILLIAMS, CRAIG			
E 640-48500-130	Employer Paid Ins		\$300.00	JUNE 2015	JUNE 2015 REIMB.
Total WILLIAMS, CRAIG			\$300.00		
Paid Chk# 099312	6/30/2015	WINE COMPANY			
E 640-47000-252	Wine For Resale		\$2,280.00	395644	WINE
E 640-47000-259	Freight		\$26.40	395644	FREIGHT
E 640-47000-259	Freight		\$23.10	396277	FREIGHT
E 640-47000-252	Wine For Resale		\$2,856.00	396277	WINE
E 640-47000-259	Freight		\$6.30	397085	FREIGHT
E 640-47000-252	Wine For Resale		\$348.00	397085	WINE
Total WINE COMPANY			\$5,539.80		
Paid Chk# 099313	6/30/2015	WINE MERCHANT			
E 640-48000-252	Wine For Resale		\$548.10	7034951	WINE
E 640-47000-252	Wine For Resale		\$1,141.01	7034985	WINE
E 640-47000-259	Freight		\$7.93	7034985	FREIGHT
E 640-47000-259	Freight		\$32.96	7035958	FREIGHT
E 640-47000-252	Wine For Resale		\$4,330.50	7035958	WINE
Total WINE MERCHANT			\$6,060.50		
Paid Chk# 099314	6/30/2015	WIRTZ BEVERAGE MN BEER			
E 640-47000-253	Beer For Resale		\$1,226.65	1090414575	BEER
E 640-47000-253	Beer For Resale		\$2,202.35	1090418250	BEER
E 640-47000-253	Beer For Resale		\$1,996.80	1090419272	BEER
E 640-47000-253	Beer For Resale		\$2,224.80	1090421254	BEER
E 640-48000-253	Beer For Resale		\$287.00	1090425151	BEER
E 640-47000-253	Beer For Resale		\$49.20	1090425286	BEER
E 640-47000-253	Beer For Resale		\$86.10	1090425287	BEER
E 640-47000-253	Beer For Resale		\$2,273.85	1090425288	BEER
Total WIRTZ BEVERAGE MN BEER			\$10,346.75		

***Check Detail Register©**

June 2015

			Check Amt	Invoice	Comment
Paid Chk#	099315	6/30/2015	WIRTZ BEVERAGE MN WINE & SPIRI		
E 640-47000-259	Freight		\$21.75	1080336634	FREIGHT
E 640-47000-252	Wine For Resale		\$1,401.60	1080336634	WINE
E 640-47000-259	Freight		\$23.68	1080336635	FREIGHT
E 640-47000-251	Liquor For Resale		\$1,856.44	1080336635	LIQUOR
E 640-47000-252	Wine For Resale		\$72.00	1080339373	WINE
E 640-47000-259	Freight		\$2.90	1080339373	FREIGHT
E 640-47000-252	Wine For Resale		\$1,104.00	1080339424	WINE
E 640-47000-259	Freight		\$9.42	1080339424	FREIGHT
E 640-47000-254	Soft Drinks/Mix For Resale		\$40.40	1080339425	MISC.BEV.
E 640-47000-259	Freight		\$32.30	1080339425	FREIGHT
E 640-47000-251	Liquor For Resale		\$4,233.23	1080339425	LIQUOR
E 640-47000-259	Freight		\$1.45	1080342183	FREIGHT
E 640-47000-251	Liquor For Resale		\$315.00	1080342183	LIQUOR
Total WIRTZ BEVERAGE MN WINE & SPIRI			\$9,114.17		
Paid Chk#	099316	6/30/2015	WOODFORD, RICHARD		
E 640-47000-130	Employer Paid Ins		\$300.00	JUNE 2015	JUNE 2015 REIMB.
Total WOODFORD, RICHARD			\$300.00		
Paid Chk#	099317	6/30/2015	ZERO WASTE USA		
E 101-45200-210	Operating Supplies (GENERAL)		\$99.00	80134	DOG WASTE BAGS
Total ZERO WASTE USA			\$99.00		
10100 Anchor Bank			\$635,610.61		

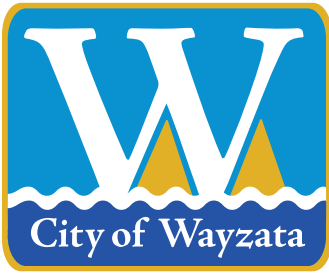
Fund Summary

<u>10100 Anchor Bank</u>		
101 GENERAL FUND		\$59,318.53
232 CEMETARY		\$200.00
233 LAKFRONT IMPROVE		\$750.00
235 CABLE TV		\$1,550.58
238 SELF INSURANCE		\$26,287.12
316 BAY CENTER		\$12,366.25
401 PERM IMPROVEMENT		\$39,429.29
404 PARK AND TRAIL CIP		\$6,660.53
407 CELL TOWER		\$1,462.50
408 GENERAL CIP		\$8,312.10
409 EQUIP REVOLVING		\$19,608.46
430 STREET CIP		\$109,554.10
610 WATER FUND		\$15,726.69
620 SEWER FUND		\$3,020.75
630 MOTOR VEHICLE		\$4,940.78
640 LIQUOR		\$300,041.42
650 SOLID WASTE		\$25,571.51
670 STORMWATER		\$810.00
		\$635,610.61

7/7/2015

THE FOLLOWING 2015 MUNICIPAL LICENSES
WERE APPROVED ADMINISTRATIVELY

2015 Gas Fitters License	
Broll, Inc.	Brooklyn Park, MN
Metro Gas Installers	Andover, MN
Owens Companies, Inc.	Bloomington, MN
Special Event/Itinerant Food Wine on Wayzata Bay 6/19/15	
Spasso	Minnetonka, MN
Special Event/Itinerant Food Candlelight Floral Ice Cream Social 6/25/15	
Candlelight Floral	Wayzata, MN
Special Event/Itinerant Food Wayzata Art Experience 6/27 & 6/28/15	
Ben & Jerry's	Wayzata, MN
Firehouse Foods	Mound, MN
Gianni's	Wayzata, MN
Green & The Grain	Minneapolis, MN
Pharaoh's Gyro's	Burnsville, MN
Wildearth Woodfired Pizza Bakery	Minneapolis, MN
Special Event/Itinerant Food Flying Pancake Breakfast 7/4/15	
Chris Cakes	Pocahantas, IA
Special Event/Itinerant Food Wayzata Legion 2nd Annual Rib Cook-Off 7/12/15	
Wayzata American Legion Post #118	Wayzata, MN
2015 Tree License	
Xtreme Climbing Tree Service, LLC	Plymouth, MN



City of Wayzata
600 Rice Street
Wayzata, MN 55391-1734

Mayor:
Ken Willcox

City Council:
Bridget Anderson
Johanna McCarthy
Andrew Mullin
Steven Tyacke

City Manager:
Heidi Nelson

To: Mayor Willcox and Councilmembers

From: Heidi Nelson, City Manager
Don Uram, Director of Administrative Services

Date: July 2, 2015

Re: Interfund Loan Resolution – TIF District 5 (Bay Center)

With the delay of the receipt of tax increment from the Bay Center project until 2015, the City has incurred TIF eligible administrative costs that have been paid for by another fund. Specifically, administrative costs associated with the Bay Center project have been paid for by TIF 3 (Widsten). Administrative costs are interchangeable between districts provided you stay within the 10% pooling requirement.

For 2015 and possibly 2016, it is anticipated that TIF eligible costs in TIF 5 will exceed the amount of increment received by the city. These costs may be financed on a temporary basis from other available City funds.

Under the TIF Act, the City is authorized to advance or loan money from any fund from which such advances may be legally made in order to finance expenditures that are eligible to be paid with tax increments under the TIF Act.

The City intends to reimburse itself for the Qualified Costs from tax increments derived from TIF 5 in accordance with the terms of the Resolution No. 28-2015 included in the packet.

CITY OF WAYZATA

RESOLUTION NO. 28-2015

AUTHORIZING INTERFUND LOAN FOR
ADVANCE OF CERTAIN COSTS
IN CONNECTION WITH
TAX INCREMENT FINANCING DISTRICT NO. 5

BE IT RESOLVED By the City Council of the City of Wayzata (the "City") as follows:

Section 1. Background.

1.01. The City has established the Tax Increment Financing District No. 5 (the "TIF District") within the Central Area Redevelopment District (the "Redevelopment Project") pursuant to Minnesota Statutes, Sections 469.174 to 469.1799 (the "TIF Act") and Sections 469.001 to 469.047 (the "HRA Act"), as amended.

1.02. The City may incur certain costs related to the TIF District, which costs may be financed on a temporary basis from available City funds.

1.03. Under Section 469.178, Subdivision 7 of the TIF Act, the City is authorized to advance or loan money from any fund from which such advances may be legally made in order to finance expenditures that are eligible to be paid with tax increments under the TIF Act.

1.04. The City intends to reimburse itself for the Qualified Costs from tax increments derived from the TIF District in accordance with the terms of this resolution (which terms are referred to collectively as the "TIF Loan").

Section 2. Terms of TIF Loan.

2.01. The City hereby authorizes the advance of up to a total of \$ 200,000 from the City's General Fund and from Tax increment Financing District No. 3 or so much thereof as may be paid as Qualified Costs. The City shall be reimbursed for such advances together with interest at the rate stated below. Interest accrues on the principal amount from the date of each advance. The maximum rate of interest permitted to be charged is limited to the greater of the rates specified under Minnesota Statutes, Section 270C.40 or Section 549.09 as of the date the loan or advance is authorized, unless the written agreement states that the maximum interest rate will fluctuate as the interest rates specified under Minnesota Statutes, Section 270C.40 or Section 549.09 are from time to time adjusted. The interest rate shall be 4% and will not fluctuate.

2.02. Principal and interest ("Payments") shall be paid semi-annually on August 1, 2015 and each August 1 and February 1 thereafter to and including the earlier of (a) the date the principal and accrued interest of the City Note is paid in full, or (b) the date of last receipt of tax increment from the TIF District ("Payment Dates") which Payments will be made in the amount and only to the extent of Available Tax Increment as hereinafter defined. Payments shall be applied first to accrued interest, and then to unpaid principal. Interest accruing from the date of

each expenditure to the first Payment Date shall be compounded semiannually on February 1 and August 1 of each year and added to principal.

2.03. Payments on this TIF Loan are payable solely from "Available Tax Increment," which shall mean, on each Payment Date, all of the tax increment generated in the preceding six (6) months with respect to the property within the TIF District and remitted to the City by Hennepin County, all in accordance with Minnesota Statutes, Sections 469.174 to 469.1799, all inclusive, as amended. Payments on this TIF Loan are subordinate to any outstanding or future bonds, notes or contracts secured in whole or in part with Available Tax Increment, and are on parity with any other outstanding or future interfund loans secured in whole or in part with Available Tax Increment.

2.04. The principal sum and all accrued interest payable under this TIF Loan are prepayable in whole or in part at any time by the City without premium or penalty. No partial prepayment shall affect the amount or timing of any other regular payment otherwise required to be made under this TIF Loan.

2.05. This TIF Loan is evidence of an internal borrowing by the City in accordance with Minnesota Statutes, Section 469.178, Subd. 7, and is a limited obligation payable solely from Available Tax Increment pledged to the payment hereof under this resolution. This TIF Loan and the interest hereon shall not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the City. Neither the State of Minnesota, nor any political subdivision thereof shall be obligated to pay the principal of or interest on this TIF Loan or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this TIF Loan or other costs incident hereto. The City shall have no obligation to pay any principal amount of the TIF Loan or accrued interest thereon, which may remain unpaid after the final Payment Date.

2.06. The City may amend the terms of this TIF Loan at any time by resolution of the City Council, including a determination to forgive the outstanding principal amount and accrued interest to the extent permissible under law.

Section 3. Effective Date. This resolution is effective upon the date of its approval.

Adopted this 7th day of July, 2015.

Ken Willcox, Mayor

ATTEST:

Heidi Nelson, City Manager

ACTION ON THIS RESOLUTION:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution:

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Wayzata, Minnesota, at a duly authorized meeting held on July __, 2015.

Becky Malone, Deputy City Clerk

SEAL

CITY OF WAYZATA



PLANNING DEPARTMENT

MEMORANDUM

To: City Council
From: Bryan Gadow, Director of Planning and Building
Date: July 1, 2015
Re: Resolution 26-2015: Denial of Shoreland CUP, Impervious Surface Variance, and Tennis Court Variances for 532 Ferndale Rd W.

Background

On June 16th, the City Council reviewed an application from Philip and Margaret Soran of 532 Ferndale Rd W for approval of a Front Yard Setback Variance, Shoreland CUP, Impervious Surface Variance, and Tennis Court Variances related to the installation of a new attached garage and tennis court at the residence (the “Application”).

The Council was generally in favor of the Front Yard Setback Variance related to the installation of a new attached garage, but was divided on the requests related to the tennis court. After review of the Application, the Council voted unanimously to adopt Resolution 25-2015, as revised during the meeting, to approve only the Front Yard Setback Variance for the new attached garage.

After additional discussion, the Council made a motion to direct staff to draft a resolution of denial of the Shoreland CUP, Impervious Surface Variance, and Tennis Court Variances included in the Application, for consideration at the next Council meeting, which was approved four (4) to one (1).

Per the Council direction, attached is draft Resolution 26-2015 for denial of the Shoreland CUP, Impervious Surface Variance, and Tennis Court Variances included in the Application at 532 Ferndale Rd W for Council review and consideration.

DRAFT RESOLUTION NO. 26-2015

**RESOLUTION DENYING SHORELAND CONDITIONAL USE PERMIT, IMPERVIOUS
SURFACE VARIANCE, AND TENNIS COURT VARIANCES AT 532 FERNDALE
ROAD WEST**

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

Section 1. BACKGROUND

1.1 Project. Phillip and Margaret Soran (the “Applicant”) have submitted a development application (the “Application”) requesting zoning approvals to remove an existing non-conforming detached garage on the property at 532 Ferndale Road W (the “Property”), to build a new attached garage and to install a tennis court on the Property (the “Project”).

1.2 Application Requests. As part of the Application, the Applicant has requested approval of the following items:

- A. A Shoreland Conditional Use Permit (CUP) for hardcover above twenty five percent (25%) to 38.8% with stormwater mitigation (the “Shoreland CUP”)
- B. A Variance from the Impervious Surface maximum of twenty five percent (25%) for impervious surface (Section 801.52.7.A) up to 38.6% (the “Impervious Surface Variance”)
- C. Variances from the Front Yard, Side Yard, and Lakeshore Setbacks for Accessory Uses (Sections 801.52.6.B.2.b and 801.91.9.D.2 & 3) for installation of a tennis court (the “Tennis Court Variances”) with the following setbacks:
 - 1. Front Yard Setback of 11.5 ft
 - 2. Side Yard Setback (West) of 6 ft
 - 3. Rear Yard Setback of 32 ft

1.3 Property. The property identification number and owner of the affected property (the “Property”) are:

532 Ferndale Road West	01-117-23-33-0027	Sendero Properties LLC
------------------------	-------------------	------------------------

1.4 Land Use. Uses in the general vicinity are single family detached residential. The Property and adjacent properties are zoned R-1 (40,000 SF minimum lot sizes).

1.5 Notice and Public Hearing. Notice of a public hearing on the Application was published in the *Lakeshore Weekly* on April 28, 2015. A copy of the notice was mailed to all property owners located within 350 feet of the Property on April 24,

2015. The required public hearing was held at the May 4, 2015 Planning Commission meeting.

- 1.6 Planning Commission Action. The Planning Commission reviewed the Application and held a Public Hearing on May 4, 2015. No individuals spoke at the Public Hearing. The Planning Commission voted three (3) in favor and two (2) opposed to direct staff to prepare a draft *Planning Commission Report and Recommendation* for approval of the Application.

The Planning Commission reviewed the draft *Planning Commission Report and Recommendation* on June 1, 2015, where a motion to adopt the Report failed on a three (3) in favor and three (3) opposed vote. The Planning Commission then voted on each of the four (4) Application requests individually, adopting only a recommendation to approve the Front Yard Variance, with certain conditions

- 1.7 City Council Action. The City Council reviewed the Application at its June 16, 2015 meeting and approved the Front Yard Setback Variance for a new attached garage pursuant to Resolution 25-2015 and directed City Staff to prepare a draft resolution denying the balance of the Application for the Council's review and consideration at its next meeting.

Section 2. STANDARDS

2.1 Shoreland Conditional Use Permit (CUP).

Except for certain situations not applicable to the Project, Section 801.91.19 of the Zoning Ordinance requires landowners or developers developing land in the Shoreland District to first submit a conditional use permit application in accordance with Section 801.04 (CUPs) and a Shoreland Impact Plan in accordance with Section 801.91.19A. The purpose of the Shoreland Impact Plan shall be to eliminate and minimize as much as possible potential pollution, erosion and siltation. All conditional use permits for consideration under Section 801.91.19 are subject to the following stipulations:

- A. The projects shall be analyzed to determine the impact of impervious surfaces, storm water runoff, floodplain, and water quality implications. Only those projects shall be allowed where the adverse impacts have been mitigated through approved means to the extent possible.
- B. Storm water treatment measures including, but not limited to, sediment basins (debris basins), desilting basins or silt traps, installation of debris guards, and microsilts basins on storm water inlets, oil skimming devices, etc. shall be required subject to the review of the City Engineer and the Minnehaha Creek Watershed District on projects where applicable.
- C. Projects shall be analyzed in terms of provisions for maintenance and enhancement of landscape features, and change in the natural condition of the soil, trees, grade courses and marshes. The vegetative planting

plan shall contain trees, when fully mature, that will exceed the building height. The plan shall also minimize tree removal, ground cover change, loss of natural vegetation, and grade changes as much as possible. It shall further provide for the relocation or replanting of trees which are proposed to be removed.

- D. Projects shall be analyzed in terms of the appearance of the structure when viewed from the lake's surface. Building materials, and color shall be analyzed to determine which facade and roof materials minimize the appearance and blend the structure into the shoreland and vegetation.
- E. Building heights shall be analyzed to determine the impact on surrounding structures and views from the lake surface or other shores. Structures shall not be allowed to exceed a height beyond that is allowed by the base zoning district or cannot be screened by landscaping or other design measures.
- F. Residential densities on a project basis shall not be allowed to exceed the maximum allowed density of the base zoning district for which the project is proposed. For higher density residential development and planned unit developments, the density shall not be allowed to exceed the density standards as specified in the R-5 District of the Zoning Ordinance.
- G. Lot coverage on a project basis shall be restricted to the provisions for maximum impervious surface coverage as provided for in the Zoning Ordinance.
- H. Overall residential densities in the shoreland area shall not exceed the surplus development capacity for residential density, as calculated for Lake Minnetonka, Gleason and Peavey Lakes, as specified in the Wayzata Comprehensive Plan/Shoreland Management Plan, as may be amended.
- I. Overall lot coverage in the shoreland area shall not exceed the surplus development capacity for impervious surface coverage calculated for Lake Minnetonka, Gleason and Peavey Lakes, as specified in the Wayzata Comprehensive Plan/Shoreland Management Plan, as may be amended.
- J. All projects shall be in conformance with the Stormwater Management Plan for the City of Wayzata, May 1988, as may be amended and/or approved by the City Engineer.
- K. All projects shall be in conformance with the Wayzata Comprehensive Plan/Shoreland Management Plan, as may be amended.
- L. All projects shall be subject to the review of the Minnehaha Creek Watershed District.

The Shoreland Conditional Use Permits are regulated by Section 801.04.2.F which requires City Council to consider possible adverse effects of the proposed conditional use. Their judgment shall be based upon (but not limited to) the following factors:

1. The proposed action in relation to the specific policies and provisions of the official City Comprehensive Plan.

2. The proposed use's compatibility with present and future uses of the area.
3. The proposed use's conformity with all performance standards contained herein (i.e., parking, loading, noise, etc.).
4. The proposed use's effect on the area in which it is proposed.
5. The proposed use's impact upon property values in the area in which it is developed.
6. Traffic generated by the proposed use is in relation to capabilities of streets serving the property.
7. The proposed use's impact upon existing public services and facilities including parks, schools, streets and utilities, and the City's service capacity.

2.2 Impervious Surface Maximum. Impervious surfaces in the R-1 District shall not exceed of twenty-five (25) percent of the lot area. Section 801.52.7.A.

2.3 Front Yard, Side Yard, and Lakeshore Setbacks for Accessory Uses. For accessory structures in the R-1 District, the front yard setback is fifty (50) feet and the side yard setback is ten (10) feet. Section 801.52.6.B.2.b. The Lakeshore setbacks for accessory uses in the Shoreland Overlay District are a minimum of seventy five feet, the average of the lakeshore setback of the two adjacent properties, or a line connecting the closest points of the two adjacent properties, whichever is greater. Sections 801.52.6.B.2.b and 801.91.9.D.2 & 3.

2.4 Zoning Ordinance Variance Standards. Sections 801.05.1.C and 801.91.9.D.3 provide the criteria for reviewing variances from the Zoning Ordinance. The variance review criteria are as follows (with Staff's comments included in *italics*):

- A. Variances shall only be permitted when they are:
 - (i) in harmony with the general purposes and intent of this Ordinance; and
 - (ii) consistent with the Comprehensive Plan.
- B. Variances may be granted when the Applicant for the variance establishes that there are practical difficulties in complying with this Ordinance.
- C. "Practical difficulties," as used in connection with the granting of a variance, means that:
 - (i) the property owner's proposal for the property is reasonable but not permitted by this Ordinance;
 - (ii) the plight of the landowner is due to circumstances unique to the property, and not created by the landowner; and
 - (iii) the variance, if granted, will not alter the essential character of the locality.
- D. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.

- E. Variances shall be granted for earth sheltered construction as defined in Minnesota Statutes, section 216C.06, subdivision 14, when in harmony with this Ordinance.
- F. The City Council shall not permit as a variance any use that is not allowed under this Ordinance for property in the zoning district where the affected person's land is located, except the City Council may permit as a variance the temporary use of a one family dwelling as a two family dwelling.
- G. The City Council may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.
- H. An application for a variance shall set forth reasons that the variance is justified under the criteria of this section in order to make reasonable use of the land, structure or building.
- I. The required setback distance may be reduced by a variance if the following conditions are met:
 - 1. The minimum setback from the ordinary high water mark is at least seventy-five feet,
 - 2. The setback shall not adversely impact views of the shoreline or lake for adjacent neighboring principal structures,
 - 3. The reduction of setback requirements is based upon a specific need or circumstance which is unique to the property in question and which, if approved, will not set a precedent which is contrary to the intent of this Ordinance. However, any structure built as a result of an issued variance shall be considered in determining the proper setback of future construction on adjacent lots.
 - 4. A shoreland impact plan is submitted and approved as required and set forth in Section 801.91.19 of this Ordinance.
 - 5. The conditions of Section 801.05 and Section 801.91.20 of this Ordinance are considered and satisfactorily met.

Section 3. FINDINGS

The City Council of the City of Wayzata hereby confirms and memorializes that the Shoreland CUP, Impervious Surface Variance, and Tennis Court Variances requested as part of the Application do not meet the applicable requirements of Wayzata's Zoning Ordinance, based upon the following findings of fact made on the record (as well as all Application materials, staff reports, public comment presented at the hearing, and the Recommendation of the Planning Commission):

3.1 Shoreland CUP.

- A. The proposed tennis court associated with the Shoreland CUP request would have an adverse effect, based upon the following:
 - 1. The effect of the proposed use has the potential to create adverse impacts to the adjacent area due to its proximity to Lake Minnetonka.

3.2 Variances.

- A. The proposed tennis court setbacks do not meet the minimum seventy five (75) ft from the ordinary high water mark as required under Section 801.91.9.D.3.a.
- B. The variance requests included in the Application (collectively, the “Variances”) do not change the current single family residential use. However, the additional impervious surface generated by the proposed tennis court would exceed the twenty five percent (25%) limit in the R-1 District.
- C. The Property’s lot area (32,879 SF) and lot depth (120 ft) are legal non-conforming for the R-1 District; however the Variances are driven by the proposed additional impervious surface for installation of a tennis court on the Property by the Applicant.

Section 4. CITY COUNCIL ACTION

- 4.1 Based on the Findings of this Resolution, the request for approval of the Shoreland CUP, Impervious Surface Variance, and Tennis Court Variances as set forth in the Application (Attachment A), is hereby **DENIED**.

Adopted by the Wayzata City Council this ____ day of July, 2015.

Mayor Ken Willcox

ATTEST:

City Manager Heidi Nelson

ACTION ON THIS RESOLUTION:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

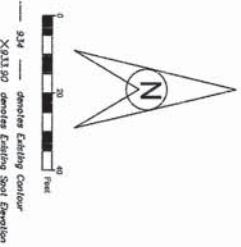
I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Wayzata, Minnesota, at a duly authorized meeting held on _____, 2015.

Becky Malone, Deputy City Clerk
SEAL

Attachment A

Applicant Submittals

Certificate of Survey and Topographic Survey



HATCHER CALCULATIONS:
AREA = 32,879 S.F. (0.75 ACRES)

EXISTING HATCHER:

Feature	Area
Existing House	3,807 S.F.
Existing Garage	899 S.F.
Existing Driveway	1,438 S.F.
Existing Slope	4,479 S.F.
Road	8,463 S.F.
Hardwood	25,78 S.F.

Property Description:
Lots 86 and 87, AUDITOR'S SUBDIVISION NO. 184, Hennepin County, Minnesota.

Certificate of Survey and Topographic Survey
on Lots 86 and 87, AUDITOR'S SUBDIVISION
NO. 184, Hennepin County, Minnesota.

Revised:

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

Paul E. Otto
License #40062 Date: 11-20-14

Requested By:

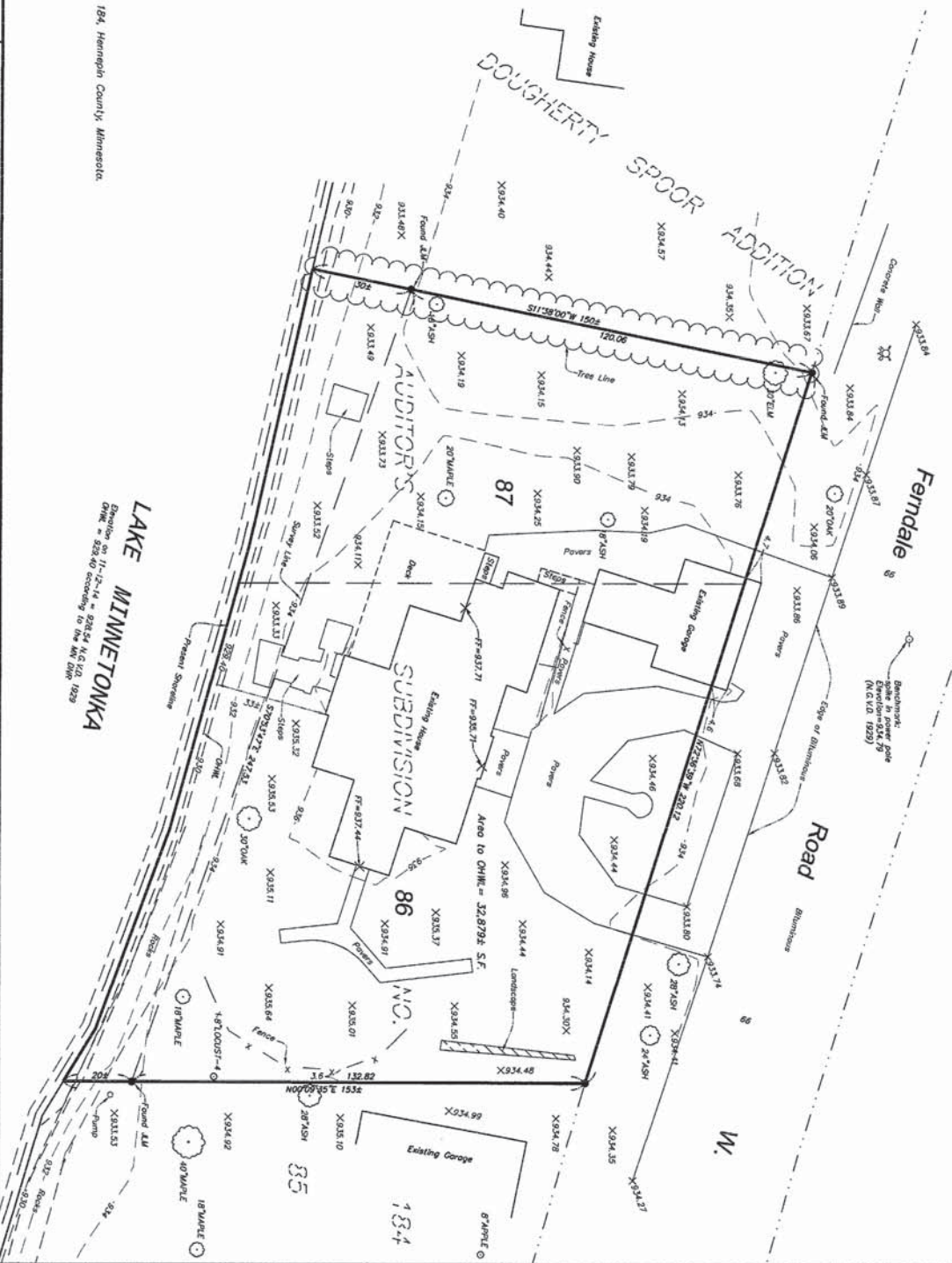
Patt Cavanaugh

Date: 11-11-14
Drawn By: T.J.B.
Scale: 1"=20'
Checked By: P.E.O.

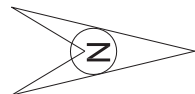


www.ottosassociates.com
9 West Division Street
Burlington, MN 55573
(763) 682-4727
Fax: (763) 682-3522

Project No. 14-0413



Certificate of Survey and Topographic Survey (Proposed Conditions)

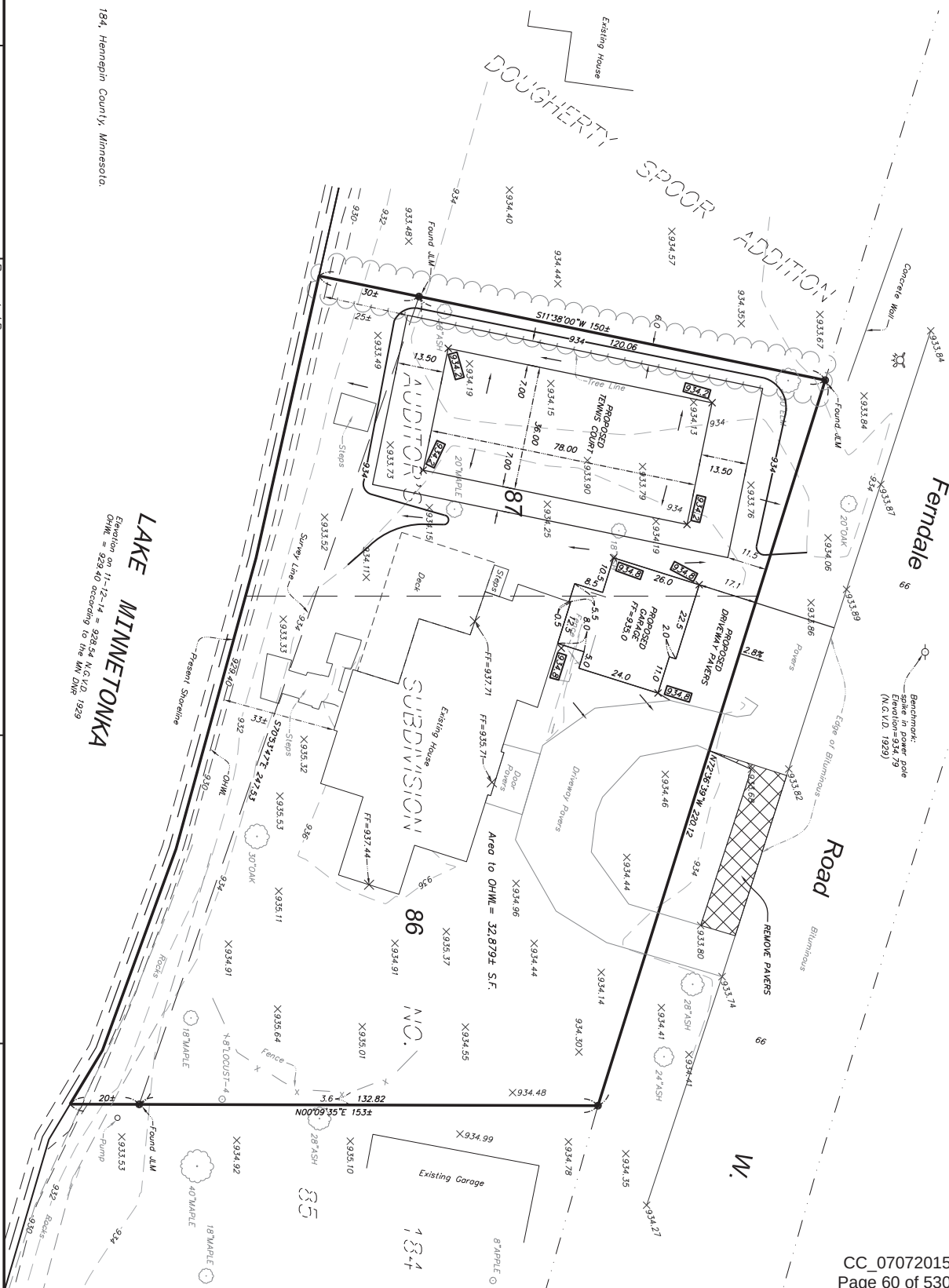


- 934 — denotes Existing Contour
- X 933.90 denotes Existing Spot Elevation
- X 934.35 denotes Proposed Spot Elevation
- 938 — denotes Proposed Contour
- denotes Proposed Drainage

HARDCOVER CALCULATIONS:
AREA = 32,879 S.F. (0.75 ACRES)

PROPOSED HARDCOVER:

	Area
House	3,387 S.F.
Garage	996 S.F.
Travis Court (Outer Area)	2,808 S.F.
Travis Court (Inner Area)	2,442 S.F.
Powers (Driveway & Door)	2,629 S.F.
Stairs	453 S.F.
Total	12,689 S.F.
% Hardcover	38.6%



LAKE MINNETONKA
Elevation on 11-12-14 = 928.54 N.C.V.D. 1929
OHW = 929.40 according to the MN DNR

Certificate of Survey and Topographic Survey
on Lots 86 and 87, AUDITOR'S SUBDIVISION
NO. 184, Hennepin County, Minnesota.

Revised: HARDCOVER CALCULATIONS 4-30-15

Requested By:

Alexander Design Group

Date: 11-11-14

Drawn By: T.J.B.

Scale: 1"=20'

Checked By: P.E.O.

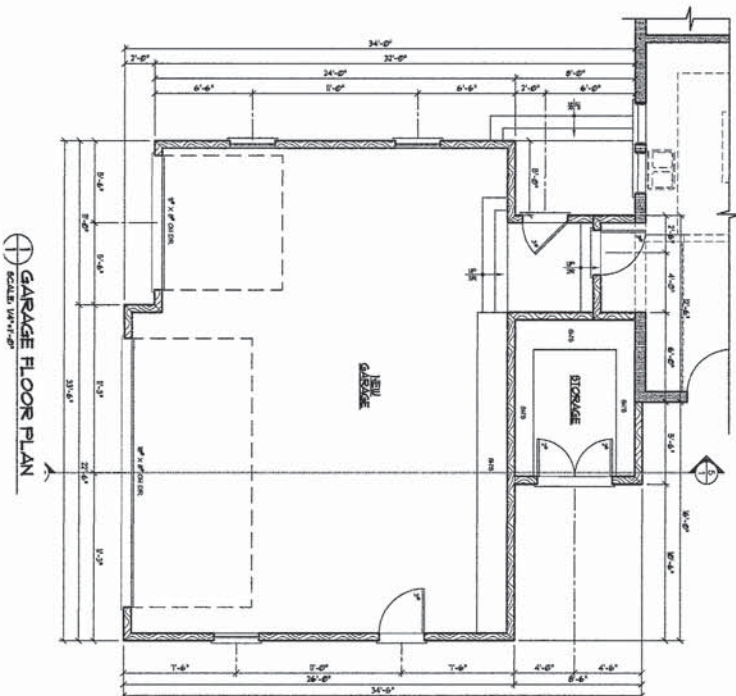
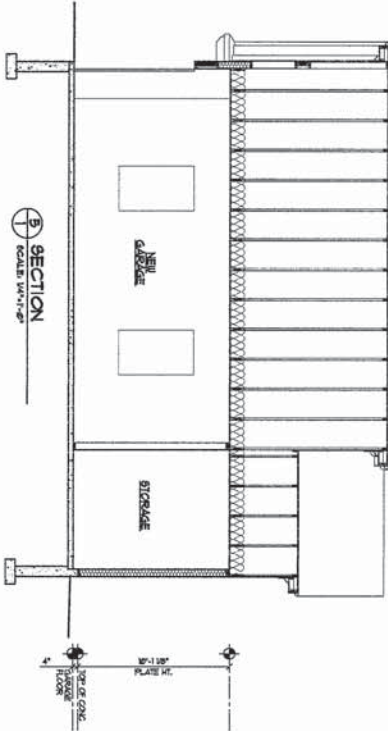
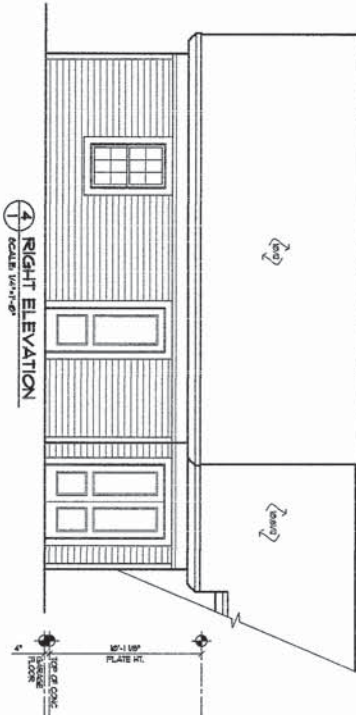
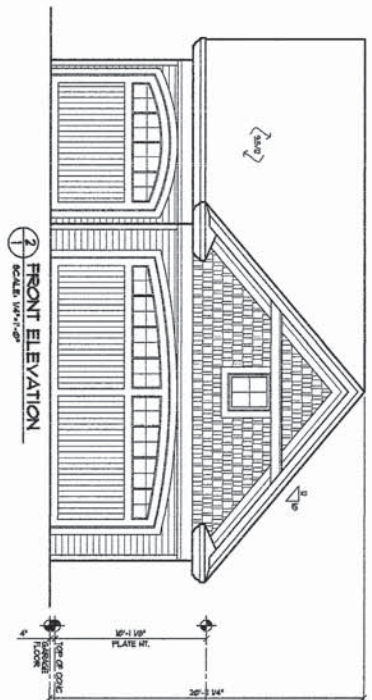
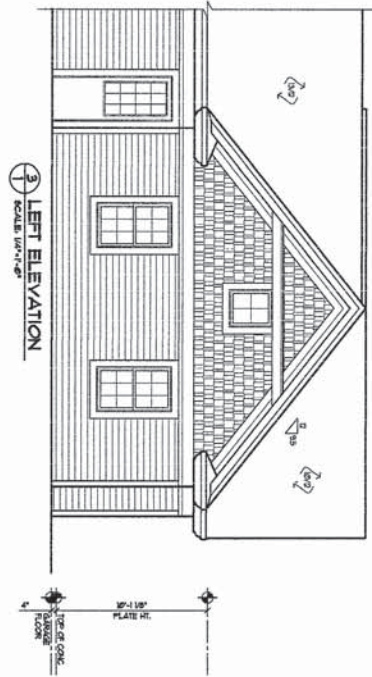


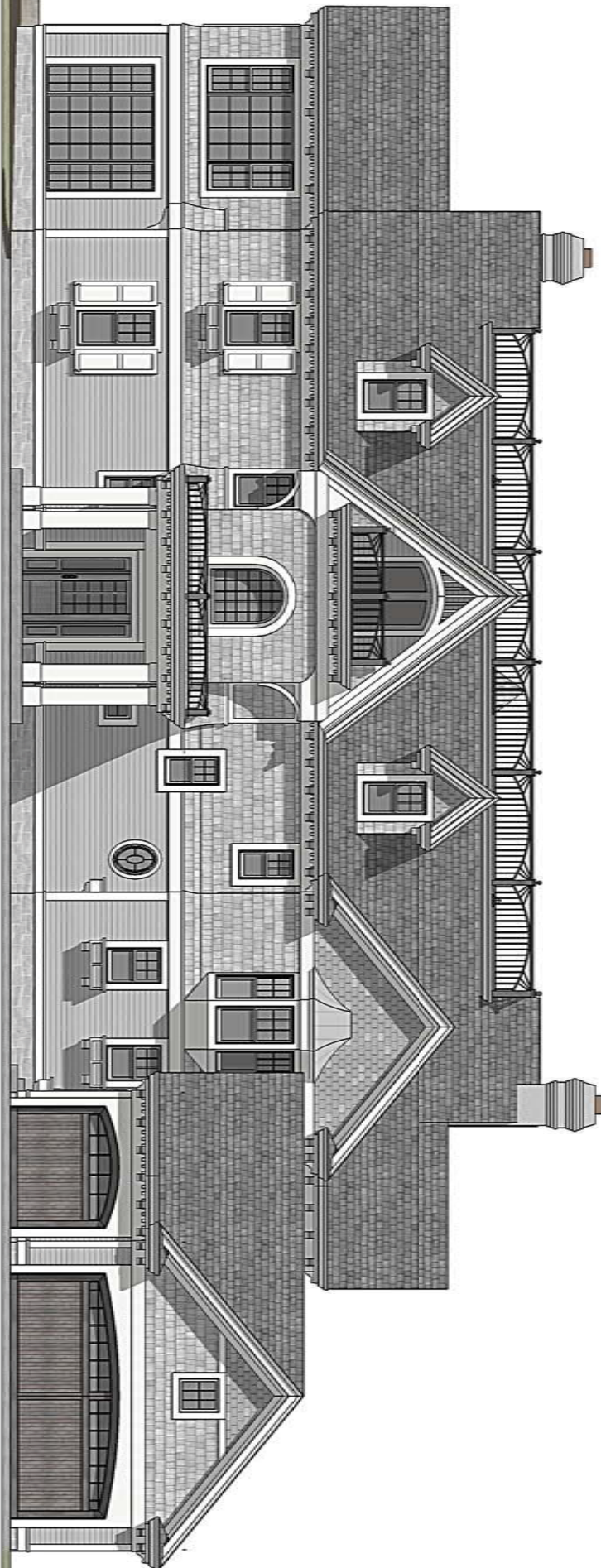
www.alexanderdesign.com
9 West Division Street
Buffalo, MN 55313
(763) 882-4177
Fax: (763) 882-3522

- denotes iron monument found
- denotes 1/2 inch by 14 inch iron pipe set and marked by license #40062

Project No.

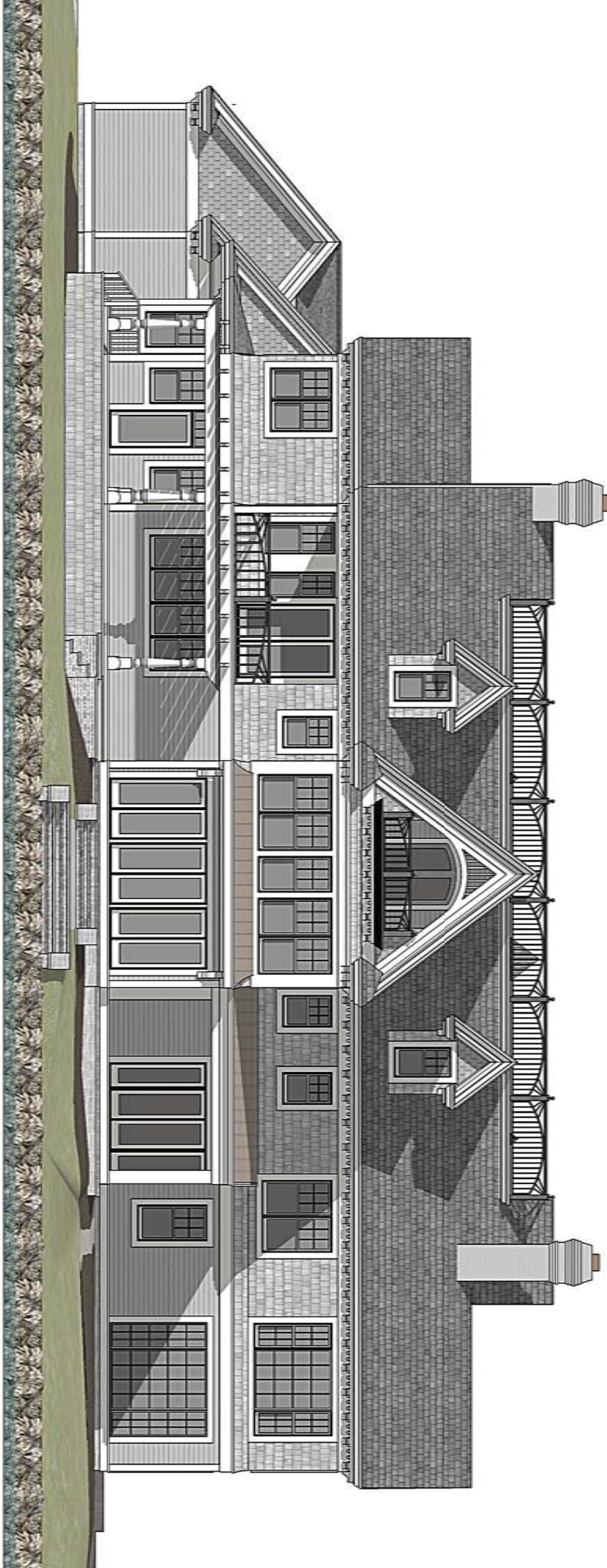
15-0151













Front Perspective
Grid Option #4

**Soran
Residence**

REVISIONS	
	REMARKS
6	04/07 /15 Revised window grids
7	04/08 /15 Revised window grids
8	04/15 /15 Revised window grids Option 3
9	04/24 /15 Revised window grids Option 4
10	



Rear Perspective 1 Grid Option #4

ALEXANDER
DESIGN
GROUP

3D Conceptual Illustration

Copy right 2015

Soran
Residence

REVISIONS	
MM/DD/YY	REMARKS
6	04/07/15 Revised window grids
7	04/08/15 Revised window grids
8	04/15/15 Revised window grids Option 3
9	04/24/15 Revised window grids Option 4

A



Rear Perspective 2
Grid Option #4

Soran
Residence

REVISIONS	
NO.	REMARKS
6	04/07 /15 Revised window grids
7	04/08 /15 Revised window grids
8	04/15 /15 Revised window grids Option 3
9	04/24 /15 Revised window grids Option 4
10	



Front Elevation
Grid Option #4

Soran
Residence

REVISIONS	
NO.	REMARKS
6	04/07 /15 Revised window grids
7	04/08 /15 Revised window grids
8	04/15 /15 Revised window grids Option 3
9	04/24 /15 Revised window grids Option 4
10	



Left Elevation
Grid Option #4



ALEXANDER

DESIGN

GROUP

3D Conceptual Illustration

Copy right 2015

Soran

Residence

REVISIONS	
MM/DD/YY	REMARKS
6 04/07/15	Revised window grids
7 04/08/15	Revised window grids
8 04/15/15	Revised window grids Option 3
9 04/24/15	Revised window grids Option 4

A



Right Elevation Grid Option #4

Soran Residence

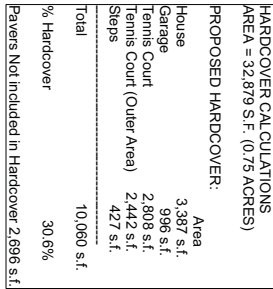
REVISIONS	
NO.	REMARKS
6	04/07/15 Revised window grids
7	04/08/15 Revised window grids
8	04/15/15 Revised window grids Option 3
9	04/24/15 Revised window grids Option 4
10	



Rear Elevation
Grid Option #4

Soran
Residence

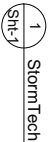
REVISIONS	
NO.	REVISIONS
6	04/07/15 Revised window grids
7	04/08/15 Revised window grids
8	04/15/15 Revised window grids Option 3
9	04/24/15 Revised window grids Option 4
10	



- 45 Epic Chamber
- 5 rows, 9 chambers
- Storage Volume = 6.30 gallons
- Footprint: 300 +/- sqft
- Bottom Stone EI = 932.11
- Bottom Chamber EI = 932.61
- Top Chamber = 933.36
- Top Stone EI = 933.36
- Min Cover = 934.36

HARDCOVER CALCULATIONS (AREA = 32,879 s.f. (0.75 ACRES))	
PROPOSED HARDCOVER:	Area
House	3,387 s.f.
Garage	996 s.f.
Tennis Court	2,800 s.f.
Tennis Court (Outer Area)	2,442 s.f.
Steps	427 s.f.
Total	10,060 s.f.
% Hardcover	30.6%
Payers Not Included in Hardcover 2,696 s.f.	

Lake Minnetonka



Phil Soren

Chamber System

DRAWN BY	CH
----------	----

Sheet #

Sheet #

outdoor
LAB Landscape Design LLC
address: 147 Tenth Street, St. Paul, Minnesota 55101
email: chuck@outdoorlab.net phone: 651-202-3662

StormTech



Memo

To: Heidi Nelson – City Manager
From: Stacie Kvilvang
Date: July 7, 2015
Subject: Amended and Restated Development Agreement – Wayzata Bay Center

On March 17th the HRA met Jointly with the City Council and Presbyterian Homes to overview the proposed changes to the development of the East Block and changes required in the TIF Agreement for the project. On April 30, 2015 the HRA appointed the HRA Chair to review amended terms for the Agreement on their behalf at a meeting with the City Council. On May 21, 2015, the City Council met to discuss the amended terms and provided staff and the developer further comments to incorporate into the Agreement. On May 29, 2015 staff overviewed the proposed changes to the Development Agreement with the HRA.

Since that time, staff and consultants have had on-going discussions with Presbyterian Homes regarding the proposed changes. It was determined by staff and legal counsel to draft an Amended and Restated Development Agreement that would include the first and second amendments to the original Agreement, delineate and memorialize what has happened to date and to outline the proposed changes outlined in the term sheet. Following is a summary of the Amended and Restated Agreement:

1. Definitions:

- a. Available tax increment changed from 95% to:
 - i. 95% until the East Block has a minimum value of \$21 million. Then available tax increment is 100% derived from everything, but for the East Block (100% of this goes to the City/HRA)
- b. East Block commencement means date upon which actual physical development commences, including grading and excavating
- c. Added East Block completion to mean date in which the City issues a certificate of occupancy (CO) for the project
- d. Added East Block plans and defined as the plans dated May 21, 2015
- e. Added East block developer, which is Bohland Development Inc.
- f. Acknowledges that the General Plans were amended by the City Council on June 2, 2015

- g. Added definition of initial TIF period to be August 1, 2015
- h. Added definition of remaining TIF period to commence on August 1st of the first year in which the East Block has a minimum valuation of \$21 million for tax assessment purposes
- i. Added definition for Parking and Mobility District
- j. Changed definition of Phase I and Phase II Improvements to coincide with actual phasing
- k. Amended TIF district to state district name, approval timing and certification

2. Land Use and Development Controls

- a. Restrictions on development
 - i. Developer has to apply for an amendment to the existing PUD Agreement for the East Block
- b. Demolition timing
 - i. Acknowledges that all demolition has occurred on the Redevelopment Property

3. TIF Project Area and Land Assembly

- a. Right of First Offer
 - i. Amended to state that the term expires on November 30, 2015 and that the City/HRA will notify the Developer at least 60 days before approving a purchase agreement with a third party, if the Development Agreement is not expired
- b. Land Assembly
 - i. States that the Developer and City have acquired all land necessary for the redevelopment and that the Developer has transferred land as appropriate to the City for the realignment of Superior Boulevard and that they have transferred the former gas station parcel

4. Construction of Minimum Improvements

- a. Minimum improvements defined as:
 - i. North Block – 164 senior housing units including independent, assisted living and memory care
 - ii. Superior Block – 90 senior independent living units, 32,000 sq/ft of retail and 270 parking stalls
 - iii. West Block – 99 residential units consisting of 73 senior apartments and 29 non-age restricted apartments and 41,000 sq/ft of retail
 - iv. Plaza Block – 59 condos and 22,000 sq/ft retail
 - v. East Block – 29 to 31 Condos, 80 to 90-unit full service hotel and 15,000 sq/ft of retail

- b. Market value of minimum improvements
 - i. Increased from \$203 million to approximately \$233 million and further defined as follows:
 - 1. Sr. Housing - \$95.4M
 - 2. Retail - \$38.7M
 - 3. Hotel - \$6.97M
 - 4. Condo - \$84.55M
 - 5. Non-age Restricted Apartments - \$7.6M
- c. North Linear Park and initial part of East Linear Park
 - i. Added East Lake Landscaping and that Developer will incur \$149,121 as a qualified cost for the improvements.
 - ii. Added East Buffer Landscaping.
 - 1. Developer needs to complete in accordance with approved plans by September 30, 2015
 - 2. Developer provides City escrow of \$25,000 for use by the City within 3 years to augment, restore or mitigate the landscaping if it is deemed necessary. These dollars will be returned to the developer if not used/needed.

5. Project Defaults/Deadline Adjustments

- a. Commencement and completion of minimum improvements
 - i. East Block to begin construction by September 30, 2015 and be substantially complete by December 31, 2017
 - ii. Acknowledgement of all the minimum improvements completed to date
- b. Commencement and completion of public infrastructure
 - i. Acknowledgement of required public infrastructure that has been completed to date, what is left to be completed (Portion of Superior Boulevard) and what has and has not yet been assessed
- c. Public access security
 - i. Amount was reduced to \$1 million and applies to the remaining public improvements to be completed. Letter of credit has to be submitted by the earlier of issuance of a building permit for the East Block or January 2, 2016

6. Master Redeveloper Reimbursement Obligations Qualified Redevelopment Costs and Performance Review

- a. Reimbursement obligations
 - i. Added that the City and the Developer are responsible for their respective legal and financial advisor expenses related to the drafting and execution of the amended Agreement from creation of the Term Sheet through execution of the Agreement
- b. Performance review of TIF assistance
 - i. Acknowledges that the look back has been completed at that the principal amount of TIF that was originally contemplated is needed (\$22.916)

7. TIF and Other Public Assistance

- a. TIF District
 - i. Acknowledges everything done to date and added the dates of the certification of the district under the special legislation received by the City in 2010
- b. TIF Assistance
 - i. Sets new principal amount at \$23.060 million (original \$22.910 million plus the added \$149,121 for the East Buffer Landscaping)
 - ii. Takes out the portion relating to the HRA adjusting the interest rate on the note upward (set at 8.75%)
- c. TIF Bonds
 - i. Added that the HRA may require reasonable assurances from the Developer that during the term of any TIF bonds, no actions will be taken that would reduce the market value of the minimum improvements. However, the HRA/City cannot require the Developer to sign a minimum assessment agreement on property it owns, if in the opinion of bond counsel would make the bonds taxable.

8. Master Redeveloper Covenants

- a. Parking and Mobility District
 - i. The Developer agrees to support and participate in the Parking District
 - ii. Developer will not protest validity or creation of the Parking and Mobility District
 - iii. Developer has same rights as all other participants in the District to petition or protest fees to be levied
 - iv. If City elects to not create the District, then the Developer and City shall negotiate in good faith on alternative financing options regarding parking and mobility needs within the City
- b. Parking illumination and wayfinding
 - i. Prior to issuance of a CO for any retail or commercial space, the Developer will install/change the brown “P” signs to blue so public understands they can park there
 - ii. Developer will install additional wayfinding signage as reasonably required by the City to better direct the public to parking within the development

- c. Construction Work Force and Parking
 - i. Prior to issuance of CO (inclusive of tenant buildouts), the Developer shall provide the City a work force parking and project access plan acceptable to the City. City is not obligated to issue building permits or CO's if the plan is not in a form acceptable to the City.
 - ii. Plan will be regularly monitored for compliance and updated as required by the City and must include:
 - 1. Monthly estimated work force needed
 - 2. Evidence of sufficient off-site parking locations
 - 3. Copies of notices to contractor and subcontractor personnel outlining the requirements
 - 4. Consequences for failing to abide with the protocols required
 - 5. Mandatory fines of \$500 per day for the first 5 days and \$1,000 per day thereafter.
- d. Access during construction of City ramp
 - i. Developer will allow City to direct parkers who would otherwise utilize City-controlled parking facilities to park within the development as long as it doesn't materially or negatively impact the parking required for the existing retail/commercial uses
 - ii. The City and the Developer will work in good faith to create a permit system which includes enforcement procedures

Please contact me at 651-697-8506 with any questions.



The Promenade of Wayzata

Approval of Amended and Restated Development Agreement

Stacie Kvilivang– Ehlers

July 7, 2015



Approved Block Plan



East Block



3



EHLERS
LEADERS IN PUBLIC FINANCE

Color Coding



Acknowledgement, Change or Amended



Added



Removed



Definitions

- Available tax increment **changed** from 95% through term of the District to:
 - 95% until the East Block has a minimum value of \$21 million for tax purposes (50% of value). Then available tax increment is 100% derived from everything, but for the East Block.
 - **100% of East Block to City/HRA**
 - Estimated to be approximately **\$527,000**/year
 - Likely to be utilized to assist in paying for new parking ramp
 - **100% of all other Blocks to Developer**



Definitions

- **Added** East Block commencement means date upon which actual physical development commences, including grading and excavating
- **Added** East Block completion to mean date in which the City issues a certificate of occupancy (CO) for the project
- **Added** East Block plans and defined as the plans dated May 21, 2015
- **Added** East block developer, which is Bohland Development Inc.
- **Acknowledges** that the General Plans were amended by the City Council on June 2, 2015
- **Added** definition of initial TIF period to be August 1, 2015



Definitions

- **Added** definition of remaining TIF period to commence on August 1st of the first year in which the East Block has a minimum valuation of \$21 million for tax assessment purposes
- **Added** definition for Parking and Mobility District
- **Changed** definition of Phase I and Phase II Improvements to coincide with actual phasing
- **Amended** TIF district to state district name, approval timing and certification



Land Use and Development Controls

- Restrictions on development
 - Added that Developer has to apply for an amendment to the existing PUD Agreement for the East Block
- Demolition timing
 - Acknowledges that all demolition has occurred on the Redevelopment Property



Land Use and Development Controls

- Right of First Offer
 - Amended to state that the term expires on November 30, 2015 and that the City/HRA will notify the Developer at least 60 days before approving a purchase agreement to sell the property in the future to a third party, if the Development Agreement is not expired
 - Development Agreement expires when Presbyterian Homes PAYGO Note is paid off
 - **City Council has determined that in the near future they do not intend to sell the property**
 - » **Keep it as parking**
- Land Assembly
 - Acknowledges that the Developer and City have acquired all land necessary for the redevelopment and that the Developer has transferred land as appropriate to the City for the realignment of Superior Boulevard and the former gas station parcel



Construction of Minimum Improvements

Block	Use	# of Rental Units	# of For-Sale Units	# of Hotel Rooms	Sq/Ft Retail
North	Senior apartment with services	164	-	-	-
	Senior apartments - independent living	90	-	-	-
Superior	Retail	-	-	-	32,000
	Senior apartments - independent living	73	-	-	-
West	Non age restricted apartments	26	-	-	-
	Retail	-	-	-	41,000
Plaza	Condos	-	59	-	-
	Retail	-	-	-	22,000
East	Hotel	-	-	80-90	-
	Condos	-	29-31	-	-
	Office	-	-	-	-
	Retail	-	-	-	15,000
TOTAL	N/A	353	88-90	80-90	110,000



10

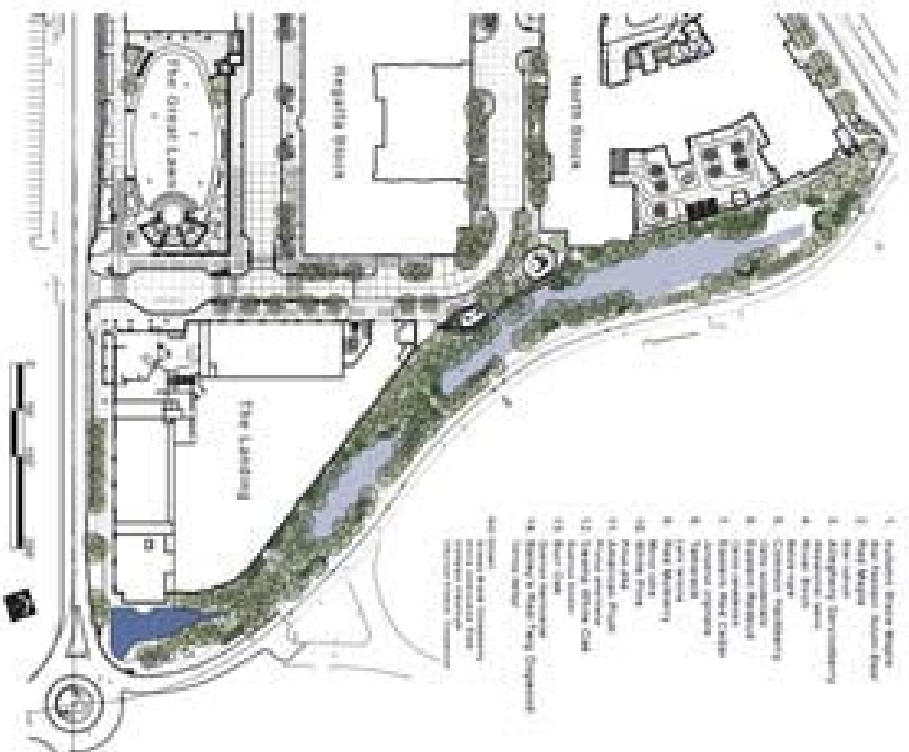
Market value of Project

- Increased from \$203 million to approximately \$233 million

Use	Markt Value
Senior Apartments	\$ 95,400,000
Non-Age Restricted Apartments	\$ 7,600,000
Condos	\$ 84,550,000
Retail	\$ 38,700,000
Hotel	\$ 6,970,000
Total	\$ 233,220,000



East Buffer Landscaping



Construction of Minimum Improvements

- North Linear Park and initial part of East Linear Park
 - **Added** East Lake Landscaping and that Developer will incur **\$149,121** as a qualified cost for the improvements
 - **Added** East Buffer Landscaping
 - Developer needs to complete in accordance with approved plans by **September 30, 2015**
 - Developer provides City escrow amount of **\$25,000** for use by the City within **3 years** to augment, restore or mitigate the landscaping if it is deemed necessary
 - » Dollars will be returned to the developer if not used/needed



East Buffer Landscaping – **Items Not in Development Agreement**

- *Longer Term Actions and Partners*
- As part of the build-out of the East Block of the Project, the City and the Developer jointly commit to the following reinvestments into the landscape buffer:
 - **\$250,000** from City for pedestrian improvements around the buffer as part of the Lake Effect plan
 - **\$25,000** from the City for additional landscaping of the buffer



East Buffer Landscaping - **Items Not in Development Agreement**

• *Intermediate Term Actions*

- Developer's installation of landscape improvements for the East Buffer adjacent to the East Block of the project
- Work with Developer's landscape team, LHB, to audit existing and proposed landscaping for the East Buffer to identify and replace trees that are under-performing or have died
- Pursue public art projects to recognize the history of the "Frog Hollow" neighborhood
 - Pursue grant opportunities through the Wayzata Rotary or other sources for public art and animal habitat features such as bird feeders
 - Look at options for reuse of the existing Cottonwood tree stump for public art
- Coordination with the Developer's landscaper on infrastructure and drainage improvements to address current runoff concerns



East Buffer Landscaping - **Items Not in Development Agreement**

- ***Pedestrian Connections***
- Staff will pursue approval of a boardwalk pedestrian connection through the east buffer with the MN DNR, Minnehaha Creek Watershed District (MCWD), and Army Corp of Engineers



Project Default/Deadline Dates

- Commencement and completion of minimum improvements
 - Changed East Block to begin construction by **September 30, 2015** and be substantially complete by **December 31, 2017**
 - Acknowledgement of all other minimum improvements completed to date
- Commencement and completion of public infrastructure
 - Acknowledgement of required public infrastructure that has been completed to date, what is left to be completed (Portion of Superior Boulevard) and what has and has not yet been assessed
- Public access security
 - Reduced amount to **\$1 million** and applies to the remaining public improvements to be completed
 - Added that letter of credit has to be submitted by the earlier of issuance of a building permit for the East Block or **January 2, 2016**



Master Redeveloper Reimbursement Obligations Qualified Redevelopment Costs and Performance Review

- Reimbursement obligations
 - Added that the City and the Developer are responsible for their respective legal and financial advisor expenses related to the drafting and execution of the amended Agreement from creation of the Term Sheet through execution of the Agreement
- Performance review of TIF assistance
 - Acknowledges that the look back has been completed at that the principal amount of TIF that was originally contemplated is needed (\$22.910M)



TIF Lookback

- At earlier of **95% occupancy** or 2 years after CO issued on last part of the project
 - Decided to do now so City/HRA would only have to issue the TIF Note once, if there was to be a reduction
- If average debt service coverage over 3-year period exceeds **1.39%**, reduction is required

2016	2017	2018	Average
122.18%	134.75%	137.29%	131.40%



TIF and Other Public Assistance

- TIF District
 - Acknowledges everything done to date and added the dates of the certification of the district under the special legislation received by the City in 2010
- TIF Assistance
 - Changed new principal amount to \$23.060 million (original \$22.910 million plus the added \$149,121 for the East Buffer Landscaping)
 - Takes out the portion relating to the HRA adjusting the interest rate on the note upward
 - Set at 8.75% per original agreement
- TIF Bonds
 - Added that the HRA may require reasonable assurances from the Developer that during the term of any TIF bonds, no actions will be taken that would reduce the market value of the minimum improvements. However, the HRA/City cannot require the Developer to sign a minimum assessment agreement on property it owns, if in the opinion of bond counsel would make the bonds taxable.



Master Developer Covenants

- **Added** Parking and Mobility District
 - The Developer agrees to support and participate in the Parking District
 - Developer will not protest validity or creation of the Parking and Mobility District
 - Developer has same rights as all other participants in the District to petition or protest fees to be levied
 - If City elects to not create the District, then the Developer and City shall negotiate in good faith on alternative financing options regarding parking and mobility needs within the City



Master Developer Covenants

- **Added** Parking illumination and wayfinding
 - Prior to issuance of a CO for any retail or commercial space, the Developer will install/change the brown “P” signs to blue so public understands they can park there
 - Developer will install additional wayfinding signage as reasonably required by the City to better direct the public to parking within the development



Master Developer Covenants

- **Added** Construction Work Force and Parking
 - Prior to issuance of CO (inclusive of tenant buildouts), the Developer shall provide the City a work force parking and project access plan acceptable to the City. City is not obligated to issue building permits or CO's if the plan is not in a form acceptable to the City
 - Plan will be regularly monitored for compliance and updated as required by the City and must include:
 - Monthly estimated work force needed
 - Evidence of sufficient off-site parking locations
 - Copies of notices to contractor and subcontractor personnel outlining the requirements
 - Consequences for failing to abide with the protocols required **AND**
 - **Mandatory fines** of **\$500** per day for the first 5 days and **\$1,000** per day thereafter



Master Developer Covenants

- **Added** Access during construction of City ramp
 - Developer will allow City to direct parkers who would otherwise utilize City-controlled parking facilities to park within the development as long as it doesn't materially or negatively impact the parking required for the existing retail/commercial uses
 - The City and the Developer will work in good faith to create a permit system which includes enforcement procedures



Questions



Preliminary Term Sheet

Developer, HRA and City entered into that certain Redevelopment Agreement, dated as of December 7, 2011 (as amended to date) (the "Original Agreement"). This Term Sheet is executed as of this 2nd day of June, 2015 by and between Developer, HRA and City and is intended to set forth the general terms upon which the parties hereto may be willing to enter into an amendment to or amended and restated version of the Original Agreement (the "Redevelopment Agreement"). This Term Sheet shall not be deemed conclusive or legally binding upon either party and neither party shall have any obligations regarding the property defined below unless and until a definitive Redevelopment Agreement is approved by the City and executed by both parties. All capitalized terms contained herein shall have the meaning given to them in the Original Agreement, unless defined in this term sheet.

1. Developer Conditions, as determined to date:
 - a. Execution of Amended and Restated Redevelopment Agreement
 - b. Execution of a TIF Note
2. City Conditions, as determined to date:
 - a. City Council approval of Planning Application
 - b. City approval of Construction Plans
 - c. Execution of an Amended and Restated Redevelopment Agreement
3. East Block Minimum Improvements: Improvements to the East Block will include the construction and equipping of a total of approximately 29 for sale condominiums, an approximately 80 to 90-unit full service hotel and approximately 14,000 sq/ft of retail space and related parking, consistent with plans submitted by Bohland Development Inc., dated 05-21-2015. Developer shall construct and provide for operation of parking consistent with plans submitted by Bohland Development Inc. dated May 21, 2015.
4. Construction Schedule: Commence construction by September 30, 2015, and substantially complete construction by December 31, 2017. For the purpose hereof, "Commence" shall mean beginning of physical improvement to the Property, including grading, excavation, or other physical site preparation work; and "Completed" shall mean that the Minimum Improvements are sufficiently complete for the issuance of a Certificate of Occupancy. Upon Completion the City shall issue, in recordable form, a "Certificate of Completion."
5. Amended PUD: The developer will apply for an amendment to the existing PUD agreement and must meet all City requirements and obtain all City approvals.
6. Available Tax Increment: Available tax increment definition will be changed to state that the Developer will receive 95% of the increment beginning in 2015 and up until the construction of the East Block is at least 50% complete for tax valuation purposes. Beginning in the year after that, the Developer shall receive 100% of the TIF generated from all development within the TIF district, excluding the East Block.
7. Parking District: Developer agrees to initiate a request to be included in the City's parking district for the downtown area and pay fees required for the development as determined through the parking district ordinance that will be adopted in 2015.

Developer's agreement requires meeting any petition requirements under Minnesota Statutes Chapter 428A and waiving the right to protest the establishment of fees.

8. Lookback: Developer has supplied, or will supply, the documentation necessary to complete the lookback contemplated in Section 8.4 and work with the City's Financial Advisor to complete the lookback to determine the size of the TIF Note prior to approval of the Amended and Restated Redevelopment Agreement.
9. TIF Note: The City agrees to issue a TIF Note to the Developer based upon the amount determined through the lookback, plus an additional \$149,121 to reimburse the Developer for additional landscaping required at the end of East Lake Street. The TIF Note will bear interest at the originally agreed to rate of 8.75% and will be payable over 26 years, beginning on the date of issuance (presumed to be in August 2015).
10. Remnant Parcel: Developer agrees to provide the City with conceptual development plans for the site by September 1, 2015. Developer further agrees to supply an outline of development scenarios and parking impacts by June 15, 2015. Such plans shall include sq/ft of the buildings, intended uses, calculation on the number of parking stalls required and how the parking will be accommodated. The City and Developer agree to work in good faith on approval of such plans to meet the goals of the City and the Developer, including but not limited to meeting parking requirements. If plans are not submitted by this date, the Developer's right of first refusal for the parcel shall be terminated.
11. Existing Parking Illumination and Wayfinding: Developer agrees to change the covers on the illuminated parking signs from brown to universal standard blue on all retail parking in the Superior, Plaza, West and East Blocks and public parking text with blue "P" signage on street signs to assure the public understands that they can park within the development when accessing retail businesses within the development. These installations shall be complete prior to the issuance of the Certificate of Occupancy for future retail/commercial space within the Superior, Plaza, West and East Blocks. In addition, the Developer agrees to work with the City to install additional wayfinding signage, including but not limited to real-time signage, as appropriate to direct the public to parking within the Development.
12. Construction Work Force and Parking: The Developer and City agree to work together in good faith to minimize the impact of the construction while allowing the construction of the project to proceed in an efficient and effective manner. The Developer agrees to supply the City with a work force parking and project access plan that can be regularly updated, monitored, and enforced (including mandatory fines which shall be payable to the City). This will include monthly estimated work force needed on site, agreements showing needed off-site parking locations to accommodate project personnel, copies of notices to contractor and subcontractor forces outlining of the requirements of the plan and consequences for failing to abide with protocols.
13. East Buffer Landscaping: Developer shall complete landscaping of East Buffer per plan to be reviewed and approved by the City per the revised landscape plan associated with the East Block plans. Developer shall complete the landscaping in the East Buffer within the 2015 planting season, except for the landscaping directly adjacent to the East Block

construction which will be completed by Completion of the East Block Minimum Improvements. Developer shall provide the City with a lump sum payment of \$25,000 to provide for additional landscaping, restoration or mitigation of the East Buffer at the City's discretion following the completion of the project. If no additional landscaping is required in the buffer within three years following the completion of the project (CO east block), they funds will be returned to the developer.

14. Landscaping at end of East Lake Street: Developer agrees to pay an additional \$149,121 for landscaping at the end of East Lake Street. The City agrees it increase the principal amount of the TIF Note by \$149,121.
15. Future City Ramp: Developer agrees to work cooperatively with the City to allow the City to direct public parking to the development beginning after occupancy of the West Block and while the new public ramp is under construction at Mill Street, to the extent it does not negatively impact the parking required for the existing uses within the Development. The City will work with the developer on a permit system for employees as needed and enforcement issues that arise during the construction period.
16. Fees: Developer and HRA agree to pay their own fees related to the negotiating and drafting of the Amended Agreement.
17. Execution of the Amended Redevelopment Agreement: The amended Redevelopment Agreement must be executed before a building permit will be issued for the East Block

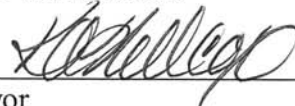
IN WITNESS WHEREOF, the parties have agreed to this non-binding term sheet as of the date first set forth above.

WAYZATA BAY REDEVELOPMENT
COMPANY, LLC

By: _____
Its: _____

By: _____
Its: _____

CITY OF WAYZATA

By: 
Its: Mayor

WAYZATA HOUSING AND
REDEVELOPMENT AUTHORITY

By: 
Its: Chair

**AMENDED AND RESTATED
REDEVELOPMENT AGREEMENT**

by and among

**THE CITY OF WAYZATA, MINNESOTA,
THE HOUSING AND REDEVELOPMENT AUTHORITY
OF THE CITY OF WAYZATA, MINNESOTA,**

and

WAYZATA BAY REDEVELOPMENT COMPANY, LLC

**Dated as of
July 15, 2015**

THIS DOCUMENT WAS DRAFTED BY:
Dorsey & Whitney LLP (JRL/BC)
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	3
Section 1.1 Definitions	3
ARTICLE II REPRESENTATIONS AND WARRANTIES	13
Section 2.1 Representations and Warranties of the City	13
Section 2.2 Representations and Warranties of the Authority	14 15
Section 2.3 Representations and Warranties of the Master Redeveloper	16
ARTICLE III LAND USE AND DEVELOPMENT CONTROLS	17
Section 3.1 Restrictions on Development	17
Section 3.2 Homeowners' Associations and Restrictive Covenants	18
Section 3.3 Environmental Review	18
Section 3.4 Zoning and Land Use Approvals	18
Section 3.5 Building and Construction Permits	18
Section 3.6 Demolition Timing	18
Section 3.7 City/Authority Approval	19 18
ARTICLE IV TIF PROJECT AREA LAND ASSEMBLY	19
Section 4.1 Minimum Improvements Area Acquisition by the Master Redeveloper	19
Section 4.2 Transfer of New Superior Boulevard Parcel to the City	19
Section 4.3 Transfer of Old Superior Boulevard Parcel to the City	19
Section 4.4 Transfer of East Lake Street Parcel to the Master Redeveloper; Reversion	19
Section 4.5 DNR Parcel	20
Section 4.6 Wetland Mitigation Parcel	20
Section 4.7 Conveyance of Rights-of-Way by the Master Redeveloper	21
Section 4.8 Contingencies to Land Transfer Closing	21
Section 4.9 Land Transfer Closings	22
Section 4.10 Land Transfer Indemnification	25 24
Section 4.11 Transfer of the Gas Station Parcel	26
Section 4.12 Right of First Offer/Refusal	27
Section 4.13 Current Status of Land Assembly	28
ARTICLE V CONSTRUCTION OF MINIMUM IMPROVEMENTS	29
Section 5.1 Minimum Improvements	29
Section 5.2 Submission and Approval of Evidence of Financing	31
Section 5.3 Relocation Indemnification	31
Section 5.4 Construction and Inspection of Minimum Improvements	31 32
Section 5.5 Effect of Delay	32
Section 5.6 Additional Responsibilities of the Master Redeveloper	32
Section 5.7 Easement for the Use and Maintenance of Public Access Areas; Ensuring Other Public Access	32 33

Section 5.8	Easement for the Use and Maintenance of Park Improvements	33
Section 5.9	Certificate of Completion	33
ARTICLE VI CONSTRUCTION AND FINANCING OF PUBLIC INFRASTRUCTURE IMPROVEMENTS		
Section 6.1	Public Infrastructure Improvements	33 34
Section 6.2	Financing the Public Infrastructure Improvements	34
Section 6.3	Decision to Construct the Public Infrastructure Improvements	34 35
Section 6.4	Special Assessments	35
Section 6.5	Options for Construction of Public Infrastructure Improvements; Submission and Approval of Evidence of Financing	35
Section 6.6	Design and Plans for Public Infrastructure Improvements	37
Section 6.7	Construction and Inspection of Public Infrastructure Improvements	37
Section 6.8	Budget for Design and Inspection Fees	37 38
Section 6.9	Reimbursement for Design and Inspection Fees	38
Section 6.10	Reimbursement for Construction Costs	38
Section 6.11	Environmental Remediation	38 39
Section 6.12	Additional Responsibilities of the Master Redeveloper	39
Section 6.13	Certificate of Completion	39 40
Section 6.14	Initial Superior Boulevard Improvements Assessment Agreement	40
Section 6.15	City Builds, Master Redeveloper Pays Cash	42
ARTICLE VII PROJECT DEFAULT DATES; DEADLINE ADJUSTMENTS		
Section 7.1	Commencement and Completion of Minimum Improvements	43
Section 7.2	Commencement and Completion of Public Infrastructure Improvements	44
Section 7.3	Timing and Sequence of Blocks and Segments	45
Section 7.4	Public Access Security	45
ARTICLE VIII MASTER REDEVELOPER REIMBURSEMENT OBLIGATIONS; QUALIFIED REDEVELOPMENT COSTS; PERFORMANCE REVIEW		
Section 8.1	Master Redeveloper Reimbursement Obligations	46
Section 8.2	Qualified Redevelopment Costs	46 47
Section 8.3	Master Redeveloper Use of Entry Deposits	47
Section 8.4	Performance Review and TIF Assistance Adjustment/Debt Coverage Ratio	47 48
ARTICLE IX TIF AND OTHER PUBLIC ASSISTANCE		
Section 9.1	TIF District	48
Section 9.2	TIF Assistance; Limitations on Reimbursement of Qualified Redevelopment Costs	49 48
Section 9.3	Tax Increment Eligibility	49
Section 9.4	Preconditions to Issuance of TIF Note	49
Section 9.5	Assignment of Note	50 49
Section 9.6	Duration of TIF Notes	52 51
Section 9.7	TIF Bonds	52 51

Section 9.8	Conditions Precedent to Issuance of TIF Bonds; Inability to Issue or Sell Bonds	52 <u>51</u>
Section 9.9	City/Authority Grant Applications	52
Section 9.10	Conduit Revenue Bonds	53 <u>52</u>
ARTICLE X ENCUMBRANCE OF MINIMUM IMPROVEMENTS AREA		53 <u>52</u>
Section 10.1	Encumbrance of the Minimum Improvements Area	53 <u>52</u>
Section 10.2	Copy of Notice of Default to Mortgagee	53
Section 10.3	Mortgagee's Option to Cure Events of Default	53
Section 10.4	Defaults Under Mortgage	54
Section 10.5	Subordination of Agreement	55 <u>54</u>
Section 10.6	Unit Mortgages	55 <u>54</u>
ARTICLE XI INSURANCE AND CONDEMNATION		55 <u>54</u>
Section 11.1	Insurance	55 <u>54</u>
Section 11.2	Condemnation	56 <u>55</u>
ARTICLE XII MASTER REDEVELOPER COVENANTS		56
Section 12.1	Maintenance and Operation of the Minimum Improvements	56
Section 12.2	Business Subsidy Agreement	<u>56</u>
<u>Section 12.3</u>	<u>Parking and Mobility District</u>	<u>56</u>
<u>Section 12.4</u>	<u>Parking Illumination and Wayfinding</u>	<u>57</u>
<u>Section 12.5</u>	<u>Construction Work Force Parking</u>	<u>57</u>
<u>Section 12.6</u>	<u>Access During Construction of City Ramp</u>	57
ARTICLE XIII TRANSFER LIMITATIONS AND INDEMNIFICATION		58
Section 13.1	Representation as to the Minimum Improvements	58
Section 13.2	Secondary Redevelopers	58
Section 13.3	Limitations on Transfer	58
Section 13.4	Indemnification	60 <u>59</u>
Section 13.5	Limitation	60
ARTICLE XIV EVENTS OF DEFAULT AND REMEDIES		60
Section 14.1	Events of Default Defined	60
Section 14.2	Master Redeveloper Events of Default	60
Section 14.3	City and Authority Events of Default	61
Section 14.4	Cure Rights	61
Section 14.5	Authority Remedies on Master Redeveloper Events of Default	62 <u>61</u>
Section 14.6	City Remedies on Master Redeveloper Events of Default	62
Section 14.7	Master Redeveloper Remedies on City or Authority Events of Default	62
Section 14.8	No Remedy Exclusive	62
Section 14.9	No Additional Waiver Implied by One Waiver	63 <u>62</u>
Section 14.10	Reimbursement of Attorneys' Fees	63 <u>62</u>
ARTICLE XV ADDITIONAL PROVISIONS		63
Section 15.1	Conflicts of Interest	63

Section 15.2	Titles of Articles and Sections.....	63
Section 15.3	Notices and Demands.....	63
Section 15.4	Counterparts.....	64
Section 15.5	Law Governing.....	64
Section 15.6	Legal Opinions.....	64
Section 15.7	Consents and Approvals.....	65 <u>64</u>
Section 15.8	Representatives.....	65 <u>64</u>
Section 15.9	Superseding Effect.....	65 <u>64</u>
Section 15.10	Relationship of Parties.....	65
Section 15.11	Term.....	65
Section 15.12	Provisions Surviving Rescission or Expiration.....	65
Section 15.13	Memorandum of Agreement.....	65
Section 15.14	Conflicts Between this Agreement and the PUD Agreement.....	65

LIST OF EXHIBITS

EXHIBIT A	TIF Project Area Map
EXHIBIT B	Minimum Improvements Site Plan
EXHIBIT B-1	Legal Description of Minimum Improvements Area
EXHIBIT C	Public Infrastructure Improvements Site Plan
EXHIBIT D	Land Transfer Map
EXHIBIT E	Wetland Mitigation Parcel Map
EXHIBIT F	Quit Claim Deed
EXHIBIT G	Easement for the Use and Maintenance of Public Access Areas
EXHIBIT H	Easement for the Use and Maintenance of Park Improvements
EXHIBIT I	TIF Pro Forma
EXHIBIT I-1	Look Back Test Rent Increase
EXHIBIT J	TIF Note
EXHIBIT K	Certificate of Completion
EXHIBIT L	Memorandum of Redevelopment Agreement

AMENDED AND RESTATED
REDEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED REDEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into this —7th day of July, ~~2015~~, 2015 (the “Effective Date”), among the **CITY OF WAYZATA, MINNESOTA**, a Minnesota home rule charter city (the “City”), the **HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA**, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “Authority”), and **WAYZATA BAY REDEVELOPMENT COMPANY, LLC**, a Minnesota limited liability company (the “Master Redeveloper”).

RECITALS

WHEREAS, the capitalized terms used, but not defined, in these Recitals have the meanings given in Article I of this Agreement; and

WHEREAS, the City and the Authority have determined that the TIF Project Area, depicted on the TIF Project Area Map, is currently underutilized, with obsolete structures and physical arrangements, substantial vacant areas and building vacancies, poor soils and potential contamination, inconsistent legal restrictions on redevelopment and outdated and inadequate public infrastructure and circulation; and

WHEREAS, the City and the Authority have determined that redevelopment of the TIF Project Area has been impeded by the difficulty of redevelopment without a consistent overall plan ensuring compatible land uses; and

WHEREAS, the City and the Authority have determined that the TIF Project Area also offers the principal opportunity within the City for creation of a unified, mixed use redevelopment, with significant opportunities for new senior housing, other housing, and commercial redevelopment; and

WHEREAS, the Master Redeveloper ~~has, in accordance with the Original Redevelopment Agreement (as defined below), proposed~~ is engaged in developing a redevelopment project covering approximately 14.5 acres in the TIF Project Area on which the Master Redeveloper proposes to demolish and clear existing blighted structures, and construct approximately 255327 senior housing units, ~~155 conventional residential units, 130,000~~ 88 condominium units, 26 market rate apartments, approximately 108,000 leasable square feet (“LSF”) of retail space, ~~27,500 LSF of office space,~~ and a full-service hotel with up to 100 rooms, in addition to street improvements, public parks, and public parking; and

WHEREAS, the City has determined to realign the intersection of Superior Boulevard and Lake Street to achieve the optimal configuration for land use, pedestrian access, safety and engineering, and the realigned streets, including any additional right-of-way or easements obtained with regard thereto, will be acquired for a public purpose and owned by the City for the use, occupation and enjoyment of the general public; and

WHEREAS, the Master Redeveloper has agreed to finance a portion of such road realignment and other sanitary sewer improvements within the TIF Project Area (collectively the “Public Infrastructure Improvements”); and

WHEREAS, the TIF Project Area includes the Minimum Improvements Area and the Public Infrastructure Improvements Area and the TIF Project Area is the same as the proposed TIF District; and

WHEREAS, the Authority has analyzed current land use in the TIF Project Area, including a building-by-building structural analysis, and after appropriate hearings and notices, the City ~~will consider adopting~~adopted findings to determine that the TIF Project Area is “blighted” within the meaning of the HRA Act and that more than 50% of the buildings in the TIF Project Area are “structurally substandard” within the meaning of the TIF Act; and

WHEREAS, ~~any required findings adopted by~~ the City and the Authority ~~will include~~adopted findings that included a determination that “but for” the assistance contemplated in the TIF Plan and provided under this Agreement, the redevelopment as proposed herein would not be expected to occur in the reasonably foreseeable future; and

WHEREAS, a major component of the proposed Redevelopment Plan is to redevelop blighted areas, prevent the emergence of blight, and foster an increase in commercial and retail development providing jobs, create new rental housing, particularly senior housing, and create new for sale housing appropriate for various life stages of the City’s residents and not currently available in the City; and

WHEREAS, in order to achieve the objectives of the Redevelopment Plan, to facilitate completion of the site improvements, including the Public Infrastructure Improvements, and the development and construction of the Minimum Improvements, the City has conveyed, or agreed to convey, certain parcels to the Master Redeveloper pursuant to the terms of this Agreement, and the Master Redeveloper has conveyed, or agreed to convey, certain parcels to the City; and

WHEREAS, the Master Redeveloper may, pursuant to the terms of this Agreement, assign certain Blocks of the Minimum Improvements to Secondary Redevelopers which will then have certain rights and obligations under this Agreement related to the assigned Block, which assignments will be approved by the Authority, and thereafter the Secondary Redevelopers will undertake those Blocks in accordance, in each case, with the provisions of this Agreement and the PUD Agreement; and

WHEREAS, under the TIF Act, the Authority is authorized to finance certain Qualified Redevelopment Costs of a redevelopment project with tax increment revenues derived from a tax increment financing district established within a redevelopment TIF Project Area; and

WHEREAS, consistent with the TIF Act, the City and the Authority has ~~or will hold~~held a public ~~hearings~~hearing to consider the need and desirability for adoption of a tax increment financing plan and the creation and establishment of the TIF Project Area as a tax increment financing district pursuant to the TIF Act, and ~~will determine~~determined that absent such authorization and the provision of certain funds to undertake various qualified redevelopment

activities, the redevelopment contemplated herein would not be undertaken, and as a consequence the City and the Authority ~~may adopt~~adopted a TIF plan and ~~establish~~established a portion of the Central Area Redevelopment District (“CARD”) Project Area as a redevelopment TIF district; and

WHEREAS, the Authority has certified the TIF District consistent with this Agreement and delayed receipt of the first Tax Increment until ~~2015~~2015; and

WHEREAS, the Authority will issue TIF Assistance in accordance with Article IX of this Agreement; and

WHEREAS, on October 21, 2008, the City, the Authority, and the Master Redeveloper entered into that certain Redevelopment Agreement (the “Original Redevelopment Agreement”); and

WHEREAS, the City, the Authority, and the Master Redeveloper have previously entered into that certain (i) First Amendment to Redevelopment Agreement dated as of December 15, 2009 (the “First Amendment”) and (ii) Second Amendment to Redevelopment Agreement dated as of December 7, 2011 (the “Second Amendment”; the First Amendment, Second Amendment, and the Original Redevelopment Agreement are collectively referred to herein as, the “Amended Redevelopment Agreement”); and

WHEREAS, in order to supplement the Amended Redevelopment Agreement, the City, the Authority, and the Master Redeveloper enter into this Agreement to amend and restate the Amended Redevelopment Agreement and, in so doing, (i) the provisions of the First Amendment and Second Amendment will be fully incorporated ~~to~~into this Agreement to be effective from and after December 15, 2009 and December 7, 2011, respectively, (ii) all other provisions that are added to this Agreement other than the First Amendment and Second Amendment provisions shall be effective from and after the Effective Date, and (iii) all of the provisions of the Original Redevelopment Agreement shall be and remain unaffected, except to the extent modified by ~~the First Amendment, the Second Amendment, and the other amended provisions of this Agreement that were not set forth in the Original Redevelopment Agreement, which provisions shall remain effective as of October 21, 2008~~this Agreement; and

WHEREAS, the City and the Authority believe that the Project is in the best interests of the residents of the City.

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

ARTICLE I DEFINITIONS

Section 1.1 Definitions. All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

“Agreement” means this Amended and Restated Redevelopment Agreement.

“Amended Redevelopment Agreement” has the meaning given in the Recitals.

“Authority” means the Wayzata Housing and Redevelopment Authority.

“Authority Representative” means the Executive Director of the Authority or his or her designee.

“Available Tax Increment” means, (i) during any applicable time frame, (i) the Initial TIF Period, ninety-five percent (95%) of the Tax Increment derived from the TIF District and received and retained by the Authority from the County from the date of issuance of the TIF Note until construction of the East Block is at least fifty percent (50%) complete for tax valuation purposes, as reasonably determined by the Authority, and (ii) following such completion of at least fifty percent (50%) for tax valuation purposes, in each subsequent tax year in the six months before each Payment Date (as defined in the TIF Note); and (ii) during the Remaining TIF Period, one hundred percent (100%) of the Tax Increment, excluding that portion of the Tax Increment generated from the parcels on which the East Block is located derived from all tax parcels in the TIF District, except the tax parcels that make up the East Block, and received by the Authority from the County in the six months before each Payment Date.

“Block” or **“Blocks”** refers to one or more portions of the Minimum Improvements, specifically the West Block, East Block, East Block Linear Park, Plaza Block, Park Plaza, Superior Block, North Block, or North Block Linear Park.

“Board” means the Board of Commissioners of the Authority.

“CARD Amendment” means an amendment to the City’s Central Area Redevelopment District addressing the Project which serves as the Redevelopment Plan.

“Certificate of Completion” means the certificates in substantially the form attached as Exhibit K, signed by the Authority Representative certifying completion of various Blocks of the Minimum Improvements, and releasing such Block from obligations to construct the Minimum Improvements under this Agreement, as specified in Section 5.9, or certifying Completion of the Public Infrastructure Improvements, and releasing Master Redeveloper from obligations to finance and construct the Public Infrastructure Improvements under this Agreement, as specified in Section 6.13.

“City” means the City of Wayzata.

“City Consultants” means the financial, engineering, legal and other similar advisors to the City and the Authority regarding the Project.

“City Council” means the Wayzata City Council.

“City Documents” has the meaning given in Section 4.9(b).

“**City Parties**” means the City and the Authority, and their respective members, employees, agents, independent contractors and attorneys.

“**Commencement**” means the date on which a building permit application is deemed complete by the City in accordance with Minnesota Statutes, Section 15.99 for a given Block (except for the East Block, which means East Block Commencement) and the corresponding Segment of the Public Infrastructure Improvements.

“**Commencement Date**” means the date of Commencement.

“**Completion**” of a particular Block or Segment means Master Redeveloper receipt of a Certificate of Completion for that Block or Segment (except for the East Block, which means East Block Completion).

“**Completion Date**” means any date a Certificate of Completion with respect to any Block of the Minimum Improvements or any Segment of the Public Infrastructure Improvements is delivered.

“**Contract for Deed**” means the contract for deed provided for by the Sale and Purchase Agreement, pursuant to which the Gas Station Parcel shall be purchased from Wayzata Circle LLC.

“**Costs of Issuance**” means all costs and expenses incurred in connection with the issuance of the TIF Assistance, including, but not limited to fees of the placement agent, fiscal consultant, bond counsel, counsel to the Authority and placement agent, and paying agent.

“**County**” means the County of Hennepin, Minnesota.

“**Cure Rights**” means the rights to cure a Default as specified in Section 14.4.

“**Deed**” means a quit claim deed in the form attached hereto as Exhibit F.

“**Default**” means an act or omission by the City, the Authority or the Master Redeveloper which becomes an Event of Default under this Agreement if it is not cured.

“**Default Date(s)**” means the Commencement and Completion Dates outlined in the Minimum Improvements Timeline in Section 7.1 and the Public Infrastructure Improvements Timeline in Section 7.2.

“**DNR**” means the Minnesota Department of Natural Resources.

“**DNR Parcel**” means the parcel of land described as Tract F, Registered Land Survey No. 1168, as depicted on the Land Transfer Map.

“**DNR Parcel Act**” means 2008 Minnesota Laws, Chapter 368, Article 1, Section 34, as amended by 2009 Minnesota Laws, Chapter 176, Article 3, Section 2.

“DNR Parcel Closing” means the date on which the City transfers certain rights in the DNR Parcel to the Master Redeveloper as detailed in Sections 4.5 and 4.9.

“East Block” has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

“East Block Commencement” means the date on which ~~a building permit application is deemed complete by the City in accordance with Minnesota Statutes, Section 15.99 for a given Block and the corresponding Segment of the Public Infrastructure Improvements.~~ actual physical improvement commences on the East Block, including grading, excavation, or other physical site preparation work.

“East Block Completion” means the date on which the City issues a certificate of occupancy for the East Block.

“East Block Linear Park” is defined in Section 5.1 and shown on the Minimum Improvements Site Plan.

“East Block Plans” means those plans submitted to the City by the East Block Redeveloper, dated May 21, 2015, which provide for the construction, equipping and parking operations for the East Block.

“East Block Redeveloper” means Bohland Development Inc. as Secondary Redeveloper for the East Block.

“East Lake Street Parcel” means 1001 East Lake Street, Wayzata, Minnesota, as depicted on the Land Transfer Map.

“EAW” means the Environmental Assessment Worksheet.

“Entry Deposits” mean those funds deposited by residents of the independent senior housing components of the Minimum Improvements and received by the Master Redeveloper pursuant to an entry deposit agreement.

“Environmental Law” means any federal, state or local law, rule, regulation, ordinance, or other legal requirement relating to (a) a Release or threatened Release of any Hazardous Material, (b) pollution or protection of public health or the environment or (c) the manufacture, handling, transport, use, treatment, storage, or disposal of Hazardous Materials.

“Event of Default” means any of the events by the City, the Authority or the Master Redeveloper described in Article XIV.

“Final Plans” means the final design and architectural plans for a given Block of the Minimum Improvements submitted to the City for approval pursuant to the City’s ordinances.

“Final Plat” means the final plat or replat for any Block of the Minimum Improvements when approved by the City and the County.

“Financing Commitment” means a commitment from a mortgage lender, or in the case of a conduit bond, a term sheet from an investment banking firm.

“First Amendment” means that certain First Amendment to Redevelopment Agreement dated as of December 15, 2009 among the City, the Authority, and the Master Redeveloper.

“FOFR Parcel” means a portion of the Old Superior Boulevard Parcel identified ~~as Parcel 1A on Exhibit D-2 of the Redevelopment Agreement~~ as shown on Attachment 2 to the First Amendment, and the Remnant Parcel identified ~~as Parcel 2A on Exhibit D-2 of the Redevelopment Agreement~~ as shown on Attachment 2 to the First Amendment.

“Gas Station Parcel” means the parcel of land located at 800 Superior Boulevard in the City, which is legally described as Tract E, Registered Land Survey No. 1168, Hennepin County, Minnesota and is depicted on the Land Transfer Map.

“Gas Station Work” means the Master Redeveloper’s obligation to remove the building, foundation and underground tanks, canopy, pumps and piping located on the Gas Station Parcel.

“General Plan Approval” means all the land use terms and conditions contained in Resolution No. 25-2008 adopted by the City Council on June 10, 2008, as shown in the minutes for the July 15, 2008 City Council meeting ~~[as amended by the City Council pursuant to [REDACTED] [Note: or are the updated plans governed by Final Plans with no General Plan revision?]]~~ on June 2, 2015.

“General Plans” means the preliminary design and architectural plans for the Project submitted by the Master Redeveloper to the City and the Authority and approved in the General Plan Approval.

“Go-Ahead Letter” means the Master Redeveloper’s letters to the City and the Authority demonstrating satisfaction of the Project financing contingency for the relevant Block and indicating the Master Redeveloper is prepared to proceed with the relevant Block.

“Grantee” means the party receiving land in each Land Transfer, and includes that party’s successors and assigns.

“Grantor” means the party granting land in each Land Transfer, and includes that party’s successors and assigns.

“Hazardous Material” means petroleum, asbestos-containing materials, and any substance, waste, pollutant, contaminant or material that is defined as hazardous or toxic in any Environmental Law.

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

“Independent Senior Housing” means that portion of the Minimum Improvements for residents fifty-five years of age or older with limited healthcare needs.

“Initial Superior Boulevard Improvements” means those public infrastructure improvements detailed in ~~Exhibit N of the Redevelopment Agreement, and as~~ Attachment 1 to the First Amendment.

“Initial Superior Boulevard Improvements Costs” means the sum of total City costs related to construction of the Initial Superior Boulevard Improvements as detailed in ~~Exhibit N of the Redevelopment Agreement, and as~~ Attachment 1 to the First Amendment.

“Initial TIF Period” means the period commencing on August 1, 2015 (the first Payment Date on the TIF Note) and ending on the February 1 immediately preceding the commencement of the Remaining TIF Period.

“Lake Street and Superior Boulevard Realignment” has the meaning given in Section 6.1 and shown on the Public Infrastructure Improvements Site Plan.

“Lake Street Improvements” means that portion of the Public Infrastructure Improvements on Lake Street, which includes Segment 4.

“Land Transfer(s)” mean one or more transfers of land between the City and the Master Redeveloper outlined in Article IV.

“Land Transfer Closing” means the simultaneous closing on all of the Land Transfers, pursuant to Section 4.9.

“Land Transfer Closing Date” means the date on which the Land Transfers occur, with the possible exception of the DNR Parcel, pursuant to Section 4.9, which shall occur on a date determined by the City, to be no earlier than January 15, 2010.

“Land Transfer Map” means the revised map shown ~~in Exhibit D of the Redevelopment Agreement, as amended by~~ on Attachment 2 to the First Amendment.

“Linear Park” means both the East Block Linear Park and the North Block Linear Park.

“Market Value” means the market value of real property as determined by the assessor of the County in accordance with Minnesota Statutes, Section 273.11 (or as finally adjusted by any assessor, board of equalization, commissioner of revenue, or any court).

“Master Redeveloper” means Wayzata Bay Redevelopment Company, LLC.

“Master Redeveloper Documents” has the meaning given in Section 4.9(c).

“Maximum Redeveloper Amount” has the meaning given in Section 6.2.

“Memorandum of Agreement” means the document described in Section 15.13 and substantially in the form shown in Exhibit L.

“Minimum Improvements” means the Master Redeveloper’s obligations in both Phase I and Phase II as described in Article V subject to the timing and sequence of Blocks and Segments provided in Section 7.3.

“Minimum Improvements Area” means the area on which the Master Redeveloper will construct the Minimum Improvements, which is illustrated on the TIF Project Area Map and legally described on Exhibit B-1.

“Minimum Improvements Site Plan” is attached as Exhibit B.

“Minimum Improvements Timeline” means the Minimum Improvements schedule established in Section 7.1.

“Mortgage” means any mortgage loan that is secured, in whole or in part, by any portion of the Minimum Improvements Area, and which is an approved encumbrance under Article X.

“MPCA” means the Minnesota Pollution Control Agency.

“New Superior Boulevard Parcel” is depicted on the Land Transfer Map.

“North Block” has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

“North Block Linear Park” has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

“Note Lender” means a financial institution or other lender that loans funds to the Master Redeveloper secured by a pledge of the TIF Note.

“Old Superior Boulevard Parcel” is depicted on the Land Transfer Map.

“Original Redevelopment Agreement” has the meaning given in the Recitals.

“Park Plaza” has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

“Parking and Mobility District” means a special service district to be established by the City in accordance with Minnesota Statutes §Sections 428A.01 to 428A.101 ~~(or in another manner as determined by the City)~~ to provide parking and related services within the City.

“Parking Facilities” means the portion of the Minimum Improvements in the East Block, West Block, Plaza Block and Superior Block, as approved in a Final Plan, available for public parking through the Public Access ~~Areas~~Area Easement.

“Park Improvements” means the portion of the Minimum Improvements, as approved in a Final Plan, available for public use as a park through a Park Improvements Easement.

“Park Improvements Easement” has the meaning given in Section 5.8.

“**Phase(s)**” means one or both phases of the Minimum Improvements described in this Agreement.

“**Phase I**” means the Master Redeveloper’s obligation to construct the Superior Block, North Block, North Block Linear Park, West Block, ~~East Block,~~ and East Block Linear Park, subject to the sequencing provisions of Section 7.3.

“**Phase II**” means the Master Redeveloper’s obligation to construct the East Block, Plaza Block, and Park Plaza, ~~Superior Block, North Block, and North Block Linear Park,~~ subject to the sequencing provisions of Section 7.3.

“**Plaza Block**” has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

“**Preliminary Plat**” means the preliminary plat for any Block of the Minimum Improvements.

“**Project**” means the Minimum Improvements and the Public Infrastructure Improvements under this Agreement.

“**Project Completion TIF Pro Forma**” means a detailed TIF pro forma in substantially the same format as the TIF Pro Forma, or in another format reasonably approved by the Authority’s financial advisor, updated to reflect actual project costs and related cash flow information as of the ~~Completion of the last Block of the Minimum Improvements~~ Effective Date.

“**Public Access Area**” means the portions of the Project covered by the Public Access Area Easement, including, but not limited to, roads, curbs, gutters, and on-street public parking.

“**Public Access Area Easement**” has the meaning given in Section 5.7.

“**Public Access Improvements**” means the portion of the Minimum Improvements, as approved in a Final Plan, available for public use through a Public Access Area Easement.

“**Public Infrastructure Improvements**” mean Sanitary Sewer Improvements and the Lake Street Improvements and Superior Boulevard Improvements to be completed by the City or the Master Redeveloper.

“**Public Infrastructure Improvements Area**” means the area in which the Public Infrastructure Improvements will be constructed which is depicted on the TIF Project Area Map.

“**Public Infrastructure Improvements Plans**” means one or more plans designed and specified by the City for the Public Infrastructure Improvements, which shall include standards for the engineering of the Public Infrastructure Improvements.

“**Public Infrastructure Improvements Site Plan**” means the map depicting the Segments of the Lake Street and Superior Boulevard Realignment and the Sanitary Sewer Improvements, attached as Exhibit C.

“Public Infrastructure Improvements Timeline” means the Public Infrastructure Improvements schedule established in Section 7.2.

“PUD Agreement” means one or more planned unit development agreements to be negotiated, approved, executed, and recorded against each Block of the Minimum Improvements by the City and the Master Redeveloper, as the same may be amended from time-to-time.

“PUD Ordinance” means Section 801.33 of the City’s ordinances.

“Qualified Redevelopment Activities” mean the Master Redeveloper’s Project-related activities eligible for TIF Assistance, as authorized by this Agreement and the TIF Act.

“Qualified Redevelopment Costs” means the certain costs and expenses related to Master Redeveloper’s Qualified Redevelopment Activities to be paid by the Master Redeveloper from Master Redeveloper sources and in specific cases reimbursed by Available Tax Increment, which costs and expenses as approved herein are set forth in the TIF Pro Forma.

“Redevelopment Plan” means the redevelopment plan adopted by the Authority in accordance with Minnesota Statutes, Section 469.027 and approved by the City Council in accordance with Minnesota Statutes, Sections 469.028 and 469.175, subdivision 3, which is the same as the CARD Amendment.

“Release” means the spilling, leaking, disposing, discharging, emitting, depositing, ejecting, leaching, escaping or any other release, however defined, whether intentional or unintentional, of any Hazardous Material.

“Remaining Public Infrastructure Improvements” means the ~~Public Infrastructure Improvements excluding the Initial~~ Remaining Superior Boulevard Improvements described in Section 6.1.

“Remaining Superior Boulevard Improvements” has the meaning given in Section 6.1.

“Remaining TIF Period” means the period commencing August 1 of the first tax-payable year in which property taxes for the East Block are based on an estimated market value of at least \$21,000,000, which amount represents fifty percent (50%) of the projected valuation of the entire East Block upon completion of all the East Block Improvements.

“Remediation Costs” mean any and all costs, expenses and fees incurred to conduct actions required by a governmental entity under Environmental Law to: (i) clean up, remove, treat, or in any other way address any Release of Hazardous Material, (ii) prevent the Release or threat of Release, or minimize the further Release of any Hazardous Materials; or (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care relating to a Release.

“Remnant Parcel” means that portion of the Gas Station Parcel which is not dedicated as a right of way by the City for the realignment of Superior Boulevard as part of the Superior Boulevard Improvements, which is depicted on Land Transfer Map as Parcel 2A.

“Reverter Closing Date” means 30 days after the Master Redeveloper’s receipt of the City’s notice exercising the City’s right of reverter for the East Lake Street Parcel.

“Reverter Deed” means the quit claim deed through which the Master Redeveloper will convey the East Lake Street parcel and any improvements thereon back to the City upon City’s exercise of its right of reverter.

“Right of First Offer/Refusal” means the rights provided in Section 4.12 hereof to the Master Redeveloper by the City with respect to the potential purchase of the Remnant Parcel and the New Superior Boulevard Parcel, in substantially the form attached as ~~Exhibit O~~ **Note no Exhibit O attached** to the Redevelopment Agreement and attached to the First Amendment as Attachment 3 (the “FOFR Agreement”).

“Sanitary Sewer Improvements” means improvements to the sanitary sewer system within the TIF Project Area, which are part of the Public Infrastructure Improvements as shown on the Public Infrastructure Improvements Site Plan and which are included in the costs described in Attachment 1 to the First Amendment.

“Secondary Redeveloper” means any redeveloper other than the Master Redeveloper that has been authorized by the City and the Authority to construct the Minimum Improvements as described in Section 13.2.

“Second Amendment” means that certain Second Amendment to Redevelopment Agreement dated as of December 7, 2011 among the City, the Authority, and the Master Redeveloper.

“Secondary Redevelopment Agreement” means any redevelopment agreement negotiated and entered into by and among a Secondary Redeveloper, the City and the Authority consistent with this Agreement.

“Segment” means refers to one or more portions of the Public Infrastructure Improvements, as described in Section 6.1 and shown on the Public Infrastructure Improvements Site Plan.

“Senior Community Town Center” means common areas and amenities for the North Block and Superior Block.

“Special Assessments” mean assessments levied against any portion of the Minimum Improvements Area or other benefited property, by the City for purposes of paying for Public Infrastructure Improvements.

“State” means the State of Minnesota.

“Superior Boulevard Improvements” means that portion of the Public Infrastructure Improvements on Superior Boulevard, which includes Segments 2, 3 (southerly third) and 6, the Initial Superior Boulevard Improvements, and the Sanitary Sewer Improvements.

“**Superior Block**” has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

“**Tax Increment**” means the tax increment from the TIF District as calculated in accordance with the TIF Act.

“**Tax Official**” means any City or County assessor; County auditor; City, County, or State board of equalization; the Commissioner of Revenue of the State; or any State or Federal district court, the Tax Court of the State, or the State Supreme Court.

“**TIF**” means tax increment financing.

“**TIF Act**” means Minnesota Statutes, Sections 469.174 to 469.1799, as amended.

“**TIF Assistance**” means the TIF Notes or the TIF Bonds.

“**TIF Bond(s)**” or “**Bond(s)**” means the TIF revenue bonds which may be issued by the Authority pursuant to Section 9.7.

“**TIF District**” or “**District**” means TIF district ~~1~~5 which was created by the Authority and the City under the TIF Act on ~~1~~November 15, 2011 and for which TIF District Certification was received filed on ~~1~~March 29, 2012.

“**TIF District Certification**” means the Authority’s request to the County Auditor to certify the TIF District in accordance with Minnesota Statutes, Section 469.175, subdivision 3, which was received filed on ~~1~~March 29, 2012.

“**TIF Note(s)**” or “**Note(s)**” means the TIF revenue note or notes to be issued by the Authority to the Master Redeveloper, in substantially the form attached hereto as Exhibit J to pay or reimburse the Master Redeveloper for the funding of Qualified Redevelopment Costs.

“**TIF Plan**” means the TIF plan adopted by the Authority for the TIF Project Area in accordance with Minnesota Statutes, Section 469.175, as the same may be amended from time-to-time.

“**TIF Pro Forma**” means the detailed TIF pro forma shown in Exhibit I of the Redevelopment Agreement, as amended by Attachment 4 to the First Amendment. [Note: Are we further revising this as an Exhibit to the Amended and Restated Agreement?]

“**TIF Project Area**” consists of the property which includes the Minimum Improvements Area and the Public Infrastructure Improvements Area. The TIF District covers a larger area than the TIF Project Area, but excludes those parcels within the TIF District west of new Superior Boulevard resulting from the Superior Boulevard Improvements, as illustrated on the TIF Project Area Map.

“**TIF Project Area Map**” means the map depicting the TIF Project Area, attached as Exhibit A.

“**Title**” or “**Title Company**” means such title insurance company, reasonably acceptable to the City, the Authority and the Master Redeveloper, which will provide the title insurance and escrow and disbursement services described in this Agreement.

“**Unavoidable Delays**” means delays, outside the control of the party claiming its occurrence, which are the direct result of (a) unusually severe or prolonged bad weather, (b) acts of God, fire or other casualty to the Project, (c) litigation commenced by third parties which directly results in delays, (d) acts of any federal, State, or local government unit which directly result in delays, (e) strikes, other labor trouble, (f) delays in delivery of materials for the Project, (g) soil conditions on the TIF Project Area, (h) delays caused by market inability to issue conduit revenue bonds at rates and conditions consistent with the TIF Pro Forma, or (i) resolution of leases in force which impact the Master Redeveloper’s ability to comport with the Minimum Improvements Timeline.

“**West Block**” has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the City. The City makes the following representations and warranties:

- (a) The City is a Minnesota municipal corporation and a home rule charter city and has the power to enter into this Agreement and carry out its obligations hereunder. The City has duly authorized the execution, delivery and performance of this Agreement.
- (b) The City is authorized by law to undertake the Public Infrastructure Improvements and pay for such Public Infrastructure Improvements, in accordance with the provisions of this Agreement.
- (c) The City is authorized by law to convey the East Lake Street Parcel to the Master Redeveloper, in accordance with the terms of this Agreement.
- (d) The City is authorized by law to enter into the various additional agreements contemplated herein, including, but not limited to, the use and maintenance agreements, all in accordance with the terms of this Agreement, and subject to approval as to form and substance by the City Attorney.
- (e) Other than items disclosed by the City to the Master Redeveloper before the execution of this Agreement, there is not pending, nor to the best of the City’s knowledge is there threatened, any suit, action or proceeding against the City before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the City to perform its obligations hereunder, or as contemplated hereby or thereby, or the validity or enforceability of this Agreement.

(f) No member of the City Council or officer of the City, has either a direct or indirect financial interest in this Agreement, nor will any City Councilmember or officer of the City, benefit financially from this Agreement within the meaning of Minnesota Statutes, Section 469.009.

(g) The City will reasonably cooperate with the Master Redeveloper with respect to any litigation commenced by third parties with respect to the Project; however, this provision does not obligate the City to incur costs, except as otherwise provided in this Agreement or elsewhere.

(h) The City will assist and reasonably cooperate with the Master Redeveloper in complying with any Environmental Law or land use regulation or Project review procedure applicable to the TIF Project Area to the extent any federal, state or local law requires the participation of the City; however, this provision does not obligate the City to incur costs, except as otherwise provided in this Agreement or elsewhere, nor to limit, waive or modify any regulatory requirements or standards applicable to the Project.

(i) The execution, delivery and performance of this Agreement, and any other documents, instruments or actions required or contemplated pursuant to this Agreement by the City does not, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof will not conflict with or constitute on the part of the City a breach of or default under any existing agreement or instrument to which the City is a party or violate any law, charter or other proceeding or action establishing or relating to the establishment and powers of the City or its officers, officials or resolutions.

Section 2.2 Representations and Warranties of the Authority. The Authority makes the following representations and warranties:

(a) The Authority is a public body corporate and politic and a governmental subdivision of the State, duly organized and existing under State law and the Authority has the authority to enter into this Agreement and carry out its obligations hereunder.

(b) The Authority has approved the TIF Assistance, the TIF District, the TIF Plan and the Redevelopment Plan as required under the TIF Act.

(c) Under the TIF Plan, the Authority will fund fiscal disparities from within the TIF District, in accordance with Minnesota Statutes, Section 469.177, subdivision 3, but otherwise agrees to retain all of the captured net tax capacity of the TIF Project Area to finance the Qualified Redevelopment Costs as provided in this Agreement, and has elected that the duration of the District will be the maximum duration permitted by the TIF Act. The Authority will not voluntarily take any action to reduce the amount of captured tax capacity retained to finance the Qualified Redevelopment Costs or to reduce the duration of the District until the amount paid to the Master Redeveloper from Available Tax Increment reaches the maximum amount specified in Section 9.2.

(d) The execution, delivery and performance of this Agreement and any other documents or instruments required pursuant to this Agreement by the Authority does not,

and consummation of the transactions contemplated therein and the fulfillment of the terms thereof will not, conflict with or constitute on the part of the Authority a breach of or default under any existing (i) indenture, mortgage, deed of trust or other agreement or instrument to which the Authority is a party or by which the Authority or any of its property is or may be bound, or (ii) legislative act, constitution or other proceeding establishing or relating to the establishment of the Authority or its officers or its resolutions.

(e) Other than items disclosed by the Authority to the Master Redeveloper before execution of this Agreement, there is not pending, nor to the best of the Authority's knowledge is there threatened, any suit, action or proceeding against the Authority before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the Authority to perform its obligations hereunder, or as contemplated hereby or thereby, or the validity or enforceability of this Agreement.

(f) No member of the Board of the Authority or officer of the Authority, has either a direct or indirect financial interest in this Agreement, nor will any Commissioner of the Authority or officer of the Authority, benefit financially from this Agreement within the meaning of Minnesota Statutes, Section 469.009.

(g) The Authority will reasonably cooperate with the Master Redeveloper with respect to any litigation commenced by third parties with respect to the Project; however, this provision does not obligate the Authority to incur costs, except as otherwise provided in this Agreement or elsewhere.

(h) The Authority will assist and reasonably cooperate with the Master Redeveloper in complying with any Environmental Law or land use regulation or development review procedure applicable to the TIF Project Area; however, this provision does not obligate the Authority to incur costs, except as otherwise provided in this Agreement or elsewhere.

(i) The Authority, as regards the Project, is aware of no facts, the existence of which would cause it to be in violation of Environmental Law or which would give any person a valid claim under the Minnesota Environmental Rights Act or the Minnesota Environmental Policy Act.

Section 2.3 Representations and Warranties of the Master Redeveloper. The Master Redeveloper represents and warrants that:

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

(b) The execution and delivery of this Agreement and the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions thereof

do not and will not conflict with or result in a breach of any of the terms or conditions of the Master Redeveloper's organizational documents, any restriction or any agreement or instrument to which the Master Redeveloper is now a party or by which it is bound or to which any property of the Master Redeveloper is subject, and do not and will not constitute a default under any of the foregoing or a violation of any order, decree, statute, rule or regulation of any court or of any state or Federal regulatory body having jurisdiction over the Master Redeveloper or its properties, including its interest in the Minimum Improvements, and do not and will not result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Master Redeveloper contrary to the terms of any instrument or agreement to which Master Redeveloper is a party or by which it is bound.

(c) To the best of the Master Redeveloper's knowledge and belief, the execution and delivery of this Agreement will not create a conflict of interest prohibited by Minnesota Statutes, Section 469.009, as amended.

(d) As of the date of the Original Agreement (except for the East Lake Street Parcel and the DNR Parcel), the Master Redeveloper had the unconditional right to acquire fee title to the Minimum Improvements Area and the Master Redeveloper will acquire the entire Minimum Improvements Area. As of the date of this Agreement, the Master Redeveloper has fee title to any Block which has not been Completed and will take all actions necessary to file the Final Plat for each Block of the Minimum Improvements prior to Commencement of construction of the applicable Block.

(e) The Master Redeveloper would not acquire the Minimum Improvements Area and would not construct the Minimum Improvements, but for the execution of this Agreement and the TIF Assistance for the Qualified Redevelopment Costs and other public assistance contemplated to be made available hereunder.

(f) The Master Redeveloper will reasonably cooperate with the City and the Authority with respect to any litigation commenced by third parties with respect to the Project; however, this provision does not obligate the Master Redeveloper to incur costs, except as otherwise provided in this Agreement or elsewhere.

(g) Other than items disclosed by the Master Redeveloper to the City and the Authority before execution of this Agreement, there are no pending or threatened legal proceedings, of which the Master Redeveloper has notice, contemplating the liquidation or dissolution of the Master Redeveloper or threatening its existence, or seeking to restrain or enjoin the transactions contemplated by the Agreement, or questioning the authority of the Master Redeveloper to execute and deliver this Agreement or the validity of this Agreement.

(h) The Master Redeveloper has not received any notice from any local, state or federal official that the activities of the Master Redeveloper or the Authority with respect to the Minimum Improvements Area, New Superior Boulevard Parcel, Old Superior Boulevard Parcel may or will be in violation of any Environmental Law, except as has been identified in any report, audit, inspection or survey, undertaken by or provided to the

City and the Authority. The Master Redeveloper is not aware of any state or federal claim filed or planned to be filed by any party relating to any violation of any local, state or federal Environmental Law, regulation or review procedure, and the Master Redeveloper is not aware of any violation of any local, state or federal law, regulation or review procedure which would give any person a valid claim under any Environmental Law, including the Minnesota Environmental Rights Act or the Minnesota Environmental Policy Act.

(i) The Master Redeveloper reasonably expects that it will be able to obtain private financing in an amount sufficient, together with funds provided by the Authority and any other public agencies, to enable the Master Redeveloper to successfully acquire the Minimum Improvements Area and construct the Minimum Improvements and Public Infrastructure Improvements, as provided herein.

(j)

ARTICLE III LAND USE AND DEVELOPMENT CONTROLS

Section 3.1 Restrictions on Development. The Master Redeveloper may not construct or permit construction on any part of the Minimum Improvements Area until the Master Redeveloper satisfies the following conditions:

(a) The Master Redeveloper acquires fee title to all of the property required for the Block proposed to be built, obtains approval of the Final Plans for such Block, executes and records the relevant PUD Agreement and causes any lien holder affecting any of the property to subject its interest as provided herein to this Agreement and the PUD Agreement;

(b) The Master Redeveloper satisfies all of the conditions established by the City in the General Plan Approval;

(c) The Master Redeveloper satisfies all of the conditions in the PUD Agreement and obtains approval of and records the Final Plat; and

(d) With respect to the East Block, the Master Redeveloper applies for an amendment to the existing PUD Agreement and meets all City requirements and obtains all City approvals.

Section 3.2 Homeowners' Associations and Restrictive Covenants. The Master Redeveloper shall submit any deed restrictions, covenants, agreements, architectural controls, homeowners' associations and other means to control the use and to ensure the maintenance of land within the Minimum Improvements Area to the City and the Authority as may be required under the PUD Agreement.

Section 3.3 Environmental Review. The City has prepared an EAW on the Minimum Improvements Area in accordance with the rules of the Minnesota Environmental

Quality Board, and made a “negative declaration” in accordance with such rules regarding the need for an Environmental Impact Statement. The time for the appeal of the negative declaration under applicable law has expired.

Section 3.4 Zoning and Land Use Approvals. Nothing in this Agreement shall limit the authority of the City with respect to zoning and land use approvals. Subject to the foregoing, the staff of the City and the Authority shall cooperate with the Master Redeveloper and assist the Master Redeveloper in the processing and obtaining of zoning and land use approvals. The Master Redeveloper shall be responsible for applying for and obtaining all land use and zoning approvals necessary for the Minimum Improvements including, without limitation, the conditions contained in the General Plan Approval and the PUD Agreement. All zoning and land use approvals shall be by the City Council or the City Planning Commission in accordance with the ordinances of the City.

Section 3.5 Building and Construction Permits. Nothing in this Agreement shall limit the governmental authority of the City with respect to its building and construction permitting process for the Minimum Improvements and Public Infrastructure Improvements. The Master Redeveloper shall comply with all applicable City building codes and construction requirements and shall be responsible for obtaining all building permits prior to construction.

Section 3.6 Demolition Timing. ~~The parties acknowledge that 2010 Minnesota Laws, Chapter 389, Article 7, Section 23 (the “Special Law”), as adopted by the Minnesota legislature, adjusts the timing of the demolition of existing buildings located within the TIF District, by allowing parcels to be deemed occupied by substandard buildings within the meaning of the TIF Act after demolition if certain terms and conditions are met. Upon issuance of a Go Ahead Letter for any of the following five Blocks, the Master Redeveloper may demolish all portions of the existing shopping center in~~ Parties acknowledge that as of the Effective Date all demolition required for construction of the Minimum Improvements within the Minimum Improvements Area: East Block, West Block, North Block, Superior Block, or Plaza Block has occurred.

Section 3.7 City/Authority Approval. Unless the City Council determines otherwise in its discretion, whenever this Agreement provides for approval by the City or the Authority, such approval shall be given by, respectively, the City Manager or the Executive Director of the Authority (or in either case his/her designee), unless (a) this Agreement explicitly provides for approval by the City Council or the Board of the Authority, (b) approval by the Council or Board is required by law or (c) the approval, in the opinion of the City Manager or the Executive Director, would result in a material change in the terms of this Agreement.

ARTICLE IV TIF PROJECT AREA LAND ASSEMBLY

Under the Amended Redevelopment Agreement, the following have or will occur and, specifically, the ongoing rights and obligations provided in Section 4.12 below are as provided in this Agreement:

Section 4.1 Minimum Improvements Area Acquisition by the Master Redeveloper. With the exception of the DNR Parcel, the Master Redeveloper will acquire fee

ownership of the Minimum Improvements Area and close on this property consistent with the Minimum Improvements Timeline described in Section 7.1 below. The Master Redeveloper shall provide all related title commitments if requested by the Authority.

Section 4.2 Transfer of New Superior Boulevard Parcel to the City. The Master Redeveloper agrees to transfer fee ownership of the New Superior Boulevard Parcel, depicted as Parcel 4 on the Land Transfer Map included as Exhibit D, to the City for the Lake Street and Superior Boulevard Realignment on the Land Transfer Closing Date, in consideration of the conveyances outlined in this Article IV and the other terms contained in this Agreement.

Section 4.3 Transfer of Old Superior Boulevard Parcel to the City. The Master Redeveloper agrees to transfer fee ownership of the Old Superior Boulevard Parcel, depicted as Parcels 1A and 1B on the Land Transfer Map, to the City on the Land Transfer Closing Date in consideration of the conveyances outlined in this Article IV and the other terms contained in this Agreement. The City agrees to grant the Master Redeveloper a Right of First Offer/Refusal for the FOFR Parcel, pursuant to the terms of Section 4.12 hereof.

Section 4.4 Transfer of East Lake Street Parcel to the Master Redeveloper; Reversion. The City will transfer fee ownership of the East Lake Street Parcel, depicted as Parcel 5 on the Land Transfer Map, to Master Redeveloper on the Land Transfer Closing Date in consideration of the conveyances outlined in this Article IV and on the condition that the Master Redeveloper continue to satisfy its obligations under this Agreement in compliance with the Minimum Improvements Timeline.

(a) If the Master Redeveloper fails to complete the grading required for the Minimum Improvements for the East Block, as specified in the grading permit for the East Block by June 30, 2011, then the City may require the East Lake Street Parcel to revert back to the City. The City may, but shall not be obligated to, cause the Master Redeveloper to reconvey the East Lake Street Parcel and all improvements thereon to the City by giving the Master Redeveloper notice of the City's exercise of its right of reverter pursuant to this Section. Such notice shall be subject to the notice and right to cure provisions in Article XIV. The right of reverter under this section for the East Lake Street Parcel shall terminate and no longer be of any force and effect upon the completion of grading permit conditions. The City agrees to execute a recordable release of its right of reverter, in a form reasonably acceptable to the Master Redeveloper, within thirty (30) days after completion of grading permit conditions. The City will agree to subordinate such reversion rights to one or more lenders if necessary in order to secure financing for land acquisition or construction of the Minimum Improvements, or both.

On the Reverter Closing Date, the Master Redeveloper will convey fee title to the East Lake Street Parcel and all improvements thereon to the City by the Reverter Deed, as follows:

(i) the City will pay the Master Redeveloper \$1.00 as consideration for receiving the Reverter Deed;

- (ii) the Master Redeveloper will convey the East Lake Street Parcel and any improvements thereon to the City free and clear of all encumbrances, subject only to easements benefiting the City or another public entity, and other encumbrances which the City or the Authority has previously approved in writing;
- (iii) the Master Redeveloper shall have no further rights to the East Lake Street Parcel or any improvements thereon;
- (iv) On or before the Reverter Closing Date, the Master Redeveloper will execute and deliver to the City a standard “seller’s affidavit” stating under oath, *inter alia*, that the Master Redeveloper has paid for all work performed or supplies ordered or delivered with respect to the East Lake Street Parcel; and
- (v) the Master Redeveloper shall deliver an updated title insurance commitment to the City evidencing the status of title to the East Lake Street Parcel.

Section 4.5 DNR Parcel. The City has purchased the DNR Parcel and will execute and deliver the DNR Easement or a reasonably equivalent license agreement to the Master Redeveloper at the Land Transfer Closing, subject to DNR approval of the DNR Easement. City staff will cooperate with the Master Redeveloper in a manner consistent with General Plan Approval to address any land use issues related to Master Redeveloper’s use of the DNR Parcel for the Project.

Section 4.6 Wetland Mitigation Parcel. The Master Redeveloper has developed a wetland mitigation plan (the “Plan”) utilizing a parcel owned by the City within a current wetland delineation area located north of I-394 and east of Broadway Avenue in the City, as shown on Exhibit E (the “Wetland Parcel”). The Plan has been approved by the Minnehaha Creek Watershed District and the City. At such time as the City issues a building permit for the East Block: (i) the City will make available the Wetland Parcel to the Master Redeveloper at the City’s expense to mitigate wetland issues created by construction of the Linear Park and the East Block; and (ii) the Master Redeveloper shall pay the City One Hundred Twenty-Nine Thousand Five Hundred Ninety-One and No/100 Dollars (\$129,591.00). All costs of implementing the Plan in excess of the \$129,591.00 payment by the Master Redeveloper shall be paid by the City. Notwithstanding any provisions in this Section 4.6 to the contrary, Master Redeveloper shall have the right to satisfy its wetland mitigation obligations with regard to the Project on a site other than the Wetland Parcel, pursuant to a plan approved by the City and the Minnehaha Creek Watershed District, at the sole expense of the Master Redeveloper.

Section 4.7 Conveyance of Rights-of-Way by the Master Redeveloper. On the Land Transfer Closing Date, the Master Redeveloper will provide a Deed to the City for all property rights it owns under the existing right-of-way for Superior Boulevard and Lake Street within the TIF Project Area in accordance with standard City requirements and at no cost, but shall not be obligated to acquire additional land beyond the TIF Project Area.

Section 4.8 Contingencies to Land Transfer Closing. The City’s and the Master Redeveloper’s obligations to close on the Land Transfers outlined in Sections 4.2 to 4.7 and 4.11

are conditioned upon the City and the Authority's approval of the TIF Plan and the PUD Agreement and further conditioned as follows:

(a) City Contingencies. The City's obligation to close on the Land Transfers is expressly conditioned upon each of the following contingencies being satisfied or waived:

(i) The Master Redeveloper shall have performed all of the obligations required to be performed by the Master Redeveloper under the PUD Agreement and this Agreement as of the Land Transfer Closing Date and shall not be in Default under the PUD Agreement and this Agreement.

(ii) The Master Redeveloper shall have delivered to the City all of the Master Redeveloper Documents described in Section 4.9(c).

(iii) The Contract for Deed shall be unamended, in full force and effect, and without any defaults and the Master Redeveloper shall have the right to assign the Contract for Deed to the City free from any claims and encumbrances against its vendee's interest.

(iv) The City shall have determined that the Master Redeveloper has the title and legal authority to transfer unencumbered fee title to the New Superior Boulevard Parcel, the Old Superior Boulevard Parcel and the vendee interest in the Contract for Deed.

(b) Master Redeveloper Contingencies. The Master Redeveloper's obligation to close on the Land Transfers is expressly conditioned upon each of the following contingencies being satisfied or waived:

(i) The City shall have performed all of the obligations required to be performed by the City under this Agreement as of the Land Transfer Closing Date and shall not be in Default under this Agreement.

(ii) The City shall have delivered to the Master Redeveloper all of the City Documents described in Section 4.9(b).

(iii) The Master Redeveloper shall have determined that the City has the title and legal authority to transfer unencumbered fee title to the East Lake Street Parcel to the Master Redeveloper

(iv) If the DNR has transferred title for the DNR Parcel to the City, then the Master Redeveloper shall have determined that the City has the title and legal authority to transfer the unencumbered license or easement rights to the DNR Parcel (as described in Section 4.9(a)(ii)) to the Master Redeveloper and the City shall have executed the DNR Easement.

(v) The City shall have executed the FOFR Agreement.

(vi) The City and all relevant governmental authorities shall have consented to any and all subdivisions and or plats that may be required in order to assemble and transfer the Old Superior Boulevard Parcel and the New Superior Boulevard Parcel.

(c) City and Master Redeveloper Options. In the event that any of the foregoing contingencies fail to be satisfied on or before the Land Transfer Closing Date, the Master Redeveloper or the City, as the case may be, may:

- (i) terminate this Agreement in the case of the failure to satisfy a contingency under subsection (a) or (b) hereof; or
- (ii) waive such failure and proceed to close; or
- (iii) cure the unsatisfied contingency and charge related costs to the other party.

Section 4.9 Land Transfer Closings. All of the Land Transfers will close as outlined herein:

(a) Time and Place. With the exception of the DNR Parcel, all Land Transfers will close simultaneously at the Land Transfer Closing.

(i) *Land Transfer Closing*. Subject to the terms and conditions of this Agreement, the Land Transfer Closing shall be on the Land Transfer Closing Date at a location determined by the City. The Land Transfer Closing Date shall occur on a date determined by the City, but no earlier than January 15, 2010, provided that the closing may not occur until all contingencies in Section 4.8 and 4.9 are satisfied. Possession for all transferred parcels shall be delivered on the Land Transfer Closing Date.

(ii) *DNR Parcel Transfer Closing*. Pursuant to the DNR Parcel Act, the City cannot obtain the DNR Parcel from the DNR until the City completes its acquisition of the Gas Station parcel. The City agrees to transfer to the Master Redeveloper the interests contemplated in Section 4.5, including the DNR Easement, no later than the DNR Parcel Deadline.

(b) City Documents. At the Land Transfer Closing, the City shall execute, where appropriate, and deliver all of the following (collectively, the “City Documents”):

(i) A Deed properly executed on behalf of the City conveying the East Lake Street Parcel to the Master Redeveloper, together with any other documents reasonably required to be delivered by the City.

(ii) An affidavit of the City indicating on the Land Transfer Closing Date that there are no outstanding unsatisfied judgments, tax liens or bankruptcies against or involving the City or the East Lake Street Parcel; that there has been no skill, labor or material furnished to such property for which payment has not been made

or for which mechanic's liens could be filed; and that, to the best of the City's knowledge and belief, there are no other unrecorded interests in such property.

(iii) Any abstracts of title in the City's possession to any portion of the East Lake Street Parcel (if abstract property), and any owner's duplicate certificate of title in the City's possession to any portion thereof (if Torrens). The City has no obligation to update any abstracts.

(iv) Any environmental reports, surveys, soil borings, title commitments or other documentation in the possession of the City and not previously delivered to the Master Redeveloper.

(v) An assignment and assumption of the Master Redeveloper's vendee's interest in the Contract for Deed.

(vi) The FOFR Agreement.

(vii) The DNR Easement (if the City has previously acquired title to the DNR Parcel).

(viii) Payment of Fifty Thousand and No/100 Dollars (\$50,000.00), in partial consideration of the transfer of the Gas Station Parcel, in the physical condition described in Section 4.9(c)(x).

(c) Master Redeveloper Documents. At the Land Transfer Closing, the Master Redeveloper shall execute, where appropriate, and deliver all of the following (collectively, the "Master Redeveloper Documents"):

(i) A Deed properly executed on behalf of the Master Redeveloper conveying the New Superior Boulevard Parcel to the City, together with any other documents reasonably required to be delivered by the Master Redeveloper.

(ii) A Deed properly executed on behalf of the Master Redeveloper conveying the Old Superior Boulevard Parcel to the City, together with any other documents reasonably required to be delivered by the Master Redeveloper.

(iii) An affidavit of the Master Redeveloper indicating on the Land Transfer Closing Date that there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving the Master Redeveloper or the Old Superior Boulevard Parcel, the New Superior Boulevard Parcel, or the Gas Station Parcel; that there has been no skill, labor or material furnished to such property for which payment has not been made or for which mechanic's liens could be filed; and that, to the best of the Master Redeveloper's knowledge and belief, there are no other unrecorded interests in such property.

(iv) Any abstracts of title, in the Master Redeveloper's possession, to any portion of the Old Superior Boulevard Parcel, the New Superior Boulevard Parcel, and the Gas Station Parcel (if abstract property), and any owner's duplicate

certificate of title in the Master Redeveloper's possession to any portion thereof (if Torrens). The Master Redeveloper has no obligation to update any abstracts.

(v) Any environmental reports, surveys, soil borings, title commitments or other documentation in the possession of the Master Redeveloper and not previously delivered to the City.

(vi) The FOFR Agreement.

(vii) An assignment and assumption of the vendee's interest in the Contract for Deed.

(viii) Estoppels, in a form reasonably requested by the City, from the Contract For Deed vendor and the holders of mortgages on the Gas Station Parcel.

(ix) As provided for in the Sale and Purchase Agreement, the mortgage maturity date extensions, Lender Agreement, Waivers, and Escrow Agreement, together with assignments of these documents by the Master Redeveloper to the City.

(x) Evidence reasonably satisfactory to the City that the lease for the Gas Station Parcel has been terminated and the tenant has vacated, and that the Gas Station Work has been completed.

(xi) An assignment or alternate arrangement for issuance to the City of an owner's policy of title insurance in the amount of the purchase price for the Gas Station Parcel and with coverage reasonably acceptable to the City.

(xii) Consents, approvals or conveyances by all third parties holding a title or lien interest in any of the properties transferred by the Master Redeveloper to the City, with respect to such transfers.

Section 4.10 Land Transfer Indemnification. Except as to the Gas Station Parcel and except as otherwise provided herein and in Section 6.11 below, the City and the Master Redeveloper, acting as both Grantor and Grantee for each Land Transfer outlined in this Article IV, agree to the following indemnification terms with regard to those Land Transfers. The Grantor in each Land Transfer agrees that the Grantee will bear no responsibility or liability to the Grantor for any Hazardous Material identified on the transferred parcel after the transfer that are determined by a preponderance of evidence to have been Released prior to the transfer, and will indemnify and hold harmless the Grantee against all claims, costs, and liabilities arising out of the presence or Release of any such Hazardous Material to the extent the Grantee may have legal responsibility therefor due to its acquisition of the transferred parcel or is required under Environmental Law or by the MPCA to incur Remediation Costs with respect to such Hazardous Materials in order to construct the Public Infrastructure Improvements.

In the event that a Grantee is named as a defendant in any legal or administrative action alleging liability against the Grantee due to the presence of any Hazardous Material on or about

the transferred parcel in violation of any Environmental Law, and such Hazardous Material was Released prior to the transfer date, the Grantor shall indemnify and hold the Grantee harmless from any judgments, damages and liabilities of any kind determined in such legal or administrative action to be due and owing by the Grantee.

If the Grantor fails to defend the Grantee, the Grantee shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter, for the account of and at the risk of the Grantor. In the event that the Grantor fails to defend, all attorneys' fees incurred by the Grantee related to such defense shall be paid for by the Grantor.

Notwithstanding anything to the contrary in this Redevelopment Agreement, however, the parties acknowledge and agree that within the cost budget for the Initial Superior Boulevard Improvements attached hereto as Attachment 1, a total of \$194,940.00 (the "RAP Budget") has been allocated for the following costs (the "RAP Costs") related to the construction of the Initial Superior Boulevard Improvements:

- (a) complete any additional environmental investigation required to delineate the scope and extent of any Hazardous Materials present in the soil, subsoil, or groundwater in the Public Infrastructure Improvements Area with respect to the Initial Superior Boulevard Improvements to the satisfaction of the MPCA;
- (b) prepare and obtain MPCA approval of a development response action plan and construction contingency plan addressing the presence of Hazardous Materials in the Public Infrastructure Improvements Area with respect to the Initial Superior Boulevard Improvements;
- (c) implement such plans in accordance with all MPCA requirements and applicable Environmental Laws, including requirements for reimbursement of Remediation Costs from the Minnesota Petrofund; and
- (d) obtain reimbursement from the Minnesota Petrofund for all eligible Remediation Costs associated with the Initial Superior Boulevard Improvements.

The City and Master Redeveloper acknowledge and agree that any RAP Costs incurred with regard to the construction of the Initial Superior Boulevard Improvements in excess of the RAP Budget shall be the sole cost and responsibility of the City.

Notwithstanding anything to the contrary in this Redevelopment Agreement, Master Redeveloper and the City acknowledge and agree that they will cooperate with each other and use their best efforts to obtain any and all third-party reimbursements, grants and/or funds that may be available to pay for any Remediation Costs arising with respect to any Public Infrastructure Improvement.

Section 4.11 Transfer of the Gas Station Parcel.

- (a) The Master Redeveloper shall assign its interest in the Contract for Deed to the City at the Land Transfer Closing; provided, however, that if the DNR will not allow a

transfer of the DNR Parcel to the City simultaneously with the assignment to the City of the vendee's interest in the Contract for Deed, then the Master Redeveloper shall assign its interest in the Contract for Deed ten (10) days prior to the Land Transfer Closing date.

(b) The Master Redeveloper shall remain obligated for timely payment to the City of all obligations of the vendee under the Contract for Deed, notwithstanding the assignment of the vendee's interest in the Contract for Deed by Master Redeveloper to the City, including but not limited to:

(i) The Master Redeveloper shall pay \$950,000 for the escrow and down payment and all closing and other costs required of the "Buyer" under the Sale and Purchase Agreement.

(ii) The Master Redeveloper agrees to make interest only monthly payments to the City in the amounts and on the dates required under the Contract for Deed to be made to Wayzata Circle LLC for the interest accruing on the \$1,400,000 balance of the purchase price, in full compliance with the terms of the Contract for Deed. The Master Redeveloper shall also pay to the City the remaining \$1,400,000 balance plus all interest owed and payable to Wayzata Circle LLC pursuant to the Contract for Deed no later than November 17, 2010. If Wayzata Circle LLC defaults in its payment of the underlying mortgages, Master Redeveloper shall cure such defaults.

(iii)

(c) The City shall have the right, but not the obligation, to accelerate the Contract for Deed payments, to prepay some or all of the remaining balance owed thereunder and to obtain fee title to the Gas Station Parcel.

(d) If the City elects to prepay amounts due under the Contract for Deed, the Master Redeveloper remains obligated to make timely interest only payments and the final balloon payment in the amounts and on the dates required under the Contract for Deed and as summarized in Section 4.11(b), and such payments shall continue to be made directly to the City; provided that Master Redeveloper may also elect to prepay to the City the final balloon payment and such accrued interest paid by the City to Wayzata Circle LLC, in Master Redeveloper's discretion.

(e) The Master Redeveloper shall have the right, but not the obligation, to accelerate the Contract for Deed payments to the City and to prepay some or all of the remaining balance owed thereunder to the City prior to the City paying off the Contract for Deed. If the Master Redeveloper so elects to prepay the final balloon payment and any accrued interest to the City, the City shall promptly pay such prepayment to the Contract for Deed vendor.

(f) Prior to the Land Transfer Closing, the Master Redeveloper shall terminate the existing lease for the Gas Station Parcel and effect the removal of the tenant at the Master Redeveloper's expense.

Section 4.12 Right of First Offer/Refusal. ~~Discuss what revisions are needed at this time per paragraph 10 of 2015 term sheet~~

- (a) Introduction. Subject to the transfer by the Master Redeveloper to the City of the Old Superior Boulevard Parcel and to the conveyance to the City of the Gas Station Parcel by Wayzata Circle LLC, the City shall grant to the Master Redeveloper a right of first offer and a right of first refusal for the purchase of the FOFR Parcel, in the form and substance set forth in the FOFR Agreement.
- (b) Right of First Offer. At such time, if any, as the City determines that it intends to sell the FOFR Parcel, the City shall notify Master Redeveloper. Thereafter, for a period of sixty (60) days (the "Initial Negotiation Period"), the parties shall negotiate in good faith to attempt to determine mutually agreeable terms for the purchase and sale of the FOFR Parcel. No later than five (5) days before the expiration of the Initial Negotiation Period, the City shall deliver a final offer to the Master Redeveloper indicating a sale price for the FOFR Parcel that would be acceptable to the City (the "Final Offer"). In the absence of a mutually acceptable agreement for the sale and purchase of the FOFR Parcel, at the request of the City, the Master Redeveloper shall certify in writing as to the receipt and terms of the Final Offer, the expiration of the Initial Negotiation Period, and the absence of such an agreement.
- (c) Right of First Refusal. Upon expiration of the Initial Negotiation Period, the City shall be free to sell, encumber or otherwise transfer the FOFR Parcel according to such terms and conditions as the City may elect, provided, however, that if the City receives an offer from a third party (the "Offeror") to purchase the FOFR Parcel (the "Offer") which the City determines that it may accept (whether such Offer is communicated in a non-binding letter of intent or a proposed purchase agreement) that is for a proposed purchase price equal to or less than ninety five percent (95%) of the purchase price stated in the Final Offer, then the City shall deliver a purchase agreement to the Master Redeveloper containing the same terms and conditions of such Offer. Master Redeveloper shall then have the right, but not the obligation, to purchase the FOFR Parcel according to the terms of the Offer as detailed in such purchase agreement. To exercise such right, Master Redeveloper shall execute and deliver to the City four (4) duplicate copies of such purchase agreement within fifteen (15) days of its receipt from the City (the "Election Period"). If Master Redeveloper does not elect to so purchase, the City shall have three hundred and sixty-five (365) days after the passing of the Election Period to close the sale of the FOFR Parcel pursuant to such Purchase Offer to the Offeror, an affiliate or subsidiary of Offeror, or to an entity in which the Offeror owns at least twenty percent (20%) equity interest (collectively, the "Offeror Purchaser"). If the City does not close on the sale to an Offeror Purchaser pursuant to the Offer within said three hundred and sixty-five (365) day time period, then all terms and provisions of this right of first refusal shall be reinstated in full force and effect with respect to the FOFR Parcel. Any transfer or attempted transfer of the FOFR Parcel in violation of this right of first refusal shall be void. If the Master Redeveloper declines to exercise its rights hereunder on or before the expiration of the Election Period, it shall execute a written acknowledgement of its decision to decline the Offer upon written request from the City, and a release of all

rights in the FOFR Parcel in the event of a closing by the City to an Offeror Purchaser on an Offer declined by the Master Redeveloper.

(d) Expiration. The FOFR Agreement shall expire on the earlier of: (i) the sale of the FOFR Parcel to an Offeror Purchaser pursuant to an Offer that has been declined by Master Redeveloper within the three hundred and sixty-five (365) day time period discussed in Section 14.12(c) above; (ii) the sale of the FOFR Parcel to an Offeror Purchaser pursuant to an Offer for a purchase price that was greater than 95% of the price stated in the Final Offer; or (iii) five (5) years after commencement of the Initial Negotiation Period; or (iv) ~~five (5) years after the FOFR Parcel has been improved and used or occupied, subsequent to the date hereof~~ November 30, 2015. Following expiration of the FOFR Agreement, but prior to termination of this Agreement under Section 15.11, the City shall give notice to the Master Redeveloper if the City determines that it intends to sell the FOFR Parcel. The City shall deliver such notice to the Master Redeveloper at least 60 days before approving a purchase agreement to sell the FOFR Parcel to a third party.

(e) Replatting. At or subsequent to the Land Transfer Closing, the City reserves the right to replat the FOFR Parcel, which may change the boundary between the FOFR Parcel and the adjoining parcel to the west currently owned by Vodegel Properties, L.L.P., provided that any such platting may not materially alter the square footage, dimensions or boundary lines of the FOFR Parcel without first obtaining the prior written consent of Master Redeveloper, which consent shall not be unreasonably withheld.

(f) Transfer to the Authority. The City reserves the right to transfer the FOFR Parcel to the Authority, and such transfer shall not be subject to the Master Redeveloper's right of first offer or refusal as detailed above; provided, however, that the Authority shall thereafter be subject to Master Redeveloper's right of first offer and Master Redeveloper's right of first refusal as provided in subparagraphs (b) and (c) above.

Section 4.13 Current Status of Land Assembly. This Agreement cumulatively represents the Original Redevelopment Agreement and the First Amendment and Second Amendment. However, as of the Effective Date, the parties agree and understand that the following obligations of the parties under this Article IV (as identified by Section number below) have been satisfactorily completed:

Section 4.1. Master Redeveloper has acquired all land except the DNR Parcel.

Section 4.2. Master Redeveloper has transferred the New Superior Boulevard Parcel to the City.

Section 4.3. Master Redeveloper has transferred Old Superior Boulevard Parcel to the City, subject to the terms of Section 4.12 with regard to the FOFR Parcel.

Section 4.4 City has transferred the East Lake Street Parcel to Master Redeveloper, and the reverter in favor of the City (described in Section 4.4) has expired.

Section 4.5. The City has purchased the DNR Parcel and has executed and delivered the DNR Easement.

Section 4.7 The Master Redeveloper completed the conveyance to the City described in Section 4.6.

Sections 4.8 and 4.9. All contingencies and requirements to close on the Land Transfers described in Sections 4.8 and 4.9 were satisfied or waived by the parties to this Agreement.

Section 4.10. The parties acknowledge that there are no outstanding RAP Costs described in Section 4.10.

Section 4.11. The Master Redeveloper has acquired fee title to the Gas Station Parcel and otherwise satisfied all terms of Section 4.11.

ARTICLE V CONSTRUCTION OF MINIMUM IMPROVEMENTS

Section 5.1 Minimum Improvements. The project includes Minimum Improvements required to be constructed by the Master Redeveloper in both Phase I and Phase II, as depicted in the Minimum Improvements Site Plan. The Master Redeveloper agrees ~~pursuant to the Original-Redevelopment Agreement (as modified by this Agreement)~~ to construct the following Minimum Improvements:

(a) Phase I Minimum Improvements. Consistent with the General Plan Approval (as revised November 15, 2011), the anticipated Minimum Improvements for Phase I of the Project include construction of the Superior Block, North Block, West Block, the North Block Linear Park and portions of the East Block Linear Park improvements, defined as follows:

(i) “*Superior Block*” includes approximately (i) ~~35,000~~32,000 gross square feet (“GSF”) of retail space; (ii) ~~8790~~ independent living senior housing units; and (iii) 270 parking spaces.

(ii) “*North Block*” includes approximately (i) ~~167~~164 senior housing units, including memory care, skilled care, assisted living and independent living units; and (ii) the Senior Community Town Center.

(iii) “*North Block Linear Park*” is shown on the Minimum Improvements Site Plan.

(iv) “*West Block*” includes approximately (i) ~~51,000~~41,000 GSF of retail; (ii) ~~10099~~ residential units (comprised of 73 senior apartments and 26 non-age restricted apartments); and (iii) 380 parking spaces. The residential units will be no more than 75 percent age-restricted senior housing and the balance of not less than 25 percent conventional rental or for sale housing, to be distributed based on

the City's final design review of the West Block and shall satisfy the conditions stipulated in City Council Resolution No. 47-2011.

(v) "*East Block Linear Park*" includes parkland as shown on the Minimum Improvements Site Plan. The portion of the East Block Linear Park shown on Attachment F will be constructed as part of the Minimum Improvements for Phase I and the remainder of the East Block Linear Park Improvements will be constructed as part of the Minimum Improvements for Phase II.

(b) Phase II Minimum Improvements. Consistent with the General Plan Approval (as revised November 15, 2011), the anticipated Minimum Improvements Blocks for Phase II of the Project include construction of the Plaza Block and Park Plaza, defined as follows, and the portion of the East Block Linear Park not constructed in Phase I:

(i) "*East Block*" includes approximately (i) 29 – 31 for sale condominiums, (ii) 80 to 90-unit full service hotel and (iii) ~~14,000~~15,000 sq/ft of retail space and related parking, consistent with the East Block Plans.

(ii) "*Plaza Block*" includes approximately (i) ~~26,000~~22,000 GSF of retail space; (ii) ~~63~~59 conventional for-sale residential units; and (iii) 230 parking spaces.

(iii) "*Park Plaza*" includes a plaza and park as shown on the Minimum Improvements Site Plan.

(c) Market Value of Minimum Improvements. It is anticipated that upon completion, the Minimum Improvements will have a Market Value of approximately \$~~201~~233 Million, with approximate Market Values for the components as follows:

- ~~Conventional residential units, \$49 Million~~
 - Senior housing units, \$~~89~~95.4 Million
 - Retail, \$~~41~~38.7 Million
 - Hotel, \$~~14~~6.97 Million
 - ~~Office~~Condominiums, \$84.55 Million
 - Non-age restricted housing, \$7.6 Million

The minimum values described above are intended to represent current expectations, and the parties do not anticipate entering into assessment agreements within the meaning of the TIF Act, unless requested by the Master Redeveloper.

(d) Minimum Improvements Timeline. The Master Redeveloper must achieve Commencement and Completion for each Block of the Minimum Improvements in accordance with the Minimum Improvements Timeline set forth below in Section 7.1.

(e) Liquor Store. The City acknowledges the Master Redeveloper has met its obligations regarding the municipal liquor store.

The Master Redeveloper hereby covenants and agrees, on behalf of itself and its successors and assigns, that age-restricted senior housing within the Minimum Improvements will be contained only within the North Block, the Superior Block and the West Block in a manner consistent with the General Plan Approval (as revised November 15, 2011).

(f) East Lake Street Landscaping. Developer will incur \$149,121 in Qualified Redevelopment Costs for landscaping at the end of East Lake Street consistent with ~~the~~ the Circle A - Lake Street East roundabout landscape plan, dated February 6, 2015.

(g) East Buffer Landscaping. Master Redeveloper shall complete landscaping of the East Block Linear Park in accordance with the Final Plans for the East Block. Master Redeveloper shall complete the specified landscaping in the East Block Linear Park within the 2015 planting season, except for ~~the~~ landscaping directly adjacent to the ~~that~~ could be damaged because of East Block construction ~~[Note: Can this be more specifically described?]~~, which will be completed by issuance of a certificate of completion for the East Block. Master Redeveloper shall provide the City with a lump sum payment of \$25,000 to be held by the City in escrow for additional landscaping, restoration or mitigation of the East Block Linear Park at the City's discretion following the issuance of such certificate of completion for the East Block. The amounts of landscaping, restoration or mitigation required by the City shall be released from escrow at the City's discretion. Within three years following the issuance of a certificate of completion for the East Block, the City will have expended all necessary funds and any remaining funds will be released from escrow and returned to the Master Redeveloper.

Section 5.2 Submission and Approval of Evidence of Financing. Concurrent with submission to the City of building permit applications for each Block, the Master Redeveloper shall provide evidence of a Financing Commitment for the Block and Public Access Improvements for which permits are sought and provide a Go-Ahead Letter for that Block and Public Access Improvements. The City's financial advisor shall review the Financing Commitment to determine that the security does not impose an unreasonable risk to the City or the Authority, and that the Financing Commitment is adequate to achieve Completion of the proposed Block and Public Access Improvements. The City attorney shall review the Financing Commitment to determine that the Financing Commitment will not impair the rights of the City or the Authority under this Agreement or the PUD Agreement. The City must complete its review of the Financing Commitment and render a decision regarding its adequacy to the Master Redeveloper within 21 days of receipt of the Financing Commitment, and if the City fails to render a decision to the Master Redeveloper within this time frame, the Finance Commitment will be deemed approved.

Alternatively, if the Master Redeveloper intends to proceed solely with equity sources of funds, the Master Redeveloper shall provide evidence satisfactory to the City and the Authority of the sufficiency of such equity. The City and the Authority will not unreasonably withhold approval of the relevant Financing Commitment.

Section 5.3 Relocation Indemnification. The Master Redeveloper agrees that the City Parties will bear no responsibility or liability for any relocation obligations and will indemnify and hold harmless the City Parties against all claims, costs, and liabilities arising out

of the Master Redeveloper's relocation efforts. In the event that the City Parties are named as a defendant in any legal or administrative action alleging liability against the City Parties due to relocation benefits, the Master Redeveloper shall indemnify and hold the City Parties harmless from any judgments, damages and liabilities of any kind determined in any legal or administrative action.

Section 5.4 Construction and Inspection of Minimum Improvements. The Minimum Improvements will be constructed by the Master Redeveloper on the Minimum Improvements Area in substantial conformity with the Final Plans approved by the City and pursuant to this Agreement, the General Plan Approval and the PUD Agreement. Prior to delivery of the Certificate of Completion to the Master Redeveloper, upon the request of the Authority, the Master Redeveloper will provide the Authority and the City with reasonable access to the Minimum Improvements Area. If during any inspection, the Authority observes that the Minimum Improvements are not being constructed in accordance with the Final Plans, it shall immediately notify the Master Redeveloper; provided that failure to provide such notice shall not result in a waiver of any such deficiency. "Reasonable access" means at least two site inspections per month during regular business hours. During the construction, marketing and rental of the Minimum Improvements, the Master Redeveloper will deliver progress reports to the Authority upon request from the Authority.

Section 5.5 Effect of Delay. The Master Redeveloper acknowledges that if construction of the Minimum Improvements is delayed due to Unavoidable Delays or for any other reason, this could affect the amount of Available Tax Increment and thus the total amount which may be available to pay the TIF Note or TIF Bonds. The Master Redeveloper acknowledges that if the Completion of the construction of the Minimum Improvements is delayed due to Unavoidable Delays or for any other reason, there will be no compensation to the Master Redeveloper or any other party for any reduction in the amount available to pay or refund the TIF Note or TIF Bonds.

Section 5.6 Additional Responsibilities of the Master Redeveloper.

(a) The Master Redeveloper will ensure each Block of the Minimum Improvements is constructed, operated and maintained in substantial accordance with the terms of this Agreement, the General Plan Approval, the Redevelopment Plan, the Final Plans, the PUD Agreement, and all local, State, and federal laws and regulations (including, but not limited to zoning, building code and public health laws and regulations).

(b) The Master Redeveloper will obtain, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and Federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed. The Authority agrees to use reasonable efforts to assist the Master Redeveloper in obtaining any permits, licenses and approvals necessary for the construction of the Minimum Improvements, at no cost to the Authority.

(c) The Master Redeveloper will not construct any building or other structures on, over, or within the boundary lines of any public utility easement unless such construction is provided for in such easement or has been approved by the utility involved.

(d) The Master Redeveloper will comply or assure compliance with all applicable Environmental Law as they relate to the Minimum Improvements Area and the Minimum Improvements.

Section 5.7 Easement for the Use and Maintenance of Public Access Areas; Ensuring Other Public Access. After Final Plans for the Minimum Improvements on any Block have been approved by the City, and prior to Commencement of construction on that Block of the Minimum Improvements, the Master Redeveloper shall deliver to the City an easement for the installation, use and maintenance of roadways, on-street public parking, curbs and gutters, sanitary sewer lines, all public and private utilities, water lines and related site work to be constructed (the “Public Access Areas Easement”) on outlots to be shown in Final Plans and as specified in the PUD Agreement. Each Public Access Areas Easement shall be in the form attached as Exhibit G and must be recorded by the Master Redeveloper within seven (7) days after the Public Access Areas Easement is delivered to the City in accordance with this Section. The Master Redeveloper shall require that the documents identified in Section 3.2 ensure public access to areas within the Minimum Improvements Area which are not covered by the Public Access Area Easement, such as the sidewalks and will submit such relevant portions of such instruments to the City for review and approval as to public access. The Public Access Areas Easements must include a total of at least fifty (50) public parking spaces.

Section 5.8 Easement for the Use and Maintenance of Park Improvements. After Final Plans for the Minimum Improvements on any Block have been approved by the City, and prior to Commencement of construction of Park Improvements on that Block of the Minimum Improvements, the Master Redeveloper shall deliver to the City an easement for the installation, use and maintenance of the Park Improvements to be constructed (the “Park Improvements Easement”) located on each Block. Each Park Improvements Easement shall be in the form attached as Exhibit H and must be recorded by the Master Redeveloper within seven (7) days after the Park Improvements Easement is delivered to the City in accordance with this Section. The reservation contained in Section 1.3(a)(vii) of the form attached as Exhibit H regarding special events or festivals shall only apply to the Park Improvements Easement including the Plaza Block. No such reservation will be included in the Park Improvements Easement including the Linear Park.

Section 5.9 Certificate of Completion. The Master Redeveloper shall notify the Authority when the final certificate of occupancy (exclusive of tenant build-outs) is received for each Block. Upon receipt of the final certificate of occupancy for a Block, the Authority will furnish to the Master Redeveloper a recordable Certificate of Completion in the form of Exhibit K, certifying the completion of the Minimum Improvements for that Block. The Certificate of Completion shall conclusively satisfy and terminate the agreements and covenants of the Master Redeveloper in this Agreement to construct Minimum Improvements on the Block covered by the Certificate of Completion, including without limitation terminating the restrictions related to encumbering the Minimum Improvements described in Article X.

ARTICLE VI CONSTRUCTION AND FINANCING OF PUBLIC INFRASTRUCTURE IMPROVEMENTS

Section 6.1 Public Infrastructure Improvements. The Project includes Public Infrastructure Improvements to be constructed in coordination with both Phase I and Phase II of the Minimum Improvements. The City and the Master Redeveloper agree to cooperate in constructing the following Public Infrastructure Improvements:

(a) Lake Street and Superior Boulevard Realignment. Consistent with the City's decision to realign the intersection of Superior Boulevard and Lake Street in order to achieve the optimal configuration for land use, pedestrian access and engineering, the Project includes reconstruction of Superior Boulevard and Lake Street and which includes the following components further described in Exhibit N to the First Amendment, ~~which is Attachment 1 hereto~~:

- (i) Lake Street Improvements, which include Segment 4;
- (ii) Initial Superior Boulevard Improvements, which include Segments 1, 2, and southerly one-third of Segment 3;
- (iii) Remaining Superior Boulevard Improvements, which include Segment 6 and the northerly two-thirds of Segment 3; and
- (iv) Sanitary Sewer Improvements.

The Lake Street and Superior Boulevard Realignment Area will be acquired by the City and the FOFR Parcel will be subject to the FOFR Agreement.

(b) Public Infrastructure Improvements Timeline. The Public Infrastructure Improvements must be constructed in accordance with the Public Infrastructure Improvements Timeline in Section 7.2.

Section 6.2 Financing the Public Infrastructure Improvements. The Master Redeveloper has agreed with the City on a method to finance the Public Infrastructure Improvements as further described in this Section 6.2 and in the balance of this Article. The Master Redeveloper is responsible for Public Infrastructure Improvements costs up to \$9,839,500, however the transfer of and payment for the Gas Station Parcel by the Master Redeveloper pursuant to Section 4.11, payment of the City's wetland mitigation fees pursuant to Section 4.6 and payment of the City's Initial Superior Boulevard Improvements through the Initial Special Assessments pursuant to Section 6.14, offset a portion of these costs and, therefore, the Master Redeveloper's maximum remaining obligation is \$3,691,746 (the "Maximum Redeveloper Amount"), subject to the terms and conditions of this Section.

(a) If the actual costs of the Initial Superior Boulevard Improvements are less than the amounts estimated by the City as of the date of this Agreement ("Initial Superior Boulevard Improvements Savings"), the Maximum Redeveloper Amount shall not be

reduced accordingly (that is, such Initial Superior Boulevard Improvements Savings may be applied to any cost of any other Segment in calculating the Maximum Redeveloper Amount), provided, however, if the actual costs of the Improvements as a whole are less than the Maximum Redeveloper Amount, such savings shall reduce the Maximum Redeveloper Amount.

(b) The Master Redeveloper, and not the City or Authority, shall be responsible to pay for any Public Infrastructure Improvement costs that are directly attributable to the negligence of the Master Redeveloper or its agents or contractors, or to default by Master Redeveloper of its obligations related to the Public Infrastructure Improvements under this Agreement.

(c) To manage Public Infrastructure Improvement costs, the Master Redeveloper may choose to construct the Public Infrastructure Improvements, pursuant to Section 6.3, or agree to be subject to Special Assessments, pursuant to Section 6.4, all subject to the further terms of Section 6.5.

Section 6.3 Decision to Construct the Public Infrastructure Improvements. The Master Redeveloper may opt to construct (i) the Lake Street Improvements or (ii) the Superior Boulevard Improvements, or (iii) both. The Master Redeveloper must notify the City no later than at the time of delivery of a Go-Ahead Letter for the first Block of each Phase if it elects to construct all or a portion of the Remaining Public Infrastructure Improvements. The City will construct the Remaining Public Infrastructure Improvements if the Master Redeveloper elects not to construct them. If the Master Redeveloper chooses to construct the Remaining Public Infrastructure Improvements, the Master Redeveloper does not need to comply with public bidding procedures required in Minnesota Statutes, Section 471.345.

Section 6.4 Special Assessments.

(a) Subject to the limitations set forth in Section 6.2 and the Cash Payment option in Section 6.15, the Master Redeveloper may opt to finance all or a portion of the Remaining Public Infrastructure Improvements which the City constructs by agreeing to be subject to Special Assessments consistent with Minnesota Statutes, Chapter 429, for actual costs up to the Maximum Redeveloper Amount, of the Public Infrastructure Improvement costs. The Master Redeveloper must notify the City of its option with regard to how the Public Infrastructure Improvements will be financed no later than the time of delivery of a Go-Ahead Letter for the first Block of each Phase.

(b) If the Master Redeveloper elects to be subject to Special Assessments, the Master Redeveloper must agree to petition for Special Assessments and waive protest rights for all land within the Minimum Improvements Area for Special Assessments. If the Public Infrastructure Improvements are financed with special assessments, then the City will construct the Public Infrastructure Improvements or relevant portion thereof. All terms of the Special Assessments will be consistent with normal City practices and policies.

Section 6.5 Options for Construction of Public Infrastructure Improvements; Submission and Approval of Evidence of Financing.

(a) **City Builds; Master Redeveloper Reimburses City.**

(i) If the Master Redeveloper chooses not to construct all or a portion of the Remaining Public Infrastructure Improvements and chooses not to be subject to Special Assessments or the Cash Payment option, then the Master Redeveloper must reimburse the City for actual Public Infrastructure Improvements costs up to the Maximum Redeveloper Amount and meet the security requirements set forth below which are established pursuant to Section 801.33.10 of the PUD Ordinance.

(ii) Before the City will commencement of construction on any Segment of the Public Infrastructure Improvements, the Master Redeveloper must provide evidence satisfactory to the City of a Financing Commitment and provide a Go-Ahead Letter. The City's financial advisor shall review the Financing Commitment to determine that the security does not impose an unreasonable risk to the City or the Authority and that the Financing Commitment is adequate to satisfy the Master Redeveloper's maximum financial responsibility for the Public Infrastructure Improvements. The City's attorney shall review the Financing Commitment and determine that it will not impair the rights of the City or the Authority under this Agreement. Alternatively, if the Master Redeveloper intends to proceed solely with equity sources of funds, the Master Redeveloper shall provide evidence satisfactory to the City and the Authority of the sufficiency of such equity. The City and the Authority will not unreasonably withhold approval of the relevant Financing Commitment.

(iii) If the City is not satisfied with the Financing Commitment, the City may require the Master Redeveloper to provide a letter of credit, or other security specified in Section 801.33.10 of the PUD Ordinance, acceptable to the City or, at the Master Redeveloper's option, the Master Redeveloper may elect to be subject to Special Assessments for up to 100 percent of its portion of the Public Infrastructure Improvement costs as specified in (b) below. If the Master Redeveloper so elects, the City will issue general obligation special assessment bonds consistent with normal City policies if the City, in its sole discretion, determines that the land value of the Minimum Improvements Area is at least equal to the principal value of the Special Assessments and carry costs during the lien enforcement period.

(b) **City Builds; Master Redeveloper Reimburses City via Special Assessments.**

(i) If the Master Redeveloper chooses not to construct the Remaining Public Infrastructure Improvements and not to use the Cash Payment option, then the Master Redeveloper chooses to be subject to Special Assessments and the Master Redeveloper agrees that the land in the Minimum Improvements Area will be subject to additional Special Assessments for actual Remaining Public Infrastructure Improvements costs up to the Maximum Redeveloper Amount.

(ii) Before the City will commence of construction on any Segment of the Public Infrastructure Improvements, the City will issue Special Assessments

pursuant to Section 6.4. The City will issue general obligation special assessment bonds consistent with normal City policies if the City determines that the land value in the Minimum Improvements Area is greater than the amount to be specially assessed against the Minimum Improvements Area plus the cost of issuing bonds. If the City determines, in its sole discretion, the value of the land does not exceed the amount to be specially assessed, then the City may require other security as specified in Section 801.33.10 of the PUD Ordinance.

(c) **Master Redeveloper Builds and Finances.**

(i) If the Master Redeveloper chooses to construct the Remaining Public Infrastructure Improvements, then the Master Redeveloper is responsible for financing Remaining Public Infrastructure Improvements costs up to the Maximum Redeveloper Amount as specified in Section 6.2.

(ii) Before the City will permit commencement of construction on any Segment of the Remaining Public Infrastructure Improvements, the Master Redeveloper must provide evidence satisfactory to the City of a Financing Commitment and provide a Go-Ahead Letter. The City's financial advisor shall review the Financing Commitment to determine that the security does not impose an unreasonable risk to the City or the Authority and that the Financing Commitment is adequate to satisfy the Master Redeveloper's maximum financial responsibility for the Remaining Public Infrastructure Improvements. The City's attorney shall review the Financing Commitment and determine that it will not impair the rights of the City or the Authority under this Agreement. Alternatively, if the Master Redeveloper intends to proceed solely with equity sources of funds, the Master Redeveloper shall provide evidence satisfactory to the City and the Authority of the sufficiency of such equity. The City and the Authority will not unreasonably withhold approval of the relevant Financing Commitment.

(iii) If the City is not satisfied with the Financing Commitment, the City may require the Master Redeveloper to provide a letter of credit or other security specified in Section 801.33.10 of the PUD Ordinance acceptable to the City.

Section 6.6 Design and Plans for Public Infrastructure Improvements. The Public Infrastructure Improvements Plans will be designed and specified by the City consistent with City standards for similar projects. Design fees incurred by the City, but paid by the Master Redeveloper must comport with the budget in Section 6.8 and the reimbursement procedure in Section 6.9.

Section 6.7 Construction and Inspection of Public Infrastructure Improvements. All Public Infrastructure Improvements shall be constructed in substantial conformity with the Public Infrastructure Improvements Plans and in substantial accordance with City engineering and performance requirements. Construction of the Public Infrastructure Improvements shall be supervised and administered by the City and the City Engineer. If the Master Redeveloper constructs the Remaining Public Infrastructure Improvements, the City may retain a consulting engineer to review and inspect the Remaining Public Infrastructure Improvements to ensure

compliance with the Public Infrastructure Improvements Plans and other relevant City requirements. Inspections must occur within the normal course of the construction schedule and the final inspection must occur within a reasonable time after Master Redeveloper completes a Segment to allow issuance of a Certificate of Completion. Inspection fees incurred by the City, but paid by the Master Redeveloper must comport with the budget in Section 6.8 and the reimbursement procedure in Section 6.9. If during any inspection, the City observes that the Remaining Public Infrastructure Improvements are not being constructed in accordance with the Public Infrastructure Improvements Plans, it shall immediately notify the Master Redeveloper; provided that failure to provide such notice shall not result in a waiver of any such deficiency.

Section 6.8 Budget for Design and Inspection Fees. The City and the Master Redeveloper will agree upon the scope of required services related to the design and inspection fees which are described in Sections 6.6 and 6.7, prior to Commencement for any Segment. The City may select the vendor to complete the required design and inspection services. The Master Redeveloper will fully reimburse the City for costs incurred for the required services up to \$310,000 for design and inspection work that is completed by December 31, 2012 (the “Maximum Amount”). Beginning on January 1, 2013, and occurring on each January 1 until the design and inspection work is complete, the Maximum Amount will adjust upward or downward by an amount equal to the CPI for the December 31 immediately preceding. For purposes of this Section 6.8, “CPI” means the “Consumer Price Index, All Urban Consumers, U.S. City Average, All Items” as determined by the United States Bureau of Labor Statistics. If the CPI is discontinued, comparable statistics on the purchasing power of the consumer dollar as published at the time of said discontinuation by a responsible financial periodical of recognized authority selected by the City, shall be used for making the above computation.

Section 6.9 Reimbursement for Design and Inspection Fees. This Section provides the procedure by which the City will be reimbursed by the Master Redeveloper for design and inspection fees described in Sections 6.6 and 6.7. Upon Completion of a Segment, and within 30 days of receiving a request for reimbursement from the City, the Master Redeveloper must reimburse the City for design and inspection fees up to the budgeted amount determined under Section 6.8. Design and inspection fees reimbursed by the Master Redeveloper under this Section are Qualified Redevelopment Costs. No Certificate of Completion will be issued until the City is fully reimbursed for all design and inspection fees then owed.

Section 6.10 Reimbursement for Construction Costs.

(a) **Master Redeveloper Reimbursement to the City.** If the City incurs Public Infrastructure Improvements costs which are not financed through the use of Special Assessments in accordance with Section 6.5(a), the Master Redeveloper must reimburse the City as follows. Upon Completion of a Segment by the City, the Master Redeveloper must reimburse the City within 30 days of receiving a written request for reimbursement from the City, and no Certificate of Completion will be issued until the City is fully reimbursed for all construction costs then owed. All reimbursement requests must certify the costs for which reimbursement is sought and must be provided to the reimbursing party pursuant to Section 15.3.

(b) **City Reimbursement to the Master Redeveloper.** If the Master Redeveloper incurs Remaining Public Infrastructure Improvements costs in excess of the Maximum Redeveloper Amount, the City must reimburse the Master Redeveloper as follows. The City must reimburse the Master Redeveloper for such excess costs within 30 days of receiving a written request for reimbursement from the Master Redeveloper. All reimbursement requests must certify the costs for which reimbursement is sought and must be provided to the reimbursing party pursuant to Section 15.3.

Section 6.11 Environmental Remediation. If the Master Redeveloper opts to construct the Remaining Public Infrastructure Improvements, the Master Redeveloper will, with the assistance of a qualified and experienced environmental consultant:

- (a) complete any additional environmental investigation required to delineate the scope and extent of any Hazardous Materials present in the soil, subsoil, or groundwater in the Public Infrastructure Improvements Area with respect to the Remaining Public Infrastructure Improvements, to the satisfaction of the MPCA;
- (b) prepare and obtain MPCA approval of a development response action plan and construction contingency plan addressing the presence of Hazardous Materials in the Public Infrastructure Improvements Area with respect to the Remaining Public Infrastructure Improvements;
- (c) implement such plans in accordance with all MPCA requirements and applicable Environmental Laws, including requirements for reimbursement of Remediation Costs from the Minnesota Petrofund; and
- (d) obtain reimbursement from the Minnesota Petrofund for all eligible Remediation Costs associated with the Remaining Public Infrastructure Improvements.

Any costs incurred by the Master Redeveloper to comply with this Section 6.11 will be shared equally by the City and the Master Redeveloper. When such expenses are due, each party will be responsible for 50% of each invoice.

Section 6.12 Additional Responsibilities of the Master Redeveloper. If the Master Redeveloper constructs the Remaining Public Infrastructure Improvements, the following provisions apply:

- (a) The Master Redeveloper will construct the Remaining Public Infrastructure Improvements in substantial accordance with the terms of this Agreement and all local, State, and federal laws and regulations (including, but not limited to zoning, building code and public health laws and regulations).
- (b) The Master Redeveloper will obtain, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and Federal laws and regulations which must be obtained or met before the Remaining Public Infrastructure Improvements may be lawfully constructed. The City agrees to use reasonable efforts to assist the Master Redeveloper in obtaining

any permits, licenses and approvals necessary for the construction of the Remaining Public Infrastructure Improvements in accordance with the Final Plans approved by the City.

(c) The Master Redeveloper will comply or assure compliance with all applicable Environmental Laws as they relate to the Public Infrastructure Improvements Area and the Public Infrastructure Improvements.

Section 6.13 Certificate of Completion. If the Master Redeveloper constructs the Remaining Public Infrastructure Improvements, the Master Redeveloper shall notify the City when construction of any Segment thereof has been substantially completed according to the Public Infrastructure Improvement Plans. The City shall promptly inspect the Remaining Public Infrastructure Improvements in order to determine whether it has been constructed in substantial conformity with plans designed and specified by the City. If the City determines that the completed Remaining Public Infrastructure Improvements have not been constructed in substantial conformity with the Public Infrastructure Improvements Plans, the City shall deliver a written statement to the Master Redeveloper indicating in adequate detail the specific respects in which the Remaining Public Infrastructure Improvements have not been constructed in substantial conformity with Public Infrastructure Improvements Plans, and the Master Redeveloper shall promptly remedy such deficiencies. Subject to requirements herein requiring reimbursements and payments by the Master Redeveloper to the City, but otherwise promptly upon determining that a Segment of the Remaining Public Infrastructure Improvements has been constructed in substantial conformity with Public Infrastructure Improvements Plans, the City will furnish to the Master Redeveloper a Certificate of Completion in the form of Exhibit K certifying the completion of that Segment of the Remaining Public Infrastructure Improvements and further providing conclusive acknowledgement that the City has accepted such Remaining Public Infrastructure Improvements. Each Certificate of Completion issued for the Remaining Public Infrastructure Improvements shall conclusively satisfy and terminate the agreements and covenants of the Master Redeveloper in this Agreement to finance and construct the applicable Segment of the Remaining Public Infrastructure Improvements. Upon the request of the Master Redeveloper, the City will undertake the Certificate of Completion inspection for any completed separate part of a Segment of the Remaining Public Infrastructure Improvements so as to expedite the prompt issuance of the Certificate of Completion upon substantial completion of the relevant Segment.

Section 6.14 Initial Superior Boulevard Improvements Assessment Agreement. The Initial Superior Boulevard Improvements are described on Exhibit N, attached to the First Amendment as Attachment 1. Pursuant to Section 6.5(b), Master Redeveloper has chosen not to construct the Initial Superior Boulevard Improvements and has elected to be subject to Special Assessments for Initial Superior Boulevard Improvement Costs, as provided in this Section 6.14 (the “Initial Special Assessments”). The City currently estimates that Initial Superior Boulevard Improvements Costs will be \$2,732,042.

(a) Authority for Special Assessments. Minnesota Statutes Chapter 429, the City’s Charter Sections 52 and 53 and the City’s Ordinance Chapter 206 authorize the City to assess the cost of the Initial Superior Boulevard Improvements against the Minimum Improvements Area.

(b) Security. The City, in its sole discretion, will issue general obligation special assessment bonds consistent with normal City policies if the City determines that the land value in the Minimum Improvements Area is greater than the amount of the Initial Special Assessments plus the cost of issuing bonds. If the City determines, in its sole discretion, the value of the land does not exceed the amount to be specially assessed, then the City may require other security as specified in Section 801.33.10 of the PUD Ordinance.

(c) Consents and Waivers by Master Redeveloper. The Master Redeveloper hereby:

(i) petitions for and consents to an assessment by the City for actual Initial Superior Boulevard Improvement costs up to, but not exceeding, \$2,732,042, plus the costs of issuing the bonds, against the Minimum Improvements Area;

(ii) represents and warrants that the Master Redeveloper has obtained the written consent and waivers of all fee title owners and mortgage holders of the Minimum Improvements Area (attached to the Redevelopment Agreement as Exhibit M **[Note: Exhibit M is the Memorandum of Agreement]**, and as introduced in Attachment 5 to the First Amendment);

(iii) waives any and all procedural and substantive objections to the Initial Special Assessments, including but not limited to, notice and hearing requirements, claims that the Minimum Improvements Area, or any part thereof, does not receive a benefit from the Initial Superior Boulevard Improvements equal to or greater than the dollar amount of the Initial Special Assessments, claims that the assessment is not uniform up on the same classes of property and claims that the amount of the special assessments allocated to any lot or outlot exceeds the benefit to such lot or outlot; and

(iv) waives any additional appeal rights available under the City Charter, Minnesota statutes or the City Ordinances.

The consents and waivers set forth in this Section 6.14 run with the title to the Minimum Improvements Area and are binding on the Master Redeveloper and its successors and assigns.

(d) Pending Special Assessment Status. The City does not intend to levy the Initial Special Assessments until the City substantially completes the Initial Superior Boulevard Improvements. Until the City levies the Initial Special Assessments, the Initial Special Assessments constitute a pending special assessment.

(e) Allocation of Special Assessments at Final Plat. The Master Redeveloper will pay the installments of Initial Special Assessments certified for payment with annual real estate taxes when and as they become due in the amounts and on the dates shown in Attachment D to **this** the Second Amendment and in accordance with the Agreement for Special Assessment Petition, Consent and Waiver, as amended by the First Amendment

to Agreement for Special Assessment Petition, Consent and Waiver substantially shown in Attachment G, which shall be executed by the Master Redeveloper.

(f) Reservation of Right. If the cost of the Initial Superior Boulevard Improvements is greater than anticipated, the City reserves the right to levy an assessment in a greater amount or levy supplemental assessments pursuant to Minnesota Statutes, Section 429.071, provided that any such future assessments would recognize the benefit, pursuant to Minnesota Statutes, Section 429.051, of the Maximum Redeveloper Amount, and provided further that the Master Redeveloper has not hereby consented or agreed to such greater assessment amount or supplemental assessments, nor has Master Redeveloper waived any of its rights to challenge such greater assessment amount or such supplement assessments pursuant to Minnesota Statutes Chapter 429.

(g) Prepayment of Special Assessments. Under Minnesota Statutes Chapter 429, the City may cause the amounts assessed against the Minimum Improvements Area to be payable in a single installment or in equal installments. The City will make the Initial Special Assessments payable in annual installments extending over 20 years in consideration of the Master Redeveloper's agreement to pay the entire, uncertified balance of the Initial Special Assessments against each lot or outlot upon the sale or other transfer (including but not limited to the conveyance of equitable ownership pursuant to a contract for deed) of that lot or outlot; provided that the payment of the balance of such Initial Special Assessments shall not be accelerated in the event of (i) the transfer of fee title, via warranty deed, to Master Redeveloper of the Minimum Improvements Area in order to satisfy its current contract for deed with Superior Lake Street Properties, LLC; or (ii) the sale or other transfer to a person pursuant to the provisions of Sections 13.2 or Sections 13.3(a)(i), (ii) or (iv). All Initial Special Assessment payments will be made semi-annually and payable with property taxes. For the first three (3) years, payment of the Initial Special Assessments will be made based on a modified principal payment schedule as permitted under City Ordinance Section 206.14. Payments under the modified principal payment schedule will begin in 2011. The first year of payments will include two principal payments of \$2500 plus interest from the date of the Initial Special Assessments are levied, and will be payable in 2011. The second year of payments will include two \$2500 principal payments plus interest and will be payable in 2012. The third year of payments will include two \$2500 principal payments plus interest and will be payable in 2013. The remaining payments will be due commencing in 2014, in generally equal semi-annual installments as reasonably determined by the City. If modified principal payment schedule for the Initial Special Assessments is challenged in any manner, the Master Redeveloper shall pay all costs reasonably incurred by the City related to that challenge. Subject to the exceptions identified above, if the Master Redeveloper conveys or otherwise transfers ownership of a lot or outlot subject to Initial Special Assessments before the City levies the Initial Special Assessments, the Master Redeveloper must escrow the portion of the pending Initial Special Assessments attributable to that lot or outlot when the City levies the special assessment, and the purchaser must, in the escrow agreement, acknowledge and agree that it is subject to and bound by the consents and waivers described in this Section 6.14. If the Master

Redeveloper elects to escrow the funds with a title insurance company, the City must be a party to the escrow agreement.

Section 6.15 City Builds, Master Redeveloper Pays Cash. Notwithstanding anything in this Article VI to the contrary, Master Redeveloper shall have the right, in its sole and absolute discretion, to pay cash (“Cash Payment”) to the City for all or a portion of the costs of the Public Infrastructure Improvements in lieu of financing such costs through Special Assessments. In the event Master Redeveloper elects the Cash Payment, Master Redeveloper shall provide written notice (“Cash Notice”) to the City exercising such option within 10 days after Master Redeveloper receives written notice from the City specifying the amount of the winning bid for the relevant portion of the Public Infrastructure Improvements (the “Bid”). Along with the Cash Notice to the City, Master Redeveloper shall provide evidence satisfactory to the City the sufficiency and availability of such cash payment in an amount equal to the Bid. Within 10 days after delivery of the Cash Notice to the City, the Master Redeveloper and the City will enter into a disbursing agreement or similar agreement (the “Disbursing Agreement”) providing how draws will be made to pay costs related to the Bid. The cash payment will be made by the Master Redeveloper in accordance with the Disbursing Agreement on the date the Disbursing Agreement is entered into.

In lieu of the Cash Payment, the City may in its sole and absolute discretion accept an alternative financing arrangement from the Master Redeveloper.

If Master Redeveloper elects to exercise its rights pursuant to this Section 6.15 or Section 6.4, in no event shall Master Redeveloper’s obligations exceed the Maximum Redeveloper Amount. If Master Redeveloper does not, within the time period specified above, (1) provide the written notice exercising such option; or (b) enter into the Disbursing Agreement and make the Cash Payment, then the City may, without further notice to the Master Redeveloper, proceed with Special Assessments for the relevant portion of the Public Infrastructure Improvements.

ARTICLE VII PROJECT DEFAULT DATES; DEADLINE ADJUSTMENTS

Section 7.1 Commencement and Completion of Minimum Improvements. Time frames for Commencement and Completion of the Minimum Improvements shall be on the following schedule, subject to Unavoidable Delay or amendment under Section 7.3. Failure to satisfy Commencement or Completion obligations of each Block of the Minimum Improvements by the Default Dates shall be an Event of Default under this Agreement. Subject to City land use approvals and coordination with the City regarding the scheduling of the construction of Public Infrastructure Improvements, the Master Redeveloper may construct the Blocks or Segments earlier than the dates in the Minimum Improvements Timeline. Following Commencement, construction of any given Block must continue in a sequence consistent with normal construction practices.

Minimum Improvements Timeline		
Block	Commencement	Completion
Phase I		

North Block	June 30, 2012	December 31, 2014
Superior Block	June 30, 2012	December 31, 2014
North Linear Park and initial portion of East Linear Park shown on Attachment F	June 30, 2012	December 31, 2014 September 30, 2015
West Block	March 31, 2014	September 30, 2015
Phase II		
Plaza Block	March 31, 2015	September 30, 2016
Park Plaza	March 31, 2015	September 30, 2016
East Block	September 30, 2015	December 31, 2017
East Linear Park (remaining portion)	March 31, 2015	September 30, 2016

For purposes of the East Block, references in Section 7.1 to “Commencement” means “East Block Commencement” and “Completion” means “East Block Completion.”

Before December 31, 2014, the Master Redeveloper will provide interim landscape, stormwater and sidewalk improvements as shown on Attachment E to the Second Amendment (“Interim Conditions”) and no final certificate of occupancy for the Minimum Improvements on the West Block shall be issued until such time as the Interim Conditions have been completed. These Interim Conditions will remain in place until Completion of the final Block of the Minimum Improvements. Until such Completion, the Master Redeveloper will provide such easements as reasonably requested by the City to ensure public use and availability to the Interim Conditions.

As of the Effective Date, the parties agree and understand that the Master Redeveloper has completed the following portions of the Minimum Improvements:

Phase I:

Superior Block

North Block

North Block Linear Park

West Block

Phase II:

Plaza Block

Park Plaza

See the table above for the construction deadlines for the uncompleted portions of the Minimum Improvements.

Section 7.2 Commencement and Completion of Public Infrastructure Improvements. Time frames for Commencement and Completion of the Public Infrastructure Improvements shall be on the following schedule, subject to Unavoidable Delay or amendment of the Minimum Improvements Timeline in Section 7.1. Failure to satisfy Commencement or Completion obligations of each Segment of the Public Infrastructure Improvements by the Default Dates shall be an Event of Default under this Agreement. Subject to City land use approvals and coordination with the City regarding the extent of any design, inspection and construction obligations, the Master Redeveloper may construct the Blocks or Segments earlier than the dates in the Public Infrastructure Improvements Timeline. Following Commencement, construction of any given Segment must continue in a sequence consistent with normal construction practices. Regardless of whether the City or the Master Redeveloper constructs the Remaining Public Infrastructure Improvements, each Segment of the Remaining Public Infrastructure Improvements must be commenced and completed in accordance with this Section 7.2.

The parties acknowledge ~~and agree that the Initial Superior Boulevard Improvements, a portion of the Lake Street Improvements and a significant portion of the Sanitary Sewer Improvements (except those shown as “Remaining Sanitary” on Attachment A to the Second Amendment) have been constructed by the City and financed through the levy of special assessments against the Minimum Improvements Area in accordance with Section 6.14 of the Redevelopment Agreement (as amended by the First Amendment). The remaining components of the Lake Street Improvements (“Segment A”) and the Remaining Superior Boulevard Improvements (“Segment B”) are described in Attachment A to the Second Amendment attached hereto.~~ that the following represents the status of the Public Infrastructure Improvements as of the Effective Date:

Public Infrastructure Improvements	
	Segment
Lake Street Improvements	Segment A
Remaining Superior Boulevard Improvements	Segment B

~~Construction of Segment A will be completed no later than the earlier to occur of either Completion of the final Block to be constructed adjacent to Lake Street or September 30, 2016. The City may elect to proceed with Segment A, as determined by the City in coordination with the Metropolitan Council’s related Lake Street project, at any earlier time and the Master Redeveloper agrees that Segment A will be financed or paid for through special assessments as a portion of the Remaining Public Infrastructure Improvements subject to the Maximum Redeveloper Amount described in Section 5 of the Second Amendment.~~

~~Construction of Segment B will be commenced by the earlier to occur of either Completion of the final Block of the Minimum Improvements to be completed or September 30,~~

~~2016. The City may elect to proceed with Segment B, in its sole discretion, at any earlier time, but the Master Redeveloper's obligation to finance or pay for Segment B as a portion of the Remaining Public Infrastructure Improvements occurs upon the earlier to occur of either Completion of the final Block of the Minimum Improvements to be completed or September 30, 2016.~~

Lake Street Improvements, which include Segment 4: completed and not currently specially assessed

Initial Superior Boulevard Improvements, which include Segments 1, 2 and the southerly one-third of Segment 3: completed, and specially assessed.

Remaining Superior Boulevard Improvements, which include Segment 6 and the northerly two-thirds of Segment 3: not yet completed.

Sanitary Sewer Improvements: completed and specially assessed.

Section 7.3 Timing and Sequence of Blocks and Segments. The Master Redeveloper agrees to construct each Block of the Minimum Improvements in accordance with the Minimum Improvements Timeline, however the City and the Authority agree that if the Master Redeveloper determines that the Default Dates in the Minimum Improvements Timeline become infeasible or otherwise problematic to ensure Completion of all the Minimum Improvements by September 30, 2016, the Master Redeveloper must seek written approval to amend the Minimum Improvements Timeline from the City and the Authority, which approval will not be unreasonably withheld. If the Minimum Improvements Timeline is altered, the Public Infrastructure Improvements Timeline is altered accordingly.

The Master Redeveloper may alter the sequence in which the Blocks are constructed by substituting one Block for another in the Minimum Improvements Timeline, provided that at least two Blocks are completed under Phase I timing and the remaining Blocks are completed under Phase II timing. Provided, further, that the North Linear Park must be constructed simultaneously with the construction of the North Block and the East Linear Park must be constructed simultaneously with the construction of the East Block. The Master Redeveloper must notify the City if it alters the sequence in the Minimum Improvements Timeline, but does not need to seek written approval for a change in the sequence of construction; however, if the City is constructing the Remaining Public Infrastructure Improvements, then the City will decide how the change in sequence contemplated under this paragraph alters the Remaining Public Infrastructure Improvements sequence.

Section 7.4 Public Access Security. The Master Redeveloper will be constructing improvements to the Public Access Areas on Outlots A, C, D and E as shown on the Final Plat in the form and sequence specified by the City consistent with the corresponding approved plans. The Final Plan approval by the City for each Block shall designate the portion of the Public Access Improvements to be completed prior to issuance of a final certificate of completion for the particular Block and such final certificate of completion will not be issued until those Public

Access Improvements are completed. In order to ensure construction of those Public Access Improvements, the Master Redeveloper will provide security, in the City's discretion, to the City, in the form of a commercially standard letter of credit or surety bond reasonably acceptable to the City, security in the amount of \$~~5,178,265~~1,000,000 ("Public Access Security") by the earlier to occur of issuance of a building permit for the ~~West~~East Block or ~~November 1, 2012~~January 2, 2016, which amount represents the cost of the portion of the Public Access Improvements that will remain to be built following construction of the Superior Block and the North Block, and the associated Public Access Improvements approved the by City. If the Master Redeveloper fails to provide the Public Access Security, the City is under no obligation to deliver either a Certificate of Completion or a City certificate of occupancy for either the North Block or the Superior Block until the Public Access Security requirement is satisfied.

The Public Access Security amount shall be reduced on a monthly basis equal to the portion of the Public Access Improvements that have been constructed in the month immediately prior. The City may reasonably require evidence of construction and payment for such Public Access Improvements prior to making respective reductions in the Public Access Security Amount.

ARTICLE VIII

MASTER REDEVELOPER REIMBURSEMENT OBLIGATIONS; QUALIFIED REDEVELOPMENT COSTS; PERFORMANCE REVIEW

Section 8.1 Master Redeveloper Reimbursement Obligations.

(a) Through the date of TIF District Certification, the Master Redeveloper is obligated to pay all out of pocket costs of the City and the Authority for the City Consultants in connection with the Project, and all third party consulting costs of the Master Redeveloper, including but not limited to costs of the development of this Agreement, the Redevelopment Plan, the TIF Plan and creation of the TIF District, the PUD Agreement, architectural and engineering studies for the Project, fiscal analysis, legal fees and all costs and expenses related thereto. The Master Redeveloper must pay such costs monthly upon presentation of invoices and other documentation of such costs, not more than thirty (30) days after the request for payment is delivered to the Master Redeveloper. All such costs will be Qualified Redevelopment Costs pursuant to the TIF Pro Forma.

(b) After the date of TIF District Certification and prior to delivery of the Certificate of Completion for the final Block or Segment, the Master Redeveloper is obligated to pay all out of pocket costs of the City and the Authority for the ongoing legal and financial advisor responsibilities under this Agreement and for the City's review and inspection of the operations and performance of the Park Improvements and Public Access Area; **provided, however,** the City, the Authority, and the Master Redeveloper will be responsible for their respective legal and financial advisor expenses related to drafting and execution of this Agreement during 2015, from creation of the corresponding term sheet through execution of this Agreement.

(c) This Section expressly supersedes in its entirety the Preliminary Agreement, which served as a reimbursement agreement between the City, the Authority and the Master Redeveloper.

Section 8.2 Qualified Redevelopment Costs.

(a) The Master Redeveloper costs eligible for TIF Assistance include costs incurred for Qualified Redevelopment Activities and Public Infrastructure Improvements, which are Qualified Redevelopment Costs and include the following:

- (i) demolition of any structures or improvements required for the Project;
- (ii) Remediation Costs;
- (iii) land acquisition and write down necessary to allow the TIF Project Area to be redeveloped as contemplated herein, including, without limitation, any costs necessary to acquire leasehold interests;
- (iv) relocation payments, if any;
- (v) Public Infrastructure Improvements paid by Master Redeveloper, including design and inspection fees paid pursuant to Section 6.9;
- (vi) site improvements by the Master Redeveloper, including without limitation foundations, parking facilities, grading, excavation, on-site roads, utilities, sidewalks, curb and gutter, street lighting and similar improvements;
- (vii) reimbursement of predevelopment costs of the City/Authority paid by the Master Redeveloper for planning, legal, consulting and other similar costs;
- (viii) capitalized interest and financing costs for eligible activities; and
- (ix) other eligible Qualified Redevelopment Costs authorized in the TIF Plan.

(b) All Qualified Redevelopment Activities and Public Infrastructure Improvements will be undertaken by the Master Redeveloper in the sequence required to allow timely Commencement and Completion of the applicable Minimum Improvements.

Section 8.3 Master Redeveloper Use of Entry Deposits. In its sole discretion, the Master Redeveloper may hold cash proceeds from the Entry Deposits in reserve to meet debt coverage obligations required for construction financing, use the Entry Deposits to reduce Project-related debt, or spend the Entry Deposits on capital improvements for the Project. Entry Deposit funds remaining after those obligations are satisfied will be used within the Project. Any such remaining funds will be placed in a discrete account solely for Project purposes and when drawn, the Master Redeveloper will send the Authority a written confirmation that the funds were used in accordance with this Section. Upon request from the Authority, the Master Redeveloper will provide evidence of the current status of Entry Deposits. If the Master Redeveloper uses proceeds from the Entry Deposits for non-Project related uses, then the

maximum principal amount of TIF Assistance as shown in Section 9.2 will be reduced in an equal amount. The requirements in this Section will terminate and the City will issue a certificate of release when the Master Redeveloper has spent all Entry Deposits in accordance with this Section.

Section 8.4 Performance Review and TIF Assistance Adjustment/Debt Coverage Ratio. The parties acknowledge that as of the Effective Date of this Agreement, the Master Redeveloper submitted and the Authority reviewed a Master Redeveloper TIF Pro Forma, and no adjustment was made to the principal amount of the TIF Note (except as provided in this Agreement), all in accordance with the terms of Section 8.4 of the Original Redevelopment Agreement as amended by the First Amendment thereto.

~~(a) The Master Redeveloper acknowledges that the level of TIF Assistance is based on the Master Redeveloper's anticipated Qualified Redevelopment Costs, the costs of the Minimum Improvements, the value derived from sale of land and improvement entitlements, the terms of capital financing and the projected cash flow as reflected in the TIF Pro Forma. At a date agreed to between the Authority and the Master Redeveloper prior to issuance of the TIF Note (the "Calculation Date"), the Master Redeveloper will submit to the Authority a Project Completion TIF Pro Forma updated to reflect all actual Project costs, land and improvement entitlement sales and cash flow information. The Project Completion TIF Pro Forma will include a calculation of the debt coverage ratio determined in accordance with the formula contained in Exhibit I-1 for the most recent fiscal year of Master Redeveloper (ending September 30) before the Calculation Date, and an estimate of the debt coverage ratio for the following two fiscal years. If the mean debt coverage ratio for those three fiscal years exceeds 1.39, the Authority will calculate the net present value (as of the Calculation Date) of the difference between the Cash Flow After Debt Service (Actual) and the Cash Flow After Debt Service (Implied) as shown in Exhibit J, which difference represents the reduction in cash flow needed to bring the projected debt service coverage ratio to 1.39. Such difference is referred to as "Excess Amount." Notwithstanding the foregoing, the Authority reserves the right to adjust upward the debt service coverage ratio in its sole discretion upon the request of Master Redeveloper, should market or financial conditions warrant such an adjustment.~~

~~(b) If the Authority finds an Excess Amount under paragraph (a) of this Section, then the Excess Amount will be applied to reduce the outstanding principal amount of the TIF Note (as a deemed prepayment) in accordance with the terms of the TIF Note. Such event must be evidenced by delivery by the Authority to the Redeveloper of a written notice stating the Excess Amount. The Excess Amount will be deemed prepaid as of the Calculation Date.~~

ARTICLE IX TIF AND OTHER PUBLIC ASSISTANCE

Section 9.1 TIF District.

(a) The Authority (on December 15, 2008), and the City (on December 16, 2008), approved a TIF Plan for the TIF District (designated as Redevelopment TIF District No.

5); and the Authority subsequently filed the TIF District Certification for the TIF District on June 11, 2009. On ~~February 15, 2011~~, November 15, 2011, the City and the Authority decertified Redevelopment TIF District No. 5 and subsequently on ~~February 15, 2015~~ November 15, 2015 I took all actions necessary to reapprove the TIF District (continued to be designated as Redevelopment TIF District No. 5), after all the hearings and notices required under Section 469.175 of the TIF Act.

(b) The TIF District has a maximum duration of 25 years after the date of first receipt of increment (i.e., 26 years of collection), as permitted under the TIF Act. In the TIF Plan, the Authority elected to defer the first year of receipt from the TIF District for four years after the year of approval, which ~~date~~ year is ~~February 15, 2015~~, 2015.

Section 9.2 TIF Assistance; Limitations on Reimbursement of Qualified Redevelopment Costs. Before the Authority will issue TIF Assistance to the Master Redeveloper, the Master Redeveloper must provide evidence satisfactory to the Authority that its Qualified Redevelopment Costs equal at least ~~\$23,060,000~~, \$23,060,000. In order to obtain the amount of Tax Increment contemplated by this Agreement, the Authority will issue, subject to satisfaction of the conditions in this Agreement, ~~one or more~~ a “pay-as-you-go” TIF Notes to the Master Redeveloper with a maximum original principal amount of ~~\$23,060,000~~, \$23,060,000, as shown in Attachment C plus interest on the unpaid principal balance thereof at a rate of 8.75% ~~(or such other interest rate as determined in the manner authorized below)~~ which shall be payable solely from Available Tax Increment from the Project as may be adjusted under Section 8.4.

The Authority does not represent or warrant the amounts of Available Tax Increment that will be available for payment of the TIF Notes or TIF Bonds. The Authority will not reimburse the Master Redeveloper for the Qualified Redevelopment Costs from Authority revenues, other than Available Tax Increment, nor guaranty the amount of money which the Master Redeveloper will receive as a reimbursement, such amount being payable solely from the Available Tax Increment in accordance with this Section.

Section 9.3 Tax Increment Eligibility. Upon any Event of Default under Articles IV, V, VI, and VII of this Agreement, which Default has not been cured, regarding any obligation under this Agreement related to a Block, Tax Increment from the defaulting Block, at the election of the Authority, may be withheld from payment on any TIF Assistance. ~~If the Master Redeveloper elects to request issuance of the TIF Bond, as part of the underwriting process, the parties and the underwriters, shall establish the terms of any TIF Bond to provide an alternate remedy upon an Event of Default in lieu of withholding Tax Increment to allow effective issuance of the debt.~~ Tax Increment from any Block that is not in Default under this Agreement shall remain available for payment of any outstanding TIF Assistance.

Section 9.4 Preconditions to Issuance of TIF Note.

(a) The Authority will issue the TIF Note to the Master Redeveloper upon satisfaction of the following conditions:

(i) the Master Redeveloper is not in Default under the terms of this Agreement;

- (ii) the Authority has received a sworn construction cost statement showing the total construction costs of Phase I from the Master Redeveloper;
 - (iii) the Master Redeveloper has provided a Financing Commitment for the Phase I Minimum Improvements in an amount sufficient, together with other funds available, to finance the construction costs of the Phase I Minimum Improvements and make the Tax Increment payment to the Authority during the construction period;
 - (iv) the City has approved the Final Plans for the Minimum Improvements;
 - (v) the Master Redeveloper has issued the applicable Go-Ahead Letter;
 - (vi) if and to the extent required, the Master Redeveloper has executed minimum assessment agreements acceptable to the City and the County; and
 - (vii) if and to the extent required, the Master Redeveloper principals shall have executed all Master Redeveloper guaranties required by the Note Lender.
- (b) Upon satisfaction of the conditions set forth in paragraph (a) above, the Authority will issue the TIF Note to the Master Redeveloper. The principal amount of the TIF Note will be the amounts set forth in Section ~~9.2 and reflected in the TIF Pro Forma~~ 9.2.

Section 9.5 Assignment of Note. The Note shall not be assignable nor transferable without the prior written consent of the Authority; provided, however, that such consent shall not be unreasonably withheld or delayed if:

- (a) the assignee or transferee delivers to the Authority a written instrument acknowledging the limited nature of the Authority's payment obligations under the Notes; and
- (b) the assignee or transferee executes and delivers to the Authority a certificate, in form and substance satisfactory to the Authority, pursuant to which, among other things, such assignee or transferee represents:
 - (i) that the Note is being acquired for investment for such assignee's or transferee's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof;
 - (ii) that the assignee or transferee has no present intention of selling, granting any participation in, or otherwise distributing the same;
 - (iii) that the assignee or transferee is an "accredited investor" within the meaning of Rule 501 of the Regulation D under the Securities Act of 1933, as amended;
 - (iv) that the assignee or transferee, either alone or with such assignee's or transferee's representatives, has knowledge and experience in financial and

business matters and is capable of evaluating the merits and risks of the prospective investment in the Note and the assignee or transferee is able to bear the economic consequences thereof;

(v) that in making its decision to acquire the Note, the assignee or transferee has relied upon independent investigations made by the assignee or transferee and, to the extent believed by such assignee or transferee to be appropriate, the assignee's or transferee's representatives, including its own professional, tax and other advisors, and has not relied upon any representation or warranty from the Authority, or any of its officers, employees, agents, affiliates or representatives, with respect to the value of the Note;

(vi) that the Authority has not made any warranty, acknowledgment or covenant, in writing or otherwise, to the assignee or transferee regarding the tax consequences, if any, of the acquisition and investment in the Note;

(vii) that the assignee or transferee or its representatives have been given a full opportunity to examine all documents and to ask questions of, and to receive answers from, the Authority and its representatives concerning the terms of the Note and such other information as the assignee or transferee desires in order to evaluate the acquisition of and investment in the Note, and all such questions have been answered to the full satisfaction of the assignee or transferee;

(viii) that the assignee or transferee has evaluated the merits and risks of investment in the Note and has determined that the Note is a suitable investment for the assignee or transferee in light of such party's overall financial condition and prospects;

(ix) that the Note will be characterized as "restricted securities" under the federal securities laws because the Note is being acquired in a transaction not involving a public offering and that under such laws and applicable regulations such securities may not be resold without registration under the Securities Act of 1933, as amended, except in certain limited circumstances; and

(x) that no market for the Note exists and no market for the Note is intended to be developed.

(c) Notwithstanding Sections (a) and (b) above, the Master Redeveloper may assign and pledge the Note to secure any loan financing the costs of the Project and may transfer the Note to:

(i) any entity controlling, controlled by or under common control with the Master Redeveloper; or

(ii) any entity in which the majority equity interest is owned by the parties that have a majority equity interest in the Master Redeveloper.

Section 9.6 Duration of TIF Notes. Consistent with the duration of the TIF District, the TIF Notes shall be payable over 26 years, commencing August 1 of the year of first receipt of increment, and continuing through February 1 of the year following the 26th year of tax increment collection from the TIF District. ~~The form of the TIF Note in Exhibit J to the Original Redevelopment Agreement is modified to be consistent with this Section (as shown in Attachment B to the Second Amendment).~~

Section 9.7 TIF Bonds. In lieu of TIF Notes, the Master Redeveloper may request the Authority to issue the TIF Bonds in a principal amount that yields net proceeds in the same amount as the original principal amount of TIF Notes described in Section 9.2. Subject to mutual agreement with the Authority regarding underwriting terms, including indemnification of the Authority for any securities law claims and investor representation letters as reasonably specified by the Authority, the Authority will sell TIF Bonds. The Authority will not unreasonably withhold its consent to the underwriting terms; provided, however, the Authority may require reasonable assurances from the Master Redeveloper that during the term of any TIF Bonds no actions will be taken that would reduce the market value of the Minimum Improvements Area that would result in a reduction of adequate Tax Increment available to pay the TIF Bonds. The restrictions contained in this Agreement applicable to TIF Notes, other than those in Section 9.5, shall also apply to TIF Bonds. Nothing in this Section 9.7 will be construed to require the Master Redeveloper to enter into an agreement with the Authority or the City that, in the opinion of bond counsel, would render interest on the TIF Bonds for any portion of the Minimum Improvements owned by the Master Redeveloper at the time of issuance subject to federal and state income tax.

Section 9.8 Conditions Precedent to Issuance of TIF Bonds; Inability to Issue or Sell Bonds.

(a) Notwithstanding anything to the contrary contained herein, the Authority shall have no obligation to issue the TIF Bonds under Section 9.7 hereof unless all of the conditions specified in Section 9.4 are satisfied. The Master Redeveloper, by the execution and delivery of this Agreement, authorizes the Authority to issue the Bonds on its behalf to finance the Qualified Redevelopment Costs.

(b) Notwithstanding anything to the contrary contained in this Agreement, if (i) the City or the Authority is unable to obtain an unqualified approving bond counsel opinion of Dorsey & Whitney LLP or other bond counsel acceptable to the City or the Authority as to the validity of the Bonds or (ii) the City or the Authority does not receive a bid for the purchase of the Bonds, then the Authority shall not have any obligation to issue the Bonds.

Section 9.9 City/Authority Grant Applications. At the Master Redeveloper's discretion, the City and the Authority will cooperate in efforts to obtain available public grant funding to undertake the Project, including but not limited to the Livable Communities Project Assistance program grants from the Metropolitan Council, Tax Base Revitalization Account grants from the Metropolitan Council for pollution remediation, Minnehaha Creek Watershed District grants, Department of Employment and Economic Development funding for pollution remediation, and any other funding from metropolitan, state, county and federal sources identified by the City, the Authority or the Master Redeveloper as reasonably available. To the

extent additional grant funds not reflected in the TIF Pro Forma are obtained, the amount shall first fund any unanticipated costs or revenue shortfalls of the Project then to reduce the principal amount of the TIF Note.

Section 9.10 Conduit Revenue Bonds. The City or the Authority will issue revenue bonds to finance one or more qualified portions of the Minimum Improvements or participate in a joint powers agreement under terms reasonably acceptable to the City or the Authority. The City and the Authority will not charge administrative fees in connection with such conduit bonds, other than reimbursement of City or Authority out-of-pocket costs.

ARTICLE X ENCUMBRANCE OF MINIMUM IMPROVEMENTS AREA

Section 10.1 Encumbrance of the Minimum Improvements Area.

(a) Until the Completion Date of all Blocks of the Minimum Improvements, neither the Master Redeveloper, nor any successor in interest to the Master Redeveloper (which specifically includes any Secondary Redeveloper), will engage in any financing or any other transaction creating any mortgage (a “Mortgage”) or other encumbrance or lien upon the Minimum Improvements Area, or portion thereof, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Minimum Improvements Area except for the purpose of obtaining funds only to the extent necessary for constructing and developing the Minimum Improvements (including, but not limited to, land and building acquisition, labor and materials, professional fees, real estate taxes, construction interest, organization, marketing and other direct or indirect costs of Minimum Improvements, costs of constructing the Minimum Improvements, and an allowance for contingencies).

(b) This restriction on encumbrance shall terminate with respect to any portion of the Minimum Improvements, upon delivery of the Certificate of Completion for such portion of the Minimum Improvements. The Master Redeveloper or any successor in interest to the Minimum Improvements or portion thereof, may sell or engage in financing or any other transaction creating a mortgage or encumbrance or lien on the Minimum Improvements or portion thereof for which a Certificate of Completion has been obtained, without obtaining the prior written approval of the Authority.

Section 10.2 Copy of Notice of Default to Mortgagee. If the Authority delivers any notice or demand to the Master Redeveloper, or any successor in interest to the Master Redeveloper, with respect to any Event of Default under this Agreement, the Authority will use its best efforts to also deliver a copy of such notice or demand to the mortgagee of any Mortgage at the address of such mortgagee provided to the Authority in a written notice from the Master Redeveloper, any successor in interest to the Master Redeveloper or the mortgagee, provided that failure of the Authority to give any such notice shall not limit the Authority’s ability to exercise any of its remedies hereunder.

Section 10.3 Mortgagee’s Option to Cure Events of Default. Upon the occurrence of an Event of Default, the mortgagee under any Mortgage will have the right at its option, to cure

or remedy such Event of Default within the cure periods set forth herein. An individual or entity who acquires title to all or a portion of the Minimum Improvements through the foreclosure of a mortgage or deed in lieu of foreclosure on such portion of the Minimum Improvements Area remains subject to each of the restrictions set forth in this Agreement and remains subject to all of the obligations of the Master Redeveloper, or any successor in interest to the Master Redeveloper, under the terms of this Agreement, but the purchaser at a foreclosure sale or grantee under a deed in lieu of foreclosure shall have no personal liability for a breach of such obligations under this Agreement so long as:

- (a) The party acquiring title through foreclosure or deed in lieu of foreclosure observes all of the restrictions set forth in the Agreement;
- (b) The party who acquired title through foreclosure or deed in lieu of foreclosure does not undertake or permit any other party to undertake any Minimum Improvements on the portion of the Minimum Improvements Area it owns;
- (c) The City has no obligation to approve any plans for Minimum Improvements of a portion of the Minimum Improvements the foreclosing mortgagee (or mortgagee obtaining a deed in lieu of foreclosure) owns or to issue any related building permits.

The purpose of this section is to permit a foreclosing lender (or mortgagee obtaining a deed in lieu of foreclosure) to hold title to the portion of the Minimum Improvements Area it acquires through foreclosure or deed in lieu of foreclosure, subject to, but without personal liability for the obligations under this Agreement, until it can sell the portion it holds to a third party who will assume the obligations of the Master Redeveloper under the terms of this Agreement and proceed with the construction of the Minimum Improvements pursuant to the terms of this Agreement. If, rather than passively holding title to the portion of the Minimum Improvements Area it acquires through foreclosure or deed in lieu of foreclosure, the foreclosing lender (or mortgagee obtaining a deed in lieu of foreclosure) or other purchaser at a foreclosure sale desires to sell portions of the Minimum Improvements Area for construction of the Minimum Improvements, the purchaser at the foreclosure sale (or mortgagee obtaining a deed in lieu of foreclosure) must assume and perform each of the obligations of the Master Redeveloper, or the applicable successor to the interest of the Master Redeveloper, under this Agreement. This section does not restrict the authority of the Authority to pursue its rights under any outstanding security, exercise remedies otherwise available under this Agreement or suspend the performance of the obligations of the Authority or the Master Redeveloper under this Agreement as otherwise allowed. The Authority agrees to reasonably cooperate with any foreclosing lender (or mortgagee obtaining a deed in lieu of foreclosure) or other purchaser at a foreclosure sale in pursuing the Minimum Improvements in accordance with this Agreement, including evaluation of such person as a successor to the rights of the Master Redeveloper hereunder and taking appropriate actions to allow the benefits and rights hereunder to be realized by such person, should the Authority approve such person as a successor in accordance with this Agreement.

Section 10.4 Defaults Under Mortgage. The Master Redeveloper, or its successor or assign, will use its best efforts to obtain an agreement from any mortgagee under a Mortgage that in the event the Master Redeveloper is in default under any Mortgage, the mortgagee will use its best efforts, within ten (10) days after it becomes aware of any such default and prior to

exercising any remedy available to it due to such default, to notify the Authority in writing of (i) the fact of default; (ii) the elements of default; and (iii) the actions required to cure the default. The Master Redeveloper, or its successor or assign, will use its best efforts to obtain an agreement in any such Mortgage, that if, within the time period required by the Mortgage, the Authority cures any default under the Mortgage, the mortgagee will pursue none of its remedies under the Mortgage based on such default.

Section 10.5 Subordination of Agreement. In order to facilitate the obtaining of financing for the construction of the Minimum Improvements, the Authority agrees to subordinate the provisions hereof to the documents executed in connection with any Mortgage securing a Financing Commitment, provided that such subordination shall not deprive the Authority or otherwise limit any of the Authority's remedies which do not create a lien on the Minimum Improvements Area, except for Special Assessments, upon the occurrence of an Event of Default by the Master Redeveloper.

Section 10.6 Unit Mortgages. The provisions of this Article do not apply to loans and mortgages to a purchaser of a unit in a common interest community within the Minimum Improvements.

ARTICLE XI INSURANCE AND CONDEMNATION

Section 11.1 Insurance.

(a) The Master Redeveloper, and any successor in interest to the Master Redeveloper (which specifically includes any Secondary Redeveloper), shall obtain and continuously maintain insurance on the Minimum Improvements and, from time to time at the request of the Authority, furnish proof to the Authority that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Master Redeveloper must obtain and continuously maintain, provided that the Master Redeveloper shall obtain the insurance described in clause (i) below prior to the commencement of construction of the Minimum Improvements (excluding excavation and footings):

(i) Builder's risk insurance, written on the so-called "Builder's Risk—Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the applicable Minimum Improvements Block at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.

(ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's/Contractor's Policy naming the Authority, and the City as an additional insured, with limits against bodily injury and property damage of not less than \$2,500,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis.

(iii) Workers compensation insurance, with statutory coverage.

(b) All insurance required in this Article shall be obtained and continuously maintained in responsible insurance companies selected by the Master Redeveloper or its successors that are authorized under the laws of the State to assume the risks covered by such policies. Unless otherwise provided in this Article, each policy must contain a provision that the insurer will not cancel nor modify the policy without giving written notice to the insured at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Master Redeveloper, or its successor or assign, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Article. In lieu of separate policies, the Master Redeveloper or its successor or assign, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

(c) The Master Redeveloper, its successor or assign, agrees to notify the Authority promptly in the case of damage exceeding \$250,000 in amount to, or destruction of the Minimum Improvements or any portion or Block thereof resulting from fire or other casualty.

Section 11.2 Condemnation. In the event that title to or possession of the Minimum Improvements Area or the Minimum Improvements, or both, or any material part thereof, is threatened with a taking through the exercise of the power of eminent domain, the Master Redeveloper, or its successor or assign, will notify the Authority of the threatened taking with reasonable promptness. The Master Redeveloper, or its successor or assign, will cooperate with the Authority if the Authority elects to assert any interests the Authority may have in the Minimum Improvements Area and the Minimum Improvements in any condemnation action undertaken against the Minimum Improvements Area and the Minimum Improvements.

ARTICLE XII MASTER REDEVELOPER COVENANTS

Section 12.1 Maintenance and Operation of the Minimum Improvements. The Master Redeveloper, and its successors or assigns (which specifically includes any Secondary Redeveloper), will, at all times during the term of this Agreement, maintain and operate the Minimum Improvements (or the applicable portion thereof) in a safe and secure way and in compliance with this Agreement and all federal, State and local laws, regulations, rulings and ordinances applicable thereto. The Master Redeveloper, or its successors or assigns, will pay all of the reasonable and necessary expenses of the operation and maintenance of the Minimum Improvements, including all premiums for insurance insuring against loss or damage thereto and adequate insurance against liability for injury to persons or property arising from the construction of the Minimum Improvements as required pursuant to this Agreement. During construction of the Minimum Improvements, the Master Redeveloper, or its successors or assigns, shall not knowingly cause any person working in or attending the Minimum Improvements for any purpose, or any tenant of the Minimum Improvements, to be exposed to any hazardous or unsafe condition; provided that such party shall not be in Default hereunder if it has required the contractors employed to perform work on the Minimum Improvements to take such precautions

as may be available to protect the persons in and around the Minimum Improvements from hazards arising from the work, and has further required each such contractor to obtain and maintain liability insurance protecting against liability to persons for injury arising from the work. The expenses of operation and maintenance of the Minimum Improvements shall be borne solely by the Master Redeveloper, its successors or assigns.

Section 12.2 Business Subsidy Agreement. The City and the Authority have determined that the financial assistance contemplated by this Agreement is not a “business subsidy” with the meaning of the Minnesota Business Subsidy Act, Minnesota Statutes, Sections 116J.993 through 116J.995 based on the exception contained in Minnesota Statutes, Section 116J.993, subdivision 3(17).

Section 12.3 Parking and Mobility District. The Master Redeveloper agrees to support and participate in the Parking and Mobility District. If the City establishes the Parking and Mobility District as a special service district under Minnesota Statutes § 428A.01 to 428A.101, Master Redeveloper shall file a petition with the City in a form acceptable to the City and hereby consents to the establishment of the Parking and Mobility District by the City. Master Redeveloper waives all rights to objection, appeal and veto granted under law or in equity including but not limited to the rights granted under Chapter 428A, including specifically, but not limited to, the right to object under §428A.02, Subd. 4 (1), the right to appeal establishment of the Parking and Mobility District under §428A.02, Subd. 5 and the right to veto under §428A.09, Subd 1, or the right to object to the ordinance establishing the Parking and Mobility District under §428A.09, Subd. 2. Master Redeveloper waives all rights to object to the validity of the Parking and Mobility District, the inclusion of the Minimum Improvements Area within the Parking and Mobility District, or the procedures used by the City in establishing the Parking and Mobility District. Master Redeveloper hereby releases the City, its officers, agents and employees from any and all liability related to or arising out of the establishment of the Parking and Mobility District. Master Redeveloper shall not sell, assign or otherwise transfer all or any portion of the Minimum Improvements Area to a third party unless such third party agrees in writing to be bound by the terms of this Section. If the City determines not to create the Parking and Mobility District, the Master Redeveloper and the City shall negotiate in good faith on alternative financing options regarding parking and mobility needs within the City. Nothing in this Section 12.3 will be construed as a waiver of Master Redeveloper’s rights it has or may have under Minnesota Statutes, Sections 428A.01 to 428A.101 with respect to the amount of any annual fee imposed within a Parking and Mobility District.

Section 12.4 Parking Illumination and Wayfinding. Prior to the issuance of a certificate of occupancy for any retail or commercial space, following the date of execution of this Agreement, within the Superior Block, the Plaza Block, the West Block, and the East Block, the Master Redevelop will install universal standard blue “P” parking signage on all Master Redeveloper-owned [or Secondary Redeveloper-owned] parking which supports retail or commercial uses within the Superior Block, the Plaza Block, the West Block, and the East Block. Master Redeveloper will install additional wayfinding signage as reasonably required by the City, including but not limited to, real-time signage, as appropriate to direct the public to parking within the Minimum Improvements Area.

Section 12.5 Construction Work Force ~~and~~ Parking. ~~Prior to~~ As of the Effective Date and until issuance of a final certificate of occupancy (inclusive of tenant buildouts) and receipt of a Certificate of Completion for the final Block, the Master Redeveloper shall provide to the City a work force parking and project access plan acceptable to the City. The City is not obligated to issue building permits, certificates of occupancy or Certificates of Completion if such plan, in a form acceptable to the City, is not provided by the Master Redeveloper to the City. Such plan will: (i) be regularly monitored for compliance and updated as required by the City; (ii) minimize the impact of construction parking within the Minimum Improvements Area and surrounding portions of the City; and (iii) include at a minimum (a) monthly estimated work force needed within the Minimum Improvements Area, (b) evidence of sufficient off-site parking locations to accommodate project personnel, (c) copies of notices to contractor and subcontractor personnel outlining the requirements of the plan, (d) consequences for failing to abide with protocols required under the plan, and (e) provide for mandatory fines payable by the Master Redeveloper to the City ~~at the rate of \$500 per day for each failure to comply for each of the first five (5) days and at the rate of \$1,000 per day for each subsequent failures to comply.~~

Section 12.6 Access During Construction of City Ramp. The City may elect to construct one or more structured parking facilities within the Parking and Mobility District. During such construction and after issuance of a certificate of occupancy for the West Block, Master Redeveloper will allow the City to direct parkers who would otherwise utilize City-controlled parking facilities to parking within the Minimum Improvements Area so long as such parking does not have a materially negative impact on the parking required for the existing retail and commercial uses within the Minimum Improvements Area. During the construction period, the City and the Master Redeveloper will work in good faith to create a permit system which includes enforcement procedures.

ARTICLE XIII TRANSFER LIMITATIONS AND INDEMNIFICATION

Section 13.1 Representation as to the Minimum Improvements. The Master Redeveloper represents to the City and the Authority that its purchase of the Minimum Improvements Area, and its other undertakings under this Agreement, are for the purpose of developing the Minimum Improvements and not for the purpose of speculation in land holding. The Master Redeveloper acknowledges that, in view of the importance of the Minimum Improvements to the general welfare of the City and the Authority, and the substantial financing and other public aids that have been made available by the City and the Authority for the purpose of making such Minimum Improvements possible, the qualifications and identity of the Master Redeveloper are of particular concern to the Authority. The Master Redeveloper further acknowledges that the City and the Authority are willing to enter into this Agreement with the Master Redeveloper because of the qualifications and identity of the Master Redeveloper.

Section 13.2 Secondary Redevelopers. The Master Redeveloper may designate a separate entity (each a "Secondary Redeveloper") to undertake any Block of the Minimum Improvements. If the Master Redeveloper seeks to be relieved of all its obligations related to the subject Block, the Master Redeveloper shall obtain the consent of the City and the Authority to the designation of any Secondary Redeveloper prior to the earlier of (i) closing on the transfer of any interest in the relevant Block to the Secondary Redeveloper; or (ii) Commencement of

construction of the relevant Block. Consent from the City and the Authority will not be unreasonably withheld. If the Master Redeveloper remains obligated related to the subject Block, no prior Authority consent is required for any assignment to a Secondary Redeveloper.

Section 13.3 Limitations on Transfer. Until the issuance of a Certificate of Completion for a Block:

- (a) The Master Redeveloper will not sell, assign, convey, lease or transfer in any other mode or manner any of its right, title, and interest in and to this Agreement, the Minimum Improvements Area or the Minimum Improvements for the relevant Block, without the express written approval of the Authority, provided that the consent of the Authority shall not be required for any of the following:
 - (i) assignment of its Minimum Improvements rights to any entity controlled by Presbyterian Homes and Services;
 - (ii) granting of a mortgage or other security interests in the Minimum Improvements as provided in Article X hereof;
 - (iii) The sale of units within a common interest community; and
 - (iv) leasing the Minimum Improvements in the normal course of business in a manner consistent with the General Plan Approval, Final Plans, and the PUD Agreement.
- (b) As a condition to approval by the City and the Authority of the transfer of any Block to a Secondary Redeveloper (where required), the Master Redeveloper shall satisfy the following conditions, if required by the Authority. The Authority shall be entitled to require, as conditions to approval of any sale, assignment, conveyance, use or transfer of any rights, title, and interest in and to this Agreement, the Minimum Improvements Area or the Minimum Improvements that:
 - (i) Any proposed transferee shall not be exempt from the payment of real estate taxes and shall have the qualifications and financial responsibility, as determined by the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Master Redeveloper;
 - (ii) Any proposed transferee, by instrument in writing satisfactory to the Authority and in form recordable among the land records shall, for itself and its successors and assigns, and expressly for the benefit of the Authority have expressly assumed all of the obligations of the Master Redeveloper (or such part thereof as is appropriate for one particular Minimum Improvements Block) under this Agreement and agree to be subject to all the conditions and restrictions to which the Master Redeveloper is subject;

- (iii) The Master Redeveloper must submit all instruments and other legal documents involved in effecting transfer to the Authority for review and written approval, which shall not be unreasonably withheld;
- (iv) The Master Redeveloper and its transferee must comply with such other conditions as the Authority may find desirable in order to achieve and safeguard the purposes of the HRA and TIF Acts, this Agreement, and the Project; and
- (v) The transferee must demonstrate, in a manner satisfactory to the City and the Authority, its ability to perform all assumed obligations in this Agreement.

In the absence of specific written agreement by the City and the Authority to the contrary, no such transfer or approval by the City and the Authority thereof shall be deemed to relieve the Master Redeveloper or any other party bound in any way by this Agreement or otherwise with respect to its obligations under this Agreement.

Section 13.4 Indemnification.

- (a) The Master Redeveloper releases and covenants and agrees that the City Parties shall not be liable for and agree, jointly and severally, to indemnify and hold harmless the City Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements and Public Infrastructure Improvements constructed by the Master Redeveloper to the extent not attributable to the negligence of the City Parties.
- (b) Except for negligence of the City Parties, the Master Redeveloper agrees to indemnify the City Parties, now and forever, and further agrees to hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Master Redeveloper (or if other persons acting on their behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Minimum Improvements and Public Infrastructure Improvements constructed by the Master Redeveloper; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the Authority in this Agreement, and further provided that Redeveloper's obligation regarding any claim regarding the TIF District brought under Minnesota Statutes, Section 469.1771, is limited to that described in Section 6.2(b) hereof.

Section 13.5 Limitation. All covenants, stipulations, promises, agreements and obligations of the City, the Authority or the Master Redeveloper contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City, the Authority and the Master Redeveloper, and not of any governing body member, officer, agent, servant or employee of the City, the Authority or the Master Redeveloper in the individual capacity thereof.

ARTICLE XIV EVENTS OF DEFAULT AND REMEDIES

Section 14.1 Events of Default Defined. Subject to applicable cure periods, “Events of Default” under this Agreement include any one or more of the events listed in Sections 14.2 and 14.3.

Section 14.2 Master Redeveloper Events of Default. The following shall be Events of Default for the Master Redeveloper:

- (a) the Master Redeveloper fails to close on the acquisition of the Minimum Improvements Area in accordance with the Minimum Improvements Timeline;
- (b) subject to Unavoidable Delays and Cure Rights, the Master Redeveloper fails to achieve Commencement and Completion of any Block of the Minimum Improvements in accordance with the Minimum Improvements Timeline, and such failure is not cured within 30 days after written notice to do so;
- (c) subject to Unavoidable Delays and Cure Rights, the Master Redeveloper shall Default in or violate its obligations with respect to the construction of any Block of the Minimum Improvements (including the nature and the date for the completion thereof), or shall abandon or substantially suspend construction work, and any such Default, violation, abandonment or suspension is not cured, ended or remedied within 30 days after written demand by the Authority so to do;
- (d) there is, in violation of this Agreement, any conveyance, encumbrance or other transfer of the Minimum Improvements Area or any part thereof, and such violation is not cured within 30 days after written demand by the Authority to the Master Redeveloper;
- (e) subject to Cure Rights, failure by the Master Redeveloper to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, and the continuation of such failure for a period of thirty (30) days after written notice of such failure from any party hereto;
- (f) prior to the delivery of a Certificate of Completion with respect to any Block of the Minimum Improvements owned by the Master Redeveloper, the Master Redeveloper shall (i) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or State law; or (ii) make an assignment for the benefit of its creditors; or (iii) become insolvent or adjudicated a bankrupt; or if a petition or answer proposing the adjudication of Master Redeveloper, as a bankrupt or its reorganization under any present or future Federal bankruptcy act or any similar Federal or State law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of Master Redeveloper, or of the Minimum Improvements, or part thereof, shall be appointed in any proceeding brought against Master Redeveloper, and shall not be discharged within ninety (90) days after

such appointed, or if Master Redeveloper shall consent to or acquiesce in such appointment.

Section 14.3 City and Authority Events of Default. Subject to Unavoidable Delays, the failure of the City or the Authority to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, and the continuation of such failure for a period of thirty (30) days after written notice of such failure from any party hereto shall be an Event of Default for the City or the Authority.

Section 14.4 Cure Rights. Notwithstanding the foregoing, if the Default reasonably requires more than thirty (30) days to cure, such Default shall not constitute an Event of Default, provided that the curing of the Default is promptly commenced upon receipt by the defaulting party of the notice of the Default, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that the defaulting party keeps the non-defaulting party well informed at all times of its progress in curing the Default; provided in no event shall such additional cure period extend beyond 180 days.

Section 14.5 Authority Remedies on Master Redeveloper Events of Default. Whenever any Event of Default occurs by the Master Redeveloper, the Authority may take any one or more of the following actions:

- (a) terminate this Agreement, but not the TIF Note, as regards that Block of the Project, except as otherwise provided herein;
- (b) exercise its rights under Section 9.3 of this Agreement regarding the Master Redeveloper's TIF eligibility;
- (c) suspend performance under this Agreement until it receives assurances from the Master Redeveloper, deemed adequate by the Authority, that the Master Redeveloper will cure the Default and continue its performance under this Agreement, withhold the Certificate of Completion for any Block of the Minimum Improvements not yet delivered, and take whatever action at law or in equity may appear necessary or desirable to the Authority to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the Master Redeveloper under this Agreement; and
- (d) the Authority shall have all remedies normally available at law and in equity to enforce performance of this Agreement including a right to specific performance. Any action for specific performance must be commenced within six months of the Event of Default.

Section 14.6 City Remedies on Master Redeveloper Events of Default. Whenever any Event of Default occurs by the Master Redeveloper, the City may suspend performance of its obligations under this Agreement and take whatever action at law or in equity may appear necessary or desirable to the City to enforce performance and observance of any obligation, agreement, or covenant of the Master Redeveloper under this Agreement, including an action for

specific performance. Any action for specific performance must be commenced within six months of the Event of Default.

Section 14.7 Master Redeveloper Remedies on City or Authority Events of Default.

Whenever any Event of Default occurs by the City or the Authority, the Master Redeveloper, may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the City or the Authority under this Agreement, including an action for specific performance. Any action for specific performance must be commenced within six months of the Event of Default.

Section 14.8 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City, the Authority or the Master Redeveloper is intended to be exclusive of any other available remedy or remedies unless otherwise expressly stated, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article XIV.

Section 14.9 No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement should be breached by any party and thereafter waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 14.10 Reimbursement of Attorneys' Fees. In the event of any enforcement action hereunder following an Event of Default, the prevailing party, in addition to other relief, shall be entitled to an award of attorney's fees and costs.

ARTICLE XV ADDITIONAL PROVISIONS

Section 15.1 Conflicts of Interest. No member of the Board or other official of the Authority shall have any financial interest, direct or indirect, in this Agreement, the TIF Project Area or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City or the Authority shall be personally liable to the City or the Authority in the event of any Default or breach by Master Redeveloper or successor or on any obligations under the terms of this Agreement.

Section 15.2 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 15.3 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any 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 in the case of the Master Redeveloper, is addressed to or delivered personally to the Master Redeveloper at:

Chief Financial Officer
Presbyterian Homes
2845 Hamline Avenue, North
Roseville, MN 55113

with a copy to: Office of Corporate Counsel
Presbyterian Homes
2845 Hamline Avenue, North
Roseville, MN 55113

In the case of the Authority, is addressed to or delivered personally to the Authority at:

Wayzata HRA
Attention: Executive Director
600 Rice Street
Wayzata, MN 55391-1799

with a copy to: Jay R. Lindgren
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402

and Robert Meller
Best & Flanagan
225 South Sixth Street, Suite 4000
Minneapolis, MN 55402-4690

In the case of the City, is addressed to or delivered personally to the City at:

City of Wayzata
Attention: City Manager
600 Rice Street
Wayzata, MN 55391-1799

with a copy to: Jay R. Lindgren
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402

and Robert Meller
Best & Flanagan
225 South Sixth Street, Suite 4000
Minneapolis, MN 55402-4690

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other, as provided in this section.

Section 15.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 15.5 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 15.6 Legal Opinions. Upon execution of this Agreement, each party shall, upon request of the other parties, supply the other parties with an opinion of its legal counsel to the effect that this Agreement is legally issued or executed by, and valid and binding upon, such party, and enforceable in accordance with its terms.

Section 15.7 Consents and Approvals. In all cases where consents or approvals are required hereunder, such consents or approvals shall not be unreasonably conditioned, delayed or withheld. All consents or approvals shall be in writing in order to be effective.

Section 15.8 Representatives. Except as otherwise provided herein, all approvals and other actions required of or taken by the Authority shall be effective upon action by the Authority Representative. All actions required of or taken by the Master Redeveloper shall be effective upon action by a duly authorized officer of its general partner.

Section 15.9 Superseding Effect. This Agreement reflects the entire agreement of the parties with respect to the items covered by this Agreement, and supersedes in all respects all prior agreements of the parties, whether written or otherwise, with respect to the items covered by this Agreement.

Section 15.10 Relationship of Parties. Nothing in this Agreement is intended, or shall be construed, to create a partnership or joint venture among or between the parties hereto, and the rights and remedies of the parties hereto shall be strictly as set forth in this Agreement.

Section 15.11 Term. The term of this Agreement shall be effective from the day and year first above written until the earlier of (a) the date this Agreement is terminated, (b) payment in full of the TIF Note or TIF Bonds, or (c) date of termination of the TIF District.

Section 15.12 Provisions Surviving Rescission or Expiration. Sections 4.10, 5.3, and 13.4 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

Section 15.13 Memorandum of Agreement. Neither party shall cause this Agreement to be recorded or filed in the real estate records of Hennepin County. However, either party may, at its option, cause a Memorandum of Agreement to be so recorded or filed in the form attached hereto as Exhibit M, and hereby incorporated herein by reference. At the time of execution of this Agreement the parties hereto will also execute and acknowledge the Memorandum of Agreement. The parties hereto acknowledge that as of the date hereof, the Master Redeveloper is not the fee owner of the Minimum Improvements Area. At such time as the Master Redeveloper

owns fee title to all or any portion of the Minimum Improvements Area, either party may, at its option, cause the Memorandum to be recorded against the Minimum Improvements Area and shall record such Memorandum of Agreement in the office of the County Recorder and/or Registrar of Titles in and for Hennepin County, Minnesota, as the case may be.

Section 15.14 Conflicts Between this Agreement and the PUD Agreement. In the event of any inconsistency or conflict between the requirements of this Agreement and the PUD Agreement, the provisions of the PUD Agreement shall control; provided, however, that for the purposes of Section 9.3 of this Agreement regarding Defaults that authorize the Authority to withhold payments on any TIF Assistance, this Agreement controls. Except with respect for such inconsistent provisions, neither agreement is intended to amend or supersede the other agreement.

IN WITNESS WHEREOF, the City, the Authority and the Master Redeveloper have caused this Agreement to be duly executed in their names and on their behalf, all on or as of the date first above written.

**CITY OF WAYZATA,
MINNESOTA**

By _____
Its Mayor

By _____
Its City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200_,
by ~~Andrew Humphrey~~Kenneth Willcox and ~~Allan Orsen~~Heidi Nelson the Mayor and City
Manager respectively, of the City of Wayzata, Minnesota, on behalf of the City of Wayzata.

Notary Public

**HOUSING AND REDEVELOPMENT
AUTHORITY OF THE CITY OF
WAYZATA, MINNESOTA**

By _____
Its Chair

By _____
Its Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200_,
by Thomas Shaver and ~~Allan Orsen~~Heidi Nelson the Chair and Executive Director respectively,
of the Housing and Redevelopment Authority of the City of Wayzata, Minnesota, on behalf of
said Authority.

Notary Public

WAYZATA BAY REDEVELOPMENT
COMPANY, LLC
a Minnesota limited liability company

By _____
Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by
_____, the _____ of Wayzata Bay Redevelopment Company, LLC, a
Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

EXHIBIT A

TIF PROJECT AREA MAP

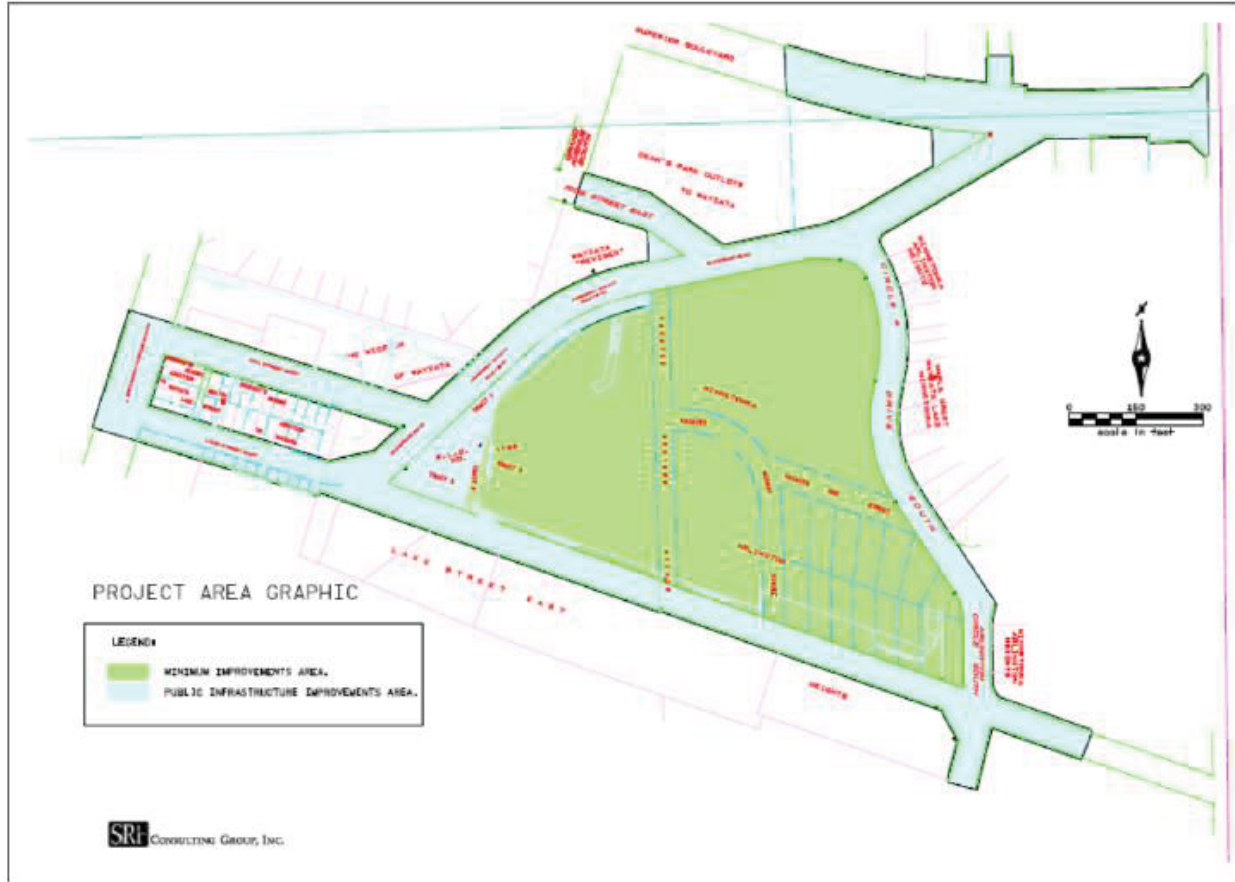
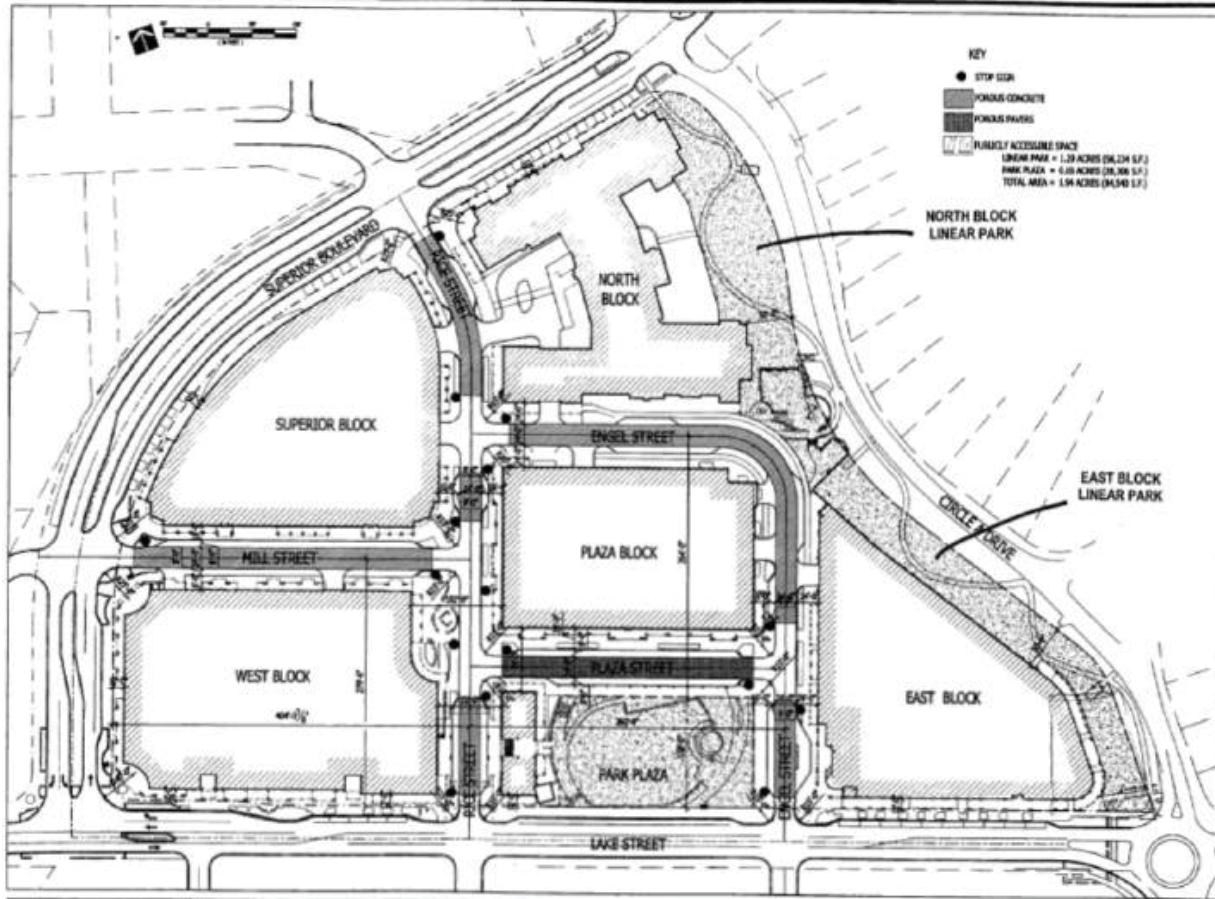


EXHIBIT B MINIMUM IMPROVEMENTS SITE PLAN



B- 1

4849-1338-1925FalseFalse

EXHIBIT B-1

LEGAL DESCRIPTION OF MINIMUM IMPROVEMENTS AREA

Par 1: Tracts D and G, Registered Land Survey No. 1168, Hennepin County, Minnesota, except that part of Tract D depicted as the “New Superior Boulevard Parcel” on Exhibit D attached hereto.

Par 2: That part of the tract of land in the plat of Wayzata lying Northwesternly of the Northwesternly line of Registered Land Survey No. 1168, Hennepin County, Minnesota and Southeasterly of the following described line: Commencing at the most Northerly corner of Tract H, said Registered Land Survey No. 1168, thence South 30 degrees 58 minutes West along the Northwesternly line of said Registered Land Survey No. 1168 a distance of 377.58 feet; thence South 59 degrees 02 minutes West along the Northwesternly line of said Registered Land Survey No. 1168 a distance of 157.99 feet to the actual point of beginning of the line being described; thence North 30 degrees 04 minutes 30 seconds East a distance of 177.54 feet; thence along a tangential curve to the right having a radius of 572.96 feet to its intersection with the Northwesternly line of said Registered Land Survey No. 1168 and there ending, except that part lying Northerly and Westerly of the Southeasterly line of Superior Boulevard as relocated, which relocation is contemplated in this Agreement.

Par 3: Block 51;

Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, Block 53, “Minnetonka Arlington Heights”; That part of Midway Circle, now vacated, lying between extensions across it of the North and South lines of said Block 53 and that further part thereof lying South and West of the centerline of said street lying between the extension across it of said North line of said Block 53 and the West line of said plat;

That part of Western Avenue as shown upon said plat lying between the extensions across it of the centerline of said Midway circle and the Northeasterly line of Block 65 said Addition.

Par 4: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, Block 50; All of vacated Oak Street lying between a line drawn parallel with and 60 feet Southwesterly from the Southwesterly line of Block 52 and a line drawn parallel with and 50 feet Northeasterly from the Northeasterly line of Block 51;

That part of Midway Circle lying Northeasterly of the center line of Midway Circle and between the Southerly extension across it of the West line of Block 50 and the Westerly extension across it of the Northerly line of Block 53;

That part of Western Avenue lying East of the West line of “Minnetonka Arlington Heights” and between the Westerly extensions across it of the Northerly line of Block 50 and the center line of vacated Midway Circle,

All in “Minnetonka Arlington Heights”.

Par 5: Lot 1, Block 53, “Minnetonka Arlington Heights.”

Par 6: That part of Tract F, Registered Land Survey No. 1168, Hennepin County, Minnesota,

depicted as the “DNR Project Area Parcel” on Exhibit D attached.

EXHIBIT C

PUBLIC INFRASTRUCTURE IMPROVEMENTS SITE PLAN



EXHIBIT D

LAND TRANSFER MAP



EXHIBIT E

WETLAND MITIGATION PARCEL MAP

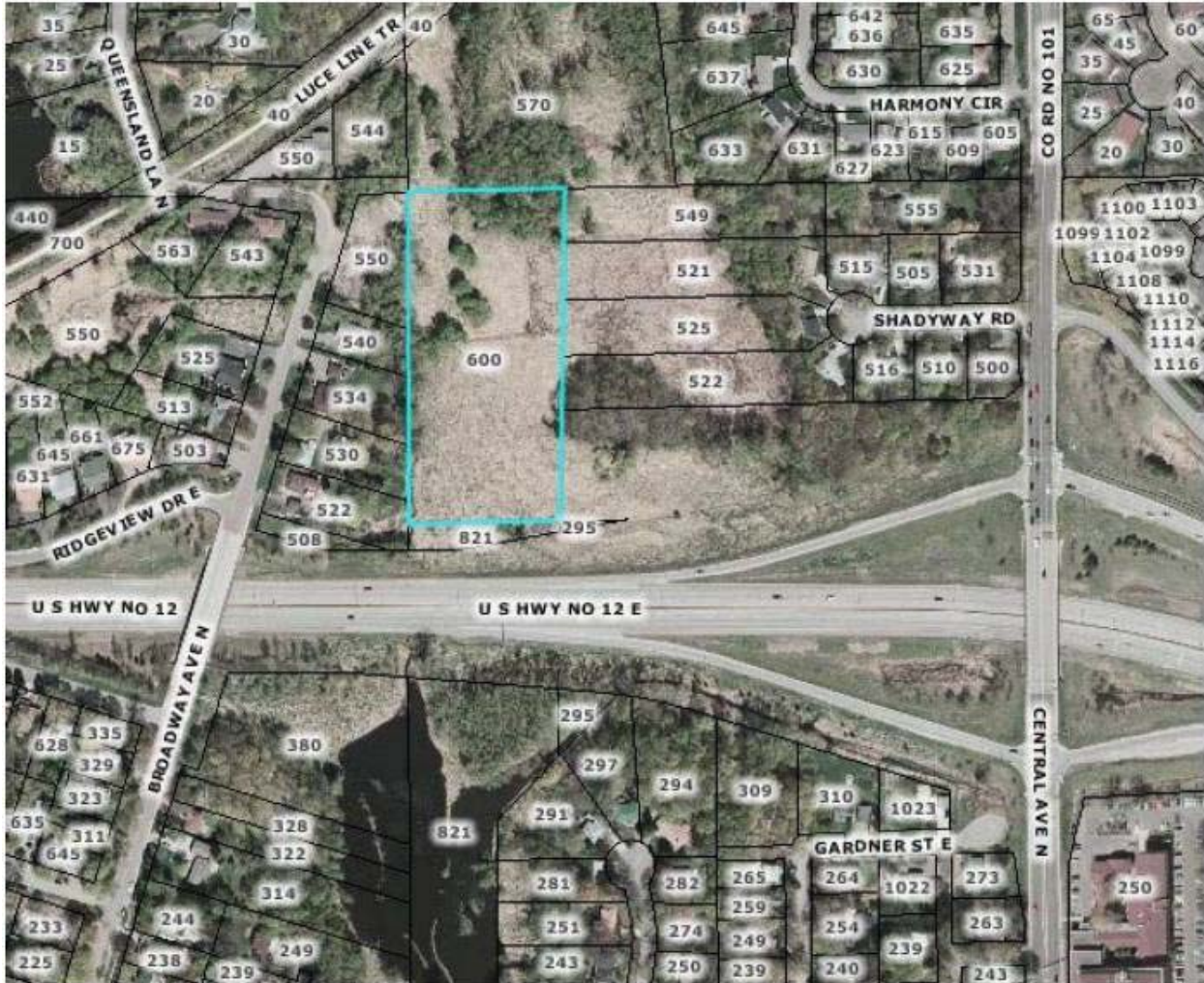


EXHIBIT F
QUITCLAIM DEED

Data: _____, 2008

FOR VALUABLE CONSIDERATION, _____, a
_____, ("Grantor"), hereby conveys and quitclaims to
_____, a _____,
("Grantee"), real property in Hennepin County, Minnesota described as follows:

together with all hereditaments and appurtenances belonging thereto, subject to general
easements and encumbrances of record.

Dated:

GRANTOR

[_____]

By _____

Its [_____]

By _____

Its [_____]

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008,
by _____ and _____, the _____ and _____, respectively, of
_____, a _____, on behalf of Grantor.

Notary Public

Check here if all or part of the land is
Registered (Torrens) ____

This Instrument Was Drafted By: Dorsey & Whitney LLP (JRL/ SRP BTC) Suite 1500 50 South Sixth Street Minneapolis, MN 55402	Tax Statements for the real property described in this instrument should be sent to: Wayzata Bay Redevelopment Company, LLC 2845 Hamline Avenue, North Roseville, MN 55113
---	--

EXHIBIT G
EASEMENT AND MAINTENANCE AGREEMENT
between
THE CITY OF WAYZATA
and
WAYZATA BAY REDEVELOPMENT COMPANY, LLC
for construction, maintenance and use of
PUBLIC ACCESS AREAS

THIS AGREEMENT, made as of this ____ day of _____, 20__, by and between the CITY OF WAYZATA, a Minnesota municipal corporation (hereinafter the “City”) and WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company (hereinafter the “Master Redeveloper”).

W I T N E S S E T H:

WHEREAS, the Wayzata Housing and Redevelopment Authority (the “Authority”), the City, and the Master Redeveloper have entered into a Master Redevelopment Agreement (the “Contract”) dated _____, 2008, a memorandum of which will be recorded in the real estate records of Hennepin County, Minnesota; and

WHEREAS, the capitalized terms used, but not defined in the of this Agreement have the meanings given in the Contract; and

WHEREAS, the Contract is intended to provide for the construction of the Minimum Improvements by the Master Redeveloper in the Minimum Improvements Area in coordination with the Authority and with the cooperation and assistance of the City; and

WHEREAS, the Contract provides for the expenditure of public funds for the Minimum Improvements to assist in the redevelopment of the Minimum Improvements Area; and

WHEREAS, the Master Redeveloper has agreed under the Contract to build certain Public Access Areas in connection with the Minimum Improvements on land to which an easement will be granted to the City by the Master Redeveloper pursuant to the Contract; and

WHEREAS, the Master Redeveloper has agreed to operate, manage, and maintain the Public Access Improvements pursuant to the Contract; and

WHEREAS, the City and the Master Redeveloper deem it to be in their vital interest and in the best interest of the City, the Authority and the State of Minnesota and in furtherance of the economic development and redevelopment plan for the Minimum Improvements Area to enter

into this Easement and Maintenance Agreement (hereinafter this “Agreement”) with the Master Redeveloper with respect to those portions of the Minimum Improvements Area on which the Public Access Improvements will be constructed;

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

GRANT OF EASEMENT

Section 1.1. Easement Premises - Subject to Section 2.1, the Master Redeveloper hereby grants and conveys to the City a non-exclusive easement (the “Easement”) over and across those portions of the real property described on Exhibit A, which are situated in the City of Wayzata, County of Hennepin, State of Minnesota (the “Easement Premises”) and which are designed, constructed or otherwise intended and reserved for use as roadways, streets, streetscape improvements, curbs and gutters, sanitary sewer lines, water lines, public and private utility improvements, and related improvements, as further described on the attached Exhibit B (“Public Access Improvements”). The Easement Premises must contain at least __ public parking spaces.

Section 1.2. Easement Purpose - The Easement is granted for the purpose of use and maintenance of Public Access Improvements, together with all appurtenances thereto and means of access from and to public rights of way and easements shown in the Final Plans or constructed by Master Redeveloper; and include, but are not limited to, any and all parking, sidewalks, streets, alleys, or public spaces immediately adjoining or contiguous to the Easement Premises and all easements appurtenant and/or used in connection with the Public Access Improvements. An additional purpose of this Easement will be to allow the City, and its employees and contractors, to inspect the Public Access Improvements, and to the extent provided herein, maintain and repair the Public Access Improvements.

Section 1.3. Releases and Reservations

(a) The Master Redeveloper reserves in, over, under, above, across and upon the Easement Premises the right to use the Easement Premises for any and all uses and purposes provided that such use does not obstruct or materially interfere with the intended purpose of the Easement, including without limitation:

- (i) the right of support for the Minimum Improvements;
- (ii) the right to build upon the Public Access Improvements;
- (iii) the right of access for ingress and egress through the Easement Premises;
- (iv) the right to bring utilities, materials, and other facilities through the Easement Premises;

(v) the right to grant easements in, over, under and across the Easement Premises for the purpose of installation, use and operation of utilities;

(vi) the right to perform all construction, maintenance, and repair of the Public Access Improvements.

(vii) the right during special events or festivals to have temporary sales displays, public seating and entertainment stages in the Easement Premises, provided that such special events or festivals may not last more than seventy-two (72) hours (not including reasonably necessary set up and break down time for the events or festivals) and may not occur more than eight (8) times each year, without prior consent of, but with prior notice to, the City.

(b) The Master Redeveloper must repair any damage caused to the Public Access Improvements due to construction of the Minimum Improvements and minimize the extent and duration of any interference with the easements rights granted herein.

(c) Upon request by the Master Redeveloper, the City must execute and deliver instruments to evidence the Master Redeveloper's reservation of rights under section (a), however execution of such instruments is not necessary to effect the reservations in this Section.

(d) All provisions in this Section 1.3 are subject to the terms of the Contract, the Final Plans, the PUD Agreement and the City Code with regard to public rights-of-way, including the requirements to obtain encroachment permits, obstruction permits or other City approvals to do work in or to public rights-of-way.

Section 1.4. Traffic Regulations and Enforcement - All vehicular and pedestrian traffic on the roadways shall be subject to applicable local, state and federal laws. The City shall have the right to regulate and enforce any and all traffic violations on the roadways.

ARTICLE II

TERM

Section 2.1. Term – The Easement will become effective upon issuance of a certificate of occupancy for a given Block. The Easement will be perpetual.

ARTICLE III

UTILITIES

Section 3.1. Utility Charges - The Master Redeveloper will pay, or cause to be paid, when the same become due, all charges for water, sewer usage, gas, electricity, power, heat,

telephone, or other communications service and any and all other utility or similar services used, rendered, supplied, or consumed in, upon, at, from, or in connection with the Easement Premises, or any part thereof.

ARTICLE IV

TAXES AND ASSESSMENTS

Section 4.1. Payment of Taxes and Assessments - The Master Redeveloper must pay, or cause to be paid, before becoming delinquent, all real estate taxes, charges, assessments, and levies, assessed and levied by any governmental taxing authority against the Easement Premises. Nothing contained in this Agreement requires the Master Redeveloper to pay any franchise, estate, inheritance, excise, succession, capital levy, or transfer tax of the City or any income, excess profits or revenue tax payable by the City under this Agreement. The Master Redeveloper has the right and option, at any time but solely at the Master Redeveloper's expense, to pay any real estate taxes or assessments in installments or under protest or in a similar manner, or to contest the levy or amount of the same in appropriate legal or administrative proceedings.

ARTICLE V

USE OF EASEMENT PREMISES

Section 5.1. Construction of Public Access Improvements - In accordance with the provisions of the Contract and this Agreement, the Master Redeveloper must build, construct, modify, alter, or reconstruct on the Easement Premises, the Public Access Improvements. The size, location, and design of the Public Access Improvements must be approved in the Final Plans. The Master Redeveloper will be the owner of the Public Access Improvements. It is understood that the Master Redeveloper may make such other improvements as it deems appropriate or desirable upon those portions of the underlying real estate described in Exhibit A hereto that are not occupied by Public Access Improvements.

Section 5.2. Liens - The Master Redeveloper will not permit any mechanic's or materialmen's liens to stand against the Easement Premises on account of improvements authorized by the Master Redeveloper, provided, however, that the Master Redeveloper may in good faith and at its expense contest any such lien in which event such lien may remain undischarged and unsatisfied during the contest and any appeal, provided the Master Redeveloper file a bond or deposit cash or other reasonable security in the amount of such lien with the court or with a mortgagee of the Easement Premises or with the City to secure the payment of such lien if finally determined to be valid.

Section 5.3. Legal and Regulatory Compliance; Control of Premises - The Master Redeveloper must operate and maintain the Public Access Improvements on the Easement Premises for public access and other related or incidental purposes and in accordance with all applicable governmental laws, ordinances, regulations and orders pertaining to Public Access Improvements generally from time to time. Subject only to the express provisions of this Agreement, the PUD Agreement, the Final Plans and the Contract, the Master Redeveloper will

have full authority and control over the management, operation, and use of the Easement Premises.

Section 5.4. No Fees – The Easement Premises must be open to the public without charge or fee without consent of the City; provided that fees or charges may be charged for special events and festivals under Section 1.3(b)(vii) above.

Section 5.5. Contractors - The Master Redeveloper may engage such employees, agents, or independent contractors as it may deem advisable to conduct the management, repair, maintenance, and operation of the Easement Premises from time to time. Master Redeveloper may make all decisions and execute all agreements, in its sole discretion, with respect to the Public Access Improvements so long as operation of the Public Access Improvements does not violate any provisions in the Contract.

Section 5.6. No Waste or Damage - Neither the City nor the Master Redeveloper may knowingly or willfully commit or suffer to be committed any waste or damage in or upon the Easement Premises, or any disfigurement or injury to any Public Access Improvements. The Master Redeveloper in its use and occupancy of the Easement Premises, may not knowingly and willfully commit or suffer to be committed any act or thing which constitutes a nuisance or interferes with the public use and enjoyment of the Public Access Improvements. Usual and normal wear and tear, damage by the elements, unavoidable casualty or depreciation and diminution over time will not be considered “waste,” “nuisance,” “damage,” “disfigurement,” or “injury.”

ARTICLE VI

INDEMNIFICATION, INSURANCE

Section 6.1. Property Insurance - The Master Redeveloper, at its sole cost and expense, must keep all Public Access Improvements, and all alterations, extensions, and improvements thereto and replacements thereof, insured against loss or damage by fire and against those casualties covered by extended coverage insurance and against vandalism and malicious mischief and against such other risks, of a similar or dissimilar nature, as are customarily covered with respect to buildings and improvements similar in construction, general location, use, and occupancy to the Public Access Improvements. Such policy of insurance will affirmatively include the full replacement cost measure of recovery.

Section 6.2. Personal Property - All property of every kind and character which the Master Redeveloper may keep or store in, at, upon, or about the Easement Premises will be kept and stored at the sole risk, cost, and expense of the Master Redeveloper.

Section 6.3. Indemnification of the City -

- (a) The Master Redeveloper releases and covenants and agrees that the City shall not be liable for and agree to indemnify and hold harmless the City Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Public Access

Improvements constructed by the Master Redeveloper to the extent not attributable to the negligence of the City Parties.

(b) Except for negligence of the City Parties, the Master Redeveloper agrees to indemnify the City Parties, now and forever, and further agrees to hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Master Redeveloper (or if other persons acting on their behalf or under its direction or control) under the Contract or the transactions contemplated thereby or the acquisition, construction, installation, ownership and operation of the Public Access Improvements constructed by the Master Redeveloper.

(c) The City in no way waives its right to statutory liability caps under Minnesota Statutes, Section 466.04, as amended. The Master Redeveloper's liability to the City equals, but does not exceed, the City's statutory liability limits under Minnesota Statutes, Section 466.04, as amended.

(d) This provision will survive termination of this Agreement.

Section 6.4. Liability Insurance - The Master Redeveloper, and any successor in interest to the Master Redeveloper (which specifically includes any Secondary Redeveloper), shall obtain and continuously maintain insurance on the Public Access Improvements and, from time to time at the request of the Authority, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The Master Redeveloper must procure and maintain continuously in effect (or cause the same to occur), policies of insurance of the kind and minimum amounts as are customarily maintained with respect to Public Access Improvements and, to be reviewed from time to time by the parties, such policies must meet the minimum requirements set forth in Minnesota Statutes Section 466.04, as amended, and must further include the following:

(a) Insurance against liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Public Access Improvements. Such insurance must provide that the City is an additional insured.

(b) To the extent reasonably available, insurance coverage with respect to the indemnification expressed in Section 6.3 hereof.

Section 6.5. General Insurance Requirement - All insurance required in this Agreement must be placed with financially sound and reputable insurers licensed to transact business in the State of Minnesota. The Master Redeveloper must furnish to the City policies evidencing all such insurance or a certificate or certificates of the respective insurers stating that such insurance is in force and effect. Each policy of insurance herein required must contain a provision that the insurer may not cancel it without giving written notice to the City at least thirty (30) days before the cancellation becomes effective. All policies or certificates of insurance will be approved

reasonably as to form and content by the City. The insurance coverage herein required may be provided by a blanket insurance policy or policies.

Section 6.6. No Insurance Obligation of City - At no time and under no circumstances will the City be required to take out, maintain in force and effect, or pay for any type of insurance coverage with reference to the protection of and/or ownership of and/or occupancy of and/or a suit relating to the Easement Premises and/or any improvements hereafter located thereon.

ARTICLE VII

ASSIGNMENT, SUBORDINATION

Section 7.1. Assignment by the City - The City may not assign or transfer its interest under this Agreement without the prior written consent of the Master Redeveloper.

Section 7.2. Assignment by Master Redeveloper - The Master Redeveloper may not assign or otherwise transfer its interest under this Agreement, except (i) as provided in the Contract, (ii) to whomever becomes an assignee of the Master Redeveloper under the Contract, (iii) to any lender holding a mortgage on or interest in the Easement Premises, and (iv) assignment of the Master Redeveloper's maintenance obligation to extent permitted in Section 8.2 herein. The City will recognize and accept any successors or assigns of Master Redeveloper.

ARTICLE VIII

MAINTENANCE OF THE EASEMENT PREMISES

Section 8.1. Maintenance - The Master Redeveloper, at its cost and expense, must keep and maintain all of the Easement Premises in good condition and repair. It is distinctly understood that the preceding does not require maintenance and/or repair of the Easement Premises and/or improvements hereinafter erected thereon in perfect condition or is a condition equal to new at all times, but the Master Redeveloper must keep and maintain the same in such condition as to minimize, so far as is practicable, by reasonable care, maintenance, replacement, and repair, the effects of use, decay, injury, and destruction of the Easement Premises or any part thereof, the City recognizing that depreciation and diminution by reason of age, use, and environmental factors is unavoidable and expected. However, notwithstanding anything herein to the contrary, it shall be the obligation of the Master Redeveloper to maintain, repair and operate the Public Access Improvements in a condition which is safe, operational and in accordance with all government agreements.

Section 8.2. Assignment of Maintenance Obligations - The Master Redeveloper may assign its maintenance obligations under Section 8.1 to a third party, including an association of property owners, provided that (i) such third party is determined to have financial resources adequate to fund the Master Redeveloper's obligations under this Agreement, and (ii) such third party and the City have entered into a signed agreement requiring the third party to be bound by the terms of this Agreement, in which event the Master Redeveloper will be released from further liability with respect to such assigned obligations.

Section 8.3. No Obligation of the City to Repair or Maintain - The City will have no obligation of any kind, expressed or implied, to repair, rebuild, restore, reconstruct, modify, alter, replace, or maintain the Easement Premises or any part thereof.

Section 8.4. Entry by City -The City may, after notice and opportunity to cure, enter onto the Easement Premises to repair and maintain the Public Access Improvements within the Easement Premises if the City determines, in its sole discretion, that performance of such repairs and maintenance is necessary (i) cure any default hereunder or (ii) to protect public health, welfare, and safety in a manner consistent with standard practices; provided, however, that in case of emergency or failure of Master Redeveloper to maintain the Public Access Improvements sufficiently to protect the public health and safety, the Easement Premises are subject to entry without notice and at any time, by City or its authorized employees and/or agents and/or by any public safety personnel to perform such maintenance or repairs as City may deem necessary in its sole discretion. The City will submit an invoice for the costs incurred for such maintenance or repairs to the Master Redeveloper. If the Master Redeveloper has failed to make payment on the invoice within 60 days, the City will have the right to assess the costs incurred by the City to all or any portion of the Minimum Improvements Area as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. By execution of this Agreement, the Master Redeveloper is agreeing to such an assessment for maintenance and repair costs, agreeing that the Minimum Improvements Area assessed for such service charges is benefited thereby, and waiving any rights the Master Redeveloper or a third party may have to object to an assessment of such service charges, including any rights of appeal under Minnesota Statutes, Chapter 429.

Section 8.5. Destruction - In the event that the Public Access Improvements on the Easement Premises are destroyed by fire or other casualty, and subject to a determination by any lender holding a mortgage on the Easement Premises, the Master Redeveloper will rebuild or reconstruct the Public Access Improvements to the extent insurance proceeds are available or, in the event insurance proceeds are not sufficient to reconstruct the entire Public Access Improvements, to the extent insurance proceeds combined with any contributions by the Master Redeveloper toward reconstruction are available. If the Master Redeveloper rebuilds or reconstructs the Public Access Improvements, the proceeds from any and all insurance policies covering risks against loss or damage must be used to rebuild or reconstruct.

ARTICLE IX

EMINENT DOMAIN

Section 9.1. Condemnation - If the Easement Premises are taken, acquired, or condemned by eminent domain for any public or quasi-public use or purpose, then the Master Redeveloper, at any time within sixty (60) days next after it has actual notice of such proposed acquisition or condemnation, will have the option to (i) cancel and terminate this Agreement as of the date of vesting of title in the condemning authority of the acquired or condemned property, or to (ii) continue this Agreement as to the remaining part of the Easement Premises not so taken or threatened to be taken. The Master Redeveloper may exercise one of the foregoing options by giving the City written notice of the exercise thereof within the foregoing sixty (60) days' period, and in the event Master Redeveloper fails or refuses, for any reason, so to furnish the City written

notice of the exercise thereof within the time and in the manner herein provided, then this Agreement will continue in full force and effect under option (ii) above.

ARTICLE X

DEFAULT AND TERMINATION

Section 10.1. Default by the City - If the City fails to perform any of its obligations under this Agreement, and fails to cure such default after thirty (30) days' written notice of such default, or, if such default cannot reasonably be cured within such thirty (30) days, fails to commence curative action and thereafter diligently complete the same, then in such case the Master Redeveloper may declare the termination of this Agreement and re-enter and take possession of the Easement Premises. In such case, or at such time as this Agreement is terminated pursuant to Section 2.1 hereof, the City agrees to execute and deliver to the Master Redeveloper a written termination of this Agreement in recordable form, which termination agreement will be filed in the official records of Hennepin County, Minnesota. In addition, the Master Redeveloper may exercise all remedies available to it at law or equity.

Section 10.2. Default by Master Redeveloper - If the Master Redeveloper fails to perform any of its obligations under this Agreement, and fails to cure such default after thirty (30) days' written notice of such default or, if such default cannot reasonably be cured within such thirty (30) days, fails to commence curative action and thereafter diligently complete the same, then in such case, the City may cure such default on behalf of the Master Redeveloper and Master Redeveloper consents to pay to the City any and all such sums as are due and owing on account thereof. City will submit a statement to Master Redeveloper evidencing the costs incurred to cure such default. If Master Redeveloper has failed to make payment in accordance with the statement within 60 days after receipt thereof, City will have the right to assess the costs incurred by City to all or any portion of the Minimum Improvements Area as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. In addition, the City may exercise all remedies available to it at law or equity.

ARTICLE XI

SURRENDER

Section 11.1. Surrender - Upon any termination of this Agreement, the City will surrender the Easement Premises to the Master Redeveloper, including without limitation any and all buildings, improvements, and fixtures then upon the Easement Premises, and all buildings, improvements, structures, fixtures, alterations, and other additions which may be made or installed by or at the instance of either party hereto, in, upon, or about the Easement Premises will become the property of Master Redeveloper upon any such termination and will be surrendered to the Master Redeveloper by the City without any payment therefor.

ARTICLE XII

MISCELLANEOUS

Section 12.1. Waiver - The waiver by any party hereto of any breach or default of any provisions anywhere contained in this Agreement does not constitute a waiver of any subsequent breach or default thereof. No provision of this Agreement is waived unless such waiver is in writing and signed by the party charged with any such waiver.

Section 12.2. Amendments - Except as otherwise herein provided, no subsequent alteration, amendment, change, waiver, discharge, termination, deletion, or addition to this Agreement will be binding upon either party unless in writing and signed by both parties. The Master Redeveloper and the City agree to join in and consent to amendments to this Agreement, to the extent such amendments are reasonably required by the Master Redeveloper's lenders; provided, however, that the Master Redeveloper and the City will not be required to enter into such amendments if the amendments do not adequately protect the legitimate interest and security of the Authority or the City with respect to the Project as defined in the Contract.

Section 12.3. Joinder; Permitted Encumbrance - Except for the Consent and Subordinations attached hereto, if any, this Agreement does not require the joinder or approval of any other person and each of the parties respectfully has the full, unrestricted and exclusive legal right and power to enter into this Agreement for the term and upon the provisions herein recited and for the use and purposes hereinabove set forth. This Agreement will constitute a permitted encumbrance under any loan agreement heretofore or hereafter entered into between the Master Redeveloper and any construction or permanent lender.

ARTICLE XIII

EARLY TERMINATION/RELOCATION OF EASEMENT

Section 13.1. Early Termination. Notwithstanding anything to the contrary in this Agreement, Master Redeveloper and its successors and assigns shall have the right to terminate this Agreement or, at their election, the right to relocate the Easement Premises in the event that (i) the Easement Premises is redeveloped and all necessary approvals are obtained from the City, (ii) there is a change in the use of adjacent Minimum Improvements which change is approved by the City; or (iii) the Public Access Improvements are destroyed by fire or other casualty and it becomes necessary to reconstruct such improvements with a different design which design has been approved by the City. Any and all costs and expenses of terminating the Easement or relocating the Easement Premises shall be paid by Master Redeveloper. In such event, Master Redeveloper and the City shall execute and deliver a recordable amendment to this Agreement to reflect the termination or relocation and the change in the description of the Easement, as applicable.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

CITY OF WAYZATA, a Minnesota
municipal corporation

By: _____
Its: Mayor

By: _____
Its: City Manager

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

WAYZATA BAY REDEVELOPMENT
COMPANY LLC, a Minnesota limited
liability company

By: _____
Its _____

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____ and _____, the _____ and _____, respectively, of the CITY OF WAYZATA, a Minnesota municipal corporation, on behalf of the corporation.

Notary Public

My Commission Expires]

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, the _____ of WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public

My Commission Expires

This Instrument was drafted by
and when recorded should be returned to:

Dorsey & Whitney LLP (JRL/~~NFS~~BTC)
Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402

EXHIBIT A

DESCRIPTION OF EASEMENT PREMISES

[A legal description of the Easement Premises will be mutually approved by the Parties and added to this exhibit upon completion and review of a survey and title insurance commitment with respect those portions of the Block occupied by Public Access Improvements.]

EXHIBIT B
PUBLIC ACCESS IMPROVEMENTS

[To be provided once the Final Plans are approved for each Block.]

CONSENT AND SUBORDINATION

The undersigned, _____, a _____, holder of (i) that certain [Mortgage] (the "Mortgage"); and (2) that certain [Assignment of Leases and Rents] (the "Assignment"), hereby consents to the foregoing *Easement and Maintenance Agreement* (the "Easement Agreement"), and hereby subjects and subordinates the Mortgage and the Assignment and all of its right, title and interest in the Easement Premises to the Easement Agreement.

Nothing in this Consent and Subordination may be construed to impose on the undersigned any obligation created by the Easement Agreement, unless and until the undersigned has acquired fee title to property burdened by the Easement Agreement.

[_____],

a _____

By: _____

Printed Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, the _____ of _____, a _____, on behalf of the _____.

(Signature of Person Taking Acknowledgment)

**This Instrument was drafted by
and when recorded should be returned to:**

Dorsey & Whitney LLP (JRL/~~AFS~~BTC)
Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402

EXHIBIT H
EASEMENT AND MAINTENANCE AGREEMENT

between
THE CITY OF WAYZATA
and
WAYZATA BAY REDEVELOPMENT COMPANY, LLC
for construction, maintenance and use of
PARK IMPROVEMENTS

THIS AGREEMENT, made as of this ____ day of _____, 20__, by and between the CITY OF WAYZATA, a Minnesota municipal corporation (hereinafter the “City”) and WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company (hereinafter the “Master Redeveloper”).

W I T N E S S E T H:

WHEREAS, the Wayzata Housing and Redevelopment Authority (the “Authority”), the City, and the Master Redeveloper have entered into a Master Redevelopment Agreement (the “Contract”) dated _____, 2008, a memorandum of which will be recorded in the real estate records of Hennepin County, Minnesota; and

WHEREAS, the capitalized terms used, but not defined, in this Agreement have the meanings given in the Contract; and

WHEREAS, the Contract is intended to provide for the construction of the Minimum Improvements by the Master Redeveloper in the Minimum Improvements Area in coordination with the Authority and with the cooperation and assistance of the City; and

WHEREAS, the Contract provides for the expenditure of public funds for the Minimum Improvements to assist in the redevelopment of the Minimum Improvements Area; and

WHEREAS, the Master Redeveloper has agreed under the Contract and the PUD Agreement to build certain Park Improvements in connection with the Minimum Improvements on land to which an easement will be granted to the City by the Master Redeveloper pursuant to the Contract and the PUD Agreement; and

WHEREAS, the Master Redeveloper has agreed to operate, manage, and maintain the Park Improvements pursuant to the Contract; and

WHEREAS, the City and the Master Redeveloper deem it to be in their vital interest and in the best interest of the City, the Authority and the State of Minnesota and in furtherance of the

economic development and redevelopment plan for the Minimum Improvements Area to enter into this Easement and Maintenance Agreement (hereinafter this “Agreement”) with the Master Redeveloper with respect to certain lands included within the Minimum Improvements Area on which the Park Improvements will be constructed;

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

GRANT OF EASEMENT

Section 1.1. Easement Premises - Subject to Section 2.1, the Master Redeveloper hereby grants and conveys to the City a non-exclusive easement (the “Easement”) over and across those portions of the real property described on Exhibit A, which are situated in the City of Wayzata, County of Hennepin, State of Minnesota (the “Easement Premises”) and are designed, constructed or otherwise intended or reserved for use as open space or park areas, and further described and depicted on the attached Exhibit B (the “Park Improvements”).

Section 1.2. Easement Purpose - The Easement is granted for the purpose of public use of the Park Improvements, together with all appurtenances thereto and means of access from and to public rights of way and easements shown in the Final Plans or constructed by Master Redeveloper; and include, but are not limited to, any and all Parking Facilities, streets, alleys, or public spaces immediately adjoining or contiguous to the Easement Premises and all easements appurtenant and/or used in connection with the Easement Premises.

Section 1.3. Releases and Reservations

(a) The Master Redeveloper reserves in, over, under, above, across and upon the Easement Premises the right to use the Easement Premises for any and all uses and purposes provided that such use does not obstruct or materially interfere with the intended purpose of the Easement, including without limitation:

- (i) the right of support for the Minimum Improvements;
- (ii) the right of access for ingress and egress through the Easement Premises;
- (iii) the right to bring utilities, materials, and other facilities through the Easement Premises;
- (iv) the right to grant easements in, over, under and across the Easement Premises for the purpose of installation, use and operation of utilities;
- (v) the right to perform all construction, maintenance and repair of the Park Improvements and adjoining improvements; and

(vi) the right during special events or festivals to have temporary sales displays, public seating and entertainment stages in the Easement Premises, provided that such special events or festivals may not last more than seventy two (72) hours (not including reasonably necessary set up and break down time for such special events or festivals) and may not occur more than eight (8) times each year, without prior consent of, but with prior notice to, the City.

(b) The Master Redeveloper must repair any damage to the Park Improvements caused by construction of the Minimum Improvements and minimize the extent and duration of any interference with the easement rights granted herein.

(c) Upon request by the Master Redeveloper, the City must execute and deliver instruments to evidence the Master Redeveloper's reservation of rights under sections (a), however execution of such instruments is not necessary to effect the reservations in this Section.

(d) All provisions in this Section 1.3 are subject to the terms of the Contract, the Final Plans, the PUD Agreement and the City Code with regard to public parks.

ARTICLE II

TERM

Section 2.1. Term – This Easement will become effective upon issuance of a certificate of occupancy for a the Block containing the Easement Premises. This Easement will be perpetual.

ARTICLE III

UTILITIES

Section 3.1. Utility Charges - The Master Redeveloper will pay, or cause to be paid, when the same become due, all charges for water, sewer usage, gas, electricity, power, heat, telephone, or other communications service and any and all other utility or similar services used, rendered, supplied, or consumed in, upon, at, from, or in connection with the Easement Premises, or any part thereof.

ARTICLE IV

TAXES AND ASSESSMENTS

Section 4.1. Payment of Taxes and Assessments - The Master Redeveloper must pay, or cause to be paid, before becoming delinquent, all real estate taxes, charges, assessments, and levies, assessed and levied by any governmental taxing authority against the Easement Premises. Nothing contained in this Agreement requires the Master Redeveloper to pay any franchise,

estate, inheritance, excise, succession, capital levy, or transfer tax of the City or any income, excess profits or revenue tax payable by the City under this Agreement. The Master Redeveloper has the right and option, at any time but solely at the Master Redeveloper's expense, to pay any real estate taxes or assessments in installments or under protest or in a similar manner, or to contest the levy or amount of the same in appropriate legal or administrative proceedings.

ARTICLE V

USE OF EASEMENT PREMISES

Section 5.1. Construction of Park Improvements - In accordance with the provisions of the Contract, the PUD Agreement and this Agreement, the Master Redeveloper must build, construct, modify, alter, and reconstruct on the Easement Premises, the Park Improvements. The size, location, and design of the Park Improvements must be approved in the Final Plans. The Master Redeveloper will be the owner of the Park Improvements. It is understood that the Master Redeveloper may make such other improvements as it deems appropriate or desirable upon those portions of the underlying real estate described in Exhibit A hereto that are not occupied by Park Improvements, provided that such improvements do not impair the use or operation of, or access to, the Park Improvements.

Section 5.2. Liens - The Master Redeveloper will not permit any mechanic's or materialmen's liens to stand against the Easement Premises on account of improvements authorized by the Master Redeveloper, provided, however, that the Master Redeveloper may in good faith and at its expense contest any such lien in which event such lien may remain undischarged and unsatisfied during the contest and any appeal, provided the Master Redeveloper files a bond or deposits cash or other reasonable security in the amount of such lien with the court or with a mortgagee of the Easement Premises or with the City to secure the payment of such lien if finally determined to be valid.

Section 5.3. Legal and Regulatory Compliance; Control of Premises - The Master Redeveloper must operate and maintain the Park Improvements on the Easement Premises for public use in accordance with all applicable governmental laws, ordinances, regulations and orders pertaining to Park Improvements generally from time to time. Subject only to the express provisions of this Agreement, the PUD Agreement, the Final Plans, and the Contract, the Master Redeveloper will have full authority and control over the management, operation, and use of the Easement Premises.

Section 5.4. No Fees - The Easement Premises must be open to the public for public use without charge or fee, except during those special events and festivals permitted in Section 1.3(a)(vii).

Section 5.5. Hours of Operation, Rules and Regulations - The Master Redeveloper must establish reasonable hours of operation, rules, and regulations as it deems advisable, necessary, or appropriate for the safe, efficient, and orderly use of the Parks Improvements subject to prior City approval.

Section 5.6. Contractors - The Master Redeveloper may engage such employees, agents, or independent contractors as it may deem advisable to conduct the management, repair, maintenance, and operation of the Easement Premises from time to time. Master Redeveloper may make all decisions and execute all agreements, in its sole discretion, with respect to the Park Improvements so long as such decisions and agreements do not violate any provisions in the Contract, this Agreement or the PUD Agreement.

Section 5.7. No Waste or Damage - Neither the City nor the Master Redeveloper may knowingly or willfully commit or suffer to be committed any waste or damage in or upon the Easement Premises, or any disfigurement or injury to any Park Improvements. The Master Redeveloper in its use and occupancy of the Easement Premises, may not knowingly and willfully commit or suffer to be committed any act or thing which constitutes a nuisance or interferes with the public use and enjoyment of the Park Improvements. Usual and normal wear and tear, damage by the elements, unavoidable casualty or depreciation and diminution over time will not be considered “waste,” “nuisance,” “damage,” “disfigurement,” or “injury.”

ARTICLE VI

INDEMNIFICATION, INSURANCE

Section 6.1. Property Insurance - The Master Redeveloper, at its sole cost and expense, must keep all Park Improvements, and all alterations, extensions, and improvements thereto and replacements thereof, insured against loss or damage by fire and against those casualties covered by extended coverage insurance and against vandalism and malicious mischief and against such other risks, of a similar or dissimilar nature, as are customarily covered with respect to buildings and improvements similar in construction, general location, use, and occupancy to the Park Improvements. Such policy of insurance will affirmatively include the full replacement cost measure of recovery.

Section 6.2. Personal Property - All property of every kind and character which the Master Redeveloper may keep or store in, at, upon, or about the Easement Premises will be kept and stored at the sole risk, cost, and expense of the Master Redeveloper.

Section 6.3. Indemnification of the City -

(a) The Master Redeveloper releases and covenants and agrees that the City shall not be liable for and agree to indemnify and hold harmless the City Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Park Improvements constructed by the Master Redeveloper to the extent not attributable to the negligence of the City Parties.

(b) Except for negligence of the City Parties, the Master Redeveloper agrees to indemnify the City Parties, now and forever, and further agrees to hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney’s fees), actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of

the Master Redeveloper (or if other persons acting on their behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Minimum Improvements and Public Infrastructure Improvements constructed by the Master Redeveloper.

(c) The City in no way waives its right to statutory liability caps under Minnesota Statutes, Section 466.04, as amended. The Master Redeveloper's liability to the City equals, but does not exceed, the City's statutory liability limits under Minnesota Statutes, Section 466.04, as amended.

(d) This provision will survive termination of this Agreement.

Section 6.4. Liability Insurance - The Master Redeveloper, and any successor in interest to the Master Redeveloper (which specifically includes any Secondary Redeveloper), shall obtain and continuously maintain insurance on the Park Improvements and, from time to time at the request of the Authority, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The Master Redeveloper must procure and maintain continuously in effect (or cause the same to occur), policies of insurance of the kind and minimum amounts as are customarily maintained with respect to Park Improvements and, to be reviewed from time to time by the parties, such policies must meet the minimum requirements set forth in Minnesota Statutes Section 466.04, and must further include the following:

(a) Insurance against liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Park Improvements. Such insurance must provide that the City is an additional insured.

(b) To the extent reasonably available, insurance coverage with respect to the indemnification expressed in Section 6.3 hereof.

Section 6.5. General Insurance Requirement - All insurance required in this Agreement must be placed with financially sound and reputable insurers licensed to transact business in the State of Minnesota. The Master Redeveloper must furnish to the City policies evidencing all such insurance or a certificate or certificates of the respective insurers stating that such insurance is in force and effect. Each policy of insurance herein required must contain a provision that the insurer may not cancel it without giving written notice to the City at least thirty (30) days before the cancellation becomes effective. All policies or certificates of insurance will be approved reasonably as to form and content by the City. The insurance coverage herein required may be provided by a blanket insurance policy or policies.

Section 6.6. No Insurance Obligation of City - At no time and under no circumstances will the City be required to take out, maintain in force and effect, or pay for any type of insurance coverage with reference to the protection of and/or ownership of and/or occupancy of and/or a suit relating to the Easement Premises and/or any improvements hereafter located thereon.

ARTICLE VII

ASSIGNMENT, SUBORDINATION

Section 7.1. Assignment by the City - The City may not assign or transfer its interest under this Agreement without the prior written consent of the Master Redeveloper.

Section 7.2. Assignment by Master Redeveloper - The Master Redeveloper may not assign or otherwise transfer its interest under this Agreement, except (i) as provided in the Contract, (ii) to whomever becomes an assignee of the Master Redeveloper under the Contract, (iii) to any lender holding a mortgage on or interest in the Easement Premises, and (iv) assignment of the Master Redeveloper's maintenance obligation to extent permitted in Section 8.2 herein. The City will recognize and accept any successors or assigns of Master Redeveloper.

ARTICLE VIII

MAINTENANCE OF THE EASEMENT PREMISES

Section 8.1. Maintenance - The Master Redeveloper, at its cost and expense, must keep and maintain all of the Easement Premises in good condition and repair. It is distinctly understood that the preceding does not require maintenance and/or repair of the Easement Premises and/or improvements hereinafter erected thereon in perfect condition or is a condition equal to new at all times, but the Master Redeveloper must keep and maintain the same in such condition as to minimize, so far as is practicable, by reasonable care, maintenance, replacement, and repair, the effects of use, decay, injury, and destruction of the Easement Premises or any part thereof, the City recognizing that depreciation and diminution by reason of age, use, and environmental factors is unavoidable and expected. However, notwithstanding anything herein to the contrary, it shall be the obligation of the Master Redeveloper to maintain, repair and operate the Park Improvements in a condition which is safe, operation and in accordance with all government agreements.

Section 8.2. Assignment of Maintenance Obligations - The Master Redeveloper may assign its maintenance obligations under Section 8.1 to a third party, including an association of property owners, provided that (1) such third party is determined by the City to have financial resources adequate to fund the Master Redeveloper's obligations under this Agreement and (ii) such third party and the City have entered into a signed agreement requiring the third party to be bound by the terms of this Agreement, in which event the Master Redeveloper will be released from further liability with respect to such assigned obligations.

Section 8.3. No Obligation of the City to Repair or Maintain - The City will have no obligation of any kind, expressed or implied, to repair, rebuild, restore, reconstruct, modify, alter, replace, or maintain the Easement Premises or any part thereof.

Section 8.4. Entry by City - The City may, after notice and opportunity to cure, enter onto the Easement Premises to repair and maintain the Park Improvements within the Easement Premises if the City determines, in its sole discretion, that performance of such repairs and maintenance is necessary (i) to cure any default hereunder or (ii) to protect public health, welfare

and safety; provided, however, that in case of emergency or failure of Master Redeveloper to maintain the Park Improvements sufficiently to protect the public health and safety, the Easement Premises are subject to entry without notice and at any time, by City or its authorized employees and/or agents and/or by any public safety personnel to perform such maintenance or repairs as City may deem necessary in its sole discretion. The City will submit an invoice for the costs incurred for such maintenance or repairs to the Master Redeveloper. If the Master Redeveloper has failed to make payment on the invoice within 60 days, the City will have the right to assess the costs incurred by the City to all or any portion of the Minimum Improvements Area as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. By execution of this Agreement, the Master Redeveloper is agreeing to such an assessment for maintenance and repair costs, agreeing that the Minimum Improvements Area assessed for such service charges is benefited thereby, and waiving any rights the Master Redeveloper or a third party may have to object to an assessment of such service charges, including any rights of appeal under Minnesota Statutes, Chapter 429.

Section 8.5. Destruction - In the event that the Park Improvements on the Easement Premises are destroyed by fire or other casualty, and subject to a determination by any lender holding a mortgage on the Easement Premises, the Master Redeveloper will rebuild or reconstruct the Park Improvements to the extent insurance proceeds are available or, in the event insurance proceeds are not sufficient to reconstruct the entire Park Improvements, to the extent insurance proceeds combined with any contributions by the Master Redeveloper toward reconstruction are available. If the Master Redeveloper rebuilds or reconstructs the Park Improvements, the proceeds from any and all insurance policies covering risks against loss or damage must be used to rebuild or reconstruct.

ARTICLE IX

EMINENT DOMAIN

Section 9.1. Condemnation - If the Easement Premises are taken, acquired, or condemned by eminent domain for any public or quasi-public use or purpose, then the Master Redeveloper, at any time within sixty (60) days next after it has actual notice of such proposed acquisition or condemnation, will have the option to (i) cancel and terminate this Agreement as of the date of vesting of title in the condemning authority of the acquired or condemned property, or to (ii) continue this Agreement as to the remaining part of the Easement Premises not so taken or threatened to be taken. The Master Redeveloper may exercise one of the foregoing options by giving the City written notice of the exercise thereof within the foregoing sixty (60) days' period, and in the event Master Redeveloper fails or refuses, for any reason, so to furnish the City written notice of the exercise thereof within the time and in the manner herein provided, then this Agreement will continue in full force and effect under option (ii) above.

ARTICLE X

DEFAULT AND TERMINATION

Section 10.1. Default by the City - If the City fails to perform any of its obligations under this Agreement, and fails to cure such default after thirty (30) days' written notice of such

default, or, if such default cannot reasonably be cured within such thirty (30) days, fails to commence curative action and thereafter diligently complete the same, then in such case the Master Redeveloper may declare the termination of this Agreement and re-enter and take possession of the Easement Premises. In such case, or at such time as this Agreement is terminated pursuant to Section 2.1 hereof, the City agrees to execute and deliver to the Master Redeveloper a written termination of this Agreement in recordable form, which termination agreement will be filed in the official records of Hennepin County, Minnesota. In addition, the Master Redeveloper may exercise all remedies available to it at law or equity.

Section 10.2. Default by Master Redeveloper - If the Master Redeveloper fails to perform any of its obligations under this Agreement, and fails to cure such default after thirty (30) days' written notice of such default or, if such default cannot reasonably be cured within such thirty (30) days, fails to commence curative action and thereafter diligently complete the same, then in such case, the City may cure such default on behalf of the Master Redeveloper and Master Redeveloper consents to pay to the City any and all such sums as are due and owing on account thereof. City will submit a statement to Master Redeveloper evidencing the costs incurred to cure such default. If Master Redeveloper has failed to make payment in accordance with the statement within 60 days after receipt thereof, City will have the right to assess the costs incurred by City to all or any portion of the Minimum Improvements Area as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. In addition, the City may exercise all remedies available to it at law or equity.

ARTICLE XI

SURRENDER

Section 11.1. Surrender - Upon any termination of this Agreement, the City will surrender the Easement Premises to the Master Redeveloper, including without limitation any and all buildings, improvements, and fixtures then upon the Easement Premises, and all buildings, improvements, structures, fixtures, alterations, and other additions which may be made or installed by or at the instance of either party hereto, in, upon, or about the Easement Premises will become the property of Master Redeveloper upon any termination and will be surrendered to the Master Redeveloper by the City without any payment therefor.

ARTICLE XII

MISCELLANEOUS

Section 12.1. Waiver - The waiver by any party hereto of any breach or default of any provisions anywhere contained in this Agreement does not constitute a waiver of any subsequent breach or default thereof. No provision of this Agreement is waived unless such waiver is in writing and signed by the party charged with any such waiver.

Section 12.2. Amendments - Except as otherwise herein provided, no subsequent alteration, amendment, change, waiver, discharge, termination, deletion, or addition to this Agreement will be binding upon either party unless in writing and signed by both parties. The Master Redeveloper and the City agree to join in and consent to amendments to this Agreement,

to the extent such amendments are reasonably required by the Master Redeveloper's lenders; provided, however, that the Master Redeveloper and the City will not be required to enter into such amendments if the amendments do not adequately protect the legitimate interest and security of the Authority or the City with respect to the Project as defined in the Contract.

Section 12.3. Joinder; Permitted Encumbrance - Except for the Consent and Subordinations attached hereto, if any, this Agreement does not require the joinder or approval of any other person and each of the parties respectfully has the full, unrestricted and exclusive legal right and power to enter into this Agreement for the term and upon the provisions herein recited and for the use and purposes hereinabove set forth. This Agreement will constitute a permitted encumbrance under any loan agreement heretofore or hereafter entered into between the Master Redeveloper and any construction or permanent lender.

ARTICLE XIII EARLY TERMINATION/RELOCATION OF EASEMENT

Section 13.1. Early Termination. Notwithstanding anything to the contrary in this Agreement, Master Redeveloper and its successors and assigns shall have the right to terminate this Agreement or, at their election, the right to relocate the Easement Premises in the event that (i) the Easement Premises is redeveloped and all necessary approvals are obtained from the City, (ii) there is a change in the use of adjacent Minimum Improvements which change is approved by the City; or (iii) the Park Improvements are destroyed by fire or other casualty and it becomes necessary to reconstruct such improvements with a different design which design has been approved by the City. Any and all costs and expenses of terminating the Easement or relocating the Easement Premises shall be paid by Master Redeveloper. In such event, Master Redeveloper and the City shall execute and deliver a recordable amendment to this Agreement to reflect the termination or relocation and the change in the description of the Easement, as applicable.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

CITY OF WAYZATA, a Minnesota
municipal corporation

By: _____

Its: Mayor

By: _____

Its: City Manager

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

WAYZATA BAY REDEVELOPMENT
COMPANY LLC, a Minnesota limited
liability company

By: _____

Its _____

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____ and _____, the _____ and _____, respectively, of the CITY OF WAYZATA, a Minnesota municipal corporation, on behalf of the corporation.

Notary Public

My Commission Expires]

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, the _____ of WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public

My Commission Expires

This Instrument was drafted by
and when recorded should be returned to:

Dorsey & Whitney LLP (JRL/~~NFS~~BTC)
Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402

EXHIBIT A

DESCRIPTION OF EASEMENT PREMISES

[A legal description of the Easement Premises will be mutually approved by the Parties and added to this exhibit upon completion and review of a survey and title insurance commitment with respect to the Easement Premises.]

EXHIBIT B
PARK IMPROVEMENTS

[To be provided once Final Plans are approved for each relevant Block.]

CONSENT AND SUBORDINATION

The undersigned, _____, a _____, holder of (i) that certain [Mortgage] (the "Mortgage"); and (2) that certain [Assignment of Leases and Rents] (the "Assignment"), hereby consents to the foregoing *Easement and Maintenance Agreement* (the "Easement Agreement"), and hereby subjects and subordinates the Mortgage and the Assignment and all of its right, title and interest in the Easement Premises to the Easement Agreement.

Nothing in this Consent and Subordination may be construed to impose on the undersigned any obligation created by the Easement Agreement, unless and until the undersigned has acquired fee title to property burdened by the Easement Agreement.

[_____] ,
a _____

By: _____

Printed Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__,
by _____, the _____ of _____, a
_____, on behalf of the _____.

(Signature of Person Taking Acknowledgment)

This Instrument was drafted by
and when recorded should be returned to:
Dorsey & Whitney LLP (JRL/~~NFS~~BTC)
Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402

EXHIBIT I
TIF PRO FORMA

Annual Operating Proforma - Baseline

	Year	Year	Year	Year	Year	Year
	1	2	3	4	5	6
Units Rented	246	240	242	242	242	242
Percent Occupancy	97%	94%	95%	95%	95%	95%
	12/31/2012	12/31/2013	12/31/2014	12/31/2015	12/31/2016	12/31/2017
Revenues						
Total Average Skilled	2,057,618	2,868,618	2,946,508	3,084,903	3,125,950	3,219,729
Total Average Assisted	1,478,520	2,804,693	2,932,565	3,020,541	3,111,358	3,204,492
Total Average Memory Care	594,320	996,590	1,026,251	1,077,038	1,088,749	1,121,412
Total Average Independent	3,132,133	5,005,794	5,269,279	5,365,557	5,526,524	5,692,329
Garage	73,424	117,347	122,117	123,780	129,554	133,440
Staff Meals	45,071	73,852	76,788	79,091	81,464	83,998
Other rental income	150,465	244,545	256,346	264,017	271,958	280,116
2nd Occupant monthly income	35,822	58,696	61,929	62,880	64,746	66,688
Resident Storage 150 units at \$30 per month	31,014	56,819	52,639	54,424	56,957	57,739
Misc	127,593	208,921	217,227	223,744	230,456	237,379
Interest Income Monthly	278,157	278,157	286,502	295,097	303,950	313,069
Guest Rooms 50% occupancy	50,636	51,306	52,839	54,424	56,957	57,739
Total Revenue	8,014,718	12,753,169	13,249,789	13,637,498	14,046,623	14,468,022
Expenses						
Total Community Living	2,012,371	2,086,787	2,162,010	2,265,070	2,220,823	2,296,923
Total Dietary	765,230	803,950	826,008	850,718	876,312	892,691
Total Engineering	260,057	267,859	275,894	284,171	292,696	301,477
Total Utilities	316,874	336,681	346,781	357,184	367,900	378,917
Total Housekeeping	335,679	337,542	347,648	358,068	368,841	379,936
Total Rehabilitation	21,333	21,973	22,632	23,351	24,030	24,731
Total Recreation Therapy	174,527	179,557	184,944	190,492	196,207	202,093
Total Volunteers	562	579	596	614	633	652
Total Transportation	5,410	3,572	3,739	3,912	4,089	4,272
Total Spiritual Care	3,182	3,277	3,376	3,477	3,581	3,689
Total Employee Health	530	546	562	579	597	614
Total Administration	1,890,196	2,108,972	2,177,468	2,242,792	2,310,875	2,379,378
Total Property Taxes	173,119	(302,002)	(844,659)	(1,397,965)	(3,418,731)	(1,436,697)
Total Operating Expense	5,912,670	5,893,292	5,449,029	5,984,524	5,258,233	5,437,576
NOI	2,122,048	6,949,878	7,791,269	8,552,974	8,788,390	9,030,446
Adjustment for Entrance Deposits (1)	7,203,483	19,767,880				
Adjusted NOI	9,325,531	17,657,758	7,791,269	8,552,974	8,788,390	9,030,446
Debt Service						
Senior Loan P&I	3,399,035	3,399,035	3,399,035	3,809,904	3,809,904	3,809,904
Secondary Financing P&I	1,808,040	1,808,040	1,808,040	1,808,040	1,808,040	1,808,040
City Improvement Financing	254,822	254,822	254,822	254,822	254,822	254,822
Entrance Deposit Funding	950,933	950,933	950,933	950,933	950,933	950,933
Total Debt Service	6,412,830	6,412,830	6,412,830	6,823,699	6,823,699	6,823,699
Cash Flow after Debt Service	2,912,701	11,244,928	1,378,439	1,729,275	1,964,691	2,206,747
Assumed Equity	15,145,800	15,145,800	15,145,800	15,145,800	15,145,800	15,145,800
Projected Cash on Cash Return	19.28%	74.24%	9.10%	11.42%	12.97%	14.37%
Replacement Reserves	-	-	-	127,500	127,500	127,500
Cash Flow after Debt and Reserves	2,912,701	11,244,928	1,378,439	1,601,775	1,837,191	2,079,247
Funded Working Capital	1,200,000	-	-	-	-	-
Comprehensive Cash Flow	4,112,701	15,357,629	16,736,068	18,337,843	20,175,011	22,254,281
Debt Coverage Ratio with Ent. Deposits	1.45	2.75	1.21	1.25	1.28	1.31
Debt Coverage Ratio without Ent. Deposits	0.33	1.01	1.21	1.25	1.28	1.31
Include Entrance Deposits in cash flow?						
	Yes					
	Projected					
Nine year average cash on cash return - No PV	16.734%					
Nine year average cash on cash return - PV to 2005	16.464%					
Reserve						
	Projected					
Cap Rate	10.10%					
Sale Value	\$ 96,394,455					
Less: Sale expense at 5%	(4,819,723)					
Add: Entrance Deposit Cash	36,000,000					
Net Sale Proceeds	\$ 127,574,732					
Less: Outstanding Principal - Primary Loan	(51,921,892)					
Less: Outstanding Principal - Secondary Loan	(34,481,685)					
Less: Outstanding Principal - City Improvement	(3,949,767)					
Less: Outstanding Principal - Entrance Deposits	(15,691,784)					
Total	\$ 4,049,316					
Internal Rate of Return	9.34%					
(1) Adjustments for entrance deposits reflect revenues not in pay flows						

(1) Adjustments for entrance deposits reflect revenues not in proforma

Annual Operating Proforma - Implied Cap						
	Year	Year	Year	Year	Year	Year
	1	2	3	4	5	6
Units Billed	196	240	242	242	242	242
Percent Occupancy	67%	68%	69%	69%	69%	69%
	12/31/2012	12/31/2013	12/31/2014	12/31/2015	12/31/2016	12/31/2017
Revenue						
Total Average Billed	2,057,688	2,860,688	2,946,938	3,036,938	3,125,938	3,219,729
Total Average Assisted	1,478,520	2,004,693	2,952,565	3,023,340	3,111,138	3,204,492
Total Average Memory Care	184,350	966,340	1,036,251	1,057,638	1,080,740	1,121,412
Total Average Independent	3,132,183	5,009,394	3,308,279	5,865,557	5,526,524	3,692,820
Grocery	73,424	117,347	122,117	125,780	129,554	133,449
Staff Meals	45,071	73,852	76,788	78,031	81,464	83,998
Other meal income	180,463	246,345	256,346	264,697	271,938	280,116
Rail Occupant monthly income	30,822	38,696	41,029	42,880	44,746	46,688
Resident Storage 150 units at \$30 per month	31,654	39,819	42,839	44,424	46,057	47,739
Misc	127,500	208,021	217,227	223,744	230,496	237,370
Interest Income Monthly	278,157	278,157	286,902	286,902	286,902	286,902
Grant Income 50% occupancy	30,800	51,300	52,839	54,424	56,057	57,739
Total Revenue	8,094,718	12,753,149	13,246,289	13,697,498	14,046,623	14,468,022
Expense						
Total Community Living	2,092,371	2,048,787	2,102,810	2,160,670	2,230,023	2,296,823
Total Dietary	745,236	810,550	826,008	850,788	876,362	902,605
Total Engineering	260,057	267,819	275,894	284,171	292,696	301,477
Total Utilities	126,674	136,681	146,781	157,184	167,960	179,017
Total Housekeeping	130,479	137,542	147,668	158,688	168,840	179,006
Total Rehabilitation	21,330	21,373	22,682	23,361	24,080	24,731
Total Recreation Therapy	174,327	179,117	184,944	190,492	196,267	202,093
Total Volunteer	382	379	596	614	633	652
Total Transportation	5,416	5,572	5,739	5,912	6,089	6,272
Total Spiritual Care	3,182	3,271	3,376	3,477	3,581	3,689
Total Employee Health	180	146	562	379	367	614
Total Administration	1,630,136	2,108,972	2,171,468	2,242,782	2,319,073	2,379,878
Total Property Taxes	173,119	(302,002)	(844,659)	(1,397,565)	(1,418,731)	(1,488,897)
Total Operating Expense	5,912,670	5,809,292	5,448,030	5,684,324	5,258,233	5,437,576
NOI	2,182,048	6,943,857	7,798,259	8,013,174	8,788,390	8,930,446
Adjustment for Retention Deposits (1)	7,338,483	10,507,880	-	-	-	-
Adjusted NOI	9,520,531	17,451,737	7,798,259	8,013,174	8,788,390	8,930,446
Implied NOI without Retention Deposits	2,182,048	7,171,857	8,013,174	8,013,174	8,788,390	8,930,446
Percent Increase of Debt Coverage	9%	9%	9%	9%	9%	9%
Debt Service						
Senior Loan P&I	3,309,033	3,309,033	3,309,033	3,309,033	3,309,033	3,309,033
Secondary Financing P&I	1,808,040	1,808,040	1,808,040	1,808,040	1,808,040	1,808,040
City Improvement Financing	254,822	254,822	254,822	254,822	254,822	254,822
Retention Deposit Funding	950,033	950,033	950,033	950,033	950,033	950,033
Total Debt Service	6,412,898	6,412,898	6,412,898	6,412,898	6,412,898	6,412,898
Cash Flow after Debt Service	2,911,704	11,344,928	1,378,699	1,725,277	1,869,662	2,266,747
Cash Flow after Debt Service (Implied)	(4,008,798)	1,162,537	2,079,654	2,409,040	2,735,646	3,019,487
Assessed Equity	15,145,800	15,145,800	15,145,800	15,145,800	15,145,800	15,145,800
Expected Cash on Cash Return	19.28%	74.24%	9.16%	11.42%	12.97%	14.57%
Expected Cash on Cash Return (Implied)	26.89%	38.37%	13.73%	16.59%	18.13%	19.94%
Replacement Reserves	-	-	-	127,500	127,500	127,500
Cash Flow after Debt and Reserves	2,911,704	11,344,928	1,378,699	1,600,777	1,742,162	2,079,247
Cash Flow after Debt and Reserves (Implied)	(4,008,798)	1,162,537	2,079,654	2,371,549	2,608,146	2,891,987
Period Working Capital	1,200,000	-	-	-	-	-
Comprehensive Cash Flow	4,112,704	15,317,625	16,796,968	18,337,540	20,135,005	22,254,280
Comprehensive Cash Flow (Implied)	(2,898,798)	(1,737,261)	942,382	2,713,933	3,342,081	3,234,288
Debt Coverage Ratio with Ret. Deposits	1.48	2.52	1.23	1.29	1.39	1.32
Debt Coverage Ratio without Ret. Deposits	0.33	1.08	1.23	1.29	1.39	1.32
Debt Coverage Ratio with Implied NOI	0.33	1.13	1.32	1.37	1.40	1.44
Include Retention Deposits in cash flow?						
	Yes		Implied		Implied	
	Baseline		Implied		Implied	
Five year average cash on cash return - No PV	15.73%		13.21%		13.21%	
Five year average cash on cash return - PV to 2015	16.48%		12.21%		12.21%	
Reversion						
	Baseline		Implied		Implied	
Cap Rate	10.00%		10.00%		10.00%	
Sale Value	\$	96,304,453	\$ 96,431,838		\$ 96,431,838	
Less: Sale expense at 5%		(4,815,226)	(4,921,593)		(4,921,593)	
Add: Retention Deposit Cash		16,000,000	16,000,000		16,000,000	
Net Sale Proceeds	\$	101,789,227	\$ 101,510,245		\$ 101,510,245	
Less: Outstanding Principal - Primary Loan		(51,921,892)	(51,921,892)		(51,921,892)	
Less: Outstanding Principal - Secondary Loan		(24,481,683)	(24,481,683)		(24,481,683)	
Less: Outstanding Principal - City Improvement		(3,648,767)	(3,648,767)		(3,648,767)	
Less: Outstanding Principal - Retention Deposits		(13,689,784)	(13,689,784)		(13,689,784)	
Total	\$	6,046,107	\$ 13,768,119		\$ 13,768,119	
Internal Rate of Return		9.56%	14.27%		14.27%	
(1) Adjustments for retention deposits reflect revenues not in pro forma						

Annual Operating Proforma - Actual						
	Year	Year	Year	Year	Year	Year
Units Rented	340	340	342	342	342	342
Percent Occupancy	97%	98%	99%	99%	99%	99%
	12/31/2012	12/31/2013	12/31/2014	12/31/2015	12/31/2016	12/31/2017
Revenues						
Total Average Rented	3,340,870	3,140,031	3,234,232	3,331,239	3,403,197	3,554,133
Total Average Assisted	1,611,587	3,062,615	3,153,875	3,248,492	3,345,946	3,446,325
Total Average Memory Care	647,839	1,008,519	1,120,968	1,154,397	1,189,235	1,224,912
Total Average Independent	1,414,025	5,462,440	5,626,514	5,795,101	5,968,956	6,148,025
Charge	73,424	117,347	122,117	123,780	129,554	139,440
Staff Meals	41,071	73,872	76,718	76,691	81,464	89,968
Other meal income	150,403	246,545	256,540	264,637	271,978	280,116
2nd Occupant monthly income	83,822	78,696	61,820	62,860	64,746	66,688
Resident Storage 150 units at \$30 per month	31,014	50,819	52,820	54,424	56,057	57,739
Other	127,500	208,921	217,217	223,744	230,436	237,339
Interest Income Monthly	178,157	278,157	286,502	295,697	303,959	313,969
Grant Income 37% occupancy	36,690	31,830	32,839	34,424	36,057	37,739
Total Revenues	8,688,357	13,838,441	14,261,976	14,688,506	15,129,576	15,583,463
Expenses						
Total Community Living	2,612,371	2,040,787	2,162,916	2,165,076	2,230,023	2,256,923
Total Dietary	361,236	801,950	826,068	850,788	876,312	903,681
Total Engineering	160,057	267,850	275,854	284,171	292,686	302,477
Total Utilities	326,874	336,681	346,781	357,184	367,900	378,997
Total Housekeeping	339,479	537,542	547,668	558,698	569,840	579,966
Total Rehabilitation	21,333	21,673	22,632	23,311	24,019	24,731
Total Woundcare Therapy	174,377	179,557	184,944	189,497	195,707	202,093
Total Volunteer	562	576	596	614	633	652
Total Transportation	5,410	5,572	5,739	5,912	6,089	6,272
Total Spiritual Care	1,162	3,277	3,376	3,477	3,581	3,689
Total Employee Health	530	546	562	579	597	614
Total Administration	1,836,196	2,108,972	2,177,408	2,242,795	2,310,055	2,379,378
Total Property Taxes	171,119	(302,632)	(344,676)	(1,307,965)	(1,418,734)	(1,430,667)
Total Operating Expense	5,912,670	5,803,292	5,449,020	5,084,524	5,239,215	5,437,576
NOI	2,775,687	8,035,149	8,812,956	9,604,381	9,871,543	10,145,887
Adjustment for Entrance Deposits (1)	7,200,480	10,707,080				
Adjusted NOI	9,976,167	18,742,229	8,812,956	9,604,381	9,871,543	10,145,887
Debt Service						
Senior Loan P&I	3,309,035	3,309,035	3,309,035	3,309,034	3,309,064	3,309,064
Secondary Financing P&I	1,808,040	1,808,040	1,808,040	1,808,040	1,808,040	1,808,040
City Improvement Financing	254,822	254,822	254,822	254,822	254,822	254,822
Entrance Deposit Funding	950,933	950,933	950,933	950,933	950,933	950,933
Total Debt Service	6,422,830	6,422,830	6,422,830	6,422,830	6,422,830	6,422,830
Cash Flow after Debt Service	3,553,337	12,319,399	2,390,126	3,181,551	3,448,713	3,723,057
Assumed Equity	15,145,800	15,145,800	15,145,800	15,145,800	15,145,800	15,145,800
Projected Cash on Cash Return	23.33%	81.43%	15.84%	18.39%	20.12%	20.93%
Replacement Reserves	-	-	-	127,500	127,500	127,500
Cash Flow after Debt and Reserves	3,553,337	12,319,399	2,390,126	3,014,051	3,321,213	3,595,557
Funded Working Capital	1,200,000	-	-	-	-	-
Cumulative Cash Flow	4,753,337	13,519,399	10,405,766	12,148,952	15,469,866	19,065,415
Debt Coverage Ratio with Ent. Deposit	1.48	2.82	1.37	1.41	1.46	1.49
Debt Coverage Ratio without Ent. Deposit	0.43	1.25	1.37	1.43	1.47	1.49
Perform Look-back Test?						
Adjustment to EBF Note	\$	3,465,242				
Include Entrance Deposits in cash flow?						
		Baseline	Actual			
Five year average cash on cash return - No FY		25.73%	20.15%			
Five year average cash on cash return - FY to 100%		10.46%	15.21%			
Execution						
		Baseline	Actual			
Cap Rate		10.05%	11.05%			
Sale Value	\$	96,304,455	\$	101,458,871		
Less: Sale expense at 3%		(4,515,223)		(3,072,944)		
Add: Entrance Deposit Cash		16,000,000		16,000,000		
Net Sale Proceeds	\$	107,789,232	\$	114,385,927		
Less: Outstanding Principal - Primary Loan		(51,921,892)		(51,921,892)		
Less: Outstanding Principal - Secondary Loan		(24,481,687)		(24,481,687)		
Less: Outstanding Principal - City Improvement		(3,648,767)		(3,648,767)		
Less: Outstanding Principal - Entrance Deposits		(17,691,784)		(17,691,784)		
Total	\$	8,047,102	\$	16,641,597		
Internal Rate of Return		9.36%		18.88%		
(1) Adjustments for entrance deposits reflect revenues not in pro forma						

EXHIBIT I-1

LOOK BACK TEST RENT INCREASE

City of Wayzata
Wayzata Bay Center
Look-back Test
Example
Assumptions

Assumptions	
Expense Trend	3.00%
Revenue Trend	3.00%
Percentage Increase to Coverage	9.00%
Debt Service Coverage Test	1.36x
Rent Increase	9.00%
Adjustment to Interest Rates	0.00%

Look-back Test Rent Increase Example

Discount Rate	7.00%																
Dated Date	9/1/2008																
Cash Flow after Debt Service (Actual)	12/31/2012	12/31/2013	12/31/2014	12/31/2015	12/31/2016	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021	12/31/2022	12/31/2023					
Cash Flow after Debt Service (Implied Cap)	\$ (3,637,143)	\$ 1,672,319	\$ 2,399,226	\$ 2,780,666	\$ 3,047,644	\$ 3,322,188	\$ 3,604,537	\$ 3,894,915	\$ 4,193,555	\$ 4,500,696	\$ 4,816,564	\$ 5,141,471					
Difference of Cash Flows	\$ (4,099,793)	\$ 1,162,537	\$ 2,079,054	\$ 2,489,043	\$ 2,735,646	\$ 3,019,487	\$ 3,290,771	\$ 3,566,715	\$ 3,850,530	\$ 4,151,463	\$ 4,454,727	\$ 4,766,570					
PV of Difference of Cash Flows @ 7%	\$ 345,086	\$ 310,506	\$ 208,196	\$ 171,482	\$ 166,156	\$ 160,978	\$ 155,945	\$ 151,055	\$ 146,309	\$ 141,688	\$ 137,205	\$ 132,851					
	12/31/2014	12/31/2015	12/31/2016	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021	12/31/2022	12/31/2023	12/31/2024	12/31/2025					
Cash Flow after Debt Service (Actual)	\$ 5,475,619	\$ 5,819,295	\$ 6,172,775	\$ 6,536,343	\$ 6,910,292	\$ 7,294,922	\$ 7,690,544	\$ 8,097,475	\$ 8,516,044	\$ 8,946,590	\$ 9,389,458	\$ 9,844,016					
Cash Flow after Debt Service (Implied Cap)	\$ 5,067,238	\$ 5,416,585	\$ 5,756,073	\$ 6,104,771	\$ 6,463,356	\$ 6,832,114	\$ 7,211,336	\$ 7,601,337	\$ 8,002,385	\$ 8,414,663	\$ 8,839,058	\$ 9,274,569					
Difference of Cash Flows	\$ 388,381	\$ 402,209	\$ 416,702	\$ 431,572	\$ 446,936	\$ 462,809	\$ 479,208	\$ 496,148	\$ 513,640	\$ 531,226	\$ 550,400	\$ 570,187					
PV of Difference of Cash Flows @ 7%	\$ 126,624	\$ 124,521	\$ 120,538	\$ 116,672	\$ 112,921	\$ 109,282	\$ 105,751	\$ 102,327	\$ 99,006	\$ 95,785	\$ 92,663	\$ 89,642					
Sum of PV of Difference of Cash Flows													\$ 8,445,542				

Wayzata Bay Center
TIF Calculation

TIF Assumptions		Year		Year		Year Taxes		Project TIF		City TIF		PV of TIF		PV of Project TIF		PV of City TIF	
EDF Growth Rate	2.00%	Year	Completed	Year	Assessed	Year Taxes Payable	EDF	Net Increment	at 95%	at 5%	PV of TIF	Project TIF	City TIF	PV of TIF	Project TIF	City TIF	
Incremental Growth Rate	2.00%	1	12/31/2010	12/31/2011	12/31/2012	12/31/2013	53,442,004	510,702	485,107	25,555	460,110	414,313	21,006	41,166	37,828	41,166	
Discount Rate	7.00%	2	12/31/2011	12/31/2012	12/31/2013	12/31/2014	108,156,541	1,631,617	980,056	51,581	823,328	782,161	41,166	41,166	60,575	41,166	
Term	25	3	12/31/2012	12/31/2013	12/31/2014	12/31/2015	188,315,323	1,636,246	1,543,034	81,212	1,211,469	1,150,622	60,575	60,575	77,681	60,575	
Deed Date	9/1/2008	4	12/31/2013	12/31/2014	12/31/2015	12/31/2016	270,077,287	2,238,202	2,117,292	113,436	1,533,616	1,475,935	74,051	74,051	92,509	74,051	
Project Present Value City Present Value	\$ 22,916,879 \$ 1,205,836	5	12/31/2014	12/31/2015	12/31/2016	12/31/2017	375,470,139	2,273,308	2,159,637	113,665	1,481,017	1,406,666	74,051	74,051	92,509	74,051	
		6	12/31/2015	12/31/2016	12/31/2017	12/31/2018	486,008,466	2,318,769	2,202,820	115,038	1,411,810	1,341,230	70,591	70,591	92,509	70,591	
		7	12/31/2016	12/31/2017	12/31/2018	12/31/2019	592,440,666	2,412,447	2,291,825	120,622	1,362,948	1,218,601	64,147	64,147	92,509	64,147	
		8	12/31/2017	12/31/2018	12/31/2019	12/31/2020	694,151,229	2,509,010	2,384,414	135,495	1,167,048	1,107,556	55,568	55,568	92,509	55,568	
		9	12/31/2018	12/31/2019	12/31/2020	12/31/2021	794,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292	
		10	12/31/2019	12/31/2020	12/31/2021	12/31/2022	894,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292	
		11	12/31/2020	12/31/2021	12/31/2022	12/31/2023	994,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292	
		12	12/31/2021	12/31/2022	12/31/2023	12/31/2024	1,094,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292	
		13	12/31/2022	12/31/2023	12/31/2024	12/31/2025	1,194,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292	
		14	12/31/2023	12/31/2024	12/31/2025	12/31/2026	1,294,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292	
		15	12/31/2024	12/31/2025	12/31/2026	12/31/2027	1,394,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292	
		16	12/31/2025	12/31/2026	12/31/2027	12/31/2028	1,494,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292	
		17	12/31/2026	12/31/2027	12/31/2028	12/31/2029	1,594,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292	
		18	12/31/2027	12/31/2028	12/31/2029	12/31/2030	1,694,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292	
		19	12/31/2028	12/31/2029	12/31/2030	12/31/2031	1,794,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292	
		20	12/31/2029	12/31/2030	12/31/2031	12/31/2032	1,894,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292	
21	12/31/2030	12/31/2031	12/31/2032	12/31/2033	1,994,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292			
22	12/31/2031	12/31/2032	12/31/2033	12/31/2034	2,094,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292			
23	12/31/2032	12/31/2033	12/31/2034	12/31/2035	2,194,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292			
24	12/31/2033	12/31/2034	12/31/2035	12/31/2036	2,294,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292			
25	12/31/2034	12/31/2035	12/31/2036	12/31/2037	2,394,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292			
26	12/31/2035	12/31/2036	12/31/2037	12/31/2038	2,494,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292			
27	12/31/2036	12/31/2037	12/31/2038	12/31/2039	2,594,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292			
28	12/31/2037	12/31/2038	12/31/2039	12/31/2040	2,694,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292			
29	12/31/2038	12/31/2039	12/31/2040	12/31/2041	2,794,187,479	2,460,686	2,337,661	135,035	1,122,987	1,107,046	58,292	58,292	92,509	58,292			
Total Years 1-25 \$ 64,098,574 \$ 69,808,145 \$ 1,200,439																	
Present Value Years 1-25 \$ 24,116,714 \$ 22,916,879 \$ 1,205,836																	

EXHIBIT J
TAX INCREMENT NOTE

R-1

\$23,060,000

Date of Original Issue: _____

UNITED STATES OF AMERICA
STATE OF MINNESOTA
CITY OF WAYZATA

HOUSING AND REDEVELOPMENT AUTHORITY
OF THE CITY OF WAYZATA, MINNESOTA
LIMITED REVENUE TAXABLE TAX INCREMENT NOTE

The **Housing and Redevelopment Authority of the City of Wayzata, Minnesota** (the “HRA”) acknowledges itself to be indebted and, for value received, promises to pay to the order of **Wayzata Bay Redevelopment Company, LLC**, or its assigns (the “Developer”), solely from the source, to the extent and in the manner hereinafter provided, up to the principal amount of this Limited Revenue Taxable Tax Increment Note (the “Note”), together with interest thereon accrued on the unpaid principal balance hereof from the date of original issue, at the rate of interest of eight and seventy-five hundredths percent (8.75%) per annum, on the Payment Dates (as hereinafter defined).

Each payment on this Note is payable in any coin or currency of the United States of America which on the date of such payment is legal tender for public and private debts and shall be made by check or draft made payable to the Developer and mailed to the Developer at its postal address within the United States which shall be designated from time to time by the Developer.

The Note is a special and limited obligation and not a general obligation of the HRA, which has been issued by the HRA pursuant to an Amended and Restated Redevelopment Agreement dated July __, 2015, between the City of Wayzata, Minnesota, the HRA and the Developer (the “Redevelopment Agreement”), as approved by the Board of the HRA to aid in financing a “project,” as defined in Minnesota Statutes, Section 469.174, subdivision 8, of the HRA consisting generally of defraying certain capital and administration costs incurred and to be incurred within and for the benefit of Tax Increment Financing District No. ____ (the “TIF District”). Capitalized terms used herein and not otherwise defined herein shall have the meaning given to them in the Redevelopment Agreement.

The maximum principal amount of this Note attributable to Qualified Redevelopment Costs shall not exceed \$23,060,000.

Principal of and interest on this Note shall be payable solely from and in the amount of Available Tax Increment, as hereinafter defined, on each August 1 and February 1 commencing ~~[February]~~August 1, ~~20—~~2015, to and including ~~[August]~~February 1, ~~20—~~2041 (the “Payment Dates”). The Authority shall have no obligation to pay principal of and interest on this Note on each Payment Date from any source other than Available Tax Increment and the failure of the Authority to pay the entire amount of principal or interest on this Note on any Payment Date shall not constitute a default hereunder as long as the Authority pays principal and interest hereon to the extent of such pledged revenues. The Authority shall have no obligation to pay unpaid balance of principal or accrued interest that may remain after the final Payment Date.

All payments made by the HRA on this Note shall be applied first to accrued interest and then to the principal amount of this Note. Interest accruing from the date of original issue through and including the first Payment Date will be compounded semiannually on February 1 and August 1 of each year and added to principal. Interest shall be computed on the basis of a year of 360 days and charged for actual days principal is unpaid.

“Available Tax Increment”~~is~~ means, (i) during the Initial TIF Period (defined as below), ninety-five percent (95%) of any tax increment the Tax Increment derived by the HRA from the Minimum Improvements Area of the TIF District in any calendar year from the TIF District and received by the Authority from the County in the six months before each Payment Date; and (ii) during the Remaining TIF Period, one hundred percent (100%) of the Tax Increment derived from all tax parcels in the TIF District, except the tax parcels that make up the East Block and received by the Authority from the County in the six months before each Payment Date.

“Initial TIF Period” means the period commencing on August 1, 2015 (the first Payment Date on the TIF Note); and ending on the February 1 immediately preceding the commencement of the Remaining TIF Period (defined below).

“Remaining TIF Period” means the period commencing August 1 of the first tax-payable year in which property taxes for the East Block are based on an estimated market value of at least \$21,000,000, which amount represents fifty percent (50%) of the projected valuation of the entire East Block upon completion of all the East Block Improvements.

EXCEPT AS TO THE OBLIGATION TO MAKE PAYMENTS FROM THE AVAILABLE TAX INCREMENT, THIS NOTE IS NOT A DEBT OF THE HRA, THE CITY OF WAYZATA, OR THE STATE OF MINNESOTA (THE “STATE”), AND NEITHER THE HRA, THE CITY OF WAYZATA, THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE ON THE NOTE, NOR SHALL THE NOTE BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN TAX INCREMENT.

Upon an Event of Default by the Redeveloper under the Redevelopment Agreement, the Authority may exercise the remedies with respect to this Note described in Section 9.3 of the Redevelopment Agreement, the terms of which are incorporated herein by reference.

The principal sum and all accrued interest payable under this Note is prepayable in whole or in part at any time by the Authority without premium or penalty. No partial prepayment shall

affect the amount or timing of any other regular payment otherwise required to be made under this Note.

Upon receipt by Redeveloper of the Authority's written statement of the Excess Amount as defined in Section 8.4 of the Redevelopment Agreement, such Excess Amount will be deemed to constitute, and will be applied to, prepayment of the principal amount of this Note. Such deemed prepayment is effective as of the Calculation Date as defined in Section 8.4 of the Redevelopment Agreement, and will be recorded by the Registrar in its records for the Note. Upon request of the Owner, the Authority will deliver to the Owner a statement of the outstanding principal balance of the Note after application of the deemed prepayment under this paragraph.

The Developer shall never have or be deemed to have the right to compel any exercise of any taxing power of the HRA or the City of Wayzata or any other public body, and neither the HRA nor the City of Wayzata nor any director, commissioner, council member, board member, officer, employee or agent of the HRA or the City of Wayzata, nor any person executing or registering this Note shall be liable personally hereon by reason of the issuance or registration hereof or otherwise.

THE HRA MAKES NO REPRESENTATION OR WARRANTY THAT THE AVAILABLE TAX INCREMENT WILL BE SUFFICIENT TO PAY THE PRINCIPAL OF AND INTEREST ON THIS NOTE. NO HOLDER OF THIS NOTE SHALL HAVE RIGHTS AGAINST THE HRA EXCEPT FOR DISTRIBUTION OF AVAILABLE TAX INCREMENT.

The Note shall not be assignable or transferable without the prior written consent of the HRA; provided, however, that such consent shall not be unreasonably withheld or delayed if: (a) the assignee or transferee delivers to the HRA a written instrument acknowledging the limited nature of the HRA's payment obligations under the Note, and (b) the assignee or transferee executes and delivers to the HRA a certificate, in form and substance satisfactory to the HRA, pursuant to which, among other things, such assignee or transferee represents (i) that the Note is being acquired for investment for such assignee's or transferee's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, (ii) that the assignee or transferee has no present intention of selling, granting any participation in, or otherwise distributing the same, (iii) that the assignee or transferee is an "accredited investor" within the meaning of Rule 501 of the Regulation D under the Securities Act of 1933, as amended, (iv) that the assignee or transferee, either alone or with such assignee's or transferee's representatives, has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of the prospective investment in the Note and the assignee or transferee is able to bear the economic consequences thereof, (v) that in making its decision to acquire the Note, the assignee or transferee has relied upon independent investigations made by the assignee or transferee and, to the extent believed by such assignee or transferee to be appropriate, the assignee's or transferee's representatives, including its own professional, tax and other advisors, and has not relied upon any representation or warranty from the HRA, or any of its officers, employees, agents, affiliates or representatives, with respect to the value of the Note, (vi) that the HRA has not made any warranty, acknowledgment or covenant, in writing or otherwise, to the assignee or transferee regarding the tax consequences, if any, of the acquisition and investment in the Note, (vii) that the assignee or transferee or its representatives have been given a full

opportunity to examine all documents and to ask questions of, and to receive answers from, the HRA and its representatives concerning the terms of the Note and such other information as the assignee or transferee desires in order to evaluate the acquisition of and investment in the Note, and all such questions have been answered to the full satisfaction of the assignee or transferee, (viii) that the assignee or transferee has evaluated the merits and risks of investment in the Note and has determined that the Note is a suitable investment for the assignee or transferee in light of such party's overall financial condition and prospects, (ix) that the Note will be characterized as "restricted securities" under the federal securities laws because the Note is being acquired in a transaction not involving a public offering and that under such laws and applicable regulations such securities may not be resold without registration under the Securities Act of 1933, as amended, except in certain limited circumstances, and (x) that no market for this Note exists and no market for the Note is intended to be developed.

Notwithstanding the foregoing, the Developer may assign and pledge this Note to secure any loan to finance the costs of the Project and may transfer the Note to (i) any entity controlling, controlled by or under common control with the Developer or (ii) any entity in which the majority equity interest is owned by the parties that have a majority equity interest in the Developer.

This Note is issued pursuant to a resolution of the Board of the HRA and is entitled to the benefits thereof, which Resolution is incorporated herein by reference.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this Note, together with all other indebtedness of the HRA or the City of Wayzata outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the HRA or the City of Wayzata to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, the Board of the Housing and Redevelopment Authority of the City of Wayzata, Minnesota, has caused this Note to be executed by the manual signatures of the Chair and the Executive Director of the HRA, and has caused this Note to be dated as of the date of original issue specified above.

Chair

Executive Director

EXHIBIT K

CERTIFICATE OF COMPLETION

A. WAYZATA BAY REDEVELOPMENT COMPANY, LLC (the “Master Redeveloper”), pursuant to the Amended and Restated Redevelopment Agreement with the CITY OF WAYZATA, MINNESOTA (the “City”) and the HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA (the “Authority”), dated effective as of _____, 2008 (the “Agreement”), has agreed to complete the _____ **[Block/Segment]**, as defined in and in accordance with the Agreement, on that certain real property (the “TIF Project Area”) located in Hennepin County, Minnesota, described in Exhibit A attached hereto.

B. The Master Redeveloper has substantially completed construction of the _____ **[Block/Segment]** as required under the Agreement.

C. The issuance of this Certificate of Completion by the City and the Authority is not intended nor shall it be construed to be a warranty or representation by the City or the Authority as to the structural soundness of the _____ **[Block/Segment]**, including, but not limited to, the quality of materials, workmanship or the fitness of the _____ **[Block/Segment]** for its proposed use.

NOW THEREFORE, this is to certify that all construction and other physical improvements specified to be done and made by the Master Redeveloper with regard to the [_____ **Block of the Minimum Improvements** or the _____ **Segment of Public Infrastructure Improvements**] have been substantially completed, and the provisions of the Agreement imposing obligations on the Master Redeveloper to construct the [_____ **Block of the Minimum Improvements** or the _____ **Segment of Public Infrastructure Improvements**] as required under the Agreement, are hereby satisfied and terminated, and the County Recorder and Registrar of Titles in and for the County of Hennepin and State of Minnesota are hereby authorized to record this instrument, to be a conclusive determination of the satisfactory termination or said provisions of the Agreement.

Dated:

CITY:

CITY OF WAYZATA, MINNESOTA

By _____

Its Mayor

By _____

Its City Manager

REVIEWED AND APPROVED

By _____
City Attorney

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by _____ and _____, the Mayor and City Manager, respectively, of the CITY OF
WAYZATA, MINNESOTA, a Minnesota municipal corporation, on behalf of the City.

Notary Public

Dated:

AUTHORITY:

HOUSING AND REDEVELOPMENT
AUTHORITY OF THE CITY OF
WAYZATA, MINNESOTA

By _____

Its President

By _____

Its Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by _____ and _____, the President and Executive Director, respectively, of the
HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA,
MINNESOTA, a public body corporate and politic organized under the laws of the State of
Minnesota, on behalf of the Authority.

Notary Public

EXHIBIT A

Legal Description

EXHIBIT L

MEMORANDUM OF AMENDED AND RESTATED REDEVELOPMENT AGREEMENT

THIS MEMORANDUM OF MASTER REDEVELOPMENT AGREEMENT (this “Memorandum”) is entered into as of _____, ~~2008~~2015, by and among the CITY OF WAYZATA, MINNESOTA, a Minnesota municipal corporation (“City”), the HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA, a public body corporate and politic organized under the laws of the State of Minnesota (“Authority”), and WAYZATA BAY REDEVELOPMENT COMPANY, LLC, a Minnesota limited liability company (“Master Redeveloper”).

RECITALS:

A. City, Authority, and Master Redeveloper (collectively, the “Parties”) have entered into a certain Amended and Restated Redevelopment Agreement dated as of _____, ~~2008~~July 7, 2015 (the “Agreement”), whereby the Parties have agreed to various aspects of the redevelopment of certain real property more particularly described in Exhibit A attached hereto and made a part hereof, together with all improvements, tenements, easements, rights and appurtenances pertaining to such real property, lying and being in Hennepin County, Minnesota (the “Property”).

B. The Parties wish to give notice of the existence of the Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the sum of One and 00/100 Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The above Recitals are incorporated by reference as if fully set forth herein.
2. Capitalized terms, when not defined herein, shall have the meanings ascribed to them in the Agreement.
3. The Parties have entered into the Agreement to set forth the terms and provisions governing the redevelopment of the Property.
4. This Memorandum has been executed and delivered by the Parties for the purpose of recording and giving notice that a contractual relationship for the redevelopment of the Property has been created between the Parties in accordance with the terms, covenants, and conditions of the Agreement.
5. The terms and conditions of the Agreement are incorporated by reference into this Memorandum as if fully set forth herein.

6. This Memorandum may be executed separately in counterparts which, when taken together, shall constitute one and the same instrument.

Dated:

CITY:

CITY OF WAYZATA, MINNESOTA

By _____

Its Mayor

By _____

Its City Manager

REVIEWED AND APPROVED

By _____
City Attorney

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008,
by Kenneth Willcox and Heidi Nelson , the Mayor and City Manager,
respectively, of the CITY OF WAYZATA, MINNESOTA, a Minnesota municipal corporation,
on behalf of the City.

Notary Public

Dated:

AUTHORITY:

HOUSING AND REDEVELOPMENT
AUTHORITY OF THE CITY OF
WAYZATA, MINNESOTA

By _____

Its ~~President~~Chair

By _____

Its Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
~~2008~~2015, by ~~_____~~Thomas Shaver and ~~_____~~Heidi Nelson, the ~~President~~Chair
and Executive Director, respectively, of the HOUSING AND REDEVELOPMENT
AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA, a public body corporate and
politic organized under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

Dated:

MASTER REDEVELOPER:

WAYZATA BAY REDEVELOPMENT
COMPANY, LLC

By _____

Its _____

~~By~~ _____

~~Its~~ _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
~~2008, 2015~~, by _____ ~~and~~ the _____, ~~the President and Executive Director,~~
~~respectively,~~ _____ of the WAYZATA BAY REDEVELOPMENT COMPANY, LLC, a
Minnesota limited liability company, on behalf of the Master Redeveloper.

Notary Public

EXHIBIT A

Document comparison by Workshare Compare on Wednesday, July 01, 2015
12:05:31 PM

Input:	
Document 1 ID	C:\Users\bjorkman.paula\My Documents\ndeloc\Amended and Restated Wayzata Redevelopment Agreement.docx
Description	C:\Users\bjorkman.paula\My Documents\ndeloc\Amended and Restated Wayzata Redevelopment Agreement.docx
Document 2 ID	C:\Users\bjorkman.paula\My Documents\ndeloc\Amended and Restated Wayzata Redevelopment Agreement(1).docx
Description	C:\Users\bjorkman.paula\My Documents\ndeloc\Amended and Restated Wayzata Redevelopment Agreement(1).docx
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	220
Deletions	224
Moved from	3
Moved to	3
Style change	0
Format changed	0
Total changes	450

**AMENDED AND RESTATED
REDEVELOPMENT AGREEMENT**

by and among

**THE CITY OF WAYZATA, MINNESOTA,
THE HOUSING AND REDEVELOPMENT AUTHORITY
OF THE CITY OF WAYZATA, MINNESOTA,**

and

WAYZATA BAY REDEVELOPMENT COMPANY, LLC

**Dated as of
July 7, 2015**

THIS DOCUMENT WAS DRAFTED BY:
Dorsey & Whitney LLP (JRL/BC)
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	3
Section 1.1 Definitions.....	3
ARTICLE II REPRESENTATIONS AND WARRANTIES	13
Section 2.1 Representations and Warranties of the City.....	13
Section 2.2 Representations and Warranties of the Authority	15
Section 2.3 Representations and Warranties of the Master Redeveloper	16
ARTICLE III LAND USE AND DEVELOPMENT CONTROLS.....	17
Section 3.1 Restrictions on Development.....	17
Section 3.2 Homeowners' Associations and Restrictive Covenants	18
Section 3.3 Environmental Review.....	18
Section 3.4 Zoning and Land Use Approvals	18
Section 3.5 Building and Construction Permits.....	18
Section 3.6 Demolition Timing.....	18
Section 3.7 City/Authority Approval.....	18
ARTICLE IV TIF PROJECT AREA LAND ASSEMBLY	19
Section 4.1 Minimum Improvements Area Acquisition by the Master Redeveloper	19
Section 4.2 Transfer of New Superior Boulevard Parcel to the City.....	19
Section 4.3 Transfer of Old Superior Boulevard Parcel to the City	19
Section 4.4 Transfer of East Lake Street Parcel to the Master Redeveloper; Reversion	19
Section 4.5 DNR Parcel	20
Section 4.6 Wetland Mitigation Parcel	20
Section 4.7 Conveyance of Rights-of-Way by the Master Redeveloper	21
Section 4.8 Contingencies to Land Transfer Closing	21
Section 4.9 Land Transfer Closings.....	22
Section 4.10 Land Transfer Indemnification	24
Section 4.11 Transfer of the Gas Station Parcel	26
Section 4.12 Right of First Offer/Refusal	27
Section 4.13 Current Status of Land Assembly	28
ARTICLE V CONSTRUCTION OF MINIMUM IMPROVEMENTS	29
Section 5.1 Minimum Improvements	29
Section 5.2 Submission and Approval of Evidence of Financing	31
Section 5.3 Relocation Indemnification.....	31
Section 5.4 Construction and Inspection of Minimum Improvements.....	32
Section 5.5 Effect of Delay.....	32
Section 5.6 Additional Responsibilities of the Master Redeveloper	32
Section 5.7 Easement for the Use and Maintenance of Public Access Areas; Ensuring Other Public Access	33

Section 5.8	Easement for the Use and Maintenance of Park Improvements	33
Section 5.9	Certificate of Completion	33
ARTICLE VI CONSTRUCTION AND FINANCING OF PUBLIC		
	INFRASTRUCTURE IMPROVEMENTS.....	34
Section 6.1	Public Infrastructure Improvements	34
Section 6.2	Financing the Public Infrastructure Improvements.....	34
Section 6.3	Decision to Construct the Public Infrastructure Improvements.....	35
Section 6.4	Special Assessments	35
Section 6.5	Options for Construction of Public Infrastructure Improvements; Submission and Approval of Evidence of Financing	35
Section 6.6	Design and Plans for Public Infrastructure Improvements	37
Section 6.7	Construction and Inspection of Public Infrastructure Improvements	37
Section 6.8	Budget for Design and Inspection Fees	38
Section 6.9	Reimbursement for Design and Inspection Fees	38
Section 6.10	Reimbursement for Construction Costs	38
Section 6.11	Environmental Remediation	39
Section 6.12	Additional Responsibilities of the Master Redeveloper	39
Section 6.13	Certificate of Completion	40
Section 6.14	Initial Superior Boulevard Improvements Assessment Agreement.....	40
Section 6.15	City Builds, Master Redeveloper Pays Cash	42
ARTICLE VII PROJECT DEFAULT DATES; DEADLINE ADJUSTMENTS		
Section 7.1	Commencement and Completion of Minimum Improvements	43
Section 7.2	Commencement and Completion of Public Infrastructure Improvements	44
Section 7.3	Timing and Sequence of Blocks and Segments.....	45
Section 7.4	Public Access Security.....	45
ARTICLE VIII MASTER REDEVELOPER REIMBURSEMENT OBLIGATIONS; QUALIFIED REDEVELOPMENT COSTS; PERFORMANCE REVIEW		
Section 8.1	Master Redeveloper Reimbursement Obligations	46
Section 8.2	Qualified Redevelopment Costs	47
Section 8.3	Master Redeveloper Use of Entry Deposits.....	47
Section 8.4	Performance Review and TIF Assistance Adjustment/Debt Coverage Ratio.....	48
ARTICLE IX TIF AND OTHER PUBLIC ASSISTANCE		
Section 9.1	TIF District.....	48
Section 9.2	TIF Assistance; Limitations on Reimbursement of Qualified Redevelopment Costs.....	48
Section 9.3	Tax Increment Eligibility	49
Section 9.4	Preconditions to Issuance of TIF Note.....	49
Section 9.5	Assignment of Note	49
Section 9.6	Duration of TIF Notes.....	51
Section 9.7	TIF Bonds	51

Section 9.8	Conditions Precedent to Issuance of TIF Bonds; Inability to Issue or Sell Bonds.....	51
Section 9.9	City/Authority Grant Applications	52
Section 9.10	Conduit Revenue Bonds	52
ARTICLE X ENCUMBRANCE OF MINIMUM IMPROVEMENTS AREA		52
Section 10.1	Encumbrance of the Minimum Improvements Area	52
Section 10.2	Copy of Notice of Default to Mortgagee	53
Section 10.3	Mortgagee’s Option to Cure Events of Default	53
Section 10.4	Defaults Under Mortgage	54
Section 10.5	Subordination of Agreement.....	54
Section 10.6	Unit Mortgages	54
ARTICLE XI INSURANCE AND CONDEMNATION		54
Section 11.1	Insurance	54
Section 11.2	Condemnation	55
ARTICLE XII MASTER REDEVELOPER COVENANTS		56
Section 12.1	Maintenance and Operation of the Minimum Improvements.....	56
Section 12.2	Business Subsidy Agreement.....	56
Section 12.3	Parking and Mobility District	56
Section 12.4	Parking Illumination and Wayfinding	57
Section 12.5	Construction Work Force Parking	57
Section 12.6	Access During Construction of City Ramp	57
ARTICLE XIII TRANSFER LIMITATIONS AND INDEMNIFICATION.....		58
Section 13.1	Representation as to the Minimum Improvements	58
Section 13.2	Secondary Redevelopers.....	58
Section 13.3	Limitations on Transfer.....	58
Section 13.4	Indemnification	59
Section 13.5	Limitation.....	60
ARTICLE XIV EVENTS OF DEFAULT AND REMEDIES		60
Section 14.1	Events of Default Defined	60
Section 14.2	Master Redeveloper Events of Default	60
Section 14.3	City and Authority Events of Default	61
Section 14.4	Cure Rights	61
Section 14.5	Authority Remedies on Master Redeveloper Events of Default.....	61
Section 14.6	City Remedies on Master Redeveloper Events of Default	62
Section 14.7	Master Redeveloper Remedies on City or Authority Events of Default.....	62
Section 14.8	No Remedy Exclusive.....	62
Section 14.9	No Additional Waiver Implied by One Waiver	62
Section 14.10	Reimbursement of Attorneys’ Fees	62
ARTICLE XV ADDITIONAL PROVISIONS		63
Section 15.1	Conflicts of Interest.....	63

Section 15.2	Titles of Articles and Sections	63
Section 15.3	Notices and Demands	63
Section 15.4	Counterparts	64
Section 15.5	Law Governing	64
Section 15.6	Legal Opinions.....	64
Section 15.7	Consents and Approvals	64
Section 15.8	Representatives	64
Section 15.9	Superseding Effect	64
Section 15.10	Relationship of Parties	65
Section 15.11	Term.....	65
Section 15.12	Provisions Surviving Rescission or Expiration.....	65
Section 15.13	Memorandum of Agreement.....	65
Section 15.14	Conflicts Between this Agreement and the PUD Agreement	65

LIST OF EXHIBITS

EXHIBIT A	TIF Project Area Map
EXHIBIT B	Minimum Improvements Site Plan
EXHIBIT B-1	Legal Description of Minimum Improvements Area
EXHIBIT C	Public Infrastructure Improvements Site Plan
EXHIBIT D	Land Transfer Map
EXHIBIT E	Wetland Mitigation Parcel Map
EXHIBIT F	Quit Claim Deed
EXHIBIT G	Easement for the Use and Maintenance of Public Access Areas
EXHIBIT H	Easement for the Use and Maintenance of Park Improvements
EXHIBIT I	TIF Pro Forma
EXHIBIT I-1	Look Back Test Rent Increase
EXHIBIT J	TIF Note
EXHIBIT K	Certificate of Completion
EXHIBIT L	Memorandum of Redevelopment Agreement

AMENDED AND RESTATED REDEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED REDEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into this 7th day of July, 2015 (the “Effective Date”), among the **CITY OF WAYZATA, MINNESOTA**, a Minnesota home rule charter city (the “City”), the **HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA**, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “Authority”), and **WAYZATA BAY REDEVELOPMENT COMPANY, LLC**, a Minnesota limited liability company (the “Master Redeveloper”).

RECITALS

WHEREAS, the capitalized terms used, but not defined, in these Recitals have the meanings given in Article I of this Agreement; and

WHEREAS, the City and the Authority have determined that the TIF Project Area, depicted on the TIF Project Area Map, is currently underutilized, with obsolete structures and physical arrangements, substantial vacant areas and building vacancies, poor soils and potential contamination, inconsistent legal restrictions on redevelopment and outdated and inadequate public infrastructure and circulation; and

WHEREAS, the City and the Authority have determined that redevelopment of the TIF Project Area has been impeded by the difficulty of redevelopment without a consistent overall plan ensuring compatible land uses; and

WHEREAS, the City and the Authority have determined that the TIF Project Area also offers the principal opportunity within the City for creation of a unified, mixed use redevelopment, with significant opportunities for new senior housing, other housing, and commercial redevelopment; and

WHEREAS, the Master Redeveloper is engaged in developing a redevelopment project covering approximately 14.5 acres in the TIF Project Area on which the Master Redeveloper proposes to demolish and clear existing blighted structures, and construct approximately 327 senior housing units, 88 condominium units, 26 market rate apartments, approximately 108,000 leasable square feet of retail space, and a full-service hotel with up to 100 rooms, in addition to street improvements, public parks, and public parking; and

WHEREAS, the City has determined to realign the intersection of Superior Boulevard and Lake Street to achieve the optimal configuration for land use, pedestrian access, safety and engineering, and the realigned streets, including any additional right-of-way or easements obtained with regard thereto, will be acquired for a public purpose and owned by the City for the use, occupation and enjoyment of the general public; and

WHEREAS, the Master Redeveloper has agreed to finance a portion of such road realignment and other sanitary sewer improvements within the TIF Project Area (collectively the “Public Infrastructure Improvements”); and

WHEREAS, the TIF Project Area includes the Minimum Improvements Area and the Public Infrastructure Improvements Area and the TIF Project Area is the same as the proposed TIF District; and

WHEREAS, the Authority has analyzed current land use in the TIF Project Area, including a building-by-building structural analysis, and after appropriate hearings and notices, the City adopted findings to determine that the TIF Project Area is “blighted” within the meaning of the HRA Act and that more than 50% of the buildings in the TIF Project Area are “structurally substandard” within the meaning of the TIF Act; and

WHEREAS, the City and the Authority adopted findings that included a determination that “but for” the assistance contemplated in the TIF Plan and provided under this Agreement, the redevelopment as proposed herein would not be expected to occur in the reasonably foreseeable future; and

WHEREAS, a major component of the proposed Redevelopment Plan is to redevelop blighted areas, prevent the emergence of blight, and foster an increase in commercial and retail development providing jobs, create new rental housing, particularly senior housing, and create new for sale housing appropriate for various life stages of the City’s residents and not currently available in the City; and

WHEREAS, in order to achieve the objectives of the Redevelopment Plan, to facilitate completion of the site improvements, including the Public Infrastructure Improvements, and the development and construction of the Minimum Improvements, the City has conveyed, or agreed to convey, certain parcels to the Master Redeveloper pursuant to the terms of this Agreement, and the Master Redeveloper has conveyed, or agreed to convey, certain parcels to the City; and

WHEREAS, the Master Redeveloper may, pursuant to the terms of this Agreement, assign certain Blocks of the Minimum Improvements to Secondary Redevelopers which will then have certain rights and obligations under this Agreement related to the assigned Block, which assignments will be approved by the Authority, and thereafter the Secondary Redevelopers will undertake those Blocks in accordance, in each case, with the provisions of this Agreement and the PUD Agreement; and

WHEREAS, under the TIF Act, the Authority is authorized to finance certain Qualified Redevelopment Costs of a redevelopment project with tax increment revenues derived from a tax increment financing district established within a redevelopment TIF Project Area; and

WHEREAS, consistent with the TIF Act, the City and the Authority has held a public hearing to consider the need and desirability for adoption of a tax increment financing plan and the creation and establishment of the TIF Project Area as a tax increment financing district pursuant to the TIF Act, and determined that absent such authorization and the provision of certain funds to undertake various qualified redevelopment activities, the redevelopment contemplated herein would not be undertaken, and as a consequence the City and the Authority adopted a TIF plan and established a portion of the Central Area Redevelopment District (“CARD”) Project Area as a redevelopment TIF district; and

WHEREAS, the Authority has certified the TIF District consistent with this Agreement and delayed receipt of the first Tax Increment until 2015; and

WHEREAS, the Authority will issue TIF Assistance in accordance with Article IX of this Agreement; and

WHEREAS, on October 21, 2008, the City, the Authority, and the Master Redeveloper entered into that certain Redevelopment Agreement (the “Original Redevelopment Agreement”); and

WHEREAS, the City, the Authority, and the Master Redeveloper have previously entered into that certain (i) First Amendment to Redevelopment Agreement dated as of December 15, 2009 (the “First Amendment”) and (ii) Second Amendment to Redevelopment Agreement dated as of December 7, 2011 (the “Second Amendment”; the First Amendment, Second Amendment, and the Original Redevelopment Agreement are collectively referred to herein as, the “Amended Redevelopment Agreement”); and

WHEREAS, in order to supplement the Amended Redevelopment Agreement, the City, the Authority, and the Master Redeveloper enter into this Agreement to amend and restate the Amended Redevelopment Agreement and, in so doing, (i) the provisions of the First Amendment and Second Amendment will be fully incorporated into this Agreement to be effective from and after December 15, 2009 and December 7, 2001, respectively, (ii) all other provisions that are added to this Agreement other than the First Amendment and Second Amendment provisions shall be effective from and after the Effective Date, and (iii) all of the provisions of the Original Redevelopment Agreement shall be and remain unaffected, except to the extent modified by this Agreement; and

WHEREAS, the City and the Authority believe that the Project is in the best interests of the residents of the City.

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

ARTICLE I DEFINITIONS

Section 1.1 Definitions. All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

“Agreement” means this Amended and Restated Redevelopment Agreement.

“Amended Redevelopment Agreement” has the meaning given in the Recitals.

“Authority” means the Wayzata Housing and Redevelopment Authority.

“Authority Representative” means the Executive Director of the Authority or his or her designee.

“Available Tax Increment” means, (i) during the Initial TIF Period, ninety-five percent (95%) of the Tax Increment derived from the TIF District and received by the Authority from the County in the six months before each Payment Date (as defined in the TIF Note); and (ii) during the Remaining TIF Period, one hundred percent (100%) of the Tax Increment derived from all tax parcels in the TIF District, *except* the tax parcels that make up the East Block, and received by the Authority from the County in the six months before each Payment Date.

“Block” or **“Blocks”** refers to one or more portions of the Minimum Improvements, specifically the West Block, East Block, East Block Linear Park, Plaza Block, Park Plaza, Superior Block, North Block, or North Block Linear Park.

“Board” means the Board of Commissioners of the Authority.

“CARD Amendment” means an amendment to the City’s Central Area Redevelopment District addressing the Project which serves as the Redevelopment Plan.

“Certificate of Completion” means the certificates in substantially the form attached as Exhibit K, signed by the Authority Representative certifying completion of various Blocks of the Minimum Improvements, and releasing such Block from obligations to construct the Minimum Improvements under this Agreement, as specified in Section 5.9, or certifying Completion of the Public Infrastructure Improvements, and releasing Master Redeveloper from obligations to finance and construct the Public Infrastructure Improvements under this Agreement, as specified in Section 6.13.

“City” means the City of Wayzata.

“City Consultants” means the financial, engineering, legal and other similar advisors to the City and the Authority regarding the Project.

“City Council” means the Wayzata City Council.

“City Documents” has the meaning given in Section 4.9(b).

“City Parties” means the City and the Authority, and their respective members, employees, agents, independent contractors and attorneys.

“Commencement” means the date on which a building permit application is deemed complete by the City in accordance with Minnesota Statutes, Section 15.99 for a given Block (except for the East Block, which means East Block Commencement) and the corresponding Segment of the Public Infrastructure Improvements.

“Commencement Date” means the date of Commencement.

“Completion” of a particular Block or Segment means Master Redeveloper receipt of a Certificate of Completion for that Block or Segment (except for the East Block, which means East Block Completion).

“Completion Date” means any date a Certificate of Completion with respect to any Block of the Minimum Improvements or any Segment of the Public Infrastructure Improvements is delivered.

“Contract for Deed” means the contract for deed provided for by the Sale and Purchase Agreement, pursuant to which the Gas Station Parcel shall be purchased from Wayzata Circle LLC.

“Costs of Issuance” means all costs and expenses incurred in connection with the issuance of the TIF Assistance, including, but not limited to fees of the placement agent, fiscal consultant, bond counsel, counsel to the Authority and placement agent, and paying agent.

“County” means the County of Hennepin, Minnesota.

“Cure Rights” means the rights to cure a Default as specified in Section 14.4.

“Deed” means a quit claim deed in the form attached hereto as Exhibit F.

“Default” means an act or omission by the City, the Authority or the Master Redeveloper which becomes an Event of Default under this Agreement if it is not cured.

“Default Date(s)” means the Commencement and Completion Dates outlined in the Minimum Improvements Timeline in Section 7.1 and the Public Infrastructure Improvements Timeline in Section 7.2.

“DNR” means the Minnesota Department of Natural Resources.

“DNR Parcel” means the parcel of land described as Tract F, Registered Land Survey No. 1168, as depicted on the Land Transfer Map.

“DNR Parcel Act” means 2008 Minnesota Laws, Chapter 368, Article 1, Section 34, as amended by 2009 Minnesota Laws, Chapter 176, Article 3, Section 2.

“DNR Parcel Closing” means the date on which the City transfers certain rights in the DNR Parcel to the Master Redeveloper as detailed in Sections 4.5 and 4.9.

“East Block” has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

“East Block Commencement” means the date on which actual physical improvement commences on the East Block, including grading, excavation, or other physical site preparation work.

“East Block Completion” means the date on which the City issues a certificate of occupancy for the East Block.

“East Block Linear Park” is defined in Section 5.1 and shown on the Minimum Improvements Site Plan.

“East Block Plans” means those plans submitted to the City by the East Block Redeveloper, dated May 21, 2015, which provide for the construction, equipping and parking operations for the East Block.

“East Block Redeveloper” means Bohland Development Inc. as Secondary Redeveloper for the East Block.

“East Lake Street Parcel” means 1001 East Lake Street, Wayzata, Minnesota, as depicted on the Land Transfer Map.

“EAW” means the Environmental Assessment Worksheet.

“Entry Deposits” mean those funds deposited by residents of the independent senior housing components of the Minimum Improvements and received by the Master Redeveloper pursuant to an entry deposit agreement.

“Environmental Law” means any federal, state or local law, rule, regulation, ordinance, or other legal requirement relating to (a) a Release or threatened Release of any Hazardous Material, (b) pollution or protection of public health or the environment or (c) the manufacture, handling, transport, use, treatment, storage, or disposal of Hazardous Materials.

“Event of Default” means any of the events by the City, the Authority or the Master Redeveloper described in Article XIV.

“Final Plans” means the final design and architectural plans for a given Block of the Minimum Improvements submitted to the City for approval pursuant to the City’s ordinances.

“Final Plat” means the final plat or replat for any Block of the Minimum Improvements when approved by the City and the County.

“Financing Commitment” means a commitment from a mortgage lender, or in the case of a conduit bond, a term sheet from an investment banking firm.

“First Amendment” means that certain First Amendment to Redevelopment Agreement dated as of December 15, 2009 among the City, the Authority, and the Master Redeveloper.

“FOFR Parcel” means a portion of the Old Superior Boulevard Parcel identified as shown on Attachment 2 to the First Amendment, and the Remnant Parcel identified as shown on Attachment 2 to the First Amendment.

“Gas Station Parcel” means the parcel of land located at 800 Superior Boulevard in the City, which is legally described as Tract E, Registered Land Survey No. 1168, Hennepin County, Minnesota and is depicted on the Land Transfer Map.

“Gas Station Work” means the Master Redeveloper’s obligation to remove the building, foundation and underground tanks, canopy, pumps and piping located on the Gas Station Parcel.

“General Plan Approval” means all the land use terms and conditions contained in Resolution No. 25-2008 adopted by the City Council on June 10, 2008, as shown in the minutes for the July 15, 2008 City Council meeting as amended by the City Council on June 2, 2015.

“General Plans” means the preliminary design and architectural plans for the Project submitted by the Master Redeveloper to the City and the Authority and approved in the General Plan Approval.

“Go-Ahead Letter” means the Master Redeveloper’s letters to the City and the Authority demonstrating satisfaction of the Project financing contingency for the relevant Block and indicating the Master Redeveloper is prepared to proceed with the relevant Block.

“Grantee” means the party receiving land in each Land Transfer, and includes that party’s successors and assigns.

“Grantor” means the party granting land in each Land Transfer, and includes that party’s successors and assigns.

“Hazardous Material” means petroleum, asbestos-containing materials, and any substance, waste, pollutant, contaminant or material that is defined as hazardous or toxic in any Environmental Law.

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

“Independent Senior Housing” means that portion of the Minimum Improvements for residents fifty-five years of age or older with limited healthcare needs.

“Initial Superior Boulevard Improvements” means those public infrastructure improvements detailed in Attachment 1 to the First Amendment.

“Initial Superior Boulevard Improvements Costs” means the sum of total City costs related to construction of the Initial Superior Boulevard Improvements as detailed in Attachment 1 to the First Amendment.

“Initial TIF Period” means the period commencing on August 1, 2015 (the first Payment Date on the TIF Note) and ending on the February 1 immediately preceding the commencement of the Remaining TIF Period.

“Lake Street and Superior Boulevard Realignment” has the meaning given in Section 6.1 and shown on the Public Infrastructure Improvements Site Plan.

“Lake Street Improvements” means that portion of the Public Infrastructure Improvements on Lake Street, which includes Segment 4.

“Land Transfer(s)” mean one or more transfers of land between the City and the Master Redeveloper outlined in Article IV.

“Land Transfer Closing” means the simultaneous closing on all of the Land Transfers, pursuant to Section 4.9.

“Land Transfer Closing Date” means the date on which the Land Transfers occur, with the possible exception of the DNR Parcel, pursuant to Section 4.9, which shall occur on a date determined by the City, to be no earlier than January 15, 2010.

“Land Transfer Map” means the revised map shown on Attachment 2 to the First Amendment.

“Linear Park” means both the East Block Linear Park and the North Block Linear Park.

“Market Value” means the market value of real property as determined by the assessor of the County in accordance with Minnesota Statutes, Section 273.11 (or as finally adjusted by any assessor, board of equalization, commissioner of revenue, or any court).

“Master Redeveloper” means Wayzata Bay Redevelopment Company, LLC.

“Master Redeveloper Documents” has the meaning given in Section 4.9(c).

“Maximum Redeveloper Amount” has the meaning given in Section 6.2.

“Memorandum of Agreement” means the document described in Section 15.13 and substantially in the form shown in Exhibit L.

“Minimum Improvements” means the Master Redeveloper’s obligations in both Phase I and Phase II as described in Article V subject to the timing and sequence of Blocks and Segments provided in Section 7.3.

“Minimum Improvements Area” means the area on which the Master Redeveloper will construct the Minimum Improvements, which is illustrated on the TIF Project Area Map and legally described on Exhibit B-1.

“Minimum Improvements Site Plan” is attached as Exhibit B.

“Minimum Improvements Timeline” means the Minimum Improvements schedule established in Section 7.1.

“Mortgage” means any mortgage loan that is secured, in whole or in part, by any portion of the Minimum Improvements Area, and which is an approved encumbrance under Article X.

“MPCA” means the Minnesota Pollution Control Agency.

“New Superior Boulevard Parcel” is depicted on the Land Transfer Map.

“North Block” has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

“North Block Linear Park” has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

“Note Lender” means a financial institution or other lender that loans funds to the Master Redeveloper secured by a pledge of the TIF Note.

“Old Superior Boulevard Parcel” is depicted on the Land Transfer Map.

“Original Redevelopment Agreement” has the meaning given in the Recitals.

“Park Plaza” has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

“Parking and Mobility District” means a special service district to be established by the City in accordance with Minnesota Statutes Sections 428A.01 to 428A.101 to provide parking and related services within the City.

“Parking Facilities” means the portion of the Minimum Improvements in the East Block, West Block, Plaza Block and Superior Block, as approved in a Final Plan, available for public parking through the Public Access Area Easement.

“Park Improvements” means the portion of the Minimum Improvements, as approved in a Final Plan, available for public use as a park through a Park Improvements Easement.

“Park Improvements Easement” has the meaning given in Section 5.8.

“Phase(s)” means one or both phases of the Minimum Improvements described in this Agreement.

“Phase I” means the Master Redeveloper’s obligation to construct the Superior Block, North Block, North Block Linear Park, West Block, and East Block Linear Park, subject to the sequencing provisions of Section 7.3.

“Phase II” means the Master Redeveloper’s obligation to construct the East Block, Plaza Block and Park Plaza, subject to the sequencing provisions of Section 7.3.

“Plaza Block” has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

“Preliminary Plat” means the preliminary plat for any Block of the Minimum Improvements.

“Project” means the Minimum Improvements and the Public Infrastructure Improvements under this Agreement.

“Project Completion TIF Pro Forma” means a detailed TIF pro forma in substantially the same format as the TIF Pro Forma, or in another format reasonably approved by the

Authority's financial advisor, updated to reflect actual project costs and related cash flow information as of the Effective Date.

"Public Access Area" means the portions of the Project covered by the Public Access Area Easement, including, but not limited to, roads, curbs, gutters, and on-street public parking.

"Public Access Area Easement" has the meaning given in Section 5.7.

"Public Access Improvements" means the portion of the Minimum Improvements, as approved in a Final Plan, available for public use through a Public Access Area Easement.

"Public Infrastructure Improvements" mean Sanitary Sewer Improvements and the Lake Street Improvements and Superior Boulevard Improvements to be completed by the City or the Master Redeveloper.

"Public Infrastructure Improvements Area" means the area in which the Public Infrastructure Improvements will be constructed which is depicted on the TIF Project Area Map.

"Public Infrastructure Improvements Plans" means one or more plans designed and specified by the City for the Public Infrastructure Improvements, which shall include standards for the engineering of the Public Infrastructure Improvements.

"Public Infrastructure Improvements Site Plan" means the map depicting the Segments of the Lake Street and Superior Boulevard Realignment and the Sanitary Sewer Improvements, attached as Exhibit C.

"Public Infrastructure Improvements Timeline" means the Public Infrastructure Improvements schedule established in Section 7.2.

"PUD Agreement" means one or more planned unit development agreements to be negotiated, approved, executed, and recorded against each Block of the Minimum Improvements by the City and the Master Redeveloper, as the same may be amended from time-to-time.

"PUD Ordinance" means Section 801.33 of the City's ordinances.

"Qualified Redevelopment Activities" mean the Master Redeveloper's Project-related activities eligible for TIF Assistance, as authorized by this Agreement and the TIF Act.

"Qualified Redevelopment Costs" means the certain costs and expenses related to Master Redeveloper's Qualified Redevelopment Activities to be paid by the Master Redeveloper from Master Redeveloper sources and in specific cases reimbursed by Available Tax Increment, which costs and expenses as approved herein are set forth in the TIF Pro Forma.

"Redevelopment Plan" means the redevelopment plan adopted by the Authority in accordance with Minnesota Statutes, Section 469.027 and approved by the City Council in accordance with Minnesota Statutes, Sections 469.028 and 469.175, subdivision 3, which is the same as the CARD Amendment.

“Release” means the spilling, leaking, disposing, discharging, emitting, depositing, ejecting, leaching, escaping or any other release, however defined, whether intentional or unintentional, of any Hazardous Material.

“Remaining Public Infrastructure Improvements” means the Remaining Superior Boulevard Improvements described in Section 6.1.

“Remaining Superior Boulevard Improvements” has the meaning given in Section 6.1.

“Remaining TIF Period” means the period commencing August 1 of the first tax-payable year in which property taxes for the East Block are based on an estimated market value of at least \$21,000,000, which amount represents fifty percent (50%) of the projected valuation of the entire East Block upon completion of all the East Block Improvements.

“Remediation Costs” mean any and all costs, expenses and fees incurred to conduct actions required by a governmental entity under Environmental Law to: (i) clean up, remove, treat, or in any other way address any Release of Hazardous Material, (ii) prevent the Release or threat of Release, or minimize the further Release of any Hazardous Materials; or (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care relating to a Release.

“Remnant Parcel” means that portion of the Gas Station Parcel which is not dedicated as a right of way by the City for the realignment of Superior Boulevard as part of the Superior Boulevard Improvements, which is depicted on Land Transfer Map as Parcel 2A.

“Reverter Closing Date” means 30 days after the Master Redeveloper’s receipt of the City’s notice exercising the City’s right of reverter for the East Lake Street Parcel.

“Reverter Deed” means the quit claim deed through which the Master Redeveloper will convey the East Lake Street parcel and any improvements thereon back to the City upon City’s exercise of its right of reverter.

“Right of First Offer/Refusal” means the rights provided in Section 4.12 hereof to the Master Redeveloper by the City with respect to the potential purchase of the Remnant Parcel and the New Superior Boulevard Parcel, in substantially the form attached to the First Amendment as Attachment 3 (the “FOFR Agreement”).

“Sanitary Sewer Improvements” means improvements to the sanitary sewer system within the TIF Project Area, which are part of the Public Infrastructure Improvements as shown on the Public Infrastructure Improvements Site Plan and which are included in the costs described in Attachment 1 to the First Amendment.

“Secondary Redeveloper” means any redeveloper other than the Master Redeveloper that has been authorized by the City and the Authority to construct the Minimum Improvements as described in Section 13.2.

“Second Amendment” means that certain Second Amendment to Redevelopment Agreement dated as of December 7, 2011 among the City, the Authority, and the Master Redeveloper.

“Secondary Redevelopment Agreement” means any redevelopment agreement negotiated and entered into by and among a Secondary Redeveloper, the City and the Authority consistent with this Agreement.

“Segment” means refers to one or more portions of the Public Infrastructure Improvements, as described in Section 6.1 and shown on the Public Infrastructure Improvements Site Plan.

“Senior Community Town Center” means common areas and amenities for the North Block and Superior Block.

“Special Assessments” mean assessments levied against any portion of the Minimum Improvements Area or other benefited property, by the City for purposes of paying for Public Infrastructure Improvements.

“State” means the State of Minnesota.

“Superior Boulevard Improvements” means that portion of the Public Infrastructure Improvements on Superior Boulevard, which includes Segments 2, 3 (southerly third) and 6, the Initial Superior Boulevard Improvements, and the Sanitary Sewer Improvements.

“Superior Block” has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

“Tax Increment” means the tax increment from the TIF District as calculated in accordance with the TIF Act.

“Tax Official” means any City or County assessor; County auditor; City, County, or State board of equalization; the Commissioner of Revenue of the State; or any State or Federal district court, the Tax Court of the State, or the State Supreme Court.

“TIF” means tax increment financing.

“TIF Act” means Minnesota Statutes, Sections 469.174 to 469.1799, as amended.

“TIF Assistance” means the TIF Notes or the TIF Bonds.

“TIF Bond(s)” or **“Bond(s)”** means the TIF revenue bonds which may be issued by the Authority pursuant to Section 9.7.

“TIF District” or **“District”** means TIF district 5 which was created by the Authority and the City under the TIF Act on November 15, 2011 and for which TIF District Certification was filed on March 29, 2012.

“TIF District Certification” means the Authority’s request to the County Auditor to certify the TIF District in accordance with Minnesota Statutes, Section 469.175, subdivision 3, which was filed on March 29, 2012.

“TIF Note(s)” or **“Note(s)”** means the TIF revenue note or notes to be issued by the Authority to the Master Redeveloper, in substantially the form attached hereto as Exhibit J to pay or reimburse the Master Redeveloper for the funding of Qualified Redevelopment Costs.

“TIF Plan” means the TIF plan adopted by the Authority for the TIF Project Area in accordance with Minnesota Statutes, Section 469.175, as the same may be amended from time-to-time.

“TIF Pro Forma” means the detailed TIF pro forma shown in Exhibit I, as amended by Attachment 4 to the First Amendment.

“TIF Project Area” consists of the property which includes the Minimum Improvements Area and the Public Infrastructure Improvements Area. The TIF District covers a larger area than the TIF Project Area, but excludes those parcels within the TIF District west of new Superior Boulevard resulting from the Superior Boulevard Improvements, as illustrated on the TIF Project Area Map.

“TIF Project Area Map” means the map depicting the TIF Project Area, attached as Exhibit A.

“Title” or **“Title Company”** means such title insurance company, reasonably acceptable to the City, the Authority and the Master Redeveloper, which will provide the title insurance and escrow and disbursement services described in this Agreement.

“Unavoidable Delays” means delays, outside the control of the party claiming its occurrence, which are the direct result of (a) unusually severe or prolonged bad weather, (b) acts of God, fire or other casualty to the Project, (c) litigation commenced by third parties which directly results in delays, (d) acts of any federal, State, or local government unit which directly result in delays, (e) strikes, other labor trouble, (f) delays in delivery of materials for the Project, (g) soil conditions on the TIF Project Area, (h) delays caused by market inability to issue conduit revenue bonds at rates and conditions consistent with the TIF Pro Forma, or (i) resolution of leases in force which impact the Master Redeveloper’s ability to comport with the Minimum Improvements Timeline.

“West Block” has the meaning given in Section 5.1 and shown on the Minimum Improvements Site Plan.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the City. The City makes the following representations and warranties:

- (a) The City is a Minnesota municipal corporation and a home rule charter city and has the power to enter into this Agreement and carry out its obligations hereunder. The City has duly authorized the execution, delivery and performance of this Agreement.
- (b) The City is authorized by law to undertake the Public Infrastructure Improvements and pay for such Public Infrastructure Improvements, in accordance with the provisions of this Agreement.
- (c) The City is authorized by law to convey the East Lake Street Parcel to the Master Redeveloper, in accordance with the terms of this Agreement.
- (d) The City is authorized by law to enter into the various additional agreements contemplated herein, including, but not limited to, the use and maintenance agreements, all in accordance with the terms of this Agreement, and subject to approval as to form and substance by the City Attorney.
- (e) Other than items disclosed by the City to the Master Redeveloper before the execution of this Agreement, there is not pending, nor to the best of the City's knowledge is there threatened, any suit, action or proceeding against the City before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the City to perform its obligations hereunder, or as contemplated hereby or thereby, or the validity or enforceability of this Agreement.
- (f) No member of the City Council or officer of the City, has either a direct or indirect financial interest in this Agreement, nor will any City Councilmember or officer of the City, benefit financially from this Agreement within the meaning of Minnesota Statutes, Section 469.009.
- (g) The City will reasonably cooperate with the Master Redeveloper with respect to any litigation commenced by third parties with respect to the Project; however, this provision does not obligate the City to incur costs, except as otherwise provided in this Agreement or elsewhere.
- (h) The City will assist and reasonably cooperate with the Master Redeveloper in complying with any Environmental Law or land use regulation or Project review procedure applicable to the TIF Project Area to the extent any federal, state or local law requires the participation of the City; however, this provision does not obligate the City to incur costs, except as otherwise provided in this Agreement or elsewhere, nor to limit, waive or modify any regulatory requirements or standards applicable to the Project.
- (i) The execution, delivery and performance of this Agreement, and any other documents, instruments or actions required or contemplated pursuant to this Agreement by the City does not, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof will not conflict with or constitute on the part of the City a breach of or default under any existing agreement or instrument to which the City is a party or violate any law, charter or other proceeding or action establishing or relating to the establishment and powers of the City or its officers, officials or resolutions.

Section 2.2 Representations and Warranties of the Authority. The Authority makes the following representations and warranties:

- (a) The Authority is a public body corporate and politic and a governmental subdivision of the State, duly organized and existing under State law and the Authority has the authority to enter into this Agreement and carry out its obligations hereunder.
- (b) The Authority has approved the TIF Assistance, the TIF District, the TIF Plan and the Redevelopment Plan as required under the TIF Act.
- (c) Under the TIF Plan, the Authority will fund fiscal disparities from within the TIF District, in accordance with Minnesota Statutes, Section 469.177, subdivision 3, but otherwise agrees to retain all of the captured net tax capacity of the TIF Project Area to finance the Qualified Redevelopment Costs as provided in this Agreement, and has elected that the duration of the District will be the maximum duration permitted by the TIF Act. The Authority will not voluntarily take any action to reduce the amount of captured tax capacity retained to finance the Qualified Redevelopment Costs or to reduce the duration of the District until the amount paid to the Master Redeveloper from Available Tax Increment reaches the maximum amount specified in Section 9.2.
- (d) The execution, delivery and performance of this Agreement and any other documents or instruments required pursuant to this Agreement by the Authority does not, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof will not, conflict with or constitute on the part of the Authority a breach of or default under any existing (i) indenture, mortgage, deed of trust or other agreement or instrument to which the Authority is a party or by which the Authority or any of its property is or may be bound, or (ii) legislative act, constitution or other proceeding establishing or relating to the establishment of the Authority or its officers or its resolutions.
- (e) Other than items disclosed by the Authority to the Master Redeveloper before execution of this Agreement, there is not pending, nor to the best of the Authority's knowledge is there threatened, any suit, action or proceeding against the Authority before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the Authority to perform its obligations hereunder, or as contemplated hereby or thereby, or the validity or enforceability of this Agreement.
- (f) No member of the Board of the Authority or officer of the Authority, has either a direct or indirect financial interest in this Agreement, nor will any Commissioner of the Authority or officer of the Authority, benefit financially from this Agreement within the meaning of Minnesota Statutes, Section 469.009.
- (g) The Authority will reasonably cooperate with the Master Redeveloper with respect to any litigation commenced by third parties with respect to the Project; however, this provision does not obligate the Authority to incur costs, except as otherwise provided in this Agreement or elsewhere.

(h) The Authority will assist and reasonably cooperate with the Master Redeveloper in complying with any Environmental Law or land use regulation or development review procedure applicable to the TIF Project Area; however, this provision does not obligate the Authority to incur costs, except as otherwise provided in this Agreement or elsewhere.

(i) The Authority, as regards the Project, is aware of no facts, the existence of which would cause it to be in violation of Environmental Law or which would give any person a valid claim under the Minnesota Environmental Rights Act or the Minnesota Environmental Policy Act.

Section 2.3 Representations and Warranties of the Master Redeveloper. The Master Redeveloper represents and warrants that:

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

(b) The execution and delivery of this Agreement and the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions thereof do not and will not conflict with or result in a breach of any of the terms or conditions of the Master Redeveloper's organizational documents, any restriction or any agreement or instrument to which the Master Redeveloper is now a party or by which it is bound or to which any property of the Master Redeveloper is subject, and do not and will not constitute a default under any of the foregoing or a violation of any order, decree, statute, rule or regulation of any court or of any state or Federal regulatory body having jurisdiction over the Master Redeveloper or its properties, including its interest in the Minimum Improvements, and do not and will not result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Master Redeveloper contrary to the terms of any instrument or agreement to which Master Redeveloper is a party or by which it is bound.

(c) To the best of the Master Redeveloper's knowledge and belief, the execution and delivery of this Agreement will not create a conflict of interest prohibited by Minnesota Statutes, Section 469.009, as amended.

(d) As of the date of the Original Agreement (except for the East Lake Street Parcel and the DNR Parcel), the Master Redeveloper had the unconditional right to acquire fee title to the Minimum Improvements Area and the Master Redeveloper will acquire the entire Minimum Improvements Area. As of the date of this Agreement, the Master Redeveloper has fee title to any Block which has not been Completed and will take all actions necessary to file the Final Plat for each Block of the Minimum Improvements prior to Commencement of construction of the applicable Block.

(e) The Master Redeveloper would not acquire the Minimum Improvements Area and would not construct the Minimum Improvements, but for the execution of this Agreement and the TIF Assistance for the Qualified Redevelopment Costs and other public assistance contemplated to be made available hereunder.

(f) The Master Redeveloper will reasonably cooperate with the City and the Authority with respect to any litigation commenced by third parties with respect to the Project; however, this provision does not obligate the Master Redeveloper to incur costs, except as otherwise provided in this Agreement or elsewhere.

(g) Other than items disclosed by the Master Redeveloper to the City and the Authority before execution of this Agreement, there are no pending or threatened legal proceedings, of which the Master Redeveloper has notice, contemplating the liquidation or dissolution of the Master Redeveloper or threatening its existence, or seeking to restrain or enjoin the transactions contemplated by the Agreement, or questioning the authority of the Master Redeveloper to execute and deliver this Agreement or the validity of this Agreement.

(h) The Master Redeveloper has not received any notice from any local, state or federal official that the activities of the Master Redeveloper or the Authority with respect to the Minimum Improvements Area, New Superior Boulevard Parcel, Old Superior Boulevard Parcel may or will be in violation of any Environmental Law, except as has been identified in any report, audit, inspection or survey, undertaken by or provided to the City and the Authority. The Master Redeveloper is not aware of any state or federal claim filed or planned to be filed by any party relating to any violation of any local, state or federal Environmental Law, regulation or review procedure, and the Master Redeveloper is not aware of any violation of any local, state or federal law, regulation or review procedure which would give any person a valid claim under any Environmental Law, including the Minnesota Environmental Rights Act or the Minnesota Environmental Policy Act.

(i) The Master Redeveloper reasonably expects that it will be able to obtain private financing in an amount sufficient, together with funds provided by the Authority and any other public agencies, to enable the Master Redeveloper to successfully acquire the Minimum Improvements Area and construct the Minimum Improvements and Public Infrastructure Improvements, as provided herein.

ARTICLE III

LAND USE AND DEVELOPMENT CONTROLS

Section 3.1 Restrictions on Development. The Master Redeveloper may not construct or permit construction on any part of the Minimum Improvements Area until the Master Redeveloper satisfies the following conditions:

(a) The Master Redeveloper acquires fee title to all of the property required for the Block proposed to be built, obtains approval of the Final Plans for such Block, executes and records the relevant PUD Agreement and causes any lien holder affecting any of the

property to subject its interest as provided herein to this Agreement and the PUD Agreement;

(b) The Master Redeveloper satisfies all of the conditions established by the City in the General Plan Approval;

(c) The Master Redeveloper satisfies all of the conditions in the PUD Agreement and obtains approval of and records the Final Plat; and

(d) With respect to the East Block, the Master Redeveloper applies for an amendment to the existing PUD Agreement and meets all City requirements and obtains all City approvals.

Section 3.2 Homeowners' Associations and Restrictive Covenants. The Master Redeveloper shall submit any deed restrictions, covenants, agreements, architectural controls, homeowners' associations and other means to control the use and to ensure the maintenance of land within the Minimum Improvements Area to the City and the Authority as may be required under the PUD Agreement.

Section 3.3 Environmental Review. The City has prepared an EAW on the Minimum Improvements Area in accordance with the rules of the Minnesota Environmental Quality Board, and made a "negative declaration" in accordance with such rules regarding the need for an Environmental Impact Statement. The time for the appeal of the negative declaration under applicable law has expired.

Section 3.4 Zoning and Land Use Approvals. Nothing in this Agreement shall limit the authority of the City with respect to zoning and land use approvals. Subject to the foregoing, the staff of the City and the Authority shall cooperate with the Master Redeveloper and assist the Master Redeveloper in the processing and obtaining of zoning and land use approvals. The Master Redeveloper shall be responsible for applying for and obtaining all land use and zoning approvals necessary for the Minimum Improvements including, without limitation, the conditions contained in the General Plan Approval and the PUD Agreement. All zoning and land use approvals shall be by the City Council or the City Planning Commission in accordance with the ordinances of the City.

Section 3.5 Building and Construction Permits. Nothing in this Agreement shall limit the governmental authority of the City with respect to its building and construction permitting process for the Minimum Improvements and Public Infrastructure Improvements. The Master Redeveloper shall comply with all applicable City building codes and construction requirements and shall be responsible for obtaining all building permits prior to construction.

Section 3.6 Demolition Timing. The Parties acknowledge that as of the Effective Date all demolition required for construction of the Minimum Improvements within the Minimum Improvements Area has occurred.

Section 3.7 City/Authority Approval. Unless the City Council determines otherwise in its discretion, whenever this Agreement provides for approval by the City or the Authority, such approval shall be given by, respectively, the City Manager or the Executive Director of the

Authority (or in either case his/her designee), unless (a) this Agreement explicitly provides for approval by the City Council or the Board of the Authority, (b) approval by the Council or Board is required by law or (c) the approval, in the opinion of the City Manager or the Executive Director, would result in a material change in the terms of this Agreement.

ARTICLE IV TIF PROJECT AREA LAND ASSEMBLY

Under the Amended Redevelopment Agreement, the following have or will occur and, specifically, the ongoing rights and obligations provided in Section 4.12 below are as provided in this Agreement:

Section 4.1 Minimum Improvements Area Acquisition by the Master Redeveloper. With the exception of the DNR Parcel, the Master Redeveloper will acquire fee ownership of the Minimum Improvements Area and close on this property consistent with the Minimum Improvements Timeline described in Section 7.1 below. The Master Redeveloper shall provide all related title commitments if requested by the Authority.

Section 4.2 Transfer of New Superior Boulevard Parcel to the City. The Master Redeveloper agrees to transfer fee ownership of the New Superior Boulevard Parcel, depicted as Parcel 4 on the Land Transfer Map included as Exhibit D, to the City for the Lake Street and Superior Boulevard Realignment on the Land Transfer Closing Date, in consideration of the conveyances outlined in this Article IV and the other terms contained in this Agreement.

Section 4.3 Transfer of Old Superior Boulevard Parcel to the City. The Master Redeveloper agrees to transfer fee ownership of the Old Superior Boulevard Parcel, depicted as Parcels 1A and 1B on the Land Transfer Map, to the City on the Land Transfer Closing Date in consideration of the conveyances outlined in this Article IV and the other terms contained in this Agreement. The City agrees to grant the Master Redeveloper a Right of First Offer/Refusal for the FOFR Parcel, pursuant to the terms of Section 4.12 hereof.

Section 4.4 Transfer of East Lake Street Parcel to the Master Redeveloper; Reversion. The City will transfer fee ownership of the East Lake Street Parcel, depicted as Parcel 5 on the Land Transfer Map, to Master Redeveloper on the Land Transfer Closing Date in consideration of the conveyances outlined in this Article IV and on the condition that the Master Redeveloper continue to satisfy its obligations under this Agreement in compliance with the Minimum Improvements Timeline.

- (a) If the Master Redeveloper fails to complete the grading required for the Minimum Improvements for the East Block, as specified in the grading permit for the East Block by June 30, 2011, then the City may require the East Lake Street Parcel to revert back to the City. The City may, but shall not be obligated to, cause the Master Redeveloper to reconvey the East Lake Street Parcel and all improvements thereon to the City by giving the Master Redeveloper notice of the City's exercise of its right of reverter pursuant to this Section. Such notice shall be subject to the notice and right to cure provisions in Article XIV. The right of reverter under this section for the East Lake Street Parcel shall terminate and no longer be of any force and effect upon the completion of grading permit

conditions. The City agrees to execute a recordable release of its right of reverter, in a form reasonably acceptable to the Master Redeveloper, within thirty (30) days after completion of grading permit conditions. The City will agree to subordinate such reversion rights to one or more lenders if necessary in order to secure financing for land acquisition or construction of the Minimum Improvements, or both.

On the Reverter Closing Date, the Master Redeveloper will convey fee title to the East Lake Street Parcel and all improvements thereon to the City by the Reverter Deed, as follows:

- (i) the City will pay the Master Redeveloper \$1.00 as consideration for receiving the Reverter Deed;
- (ii) the Master Redeveloper will convey the East Lake Street Parcel and any improvements thereon to the City free and clear of all encumbrances, subject only to easements benefiting the City or another public entity, and other encumbrances which the City or the Authority has previously approved in writing;
- (iii) the Master Redeveloper shall have no further rights to the East Lake Street Parcel or any improvements thereon;
- (iv) On or before the Reverter Closing Date, the Master Redeveloper will execute and deliver to the City a standard “seller’s affidavit” stating under oath, *inter alia*, that the Master Redeveloper has paid for all work performed or supplies ordered or delivered with respect to the East Lake Street Parcel; and
- (v) the Master Redeveloper shall deliver an updated title insurance commitment to the City evidencing the status of title to the East Lake Street Parcel.

Section 4.5 DNR Parcel. The City has purchased the DNR Parcel and will execute and deliver the DNR Easement or a reasonably equivalent license agreement to the Master Redeveloper at the Land Transfer Closing, subject to DNR approval of the DNR Easement. City staff will cooperate with the Master Redeveloper in a manner consistent with General Plan Approval to address any land use issues related to Master Redeveloper’s use of the DNR Parcel for the Project.

Section 4.6 Wetland Mitigation Parcel. The Master Redeveloper has developed a wetland mitigation plan (the “Plan”) utilizing a parcel owned by the City within a current wetland delineation area located north of I-394 and east of Broadway Avenue in the City, as shown on Exhibit E (the “Wetland Parcel”). The Plan has been approved by the Minnehaha Creek Watershed District and the City. At such time as the City issues a building permit for the East Block: (i) the City will make available the Wetland Parcel to the Master Redeveloper at the City’s expense to mitigate wetland issues created by construction of the Linear Park and the East Block; and (ii) the Master Redeveloper shall pay the City One Hundred Twenty-Nine Thousand Five Hundred Ninety-One and No/100 Dollars (\$129,591.00). All costs of implementing the Plan in excess of the \$129,591.00 payment by the Master Redeveloper shall be paid by the City. Notwithstanding any provisions in this Section 4.6 to the contrary, Master Redeveloper shall

have the right to satisfy its wetland mitigation obligations with regard to the Project on a site other than the Wetland Parcel, pursuant to a plan approved by the City and the Minnehaha Creek Watershed District, at the sole expense of the Master Redeveloper.

Section 4.7 Conveyance of Rights-of-Way by the Master Redeveloper. On the Land Transfer Closing Date, the Master Redeveloper will provide a Deed to the City for all property rights it owns under the existing right-of-way for Superior Boulevard and Lake Street within the TIF Project Area in accordance with standard City requirements and at no cost, but shall not be obligated to acquire additional land beyond the TIF Project Area.

Section 4.8 Contingencies to Land Transfer Closing. The City's and the Master Redeveloper's obligations to close on the Land Transfers outlined in Sections 4.2 to 4.7 and 4.11 are conditioned upon the City and the Authority's approval of the TIF Plan and the PUD Agreement and further conditioned as follows:

(a) City Contingencies. The City's obligation to close on the Land Transfers is expressly conditioned upon each of the following contingencies being satisfied or waived:

(i) The Master Redeveloper shall have performed all of the obligations required to be performed by the Master Redeveloper under the PUD Agreement and this Agreement as of the Land Transfer Closing Date and shall not be in Default under the PUD Agreement and this Agreement.

(ii) The Master Redeveloper shall have delivered to the City all of the Master Redeveloper Documents described in Section 4.9(c).

(iii) The Contract for Deed shall be unamended, in full force and effect, and without any defaults and the Master Redeveloper shall have the right to assign the Contract for Deed to the City free from any claims and encumbrances against its vendee's interest.

(iv) The City shall have determined that the Master Redeveloper has the title and legal authority to transfer unencumbered fee title to the New Superior Boulevard Parcel, the Old Superior Boulevard Parcel and the vendee interest in the Contract for Deed.

(b) Master Redeveloper Contingencies. The Master Redeveloper's obligation to close on the Land Transfers is expressly conditioned upon each of the following contingencies being satisfied or waived:

(i) The City shall have performed all of the obligations required to be performed by the City under this Agreement as of the Land Transfer Closing Date and shall not be in Default under this Agreement.

(ii) The City shall have delivered to the Master Redeveloper all of the City Documents described in Section 4.9(b).

(iii) The Master Redeveloper shall have determined that the City has the title and legal authority to transfer unencumbered fee title to the East Lake Street Parcel to the Master Redeveloper

(iv) If the DNR has transferred title for the DNR Parcel to the City, then the Master Redeveloper shall have determined that the City has the title and legal authority to transfer the unencumbered license or easement rights to the DNR Parcel (as described in Section 4.9(a)(ii)) to the Master Redeveloper and the City shall have executed the DNR Easement.

(v) The City shall have executed the FOFR Agreement.

(vi) The City and all relevant governmental authorities shall have consented to any and all subdivisions and or plats that may be required in order to assemble and transfer the Old Superior Boulevard Parcel and the New Superior Boulevard Parcel.

(c) City and Master Redeveloper Options. In the event that any of the foregoing contingencies fail to be satisfied on or before the Land Transfer Closing Date, the Master Redeveloper or the City, as the case may be, may:

(i) terminate this Agreement in the case of the failure to satisfy a contingency under subsection (a) or (b) hereof; or

(ii) waive such failure and proceed to close; or

(iii) cure the unsatisfied contingency and charge related costs to the other party.

Section 4.9 Land Transfer Closings. All of the Land Transfers will close as outlined herein:

(a) Time and Place. With the exception of the DNR Parcel, all Land Transfers will close simultaneously at the Land Transfer Closing.

(i) *Land Transfer Closing.* Subject to the terms and conditions of this Agreement, the Land Transfer Closing shall be on the Land Transfer Closing Date at a location determined by the City. The Land Transfer Closing Date shall occur on a date determined by the City, but no earlier than January 15, 2010, provided that the closing may not occur until all contingencies in Section 4.8 and 4.9 are satisfied. Possession for all transferred parcels shall be delivered on the Land Transfer Closing Date.

(ii) *DNR Parcel Transfer Closing.* Pursuant to the DNR Parcel Act, the City cannot obtain the DNR Parcel from the DNR until the City completes its acquisition of the Gas Station parcel. The City agrees to transfer to the Master Redeveloper the interests contemplated in Section 4.5, including the DNR Easement, no later than the DNR Parcel Deadline.

(b) City Documents. At the Land Transfer Closing, the City shall execute, where appropriate, and deliver all of the following (collectively, the “City Documents”):

- (i) A Deed properly executed on behalf of the City conveying the East Lake Street Parcel to the Master Redeveloper, together with any other documents reasonably required to be delivered by the City.
- (ii) An affidavit of the City indicating on the Land Transfer Closing Date that there are no outstanding unsatisfied judgments, tax liens or bankruptcies against or involving the City or the East Lake Street Parcel; that there has been no skill, labor or material furnished to such property for which payment has not been made or for which mechanic’s liens could be filed; and that, to the best of the City’s knowledge and belief, there are no other unrecorded interests in such property.
- (iii) Any abstracts of title in the City’s possession to any portion of the East Lake Street Parcel (if abstract property), and any owner’s duplicate certificate of title in the City’s possession to any portion thereof (if Torrens). The City has no obligation to update any abstracts.
- (iv) Any environmental reports, surveys, soil borings, title commitments or other documentation in the possession of the City and not previously delivered to the Master Redeveloper.
- (v) An assignment and assumption of the Master Redeveloper’s vendee’s interest in the Contract for Deed.
- (vi) The FOFR Agreement.
- (vii) The DNR Easement (if the City has previously acquired title to the DNR Parcel).
- (viii) Payment of Fifty Thousand and No/100 Dollars (\$50,000.00), in partial consideration of the transfer of the Gas Station Parcel, in the physical condition described in Section 4.9(c)(x).

(c) Master Redeveloper Documents. At the Land Transfer Closing, the Master Redeveloper shall execute, where appropriate, and deliver all of the following (collectively, the “Master Redeveloper Documents”):

- (i) A Deed properly executed on behalf of the Master Redeveloper conveying the New Superior Boulevard Parcel to the City, together with any other documents reasonably required to be delivered by the Master Redeveloper.
- (ii) A Deed properly executed on behalf of the Master Redeveloper conveying the Old Superior Boulevard Parcel to the City, together with any other documents reasonably required to be delivered by the Master Redeveloper.

- (iii) An affidavit of the Master Redeveloper indicating on the Land Transfer Closing Date that there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving the Master Redeveloper or the Old Superior Boulevard Parcel, the New Superior Boulevard Parcel, or the Gas Station Parcel; that there has been no skill, labor or material furnished to such property for which payment has not been made or for which mechanic's liens could be filed; and that, to the best of the Master Redeveloper's knowledge and belief, there are no other unrecorded interests in such property.
- (iv) Any abstracts of title, in the Master Redeveloper's possession, to any portion of the Old Superior Boulevard Parcel, the New Superior Boulevard Parcel, and the Gas Station Parcel (if abstract property), and any owner's duplicate certificate of title in the Master Redeveloper's possession to any portion thereof (if Torrens). The Master Redeveloper has no obligation to update any abstracts.
- (v) Any environmental reports, surveys, soil borings, title commitments or other documentation in the possession of the Master Redeveloper and not previously delivered to the City.
- (vi) The FOFR Agreement.
- (vii) An assignment and assumption of the vendee's interest in the Contract for Deed.
- (viii) Estoppels, in a form reasonably requested by the City, from the Contract For Deed vendor and the holders of mortgages on the Gas Station Parcel.
- (ix) As provided for in the Sale and Purchase Agreement, the mortgage maturity date extensions, Lender Agreement, Waivers, and Escrow Agreement, together with assignments of these documents by the Master Redeveloper to the City.
- (x) Evidence reasonably satisfactory to the City that the lease for the Gas Station Parcel has been terminated and the tenant has vacated, and that the Gas Station Work has been completed.
- (xi) An assignment or alternate arrangement for issuance to the City of an owner's policy of title insurance in the amount of the purchase price for the Gas Station Parcel and with coverage reasonably acceptable to the City.
- (xii) Consents, approvals or conveyances by all third parties holding a title or lien interest in any of the properties transferred by the Master Redeveloper to the City, with respect to such transfers.

Section 4.10 Land Transfer Indemnification. Except as to the Gas Station Parcel and except as otherwise provided herein and in Section 6.11 below, the City and the Master Redeveloper, acting as both Grantor and Grantee for each Land Transfer outlined in this

Article IV, agree to the following indemnification terms with regard to those Land Transfers. The Grantor in each Land Transfer agrees that the Grantee will bear no responsibility or liability to the Grantor for any Hazardous Material identified on the transferred parcel after the transfer that are determined by a preponderance of evidence to have been Released prior to the transfer, and will indemnify and hold harmless the Grantee against all claims, costs, and liabilities arising out of the presence or Release of any such Hazardous Material to the extent the Grantee may have legal responsibility therefor due to its acquisition of the transferred parcel or is required under Environmental Law or by the MPCA to incur Remediation Costs with respect to such Hazardous Materials in order to construct the Public Infrastructure Improvements.

In the event that a Grantee is named as a defendant in any legal or administrative action alleging liability against the Grantee due to the presence of any Hazardous Material on or about the transferred parcel in violation of any Environmental Law, and such Hazardous Material was Released prior to the transfer date, the Grantor shall indemnify and hold the Grantee harmless from any judgments, damages and liabilities of any kind determined in such legal or administrative action to be due and owing by the Grantee.

If the Grantor fails to defend the Grantee, the Grantee shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter, for the account of and at the risk of the Grantor. In the event that the Grantor fails to defend, all attorneys' fees incurred by the Grantee related to such defense shall be paid for by the Grantor.

Notwithstanding anything to the contrary in this Redevelopment Agreement, however, the parties acknowledge and agree that within the cost budget for the Initial Superior Boulevard Improvements attached hereto as Attachment 1, a total of \$194,940.00 (the "RAP Budget") has been allocated for the following costs (the "RAP Costs") related to the construction of the Initial Superior Boulevard Improvements:

- (a) complete any additional environmental investigation required to delineate the scope and extent of any Hazardous Materials present in the soil, subsoil, or groundwater in the Public Infrastructure Improvements Area with respect to the Initial Superior Boulevard Improvements to the satisfaction of the MPCA;
- (b) prepare and obtain MPCA approval of a development response action plan and construction contingency plan addressing the presence of Hazardous Materials in the Public Infrastructure Improvements Area with respect to the Initial Superior Boulevard Improvements;
- (c) implement such plans in accordance with all MPCA requirements and applicable Environmental Laws, including requirements for reimbursement of Remediation Costs from the Minnesota Petrofund; and
- (d) obtain reimbursement from the Minnesota Petrofund for all eligible Remediation Costs associated with the Initial Superior Boulevard Improvements.

The City and Master Redeveloper acknowledge and agree that any RAP Costs incurred with regard to the construction of the Initial Superior Boulevard Improvements in excess of the RAP Budget shall be the sole cost and responsibility of the City.

Notwithstanding anything to the contrary in this Redevelopment Agreement, Master Redeveloper and the City acknowledge and agree that they will cooperate with each other and use their best efforts to obtain any and all third-party reimbursements, grants and/or funds that may be available to pay for any Remediation Costs arising with respect to any Public Infrastructure Improvement.

Section 4.11 Transfer of the Gas Station Parcel.

- (a) The Master Redeveloper shall assign its interest in the Contract for Deed to the City at the Land Transfer Closing; provided, however, that if the DNR will not allow a transfer of the DNR Parcel to the City simultaneously with the assignment to the City of the vendee's interest in the Contract for Deed, then the Master Redeveloper shall assign its interest in the Contract for Deed ten (10) days prior to the Land Transfer Closing date.
- (b) The Master Redeveloper shall remain obligated for timely payment to the City of all obligations of the vendee under the Contract for Deed, notwithstanding the assignment of the vendee's interest in the Contract for Deed by Master Redeveloper to the City, including but not limited to:
 - (i) The Master Redeveloper shall pay \$950,000 for the escrow and down payment and all closing and other costs required of the "Buyer" under the Sale and Purchase Agreement.
 - (ii) The Master Redeveloper agrees to make interest only monthly payments to the City in the amounts and on the dates required under the Contract for Deed to be made to Wayzata Circle LLC for the interest accruing on the \$1,400,000 balance of the purchase price, in full compliance with the terms of the Contract for Deed. The Master Redeveloper shall also pay to the City the remaining \$1,400,000 balance plus all interest owed and payable to Wayzata Circle LLC pursuant to the Contract for Deed no later than November 17, 2010. If Wayzata Circle LLC defaults in its payment of the underlying mortgages, Master Redeveloper shall cure such defaults.
- (c) The City shall have the right, but not the obligation, to accelerate the Contract for Deed payments, to prepay some or all of the remaining balance owed thereunder and to obtain fee title to the Gas Station Parcel.
- (d) If the City elects to prepay amounts due under the Contract for Deed, the Master Redeveloper remains obligated to make timely interest only payments and the final balloon payment in the amounts and on the dates required under the Contract for Deed and as summarized in Section 4.11(b), and such payments shall continue to be made directly to the City; provided that Master Redeveloper may also elect to prepay to the City the final balloon payment and such accrued interest paid by the City to Wayzata Circle LLC, in Master Redeveloper's discretion.
- (e) The Master Redeveloper shall have the right, but not the obligation, to accelerate the Contract for Deed payments to the City and to prepay some or all of the remaining balance owed thereunder to the City prior to the City paying off the Contract for Deed. If

the Master Redeveloper so elects to prepay the final balloon payment and any accrued interest to the City, the City shall promptly pay such prepayment to the Contract for Deed vendor.

(f) Prior to the Land Transfer Closing, the Master Redeveloper shall terminate the existing lease for the Gas Station Parcel and effect the removal of the tenant at the Master Redeveloper's expense.

Section 4.12 Right of First Offer/Refusal.

(a) Introduction. Subject to the transfer by the Master Redeveloper to the City of the Old Superior Boulevard Parcel and to the conveyance to the City of the Gas Station Parcel by Wayzata Circle LLC, the City shall grant to the Master Redeveloper a right of first offer and a right of first refusal for the purchase of the FOFR Parcel, in the form and substance set forth in the FOFR Agreement.

(b) Right of First Offer. At such time, if any, as the City determines that it intends to sell the FOFR Parcel, the City shall notify Master Redeveloper. Thereafter, for a period of sixty (60) days (the "Initial Negotiation Period"), the parties shall negotiate in good faith to attempt to determine mutually agreeable terms for the purchase and sale of the FOFR Parcel. No later than five (5) days before the expiration of the Initial Negotiation Period, the City shall deliver a final offer to the Master Redeveloper indicating a sale price for the FOFR Parcel that would be acceptable to the City (the "Final Offer"). In the absence of a mutually acceptable agreement for the sale and purchase of the FOFR Parcel, at the request of the City, the Master Redeveloper shall certify in writing as to the receipt and terms of the Final Offer, the expiration of the Initial Negotiation Period, and the absence of such an agreement.

(c) Right of First Refusal. Upon expiration of the Initial Negotiation Period, the City shall be free to sell, encumber or otherwise transfer the FOFR Parcel according to such terms and conditions as the City may elect, provided, however, that if the City receives an offer from a third party (the "Offeror") to purchase the FOFR Parcel (the "Offer") which the City determines that it may accept (whether such Offer is communicated in a non-binding letter of intent or a proposed purchase agreement) that is for a proposed purchase price equal to or less than ninety five percent (95%) of the purchase price stated in the Final Offer, then the City shall deliver a purchase agreement to the Master Redeveloper containing the same terms and conditions of such Offer. Master Redeveloper shall then have the right, but not the obligation, to purchase the FOFR Parcel according to the terms of the Offer as detailed in such purchase agreement. To exercise such right, Master Redeveloper shall execute and deliver to the City four (4) duplicate copies of such purchase agreement within fifteen (15) days of its receipt from the City (the "Election Period"). If Master Redeveloper does not elect to so purchase, the City shall have three hundred and sixty-five (365) days after the passing of the Election Period to close the sale of the FOFR Parcel pursuant to such Purchase Offer to the Offeror, an affiliate or subsidiary of Offeror, or to an entity in which the Offeror owns at least twenty percent (20%) equity interest (collectively, the "Offeror Purchaser"). If the City does not close on the sale to an Offeror Purchaser pursuant to the Offer within said three hundred and

sixty-five (365) day time period, then all terms and provisions of this right of first refusal shall be reinstated in full force and effect with respect to the FOFR Parcel. Any transfer or attempted transfer of the FOFR Parcel in violation of this right of first refusal shall be void. If the Master Redeveloper declines to exercise its rights hereunder on or before the expiration of the Election Period, it shall execute a written acknowledgement of its decision to decline the Offer upon written request from the City, and a release of all rights in the FOFR Parcel in the event of a closing by the City to an Offeror Purchaser on an Offer declined by the Master Redeveloper.

(d) Expiration. The FOFR Agreement shall expire on the earlier of: (i) the sale of the FOFR Parcel to an Offeror Purchaser pursuant to an Offer that has been declined by Master Redeveloper within the three hundred and sixty-five (365) day time period discussed in Section 14.12(c) above; (ii) the sale of the FOFR Parcel to an Offeror Purchaser pursuant to an Offer for a purchase price that was greater than 95% of the price stated in the Final Offer; or (iii) five (5) years after commencement of the Initial Negotiation Period; or (iv) November 30, 2015. Following expiration of the FOFR Agreement, but prior to termination of this Agreement under Section 15.11, the City shall give notice to the Master Redeveloper if the City determines that it intends to sell the FOFR Parcel. The City shall deliver such notice to the Master Redeveloper at least 60 days before approving a purchase agreement to sell the FOFR Parcel to a third party.

(e) Replatting. At or subsequent to the Land Transfer Closing, the City reserves the right to replat the FOFR Parcel, which may change the boundary between the FOFR Parcel and the adjoining parcel to the west currently owned by Vodegel Properties, L.L.P., provided that any such platting may not materially alter the square footage, dimensions or boundary lines of the FOFR Parcel without first obtaining the prior written consent of Master Redeveloper, which consent shall not be unreasonably withheld.

(f) Transfer to the Authority. The City reserves the right to transfer the FOFR Parcel to the Authority, and such transfer shall not be subject to the Master Redeveloper's right of first offer or refusal as detailed above; provided, however, that the Authority shall thereafter be subject to Master Redeveloper's right of first offer and Master Redeveloper's right of first refusal as provided in subparagraphs (b) and (c) above.

Section 4.13 Current Status of Land Assembly. This Agreement cumulatively represents the Original Redevelopment Agreement and the First Amendment and Second Amendment. However, as of the Effective Date, the parties agree and understand that the following obligations of the parties under this Article IV (as identified by Section number below) have been satisfactorily completed:

Section 4.1. Master Redeveloper has acquired all land except the DNR Parcel.

Section 4.2. Master Redeveloper has transferred the New Superior Boulevard Parcel to the City.

Section 4.3. Master Redeveloper has transferred Old Superior Boulevard Parcel to the City, subject to the terms of Section 4.12 with regard to the FOFR Parcel.

Section 4.4 City has transferred the East Lake Street Parcel to Master Redeveloper, and the reverter in favor of the City (described in Section 4.4) has expired.

Section 4.5. The City has purchased the DNR Parcel and has executed and delivered the DNR Easement.

Section 4.7 The Master Redeveloper completed the conveyance to the City described in Section 4.6.

Sections 4.8 and 4.9. All contingencies and requirements to close on the Land Transfers described in Sections 4.8 and 4.9 were satisfied or waived by the parties to this Agreement.

Section 4.10. The parties acknowledge that there are no outstanding RAP Costs described in Section 4.10.

Section 4.11. The Master Redeveloper has acquired fee title to the Gas Station Parcel and otherwise satisfied all terms of Section 4.11.

ARTICLE V CONSTRUCTION OF MINIMUM IMPROVEMENTS

Section 5.1 Minimum Improvements. The project includes Minimum Improvements required to be constructed by the Master Redeveloper in both Phase I and Phase II, as depicted in the Minimum Improvements Site Plan. The Master Redeveloper agrees to construct the following Minimum Improvements:

(a) **Phase I Minimum Improvements.** Consistent with the General Plan Approval (as revised November 15, 2011), the anticipated Minimum Improvements for Phase I of the Project include construction of the Superior Block, North Block, West Block, the North Block Linear Park and portions of the East Block Linear Park improvements, defined as follows:

(i) “*Superior Block*” includes approximately (i) 32,000 gross square feet (“GSF”) of retail space; (ii) 90 independent living senior housing units; and (iii) 270 parking spaces.

(ii) “*North Block*” includes approximately (i) 164 senior housing units, including memory care, skilled care, assisted living and independent living units; and (ii) the Senior Community Town Center.

(iii) “*North Block Linear Park*” is shown on the Minimum Improvements Site Plan.

(iv) “*West Block*” includes approximately (i) 41,000 GSF of retail; (ii) 99 residential units (comprised of 73 senior apartments and 26 non-age restricted apartments); and (iii) 380 parking spaces. The residential units will be no more than 75 percent age-restricted senior housing and the balance of not less than 25

percent conventional rental or for sale housing, to be distributed based on the City's final design review of the West Block and shall satisfy the conditions stipulated in City Council Resolution No. 47-2011.

(v) *“East Block Linear Park”* includes parkland as shown on the Minimum Improvements Site Plan. The portion of the East Block Linear Park shown on Attachment F will be constructed as part of the Minimum Improvements for Phase I and the remainder of the East Block Linear Park Improvements will be constructed as part of the Minimum Improvements for Phase II.

(b) Phase II Minimum Improvements. Consistent with the General Plan Approval (as revised November 15, 2011), the anticipated Minimum Improvements Blocks for Phase II of the Project include construction of the Plaza Block and Park Plaza, defined as follows, and the portion of the East Block Linear Park not constructed in Phase I:

(i) *“East Block”* includes approximately (i) 29 – 31 for sale condominiums, (ii) 80 to 90-unit full service hotel and (iii) 15,000 sq/ft of retail space and related parking, consistent with the East Block Plans.

(ii) *“Plaza Block”* includes approximately (i) 22,000 GSF of retail space; (ii) 59 conventional for-sale residential units; and (iii) 230 parking spaces.

(iii) *“Park Plaza”* includes a plaza and park as shown on the Minimum Improvements Site Plan.

(c) Market Value of Minimum Improvements. It is anticipated that upon completion, the Minimum Improvements will have a Market Value of approximately \$233 Million, with approximate Market Values for the components as follows:

- Senior housing units, \$95.4 Million
- Retail, \$38.7 Million
- Hotel, \$6.97 Million
- Condominiums, \$84.55 Million
- Non-age restricted housing, \$7.6 Million

The minimum values described above are intended to represent current expectations, and the parties do not anticipate entering into assessment agreements within the meaning of the TIF Act, unless requested by the Master Redeveloper.

(d) Minimum Improvements Timeline. The Master Redeveloper must achieve Commencement and Completion for each Block of the Minimum Improvements in accordance with the Minimum Improvements Timeline set forth below in Section 7.1.

(e) Liquor Store. The City acknowledges the Master Redeveloper has met its obligations regarding the municipal liquor store.

The Master Redeveloper hereby covenants and agrees, on behalf of itself and its successors and assigns, that age-restricted senior housing within the Minimum Improvements

will be contained only within the North Block, the Superior Block and the West Block in a manner consistent with the General Plan Approval (as revised November 15, 2011).

(f) East Lake Street Landscaping. Developer will incur \$149,121 in Qualified Redevelopment Costs for landscaping at the end of East Lake Street consistent with the Circle A - Lake Street East roundabout landscape plan, dated February 6, 2015.

(g) East Buffer Landscaping. Master Redeveloper shall complete landscaping of the East Block Linear Park in accordance with the Final Plans for the East Block. Master Redeveloper shall complete the specified landscaping in the East Block Linear Park within the 2015 planting season, except for landscaping that could be damaged because of East Block construction, which will be completed by issuance of a certificate of completion for the East Block. Master Redeveloper shall provide the City with a lump sum payment of \$25,000 to be held by the City in escrow for additional landscaping, restoration or mitigation of the East Block Linear Park at the City's discretion following the issuance of such certificate of completion for the East Block. The amounts of landscaping, restoration or mitigation required by the City shall be released from escrow at the City's discretion. Within three years following the issuance of a certificate of completion for the East Block, the City will have expended all necessary funds and any remaining funds will be released from escrow and returned to the Master Redeveloper.

Section 5.2 Submission and Approval of Evidence of Financing. Concurrent with submission to the City of building permit applications for each Block, the Master Redeveloper shall provide evidence of a Financing Commitment for the Block and Public Access Improvements for which permits are sought and provide a Go-Ahead Letter for that Block and Public Access Improvements. The City's financial advisor shall review the Financing Commitment to determine that the security does not impose an unreasonable risk to the City or the Authority, and that the Financing Commitment is adequate to achieve Completion of the proposed Block and Public Access Improvements. The City attorney shall review the Financing Commitment to determine that the Financing Commitment will not impair the rights of the City or the Authority under this Agreement or the PUD Agreement. The City must complete its review of the Financing Commitment and render a decision regarding its adequacy to the Master Redeveloper within 21 days of receipt of the Financing Commitment, and if the City fails to render a decision to the Master Redeveloper within this time frame, the Finance Commitment will be deemed approved.

Alternatively, if the Master Redeveloper intends to proceed solely with equity sources of funds, the Master Redeveloper shall provide evidence satisfactory to the City and the Authority of the sufficiency of such equity. The City and the Authority will not unreasonably withhold approval of the relevant Financing Commitment.

Section 5.3 Relocation Indemnification. The Master Redeveloper agrees that the City Parties will bear no responsibility or liability for any relocation obligations and will indemnify and hold harmless the City Parties against all claims, costs, and liabilities arising out of the Master Redeveloper's relocation efforts. In the event that the City Parties are named as a defendant in any legal or administrative action alleging liability against the City Parties due to relocation benefits, the Master Redeveloper shall indemnify and hold the City Parties harmless

from any judgments, damages and liabilities of any kind determined in any legal or administrative action.

Section 5.4 Construction and Inspection of Minimum Improvements. The Minimum Improvements will be constructed by the Master Redeveloper on the Minimum Improvements Area in substantial conformity with the Final Plans approved by the City and pursuant to this Agreement, the General Plan Approval and the PUD Agreement. Prior to delivery of the Certificate of Completion to the Master Redeveloper, upon the request of the Authority, the Master Redeveloper will provide the Authority and the City with reasonable access to the Minimum Improvements Area. If during any inspection, the Authority observes that the Minimum Improvements are not being constructed in accordance with the Final Plans, it shall immediately notify the Master Redeveloper; provided that failure to provide such notice shall not result in a waiver of any such deficiency. “Reasonable access” means at least two site inspections per month during regular business hours. During the construction, marketing and rental of the Minimum Improvements, the Master Redeveloper will deliver progress reports to the Authority upon request from the Authority.

Section 5.5 Effect of Delay. The Master Redeveloper acknowledges that if construction of the Minimum Improvements is delayed due to Unavoidable Delays or for any other reason, this could affect the amount of Available Tax Increment and thus the total amount which may be available to pay the TIF Note or TIF Bonds. The Master Redeveloper acknowledges that if the Completion of the construction of the Minimum Improvements is delayed due to Unavoidable Delays or for any other reason, there will be no compensation to the Master Redeveloper or any other party for any reduction in the amount available to pay or refund the TIF Note or TIF Bonds.

Section 5.6 Additional Responsibilities of the Master Redeveloper.

(a) The Master Redeveloper will ensure each Block of the Minimum Improvements is constructed, operated and maintained in substantial accordance with the terms of this Agreement, the General Plan Approval, the Redevelopment Plan, the Final Plans, the PUD Agreement, and all local, State, and federal laws and regulations (including, but not limited to zoning, building code and public health laws and regulations).

(b) The Master Redeveloper will obtain, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and Federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed. The Authority agrees to use reasonable efforts to assist the Master Redeveloper in obtaining any permits, licenses and approvals necessary for the construction of the Minimum Improvements, at no cost to the Authority.

(c) The Master Redeveloper will not construct any building or other structures on, over, or within the boundary lines of any public utility easement unless such construction is provided for in such easement or has been approved by the utility involved.

(d) The Master Redeveloper will comply or assure compliance with all applicable Environmental Law as they relate to the Minimum Improvements Area and the Minimum Improvements.

Section 5.7 Easement for the Use and Maintenance of Public Access Areas; Ensuring Other Public Access. After Final Plans for the Minimum Improvements on any Block have been approved by the City, and prior to Commencement of construction on that Block of the Minimum Improvements, the Master Redeveloper shall deliver to the City an easement for the installation, use and maintenance of roadways, on-street public parking, curbs and gutters, sanitary sewer lines, all public and private utilities, water lines and related site work to be constructed (the “Public Access Areas Easement”) on outlots to be shown in Final Plans and as specified in the PUD Agreement. Each Public Access Areas Easement shall be in the form attached as Exhibit G and must be recorded by the Master Redeveloper within seven (7) days after the Public Access Areas Easement is delivered to the City in accordance with this Section. The Master Redeveloper shall require that the documents identified in Section 3.2 ensure public access to areas within the Minimum Improvements Area which are not covered by the Public Access Area Easement, such as the sidewalks and will submit such relevant portions of such instruments to the City for review and approval as to public access. The Public Access Areas Easements must include a total of at least fifty (50) public parking spaces.

Section 5.8 Easement for the Use and Maintenance of Park Improvements. After Final Plans for the Minimum Improvements on any Block have been approved by the City, and prior to Commencement of construction of Park Improvements on that Block of the Minimum Improvements, the Master Redeveloper shall deliver to the City an easement for the installation, use and maintenance of the Park Improvements to be constructed (the “Park Improvements Easement”) located on each Block. Each Park Improvements Easement shall be in the form attached as Exhibit H and must be recorded by the Master Redeveloper within seven (7) days after the Park Improvements Easement is delivered to the City in accordance with this Section. The reservation contained in Section 1.3(a)(vii) of the form attached as Exhibit H regarding special events or festivals shall only apply to the Park Improvements Easement including the Plaza Block. No such reservation will be included in the Park Improvements Easement including the Linear Park.

Section 5.9 Certificate of Completion. The Master Redeveloper shall notify the Authority when the final certificate of occupancy (exclusive of tenant build-outs) is received for each Block. Upon receipt of the final certificate of occupancy for a Block, the Authority will furnish to the Master Redeveloper a recordable Certificate of Completion in the form of Exhibit K, certifying the completion of the Minimum Improvements for that Block. The Certificate of Completion shall conclusively satisfy and terminate the agreements and covenants of the Master Redeveloper in this Agreement to construct Minimum Improvements on the Block covered by the Certificate of Completion, including without limitation terminating the restrictions related to encumbering the Minimum Improvements described in Article X.

ARTICLE VI CONSTRUCTION AND FINANCING OF PUBLIC INFRASTRUCTURE IMPROVEMENTS

Section 6.1 Public Infrastructure Improvements. The Project includes Public Infrastructure Improvements to be constructed in coordination with both Phase I and Phase II of the Minimum Improvements. The City and the Master Redeveloper agree to cooperate in constructing the following Public Infrastructure Improvements:

- (a) Lake Street and Superior Boulevard Realignment. Consistent with the City's decision to realign the intersection of Superior Boulevard and Lake Street in order to achieve the optimal configuration for land use, pedestrian access and engineering, the Project includes reconstruction of Superior Boulevard and Lake Street and which includes the following components further described in Exhibit N to the First Amendment:
 - (i) Lake Street Improvements, which include Segment 4;
 - (ii) Initial Superior Boulevard Improvements, which include Segments 1, 2, and southerly one-third of Segment 3;
 - (iii) Remaining Superior Boulevard Improvements, which include Segment 6 and the northerly two-thirds of Segment 3; and
 - (iv) Sanitary Sewer Improvements.

The Lake Street and Superior Boulevard Realignment Area will be acquired by the City and the FOFR Parcel will be subject to the FOFR Agreement.

- (b) Public Infrastructure Improvements Timeline. The Public Infrastructure Improvements must be constructed in accordance with the Public Infrastructure Improvements Timeline in Section 7.2.

Section 6.2 Financing the Public Infrastructure Improvements. The Master Redeveloper has agreed with the City on a method to finance the Public Infrastructure Improvements as further described in this Section 6.2 and in the balance of this Article. The Master Redeveloper is responsible for Public Infrastructure Improvements costs up to \$9,839,500, however the transfer of and payment for the Gas Station Parcel by the Master Redeveloper pursuant to Section 4.11, payment of the City's wetland mitigation fees pursuant to Section 4.6 and payment of the City's Initial Superior Boulevard Improvements through the Initial Special Assessments pursuant to Section 6.14, offset a portion of these costs and, therefore, the Master Redeveloper's maximum remaining obligation is \$3,691,746 (the "Maximum Redeveloper Amount"), subject to the terms and conditions of this Section.

- (a) If the actual costs of the Initial Superior Boulevard Improvements are less than the amounts estimated by the City as of the date of this Agreement ("Initial Superior Boulevard Improvements Savings"), the Maximum Redeveloper Amount shall not be reduced accordingly (that is, such Initial Superior Boulevard Improvements Savings may

be applied to any cost of any other Segment in calculating the Maximum Redeveloper Amount), provided, however, if the actual costs of the Improvements as a whole are less than the Maximum Redeveloper Amount, such savings shall reduce the Maximum Redeveloper Amount.

(b) The Master Redeveloper, and not the City or Authority, shall be responsible to pay for any Public Infrastructure Improvement costs that are directly attributable to the negligence of the Master Redeveloper or its agents or contractors, or to default by Master Redeveloper of its obligations related to the Public Infrastructure Improvements under this Agreement.

(c) To manage Public Infrastructure Improvement costs, the Master Redeveloper may choose to construct the Public Infrastructure Improvements, pursuant to Section 6.3, or agree to be subject to Special Assessments, pursuant to Section 6.4, all subject to the further terms of Section 6.5.

Section 6.3 Decision to Construct the Public Infrastructure Improvements. The Master Redeveloper may opt to construct (i) the Lake Street Improvements or (ii) the Superior Boulevard Improvements, or (iii) both. The Master Redeveloper must notify the City no later than at the time of delivery of a Go-Ahead Letter for the first Block of each Phase if it elects to construct all or a portion of the Remaining Public Infrastructure Improvements. The City will construct the Remaining Public Infrastructure Improvements if the Master Redeveloper elects not to construct them. If the Master Redeveloper chooses to construct the Remaining Public Infrastructure Improvements, the Master Redeveloper does not need to comply with public bidding procedures required in Minnesota Statutes, Section 471.345.

Section 6.4 Special Assessments.

(a) Subject to the limitations set forth in Section 6.2 and the Cash Payment option in Section 6.15, the Master Redeveloper may opt to finance all or a portion of the Remaining Public Infrastructure Improvements which the City constructs by agreeing to be subject to Special Assessments consistent with Minnesota Statutes, Chapter 429, for actual costs up to the Maximum Redeveloper Amount, of the Public Infrastructure Improvement costs. The Master Redeveloper must notify the City of its option with regard to how the Public Infrastructure Improvements will be financed no later than the time of delivery of a Go-Ahead Letter for the first Block of each Phase.

(b) If the Master Redeveloper elects to be subject to Special Assessments, the Master Redeveloper must agree to petition for Special Assessments and waive protest rights for all land within the Minimum Improvements Area for Special Assessments. If the Public Infrastructure Improvements are financed with special assessments, then the City will construct the Public Infrastructure Improvements or relevant portion thereof. All terms of the Special Assessments will be consistent with normal City practices and policies.

Section 6.5 Options for Construction of Public Infrastructure Improvements; Submission and Approval of Evidence of Financing.

(a) **City Builds; Master Redeveloper Reimburses City.**

(i) If the Master Redeveloper chooses not to construct all or a portion of the Remaining Public Infrastructure Improvements and chooses not to be subject to Special Assessments or the Cash Payment option, then the Master Redeveloper must reimburse the City for actual Public Infrastructure Improvements costs up to the Maximum Redeveloper Amount and meet the security requirements set forth below which are established pursuant to Section 801.33.10 of the PUD Ordinance.

(ii) Before the City will commencement of construction on any Segment of the Public Infrastructure Improvements, the Master Redeveloper must provide evidence satisfactory to the City of a Financing Commitment and provide a Go-Ahead Letter. The City's financial advisor shall review the Financing Commitment to determine that the security does not impose an unreasonable risk to the City or the Authority and that the Financing Commitment is adequate to satisfy the Master Redeveloper's maximum financial responsibility for the Public Infrastructure Improvements. The City's attorney shall review the Financing Commitment and determine that it will not impair the rights of the City or the Authority under this Agreement. Alternatively, if the Master Redeveloper intends to proceed solely with equity sources of funds, the Master Redeveloper shall provide evidence satisfactory to the City and the Authority of the sufficiency of such equity. The City and the Authority will not unreasonably withhold approval of the relevant Financing Commitment.

(iii) If the City is not satisfied with the Financing Commitment, the City may require the Master Redeveloper to provide a letter of credit, or other security specified in Section 801.33.10 of the PUD Ordinance, acceptable to the City or, at the Master Redeveloper's option, the Master Redeveloper may elect to be subject to Special Assessments for up to 100 percent of its portion of the Public Infrastructure Improvement costs as specified in (b) below. If the Master Redeveloper so elects, the City will issue general obligation special assessment bonds consistent with normal City policies if the City, in its sole discretion, determines that the land value of the Minimum Improvements Area is at least equal to the principal value of the Special Assessments and carry costs during the lien enforcement period.

(b) City Builds; Master Redeveloper Reimburses City via Special Assessments.

(i) If the Master Redeveloper chooses not to construct the Remaining Public Infrastructure Improvements and not to use the Cash Payment option, then the Master Redeveloper chooses to be subject to Special Assessments and the Master Redeveloper agrees that the land in the Minimum Improvements Area will be subject to additional Special Assessments for actual Remaining Public Infrastructure Improvements costs up to the Maximum Redeveloper Amount.

(ii) Before the City will commence of construction on any Segment of the Public Infrastructure Improvements, the City will issue Special Assessments pursuant to Section 6.4. The City will issue general obligation special assessment bonds consistent with normal City policies if the City determines that the land

value in the Minimum Improvements Area is greater than the amount to be specially assessed against the Minimum Improvements Area plus the cost of issuing bonds. If the City determines, in its sole discretion, the value of the land does not exceed the amount to be specially assessed, then the City may require other security as specified in Section 801.33.10 of the PUD Ordinance.

(c) **Master Redeveloper Builds and Finances.**

(i) If the Master Redeveloper chooses to construct the Remaining Public Infrastructure Improvements, then the Master Redeveloper is responsible for financing Remaining Public Infrastructure Improvements costs up to the Maximum Redeveloper Amount as specified in Section 6.2.

(ii) Before the City will permit commencement of construction on any Segment of the Remaining Public Infrastructure Improvements, the Master Redeveloper must provide evidence satisfactory to the City of a Financing Commitment and provide a Go-Ahead Letter. The City's financial advisor shall review the Financing Commitment to determine that the security does not impose an unreasonable risk to the City or the Authority and that the Financing Commitment is adequate to satisfy the Master Redeveloper's maximum financial responsibility for the Remaining Public Infrastructure Improvements. The City's attorney shall review the Financing Commitment and determine that it will not impair the rights of the City or the Authority under this Agreement. Alternatively, if the Master Redeveloper intends to proceed solely with equity sources of funds, the Master Redeveloper shall provide evidence satisfactory to the City and the Authority of the sufficiency of such equity. The City and the Authority will not unreasonably withhold approval of the relevant Financing Commitment.

(iii) If the City is not satisfied with the Financing Commitment, the City may require the Master Redeveloper to provide a letter of credit or other security specified in Section 801.33.10 of the PUD Ordinance acceptable to the City.

Section 6.6 Design and Plans for Public Infrastructure Improvements. The Public Infrastructure Improvements Plans will be designed and specified by the City consistent with City standards for similar projects. Design fees incurred by the City, but paid by the Master Redeveloper must comport with the budget in Section 6.8 and the reimbursement procedure in Section 6.9.

Section 6.7 Construction and Inspection of Public Infrastructure Improvements. All Public Infrastructure Improvements shall be constructed in substantial conformity with the Public Infrastructure Improvements Plans and in substantial accordance with City engineering and performance requirements. Construction of the Public Infrastructure Improvements shall be supervised and administered by the City and the City Engineer. If the Master Redeveloper constructs the Remaining Public Infrastructure Improvements, the City may retain a consulting engineer to review and inspect the Remaining Public Infrastructure Improvements to ensure compliance with the Public Infrastructure Improvements Plans and other relevant City

requirements. Inspections must occur within the normal course of the construction schedule and the final inspection must occur within a reasonable time after Master Redeveloper completes a Segment to allow issuance of a Certificate of Completion. Inspection fees incurred by the City, but paid by the Master Redeveloper must comport with the budget in Section 6.8 and the reimbursement procedure in Section 6.9. If during any inspection, the City observes that the Remaining Public Infrastructure Improvements are not being constructed in accordance with the Public Infrastructure Improvements Plans, it shall immediately notify the Master Redeveloper; provided that failure to provide such notice shall not result in a waiver of any such deficiency.

Section 6.8 Budget for Design and Inspection Fees. The City and the Master Redeveloper will agree upon the scope of required services related to the design and inspection fees which are described in Sections 6.6 and 6.7, prior to Commencement for any Segment. The City may select the vendor to complete the required design and inspection services. The Master Redeveloper will fully reimburse the City for costs incurred for the required services up to \$310,000 for design and inspection work that is completed by December 31, 2012 (the “Maximum Amount”). Beginning on January 1, 2013, and occurring on each January 1 until the design and inspection work is complete, the Maximum Amount will adjust upward or downward by an amount equal to the CPI for the December 31 immediately preceding. For purposes of this Section 6.8, “CPI” means the “Consumer Price Index, All Urban Consumers, U.S. City Average, All Items” as determined by the United States Bureau of Labor Statistics. If the CPI is discontinued, comparable statistics on the purchasing power of the consumer dollar as published at the time of said discontinuation by a responsible financial periodical of recognized authority selected by the City, shall be used for making the above computation.

Section 6.9 Reimbursement for Design and Inspection Fees. This Section provides the procedure by which the City will be reimbursed by the Master Redeveloper for design and inspection fees described in Sections 6.6 and 6.7. Upon Completion of a Segment, and within 30 days of receiving a request for reimbursement from the City, the Master Redeveloper must reimburse the City for design and inspection fees up to the budgeted amount determined under Section 6.8. Design and inspection fees reimbursed by the Master Redeveloper under this Section are Qualified Redevelopment Costs. No Certificate of Completion will be issued until the City is fully reimbursed for all design and inspection fees then owed.

Section 6.10 Reimbursement for Construction Costs.

(a) **Master Redeveloper Reimbursement to the City.** If the City incurs Public Infrastructure Improvements costs which are not financed through the use of Special Assessments in accordance with Section 6.5(a), the Master Redeveloper must reimburse the City as follows. Upon Completion of a Segment by the City, the Master Redeveloper must reimburse the City within 30 days of receiving a written request for reimbursement from the City, and no Certificate of Completion will be issued until the City is fully reimbursed for all construction costs then owed. All reimbursement requests must certify the costs for which reimbursement is sought and must be provided to the reimbursing party pursuant to Section 15.3.

(b) **City Reimbursement to the Master Redeveloper.** If the Master Redeveloper incurs Remaining Public Infrastructure Improvements costs in excess of the Maximum

Redeveloper Amount, the City must reimburse the Master Redeveloper as follows. The City must reimburse the Master Redeveloper for such excess costs within 30 days of receiving a written request for reimbursement from the Master Redeveloper. All reimbursement requests must certify the costs for which reimbursement is sought and must be provided to the reimbursing party pursuant to Section 15.3.

Section 6.11 Environmental Remediation. If the Master Redeveloper opts to construct the Remaining Public Infrastructure Improvements, the Master Redeveloper will, with the assistance of a qualified and experienced environmental consultant:

- (a) complete any additional environmental investigation required to delineate the scope and extent of any Hazardous Materials present in the soil, subsoil, or groundwater in the Public Infrastructure Improvements Area with respect to the Remaining Public Infrastructure Improvements, to the satisfaction of the MPCA;
- (b) prepare and obtain MPCA approval of a development response action plan and construction contingency plan addressing the presence of Hazardous Materials in the Public Infrastructure Improvements Area with respect to the Remaining Public Infrastructure Improvements;
- (c) implement such plans in accordance with all MPCA requirements and applicable Environmental Laws, including requirements for reimbursement of Remediation Costs from the Minnesota Petrofund; and
- (d) obtain reimbursement from the Minnesota Petrofund for all eligible Remediation Costs associated with the Remaining Public Infrastructure Improvements.

Any costs incurred by the Master Redeveloper to comply with this Section 6.11 will be shared equally by the City and the Master Redeveloper. When such expenses are due, each party will be responsible for 50% of each invoice.

Section 6.12 Additional Responsibilities of the Master Redeveloper. If the Master Redeveloper constructs the Remaining Public Infrastructure Improvements, the following provisions apply:

- (a) The Master Redeveloper will construct the Remaining Public Infrastructure Improvements in substantial accordance with the terms of this Agreement and all local, State, and federal laws and regulations (including, but not limited to zoning, building code and public health laws and regulations).
- (b) The Master Redeveloper will obtain, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and Federal laws and regulations which must be obtained or met before the Remaining Public Infrastructure Improvements may be lawfully constructed. The City agrees to use reasonable efforts to assist the Master Redeveloper in obtaining any permits, licenses and approvals necessary for the construction of the Remaining Public Infrastructure Improvements in accordance with the Final Plans approved by the City.

- (c) The Master Redeveloper will comply or assure compliance with all applicable Environmental Laws as they relate to the Public Infrastructure Improvements Area and the Public Infrastructure Improvements.

Section 6.13 Certificate of Completion. If the Master Redeveloper constructs the Remaining Public Infrastructure Improvements, the Master Redeveloper shall notify the City when construction of any Segment thereof has been substantially completed according to the Public Infrastructure Improvement Plans. The City shall promptly inspect the Remaining Public Infrastructure Improvements in order to determine whether it has been constructed in substantial conformity with plans designed and specified by the City. If the City determines that the completed Remaining Public Infrastructure Improvements have not been constructed in substantial conformity with the Public Infrastructure Improvements Plans, the City shall deliver a written statement to the Master Redeveloper indicating in adequate detail the specific respects in which the Remaining Public Infrastructure Improvements have not been constructed in substantial conformity with Public Infrastructure Improvements Plans, and the Master Redeveloper shall promptly remedy such deficiencies. Subject to requirements herein requiring reimbursements and payments by the Master Redeveloper to the City, but otherwise promptly upon determining that a Segment of the Remaining Public Infrastructure Improvements has been constructed in substantial conformity with Public Infrastructure Improvements Plans, the City will furnish to the Master Redeveloper a Certificate of Completion in the form of Exhibit K certifying the completion of that Segment of the Remaining Public Infrastructure Improvements and further providing conclusive acknowledgement that the City has accepted such Remaining Public Infrastructure Improvements. Each Certificate of Completion issued for the Remaining Public Infrastructure Improvements shall conclusively satisfy and terminate the agreements and covenants of the Master Redeveloper in this Agreement to finance and construct the applicable Segment of the Remaining Public Infrastructure Improvements. Upon the request of the Master Redeveloper, the City will undertake the Certificate of Completion inspection for any completed separate part of a Segment of the Remaining Public Infrastructure Improvements so as to expedite the prompt issuance of the Certificate of Completion upon substantial completion of the relevant Segment.

Section 6.14 Initial Superior Boulevard Improvements Assessment Agreement. The Initial Superior Boulevard Improvements are described on Exhibit N, attached to the First Amendment as Attachment 1. Pursuant to Section 6.5(b), Master Redeveloper has chosen not to construct the Initial Superior Boulevard Improvements and has elected to be subject to Special Assessments for Initial Superior Boulevard Improvement Costs, as provided in this Section 6.14 (the “Initial Special Assessments”). The City currently estimates that Initial Superior Boulevard Improvements Costs will be \$2,732,042.

- (a) Authority for Special Assessments. Minnesota Statutes Chapter 429, the City’s Charter Sections 52 and 53 and the City’s Ordinance Chapter 206 authorize the City to assess the cost of the Initial Superior Boulevard Improvements against the Minimum Improvements Area.
- (b) Security. The City, in its sole discretion, will issue general obligation special assessment bonds consistent with normal City policies if the City determines that the land value in the Minimum Improvements Area is greater than the amount of the Initial

Special Assessments plus the cost of issuing bonds. If the City determines, in its sole discretion, the value of the land does not exceed the amount to be specially assessed, then the City may require other security as specified in Section 801.33.10 of the PUD Ordinance.

(c) Consents and Waivers by Master Redeveloper. The Master Redeveloper hereby:

(i) petitions for and consents to an assessment by the City for actual Initial Superior Boulevard Improvement costs up to, but not exceeding, \$2,732,042, plus the costs of issuing the bonds, against the Minimum Improvements Area;

(ii) represents and warrants that the Master Redeveloper has obtained the written consent and waivers of all fee title owners and mortgage holders of the Minimum Improvements Area (attached to the Redevelopment Agreement as Exhibit M, and as introduced in Attachment 5 to the First Amendment);

(iii) waives any and all procedural and substantive objections to the Initial Special Assessments, including but not limited to, notice and hearing requirements, claims that the Minimum Improvements Area, or any part thereof, does not receive a benefit from the Initial Superior Boulevard Improvements equal to or greater than the dollar amount of the Initial Special Assessments, claims that the assessment is not uniform up on the same classes of property and claims that the amount of the special assessments allocated to any lot or outlot exceeds the benefit to such lot or outlot; and

(iv) waives any additional appeal rights available under the City Charter, Minnesota statutes or the City Ordinances.

The consents and waivers set forth in this Section 6.14 run with the title to the Minimum Improvements Area and are binding on the Master Redeveloper and its successors and assigns.

(d) Pending Special Assessment Status. The City does not intend to levy the Initial Special Assessments until the City substantially completes the Initial Superior Boulevard Improvements. Until the City levies the Initial Special Assessments, the Initial Special Assessments constitute a pending special assessment.

(e) Allocation of Special Assessments at Final Plat. The Master Redeveloper will pay the installments of Initial Special Assessments certified for payment with annual real estate taxes when and as they become due in the amounts and on the dates shown in Attachment D to the Second Amendment and in accordance with the Agreement for Special Assessment Petition, Consent and Waiver, as amended by the First Amendment to Agreement for Special Assessment Petition, Consent and Waiver substantially shown in Attachment G, which shall be executed by the Master Redeveloper.

(f) Reservation of Right. If the cost of the Initial Superior Boulevard Improvements is greater than anticipated, the City reserves the right to levy an assessment in a greater amount or levy supplemental assessments pursuant to Minnesota Statutes, Section

429.071, provided that any such future assessments would recognize the benefit, pursuant to Minnesota Statutes, Section 429.051, of the Maximum Redeveloper Amount, and provided further that the Master Redeveloper has not hereby consented or agreed to such greater assessment amount or supplemental assessments, nor has Master Redeveloper waived any of its rights to challenge such greater assessment amount or such supplement assessments pursuant to Minnesota Statutes Chapter 429.

(g) Prepayment of Special Assessments. Under Minnesota Statutes Chapter 429, the City may cause the amounts assessed against the Minimum Improvements Area to be payable in a single installment or in equal installments. The City will make the Initial Special Assessments payable in annual installments extending over 20 years in consideration of the Master Redeveloper's agreement to pay the entire, uncertified balance of the Initial Special Assessments against each lot or outlot upon the sale or other transfer (including but not limited to the conveyance of equitable ownership pursuant to a contract for deed) of that lot or outlot; provided that the payment of the balance of such Initial Special Assessments shall not be accelerated in the event of (i) the transfer of fee title, via warranty deed, to Master Redeveloper of the Minimum Improvements Area in order to satisfy its current contract for deed with Superior Lake Street Properties, LLC; or (ii) the sale or other transfer to a person pursuant to the provisions of Sections 13.2 or Sections 13.3(a)(i), (ii) or (iv). All Initial Special Assessment payments will be made semi-annually and payable with property taxes. For the first three (3) years, payment of the Initial Special Assessments will be made based on a modified principal payment schedule as permitted under City Ordinance Section 206.14. Payments under the modified principal payment schedule will begin in 2011. The first year of payments will include two principal payments of \$2500 plus interest from the date of the Initial Special Assessments are levied, and will be payable in 2011. The second year of payments will include two \$2500 principal payments plus interest and will be payable in 2012. The third year of payments will include two \$2500 principal payments plus interest and will be payable in 2013. The remaining payments will be due commencing in 2014, in generally equal semi-annual installments as reasonably determined by the City. If modified principal payment schedule for the Initial Special Assessments is challenged in any manner, the Master Redeveloper shall pay all costs reasonably incurred by the City related to that challenge. Subject to the exceptions identified above, if the Master Redeveloper conveys or otherwise transfers ownership of a lot or outlot subject to Initial Special Assessments before the City levies the Initial Special Assessments, the Master Redeveloper must escrow the portion of the pending Initial Special Assessments attributable to that lot or outlot when the City levies the special assessment, and the purchaser must, in the escrow agreement, acknowledge and agree that it is subject to and bound by the consents and waivers described in this Section 6.14. If the Master Redeveloper elects to escrow the funds with a title insurance company, the City must be a party to the escrow agreement.

Section 6.15 City Builds, Master Redeveloper Pays Cash. Notwithstanding anything in this Article VI to the contrary, Master Redeveloper shall have the right, in its sole and absolute discretion, to pay cash ("Cash Payment") to the City for all or a portion of the costs of the Public Infrastructure Improvements in lieu of financing such costs through Special Assessments. In the event Master Redeveloper elects the Cash Payment, Master Redeveloper shall provide written

notice (“Cash Notice”) to the City exercising such option within 10 days after Master Redeveloper receives written notice from the City specifying the amount of the winning bid for the relevant portion of the Public Infrastructure Improvements (the “Bid”). Along with the Cash Notice to the City, Master Redeveloper shall provide evidence satisfactory to the City the sufficiency and availability of such cash payment in an amount equal to the Bid. Within 10 days after delivery of the Cash Notice to the City, the Master Redeveloper and the City will enter into a disbursing agreement or similar agreement (the “Disbursing Agreement”) providing how draws will be made to pay costs related to the Bid. The cash payment will be made by the Master Redeveloper in accordance with the Disbursing Agreement on the date the Disbursing Agreement is entered into.

In lieu of the Cash Payment, the City may in its sole and absolute discretion accept an alternative financing arrangement from the Master Redeveloper.

If Master Redeveloper elects to exercise its rights pursuant to this Section 6.15 or Section 6.4, in no event shall Master Redeveloper’s obligations exceed the Maximum Redeveloper Amount. If Master Redeveloper does not, within the time period specified above, (1) provide the written notice exercising such option; or (b) enter into the Disbursing Agreement and make the Cash Payment, then the City may, without further notice to the Master Redeveloper, proceed with Special Assessments for the relevant portion of the Public Infrastructure Improvements.

ARTICLE VII PROJECT DEFAULT DATES; DEADLINE ADJUSTMENTS

Section 7.1 Commencement and Completion of Minimum Improvements. Time frames for Commencement and Completion of the Minimum Improvements shall be on the following schedule, subject to Unavoidable Delay or amendment under Section 7.3. Failure to satisfy Commencement or Completion obligations of each Block of the Minimum Improvements by the Default Dates shall be an Event of Default under this Agreement. Subject to City land use approvals and coordination with the City regarding the scheduling of the construction of Public Infrastructure Improvements, the Master Redeveloper may construct the Blocks or Segments earlier than the dates in the Minimum Improvements Timeline. Following Commencement, construction of any given Block must continue in a sequence consistent with normal construction practices.

Minimum Improvements Timeline		
Block	Commencement	Completion
Phase I		
North Block	June 30, 2012	December 31, 2014
Superior Block	June 30, 2012	December 31, 2014
North Linear Park and initial portion of East Linear Park shown on Attachment F	June 30, 2012	September 30, 2015
West Block	March 31, 2014	September 30, 2015

Phase II		
Plaza Block	March 31, 2015	September 30, 2016
Park Plaza	March 31, 2015	September 30, 2016
East Block	September 30, 2015	December 31, 2017
East Linear Park (remaining portion)	March 31, 2015	September 30, 2016

For purposes of the East Block, references in Section 7.1 to “Commencement” means “East Block Commencement” and “Completion” means “East Block Completion.”

Before December 31, 2014, the Master Redeveloper will provide interim landscape, stormwater and sidewalk improvements as shown on Attachment E to the Second Amendment (“Interim Conditions”) and no final certificate of occupancy for the Minimum Improvements on the West Block shall be issued until such time as the Interim Conditions have been completed. These Interim Conditions will remain in place until Completion of the final Block of the Minimum Improvements. Until such Completion, the Master Redeveloper will provide such easements as reasonably requested by the City to ensure public use and availability to the Interim Conditions.

As of the Effective Date, the parties agree and understand that the Master Redeveloper has completed the following portions of the Minimum Improvements:

Phase I:

Superior Block

North Block

North Block Linear Park

West Block

Phase II:

Plaza Block

Park Plaza

See the table above for the construction deadlines for the uncompleted portions of the Minimum Improvements.

Section 7.2 Commencement and Completion of Public Infrastructure Improvements. Time frames for Commencement and Completion of the Public Infrastructure Improvements shall be on the following schedule, subject to Unavoidable Delay or amendment of the Minimum Improvements Timeline in Section 7.1. Failure to satisfy Commencement or Completion obligations of each Segment of the Public Infrastructure Improvements by the Default Dates shall be an Event of Default under this Agreement. Subject to City land use

approvals and coordination with the City regarding the extent of any design, inspection and construction obligations, the Master Redeveloper may construct the Blocks or Segments earlier than the dates in the Public Infrastructure Improvements Timeline. Following Commencement, construction of any given Segment must continue in a sequence consistent with normal construction practices. Regardless of whether the City or the Master Redeveloper constructs the Remaining Public Infrastructure Improvements, each Segment of the Remaining Public Infrastructure Improvements must be commenced and completed in accordance with this Section 7.2.

The parties acknowledge that the following represents the status of the Public Infrastructure Improvements as of the Effective Date:

Lake Street Improvements, which include Segment 4: completed and not currently specially assessed

Initial Superior Boulevard Improvements, which include Segments 1, 2 and the southerly one-third of Segment 3: completed, and specially assessed.

Remaining Superior Boulevard Improvements, which include Segment 6 and the northerly two-thirds of Segment 3: not yet completed.

Sanitary Sewer Improvements: completed and specially assessed.

Section 7.3 Timing and Sequence of Blocks and Segments. The Master Redeveloper agrees to construct each Block of the Minimum Improvements in accordance with the Minimum Improvements Timeline, however the City and the Authority agree that if the Master Redeveloper determines that the Default Dates in the Minimum Improvements Timeline become infeasible or otherwise problematic to ensure Completion of all the Minimum Improvements by September 30, 2016, the Master Redeveloper must seek written approval to amend the Minimum Improvements Timeline from the City and the Authority, which approval will not be unreasonably withheld. If the Minimum Improvements Timeline is altered, the Public Infrastructure Improvements Timeline is altered accordingly.

The Master Redeveloper may alter the sequence in which the Blocks are constructed by substituting one Block for another in the Minimum Improvements Timeline, provided that at least two Blocks are completed under Phase I timing and the remaining Blocks are completed under Phase II timing. Provided, further, that the North Linear Park must be constructed simultaneously with the construction of the North Block and the East Linear Park must be constructed simultaneously with the construction of the East Block. The Master Redeveloper must notify the City if it alters the sequence in the Minimum Improvements Timeline, but does not need to seek written approval for a change in the sequence of construction; however, if the City is constructing the Remaining Public Infrastructure Improvements, then the City will decide how the change in sequence contemplated under this paragraph alters the Remaining Public Infrastructure Improvements sequence.

Section 7.4 Public Access Security. The Master Redeveloper will be constructing improvements to the Public Access Areas on Outlots A, C, D and E as shown on the Final Plat in

the form and sequence specified by the City consistent with the corresponding approved plans. The Final Plan approval by the City for each Block shall designate the portion of the Public Access Improvements to be completed prior to issuance of a final certificate of completion for the particular Block and such final certificate of completion will not be issued until those Public Access Improvements are completed. In order to ensure construction of those Public Access Improvements, the Master Redeveloper will provide security, in the City's discretion, to the City, in the form of a commercially standard letter of credit or surety bond reasonably acceptable to the City, security in the amount of \$1,000,000 ("Public Access Security") by the earlier to occur of issuance of a building permit for the East Block or January 2, 2016, which amount represents the cost of the portion of the Public Access Improvements that will remain to be built following construction of the Superior Block and the North Block, and the associated Public Access Improvements approved the by City. If the Master Redeveloper fails to provide the Public Access Security, the City is under no obligation to deliver either a Certificate of Completion or a City certificate of occupancy for either the North Block or the Superior Block until the Public Access Security requirement is satisfied.

The Public Access Security amount shall be reduced on a monthly basis equal to the portion of the Public Access Improvements that have been constructed in the month immediately prior. The City may reasonably require evidence of construction and payment for such Public Access Improvements prior to making respective reductions in the Public Access Security Amount.

ARTICLE VIII

MASTER REDEVELOPER REIMBURSEMENT OBLIGATIONS; QUALIFIED REDEVELOPMENT COSTS; PERFORMANCE REVIEW

Section 8.1 Master Redeveloper Reimbursement Obligations.

(a) Through the date of TIF District Certification, the Master Redeveloper is obligated to pay all out of pocket costs of the City and the Authority for the City Consultants in connection with the Project, and all third party consulting costs of the Master Redeveloper, including but not limited to costs of the development of this Agreement, the Redevelopment Plan, the TIF Plan and creation of the TIF District, the PUD Agreement, architectural and engineering studies for the Project, fiscal analysis, legal fees and all costs and expenses related thereto. The Master Redeveloper must pay such costs monthly upon presentation of invoices and other documentation of such costs, not more than thirty (30) days after the request for payment is delivered to the Master Redeveloper. All such costs will be Qualified Redevelopment Costs pursuant to the TIF Pro Forma.

(b) After the date of TIF District Certification and prior to delivery of the Certificate of Completion for the final Block or Segment, the Master Redeveloper is obligated to pay all out of pocket costs of the City and the Authority for the ongoing legal and financial advisor responsibilities under this Agreement and for the City's review and inspection of the operations and performance of the Park Improvements and Public Access Area; **provided, however,** the City, the Authority, and the Master Redeveloper will be responsible for their respective legal and financial advisor expenses related to drafting

and execution of this Agreement during 2015, from creation of the corresponding term sheet through execution of this Agreement.

(c) This Section expressly supersedes in its entirety the Preliminary Agreement, which served as a reimbursement agreement between the City, the Authority and the Master Redeveloper.

Section 8.2 Qualified Redevelopment Costs.

(a) The Master Redeveloper costs eligible for TIF Assistance include costs incurred for Qualified Redevelopment Activities and Public Infrastructure Improvements, which are Qualified Redevelopment Costs and include the following:

- (i) demolition of any structures or improvements required for the Project;
- (ii) Remediation Costs;
- (iii) land acquisition and write down necessary to allow the TIF Project Area to be redeveloped as contemplated herein, including, without limitation, any costs necessary to acquire leasehold interests;
- (iv) relocation payments, if any;
- (v) Public Infrastructure Improvements paid by Master Redeveloper, including design and inspection fees paid pursuant to Section 6.9;
- (vi) site improvements by the Master Redeveloper, including without limitation foundations, parking facilities, grading, excavation, on-site roads, utilities, sidewalks, curb and gutter, street lighting and similar improvements;
- (vii) reimbursement of predevelopment costs of the City/Authority paid by the Master Redeveloper for planning, legal, consulting and other similar costs;
- (viii) capitalized interest and financing costs for eligible activities; and
- (ix) other eligible Qualified Redevelopment Costs authorized in the TIF Plan.

(b) All Qualified Redevelopment Activities and Public Infrastructure Improvements will be undertaken by the Master Redeveloper in the sequence required to allow timely Commencement and Completion of the applicable Minimum Improvements.

Section 8.3 Master Redeveloper Use of Entry Deposits. In its sole discretion, the Master Redeveloper may hold cash proceeds from the Entry Deposits in reserve to meet debt coverage obligations required for construction financing, use the Entry Deposits to reduce Project-related debt, or spend the Entry Deposits on capital improvements for the Project. Entry Deposit funds remaining after those obligations are satisfied will be used within the Project. Any such remaining funds will be placed in a discrete account solely for Project purposes and when drawn, the Master Redeveloper will send the Authority a written confirmation that the funds

were used in accordance with this Section. Upon request from the Authority, the Master Redeveloper will provide evidence of the current status of Entry Deposits. If the Master Redeveloper uses proceeds from the Entry Deposits for non-Project related uses, then the maximum principal amount of TIF Assistance as shown in Section 9.2 will be reduced in an equal amount. The requirements in this Section will terminate and the City will issue a certificate of release when the Master Redeveloper has spent all Entry Deposits in accordance with this Section.

Section 8.4 Performance Review and TIF Assistance Adjustment/Debt Coverage Ratio. The parties acknowledge that as of the Effective Date of this Agreement, the Master Redeveloper submitted and the Authority reviewed a Master Redeveloper TIF Pro Forma, and no adjustment was made to the principal amount of the TIF Note (except as provided in this Agreement), all in accordance with the terms of Section 8.4 of the Original Redevelopment Agreement as amended by the First Amendment thereto.

ARTICLE IX TIF AND OTHER PUBLIC ASSISTANCE

Section 9.1 TIF District.

(a) The Authority (on December 15, 2008), and the City (on December 16, 2008), approved a TIF Plan for the TIF District (designated as Redevelopment TIF District No. 5); and the Authority subsequently filed the TIF District Certification for the TIF District on June 11, 2009. On November 15, 2011, the City and the Authority decertified Redevelopment TIF District No. 5 and subsequently on November 15, 2015 I took all actions necessary to reapprove the TIF District (continued to be designated as Redevelopment TIF District No. 5), after all the hearings and notices required under Section 469.175 of the TIF Act.

(b) The TIF District has a maximum duration of 25 years after the date of first receipt of increment (i.e., 26 years of collection), as permitted under the TIF Act. In the TIF Plan, the Authority elected to defer the first year of receipt from the TIF District for four years after the year of approval, which year is 2015.

Section 9.2 TIF Assistance; Limitations on Reimbursement of Qualified Redevelopment Costs. Before the Authority will issue TIF Assistance to the Master Redeveloper, the Master Redeveloper must provide evidence satisfactory to the Authority that its Qualified Redevelopment Costs equal at least [\$23,060,000]. In order to obtain the amount of Tax Increment contemplated by this Agreement, the Authority will issue, subject to satisfaction of the conditions in this Agreement, a “pay-as-you-go” TIF Notes to the Master Redeveloper with a maximum original principal amount of [\$23,060,000], as shown in Attachment C plus interest on the unpaid principal balance thereof at a rate of 8.75% which shall be payable solely from Available Tax Increment from the Project as may be adjusted under Section 8.4.

The Authority does not represent or warrant the amounts of Available Tax Increment that will be available for payment of the TIF Notes or TIF Bonds. The Authority will not reimburse the Master Redeveloper for the Qualified Redevelopment Costs from Authority revenues, other

than Available Tax Increment, nor guaranty the amount of money which the Master Redeveloper will receive as a reimbursement, such amount being payable solely from the Available Tax Increment in accordance with this Section.

Section 9.3 Tax Increment Eligibility. Upon any Event of Default under Articles IV, V, VI, and VII of this Agreement, which Default has not been cured, regarding any obligation under this Agreement related to a Block, Tax Increment from the defaulting Block, at the election of the Authority, may be withheld from payment on any TIF Assistance. Tax Increment from any Block that is not in Default under this Agreement shall remain available for payment of any outstanding TIF Assistance.

Section 9.4 Preconditions to Issuance of TIF Note.

- (a) The Authority will issue the TIF Note to the Master Redeveloper upon satisfaction of the following conditions:
- (i) the Master Redeveloper is not in Default under the terms of this Agreement;
 - (ii) the Authority has received a sworn construction cost statement showing the total construction costs of Phase I from the Master Redeveloper;
 - (iii) the Master Redeveloper has provided a Financing Commitment for the Phase I Minimum Improvements in an amount sufficient, together with other funds available, to finance the construction costs of the Phase I Minimum Improvements and make the Tax Increment payment to the Authority during the construction period;
 - (iv) the City has approved the Final Plans for the Minimum Improvements;
 - (v) the Master Redeveloper has issued the applicable Go-Ahead Letter;
 - (vi) if and to the extent required, the Master Redeveloper has executed minimum assessment agreements acceptable to the City and the County; and
 - (vii) if and to the extent required, the Master Redeveloper principals shall have executed all Master Redeveloper guaranties required by the Note Lender.
- (b) Upon satisfaction of the conditions set forth in paragraph (a) above, the Authority will issue the TIF Note to the Master Redeveloper. The principal amount of the TIF Note will be the amounts set forth in Section 9.2.

Section 9.5 Assignment of Note. The Note shall not be assignable nor transferable without the prior written consent of the Authority; provided, however, that such consent shall not be unreasonably withheld or delayed if:

- (a) the assignee or transferee delivers to the Authority a written instrument acknowledging the limited nature of the Authority's payment obligations under the Notes; and
- (b) the assignee or transferee executes and delivers to the Authority a certificate, in form and substance satisfactory to the Authority, pursuant to which, among other things, such assignee or transferee represents:
 - (i) that the Note is being acquired for investment for such assignee's or transferee's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof;
 - (ii) that the assignee or transferee has no present intention of selling, granting any participation in, or otherwise distributing the same;
 - (iii) that the assignee or transferee is an "accredited investor" within the meaning of Rule 501 of the Regulation D under the Securities Act of 1933, as amended;
 - (iv) that the assignee or transferee, either alone or with such assignee's or transferee's representatives, has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of the prospective investment in the Note and the assignee or transferee is able to bear the economic consequences thereof;
 - (v) that in making its decision to acquire the Note, the assignee or transferee has relied upon independent investigations made by the assignee or transferee and, to the extent believed by such assignee or transferee to be appropriate, the assignee's or transferee's representatives, including its own professional, tax and other advisors, and has not relied upon any representation or warranty from the Authority, or any of its officers, employees, agents, affiliates or representatives, with respect to the value of the Note;
 - (vi) that the Authority has not made any warranty, acknowledgment or covenant, in writing or otherwise, to the assignee or transferee regarding the tax consequences, if any, of the acquisition and investment in the Note;
 - (vii) that the assignee or transferee or its representatives have been given a full opportunity to examine all documents and to ask questions of, and to receive answers from, the Authority and its representatives concerning the terms of the Note and such other information as the assignee or transferee desires in order to evaluate the acquisition of and investment in the Note, and all such questions have been answered to the full satisfaction of the assignee or transferee;
 - (viii) that the assignee or transferee has evaluated the merits and risks of investment in the Note and has determined that the Note is a suitable investment for the assignee or transferee in light of such party's overall financial condition and prospects;

- (ix) that the Note will be characterized as “restricted securities” under the federal securities laws because the Note is being acquired in a transaction not involving a public offering and that under such laws and applicable regulations such securities may not be resold without registration under the Securities Act of 1933, as amended, except in certain limited circumstances; and
 - (x) that no market for the Note exists and no market for the Note is intended to be developed.
- (c) Notwithstanding Sections (a) and (b) above, the Master Redeveloper may assign and pledge the Note to secure any loan financing the costs of the Project and may transfer the Note to:
- (i) any entity controlling, controlled by or under common control with the Master Redeveloper; or
 - (ii) any entity in which the majority equity interest is owned by the parties that have a majority equity interest in the Master Redeveloper.

Section 9.6 Duration of TIF Notes. Consistent with the duration of the TIF District, the TIF Notes shall be payable over 26 years, commencing August 1 of the year of first receipt of increment, and continuing through February 1 of the year following the 26th year of tax increment collection from the TIF District. .

Section 9.7 TIF Bonds. In lieu of TIF Notes, the Master Redeveloper may request the Authority to issue the TIF Bonds in a principal amount that yields net proceeds in the same amount as the original principal amount of TIF Notes described in Section 9.2. Subject to mutual agreement with the Authority regarding underwriting terms, including indemnification of the Authority for any securities law claims and investor representation letters as reasonably specified by the Authority, the Authority will sell TIF Bonds. The Authority will not unreasonably withhold its consent to the underwriting terms; provided, however, the Authority may require reasonable assurances from the Master Redeveloper that during the term of any TIF Bonds no actions will be taken that would reduce the market value of the Minimum Improvements Area that would result in a reduction of adequate Tax Increment available to pay the TIF Bonds. The restrictions contained in this Agreement applicable to TIF Notes, other than those in Section 9.5, shall also apply to TIF Bonds. Nothing in this Section 9.7 will be construed to require the Master Redeveloper to enter into an agreement with the Authority or the City that, in the opinion of bond counsel, would render interest on the TIF Bonds for any portion of the Minimum Improvements owned by the Master Redeveloper at the time of issuance subject to federal and state income tax.

Section 9.8 Conditions Precedent to Issuance of TIF Bonds; Inability to Issue or Sell Bonds.

- (a) Notwithstanding anything to the contrary contained herein, the Authority shall have no obligation to issue the TIF Bonds under Section 9.7 hereof unless all of the conditions specified in Section 9.4 are satisfied. The Master Redeveloper, by the

execution and delivery of this Agreement, authorizes the Authority to issue the Bonds on its behalf to finance the Qualified Redevelopment Costs.

(b) Notwithstanding anything to the contrary contained in this Agreement, if (i) the City or the Authority is unable to obtain an unqualified approving bond counsel opinion of Dorsey & Whitney LLP or other bond counsel acceptable to the City or the Authority as to the validity of the Bonds or (ii) the City or the Authority does not receive a bid for the purchase of the Bonds, then the Authority shall not have any obligation to issue the Bonds.

Section 9.9 City/Authority Grant Applications. At the Master Redeveloper's discretion, the City and the Authority will cooperate in efforts to obtain available public grant funding to undertake the Project, including but not limited to the Livable Communities Project Assistance program grants from the Metropolitan Council, Tax Base Revitalization Account grants from the Metropolitan Council for pollution remediation, Minnehaha Creek Watershed District grants, Department of Employment and Economic Development funding for pollution remediation, and any other funding from metropolitan, state, county and federal sources identified by the City, the Authority or the Master Redeveloper as reasonably available. To the extent additional grant funds not reflected in the TIF Pro Forma are obtained, the amount shall first fund any unanticipated costs or revenue shortfalls of the Project then to reduce the principal amount of the TIF Note.

Section 9.10 Conduit Revenue Bonds. The City or the Authority will issue revenue bonds to finance one or more qualified portions of the Minimum Improvements or participate in a joint powers agreement under terms reasonably acceptable to the City or the Authority. The City and the Authority will not charge administrative fees in connection with such conduit bonds, other than reimbursement of City or Authority out-of-pocket costs.

ARTICLE X ENCUMBRANCE OF MINIMUM IMPROVEMENTS AREA

Section 10.1 Encumbrance of the Minimum Improvements Area.

(a) Until the Completion Date of all Blocks of the Minimum Improvements, neither the Master Redeveloper, nor any successor in interest to the Master Redeveloper (which specifically includes any Secondary Redeveloper), will engage in any financing or any other transaction creating any mortgage (a "Mortgage") or other encumbrance or lien upon the Minimum Improvements Area, or portion thereof, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Minimum Improvements Area except for the purpose of obtaining funds only to the extent necessary for constructing and developing the Minimum Improvements (including, but not limited to, land and building acquisition, labor and materials, professional fees, real estate taxes, construction interest, organization, marketing and other direct or indirect costs of Minimum Improvements, costs of constructing the Minimum Improvements, and an allowance for contingencies).

(b) This restriction on encumbrance shall terminate with respect to any portion of the Minimum Improvements, upon delivery of the Certificate of Completion for such portion of the Minimum Improvements. The Master Redeveloper or any successor in interest to the Minimum Improvements or portion thereof, may sell or engage in financing or any other transaction creating a mortgage or encumbrance or lien on the Minimum Improvements or portion thereof for which a Certificate of Completion has been obtained, without obtaining the prior written approval of the Authority.

Section 10.2 Copy of Notice of Default to Mortgagee. If the Authority delivers any notice or demand to the Master Redeveloper, or any successor in interest to the Master Redeveloper, with respect to any Event of Default under this Agreement, the Authority will use its best efforts to also deliver a copy of such notice or demand to the mortgagee of any Mortgage at the address of such mortgagee provided to the Authority in a written notice from the Master Redeveloper, any successor in interest to the Master Redeveloper or the mortgagee, provided that failure of the Authority to give any such notice shall not limit the Authority's ability to exercise any of its remedies hereunder.

Section 10.3 Mortgagee's Option to Cure Events of Default. Upon the occurrence of an Event of Default, the mortgagee under any Mortgage will have the right at its option, to cure or remedy such Event of Default within the cure periods set forth herein. An individual or entity who acquires title to all or a portion of the Minimum Improvements through the foreclosure of a mortgage or deed in lieu of foreclosure on such portion of the Minimum Improvements Area remains subject to each of the restrictions set forth in this Agreement and remains subject to all of the obligations of the Master Redeveloper, or any successor in interest to the Master Redeveloper, under the terms of this Agreement, but the purchaser at a foreclosure sale or grantee under a deed in lieu of foreclosure shall have no personal liability for a breach of such obligations under this Agreement so long as:

- (a) The party acquiring title through foreclosure or deed in lieu of foreclosure observes all of the restrictions set forth in the Agreement;
- (b) The party who acquired title through foreclosure or deed in lieu of foreclosure does not undertake or permit any other party to undertake any Minimum Improvements on the portion of the Minimum Improvements Area it owns;
- (c) The City has no obligation to approve any plans for Minimum Improvements of a portion of the Minimum Improvements the foreclosing mortgagee (or mortgagee obtaining a deed in lieu of foreclosure) owns or to issue any related building permits.

The purpose of this section is to permit a foreclosing lender (or mortgagee obtaining a deed in lieu of foreclosure) to hold title to the portion of the Minimum Improvements Area it acquires through foreclosure or deed in lieu of foreclosure, subject to, but without personal liability for the obligations under this Agreement, until it can sell the portion it holds to a third party who will assume the obligations of the Master Redeveloper under the terms of this Agreement and proceed with the construction of the Minimum Improvements pursuant to the terms of this Agreement. If, rather than passively holding title to the portion of the Minimum Improvements Area it acquires through foreclosure or deed in lieu of foreclosure, the foreclosing lender (or

mortgagee obtaining a deed in lieu of foreclosure) or other purchaser at a foreclosure sale desires to sell portions of the Minimum Improvements Area for construction of the Minimum Improvements, the purchaser at the foreclosure sale (or mortgagee obtaining a deed in lieu of foreclosure) must assume and perform each of the obligations of the Master Redeveloper, or the applicable successor to the interest of the Master Redeveloper, under this Agreement. This section does not restrict the authority of the Authority to pursue its rights under any outstanding security, exercise remedies otherwise available under this Agreement or suspend the performance of the obligations of the Authority or the Master Redeveloper under this Agreement as otherwise allowed. The Authority agrees to reasonably cooperate with any foreclosing lender (or mortgagee obtaining a deed in lieu of foreclosure) or other purchaser at a foreclosure sale in pursuing the Minimum Improvements in accordance with this Agreement, including evaluation of such person as a successor to the rights of the Master Redeveloper hereunder and taking appropriate actions to allow the benefits and rights hereunder to be realized by such person, should the Authority approve such person as a successor in accordance with this Agreement.

Section 10.4 Defaults Under Mortgage. The Master Redeveloper, or its successor or assign, will use its best efforts to obtain an agreement from any mortgagee under a Mortgage that in the event the Master Redeveloper is in default under any Mortgage, the mortgagee will use its best efforts, within ten (10) days after it becomes aware of any such default and prior to exercising any remedy available to it due to such default, to notify the Authority in writing of (i) the fact of default; (ii) the elements of default; and (iii) the actions required to cure the default. The Master Redeveloper, or its successor or assign, will use its best efforts to obtain an agreement in any such Mortgage, that if, within the time period required by the Mortgage, the Authority cures any default under the Mortgage, the mortgagee will pursue none of its remedies under the Mortgage based on such default.

Section 10.5 Subordination of Agreement. In order to facilitate the obtaining of financing for the construction of the Minimum Improvements, the Authority agrees to subordinate the provisions hereof to the documents executed in connection with any Mortgage securing a Financing Commitment, provided that such subordination shall not deprive the Authority or otherwise limit any of the Authority's remedies which do not create a lien on the Minimum Improvements Area, except for Special Assessments, upon the occurrence of an Event of Default by the Master Redeveloper.

Section 10.6 Unit Mortgages. The provisions of this Article do not apply to loans and mortgages to a purchaser of a unit in a common interest community within the Minimum Improvements.

ARTICLE XI INSURANCE AND CONDEMNATION

Section 11.1 Insurance.

(a) The Master Redeveloper, and any successor in interest to the Master Redeveloper (which specifically includes any Secondary Redeveloper), shall obtain and continuously maintain insurance on the Minimum Improvements and, from time to time at the request of the Authority, furnish proof to the Authority that the premiums for such insurance

have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Master Redeveloper must obtain and continuously maintain, provided that the Master Redeveloper shall obtain the insurance described in clause (i) below prior to the commencement of construction of the Minimum Improvements (excluding excavation and footings):

(i) Builder's risk insurance, written on the so-called "Builder's Risk—Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the applicable Minimum Improvements Block at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.

(ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's/Contractor's Policy naming the Authority, and the City as an additional insured, with limits against bodily injury and property damage of not less than \$2,500,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis.

(iii) Workers compensation insurance, with statutory coverage.

(b) All insurance required in this Article shall be obtained and continuously maintained in responsible insurance companies selected by the Master Redeveloper or its successors that are authorized under the laws of the State to assume the risks covered by such policies. Unless otherwise provided in this Article, each policy must contain a provision that the insurer will not cancel nor modify the policy without giving written notice to the insured at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Master Redeveloper, or its successor or assign, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Article. In lieu of separate policies, the Master Redeveloper or its successor or assign, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

(c) The Master Redeveloper, its successor or assign, agrees to notify the Authority promptly in the case of damage exceeding \$250,000 in amount to, or destruction of the Minimum Improvements or any portion or Block thereof resulting from fire or other casualty.

Section 11.2 Condemnation. In the event that title to or possession of the Minimum Improvements Area or the Minimum Improvements, or both, or any material part thereof, is threatened with a taking through the exercise of the power of eminent domain, the Master Redeveloper, or its successor or assign, will notify the Authority of the threatened taking with reasonable promptness. The Master Redeveloper, or its successor or assign, will cooperate with the Authority if the Authority elects to assert any interests the Authority may have in the

Minimum Improvements Area and the Minimum Improvements in any condemnation action undertaken against the Minimum Improvements Area and the Minimum Improvements.

ARTICLE XII

MASTER REDEVELOPER COVENANTS

Section 12.1 Maintenance and Operation of the Minimum Improvements. The Master Redeveloper, and its successors or assigns (which specifically includes any Secondary Redeveloper), will, at all times during the term of this Agreement, maintain and operate the Minimum Improvements (or the applicable portion thereof) in a safe and secure way and in compliance with this Agreement and all federal, State and local laws, regulations, rulings and ordinances applicable thereto. The Master Redeveloper, or its successors or assigns, will pay all of the reasonable and necessary expenses of the operation and maintenance of the Minimum Improvements, including all premiums for insurance insuring against loss or damage thereto and adequate insurance against liability for injury to persons or property arising from the construction of the Minimum Improvements as required pursuant to this Agreement. During construction of the Minimum Improvements, the Master Redeveloper, or its successors or assigns, shall not knowingly cause any person working in or attending the Minimum Improvements for any purpose, or any tenant of the Minimum Improvements, to be exposed to any hazardous or unsafe condition; provided that such party shall not be in Default hereunder if it has required the contractors employed to perform work on the Minimum Improvements to take such precautions as may be available to protect the persons in and around the Minimum Improvements from hazards arising from the work, and has further required each such contractor to obtain and maintain liability insurance protecting against liability to persons for injury arising from the work. The expenses of operation and maintenance of the Minimum Improvements shall be borne solely by the Master Redeveloper, its successors or assigns.

Section 12.2 Business Subsidy Agreement. The City and the Authority have determined that the financial assistance contemplated by this Agreement is not a “business subsidy” with the meaning of the Minnesota Business Subsidy Act, Minnesota Statutes, Sections 116J.993 through 116J.995 based on the exception contained in Minnesota Statutes, Section 116J.993, subdivision 3(17).

Section 12.3 Parking and Mobility District. The Master Redeveloper agrees to support and participate in the Parking and Mobility District. If the City establishes the Parking and Mobility District as a special service district under Minnesota Statutes § 428A.01 to 428A.101, Master Redeveloper shall file a petition with the City in a form acceptable to the City and hereby consents to the establishment of the Parking and Mobility District by the City. Master Redeveloper waives all rights to objection, appeal and veto granted under law or in equity including but not limited to the rights granted under Chapter 428A, including specifically, but not limited to, the right to object under §428A.02, Subd. 4 (1), the right to appeal establishment of the Parking and Mobility District under §428A.02, Subd. 5 and the right to veto under §428A.09, Subd 1, or the right to object to the ordinance establishing the Parking and Mobility District under §428A.09, Subd. 2. Master Redeveloper waives all rights to object to the validity of the Parking and Mobility District, the inclusion of the Minimum Improvements Area within the Parking and Mobility District, or the procedures used by the City in establishing the Parking and Mobility District. Master Redeveloper hereby releases the City, its officers, agents and

employees from any and all liability related to or arising out of the establishment of the Parking and Mobility District. Master Redeveloper shall not sell, assign or otherwise transfer all or any portion of the Minimum Improvements Area to a third party unless such third party agrees in writing to be bound by the terms of this Section. If the City determines not to create the Parking and Mobility District, the Master Redeveloper and the City shall negotiate in good faith on alternative financing options regarding parking and mobility needs within the City. Nothing in this Section 12.3 will be construed as a waiver of Master Redeveloper's rights it has or may have under Minnesota Statutes, Sections 428A.01 to 428A.101 with respect to the amount of any annual fee imposed within a Parking and Mobility District.

Section 12.4 Parking Illumination and Wayfinding. Prior to the issuance of a certificate of occupancy for any retail or commercial space, following the date of execution of this Agreement, within the Superior Block, the Plaza Block, the West Block, and the East Block, the Master Redevelop will install universal standard blue "P" parking signage on all Master Redeveloper-owned [or Secondary Redeveloper-owned] parking which supports retail or commercial uses within the Superior Block, the Plaza Block, the West Block, and the East Block. Master Redeveloper will install additional wayfinding signage as reasonably required by the City, including but not limited to, real-time signage, as appropriate to direct the public to parking within the Minimum Improvements Area.

Section 12.5 Construction Work Force Parking. As of the Effective Date and until issuance of a final certificate of occupancy (inclusive of tenant buildouts) and receipt of a Certificate of Completion for the final Block, the Master Redeveloper shall provide to the City a work force parking and project access plan acceptable to the City. The City is not obligated to issue building permits, certificates of occupancy or Certificates of Completion if such plan, in a form acceptable to the City, is not provided by the Master Redeveloper to the City. Such plan will: (i) be regularly monitored for compliance and updated as required by the City; (ii) minimize the impact of construction parking within the Minimum Improvements Area and surrounding portions of the City; and (iii) include at a minimum (a) monthly estimated work force needed within the Minimum Improvements Area, (b) evidence of sufficient off-site parking locations to accommodate project personnel, (c) copies of notices to contractor and subcontractor personnel outlining the requirements of the plan, (d) consequences for failing to abide with protocols required under the plan, and (e) provide for mandatory fines payable by the Master Redeveloper to the City at the rate of \$500 per day for each failure to comply for each of the first five (5) days and at the rate of \$1,000 per day for each subsequent failures to comply.

Section 12.6 Access During Construction of City Ramp. The City may elect to construct one or more structured parking facilities within the Parking and Mobility District. During such construction and after issuance of a certificate of occupancy for the West Block, Master Redeveloper will allow the City to direct parkers who would otherwise utilize City-controlled parking facilities to parking within the Minimum Improvements Area so long as such parking does not have a materially negative impact on the parking required for the existing retail and commercial uses within the Minimum Improvements Area. During the construction period, the City and the Master Redeveloper will work in good faith to create a permit system which includes enforcement procedures.

ARTICLE XIII

TRANSFER LIMITATIONS AND INDEMNIFICATION

Section 13.1 Representation as to the Minimum Improvements. The Master Redeveloper represents to the City and the Authority that its purchase of the Minimum Improvements Area, and its other undertakings under this Agreement, are for the purpose of developing the Minimum Improvements and not for the purpose of speculation in land holding. The Master Redeveloper acknowledges that, in view of the importance of the Minimum Improvements to the general welfare of the City and the Authority, and the substantial financing and other public aids that have been made available by the City and the Authority for the purpose of making such Minimum Improvements possible, the qualifications and identity of the Master Redeveloper are of particular concern to the Authority. The Master Redeveloper further acknowledges that the City and the Authority are willing to enter into this Agreement with the Master Redeveloper because of the qualifications and identity of the Master Redeveloper.

Section 13.2 Secondary Redevelopers. The Master Redeveloper may designate a separate entity (each a “Secondary Redeveloper”) to undertake any Block of the Minimum Improvements. If the Master Redeveloper seeks to be relieved of all its obligations related to the subject Block, the Master Redeveloper shall obtain the consent of the City and the Authority to the designation of any Secondary Redeveloper prior to the earlier of (i) closing on the transfer of any interest in the relevant Block to the Secondary Redeveloper; or (ii) Commencement of construction of the relevant Block. Consent from the City and the Authority will not be unreasonably withheld. If the Master Redeveloper remains obligated related to the subject Block, no prior Authority consent is required for any assignment to a Secondary Redeveloper.

Section 13.3 Limitations on Transfer. Until the issuance of a Certificate of Completion for a Block:

- (a) The Master Redeveloper will not sell, assign, convey, lease or transfer in any other mode or manner any of its right, title, and interest in and to this Agreement, the Minimum Improvements Area or the Minimum Improvements for the relevant Block, without the express written approval of the Authority, provided that the consent of the Authority shall not be required for any of the following:
 - (i) assignment of its Minimum Improvements rights to any entity controlled by Presbyterian Homes and Services;
 - (ii) granting of a mortgage or other security interests in the Minimum Improvements as provided in Article X hereof;
 - (iii) The sale of units within a common interest community; and
 - (iv) leasing the Minimum Improvements in the normal course of business in a manner consistent with the General Plan Approval, Final Plans, and the PUD Agreement.
- (b) As a condition to approval by the City and the Authority of the transfer of any Block to a Secondary Redeveloper (where required), the Master Redeveloper shall satisfy

the following conditions, if required by the Authority. The Authority shall be entitled to require, as conditions to approval of any sale, assignment, conveyance, use or transfer of any rights, title, and interest in and to this Agreement, the Minimum Improvements Area or the Minimum Improvements that:

- (i) Any proposed transferee shall not be exempt from the payment of real estate taxes and shall have the qualifications and financial responsibility, as determined by the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Master Redeveloper;
- (ii) Any proposed transferee, by instrument in writing satisfactory to the Authority and in form recordable among the land records shall, for itself and its successors and assigns, and expressly for the benefit of the Authority have expressly assumed all of the obligations of the Master Redeveloper (or such part thereof as is appropriate for one particular Minimum Improvements Block) under this Agreement and agree to be subject to all the conditions and restrictions to which the Master Redeveloper is subject;
- (iii) The Master Redeveloper must submit all instruments and other legal documents involved in effecting transfer to the Authority for review and written approval, which shall not be unreasonably withheld;
- (iv) The Master Redeveloper and its transferee must comply with such other conditions as the Authority may find desirable in order to achieve and safeguard the purposes of the HRA and TIF Acts, this Agreement, and the Project; and
- (v) The transferee must demonstrate, in a manner satisfactory to the City and the Authority, its ability to perform all assumed obligations in this Agreement.

In the absence of specific written agreement by the City and the Authority to the contrary, no such transfer or approval by the City and the Authority thereof shall be deemed to relieve the Master Redeveloper or any other party bound in any way by this Agreement or otherwise with respect to its obligations under this Agreement.

Section 13.4 Indemnification.

- (a) The Master Redeveloper releases and covenants and agrees that the City Parties shall not be liable for and agree, jointly and severally, to indemnify and hold harmless the City Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements and Public Infrastructure Improvements constructed by the Master Redeveloper to the extent not attributable to the negligence of the City Parties.
- (b) Except for negligence of the City Parties, the Master Redeveloper agrees to indemnify the City Parties, now and forever, and further agrees to hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Master

Redeveloper (or if other persons acting on their behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Minimum Improvements and Public Infrastructure Improvements constructed by the Master Redeveloper; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the Authority in this Agreement, and further provided that Redeveloper's obligation regarding any claim regarding the TIF District brought under Minnesota Statutes, Section 469.1771, is limited to that described in Section 6.2(b) hereof.

Section 13.5 Limitation. All covenants, stipulations, promises, agreements and obligations of the City, the Authority or the Master Redeveloper contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City, the Authority and the Master Redeveloper, and not of any governing body member, officer, agent, servant or employee of the City, the Authority or the Master Redeveloper in the individual capacity thereof.

ARTICLE XIV EVENTS OF DEFAULT AND REMEDIES

Section 14.1 Events of Default Defined. Subject to applicable cure periods, "Events of Default" under this Agreement include any one or more of the events listed in Sections 14.2 and 14.3.

Section 14.2 Master Redeveloper Events of Default. The following shall be Events of Default for the Master Redeveloper:

- (a) the Master Redeveloper fails to close on the acquisition of the Minimum Improvements Area in accordance with the Minimum Improvements Timeline;
- (b) subject to Unavoidable Delays and Cure Rights, the Master Redeveloper fails to achieve Commencement and Completion of any Block of the Minimum Improvements in accordance with the Minimum Improvements Timeline, and such failure is not cured within 30 days after written notice to do so;
- (c) subject to Unavoidable Delays and Cure Rights, the Master Redeveloper shall Default in or violate its obligations with respect to the construction of any Block of the Minimum Improvements (including the nature and the date for the completion thereof), or shall abandon or substantially suspend construction work, and any such Default, violation, abandonment or suspension is not cured, ended or remedied within 30 days after written demand by the Authority so to do;
- (d) there is, in violation of this Agreement, any conveyance, encumbrance or other transfer of the Minimum Improvements Area or any part thereof, and such violation is not cured within 30 days after written demand by the Authority to the Master Redeveloper;
- (e) subject to Cure Rights, failure by the Master Redeveloper to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or

performed under this Agreement, and the continuation of such failure for a period of thirty (30) days after written notice of such failure from any party hereto;

(f) prior to the delivery of a Certificate of Completion with respect to any Block of the Minimum Improvements owned by the Master Redeveloper, the Master Redeveloper shall (i) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or State law; or (ii) make an assignment for the benefit of its creditors; or (iii) become insolvent or adjudicated a bankrupt; or if a petition or answer proposing the adjudication of Master Redeveloper, as a bankrupt or its reorganization under any present or future Federal bankruptcy act or any similar Federal or State law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of Master Redeveloper, or of the Minimum Improvements, or part thereof, shall be appointed in any proceeding brought against Master Redeveloper, and shall not be discharged within ninety (90) days after such appointed, or if Master Redeveloper shall consent to or acquiesce in such appointment.

Section 14.3 City and Authority Events of Default. Subject to Unavoidable Delays, the failure of the City or the Authority to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, and the continuation of such failure for a period of thirty (30) days after written notice of such failure from any party hereto shall be an Event of Default for the City or the Authority.

Section 14.4 Cure Rights. Notwithstanding the foregoing, if the Default reasonably requires more than thirty (30) days to cure, such Default shall not constitute an Event of Default, provided that the curing of the Default is promptly commenced upon receipt by the defaulting party of the notice of the Default, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that the defaulting party keeps the non-defaulting party well informed at all times of its progress in curing the Default; provided in no event shall such additional cure period extend beyond 180 days.

Section 14.5 Authority Remedies on Master Redeveloper Events of Default. Whenever any Event of Default occurs by the Master Redeveloper, the Authority may take any one or more of the following actions:

- (a) terminate this Agreement, but not the TIF Note, as regards that Block of the Project, except as otherwise provided herein;
- (b) exercise its rights under Section 9.3 of this Agreement regarding the Master Redeveloper's TIF eligibility;
- (c) suspend performance under this Agreement until it receives assurances from the Master Redeveloper, deemed adequate by the Authority, that the Master Redeveloper will cure the Default and continue its performance under this Agreement, withhold the Certificate of Completion for any Block of the Minimum Improvements not yet

delivered, and take whatever action at law or in equity may appear necessary or desirable to the Authority to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the Master Redeveloper under this Agreement; and

(d) the Authority shall have all remedies normally available at law and in equity to enforce performance of this Agreement including a right to specific performance. Any action for specific performance must be commenced within six months of the Event of Default.

Section 14.6 City Remedies on Master Redeveloper Events of Default. Whenever any Event of Default occurs by the Master Redeveloper, the City may suspend performance of its obligations under this Agreement and take whatever action at law or in equity may appear necessary or desirable to the City to enforce performance and observance of any obligation, agreement, or covenant of the Master Redeveloper under this Agreement, including an action for specific performance. Any action for specific performance must be commenced within six months of the Event of Default.

Section 14.7 Master Redeveloper Remedies on City or Authority Events of Default. Whenever any Event of Default occurs by the City or the Authority, the Master Redeveloper, may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the City or the Authority under this Agreement, including an action for specific performance. Any action for specific performance must be commenced within six months of the Event of Default.

Section 14.8 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City, the Authority or the Master Redeveloper is intended to be exclusive of any other available remedy or remedies unless otherwise expressly stated, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article XIV.

Section 14.9 No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement should be breached by any party and thereafter waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 14.10 Reimbursement of Attorneys' Fees. In the event of any enforcement action hereunder following an Event of Default, the prevailing party, in addition to other relief, shall be entitled to an award of attorney's fees and costs.

ARTICLE XV ADDITIONAL PROVISIONS

Section 15.1 Conflicts of Interest. No member of the Board or other official of the Authority shall have any financial interest, direct or indirect, in this Agreement, the TIF Project Area or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City or the Authority shall be personally liable to the City or the Authority in the event of any Default or breach by Master Redeveloper or successor or on any obligations under the terms of this Agreement.

Section 15.2 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 15.3 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any 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 in the case of the Master Redeveloper, is addressed to or delivered personally to the Master Redeveloper at:

Chief Financial Officer
Presbyterian Homes
2845 Hamline Avenue, North
Roseville, MN 55113

with a copy to: Office of Corporate Counsel
Presbyterian Homes
2845 Hamline Avenue, North
Roseville, MN 55113

In the case of the Authority, is addressed to or delivered personally to the Authority at:
Wayzata HRA
Attention: Executive Director
600 Rice Street
Wayzata, MN 55391-1799

with a copy to: Jay R. Lindgren
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402

and Robert Meller
Best & Flanagan

225 South Sixth Street, Suite 4000
Minneapolis, MN 55402-4690

In the case of the City, is addressed to or delivered personally to the City at:

City of Wayzata
Attention: City Manager
600 Rice Street
Wayzata, MN 55391-1799

with a copy to:

Jay R. Lindgren
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402

and

Robert Meller
Best & Flanagan
225 South Sixth Street, Suite 4000
Minneapolis, MN 55402-4690

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other, as provided in this section.

Section 15.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 15.5 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 15.6 Legal Opinions. Upon execution of this Agreement, each party shall, upon request of the other parties, supply the other parties with an opinion of its legal counsel to the effect that this Agreement is legally issued or executed by, and valid and binding upon, such party, and enforceable in accordance with its terms.

Section 15.7 Consents and Approvals. In all cases where consents or approvals are required hereunder, such consents or approvals shall not be unreasonably conditioned, delayed or withheld. All consents or approvals shall be in writing in order to be effective.

Section 15.8 Representatives. Except as otherwise provided herein, all approvals and other actions required of or taken by the Authority shall be effective upon action by the Authority Representative. All actions required of or taken by the Master Redeveloper shall be effective upon action by a duly authorized officer of its general partner.

Section 15.9 Superseding Effect. This Agreement reflects the entire agreement of the parties with respect to the items covered by this Agreement, and supersedes in all respects all prior agreements of the parties, whether written or otherwise, with respect to the items covered by this Agreement.

Section 15.10 Relationship of Parties. Nothing in this Agreement is intended, or shall be construed, to create a partnership or joint venture among or between the parties hereto, and the rights and remedies of the parties hereto shall be strictly as set forth in this Agreement.

Section 15.11 Term. The term of this Agreement shall be effective from the day and year first above written until the earlier of (a) the date this Agreement is terminated, (b) payment in full of the TIF Note or TIF Bonds, or (c) date of termination of the TIF District.

Section 15.12 Provisions Surviving Rescission or Expiration. Sections 4.10, 5.3, and 13.4 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

Section 15.13 Memorandum of Agreement. Neither party shall cause this Agreement to be recorded or filed in the real estate records of Hennepin County. However, either party may, at its option, cause a Memorandum of Agreement to be so recorded or filed in the form attached hereto as Exhibit M, and hereby incorporated herein by reference. At the time of execution of this Agreement the parties hereto will also execute and acknowledge the Memorandum of Agreement. The parties hereto acknowledge that as of the date hereof, the Master Redeveloper is not the fee owner of the Minimum Improvements Area. At such time as the Master Redeveloper owns fee title to all or any portion of the Minimum Improvements Area, either party may, at its option, cause the Memorandum to be recorded against the Minimum Improvements Area and shall record such Memorandum of Agreement in the office of the County Recorder and/or Registrar of Titles in and for Hennepin County, Minnesota, as the case may be.

Section 15.14 Conflicts Between this Agreement and the PUD Agreement. In the event of any inconsistency or conflict between the requirements of this Agreement and the PUD Agreement, the provisions of the PUD Agreement shall control; provided, however, that for the purposes of Section 9.3 of this Agreement regarding Defaults that authorize the Authority to withhold payments on any TIF Assistance, this Agreement controls. Except with respect for such inconsistent provisions, neither agreement is intended to amend or supersede the other agreement.

IN WITNESS WHEREOF, the City, the Authority and the Master Redeveloper have caused this Agreement to be duly executed in their names and on their behalf, all on or as of the date first above written.

**CITY OF WAYZATA,
MINNESOTA**

By _____
Its Mayor

By _____
Its City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200_,
by Kenneth Willcox and Heidi Nelson the Mayor and City Manager respectively, of the City of
Wayzata, Minnesota, on behalf of the City of Wayzata.

Notary Public

**HOUSING AND REDEVELOPMENT
AUTHORITY OF THE CITY OF
WAYZATA, MINNESOTA**

By _____
Its Chair

By _____
Its Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200_,
by Thomas Shaver and Heidi Nelson the Chair and Executive Director respectively, of the
Housing and Redevelopment Authority of the City of Wayzata, Minnesota, on behalf of said
Authority.

Notary Public

WAYZATA BAY REDEVELOPMENT
COMPANY, LLC
a Minnesota limited liability company

By _____
Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by
_____, the _____ of Wayzata Bay Redevelopment Company, LLC, a
Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

EXHIBIT A

TIF PROJECT AREA MAP

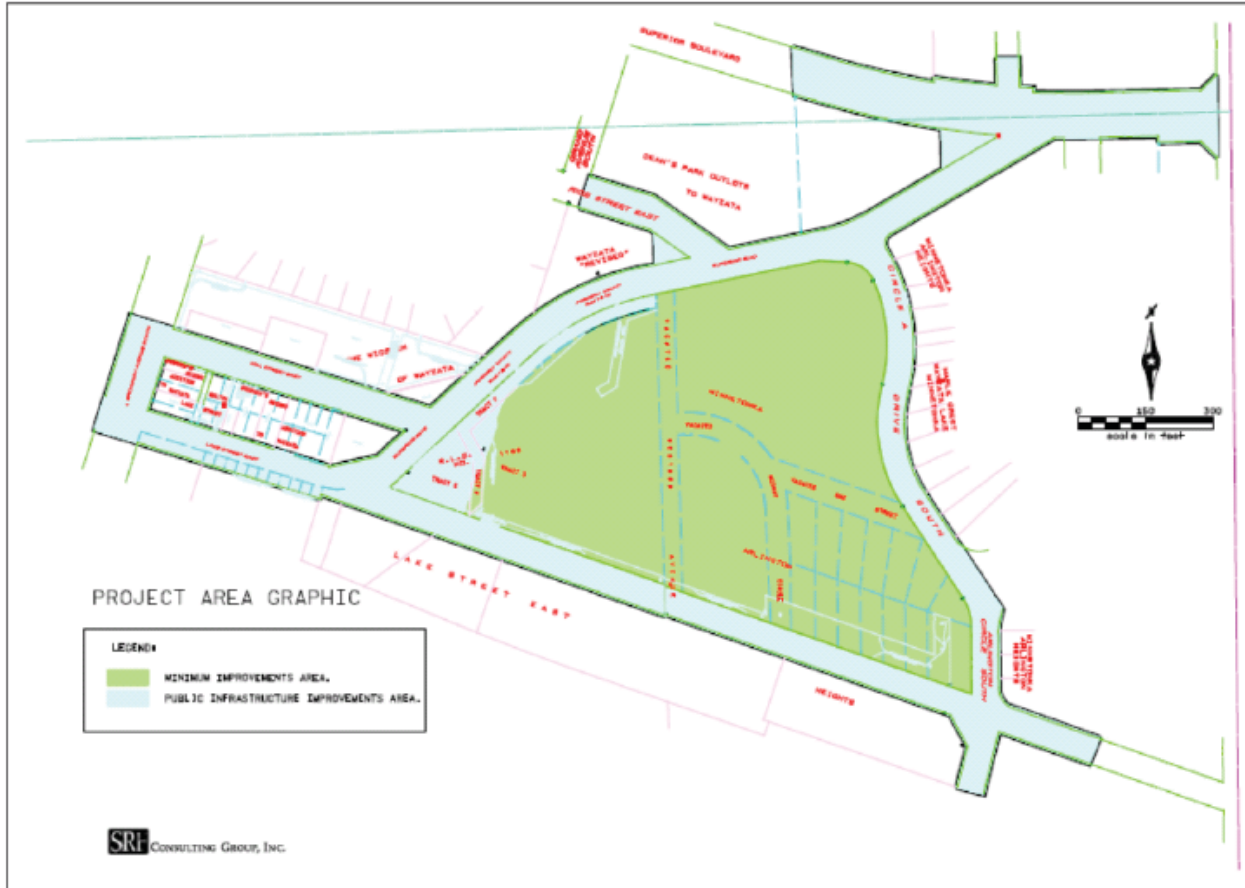


EXHIBIT B

MINIMUM IMPROVEMENTS SITE PLAN

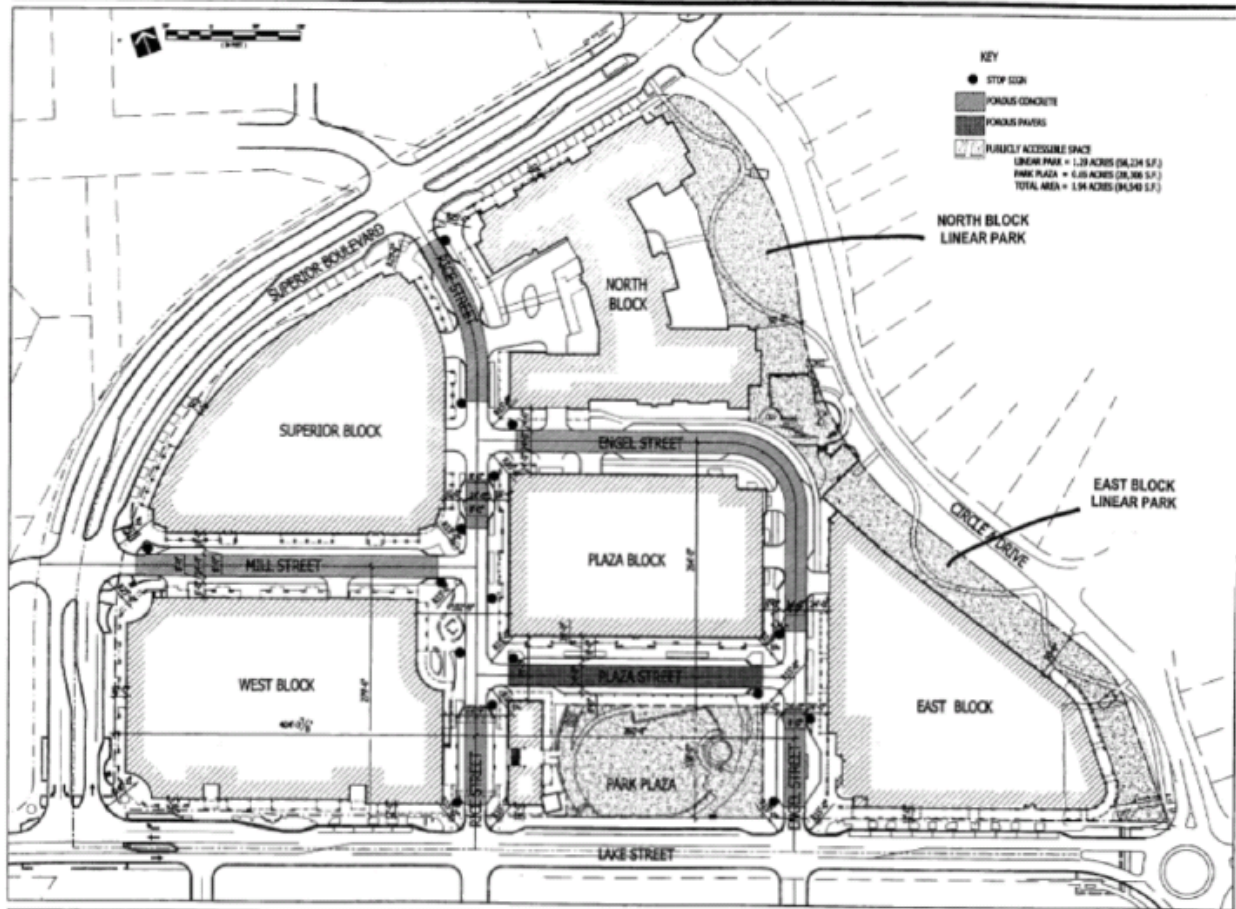


EXHIBIT B-1

LEGAL DESCRIPTION OF MINIMUM IMPROVEMENTS AREA

Par 1: Tracts D and G, Registered Land Survey No. 1168, Hennepin County, Minnesota, except that part of Tract D depicted as the “New Superior Boulevard Parcel” on Exhibit D attached hereto.

Par 2: That part of the tract of land in the plat of Wayzata lying Northwesterly of the Northwesterly line of Registered Land Survey No. 1168, Hennepin County, Minnesota and Southeasterly of the following described line: Commencing at the most Northerly corner of Tract H, said Registered Land Survey No. 1168, thence South 30 degrees 58 minutes West along the Northwesterly line of said Registered Land Survey No. 1168 a distance of 377.58 feet; thence South 59 degrees 02 minutes West along the Northwesterly line of said Registered Land Survey No. 1168 a distance of 157.99 feet to the actual point of beginning of the line being described; thence North 30 degrees 04 minutes 30 seconds East a distance of 177.54 feet; thence along a tangential curve to the right having a radius of 572.96 feet to its intersection with the Northwesterly line of said Registered Land Survey No. 1168 and there ending, except that part lying Northerly and Westerly of the Southeasterly line of Superior Boulevard as relocated, which relocation is contemplated in this Agreement.

Par 3: Block 51;

Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, Block 53, “Minnetonka Arlington Heights”; That part of Midway Circle, now vacated, lying between extensions across it of the North and South lines of said Block 53 and that further part thereof lying South and West of the centerline of said street lying between the extension across it of said North line of said Block 53 and the West line of said plat;

That part of Western Avenue as shown upon said plat lying between the extensions across it of the centerline of said Midway circle and the Northeasterly line of Block 65 said Addition.

Par 4: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, Block 50; All of vacated Oak Street lying between a line drawn parallel with and 60 feet Southwesterly from the Southwesterly line of Block 52 and a line drawn parallel with and 50 feet Northeasterly from the Northeasterly line of Block 51;

That part of Midway Circle lying Northeasterly of the center line of Midway Circle and between the Southerly extension across it of the West line of Block 50 and the Westerly extension across it of the Northerly line of Block 53;

That part of Western Avenue lying East of the West line of “Minnetonka Arlington Heights” and between the Westerly extensions across it of the Northerly line of Block 50 and the center line of vacated Midway Circle,

All in “Minnetonka Arlington Heights”.

Par 5: Lot 1, Block 53, “Minnetonka Arlington Heights.”

Par 6: That part of Tract F, Registered Land Survey No. 1168, Hennepin County, Minnesota, depicted as the “DNR Project Area Parcel” on Exhibit D attached.

EXHIBIT C

PUBLIC INFRASTRUCTURE IMPROVEMENTS SITE PLAN



EXHIBIT D
LAND TRANSFER MAP



EXHIBIT E
WETLAND MITIGATION PARCEL MAP

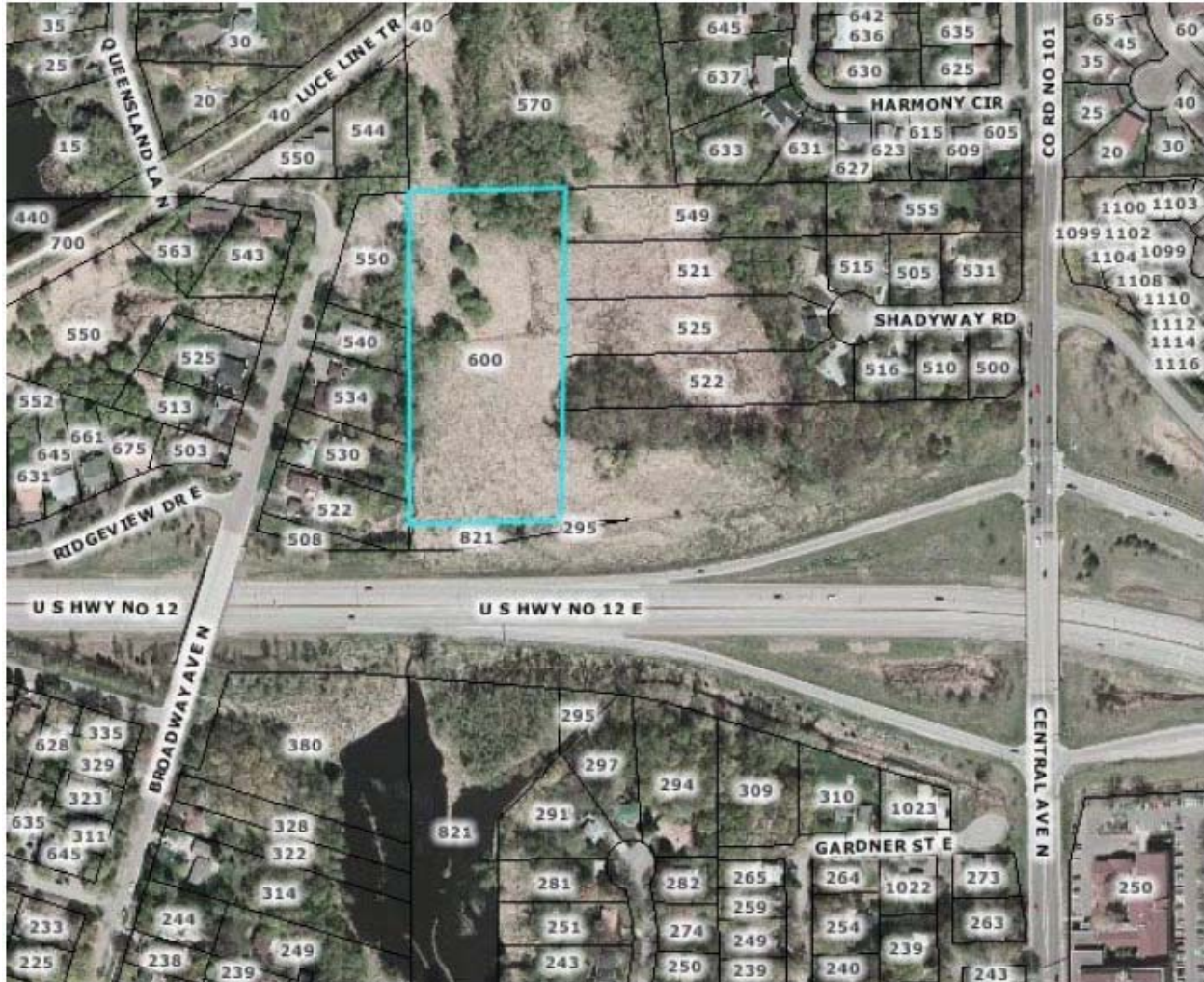


EXHIBIT F
QUITCLAIM DEED

Data: _____, 2008

FOR VALUABLE CONSIDERATION, _____, a
_____, (“Grantor”), hereby conveys and quitclaims to
_____, a _____,
 (“Grantee”), real property in Hennepin County, Minnesota described as follows:

together with all hereditaments and appurtenances belonging thereto, subject to general
easements and encumbrances of record.

GRANTOR _____

By _____

Its [_____]

By _____

Its [_____]

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____ and _____, the _____ and _____, respectively, of _____, a _____, on behalf of Grantor.

Check here if all or part of the land is
Registered (Torrens) ____

This Instrument Was Drafted By: Dorsey & Whitney LLP (JRL/BTC) Suite 1500 50 South Sixth Street Minneapolis, MN 55402	Tax Statements for the real property described in this instrument should be sent to: Wayzata Bay Redevelopment Company, LLC 2845 Hamline Avenue, North Roseville, MN 55113
--	--

EXHIBIT G
EASEMENT AND MAINTENANCE AGREEMENT

between
THE CITY OF WAYZATA
and
WAYZATA BAY REDEVELOPMENT COMPANY, LLC
for construction, maintenance and use of
PUBLIC ACCESS AREAS

THIS AGREEMENT, made as of this ____ day of _____, 20__, by and between the CITY OF WAYZATA, a Minnesota municipal corporation (hereinafter the “City”) and WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company (hereinafter the “Master Redeveloper”).

W I T N E S S E T H:

WHEREAS, the Wayzata Housing and Redevelopment Authority (the “Authority”), the City, and the Master Redeveloper have entered into a Master Redevelopment Agreement (the “Contract”) dated _____, 2008, a memorandum of which will be recorded in the real estate records of Hennepin County, Minnesota; and

WHEREAS, the capitalized terms used, but not defined in the of this Agreement have the meanings given in the Contract; and

WHEREAS, the Contract is intended to provide for the construction of the Minimum Improvements by the Master Redeveloper in the Minimum Improvements Area in coordination with the Authority and with the cooperation and assistance of the City; and

WHEREAS, the Contract provides for the expenditure of public funds for the Minimum Improvements to assist in the redevelopment of the Minimum Improvements Area; and

WHEREAS, the Master Redeveloper has agreed under the Contract to build certain Public Access Areas in connection with the Minimum Improvements on land to which an easement will be granted to the City by the Master Redeveloper pursuant to the Contract; and

WHEREAS, the Master Redeveloper has agreed to operate, manage, and maintain the Public Access Improvements pursuant to the Contract; and

WHEREAS, the City and the Master Redeveloper deem it to be in their vital interest and in the best interest of the City, the Authority and the State of Minnesota and in furtherance of the economic development and redevelopment plan for the Minimum Improvements Area to enter

into this Easement and Maintenance Agreement (hereinafter this “Agreement”) with the Master Redeveloper with respect to those portions of the Minimum Improvements Area on which the Public Access Improvements will be constructed;

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

GRANT OF EASEMENT

Section 1.1. Easement Premises - Subject to Section 2.1, the Master Redeveloper hereby grants and conveys to the City a non-exclusive easement (the “Easement”) over and across those portions of the real property described on Exhibit A, which are situated in the City of Wayzata, County of Hennepin, State of Minnesota (the “Easement Premises”) and which are designed, constructed or otherwise intended and reserved for use as roadways, streets, streetscape improvements, curbs and gutters, sanitary sewer lines, water lines, public and private utility improvements, and related improvements, as further described on the attached Exhibit B (“Public Access Improvements”). The Easement Premises must contain at least ___ public parking spaces.

Section 1.2. Easement Purpose - The Easement is granted for the purpose of use and maintenance of Public Access Improvements, together with all appurtenances thereto and means of access from and to public rights of way and easements shown in the Final Plans or constructed by Master Redeveloper; and include, but are not limited to, any and all parking, sidewalks, streets, alleys, or public spaces immediately adjoining or contiguous to the Easement Premises and all easements appurtenant and/or used in connection with the Public Access Improvements. An additional purpose of this Easement will be to allow the City, and its employees and contractors, to inspect the Public Access Improvements, and to the extent provided herein, maintain and repair the Public Access Improvements.

Section 1.3. Releases and Reservations

(a) The Master Redeveloper reserves in, over, under, above, across and upon the Easement Premises the right to use the Easement Premises for any and all uses and purposes provided that such use does not obstruct or materially interfere with the intended purpose of the Easement, including without limitation:

- (i) the right of support for the Minimum Improvements;
- (ii) the right to build upon the Public Access Improvements;
- (iii) the right of access for ingress and egress through the Easement Premises;
- (iv) the right to bring utilities, materials, and other facilities through the Easement Premises;

(v) the right to grant easements in, over, under and across the Easement Premises for the purpose of installation, use and operation of utilities;

(vi) the right to perform all construction, maintenance, and repair of the Public Access Improvements.

(vii) the right during special events or festivals to have temporary sales displays, public seating and entertainment stages in the Easement Premises, provided that such special events or festivals may not last more than seventy-two (72) hours (not including reasonably necessary set up and break down time for the events or festivals) and may not occur more than eight (8) times each year, without prior consent of, but with prior notice to, the City.

(b) The Master Redeveloper must repair any damage caused to the Public Access Improvements due to construction of the Minimum Improvements and minimize the extent and duration of any interference with the easements rights granted herein.

(c) Upon request by the Master Redeveloper, the City must execute and deliver instruments to evidence the Master Redeveloper's reservation of rights under section (a), however execution of such instruments is not necessary to effect the reservations in this Section.

(d) All provisions in this Section 1.3 are subject to the terms of the Contract, the Final Plans, the PUD Agreement and the City Code with regard to public rights-of-way, including the requirements to obtain encroachment permits, obstruction permits or other City approvals to do work in or to public rights-of-way.

Section 1.4. Traffic Regulations and Enforcement - All vehicular and pedestrian traffic on the roadways shall be subject to applicable local, state and federal laws. The City shall have the right to regulate and enforce any and all traffic violations on the roadways.

ARTICLE II

TERM

Section 2.1. Term – The Easement will become effective upon issuance of a certificate of occupancy for a given Block. The Easement will be perpetual.

ARTICLE III

UTILITIES

Section 3.1. Utility Charges - The Master Redeveloper will pay, or cause to be paid, when the same become due, all charges for water, sewer usage, gas, electricity, power, heat,

telephone, or other communications service and any and all other utility or similar services used, rendered, supplied, or consumed in, upon, at, from, or in connection with the Easement Premises, or any part thereof.

ARTICLE IV

TAXES AND ASSESSMENTS

Section 4.1. Payment of Taxes and Assessments - The Master Redeveloper must pay, or cause to be paid, before becoming delinquent, all real estate taxes, charges, assessments, and levies, assessed and levied by any governmental taxing authority against the Easement Premises. Nothing contained in this Agreement requires the Master Redeveloper to pay any franchise, estate, inheritance, excise, succession, capital levy, or transfer tax of the City or any income, excess profits or revenue tax payable by the City under this Agreement. The Master Redeveloper has the right and option, at any time but solely at the Master Redeveloper's expense, to pay any real estate taxes or assessments in installments or under protest or in a similar manner, or to contest the levy or amount of the same in appropriate legal or administrative proceedings.

ARTICLE V

USE OF EASEMENT PREMISES

Section 5.1. Construction of Public Access Improvements - In accordance with the provisions of the Contract and this Agreement, the Master Redeveloper must build, construct, modify, alter, or reconstruct on the Easement Premises, the Public Access Improvements. The size, location, and design of the Public Access Improvements must be approved in the Final Plans. The Master Redeveloper will be the owner of the Public Access Improvements. It is understood that the Master Redeveloper may make such other improvements as it deems appropriate or desirable upon those portions of the underlying real estate described in Exhibit A hereto that are not occupied by Public Access Improvements.

Section 5.2. Liens - The Master Redeveloper will not permit any mechanic's or materialmen's liens to stand against the Easement Premises on account of improvements authorized by the Master Redeveloper, provided, however, that the Master Redeveloper may in good faith and at its expense contest any such lien in which event such lien may remain undischarged and unsatisfied during the contest and any appeal, provided the Master Redeveloper file a bond or deposit cash or other reasonable security in the amount of such lien with the court or with a mortgagee of the Easement Premises or with the City to secure the payment of such lien if finally determined to be valid.

Section 5.3. Legal and Regulatory Compliance; Control of Premises - The Master Redeveloper must operate and maintain the Public Access Improvements on the Easement Premises for public access and other related or incidental purposes and in accordance with all applicable governmental laws, ordinances, regulations and orders pertaining to Public Access Improvements generally from time to time. Subject only to the express provisions of this Agreement, the PUD Agreement, the Final Plans and the Contract, the Master Redeveloper will

have full authority and control over the management, operation, and use of the Easement Premises.

Section 5.4. No Fees – The Easement Premises must be open to the public without charge or fee without consent of the City; provided that fees or charges may be charged for special events and festivals under Section 1.3(b)(vii) above.

Section 5.5. Contractors - The Master Redeveloper may engage such employees, agents, or independent contractors as it may deem advisable to conduct the management, repair, maintenance, and operation of the Easement Premises from time to time. Master Redeveloper may make all decisions and execute all agreements, in its sole discretion, with respect to the Public Access Improvements so long as operation of the Public Access Improvements does not violate any provisions in the Contract.

Section 5.6. No Waste or Damage - Neither the City nor the Master Redeveloper may knowingly or willfully commit or suffer to be committed any waste or damage in or upon the Easement Premises, or any disfigurement or injury to any Public Access Improvements. The Master Redeveloper in its use and occupancy of the Easement Premises, may not knowingly and willfully commit or suffer to be committed any act or thing which constitutes a nuisance or interferes with the public use and enjoyment of the Public Access Improvements. Usual and normal wear and tear, damage by the elements, unavoidable casualty or depreciation and diminution over time will not be considered “waste,” “nuisance,” “damage,” “disfigurement,” or “injury.”

ARTICLE VI

INDEMNIFICATION, INSURANCE

Section 6.1. Property Insurance - The Master Redeveloper, at its sole cost and expense, must keep all Public Access Improvements, and all alterations, extensions, and improvements thereto and replacements thereof, insured against loss or damage by fire and against those casualties covered by extended coverage insurance and against vandalism and malicious mischief and against such other risks, of a similar or dissimilar nature, as are customarily covered with respect to buildings and improvements similar in construction, general location, use, and occupancy to the Public Access Improvements. Such policy of insurance will affirmatively include the full replacement cost measure of recovery.

Section 6.2. Personal Property - All property of every kind and character which the Master Redeveloper may keep or store in, at, upon, or about the Easement Premises will be kept and stored at the sole risk, cost, and expense of the Master Redeveloper.

Section 6.3. Indemnification of the City -

- (a) The Master Redeveloper releases and covenants and agrees that the City shall not be liable for and agree to indemnify and hold harmless the City Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Public Access

Improvements constructed by the Master Redeveloper to the extent not attributable to the negligence of the City Parties.

(b) Except for negligence of the City Parties, the Master Redeveloper agrees to indemnify the City Parties, now and forever, and further agrees to hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney's fees), actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Master Redeveloper (or if other persons acting on their behalf or under its direction or control) under the Contract or the transactions contemplated thereby or the acquisition, construction, installation, ownership and operation of the Public Access Improvements constructed by the Master Redeveloper.

(c) The City in no way waives its right to statutory liability caps under Minnesota Statutes, Section 466.04, as amended. The Master Redeveloper's liability to the City equals, but does not exceed, the City's statutory liability limits under Minnesota Statutes, Section 466.04, as amended.

(d) This provision will survive termination of this Agreement.

Section 6.4. Liability Insurance - The Master Redeveloper, and any successor in interest to the Master Redeveloper (which specifically includes any Secondary Redeveloper), shall obtain and continuously maintain insurance on the Public Access Improvements and, from time to time at the request of the Authority, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The Master Redeveloper must procure and maintain continuously in effect (or cause the same to occur), policies of insurance of the kind and minimum amounts as are customarily maintained with respect to Public Access Improvements and, to be reviewed from time to time by the parties, such policies must meet the minimum requirements set forth in Minnesota Statutes Section 466.04, as amended, and must further include the following:

(a) Insurance against liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Public Access Improvements. Such insurance must provide that the City is an additional insured.

(b) To the extent reasonably available, insurance coverage with respect to the indemnification expressed in Section 6.3 hereof.

Section 6.5. General Insurance Requirement - All insurance required in this Agreement must be placed with financially sound and reputable insurers licensed to transact business in the State of Minnesota. The Master Redeveloper must furnish to the City policies evidencing all such insurance or a certificate or certificates of the respective insurers stating that such insurance is in force and effect. Each policy of insurance herein required must contain a provision that the insurer may not cancel it without giving written notice to the City at least thirty (30) days before the cancellation becomes effective. All policies or certificates of insurance will be approved

reasonably as to form and content by the City. The insurance coverage herein required may be provided by a blanket insurance policy or policies.

Section 6.6. No Insurance Obligation of City - At no time and under no circumstances will the City be required to take out, maintain in force and effect, or pay for any type of insurance coverage with reference to the protection of and/or ownership of and/or occupancy of and/or a suit relating to the Easement Premises and/or any improvements hereafter located thereon.

ARTICLE VII

ASSIGNMENT, SUBORDINATION

Section 7.1. Assignment by the City - The City may not assign or transfer its interest under this Agreement without the prior written consent of the Master Redeveloper.

Section 7.2. Assignment by Master Redeveloper - The Master Redeveloper may not assign or otherwise transfer its interest under this Agreement, except (i) as provided in the Contract, (ii) to whomever becomes an assignee of the Master Redeveloper under the Contract, (iii) to any lender holding a mortgage on or interest in the Easement Premises, and (iv) assignment of the Master Redeveloper's maintenance obligation to extent permitted in Section 8.2 herein. The City will recognize and accept any successors or assigns of Master Redeveloper.

ARTICLE VIII

MAINTENANCE OF THE EASEMENT PREMISES

Section 8.1. Maintenance - The Master Redeveloper, at its cost and expense, must keep and maintain all of the Easement Premises in good condition and repair. It is distinctly understood that the preceding does not require maintenance and/or repair of the Easement Premises and/or improvements hereinafter erected thereon in perfect condition or is a condition equal to new at all times, but the Master Redeveloper must keep and maintain the same in such condition as to minimize, so far as is practicable, by reasonable care, maintenance, replacement, and repair, the effects of use, decay, injury, and destruction of the Easement Premises or any part thereof, the City recognizing that depreciation and diminution by reason of age, use, and environmental factors is unavoidable and expected. However, notwithstanding anything herein to the contrary, it shall be the obligation of the Master Redeveloper to maintain, repair and operate the Public Access Improvements in a condition which is safe, operational and in accordance with all government agreements.

Section 8.2. Assignment of Maintenance Obligations - The Master Redeveloper may assign its maintenance obligations under Section 8.1 to a third party, including an association of property owners, provided that (i) such third party is determined to have financial resources adequate to fund the Master Redeveloper's obligations under this Agreement, and (ii) such third party and the City have entered into a signed agreement requiring the third party to be bound by

the terms of this Agreement, in which event the Master Redeveloper will be released from further liability with respect to such assigned obligations.

Section 8.3. No Obligation of the City to Repair or Maintain - The City will have no obligation of any kind, expressed or implied, to repair, rebuild, restore, reconstruct, modify, alter, replace, or maintain the Easement Premises or any part thereof.

Section 8.4. Entry by City -The City may, after notice and opportunity to cure, enter onto the Easement Premises to repair and maintain the Public Access Improvements within the Easement Premises if the City determines, in its sole discretion, that performance of such repairs and maintenance is necessary (i) cure any default hereunder or (ii) to protect public health, welfare, and safety in a manner consistent with standard practices; provided, however, that in case of emergency or failure of Master Redeveloper to maintain the Public Access Improvements sufficiently to protect the public health and safety, the Easement Premises are subject to entry without notice and at any time, by City or its authorized employees and/or agents and/or by any public safety personnel to perform such maintenance or repairs as City may deem necessary in its sole discretion. The City will submit an invoice for the costs incurred for such maintenance or repairs to the Master Redeveloper. If the Master Redeveloper has failed to make payment on the invoice within 60 days, the City will have the right to assess the costs incurred by the City to all or any portion of the Minimum Improvements Area as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. By execution of this Agreement, the Master Redeveloper is agreeing to such an assessment for maintenance and repair costs, agreeing that the Minimum Improvements Area assessed for such service charges is benefited thereby, and waiving any rights the Master Redeveloper or a third party may have to object to an assessment of such service charges, including any rights of appeal under Minnesota Statutes, Chapter 429.

Section 8.5. Destruction - In the event that the Public Access Improvements on the Easement Premises are destroyed by fire or other casualty, and subject to a determination by any lender holding a mortgage on the Easement Premises, the Master Redeveloper will rebuild or reconstruct the Public Access Improvements to the extent insurance proceeds are available or, in the event insurance proceeds are not sufficient to reconstruct the entire Public Access Improvements, to the extent insurance proceeds combined with any contributions by the Master Redeveloper toward reconstruction are available. If the Master Redeveloper rebuilds or reconstructs the Public Access Improvements, the proceeds from any and all insurance policies covering risks against loss or damage must be used to rebuild or reconstruct.

ARTICLE IX

EMINENT DOMAIN

Section 9.1. Condemnation - If the Easement Premises are taken, acquired, or condemned by eminent domain for any public or quasi-public use or purpose, then the Master Redeveloper, at any time within sixty (60) days next after it has actual notice of such proposed acquisition or condemnation, will have the option to (i) cancel and terminate this Agreement as of the date of vesting of title in the condemning authority of the acquired or condemned property, or to (ii) continue this Agreement as to the remaining part of the Easement Premises not so taken or threatened to be taken. The Master Redeveloper may exercise one of the foregoing options by

giving the City written notice of the exercise thereof within the foregoing sixty (60) days' period, and in the event Master Redeveloper fails or refuses, for any reason, so to furnish the City written notice of the exercise thereof within the time and in the manner herein provided, then this Agreement will continue in full force and effect under option (ii) above.

ARTICLE X

DEFAULT AND TERMINATION

Section 10.1. Default by the City - If the City fails to perform any of its obligations under this Agreement, and fails to cure such default after thirty (30) days' written notice of such default, or, if such default cannot reasonably be cured within such thirty (30) days, fails to commence curative action and thereafter diligently complete the same, then in such case the Master Redeveloper may declare the termination of this Agreement and re-enter and take possession of the Easement Premises. In such case, or at such time as this Agreement is terminated pursuant to Section 2.1 hereof, the City agrees to execute and deliver to the Master Redeveloper a written termination of this Agreement in recordable form, which termination agreement will be filed in the official records of Hennepin County, Minnesota. In addition, the Master Redeveloper may exercise all remedies available to it at law or equity.

Section 10.2. Default by Master Redeveloper - If the Master Redeveloper fails to perform any of its obligations under this Agreement, and fails to cure such default after thirty (30) days' written notice of such default or, if such default cannot reasonably be cured within such thirty (30) days, fails to commence curative action and thereafter diligently complete the same, then in such case, the City may cure such default on behalf of the Master Redeveloper and Master Redeveloper consents to pay to the City any and all such sums as are due and owing on account thereof. City will submit a statement to Master Redeveloper evidencing the costs incurred to cure such default. If Master Redeveloper has failed to make payment in accordance with the statement within 60 days after receipt thereof, City will have the right to assess the costs incurred by City to all or any portion of the Minimum Improvements Area as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. In addition, the City may exercise all remedies available to it at law or equity.

ARTICLE XI

SURRENDER

Section 11.1. Surrender - Upon any termination of this Agreement, the City will surrender the Easement Premises to the Master Redeveloper, including without limitation any and all buildings, improvements, and fixtures then upon the Easement Premises, and all buildings, improvements, structures, fixtures, alterations, and other additions which may be made or installed by or at the instance of either party hereto, in, upon, or about the Easement Premises will become the property of Master Redeveloper upon any such termination and will be surrendered to the Master Redeveloper by the City without any payment therefor.

ARTICLE XII

MISCELLANEOUS

Section 12.1. Waiver - The waiver by any party hereto of any breach or default of any provisions anywhere contained in this Agreement does not constitute a waiver of any subsequent breach or default thereof. No provision of this Agreement is waived unless such waiver is in writing and signed by the party charged with any such waiver.

Section 12.2. Amendments - Except as otherwise herein provided, no subsequent alteration, amendment, change, waiver, discharge, termination, deletion, or addition to this Agreement will be binding upon either party unless in writing and signed by both parties. The Master Redeveloper and the City agree to join in and consent to amendments to this Agreement, to the extent such amendments are reasonably required by the Master Redeveloper's lenders; provided, however, that the Master Redeveloper and the City will not be required to enter into such amendments if the amendments do not adequately protect the legitimate interest and security of the Authority or the City with respect to the Project as defined in the Contract.

Section 12.3. Joinder; Permitted Encumbrance - Except for the Consent and Subordinations attached hereto, if any, this Agreement does not require the joinder or approval of any other person and each of the parties respectfully has the full, unrestricted and exclusive legal right and power to enter into this Agreement for the term and upon the provisions herein recited and for the use and purposes hereinabove set forth. This Agreement will constitute a permitted encumbrance under any loan agreement heretofore or hereafter entered into between the Master Redeveloper and any construction or permanent lender.

ARTICLE XIII

EARLY TERMINATION/RELOCATION OF EASEMENT

Section 13.1. Early Termination. Notwithstanding anything to the contrary in this Agreement, Master Redeveloper and its successors and assigns shall have the right to terminate this Agreement or, at their election, the right to relocate the Easement Premises in the event that (i) the Easement Premises is redeveloped and all necessary approvals are obtained from the City, (ii) there is a change in the use of adjacent Minimum Improvements which change is approved by the City; or (iii) the Public Access Improvements are destroyed by fire or other casualty and it becomes necessary to reconstruct such improvements with a different design which design has been approved by the City. Any and all costs and expenses of terminating the Easement or relocating the Easement Premises shall be paid by Master Redeveloper. In such event, Master Redeveloper and the City shall execute and deliver a recordable amendment to this Agreement to reflect the termination or relocation and the change in the description of the Easement, as applicable.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

CITY OF WAYZATA, a Minnesota
municipal corporation

By: _____
Its: Mayor

By: _____
Its: City Manager

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

WAYZATA BAY REDEVELOPMENT
COMPANY LLC, a Minnesota limited
liability company

By: _____
Its _____

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____ and _____, the _____ and _____, respectively, of the CITY OF WAYZATA, a Minnesota municipal corporation, on behalf of the corporation.

Notary Public

My Commission Expires]

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, the _____ of WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public

My Commission Expires

This Instrument was drafted by
and when recorded should be returned to:

Dorsey & Whitney LLP (JRL/BTC)
Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402

EXHIBIT A

DESCRIPTION OF EASEMENT PREMISES

[A legal description of the Easement Premises will be mutually approved by the Parties and added to this exhibit upon completion and review of a survey and title insurance commitment with respect those portions of the Block occupied by Public Access Improvements.]

EXHIBIT B
PUBLIC ACCESS IMPROVEMENTS

[To be provided once the Final Plans are approved for each Block.]

CONSENT AND SUBORDINATION

The undersigned, _____, a
_____, holder of (i) that certain [Mortgage] (the “Mortgage”); and (2)
that certain [Assignment of Leases and Rents] (the “Assignment”), hereby consents to the
foregoing *Easement and Maintenance Agreement* (the “Easement Agreement”), and hereby
subjects and subordinates the Mortgage and the Assignment and all of its right, title and interest
in the Easement Premises to the Easement Agreement.

Nothing in this Consent and Subordination may be construed to impose on the undersigned any obligation created by the Easement Agreement, unless and until the undersigned has acquired fee title to property burdened by the Easement Agreement.

$$\left[\frac{1}{\sqrt{\pi}} e^{-x^2} \right],$$

a _____

By: _____

Printed Name:_____

Title: _____

STATE OF _____) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, the _____ of _____, a _____, on behalf of the _____.

(Signature of Person Taking Acknowledgment)

This Instrument was drafted by
and when recorded should be returned to:

Dorsey & Whitney LLP (JRL/BTC)
Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402

EXHIBIT H
EASEMENT AND MAINTENANCE AGREEMENT

between
THE CITY OF WAYZATA
and
WAYZATA BAY REDEVELOPMENT COMPANY, LLC
for construction, maintenance and use of
PARK IMPROVEMENTS

THIS AGREEMENT, made as of this ____ day of _____, 20__, by and between the CITY OF WAYZATA, a Minnesota municipal corporation (hereinafter the “City”) and WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company (hereinafter the “Master Redeveloper”).

W I T N E S S E T H:

WHEREAS, the Wayzata Housing and Redevelopment Authority (the “Authority”), the City, and the Master Redeveloper have entered into a Master Redevelopment Agreement (the “Contract”) dated _____, 2008, a memorandum of which will be recorded in the real estate records of Hennepin County, Minnesota; and

WHEREAS, the capitalized terms used, but not defined, in this Agreement have the meanings given in the Contract; and

WHEREAS, the Contract is intended to provide for the construction of the Minimum Improvements by the Master Redeveloper in the Minimum Improvements Area in coordination with the Authority and with the cooperation and assistance of the City; and

WHEREAS, the Contract provides for the expenditure of public funds for the Minimum Improvements to assist in the redevelopment of the Minimum Improvements Area; and

WHEREAS, the Master Redeveloper has agreed under the Contract and the PUD Agreement to build certain Park Improvements in connection with the Minimum Improvements on land to which an easement will be granted to the City by the Master Redeveloper pursuant to the Contract and the PUD Agreement; and

WHEREAS, the Master Redeveloper has agreed to operate, manage, and maintain the Park Improvements pursuant to the Contract; and

WHEREAS, the City and the Master Redeveloper deem it to be in their vital interest and in the best interest of the City, the Authority and the State of Minnesota and in furtherance of the

economic development and redevelopment plan for the Minimum Improvements Area to enter into this Easement and Maintenance Agreement (hereinafter this “Agreement”) with the Master Redeveloper with respect to certain lands included within the Minimum Improvements Area on which the Park Improvements will be constructed;

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

GRANT OF EASEMENT

Section 1.1. Easement Premises - Subject to Section 2.1, the Master Redeveloper hereby grants and conveys to the City a non-exclusive easement (the “Easement”) over and across those portions of the real property described on Exhibit A, which are situated in the City of Wayzata, County of Hennepin, State of Minnesota (the “Easement Premises”) and are designed, constructed or otherwise intended or reserved for use as open space or park areas, and further described and depicted on the attached Exhibit B (the “Park Improvements”).

Section 1.2. Easement Purpose - The Easement is granted for the purpose of public use of the Park Improvements, together with all appurtenances thereto and means of access from and to public rights of way and easements shown in the Final Plans or constructed by Master Redeveloper; and include, but are not limited to, any and all Parking Facilities, streets, alleys, or public spaces immediately adjoining or contiguous to the Easement Premises and all easements appurtenant and/or used in connection with the Easement Premises.

Section 1.3. Releases and Reservations

(a) The Master Redeveloper reserves in, over, under, above, across and upon the Easement Premises the right to use the Easement Premises for any and all uses and purposes provided that such use does not obstruct or materially interfere with the intended purpose of the Easement, including without limitation:

- (i) the right of support for the Minimum Improvements;
- (ii) the right of access for ingress and egress through the Easement Premises;
- (iii) the right to bring utilities, materials, and other facilities through the Easement Premises;
- (iv) the right to grant easements in, over, under and across the Easement Premises for the purpose of installation, use and operation of utilities;
- (v) the right to perform all construction, maintenance and repair of the Park Improvements and adjoining improvements; and

(vi) the right during special events or festivals to have temporary sales displays, public seating and entertainment stages in the Easement Premises, provided that such special events or festivals may not last more than seventy two (72) hours (not including reasonably necessary set up and break down time for such special events or festivals) and may not occur more than eight (8) times each year, without prior consent of, but with prior notice to, the City.

(b) The Master Redeveloper must repair any damage to the Park Improvements caused by construction of the Minimum Improvements and minimize the extent and duration of any interference with the easement rights granted herein.

(c) Upon request by the Master Redeveloper, the City must execute and deliver instruments to evidence the Master Redeveloper's reservation of rights under sections (a), however execution of such instruments is not necessary to effect the reservations in this Section.

(d) All provisions in this Section 1.3 are subject to the terms of the Contract, the Final Plans, the PUD Agreement and the City Code with regard to public parks.

ARTICLE II

TERM

Section 2.1. Term – This Easement will become effective upon issuance of a certificate of occupancy for a the Block containing the Easement Premises. This Easement will be perpetual.

ARTICLE III

UTILITIES

Section 3.1. Utility Charges - The Master Redeveloper will pay, or cause to be paid, when the same become due, all charges for water, sewer usage, gas, electricity, power, heat, telephone, or other communications service and any and all other utility or similar services used, rendered, supplied, or consumed in, upon, at, from, or in connection with the Easement Premises, or any part thereof.

ARTICLE IV

TAXES AND ASSESSMENTS

Section 4.1. Payment of Taxes and Assessments - The Master Redeveloper must pay, or cause to be paid, before becoming delinquent, all real estate taxes, charges, assessments, and levies, assessed and levied by any governmental taxing authority against the Easement Premises. Nothing contained in this Agreement requires the Master Redeveloper to pay any franchise,

estate, inheritance, excise, succession, capital levy, or transfer tax of the City or any income, excess profits or revenue tax payable by the City under this Agreement. The Master Redeveloper has the right and option, at any time but solely at the Master Redeveloper's expense, to pay any real estate taxes or assessments in installments or under protest or in a similar manner, or to contest the levy or amount of the same in appropriate legal or administrative proceedings.

ARTICLE V

USE OF EASEMENT PREMISES

Section 5.1. Construction of Park Improvements - In accordance with the provisions of the Contract, the PUD Agreement and this Agreement, the Master Redeveloper must build, construct, modify, alter, and reconstruct on the Easement Premises, the Park Improvements. The size, location, and design of the Park Improvements must be approved in the Final Plans. The Master Redeveloper will be the owner of the Park Improvements. It is understood that the Master Redeveloper may make such other improvements as it deems appropriate or desirable upon those portions of the underlying real estate described in Exhibit A hereto that are not occupied by Park Improvements, provided that such improvements do not impair the use or operation of, or access to, the Park Improvements.

Section 5.2. Liens - The Master Redeveloper will not permit any mechanic's or materialmen's liens to stand against the Easement Premises on account of improvements authorized by the Master Redeveloper, provided, however, that the Master Redeveloper may in good faith and at its expense contest any such lien in which event such lien may remain undischarged and unsatisfied during the contest and any appeal, provided the Master Redeveloper files a bond or deposits cash or other reasonable security in the amount of such lien with the court or with a mortgagee of the Easement Premises or with the City to secure the payment of such lien if finally determined to be valid.

Section 5.3. Legal and Regulatory Compliance; Control of Premises - The Master Redeveloper must operate and maintain the Park Improvements on the Easement Premises for public use in accordance with all applicable governmental laws, ordinances, regulations and orders pertaining to Park Improvements generally from time to time. Subject only to the express provisions of this Agreement, the PUD Agreement, the Final Plans, and the Contract, the Master Redeveloper will have full authority and control over the management, operation, and use of the Easement Premises.

Section 5.4. No Fees - The Easement Premises must be open to the public for public use without charge or fee, except during those special events and festivals permitted in Section 1.3(a)(vii).

Section 5.5. Hours of Operation, Rules and Regulations - The Master Redeveloper must establish reasonable hours of operation, rules, and regulations as it deems advisable, necessary, or appropriate for the safe, efficient, and orderly use of the Parks Improvements subject to prior City approval.

Section 5.6. Contractors - The Master Redeveloper may engage such employees, agents, or independent contractors as it may deem advisable to conduct the management, repair, maintenance, and operation of the Easement Premises from time to time. Master Redeveloper may make all decisions and execute all agreements, in its sole discretion, with respect to the Park Improvements so long as such decisions and agreements do not violate any provisions in the Contract, this Agreement or the PUD Agreement.

Section 5.7. No Waste or Damage - Neither the City nor the Master Redeveloper may knowingly or willfully commit or suffer to be committed any waste or damage in or upon the Easement Premises, or any disfigurement or injury to any Park Improvements. The Master Redeveloper in its use and occupancy of the Easement Premises, may not knowingly and willfully commit or suffer to be committed any act or thing which constitutes a nuisance or interferes with the public use and enjoyment of the Park Improvements. Usual and normal wear and tear, damage by the elements, unavoidable casualty or depreciation and diminution over time will not be considered “waste,” “nuisance,” “damage,” “disfigurement,” or “injury.”

ARTICLE VI

INDEMNIFICATION, INSURANCE

Section 6.1. Property Insurance - The Master Redeveloper, at its sole cost and expense, must keep all Park Improvements, and all alterations, extensions, and improvements thereto and replacements thereof, insured against loss or damage by fire and against those casualties covered by extended coverage insurance and against vandalism and malicious mischief and against such other risks, of a similar or dissimilar nature, as are customarily covered with respect to buildings and improvements similar in construction, general location, use, and occupancy to the Park Improvements. Such policy of insurance will affirmatively include the full replacement cost measure of recovery.

Section 6.2. Personal Property - All property of every kind and character which the Master Redeveloper may keep or store in, at, upon, or about the Easement Premises will be kept and stored at the sole risk, cost, and expense of the Master Redeveloper.

Section 6.3. Indemnification of the City -

(a) The Master Redeveloper releases and covenants and agrees that the City shall not be liable for and agree to indemnify and hold harmless the City Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Park Improvements constructed by the Master Redeveloper to the extent not attributable to the negligence of the City Parties.

(b) Except for negligence of the City Parties, the Master Redeveloper agrees to indemnify the City Parties, now and forever, and further agrees to hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorney’s fees), actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or

inactions of the Master Redeveloper (or if other persons acting on their behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Minimum Improvements and Public Infrastructure Improvements constructed by the Master Redeveloper.

(c) The City in no way waives its right to statutory liability caps under Minnesota Statutes, Section 466.04, as amended. The Master Redeveloper's liability to the City equals, but does not exceed, the City's statutory liability limits under Minnesota Statutes, Section 466.04, as amended.

(d) This provision will survive termination of this Agreement.

Section 6.4. Liability Insurance - The Master Redeveloper, and any successor in interest to the Master Redeveloper (which specifically includes any Secondary Redeveloper), shall obtain and continuously maintain insurance on the Park Improvements and, from time to time at the request of the Authority, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The Master Redeveloper must procure and maintain continuously in effect (or cause the same to occur), policies of insurance of the kind and minimum amounts as are customarily maintained with respect to Park Improvements and, to be reviewed from time to time by the parties, such policies must meet the minimum requirements set forth in Minnesota Statutes Section 466.04, and must further include the following:

(a) Insurance against liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Park Improvements. Such insurance must provide that the City is an additional insured.

(b) To the extent reasonably available, insurance coverage with respect to the indemnification expressed in Section 6.3 hereof.

Section 6.5. General Insurance Requirement - All insurance required in this Agreement must be placed with financially sound and reputable insurers licensed to transact business in the State of Minnesota. The Master Redeveloper must furnish to the City policies evidencing all such insurance or a certificate or certificates of the respective insurers stating that such insurance is in force and effect. Each policy of insurance herein required must contain a provision that the insurer may not cancel it without giving written notice to the City at least thirty (30) days before the cancellation becomes effective. All policies or certificates of insurance will be approved reasonably as to form and content by the City. The insurance coverage herein required may be provided by a blanket insurance policy or policies.

Section 6.6. No Insurance Obligation of City - At no time and under no circumstances will the City be required to take out, maintain in force and effect, or pay for any type of insurance coverage with reference to the protection of and/or ownership of and/or occupancy of and/or a suit relating to the Easement Premises and/or any improvements hereafter located thereon.

ARTICLE VII

ASSIGNMENT, SUBORDINATION

Section 7.1. Assignment by the City - The City may not assign or transfer its interest under this Agreement without the prior written consent of the Master Redeveloper.

Section 7.2. Assignment by Master Redeveloper - The Master Redeveloper may not assign or otherwise transfer its interest under this Agreement, except (i) as provided in the Contract, (ii) to whomever becomes an assignee of the Master Redeveloper under the Contract, (iii) to any lender holding a mortgage on or interest in the Easement Premises, and (iv) assignment of the Master Redeveloper's maintenance obligation to extent permitted in Section 8.2 herein. The City will recognize and accept any successors or assigns of Master Redeveloper.

ARTICLE VIII

MAINTENANCE OF THE EASEMENT PREMISES

Section 8.1. Maintenance - The Master Redeveloper, at its cost and expense, must keep and maintain all of the Easement Premises in good condition and repair. It is distinctly understood that the preceding does not require maintenance and/or repair of the Easement Premises and/or improvements hereinafter erected thereon in perfect condition or is a condition equal to new at all times, but the Master Redeveloper must keep and maintain the same in such condition as to minimize, so far as is practicable, by reasonable care, maintenance, replacement, and repair, the effects of use, decay, injury, and destruction of the Easement Premises or any part thereof, the City recognizing that depreciation and diminution by reason of age, use, and environmental factors is unavoidable and expected. However, notwithstanding anything herein to the contrary, it shall be the obligation of the Master Redeveloper to maintain, repair and operate the Park Improvements in a condition which is safe, operation and in accordance with all government agreements.

Section 8.2. Assignment of Maintenance Obligations - The Master Redeveloper may assign its maintenance obligations under Section 8.1 to a third party, including an association of property owners, provided that (1) such third party is determined by the City to have financial resources adequate to fund the Master Redeveloper's obligations under this Agreement and (ii) such third party and the City have entered into a signed agreement requiring the third party to be bound by the terms of this Agreement, in which event the Master Redeveloper will be released from further liability with respect to such assigned obligations.

Section 8.3. No Obligation of the City to Repair or Maintain - The City will have no obligation of any kind, expressed or implied, to repair, rebuild, restore, reconstruct, modify, alter, replace, or maintain the Easement Premises or any part thereof.

Section 8.4. Entry by City - The City may, after notice and opportunity to cure, enter onto the Easement Premises to repair and maintain the Park Improvements within the Easement Premises if the City determines, in its sole discretion, that performance of such repairs and

maintenance is necessary (i) to cure any default hereunder or (ii) to protect public health, welfare and safety; provided, however, that in case of emergency or failure of Master Redeveloper to maintain the Park Improvements sufficiently to protect the public health and safety, the Easement Premises are subject to entry without notice and at any time, by City or its authorized employees and/or agents and/or by any public safety personnel to perform such maintenance or repairs as City may deem necessary in its sole discretion. The City will submit an invoice for the costs incurred for such maintenance or repairs to the Master Redeveloper. If the Master Redeveloper has failed to make payment on the invoice within 60 days, the City will have the right to assess the costs incurred by the City to all or any portion of the Minimum Improvements Area as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. By execution of this Agreement, the Master Redeveloper is agreeing to such an assessment for maintenance and repair costs, agreeing that the Minimum Improvements Area assessed for such service charges is benefited thereby, and waiving any rights the Master Redeveloper or a third party may have to object to an assessment of such service charges, including any rights of appeal under Minnesota Statutes, Chapter 429.

Section 8.5. Destruction - In the event that the Park Improvements on the Easement Premises are destroyed by fire or other casualty, and subject to a determination by any lender holding a mortgage on the Easement Premises, the Master Redeveloper will rebuild or reconstruct the Park Improvements to the extent insurance proceeds are available or, in the event insurance proceeds are not sufficient to reconstruct the entire Park Improvements, to the extent insurance proceeds combined with any contributions by the Master Redeveloper toward reconstruction are available. If the Master Redeveloper rebuilds or reconstructs the Park Improvements, the proceeds from any and all insurance policies covering risks against loss or damage must be used to rebuild or reconstruct.

ARTICLE IX

EMINENT DOMAIN

Section 9.1. Condemnation - If the Easement Premises are taken, acquired, or condemned by eminent domain for any public or quasi-public use or purpose, then the Master Redeveloper, at any time within sixty (60) days next after it has actual notice of such proposed acquisition or condemnation, will have the option to (i) cancel and terminate this Agreement as of the date of vesting of title in the condemning authority of the acquired or condemned property, or to (ii) continue this Agreement as to the remaining part of the Easement Premises not so taken or threatened to be taken. The Master Redeveloper may exercise one of the foregoing options by giving the City written notice of the exercise thereof within the foregoing sixty (60) days' period, and in the event Master Redeveloper fails or refuses, for any reason, so to furnish the City written notice of the exercise thereof within the time and in the manner herein provided, then this Agreement will continue in full force and effect under option (ii) above.

ARTICLE X

DEFAULT AND TERMINATION

Section 10.1. Default by the City - If the City fails to perform any of its obligations under this Agreement, and fails to cure such default after thirty (30) days' written notice of such default, or, if such default cannot reasonably be cured within such thirty (30) days, fails to commence curative action and thereafter diligently complete the same, then in such case the Master Redeveloper may declare the termination of this Agreement and re-enter and take possession of the Easement Premises. In such case, or at such time as this Agreement is terminated pursuant to Section 2.1 hereof, the City agrees to execute and deliver to the Master Redeveloper a written termination of this Agreement in recordable form, which termination agreement will be filed in the official records of Hennepin County, Minnesota. In addition, the Master Redeveloper may exercise all remedies available to it at law or equity.

Section 10.2. Default by Master Redeveloper - If the Master Redeveloper fails to perform any of its obligations under this Agreement, and fails to cure such default after thirty (30) days' written notice of such default or, if such default cannot reasonably be cured within such thirty (30) days, fails to commence curative action and thereafter diligently complete the same, then in such case, the City may cure such default on behalf of the Master Redeveloper and Master Redeveloper consents to pay to the City any and all such sums as are due and owing on account thereof. City will submit a statement to Master Redeveloper evidencing the costs incurred to cure such default. If Master Redeveloper has failed to make payment in accordance with the statement within 60 days after receipt thereof, City will have the right to assess the costs incurred by City to all or any portion of the Minimum Improvements Area as a service charge pursuant to Minnesota Statutes, Section 429.101, or any successor statute. In addition, the City may exercise all remedies available to it at law or equity.

ARTICLE XI

SURRENDER

Section 11.1. Surrender - Upon any termination of this Agreement, the City will surrender the Easement Premises to the Master Redeveloper, including without limitation any and all buildings, improvements, and fixtures then upon the Easement Premises, and all buildings, improvements, structures, fixtures, alterations, and other additions which may be made or installed by or at the instance of either party hereto, in, upon, or about the Easement Premises will become the property of Master Redeveloper upon any termination and will be surrendered to the Master Redeveloper by the City without any payment therefor.

ARTICLE XII

MISCELLANEOUS

Section 12.1. Waiver - The waiver by any party hereto of any breach or default of any provisions anywhere contained in this Agreement does not constitute a waiver of any subsequent

breach or default thereof. No provision of this Agreement is waived unless such waiver is in writing and signed by the party charged with any such waiver.

Section 12.2. Amendments - Except as otherwise herein provided, no subsequent alteration, amendment, change, waiver, discharge, termination, deletion, or addition to this Agreement will be binding upon either party unless in writing and signed by both parties. The Master Redeveloper and the City agree to join in and consent to amendments to this Agreement, to the extent such amendments are reasonably required by the Master Redeveloper's lenders; provided, however, that the Master Redeveloper and the City will not be required to enter into such amendments if the amendments do not adequately protect the legitimate interest and security of the Authority or the City with respect to the Project as defined in the Contract.

Section 12.3. Joinder; Permitted Encumbrance - Except for the Consent and Subordinations attached hereto, if any, this Agreement does not require the joinder or approval of any other person and each of the parties respectfully has the full, unrestricted and exclusive legal right and power to enter into this Agreement for the term and upon the provisions herein recited and for the use and purposes hereinabove set forth. This Agreement will constitute a permitted encumbrance under any loan agreement heretofore or hereafter entered into between the Master Redeveloper and any construction or permanent lender.

ARTICLE XIII EARLY TERMINATION/RELOCATION OF EASEMENT

Section 13.1. Early Termination. Notwithstanding anything to the contrary in this Agreement, Master Redeveloper and its successors and assigns shall have the right to terminate this Agreement or, at their election, the right to relocate the Easement Premises in the event that (i) the Easement Premises is redeveloped and all necessary approvals are obtained from the City, (ii) there is a change in the use of adjacent Minimum Improvements which change is approved by the City; or (iii) the Park Improvements are destroyed by fire or other casualty and it becomes necessary to reconstruct such improvements with a different design which design has been approved by the City. Any and all costs and expenses of terminating the Easement or relocating the Easement Premises shall be paid by Master Redeveloper. In such event, Master Redeveloper and the City shall execute and deliver a recordable amendment to this Agreement to reflect the termination or relocation and the change in the description of the Easement, as applicable.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

CITY OF WAYZATA, a Minnesota
municipal corporation

By: _____

Its: Mayor

By: _____

Its: City Manager

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

WAYZATA BAY REDEVELOPMENT
COMPANY LLC, a Minnesota limited
liability company

By: _____

Its _____

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____ and _____, the _____ and _____, respectively, of the CITY OF WAYZATA, a Minnesota municipal corporation, on behalf of the corporation.

Notary Public

My Commission Expires]

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, the _____ of WAYZATA BAY REDEVELOPMENT COMPANY LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public

My Commission Expires

This Instrument was drafted by
and when recorded should be returned to:

Dorsey & Whitney LLP (JRL/BTC)
Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402

EXHIBIT A

DESCRIPTION OF EASEMENT PREMISES

[A legal description of the Easement Premises will be mutually approved by the Parties and added to this exhibit upon completion and review of a survey and title insurance commitment with respect to the Easement Premises.]

EXHIBIT B
PARK IMPROVEMENTS

[To be provided once Final Plans are approved for each relevant Block.]

CONSENT AND SUBORDINATION

The undersigned, _____, a _____, holder of (i) that certain [Mortgage] (the "Mortgage"); and (2) that certain [Assignment of Leases and Rents] (the "Assignment"), hereby consents to the foregoing *Easement and Maintenance Agreement* (the "Easement Agreement"), and hereby subjects and subordinates the Mortgage and the Assignment and all of its right, title and interest in the Easement Premises to the Easement Agreement.

Nothing in this Consent and Subordination may be construed to impose on the undersigned any obligation created by the Easement Agreement, unless and until the undersigned has acquired fee title to property burdened by the Easement Agreement.

[_____] ,
a _____

By: _____

Printed Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, the _____ of _____, a _____, on behalf of the _____.

(Signature of Person Taking Acknowledgment)

This Instrument was drafted by
and when recorded should be returned to:

Dorsey & Whitney LLP (JRL/BTC)
Suite 1500
50 South Sixth Street
Minneapolis, Minnesota 55402

EXHIBIT I
TIF PRO FORMA

Annual Operating Proforma - Baseline

	Year	Year	Year	Year	Year	Year
	1	2	3	4	5	6
Units Rented	146	240	242	242	242	242
Percent Occupancy	97%	94%	95%	95%	95%	95%
	12/31/2012	12/31/2013	12/31/2014	12/31/2015	12/31/2016	12/31/2017
Revenues						
Total Average Skilled	2,057,688	2,866,688	2,946,508	3,034,903	3,125,950	3,219,729
Total Average Assisted	1,478,520	2,804,693	2,932,565	3,026,541	3,111,158	3,204,492
Total Average Memory Care	594,320	996,360	1,036,251	1,057,018	1,088,749	1,121,412
Total Average Independent	3,132,133	5,005,794	5,269,179	5,365,557	5,536,524	5,692,320
Garage	73,424	117,347	122,117	125,780	129,554	133,440
Staff Meals	45,671	73,852	76,788	79,091	81,464	83,908
Other meal income	150,465	246,545	256,346	264,017	271,958	280,116
2nd Occupant monthly income	35,822	58,696	61,029	62,860	64,746	66,688
Resident Storage 150 units at \$10 per month	31,614	56,819	52,839	54,434	56,067	57,739
Misc	127,503	208,921	217,227	223,744	230,456	237,370
Interest Income Monthly	278,157	278,157	286,502	293,097	303,950	313,089
Guest Rooms 50% occupancy	36,680	51,506	52,839	54,434	56,067	57,739
Total Revenue	8,014,718	12,753,169	13,240,389	13,637,498	14,046,623	14,468,022
Expenses						
Total Community Living	2,012,371	2,046,787	2,162,010	2,163,070	2,230,923	2,286,923
Total Dietary	765,230	801,950	836,008	856,718	876,312	902,691
Total Engineering	260,057	267,859	275,854	284,171	292,696	301,477
Total Utilities	326,874	336,681	346,781	357,184	367,900	378,937
Total Housekeeping	339,479	337,542	347,648	358,098	368,841	379,936
Total Rehabilitation	21,333	21,973	22,632	23,311	24,010	24,731
Total Recreation Therapy	174,327	179,557	184,944	196,492	196,207	202,093
Total Volunteers	562	579	596	614	633	652
Total Transportation	5,410	5,572	5,739	5,912	6,089	6,272
Total Spiritual Care	3,182	3,277	3,376	3,477	3,581	3,689
Total Employee Health	530	546	562	579	597	614
Total Administration	1,830,196	2,108,972	2,177,468	2,242,792	2,316,975	2,379,378
Total Property Taxes	173,119	(302,002)	(844,659)	(1,397,965)	(1,418,731)	(1,439,697)
Total Operating Expense	5,912,670	5,803,292	5,449,020	5,084,534	5,258,233	5,437,576
NOI	2,122,048	6,949,878	7,791,269	8,552,974	8,788,390	9,030,446
Adjustment for Entrance Deposits (1)	7,203,483	10,707,880				
Adjusted NOI	9,325,531	17,657,758	7,791,269	8,552,974	8,788,390	9,030,446
Debt Service						
Senior Loan P&I	3,399,035	3,399,035	3,399,035	3,809,904	3,809,904	3,809,904
Secondary Financing P&I	1,808,040	1,808,040	1,808,040	1,808,040	1,808,040	1,808,040
City Improvement Financing	254,822	254,822	254,822	254,822	254,822	254,822
Entrance Deposit Funding	950,933	950,933	950,933	950,933	950,933	950,933
Total Debt Service	6,412,830	6,412,830	6,412,830	6,823,699	6,823,699	6,823,699
Cash Flow after Debt Service	2,912,701	11,244,928	1,378,439	1,729,275	1,964,691	2,206,747
Assumed Equity	15,145,800	15,145,800	15,145,800	15,145,800	15,145,800	15,145,800
Projected Cash on Cash Return	19.23%	74.24%	9.10%	11.42%	12.97%	14.57%
Replacement Reserves	-	-	-	127,500	127,500	127,500
Cash Flow after Debt and Reserves	2,912,701	11,244,928	1,378,439	1,601,775	1,837,191	2,079,247
Funded Working Capital	1,200,000	-	-	-	-	-
Cumulative Cash Flow	4,112,701	15,157,629	16,736,068	18,337,843	20,175,035	22,254,281
Debt Coverage Ratio with Ent. Deposits	1.45	2.75	1.21	1.25	1.29	1.32
Debt Coverage Ratio without Ent. Deposits	0.33	1.01	1.21	1.25	1.29	1.32
Include Entrance Deposits in cash flow?						
	Yes					
	Projected					
Nine year average cash on cash return - % FV	11.734%					
Nine year average cash on cash return - FV to 2008	11.469%					
Reversion						
	Projected					
Cap Rate	10.00%					
Sale Value	\$ 90,304,455					
Less: Sale expense at 5%	(4,515,223)					
Add: Entrance Deposit Cash	16,090,000					
Net Sale Proceeds	\$ 101,789,232					
Less: Outstanding Principal - Primary Loan	(51,921,892)					
Less: Outstanding Principal - Secondary Loan	(24,481,685)					
Less: Outstanding Principal - City Improvement	(3,648,767)					
Less: Outstanding Principal - Entrance Deposits	(15,691,784)					
Total	\$ 6,045,316					
Internal Rate of Return	9.34%					
(1) Adjustments for entrance deposits reflect revenues not in pro forma						

(1) Adjustments for entrance deposits reflect revenues not in pro forma

Annual Operating Proforma - Implied Cap						
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Units Rated	146	240	242	242	242	242
Percent Company	87%	84%	89%	89%	89%	89%
	12/31/2012	12/31/2013	12/31/2014	12/31/2015	12/31/2016	12/31/2017
Revenue:						
Total Average Rented	2,057,688	2,963,688	2,946,308	3,034,569	3,225,950	3,219,729
Total Average Assured	1,478,520	2,304,695	2,332,365	2,021,540	3,111,138	3,204,492
Total Average Monthly Care	594,330	906,360	1,026,251	1,057,038	1,083,749	1,121,412
Total Average Independent	3,132,139	5,005,734	5,308,279	5,365,557	5,526,524	5,692,300
Gauge	73,424	117,347	122,117	125,780	129,514	133,440
Ball Molds	45,071	73,852	76,788	75,039	81,464	83,968
Other small income	130,463	246,545	256,346	264,037	271,338	280,116
Ball Outpost monthly income	30,822	58,698	41,029	62,860	84,746	96,888
Ballnet Storage 150 units at \$30 per month	31,014	59,819	62,839	54,424	56,037	57,739
Misc	127,333	208,521	211,227	223,744	239,436	237,370
Interest Income Monthly	278,197	278,197	286,302	286,309	289,590	313,069
Churn Income 50% occupancy	30,600	51,300	52,839	54,424	56,037	57,739
Total Revenue	8,034,718	12,753,519	13,240,289	13,637,498	14,046,623	14,468,022
Expense:						
Total Community Living	2,012,371	2,645,787	2,162,040	2,165,670	2,293,023	2,296,923
Total Therapy	745,280	855,350	826,008	855,788	876,362	892,460
Total Engineering	260,057	267,819	275,894	284,171	292,686	301,477
Total Utilities	326,874	336,681	346,781	357,184	367,960	378,917
Total Housekeeping	336,479	337,542	347,668	358,086	368,881	379,906
Total Rehabilitation	21,389	21,873	22,692	23,311	24,019	24,711
Total Recreation Therapy	174,827	178,517	184,944	190,492	196,267	202,093
Total Volunteers	582	579	596	614	633	652
Total Transportation	5,410	5,572	5,739	5,912	6,089	6,272
Total Spiritual Care	3,182	3,271	3,376	3,477	3,581	3,689
Total Employee Health	180	548	562	579	587	614
Total Administration	1,836,196	2,108,972	2,177,468	2,242,792	2,310,073	2,379,378
Total Property Taxes	173,119	1,802,002	1,844,659	1,897,560	1,418,731	1,439,697
Total Operating Expense	5,912,670	8,809,292	5,440,020	5,684,534	5,258,233	5,497,576
NOI	2,122,048	4,944,227	7,799,269	8,552,974	8,788,390	9,000,446
Adjustment for Entrance Deposits (1)	1,208,483	10,707,880	-	-	-	-
Adjusted NOI	9,325,391	15,652,107	7,799,269	8,552,974	8,788,390	9,000,446
Implied NOI without Entrance Deposits	5,515,082	7,075,267	5,652,489	6,822,712	6,379,345	5,855,135
Percent Increase of Debt Coverage	0%	0%	0%	0%	0%	0%
Debt Service						
Senior Loan P&I	3,309,033	3,309,033	3,309,033	3,309,304	3,309,304	3,309,304
Secondary Financing P&I	1,808,040	1,808,040	1,808,040	1,808,040	1,808,040	1,808,040
City Improvement Financing	254,822	254,822	254,822	254,822	254,822	254,822
Bondnote Deposit Funding	850,933	850,933	850,933	850,933	850,933	850,933
Total Debt Service	6,412,828	6,412,828	6,412,828	6,412,828	6,412,828	6,412,828
Cash Flow after Debt Service	2,912,704	11,344,928	1,386,441	1,726,275	1,968,602	2,206,747
Cash Flow after Debt Service (Implied)	14,095,780	1,162,537	2,079,654	2,496,040	2,755,646	3,019,487
Assumed Equity	15,141,800	15,141,800	15,141,800	15,141,800	15,141,800	15,141,800
Proposed Cash on Cash Return	19.29%	74.24%	9.19%	11.42%	12.97%	14.57%
Proposed Cash on Cash Return (Implied)	20.49%	78.07%	13.79%	16.09%	18.19%	19.94%
Replacement Reserves	-	-	-	127,500	127,500	127,500
Cash Flow after Debt and Reserves	2,912,704	11,344,928	1,386,441	1,698,775	1,891,102	2,079,247
Cash Flow after Debt and Reserves (Implied)	14,095,780	1,162,537	2,079,654	2,371,540	2,628,146	2,891,987
Fixed Working Capital	1,200,000	-	-	-	-	-
Committed Cash Flow	4,112,704	15,357,628	16,795,968	18,337,845	20,179,098	22,254,281
Committed Cash Flow (Implied)	12,895,780	1,177,267	342,582	2,713,935	3,342,081	3,234,388
Debt Coverage Ratio with Ent. Deposits	1.45	2.74	1.31	1.35	1.39	1.37
Debt Coverage Ratio without Ent. Deposits	0.33	1.08	1.31	1.35	1.39	1.37
Debt Coverage Ratio with Implied NOI	0.38	1.18	1.32	1.37	1.40	1.44
Include Entrance Deposits in cash flow?						
	Yes		Implied			
	Baseline		Implied			
Five year average cash on cash return - No PV	15.73%		13.23%			
Five year average cash on cash return - PV to 2015	10.46%		12.21%			
Reversion						
	Baseline		Implied			
Cap Rate	10.00%		10.00%			
Sale Value	\$ 90,304,453		\$ 90,431,854			
Less: Sale expense at 1%	(4,315,223)		(4,321,593)			
Add: Entrance Deposit Cash	16,000,000		16,000,000			
Net Sale Proceeds	\$ 101,989,230		\$ 109,110,261			
Less: Outstanding Principal - Primary Loan	(51,321,892)		(51,321,892)			
Less: Outstanding Principal - Secondary Loan	(24,481,683)		(24,481,683)			
Less: Outstanding Principal - City Improvement	(3,648,767)		(3,648,767)			
Less: Outstanding Principal - Entrance Deposits	(15,039,784)		(15,039,784)			
Total	\$ 8,487,104		\$ 14,598,135			
Internal Rate of Return	9.50%		14.27%			
(1) Adjustments for entrance deposits reflect revenues not in pro forma						

Annual Operating Proforma - Actual						
	Year	Year	Year	Year	Year	Year
Units Rented	340	340	342	342	342	342
Percent Occupancy	97%	96%	98%	98%	98%	98%
	12/31/2012	12/31/2013	12/31/2014	12/31/2015	12/31/2016	12/31/2017
Revenue						
Total Average Billed	3,242,879	3,140,031	3,234,232	3,331,279	3,431,197	3,524,131
Total Average Assisted	1,611,587	3,062,013	3,153,875	3,248,492	3,345,946	3,446,325
Total Average Memory Care	647,809	1,088,319	1,120,968	1,174,597	1,189,235	1,224,912
Total Average Independent	3,414,025	5,462,440	5,626,314	5,795,103	5,968,956	6,148,035
Storage	73,424	117,547	122,117	123,786	129,554	135,449
Staff Meals	43,071	73,872	76,788	79,691	81,484	83,908
Other meal income	150,403	240,543	270,346	264,037	271,978	280,116
2nd Occupant monthly income	31,822	58,696	61,029	62,866	64,746	66,888
Resident Storage 170 units at \$30 per month	51,014	50,819	52,839	54,424	56,057	57,739
Misc	127,809	208,921	217,227	223,744	230,456	237,379
Interest Income Monthly	178,157	278,157	286,502	295,697	303,959	313,969
Grant Income 50% occupancy	36,696	51,306	52,839	54,424	56,057	57,739
Total Revenue	8,698,357	13,838,441	14,261,076	14,688,906	15,129,576	15,589,463
Expenses						
Total Community Living	2,611,371	2,640,787	2,162,010	2,165,076	2,230,023	2,296,924
Total Dietary	561,240	801,950	826,808	850,788	876,512	902,961
Total Engineering	366,057	367,850	275,894	284,171	292,884	301,477
Total Utilities	326,874	316,681	340,781	357,184	367,903	378,937
Total Housekeeping	336,479	337,542	347,668	358,698	368,841	379,906
Total Rehabilitation	21,331	21,073	22,632	23,311	24,019	24,731
Total Reproductive Therapy	174,377	179,337	184,944	190,497	196,767	202,893
Total Volunteer	502	570	506	614	633	652
Total Transportation	3,410	3,572	3,739	3,912	4,089	4,272
Total Spiritual Care	3,182	3,277	3,376	3,477	3,581	3,689
Total Employee Health	530	546	562	579	597	614
Total Administration	1,836,196	2,108,072	2,177,408	2,242,792	2,310,075	2,379,378
Total Property Taxes	171,113	(302,632)	(344,636)	(1,397,065)	(1,418,751)	(1,439,097)
Total Operating Expense	5,912,670	5,803,292	5,449,020	5,084,524	5,218,233	5,437,576
NOI	2,775,687	8,035,149	8,812,056	9,604,381	9,911,343	10,145,887
Adjustment for Entrance Deposits (1)	7,203,483	10,707,890	-	-	-	-
Adjusted NOI	9,979,170	18,743,039	8,812,056	9,604,381	9,911,343	10,145,887
Debt Service						
Senior Loan P&I	3,399,035	3,399,035	3,399,035	3,800,934	3,809,304	3,809,304
Secondary Financing P&I	1,808,040	1,808,040	1,808,040	1,808,040	1,808,040	1,808,040
City Improvement Financing	254,822	254,822	254,822	254,822	254,822	254,822
Entrance Deposit Funding	950,933	950,933	950,933	950,933	950,933	950,933
Total Debt Service	6,412,830	6,412,830	6,412,830	9,823,699	9,823,699	9,823,699
Cash Flow after Debt Service	3,566,340	12,330,209	2,399,226	(2,700,636)	(3,447,444)	(3,322,188)
Assumed Equity	15,145,800	15,145,800	15,145,800	15,145,800	15,145,800	15,145,800
Proposed Cash on Cash Return	23.33%	81.43%	15.84%	18.30%	20.32%	21.93%
Replacement Reserves	-	-	-	127,500	127,500	127,500
Cash Flow after Debt and Reserves	3,566,340	12,330,209	2,399,226	(2,653,136)	(3,920,144)	(3,194,688)
Funded Working Capital	1,206,096	-	-	-	-	-
Cumulative Cash Flow	4,792,340	17,006,340	10,405,786	22,148,952	25,069,256	28,263,781
Debt Coverage Ratio with Ent. Deposits	1.58	2.82	1.37	1.41	1.40	1.40
Debt Coverage Ratio without Ent. Deposits	0.43	2.27	1.37	1.41	1.40	1.40
Perform Look-back Test?	Yes	1.40x				
Adjustment to TIF Note	\$ 3,447,542					
Include Entrance Deposits in cash flow?						
	Yes					
	Baseline	Actual				
Nine year average cash on cash return - No FV	15.75%	20.15%				
Nine year average cash on cash return - FV to 2018	10.48%	13.21%				
Reversion						
	Baseline	Actual				
Cap Rate	10.00%	10.00%				
Sale Value	\$ 96,394,453	\$ 101,458,871				
Less: Sale expense at 3%	(4,315,223)	(5,972,944)				
Add: Entrance Deposit Cash	16,000,000	16,000,000				
Net Sale Proceeds	\$ 108,079,230	\$ 111,385,927				
Less: Outstanding Principal - Primary Loan	(51,921,892)	(51,921,892)				
Less: Outstanding Principal - Secondary Loan	(24,481,687)	(24,481,687)				
Less: Outstanding Principal - City Improvement	(3,648,767)	(3,648,767)				
Less: Outstanding Principal - Entrance Deposits	(13,691,784)	(13,691,784)				
Total	\$ 8,945,188	\$ 16,641,000				
Internal Rate of Return	9.68%	18.68%				
(1) Adjustments for entrance deposits reflect revenues not in pro forma						

EXHIBIT I-1

LOOK BACK TEST RENT INCREASE

City of Wayzata
Wayzata Bay Center
Look-back Test
Example
Assumptions

Assumptions	
Expense Trend	3.00%
Revenue Trend	3.00%
Percentage Increase to Coverage	9.00%
Debt Service Coverage Test	1.36x
Rent Increase	9.00%
Adjustment to Interest Rates	0.00%

Look-back Test **Rent Increase Example**

Discount Rate	1.00%																			
Dated Date	9/1/2008																			
Cash Flow after Debt Service (Actual)	12/31/2012	12/31/2013	12/31/2014	12/31/2015	12/31/2016	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021	12/31/2022	12/31/2023								
Cash Flow after Debt Service (Implied Cap)	\$ (3,631,143)	\$ 1,622,319	\$ 2,399,226	\$ 1,780,686	\$ 3,047,644	\$ 3,322,118	\$ 3,604,537	\$ 3,894,915	\$ 4,193,555	\$ 4,500,696	\$ 4,816,584	\$ 5,141,471								
Difference of Cash Flows	<u>\$ (4,099,703)</u>	<u>\$ 1,162,237</u>	<u>\$ 2,079,054</u>	<u>\$ 2,499,043</u>	<u>\$ 2,755,046</u>	<u>\$ 3,019,487</u>	<u>\$ 3,290,771</u>	<u>\$ 3,596,715</u>	<u>\$ 3,895,536</u>	<u>\$ 4,151,493</u>	<u>\$ 4,454,727</u>	<u>\$ 4,769,570</u>								
PV of Difference of Cash Flows @ 7%	\$ 345,086	\$ 310,506	\$ 206,196	\$ 171,482	\$ 166,156	\$ 160,978	\$ 155,945	\$ 151,055	\$ 146,309	\$ 141,688	\$ 137,205	\$ 132,851								
	12/31/2024	12/31/2025	12/31/2026	12/31/2027	12/31/2028	12/31/2029	12/31/2030	12/31/2031	12/31/2032	12/31/2033	12/31/2034	Total								
Cash Flow after Debt Service (Actual)	\$ 5,475,619	\$ 5,819,295	\$ 6,172,775	\$ 6,536,343	\$ 6,910,292	\$ 7,294,922	\$ 7,690,544	\$ 8,097,475	\$ 8,516,044	\$ 8,946,590	\$ 9,389,458	\$ 9,845,360								
Cash Flow after Debt Service (Implied Cap)	<u>\$ 5,067,238</u>	<u>\$ 5,416,585</u>	<u>\$ 5,756,073</u>	<u>\$ 6,104,771</u>	<u>\$ 6,463,356</u>	<u>\$ 6,832,114</u>	<u>\$ 7,211,356</u>	<u>\$ 7,601,327</u>	<u>\$ 8,002,395</u>	<u>\$ 8,414,863</u>	<u>\$ 8,839,058</u>	<u>\$ 9,273,589</u>								
Difference of Cash Flows	\$ 384,381	\$ 402,709	\$ 416,702	\$ 431,572	\$ 446,936	\$ 462,809	\$ 479,188	\$ 496,148	\$ 513,649	\$ 531,726	\$ 550,400	\$ 569,187								
PV of Difference of Cash Flows @ 7%	\$ 126,624	\$ 124,521	\$ 120,538	\$ 116,672	\$ 112,921	\$ 109,242	\$ 105,751	\$ 102,327	\$ 99,006	\$ 95,785	\$ 92,663	\$ 89,642								
Sum of PV of Difference of Cash Flows													\$ 3,446,542							

CC_07072015
Page 372 of 530

I-1-3

EXHIBIT J
TAX INCREMENT NOTE

R-1

\$23,060,000

Date of Original Issue: _____

**UNITED STATES OF AMERICA
STATE OF MINNESOTA
CITY OF WAYZATA**

**HOUSING AND REDEVELOPMENT AUTHORITY
OF THE CITY OF WAYZATA, MINNESOTA
LIMITED REVENUE TAXABLE TAX INCREMENT NOTE**

The **Housing and Redevelopment Authority of the City of Wayzata, Minnesota** (the “HRA”) acknowledges itself to be indebted and, for value received, promises to pay to the order of **Wayzata Bay Redevelopment Company, LLC**, or its assigns (the “Developer”), solely from the source, to the extent and in the manner hereinafter provided, up to the principal amount of this Limited Revenue Taxable Tax Increment Note (the “Note”), together with interest thereon accrued on the unpaid principal balance hereof from the date of original issue, at the rate of interest of eight and seventy-five hundredths percent (8.75%) per annum, on the Payment Dates (as hereinafter defined).

Each payment on this Note is payable in any coin or currency of the United States of America which on the date of such payment is legal tender for public and private debts and shall be made by check or draft made payable to the Developer and mailed to the Developer at its postal address within the United States which shall be designated from time to time by the Developer.

The Note is a special and limited obligation and not a general obligation of the HRA, which has been issued by the HRA pursuant to an Amended and Restated Redevelopment Agreement dated July____, 2015, between the City of Wayzata, Minnesota, the HRA and the Developer (the “Redevelopment Agreement”), as approved by the Board of the HRA to aid in financing a “project,” as defined in Minnesota Statutes, Section 469.174, subdivision 8, of the HRA consisting generally of defraying certain capital and administration costs incurred and to be incurred within and for the benefit of Tax Increment Financing District No.____ (the “TIF District”). Capitalized terms used herein and not otherwise defined herein shall have the meaning given to them in the Redevelopment Agreement.

The maximum principal amount of this Note attributable to Qualified Redevelopment Costs shall not exceed \$23,060,000.

Principal of and interest on this Note shall be payable solely from and in the amount of Available Tax Increment, as hereinafter defined, on each August 1 and February 1 commencing August 1, 2015, to and including February 1, 2041 (the "Payment Dates"). The Authority shall have no obligation to pay principal of and interest on this Note on each Payment Date from any source other than Available Tax Increment and the failure of the Authority to pay the entire amount of principal or interest on this Note on any Payment Date shall not constitute a default hereunder as long as the Authority pays principal and interest hereon to the extent of such pledged revenues. The Authority shall have no obligation to pay unpaid balance of principal or accrued interest that may remain after the final Payment Date.

All payments made by the HRA on this Note shall be applied first to accrued interest and then to the principal amount of this Note. Interest accruing from the date of original issue through and including the first Payment Date will be compounded semiannually on February 1 and August 1 of each year and added to principal. Interest shall be computed on the basis of a year of 360 days and charged for actual days principal is unpaid.

"Available Tax Increment " means, (i) during the Initial TIF Period (defined below), ninety-five percent (95%) of the Tax Increment derived from the TIF District and received by the Authority from the County in the six months before each Payment Date; and (ii) during the Remaining TIF Period, one hundred percent (100%) of the Tax Increment derived from all tax parcels in the TIF District , *except* the tax parcels that make up the East Block and received by the Authority from the County in the six months before each Payment Date.

"Initial TIF Period" means the period commencing on August 1, 2015 (the first Payment Date on the TIF Note); and ending on the February 1 immediately preceding the commencement of the Remaining TIF Period (defined below).

"Remaining TIF Period" means the period commencing August 1 of the first tax-payable year in which property taxes for the East Block are based on an estimated market value of at least \$21,000,000, which amount represents fifty percent (50%) of the projected valuation of the entire East Block upon completion of all the East Block Improvements.

EXCEPT AS TO THE OBLIGATION TO MAKE PAYMENTS FROM THE AVAILABLE TAX INCREMENT, THIS NOTE IS NOT A DEBT OF THE HRA, THE CITY OF WAYZATA, OR THE STATE OF MINNESOTA (THE "STATE"), AND NEITHER THE HRA, THE CITY OF WAYZATA, THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE ON THE NOTE, NOR SHALL THE NOTE BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN TAX INCREMENT.

Upon an Event of Default by the Redeveloper under the Redevelopment Agreement, the Authority may exercise the remedies with respect to this Note described in Section 9.3 of the Redevelopment Agreement, the terms of which are incorporated herein by reference.

The principal sum and all accrued interest payable under this Note is prepayable in whole or in part at any time by the Authority without premium or penalty. No partial prepayment shall affect the amount or timing of any other regular payment otherwise required to be made under this Note.

Upon receipt by Redeveloper of the Authority's written statement of the Excess Amount as defined in Section 8.4 of the Redevelopment Agreement, such Excess Amount will be deemed to constitute, and will be applied to, prepayment of the principal amount of this Note. Such deemed prepayment is effective as of the Calculation Date as defined in Section 8.4 of the Redevelopment Agreement, and will be recorded by the Registrar in its records for the Note. Upon request of the Owner, the Authority will deliver to the Owner a statement of the outstanding principal balance of the Note after application of the deemed prepayment under this paragraph.

The Developer shall never have or be deemed to have the right to compel any exercise of any taxing power of the HRA or the City of Wayzata or any other public body, and neither the HRA nor the City of Wayzata nor any director, commissioner, council member, board member, officer, employee or agent of the HRA or the City of Wayzata, nor any person executing or registering this Note shall be liable personally hereon by reason of the issuance or registration hereof or otherwise.

THE HRA MAKES NO REPRESENTATION OR WARRANTY THAT THE AVAILABLE TAX INCREMENT WILL BE SUFFICIENT TO PAY THE PRINCIPAL OF AND INTEREST ON THIS NOTE. NO HOLDER OF THIS NOTE SHALL HAVE RIGHTS AGAINST THE HRA EXCEPT FOR DISTRIBUTION OF AVAILABLE TAX INCREMENT.

The Note shall not be assignable or transferable without the prior written consent of the HRA; provided, however, that such consent shall not be unreasonably withheld or delayed if: (a) the assignee or transferee delivers to the HRA a written instrument acknowledging the limited nature of the HRA's payment obligations under the Note, and (b) the assignee or transferee executes and delivers to the HRA a certificate, in form and substance satisfactory to the HRA, pursuant to which, among other things, such assignee or transferee represents (i) that the Note is being acquired for investment for such assignee's or transferee's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, (ii) that the assignee or transferee has no present intention of selling, granting any participation in, or otherwise distributing the same, (iii) that the assignee or transferee is an "accredited investor" within the meaning of Rule 501 of the Regulation D under the Securities Act of 1933, as amended, (iv) that the assignee or transferee, either alone or with such assignee's or transferee's representatives, has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of the prospective investment in the Note and the assignee or transferee is able to bear the economic consequences thereof, (v) that in making its decision to acquire the Note, the assignee or transferee has relied upon independent investigations made by the assignee or transferee and, to the extent believed by such assignee or transferee to be appropriate, the assignee's or transferee's representatives, including its own professional, tax and other advisors, and has not relied upon any representation or warranty from the HRA, or any of its officers, employees, agents, affiliates or representatives, with respect to the value of the Note, (vi) that the HRA has not made any warranty, acknowledgment or covenant, in writing or otherwise, to the assignee or transferee regarding the tax consequences, if any, of the acquisition and investment in the Note, (vii) that the assignee or transferee or its representatives have been given a full opportunity to examine all documents and to ask questions of, and to receive answers from, the HRA and its representatives concerning the terms of the Note and such other information as the assignee or transferee desires in order to evaluate the acquisition of and investment in the Note,

and all such questions have been answered to the full satisfaction of the assignee or transferee, (viii) that the assignee or transferee has evaluated the merits and risks of investment in the Note and has determined that the Note is a suitable investment for the assignee or transferee in light of such party's overall financial condition and prospects, (ix) that the Note will be characterized as "restricted securities" under the federal securities laws because the Note is being acquired in a transaction not involving a public offering and that under such laws and applicable regulations such securities may not be resold without registration under the Securities Act of 1933, as amended, except in certain limited circumstances, and (x) that no market for this Note exists and no market for the Note is intended to be developed.

Notwithstanding the foregoing, the Developer may assign and pledge this Note to secure any loan to finance the costs of the Project and may transfer the Note to (i) any entity controlling, controlled by or under common control with the Developer or (ii) any entity in which the majority equity interest is owned by the parties that have a majority equity interest in the Developer.

This Note is issued pursuant to a resolution of the Board of the HRA and is entitled to the benefits thereof, which Resolution is incorporated herein by reference.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this Note, together with all other indebtedness of the HRA or the City of Wayzata outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the HRA or the City of Wayzata to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, the Board of the Housing and Redevelopment Authority of the City of Wayzata, Minnesota, has caused this Note to be executed by the manual signatures of the Chair and the Executive Director of the HRA, and has caused this Note to be dated as of the date of original issue specified above.

Chair

Executive Director

EXHIBIT K

CERTIFICATE OF COMPLETION

A. WAYZATA BAY REDEVELOPMENT COMPANY, LLC (the “Master Redeveloper”), pursuant to the Amended and Restated Redevelopment Agreement with the CITY OF WAYZATA, MINNESOTA (the “City”) and the HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA (the “Authority”), dated effective as of _____, 2008 (the “Agreement”), has agreed to complete the _____ **[Block/Segment]**, as defined in and in accordance with the Agreement, on that certain real property (the “TIF Project Area”) located in Hennepin County, Minnesota, described in Exhibit A attached hereto.

B. The Master Redeveloper has substantially completed construction of the _____ **[Block/Segment]** as required under the Agreement.

C. The issuance of this Certificate of Completion by the City and the Authority is not intended nor shall it be construed to be a warranty or representation by the City or the Authority as to the structural soundness of the _____ **[Block/Segment]**, including, but not limited to, the quality of materials, workmanship or the fitness of the _____ **[Block/Segment]** for its proposed use.

NOW THEREFORE, this is to certify that all construction and other physical improvements specified to be done and made by the Master Redeveloper with regard to the [_____ **Block of the Minimum Improvements** or the _____ **Segment of Public Infrastructure Improvements**] have been substantially completed, and the provisions of the Agreement imposing obligations on the Master Redeveloper to construct the [_____ **Block of the Minimum Improvements** or the _____ **Segment of Public Infrastructure Improvements**] as required under the Agreement, are hereby satisfied and terminated, and the County Recorder and Registrar of Titles in and for the County of Hennepin and State of Minnesota are hereby authorized to record this instrument, to be a conclusive determination of the satisfactory termination or said provisions of the Agreement.

Dated:

CITY:

CITY OF WAYZATA, MINNESOTA

By _____

Its Mayor

By _____

Its City Manager

REVIEWED AND APPROVED

By _____
City Attorney

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by _____ and _____, the Mayor and City Manager, respectively, of the CITY OF
WAYZATA, MINNESOTA, a Minnesota municipal corporation, on behalf of the City.

Notary Public

Dated:

AUTHORITY:

HOUSING AND REDEVELOPMENT
AUTHORITY OF THE CITY OF
WAYZATA, MINNESOTA

By _____

Its President

By _____

Its Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by _____ and _____, the President and Executive Director, respectively, of the
HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA,
MINNESOTA, a public body corporate and politic organized under the laws of the State of
Minnesota, on behalf of the Authority.

Notary Public

EXHIBIT A

Legal Description

EXHIBIT L

MEMORANDUM OF AMENDED AND RESTATED REDEVELOPMENT AGREEMENT

THIS MEMORANDUM OF MASTER REDEVELOPMENT AGREEMENT (this “Memorandum”) is entered into as of _____, 2015, by and among the CITY OF WAYZATA, MINNESOTA, a Minnesota municipal corporation (“City”), the HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA, MINNESOTA, a public body corporate and politic organized under the laws of the State of Minnesota (“Authority”), and WAYZATA BAY REDEVELOPMENT COMPANY, LLC, a Minnesota limited liability company (“Master Redeveloper”).

RECITALS:

A. City, Authority, and Master Redeveloper (collectively, the “Parties”) have entered into a certain Amended and Restated Redevelopment Agreement dated as of July 7, 2015 (the “Agreement”), whereby the Parties have agreed to various aspects of the redevelopment of certain real property more particularly described in Exhibit A attached hereto and made a part hereof, together with all improvements, tenements, easements, rights and appurtenances pertaining to such real property, lying and being in Hennepin County, Minnesota (the “Property”).

B. The Parties wish to give notice of the existence of the Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the sum of One and 00/100 Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The above Recitals are incorporated by reference as if fully set forth herein.
2. Capitalized terms, when not defined herein, shall have the meanings ascribed to them in the Agreement.
3. The Parties have entered into the Agreement to set forth the terms and provisions governing the redevelopment of the Property.
4. This Memorandum has been executed and delivered by the Parties for the purpose of recording and giving notice that a contractual relationship for the redevelopment of the Property has been created between the Parties in accordance with the terms, covenants, and conditions of the Agreement.
5. The terms and conditions of the Agreement are incorporated by reference into this Memorandum as if fully set forth herein.

6. This Memorandum may be executed separately in counterparts which, when taken together, shall constitute one and the same instrument.

Dated:

CITY:

CITY OF WAYZATA, MINNESOTA

By _____

Its Mayor

By _____

Its City Manager

REVIEWED AND APPROVED

By _____
City Attorney

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by Kenneth Willcox and Heidi Nelson, the Mayor and City Manager, respectively, of the CITY OF WAYZATA, MINNESOTA, a Minnesota municipal corporation, on behalf of the City.

Notary Public

Dated:

AUTHORITY:

HOUSING AND REDEVELOPMENT
AUTHORITY OF THE CITY OF
WAYZATA, MINNESOTA

By _____

Its Chair

By _____

Its Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015,
by Thomas Shaver and Heidi Nelson, the Chair and Executive Director, respectively, of the
HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF WAYZATA,
MINNESOTA, a public body corporate and politic organized under the laws of the State of
Minnesota, on behalf of the Authority.

Notary Public

Dated:

MASTER REDEVELOPER:

WAYZATA BAY REDEVELOPMENT
COMPANY, LLC

By _____

Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015,
by _____, the _____ of the WAYZATA BAY REDEVELOPMENT
COMPANY, LLC, a Minnesota limited liability company, on behalf of the Master Redeveloper.

Notary Public

EXHIBIT A

MEMORANDUM

To: Heidi Nelson

From: Brian T. Grogan

Date: June 30, 2015

Re: Cable Television Franchise Renewal – City of Wayzata, MN

Introduction

Mediacom Minnesota LLC (“Mediacom”) provides cable service to residents of the City of Wayzata, Minnesota (“City”) under the terms of non-exclusive franchise agreement dated July 1, 1998. The City, as local franchising authority, has the right to issue cable franchise agreements, and to oversee and regulate the cable operator’s compliance with the franchise provisions. The existing Cable Television Franchise Agreement expired on or about July 1, 2013. The City has previously adopted resolutions extending the franchise term.

In response to Mediacom’s renewal request the City initiated the process of identifying the future cable-related needs and interests in the City and evaluating the existing cable system operated by Mediacom. In order to accomplish this needs assessment the City approved the following studies:

1. On-line Survey – completed December 3, 2012
2. PEG Access Review – final report dated February 26, 2013
3. Franchise Fee Desk Review – final report dated June 17, 2013
4. Technical Review – final report dated November 2013

Renewal Cable Television Franchise

The City prepared a draft cable television franchise and sent it to Mediacom on November 22, 2013 for its review and comment. Mediacom provided its written response on January 20, 2014. By letter dated March 6, 2014 the City provided its response to Mediacom’s proposed changes. The City and Mediacom met face-to-face and via conference calls to narrow the list of outstanding issues. The City and Mediacom have now reached agreement on a mutually acceptable Cable Television Franchise Ordinance.

Final Results

10 year term (option for an additional 5 year term)
\$1.20 PEG Fee; 2 PEG Channels
Free service provided to schools and public buildings
5% franchise fee payable to the City on a quarterly basis.
Strong customer service standards

2869490v1

Cable Television Franchise Renewal

**City of Wayzata, MN
July 7, 2015**

Presented by: Brian T. Grogan, Esq

Existing Franchise

- **Franchise Effective Date - July 1, 1998**
 - Term = 15 years
 - Expiration Date = July 1, 2013
 - Franchise term extended
- **Compensation**
 - Franchise Fee = 5% of gross revenues on “cable service”
 - Does not include telephone or broadband
 - Wayzata = 1,100 cable subscribers (est.)
- **Public, Educational and Governmental (“PEG”)**
 - 4 PEG Channels = Channels 8, 19, 20 and 21
 - Access Fee - \$.60 per month per subscriber
 - Access fee is over and above 5% franchise fee
- **Existing Franchise**
 - Nearly \$ 1 Million paid to City over current franchise term

Needs Assessment

- **On-line Survey**
 - Completed December 3, 2012
- **PEG Access Review**
 - Final Report dated February 26, 2013
- **Franchise Fee Desk Review**
 - Final Report Dated June 17, 2013
- **Technical Review**
 - Final Report Dated November 2013

Negotiation Process

- **City's Franchise Renewal Negotiation Team**
 - Heidi Nelson
 - Brian Grogan
- **Franchise Extended**
 - City and Mediacom have extended existing franchise term
 - Current expiration April 30, 2015
 - Month to month since that time
- **Renewal Negotiations Began in Late 2013**
 - City sent first draft franchise to Mediacom – Nov. 2013
 - Parties exchanged several drafts thereafter
 - Parties met face-to-face and via conference calls

Key Terms of New Franchise

1. 10 year term (option for an additional 5 year term)
2. 5% Franchise Fee
 - a. Strong definition of “Gross Revenues”
 - b. Bundled services addressed
 - c. Payments due quarterly – with detailed verification worksheet
3. \$10,000 – Security Fund
4. Free service to public buildings and schools

Key Terms of New Franchise

- 5. Strong Customer Service standards
- 6. 2 PEG Channels
 - a. Option to receive (2) LMCC PEG Channels - upon availability
 - b. 1 HD Channel
 - i. Provided after 4/1/2016, upon 90 days notice
 - ii. Return of 1 PEG SD Channel
- 7. \$1.20 - PEG Fee
 - a. Option to increase to \$1.50
 - b. After 5th year anniversary of effective date of franchise

Questions

Brian T. Grogan, Esq.
Moss & Barnett, A Professional Association
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402
(612) 877-5340 phone / (612) 877-5031 facsimile
E-mail: Brian.Grogan@lawmoss.com
Web site: www.lawmoss.com

CABLE TELEVISION FRANCHISE ORDINANCE
City of Wayzata, Minnesota

June 30, 2015

Prepared by:

BRIAN T. GROGAN, ESQ.

**Moss & Barnett
A Professional Association
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402
(612) 877-5340**

TABLE OF CONTENTS

SECTION 1 SHORT TITLE AND DEFINITIONS	1
SECTION 2 GRANT OF AUTHORITY	6
SECTION 3 CONSTRUCTION STANDARDS	9
SECTION 4 DESIGN PROVISION.....	10
SECTION 5 SERVICE PROVISIONS.....	12
SECTION 6 PUBLIC ACCESS PROVISIONS.....	16
SECTION 7 OPERATION AND ADMINISTRATION PROVISIONS	16
SECTION 8 GENERAL FINANCIAL AND INSURANCE PROVISIONS.....	20
SECTION 9 SALE, ABANDONMENT, TRANSFER and REVOCATION	25
SECTION 10 MISCELLANEOUS PROVISIONS	29
SECTION 11 PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS	31
Exhibit A	Description of System
Exhibit B	PEG Access Facilities and Equipment
Exhibit C	Service to Public Facilities
Exhibit D	Public Buildings to be Provided with Two-Way Capability
Exhibit E	Franchise Fee Payment Worksheet

ORDINANCE NO. _____

AN ORDINANCE GRANTING A FRANCHISE TO MEDIACOM MINNESOTA LLC TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF WAYZATA, MINNESOTA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

The City Council of the City of Wayzata ordains.

STATEMENT OF INTENT AND PURPOSES

The City of Wayzata intends, by the adoption of this Franchise, to bring about the development of a Cable System, and the continued operation of it. Such a development can contribute significantly to the communications needs and desires of the residents and citizens of the City and the public generally. Further, City may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a Cable System.

FINDINGS

In the review of the request for renewal by Grantee and negotiations related thereto, and as a result of a public hearing, the City Council makes the following findings:

1. Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
2. Grantee's plans for constructing and operating the Cable System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
3. The Franchise granted to Grantee by City complies with the existing applicable State statutes, federal laws and regulations; and
4. The Franchise granted to Grantee is nonexclusive.

SECTION 1 SHORT TITLE AND DEFINITIONS

1.1 Short Title. This Franchise shall be known and cited as the Cable Television Franchise Ordinance.

1.2 Definitions. For purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any

other term shall have their meaning as otherwise defined in this section. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

(a) “Applicable Laws” means any local law, City Code or federal or State statute, law, regulation or other final legal authority governing any of the matters addressed in this Franchise.

(b) “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast signals. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 522(3).

(c) “Cable Act” means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§ 521-611 (1982 & Supp. V 1987)) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 and the Telecommunications Act of 1996, Pub. L. No. 104-458 and as the same may, from time to time, be amended.

(d) “Cable Service” or “Service” means:

(i) The one-way transmission to Subscribers of (i) video programming, or (ii) other programming service; and

(ii) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) “Cable System,” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:

(i) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

(ii) A facility that serves Subscribers without using any public rights-of-way;

(iii) A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541) to the extent such facility is used in the transmission of video programming directly to Subscribers; unless the extent of such use is solely to provide interactive on-demand services;

(iv) An open video system that complies with Section 653 of the Cable Act; or

- (v) Any facilities of any electric utility used solely for operating its electric utility system.
- (f) “Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the Federal Communications Commission.
- (g) “City” means the City of Wayzata, Minnesota.
- (h) “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the service.
- (i) “Council” means the City Council of the City of Wayzata, Minnesota.
- (j) “Demarcation Point” shall have the meaning set forth in FCC regulations 47 C.F.R. § 76.5 (mm) as may from time to time be amended. Generally it shall mean a point agreed upon by Grantee and the City up to twelve (12) inches outside of the building wall.
- (k) “Drop” means the cable that connects the ground block on the Subscriber’s residence to the nearest Feeder Cable of the System.
- (l) “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- (m) “Feeder Cable” means coaxial cables that run along Streets within the served area and connects between the individual Taps which serve the Drops.
- (n) “Franchise” means this Franchise and the regulatory and contractual relationship established hereby.
- (o) “Franchise Fee” means any tax, fee or assessment of any kind imposed by the City or any other Governmental Authority on a Grantee or cable Subscriber, or both, solely because of their status as such. The term “Franchise Fee” does not include: (i) any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); (ii) capital costs which are required by the Franchise to be incurred by the Grantee for PEG Access Facilities; (iii) requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or (iv) any fee imposed under Title 17 of the United States Code.
- (p) “GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).

(q) “Governmental Authority” means any court or other federal, State, county, municipal or other governmental department, commission, board, agency or instrumentality.

(r) “Grantee” is Mediacom Minnesota LLC, its lawful successors, transferees or assignees.

(s) “Gross Revenues” means any and all revenues derived by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area. Gross Revenues shall include, by way of example but not limitation, revenues from Basic Cable Service, all Cable Service fees, premium, pay-per-view, pay television, late fees, guides, home shopping revenue, Installation and reconnection fees, revenues from program guides and electronic guides, additional outlet fees, Franchise Fees required by this Franchise upgrade and downgrade fees, advertising revenue, Converter rental fees and lockout device fees. Revenues which are not directly attributable to specific customers, such as advertising revenue and home shopping commissions, shall be allocated to systems and jurisdictions on a per subscriber basis measured in a consistent manner from period to period. “Gross Revenues shall not include any bad debt, refundable deposits, investment income, FCC fees, taxes, fees or assessments of general applicability imposed or assessed by any Governmental Authority including any PEG Fee. A Franchise Fee is not such a tax, fee or assessment. The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with GAAP.

(t) “Installation” means the connection of the System from feeder cable to the point of connectivity.

(u) “Normal Business Hours” means those hours during which most similar businesses in the City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours at least one (1) night per week and/or some weekend hours.

(v) “Normal Operating Conditions” means those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the System.

(w) “PEG” means public, educational and governmental.

(x) “Person” means any individual or any association, firm, general partnership, limited partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for-profit or not-for-profit.

(y) “Public, Educational or Government Access Facilities” or “PEG Access Facilities” means:

(i) Channel capacity designated for public, educational or governmental use; and

(ii) Facilities and equipment for the use of such Channel capacity.

(z) “Service Area” or “Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted, unless otherwise specified in this Franchise.

(aa) “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels.

(bb) “Standard Installation” means the first one hundred twenty-five (125) feet of a residential Drop.

(cc) “State” means the State of Minnesota.

(dd) “Street” means any street, alley, other land or waterway, dedicated or commonly used for utility purposes, including general or utility easements in which the City has the right and authority to authorize, regulate or permit the location of facilities other than those of the City. “Street” shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings, fixtures and other structures or improvements, regardless of whether they are situated in the public right-of-way.

(ee) “Subscriber” means any Person who lawfully elects to subscribe to Cable Service via the System. In the case of multiple office buildings or multiple dwelling units, the “Subscriber” means the lessee, tenant or occupant.

(ff) “Tap” means a device installed in the Cable System which connects a Drop to the Feeder Cable.

(gg) “Wireline MVPD” means a multichannel video programming distributor that utilizes the Streets to install cable or fiber and is engaged in the business of making available for purchase, by Subscribers, multiple Channels of video programming in the City.

1.3 Written Notice. The Grantee shall designate an agent upon whom process against it may be served on behalf of the City. All notices, reports or demands required or permitted to be given under this Franchise shall be in writing and shall be deemed to be given when delivered personally to the party designated below, or when five (5) days have elapsed after it has been deposited in the United States mail in a sealed envelope, with registered or certified mail, postage prepaid thereon, or on the next business day if sent by express mail or nationally recognized overnight air courier addressed to the party to which notice, report or demand is being given, as follows:

If to City: City Manager
600 Rice Street
Wayzata, MN 55391

If to Grantee: Mediacom Minnesota LLC
1504 Second Street SE
PO Box 110
Waseca MN 56093

Non-binding Courtesy Copy to: Bruce Gluckman, Esq.
Vice President and Deputy General Counsel
Mediacom Communications Corporation
One Mediacom Way
Mediacom Park, NY 10918

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

SECTION 2 GRANT OF AUTHORITY

2.1 Franchise Required. It shall be unlawful for any Person, unless specifically required by Applicable Laws, to construct, install, operate or maintain a Cable System or to offer Cable Service in the City, unless such Person or the Person for whom such action is being taken shall have first obtained and shall currently hold a valid franchise.

2.2 Grant of Franchise. This nonexclusive Franchise is granted pursuant to the terms and conditions contained herein. The City hereby authorizes Grantee to occupy or use the City's Streets subject to: 1) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and 2) all applicable provisions of the City Code. Said Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise. Nothing in this Franchise shall be construed to prohibit Grantee from: (1) providing services other than Cable Services to the extent not prohibited by Applicable Law; or (2) challenging any exercise of the City's legislative or regulatory authority in an appropriate forum. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

2.3 Grant of Nonexclusive Authority.

(a) The Franchise granted herein shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee other than as described herein. If any other Wireline MVPD enters into any agreement with the City to provide multi channel video programming or its equivalent to residents in the City, the City, upon written request of the Grantee, shall permit the Grantee to construct

and/or operate its Cable System and provide multi channel video programming or its equivalent to Subscribers in the City under a substantially similar agreement as determined in City's reasonable discretion, as applicable to the new MVPD. Within one hundred eighty (180) days after the Grantee submits a written request to the City, the Grantee and the City shall enter into an agreement or other appropriate authorization (if necessary) containing the substantially similar terms and conditions, as determined in City's reasonable discretion, as are applicable to the new Wireline MVPD.

(b) The Cable System constructed and maintained by Grantee or its agents shall not interfere with other uses of Streets. Grantee shall make use of existing poles and other facilities available to Grantee to the extent commercially reasonable. Nothing in this section authorizes the Grantee to construct poles in the City without prior City consent consistent with the City Code.

(c) Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if City, in its sole opinion, determines that such use is inconsistent with the terms, conditions, or provisions by which such Street was created or dedicated, or with the present use of the Street.

(d) Grantee shall have the authority to use Streets for the distribution of Grantee's System. The City may require all developers of future subdivisions to allow and accommodate the construction of the System as part of any provisions for utilities to serve such subdivisions.

(e) The Grantee specifically agrees to comply with the generally applicable and lawful provisions of the City's Right-of-Way Code and applicable regulations of the City. Subject to the police power exception below, in the event of a conflict between A) the lawful provisions of the City's Right-of-Way Code or applicable regulations of the City and B) this Franchise, the express provisions of the City's Right-of-Way Code shall govern. Subject to express federal and state preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to the City Code, ordinances or any regulation of City, except in the lawful exercise of City's police power. Grantee acknowledges that the City may modify its regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications to the City Code; however, Grantee reserves any rights it may have to challenge such modifications to the City Code whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law.

(f) Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Streets.

(g) This Franchise complies with the Minnesota franchise standards set forth in Minnesota Statutes Section 238.084. The City and the Grantee shall conform to

Minnesota laws promulgated subsequent to the date of this Franchise. The City and the Grantee shall conform to federal laws and regulations as they become effective.

2.4 Term. The term of this Franchise shall be for the period of ten (10) years from the date of acceptance by Grantee, unless renewed, revoked or, terminated sooner as herein provided ("Initial Term"). Upon mutual agreement by City and Grantee, the Initial Term may be extended for an additional five (5) years.

2.5 Previous Franchise. Upon acceptance of this Franchise by Grantee as required in Section 11.2 herein, this Franchise shall supersede and replace any previous Franchise granting a franchise to Grantee to own, operate and maintain a Cable System within the City. Franchise Ordinance No. 916B is hereby repealed.

2.6 Rules of Grantee. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligation under this Franchise and to assure uninterrupted service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the City Code or Applicable Law.

2.7 Territorial Area Involved. This Franchise is granted for the Service Area.

(a) Grantee shall design, construct and maintain the Cable System to have the capability to pass every dwelling unit and commercial building in the Service Area, subject to any Service Area line extension requirements of this Franchise. Grantee shall extend plant to all areas of the City where the density reaches or exceeds seven (7) homes per on-quarter (1/4) linear strand mile of cable as measured from the nearest Tap required to deliver a signal that complies with the FCC Technical Standards, if applicable. After Service has been established by activating trunk and/or distribution cables for any Service Area, Grantee shall provide Cable Service to any requesting Subscriber within that Service Area within thirty (30) days from the date of request, provided that the Grantee is able to secure access to all rights-of-way necessary to extend Service to such Subscriber within such thirty (30) day period on reasonable terms and conditions and Grantee can provide Cable Service using a Standard Installation.

(b) If a Subscriber requires a non-Standard Installation (*e.g.* a Drop in excess of 250 feet), Grantee shall, upon request, provide a quote for construction of the non-Standard Installation and shall establish a mutually acceptable payment schedule not to exceed one (1) calendar year. For residential Installations only, Grantee shall be responsible for all costs of the Standard Installation and the Subscriber shall be responsible for one half (1/2) of the Actual Cost of any construction required beyond the cost of the Standard Installation; Grantee shall be responsible for the balance of the costs for the non-Standard Installation.

(c) Grantee shall promptly bury all Drops to Subscribers' dwellings when required by local construction standards. In the event the ground is frozen or otherwise unsuitable to permit immediate burial, Grantee shall be permitted to delay such burial

until the ground becomes suitable for burial and shall complete said burial no later than June 1st of each year.

2.8 Governing Requirements and Non-waiver of Rights. City and Grantee shall comply with all lawful requirements of this Franchise and Applicable Law. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and has the right to enter into, execute and perform its obligations under this Franchise and that Grantee believes that said terms and conditions are not unreasonable and are valid and binding obligations. Subject to the foregoing, nothing in this Franchise shall be construed as a waiver of any rights of the City or Grantee.

SECTION 3 CONSTRUCTION STANDARDS

3.1 Grantee's Facilities and Equipment.

(a) In those areas of the City where transmission or distribution facilities of all the public utilities providing telephone and electric power service are underground, the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.

(b) Grantee shall be granted access to any easements granted to a public utility, municipal utility or utility district in any areas annexed by City or new developments.

(c) In those areas of the City where Grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground, then the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities underground in accordance with the City Code. Certain of Grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground closures; however, the City specifically reserves all of its rights to approve above-ground or underground locations for pedestals subject to Applicable Laws. Grantee shall be responsible for any costs associated with these obligations to the same extent other users of the Streets in accordance with Applicable Laws.

3.2 System Extensions. Grantee shall obtain all necessary permits from City before commencing any construction upgrade or extension of the System, including the opening or disturbance of any Street, or private or public property within City. Grantee shall strictly adhere to all generally applicable, Applicable Law regarding the construction, operation or maintenance of the System in City in accordance with Applicable Law.

3.3 Repair of Streets and Property. Consistent with any generally applicable Applicable Law, any and all Streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee.

3.4 Conditions on Street Use.

(a) Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

(b) The Grantee shall furnish to and file with City Manager strand maps of the System, including the location of any underground plant and Grantee shall file with City updates of such map annually if changes have been made in the System. City shall have the right to travel to Grantee's office, which shall be located no further than the Lake Minnetonka region or the City of Chanhassen, to review as-built maps to be made available by the Grantee in accordance with Section 7.5 of this Franchise.

(c) The Grantee shall, on request of any Person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and the Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.

3.5 Tree Trimming. Grantee shall have the authority, pursuant to the City Code, to trim trees upon and hanging over Streets and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee.

3.6 Protection of facilities. Nothing contained in this section shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid damaging Grantee's facilities while performing any work connected with grading, regrading or changing the line of any Rights-of-Way or public place or the construction or reconstruction of any sewer or water system.

3.7 Use of Grantee's Facilities. The City shall, at its own expense, have the right to install and maintain upon the poles and within the underground pipes and conduits owned by Grantee, any wires and fixtures desired by the City only to the extent and under such terms and conditions as are mutually agreed upon by City and Grantee.

SECTION 4 DESIGN PROVISION

4.1 Minimum Channel Capacity.

(a) As of the effective date of this Franchise, Grantee currently operates a System utilizing a 750 MHz fiber/coaxial hybrid Cable System which shall be capable of delivering a minimum of eighty (80) video program Channels.

(b) All programming decisions remain the sole discretion of Grantee subject to City's rights pursuant to 47 U.S.C. § 545. Grantee shall comply with federal law

regarding notice to City and Subscribers prior to any Channel additions, deletions, or realignments.

4.2 Technical Standards. The System shall at all times meet the technical standards established by the FCC as they may be amended from time to time and shall be operated so as to minimize disruption of signal to Subscribers. The System specifications are outlined in Exhibit A for information purposes.

4.3 Special Testing. City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing. Before ordering such tests, Grantee shall be afforded thirty (30) days to correct problems or complaints upon which tests were ordered. The City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by a qualified engineer selected by City. In the event that special testing is required by City to determine the source of technical difficulties, the cost of said testing shall be borne by the Grantee if the testing reveals the source of the technical difficulty to be within Grantee's reasonable control. If the testing reveals the difficulties to be caused by factors which are beyond Grantee's reasonable control then the cost of said test shall be borne by City.

4.4 FCC Reports. The results of tests required to be filed by Grantee with the FCC shall also be copied to City within ten (10) days of the conduct of the date of the test.

4.5 Emergency Alert Capability. At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable federal law and regulations including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements. The City may identify authorized emergency officials for activating the EAS consistent with the Minnesota State Emergency Statewide Plan ("EAS Plan"). The City may also develop a local plan containing methods of EAS message distribution, subject to Applicable Laws and the EAS Plan. Nothing in this section is intended to expand Grantee's obligations beyond that which is required by the EAS Plan and Applicable Law.

4.6 Parental Control Lock. Grantee shall provide, for sale or lease, to Subscribers, upon request, a parental control locking device or digital code that permits inhibiting the video and audio portions of any Channels offered by Grantee.

4.7 Right of Inspection. City shall have the right to inspect all construction, reconstruction or installation work performed by Grantee pursuant to all applicable provisions of the City Code.

SECTION 5 SERVICE PROVISIONS

5.1 **Rate Regulation.** The City reserves the right to regulate rates for Basic Cable Service and any other services offered over the Cable System, to the extent not prohibited by Applicable Laws. The Grantee shall be subject to the rate regulation provisions provided for herein, and those of the FCC at 47 C.F.R., Part 76, Subpart N, as the same may be amended from time to time. The City shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76, Subpart N, as the same may be amended from time to time.

5.2 **Leased Channel Service.** Grantee shall offer leased channel service on reasonable terms and conditions and in accordance with Applicable Laws.

5.3 **Consumer Protection and Service Standards.** Grantee shall maintain a convenient local customer service or bill payment location for receiving Subscriber payments; provided, however, this section does not require Grantee to maintain an office in the City. Grantee shall also maintain or arrange for a location where equipment can be dropped off or exchanged as is necessary or, in the alternative, establish a system for having Subscriber equipment picked up at the Subscriber residence free-of-charge. Grantee shall also comply with the following consumer protection standards for Cable Service under Normal Operating Conditions:

(a) **Cable System office hours and telephone availability.**

(i) Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

1. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

2. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

(ii) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

(iii) Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(v) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

(b) Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

(i) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

(ii) Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem.

(iii) The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

(iv) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(c) Communications between Grantee and Subscribers. Grantee shall comply with the provisions of 47 CFR §76.1601-1604 regarding communications with Subscribers in the City:

(i) Refunds. Refund checks will be issued promptly, but no later than either:

1. The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

2. The return of the equipment supplied by Grantee if Cable Service is terminated.

(ii) Credits. Credits for Cable Service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(d) Billing:

(i) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Cable Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(ii) In case of a billing dispute, Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

(e) Subscriber Information. Grantee will provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

(i) Products and Services offered;

(ii) Prices and options for programming services and conditions of subscription to programming and other services;

(iii) Installation and Service maintenance policies;

(iv) Instructions on how to use the Cable Service;

(v) Channel positions of programming carried on the System; and

(vi) Billing and complaint procedures, including the address and telephone number of the City's cable office.

Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including the address of the responsible officer of the City. Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of Grantee. In addition, Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the information required by this Section 5.3(e).

(f) Notice or Rate Programming Change. In addition to the requirement of this subparagraph (f) regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Grantee shall give thirty (30) days written notice to both Subscribers and the City before implementing any rate or Service change consistent with applicable federal law. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the

rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, Grantee need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(g) **Subscriber Contracts.** Grantee shall, upon written request, provide the City with any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any standard form Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Grantee's current Subscriber rates and charges for Cable Service shall be maintained on file with City and shall be available for public inspection.

(h) **Refund Policy.** If a Subscriber's Cable Service is interrupted or discontinued, without cause, for twenty-four (24) or more consecutive hours, Grantee shall, upon request by the Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) days.

(i) **Late Fees.** Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce Grantee's compliance with all Applicable Laws to the maximum extent legally permissible.

(j) **Disputes.** All Subscribers and members of the general public may direct complaints, regarding Grantee's Service or performance to the chief administrative officer of the City or the chief administrative officer's designee, which may be a board or Commission of the City.

(k) **Failure to Resolve Complaints.** Grantee shall resolve a complaint within thirty (30) days. In addition, Grantee shall respond to written complaints from the City in a timely manner, and provide a copy of each response to the City within fifteen (15) days.

(l) **Notification of Complaint Procedure.** Grantee shall have printed clearly and prominently on each Subscriber bill and in the customer service agreement provided for in Section 5.3(e), the twenty-four (24) hour Grantee phone number for Subscriber complaints. Additionally, Grantee shall provide information to customers concerning the procedures to follow when they are unsatisfied with measures taken by Grantee to remedy their complaint. This information will include the phone number of the City office or Person designated to handle complaints. Additionally, Grantee shall state that complaints should be made to Grantee prior to contacting the City.

(m) **Grantee Identification.** Grantee shall provide all customer service technicians and all other Grantee employees entering private property with appropriate

picture identification so that Grantee employees may be easily identified by the property owners and Subscribers.

SECTION 6 PUBLIC ACCESS PROVISIONS

6.1 Public, Educational and Government Access. City or its designee is hereby designated to operate, administer, promote, and manage public, educational, and governmental programming (hereinafter “PEG Access”) to the Cable System established pursuant to this Section 6. Grantee shall have no responsibility whatsoever for PEG Access except as expressly stated in this Section 6 and Exhibit B attached hereto and hereby incorporated by reference as if fully set forth herein.

6.2 Grantee Support for PEG Usage. In accordance with the provisions of the Cable Act and Minnesota Statutes Section 238.084, Grantee shall provide and make available for PEG Access usage within the Service Area the following:

- (a) Provision and use of the grant funds and Channels designated in Exhibit B of this Franchise for local educational and governmental programming and access use at no charge in accordance with the requirements of Exhibit B.
- (b) Maintenance of the PEG Access Facilities and Channels, and support of educational and governmental programming to the extent specified in Exhibit B of this Franchise.
- (c) Provision of free public building Installation and Cable Service and the provision of two-way capability as more clearly specified in Exhibit B.
- (d) PEG Access Facilities shall be operated by the City.

SECTION 7 OPERATION AND ADMINISTRATION PROVISIONS

7.1 Franchise Fee.

(a) During the term of the Franchise, Grantee shall pay quarterly to the City a Franchise Fee of five percent (5%) of Gross Revenues. In the event Grantee bundles or combines Cable Services (which are subject to the Franchise Fee) with non-Cable Services (which are not subject to the Franchise Fee) so that Subscribers pay a single fee for more than one (1) class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the Franchise Fee, it shall allocate to Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.

(b) Each Franchise Fee payment shall be paid quarterly not later than thirty (30) days following the end of a given quarter and each payment shall be accompanied by

a Franchise Fee Payment Worksheet substantially in the form attached hereto as Exhibit E.

(c) Except as otherwise provided by law, no acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise Fee under this Franchise or for the performance of any other obligation of the Grantee.

(d) Any Franchise Fees owing pursuant to this Franchise which remain unpaid more than thirty (30) days after the end of a given quarter shall be delinquent and shall immediately thereafter accrue interest at twelve percent (12%) per annum or two percent (2%) above prime lending rate as quoted by the Wall Street Journal, whichever is greater. Enforcement of unpaid Franchise Fees shall be handled in accordance with Section 9.6; however, Grantee shall in all cases be subject to interest on any payment more than thirty (30) days after the end of a given quarter.

(e) Upon ten (10) days prior written notice, City shall have the right to conduct an independent audit of Grantee's records. If such audit indicates a Franchise Fee underpayment of five percent (5%) or more, the Grantee shall assume all of City's out-of-pocket costs associated with the conduct of such an audit and shall remit to City all applicable Franchise Fees due and payable together with interest at twelve percent (12%) per annum or two percent (2%) above prime lending rate as quoted by the Wall Street Journal, whichever is greater.

7.2 Not Franchise Fees.

(a) Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to the City pursuant to Section 7.1 hereof shall take precedence over all other payments, contributions, Services, equipment, facilities, support, resources or other activities to be provided or performed by the Grantee pursuant to this Franchise and that the Franchise Fees provided for in Section 7.1 of this Franchise shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which the Grantee shall be required to pay to the City and/or to any other Governmental Authority, all of which shall be separate and distinct obligations of Grantee.

(b) Grantee shall not apply or seek to apply or make any claim that all or any part of the Franchise Fees or other payments or contributions to be made by Grantee to City pursuant to this Franchise and shall be deducted from or credited or offset against any taxes, fees or assessments of general applicability levied or imposed by the City or any other Governmental Authority, including any such tax, fee or assessment imposed on both utilities and cable operators or their services.

(c) Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments of general applicability levied or imposed by the City or any other Governmental Authority (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) as a deduction or other credit from or

against any of the Franchise Fees each of which shall be deemed to be separate and distinct obligations of the Grantee

7.3 Periodic Evaluation, Review and Modification. City and Grantee acknowledge and agree that the field of cable television is rapidly changing and one which may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, in order to provide for the maximum degree of flexibility in this Franchise, and to help achieve a continued, advanced and modern Cable System, the following evaluation provisions will apply:

(a) Grantee shall be subject to the procedures and the subjects described in this Section 7.3.

(b) The City may require, in its sole discretion, that the Grantee participate in evaluation sessions with the City at any time and from time to time during the term of this Franchise; provided, however, there shall not be more than one (1) evaluation session during any three (3) year period.

(c) Topics which may be discussed at any evaluation session include, but are not limited to, rates, Channel capacity, the System performance, programming, PEG Access, municipal uses of the System, Subscriber complaints, judicial rulings, FCC rulings and any other topics the City or Grantee may deem relevant.

(d) During an evaluation session, Grantee shall fully cooperate with the City and shall provide without cost and in a timely manner such information and documents as the City may request to perform the evaluation.

(e) As a result of an evaluation session, the City or Grantee may determine that an amendment in the terms of this Franchise may be mutually agreed upon.

7.4 Reports.

(a) All reports and records required under this Franchise shall be furnished at the sole expense of Grantee, except as otherwise provided in this Franchise.

(b) Grantee shall provide City with an annual statement, within ninety (90) days of the close of each calendar year end, certified by an officer of the Grantee, reflecting the total amounts of Gross Revenues and all payments, and computations of the Franchise Fee for the previous calendar year.

(c) Grantee shall, upon written request of the City Manager, provide City with a quarterly customer service compliance report which shall, at a minimum, demonstrate Grantee's compliance with the terms and provisions of Section 5.3 of this Franchise.

(d) Upon request of the City and in no event later than thirty (30) days from the date of receipt of such request, Grantee shall make available to City such reports, maps and information or data with respect to Grantee's compliance with this Franchise.

Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant to this section.

7.5 Records Required and City's Right to Inspect

(a) Grantee shall at all times maintain the following records and information relating specifically to the Cable System serving the City as identified by the FCC Community Unit Identifier ("CUID") as opposed to a regional cable system or other operating unit of Grantee and shall provide such information to City upon no less than thirty (30) days advance written request:

(i) A full and complete set of plans, records and "as-built" drawings and/or maps which shall be updated annually showing the location of the Cable System installed or in use in the City, exclusive of Subscriber service Drops and equipment provided in Subscribers' homes.

(ii) a summary of service calls, identifying the number, general nature and disposition of such calls, in a form reasonably acceptable to the City; and

(iii) a summary of Grantee's compliance with the terms and provision of the customer service requirements set forth in Section 5.3 of this Franchise.

(b) Upon request of the City and in no event later than thirty (30) days from the date of receipt of such request, Grantee shall, free of charge, prepare and furnish to the City such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary to ensure compliance with the terms of this Franchise. Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant with the terms of this Franchise.

(c) The City agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary for the enforcement and administration of this Franchise.

7.6 Recovery of Processing Costs. To aid in the analysis and resolution of any future disputed matters relative to this Franchise, the City and Grantee may, by mutual written agreement (both as to whether to hire and whom to hire), employ the services of technical, financial and/or legal consultants, as mediators. All reasonable fees of the consultants incurred by the City and/or the Grantee in this regard shall, unless the parties otherwise agree, be borne equally by City and Grantee.

7.7 Confidentiality. Subject to Applicable Law, Grantee may choose to provide any confidential or proprietary records that it is obligated to make available to the City pursuant to this Franchise, by allowing the City, or its designated representative(s), to view the records at a conference room in City Hall or at Grantee's office located in the City or a location no further than the Lake Minnetonka region or the City of Chanhassen, without City obtaining its own copies of such records. Grantee may also choose to provide any confidential or proprietary records pursuant to a mutually acceptable non-disclosure agreement with a City designated agent. The intent of the parties is to work cooperatively to insure that those records reasonably

necessary for City's monitoring and enforcement of Franchise obligations are provided to City. City agrees to keep said records confidential and proprietary to the fullest extent permitted by Applicable Law. Grantee shall be responsible for clearly and conspicuously identifying the records confidential or proprietary. Grantee acknowledges that the Minnesota Data Practices Act ("MDPA") places limitations on the ability of the City to protect certain information unless such information meets the statutory requirements set forth in the MDPA. If the City believes it must release any such confidential or proprietary records in the course of enforcing this Franchise, or for any other reason including compliance with the MDPA, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. The City agrees that, to the extent permitted by the MDPA and Applicable Law, it shall deny access to any of Grantee's Records marked confidential, as set forth above, to any Person and that it shall furnish only that portion of the Grantee's records required under the MDPA and Applicable Law.

7.8 Administration of Franchise. The City Manager or its designee shall have continuing regulatory jurisdiction and supervision over the Cable System and the Grantee's operation under the Franchise. The City Manager shall have authority to issue notice of franchise violations to Grantee under this Franchise; provided, however, the Council shall have sole authority to conduct any required hearings regarding such alleged violations and issue any decisions regarding enforcement the Franchise.

SECTION 8

GENERAL FINANCIAL AND INSURANCE PROVISIONS

8.1 Security Fund.

(a) Upon acceptance of this Franchise, Grantee shall establish and provide to City a security fund, as security for the full and timely payment and performance by Grantee of all of its obligations under this Franchise in the amount of Ten Thousand and No/100 Dollars (\$10,000) in the form of an irrevocable letter of credit, established in a local bank and maintained throughout the term of this Franchise. City may, in its sole discretion, reduce the amount of the letter of credit. If, at any time during the term of this Franchise, Grantee seeks consent to a transfer or assignment of its rights hereunder, City may unilaterally increase the security fund up to Twenty Thousand Dollars (\$20,000) if it so chooses.

(b) The security fund may be drawn upon by City for those purposes specified in Section 8.1(d) hereof. Grantee's recourse, in the event Grantee believes that City's actions in taking any security funds is improper, shall be through legal action after the security has been drawn upon. Actions brought by Grantee hereunder may be subject to 47 U.S.C. §555A – Limitations of Franchising Authority Liability – which is hereby incorporated by reference as if fully set forth herein.

(c) Nothing herein shall be deemed a waiver of the normal permit requirements made of all contractors working within the City's rights-of-way.

(d) In addition to recovery of any monies owed by Grantee to City or damages to City as a result of any acts or omissions by Grantee pursuant to the Franchise, City in

compliance with this section may charge to and collect from the letter of credit the following penalties:

(i) For failure to provide data, documents, reports or information or to cooperate with City during an application process or system review or as otherwise provided herein, the penalty shall be One Hundred Fifty and No/100 Dollars (\$150) per day for each day, or part thereof, such failure occurs or continues.

(ii) For failure to comply with construction, operation or maintenance standards the penalty shall be One Hundred Twenty-five and No/100 Dollars (\$125) per day for each day, or part thereof, such failure occurs or continues.

(iii) For failure to provide the services Grantee has proposed including, but not limited to, the implementation and the utilization of the access channels and the maintenance and/or replacement of the equipment and other facilities, the penalty shall be One Hundred Fifty and No/100 Dollars (\$150) per day for each day, or part thereof, such failure occurs or continues.

(iv) For failure to comply with any of the provisions of this Franchise, or other City ordinance related to Franchise operations for which a penalty is not otherwise specifically provided pursuant to this subparagraph (d), the penalty shall be One Hundred Fifty and No/100 Dollars (\$150) per day for each day, or part thereof, such failure occurs or continues.

(e) Each violation of any provision of this Franchise shall be considered a separate violation for which a separate penalty can be imposed.

(f) Whenever City finds that Grantee has violated one (1) or more terms, conditions or provisions of this Franchise, or for any other violation contemplated in subparagraph (d), above, a written notice shall be given to Grantee informing it of such violation. At any time after thirty (30) days (or such longer reasonable time which, in the sole determination of City, is necessary to cure the alleged violation) following local receipt of notice, provided Grantee remains in violation of one (1) or more terms, conditions or provisions of this Franchise, in the opinion of City, City may draw from the letter of credit all penalties and other monies due City from the date of the local receipt of notice. Nothing herein is intended to modify the standard of review applicable to the City's determination.

(g) Upon receipt of the violation notice from the City, the Grantee may within thirty (30) days of such receipt, notify City in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by Grantee to City shall specify with particularity the matters disputed by Grantee. Such notice by Grantee shall toll the accrual of all penalties from the security fund and the timeframe allowed for cure until the City issues a decision following the required hearing in Section 8.1(g) (i) herein. If Grantee does not dispute the alleged violation set forth in the violation notice, Grantee

shall have thirty (30) days from the receipt of the violation notice to cure the alleged default before the City may impose damages as set forth Section 8.1(d) herein.

(i) City shall hear Grantee's dispute within sixty (60) days and render a final decision within sixty (60) days thereafter.

(ii) Upon the determination of City that no violation has taken place, City shall refund to Grantee, without interest, all monies drawn from the letter of credit by reason of the alleged violation.

(h) If said letter of credit or any subsequent letter of credit delivered pursuant thereto expires during the term of this Franchise, it shall be renewed or replaced during the term of this Franchise. The renewed or replaced letter of credit shall be of the same form and with a bank authorized herein and for the full amount stated in subparagraph (a) of this section.

(i) If City draws upon the letter of credit or any subsequent letter of credit delivered pursuant hereto, in whole or in part, Grantee shall replace or replenish to its full amount the same within ten (10) days and shall deliver to City a like replacement letter of credit or certification of replenishment for the full amount stated in Section 8.1(a) as a substitution of the previous letter of credit. This shall be a continuing obligation for any draws upon the letter of credit.

(j) The failure to replace or replenish any letter of credit may also, at the option of the City, be deemed a default by Grantee under this Franchise. The drawing on the letter of credit by City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such default.

(k) The collection by City of any damages, monies or penalties from the letter of credit shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the letter of credit, be deemed a waiver of any right of City pursuant to this Franchise or otherwise.

8.2 Liability Insurance.

(a) Grantee shall with its acceptance of this Franchise, and at its sole expense, take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the State of Minnesota with a rating by A.M. Best & Co. of not less than "A-" that shall protect the Grantee, the City and their officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Two Million

Dollars (\$2,000,000.00). The following endorsements shall be attached to the liability policy:

(i) The policy shall provide coverage on an “occurrence” basis.

(ii) The policy shall cover personal injury as well as bodily injury.

(iii) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier’s standard endorsement as to bodily injuries, personal injuries and property damage.

(iv) Broad form property damage liability shall be afforded.

(v) The City shall be named as an additional insured on the policy.

(vi) An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the City will be called upon to contribute to a loss under this coverage.

(vii) Standard form of cross-liability shall be afforded.

(viii) An endorsement stating that the policy shall not be canceled without thirty (30) days’ notice of such cancellation given to the City.

(b) Grantee shall submit to City documentation of the required insurance, including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.

8.3 Indemnification.

(a) Grantee shall indemnify, defend and hold City, its officers, boards, commissions, agents and employees (collectively the “Indemnified Parties”) harmless from and against any and all lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorney’s fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the grant of this Franchise, the operation of Grantee’s System, the breach by Grantee of its obligations under this Franchise and/or the activities of Grantee, its subcontractor, employees and agents hereunder. Grantee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee’s employees, including compliance with Social Security and withholdings.

(i) The indemnification obligations of Grantee set forth in this Franchise are not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Workers’ Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under

this Franchise, or the terms, applicability or limitations of any insurance held by Grantee.

(ii) City does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Franchise, because of the acceptance by City, or the deposit with City by Grantee, of any of the insurance policies described in this Franchise.

(iii) The indemnification of City by Grantee provided for in this Franchise shall apply to all damages and claims for damages of any kind suffered by reason of any of the Grantee's operations referred to in this Franchise, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

(iv) Grantee shall not be required to indemnify City for negligence or misconduct on the part of City or its officials, boards, commissions, agents, or employees. City shall hold Grantee harmless, subject to the limitations in Minnesota Statutes Chapter 466, for any damage resulting from the negligence or misconduct of the City or its officials, boards, commissions, agents, or employees in utilizing any PEG Access Channels, equipment, or facilities and for any such negligence or misconduct by City in connection with work performed by City and permitted by this Franchise, on or adjacent to the Cable System.

(a) In order for City to assert its rights to be indemnified, defended, and held harmless, City must, with respect to each claim:

(i) Promptly notify Grantee within ten (10) business days in writing of any claim or legal proceeding which gives rise to such right;

(ii) Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and

(iii) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to subparagraph (ii) above.

8.4 Grantee's Insurance. Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until all insurance required under this Franchise has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Franchise.

8.5 Workers' Compensation Insurance. Grantee shall obtain and maintain Workers' Compensation Insurance for all of Grantee's employees, and in case any work is sublet, Grantee shall require any subcontractor similarly to provide Workers' Compensation Insurance for all of their employees, all in compliance with State laws, and to fully indemnify the City from and against any and all claims arising out of occurrences on the work. Grantee hereby indemnifies

City for any and all costs, expenses (including attorneys' fees and disbursements of counsel), damages and liabilities incurred by City as a result of any failure of either Grantee or any subcontractor to take out and maintain such insurance. Grantee shall provide the City with a certificate of insurance indicating Workers' Compensation coverage upon its acceptance of this Franchise.

SECTION 9

SALE, ABANDONMENT, TRANSFER AND REVOCATION

9.1 Franchise Non-transferable.

(a) Grantee shall not voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, lease, sublet or otherwise dispose of, in whole or in part, the Franchise and/or Cable System or any of the rights or privileges granted by the Franchise, without the prior written consent of the Council and then only upon such terms and conditions as may be prescribed by the Council with regard to the proposed transferee's legal, technical and financial qualifications, which consent shall not be unreasonably denied or delayed. Any attempt to sell, assign, transfer, lease, sublet or otherwise dispose of all or any part of the Franchise and/or Cable System or Grantee's rights therein without the prior written consent of the Council shall be null and void and shall be grounds for termination of the Franchise pursuant to Section 9.6 hereof and the applicable provisions of any Franchise.

(b) Without limiting the nature of the events requiring the Council's approval under this section, the following events shall be deemed to be a sale, assignment or other transfer of the Franchise and/or Cable System requiring compliance with this section: (i) the sale, assignment or other transfer of all or a majority of Grantee's assets or the assets comprising the Cable System to any Person; (ii) the merger of the Grantee or any of its parents with or into another Person (including the merger of Grantee or any parent with or into any parent or subsidiary corporation or other Person); (iii) the consolidation of the Grantee or any of its parents with any other Person; (iv) the creation of a subsidiary corporation or other entity; (v) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in Grantee or any of its parents by one or more of its existing shareholders, partners, members or other equity owners so as to create a new Controlling Interest in Grantee; (vi) the issuance of additional capital stock or partnership, membership or other equity interest by Grantee or any of its parents so as to create a new Controlling Interest in Grantee; and (vii) the entry by the Grantee into an agreement with respect to the management or operation of the Grantee, any of Grantee's parents and/or the System or the subsequent amendment thereof. The term "Controlling Interest" as used herein is not limited to majority equity ownership of the Grantee, but also includes actual working control over the Grantee, any parent of Grantee and/or the System in whatever manner exercised.

(c) Grantee shall notify City in writing of any foreclosure or any other judicial sale of all or a substantial part of the property and assets comprising the Cable System of the Grantee or upon the termination of any lease or interest covering all or a substantial part of said property and assets. Such notification shall be considered by City as notice

that a change in control or ownership of the Franchise has taken place and the provisions under this section governing the consent of City to such change in control or ownership shall apply.

(d) For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, City may inquire into the qualifications of the prospective transferee or controlling party, and Grantee shall assist City in any such inquiry. In seeking City's consent to any change of ownership or control, Grantee shall have the responsibility of insuring that the transferee completes an application in form and substance reasonably satisfactory to City, which application shall include the information required under this Franchise and Applicable Laws. The transferee shall be required to establish to the satisfaction of the City that it possesses the legal, technical and financial qualifications to operate and maintain the System and comply with all Franchise requirements for the remainder of the term of this Franchise. If, after considering the legal, financial, character and technical qualities of the transferee and determining that they are satisfactory, the City finds that such transfer is acceptable, the City shall permit such transfer and assignment of the rights and obligations of this Franchise as may be in the public interest. The consent of the City to such transfer shall not be unreasonably denied.

(e) Any financial institution having a security interest in any and all of the property and assets of Grantee as security for any loan made to Grantee or any of its affiliates for the construction and/or operation of the Cable System must notify the City that it or its designee satisfactory to the City shall take control of and operate the Cable System, in the event of a default in the payment or performance of the debts, liabilities or obligations of Grantee or its affiliates to such financial institution. Further, said financial institution shall also submit a plan for such operation of the System within thirty (30) days of assuming such control that will insure continued service and compliance with all Franchise requirements during the term the financial institution or its designee exercises control over the System. The financial institution or its designee shall not exercise control over the System for a period exceeding one (1) year unless extended by the City in its discretion and during said period of time it shall have the right to petition the City to transfer the Franchise to another Grantee.

(f) In addition to the aforementioned requirements in this Section 9.1, the City and Grantee shall, at all times, comply with the requirements of Minnesota Statutes Section 238.083 regarding the sale or transfer of a franchise and with all other Applicable Laws.

9.2 City's Right to Purchase System.

(a) The City shall have a right of first refusal to purchase the Cable System in the event the Grantee receives a bona fide offer to purchase the Cable System from any Person. Bona fide offer as used in this section means a written offer which has been accepted by Grantee, subject to the City's rights under this Franchise. The price to be paid by the City shall be the amount provided for in the bona fide offer, including the same terms and conditions as the bona fide offer. The City shall notify Grantee of its

decision to purchase within sixty (60) days of the City's receipt from Grantee of a copy of the written bona fide offer and such other relevant and pertinent information as the City shall deem appropriate.

(b) Consistent with Section 627 of the Cable Act and all other Applicable Laws, at the expiration, cancellation, revocation or termination of this Franchise, the City shall have the option to purchase, condemn or otherwise acquire and hold the Cable System.

9.3 Abandonment or Removal of Franchise Property.

(a) Grantee may not abandon the Cable System or any portion thereof without having first given three (3) months written notice to the City. Grantee may not abandon the Cable System or any portion thereof without compensating the City for damages resulting from the abandonment.

(b) In the event that the use of any property of Grantee within the Franchise Area or a portion thereof is discontinued for a continuous period of twelve (12) months, Grantee shall be deemed to have abandoned that property.

(c) City, upon such terms as City may impose, may give Grantee permission to abandon, without removing, any System facility or equipment laid, directly constructed, operated or maintained in, on, under or over the Franchise Area. Unless such permission is granted or unless otherwise provided in this Franchise, the Grantee shall remove all abandoned facilities and equipment upon receipt of written notice from City and shall restore any affected Street consistent with Applicable Law. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation made by or on behalf of Grantee and shall leave all Streets and other public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. City shall have the right to inspect and approve the condition of the Streets, public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Franchise and any security fund provided for in this Franchise shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this section.

(d) Upon abandonment of any Franchise property in place, the Grantee, if required by the City, shall submit to City a bill of sale and/or other an instrument, satisfactory in form and content to the City, transferring to the City the ownership of the Franchise property abandoned.

(e) At the expiration or termination of the term for which this Franchise is granted, or upon its earlier revocation or termination, as provided for herein, in any such case without renewal, extension or transfer, the City shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the Cable System

from all Streets and public ways within the City within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

(f) Notwithstanding anything to the contrary set forth in this Franchise, the Grantee may, with the consent of the City, abandon any underground Franchise property in place so long as it does not materially interfere with the use of the Street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable operator.

(g) Nothing herein shall require the removal of any portion of the System lawfully used to provide non-Cable Services in the City.

9.4 Extended Operation and Continuity of Services.

(a) Upon termination or forfeiture of this Franchise, Grantee shall remove its cable, wires, and appliances from the Streets, alleys, or other public places within the Service Area if the City so requests. Failure by the Grantee to remove its cable, wires, and appliances as referenced herein shall be subject to the requirements of Section 9.3 of this Franchise.

9.5 Receivership and Foreclosure

(a) The Franchise granted hereunder shall, at the option of City, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless: (1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all the defaults and violations under this Franchise or provided a plan for the remedy of such defaults and violations which is satisfactory to the City; and (2) such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(b) In the case of a foreclosure or other judicial sale of the Franchise property, or any material part thereof, City may give notice of termination of this Franchise upon Grantee and the successful bidder at such sale, in which the event this Franchise and all rights and privileges of the Grantee hereunder shall cease and terminate thirty (30) days after such notice has been given, unless (1) City shall have approved the transfer of the Franchise in accordance with the provisions of this Franchise; and (2) such successful bidder shall have covenanted and agreed with City to assume and be bound by all terms and conditions of this Franchise.

9.6 Procedures for Revocation, Termination or Cancellation.

(a) City shall provide Grantee with written notice of a cause for revocation, termination, or cancellation and the intent to revoke, terminate or cancel and shall allow Grantee thirty (30) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. In the notice required therein, City shall provide Grantee with the basis of the revocation, termination or cancellation.

(b) Grantee shall be provided the right to a public hearing affording due process before the City Council prior to the effective date of revocation, termination, or cancellation, which public hearing shall follow the thirty (30) day notice provided in subparagraph (a) above. City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

(c) Only after the public hearing and upon written notice of the determination by City to revoke, terminate or cancel the Franchise may Grantee appeal said decision with an appropriate state or federal court or agency.

(d) During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the Franchise would endanger the health, safety and welfare of any Person or the public.

9.7 Reservation of Rights. City and Grantee reserve all rights that they may possess under Applicable Laws unless expressly waived herein.

SECTION 10 MISCELLANEOUS PROVISIONS

10.1 Franchise Renewal. Any renewal of this Franchise shall be in accordance with Applicable Laws. The term of any renewed Franchise shall be limited to a period not to exceed fifteen (15) years.

10.2 Amendment of Franchise. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 7.3 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in Applicable Laws. City shall act pursuant to local law pertaining to the ordinance amendment process.

10.3 Right of Individuals.

(a) Grantee shall comply at all times with all other Applicable Laws, relating to nondiscrimination. Access to Cable Service shall not be denied to any group of potential Subscribers because of the income of the residents of the local area.

(b) Grantee shall adhere to the applicable equal employment opportunity requirements of Applicable Laws, as now written or as amended from time to time including 47 U.S.C. § 554.

(c) Subscriber Privacy. To the extent required by Minn. Stat. § 238.084 Subd. 1(s) Grantee shall comply with the following:

(i) No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

(ii) No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, including but not limited to lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's business use, and also to the Subscriber subject of that information, unless Grantee has received specific written permission from the Subscriber to make such data available.

(iii) Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (ii) of this section.

(iv) "Class IV Cable Communications Channel" means a signaling path provided by a Cable System to transmit signals of any type from a Subscriber terminal to another point in the System.

(d) Grantee shall at all times comply with 47 U.S.C. § 551 regarding protection of Subscriber's personally identifiable information.

10.4 Rights Reserved to City. In addition to any rights specifically reserved to the City by this Franchise, the City reserves to itself every right and power which is required to be reserved by a provision of this Franchise.

10.5 Severability. If any provision of this Franchise is held by any Governmental Authority of competent jurisdiction, to be invalid as conflicting with any Applicable Laws now or hereafter in effect, or is held by such Governmental Authority to be modified in any way in order to conform to the requirements of any such Applicable Laws, such provision shall be considered a separate, distinct, and independent part of this Franchise, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such Applicable Laws are subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with such

laws, said provision shall thereupon return to full force and effect and shall thereafter be binding on City and Grantee, provided that City shall give Grantee thirty (30) days written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for Grantee to comply with such provision.

10.6 Force Majeure. In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise is prevented or impaired due to any cause beyond its reasonable control, such inability to perform shall be deemed to be excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof provided Grantee has notified City in writing within a reasonable time of its discovery of the occurrence of such an event. Such causes beyond Grantee's reasonable control shall include, but shall not be limited to, acts of God, civil emergencies and labor unrest or strikes, untimely delivery of equipment, inability of Grantee to obtain access to an individual's property and inability of Grantee to secure all necessary permits to utilize utility poles and conduit so long as Grantee utilizes due diligence to timely obtain said permits.

SECTION 11

PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS

11.1 Publication; Effective Date. This Franchise shall be published in accordance with Applicable Law. This Franchise shall take effect upon publication subject to Grantee's acceptance.

11.2 Acceptance.

(a) Grantee shall accept this Franchise within thirty (30) of its enactment by the City Council, unless the time for acceptance is extended by City. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. In the event acceptance does not take place, this Franchise and any and all rights previously granted to Grantee shall be null and void.

(b) Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

(c) Grantee shall accept this Franchise in the following manner:

(i) This Franchise will be properly executed and acknowledged by Grantee and delivered to City.

(ii) With its acceptance, Grantee shall also deliver any performance bond, security fund and insurance certificates required herein that have not previously been delivered.

CITY OF WAYZATA, MINNESOTA

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

1st Reading: _____, 2015

2nd Reading: _____, 2015

Publication Date: _____, 2015

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

MEDIACOM MINNESOTA LLC

Dated: _____, 2015

By: _____

Its: _____

SWORN TO BEFORE ME this
_____ day of _____, 2015

Notary Public

EXHIBIT A
DESCRIPTION OF SYSTEM
For Information only

1. The Cable System shall be designed, constructed, routinely inspected, and maintained to guarantee that the Cable System meets or exceeds the requirements of the most current editions of the National Electrical Code (NFRA 70) and the National Electrical Safety Code (ANSI C2). In all matters requiring interpretation of either of these codes, the City's interpretation shall control over all other sources and interpretations.

2. General Description. The Cable System shall provide Subscribers with a technically advanced and reliable Cable System. The System shall have at least 750 MHz of bandwidth capacity, capable of delivering approximately 80 analog Channels of programming.

3. Design. The design of the System shall be based upon a "Fiber to the node" architecture that will deliver the signals by fiber optics directly to each neighborhood. Grantee's initial design includes a minimum of six (6) fibers to each node site having a neighborhood group average of approximately three hundred (300) homes. If Grantee splits nodes into smaller sizes, fewer fibers will extend to such smaller nodes. There shall be no more than seven (7) active amplifiers in a cascade from each node to the residential dwelling. The incorporation of stand-by power supplies, strategically placed throughout the system including all hubs, will further reduce the likelihood of Service Interruptions.

3. Technical Standards. The System shall meet or exceed FCC requirements. In no event shall the System fall below the following standards:

- a. The System shall be capable of meeting the following distortion parameters:
 - 1. Carrier to RMS Noise 48 dB
 - 2. Carrier to Second Order 53 dB
 - 3. Carrier to Cross Modulation 51 dB
 - 4. Carrier to Composite Triple Beat 53 dB
- b. The frequency response of a single Channel as measured across any 6 MHz analog Channel shall not exceed +/- 2 dB.
- c. The frequency response of the entire passband shall not exceed $N/10 + 2$ dB for the entire System where N is the number of amplifiers in cascade.
- d. The System shall be designed such that at a minimum all technical specifications of this Franchise are met.
- e. The System shall be designed such that no noticeable degradation in signal quality will appear at the Subscriber terminal.

EXHIBIT B
PEG ACCESS FACILITIES AND EQUIPMENT

1. PUBLIC, EDUCATIONAL AND GOVERNMENT (PEG) ACCESS CHANNELS.

a) Grantee shall continue to provide two (2) channels for use by the City to provide educational and governmental access ("PEG Channels"). In the event access channels programmed by the Lake Minnetonka Cable Commission ("LMCC") are made available to the City and the City elects to provide such LMCC access channels, Grantee shall, upon 120 days advance written notice from City, carry up to two (2) of the LMCC access channels on the Basic Cable Service tier in the City for a total of four (4) PEG channels.

b) Whenever the PEG Channels are in use during eighty percent (80%) of the weekdays, Monday to Friday, for eighty percent (80%) of the time for any consecutive three (3) hour period for six (6) weeks running, and there is demand for use of an additional Channel for the same purpose, the Grantee shall then have six (6) months in which to provide a new PEG Channel for the same purpose, provided that provision of the additional Channel or Channels must not require the Cable System to install Converters.

c) The PEG Channels shall be dedicated for PEG use for the term of the Franchise, provided that Grantee may, utilize any portions of the PEG Channels not scheduled for PEG use. City shall establish rules and procedures for such scheduling in accordance with Section 611 of the Cable Act (47 U.S.C. § 531).

d) Grantee shall designate the standard Channel 6 for uniform regional channel usage currently provided by "Metro Channel 6" as required by Minnesota Statutes Section 238.43. Programming on this regional channel shall include a broad range of informational, educational, and public service programs and materials to cable television subscribers throughout the Twin Cities metropolitan area.

2. ANALOG, DIGITAL AND HD PEG CARRIAGE REQUIREMENTS.

a) Grantee shall provide the Access Channels on the Basic Cable Service tier or the lowest tier of service offered by Grantee in accordance with the Cable Act. At such time as Grantee no longer offers Basic Cable Service in an analog format, Grantee shall carry all PEG Access Channels in a standard digital format in Grantee's Basic Cable Service package, unless the parties agree to an earlier conversion date. Thereafter, but no earlier than April 1, 2016, and upon ninety (90) days' notice from the City, which notice may be sent by City on or before October 31, 2015, Grantee shall make one (1) PEG Access Channel available in high definition (HD) format and discontinue carriage on that same PEG channel in SD format, provided that Grantee receives a satisfactory HD signal from the program originator and provided City understands HD Channels may not be available on the Basic Cable tier of service. Grantee shall have no obligation to carry any PEG Access Channels in more than one format; i.e. dual carriage. Grantee shall be responsible for all costs associated with the transport and distribution of the PEG HD Channel on its side of the Demarcation Point including any required Head end equipment or hubs/node

equipment or similar distribution facilities necessary to deliver the PEG HD Channel(s) to Subscribers. The City shall be responsible for all costs associated with the creation and production of the PEG HD Channel on its side of the Demarcation Point.

b) The City acknowledges that receipt of an HD format Access Channel may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to all HD services.

3. ACCESS CHANNEL LOCATIONS.

a) Grantee shall make every reasonable effort to coordinate the cablecasting of PEG Access programming on the Cable System on the same Channel designations as such programming is currently cablecast within the City. In no event shall any PEG Access Channel reallocations be made prior to ninety (90) days written notice to the City by Grantee, except for circumstances beyond Grantee's reasonable control. The PEG Access Channels will be located in the channel neighborhood within reasonable proximity (4-7 channel slots) to other commercial video or broadcast Channels in Grantee's reasonable discretion, excluding pay-per-view programming offered by Grantee in the City.

b) Grantee agrees not to encrypt the PEG Access Channels differently than other commercial Channels available on the Cable System.

c) In conjunction with any occurrence of any Access Channel(s) relocation, Grantee shall provide a minimum of Three Thousand Dollars (\$3,000) of in-kind air time per event on advertiser supported Channels (e.g. USA, TNT, TBS, Discovery Channel, or other comparable Channels) for the purpose of airing City's, or its designees', pre-produced thirty (30) second announcement explaining the change in location.

4. ANCILLARY EQUIPMENT. Any ancillary equipment operated by Grantee for the benefit of PEG Access Channels on Grantee's fiber paths or Cable System, whether referred to switchers, routers or other equipment, will be maintained by Grantee, at no cost to the City or schools for the life of the Franchise. Grantee is responsible for any ancillary equipment on its side of the Demarcation Point and the City or school is responsible for all other production/playback equipment.

5. PEG TECHNICAL QUALITY.

a) Grantee shall not be required to carry a PEG Access Channel in a higher quality format than that of the Channel signal delivered to Grantee, but Grantee shall not implement a change in the method of delivery of PEG Access Channels that results in a material degradation of signal quality or impairment of viewer reception of PEG Access Channels, provided that this requirement shall not prohibit Grantee from implementing new technologies also utilized for commercial Channels carried on its Cable System.

i) Grantee shall meet FCC signal quality standards when offering Access Channels on its Cable System and shall continue to comply with closed captioning pass-through requirements. There shall be no significant deterioration in an Access Channels signal from the point of origination upstream to the point of reception downstream on the Cable System.

ii) Within twenty-four (24) hours of a written request from City to the Grantee identifying a technical problem with a Access Channel and requesting assistance, Grantee will provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible and if so, Grantee will take prompt corrective action. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering representation from Grantee and the City in order to determine the course of action to remedy the problem.

b) Grantee shall cablecast the entire programming stream of each PEG channel including any Program Related Material, as defined below in this Paragraph 6(d)), "Program Related Material" shall mean (i) closed-captioning information, (ii) program identification codes, (iii) program ratings information, (iv) such other material as may be essential, necessary or appropriate for the delivery or distribution of the signal, and (v) information and material that is directly related to the subject matter of the programs on the PEG channels, if such information or material is transmitted concurrently or substantially concurrently with its associated program content.

6. CHANGE IN TECHNOLOGY. In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires new equipment in order to transport PEG Channel programming, Grantee shall be responsible for any equipment, free of charge to the City, required on its side of the Demarcation Point.

7. RELOCATION OF GRANTEE'S HEADEND. In the event Grantee relocates its headend, Grantee will be responsible for replacing or restoring the existing dedicated fiber connections at Grantee's cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards and related obligations of the Franchise free of charge to the City or its designated entities.

8. PEG OPERATIONS. City may in its sole discretion, negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions or others to share the operating expenses of the PEG Channels. City and Grantee may negotiate an agreement for management of PEG Access Facilities, if so desired by both parties.

9. TITLE TO PEG EQUIPMENT. City shall retain title to all PEG equipment and facilities purchased or otherwise acquired.

10. PROMOTION OF PEG ACCESS. Grantee shall allow the City to place bill stuffers in Grantee's Subscriber statements at a cost to the City as specified by Grantee's third party vendor, no less frequently than twice per year upon the written request of the City and at such times that

the placement of such materials would not materially and adversely affect Grantee's cost for the production and mailing of such statements. The City agrees to pay Grantee or Grantee's third party vendor in advance for the actual cost of such bill stuffers. Grantee shall also make available access information provided by City in Subscriber packets at the time of Installation and at the counter in the System's business office within the Service Area. Grantee shall also identify the PEG Access Channels in or on any program guide of services for the Cable System.

11. PEG ACCESS OPERATING SUPPORT.

- a) Upon Grantee's acceptance of this Franchise, Grantee shall collect on behalf of City a per Subscriber fee of One Dollar and 20/100 (\$1.20) per month solely to fund public, educational and governmental access expenditures (hereinafter "PEG Fee").
- b) The City Council may vote to increase the PEG Fee at any time five (5) years after the effective date of this Franchise up to a per Subscriber fee of One Dollar and 50/100 (\$1.50) per month.
- c) The PEG Fee shall be used by City in its sole discretion to fund PEG Access expenditures in a manner consistent with federal law.
- d) The PEG Fee is not intended to represent part of the Franchise Fee and is intended to fall within one (1) or more of the exceptions in 47 U.S.C. § 542. The PEG Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Laws. Grantee shall pay the PEG Fee to the City quarterly at the same time as the payment of Franchise Fees under Section 7.1 of the Franchise. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to remit the PEG Fee.
- e) Any PEG Fees owing pursuant to this Franchise which remain unpaid more than thirty (30) days after the end of a given quarter shall be delinquent and shall immediately thereafter accrue interest at twelve percent (12%) per annum or two percent (2%) above prime lending rate as quoted by the Wall Street Journal, whichever is greater. Enforcement of unpaid PEG Fees shall be handled in accordance with Section 9.6 of the Franchise; however, Grantee shall in all cases be subject to interest on any payment more than thirty (30) days after the end of a given quarter.

12. SERVICE TO PUBLIC BUILDINGS.

- a) Subject to subparagraph 12(d) of this Exhibit B, throughout the term of this Franchise Grantee shall provide, free of charge, one (1) service Drop, one (1) Converter, if necessary and requested, and Basic Cable Service and the next highest penetrated level of Cable Service generally available to all Subscribers (as of the effective date referred to as Expanded Basic Cable Service) ("Complimentary Service"), to all of the sites listed on Exhibit C attached hereto.

b) The City or the building occupant shall have the right to extend Cable Service throughout the building to additional outlets for the provision of Complimentary Service to such additional outlets. If ancillary equipment, such as a Converter, is required to receive the signal at additional outlets beyond the one (1) complimentary Converter referenced in paragraph a) above, the institution shall be required to pay the same monthly rate that Subscribers pay.

c) Notwithstanding anything to the contrary set forth in this section, Grantee shall not be required to provide Complimentary Service to such buildings unless it is technically feasible.

d) Notwithstanding subparagraph 12(a) of this Exhibit B, Grantee may implement fees or charges for Complimentary Service or additional outlets in the City (or seek to offset or deduct from Franchise Fees) only if Grantee also imposes the same fees or charges in other municipalities located within the Lake Minnetonka region.

e) Grantee shall, in any public building hereinafter built, provide all materials, design specifications and technical advice to provide Complimentary Service to such building. If the Installation to such building exceeds three hundred fifty (350) feet, Grantee will accommodate the Installation up to three hundred fifty (350) feet if the City or other agency provides the necessary attachment point for aerial service or conduit pathway for underground service. If the necessary pathway is not provided, the City or other agency shall pay the incremental cost of such Installation in excess of two hundred fifty (250) feet for an aerial service Installation or in excess of one hundred fifty (150) feet for an underground service Installation. For purposes of this paragraph, "incremental cost" means Grantee's actual cost to provide the Installation beyond the applicable distances, with no mark-up for profit. The recipient of the service will secure any necessary right of entry.

f) Dedicated Fiber Return Lines for PEG. Grantee shall provide and maintain, free of charge, throughout the life of this Franchise all existing fiber return lines and other return lines and associated equipment that are in place as of the effective date of this Franchise in order to enable the distribution of PEG Access programming to Grantee's Subscribers. Additional two-way capability allowing for live transmission of PEG programming upstream to Grantee's Headend shall be provided in accordance with the terms of Exhibit D attached hereto. The City shall ensure PEG Channels and signals leaving the playback facilities are in compliance with applicable FCC technical standards.

EXHIBIT C
SERVICE TO PUBLIC FACILITIES

	FACILITY NAME	ADDRESS
1.	City Council Chambers	600 Rice Street
2.	Wayzata West Junior High	149 Barry Avenue North
3.	Fire Station	600 Rice Street
4.	Wayzata Public Works	299 Wayzata Boulevard West
5.	Wayzata Public Library	620 Rice Street
6.	Historic Depot	402 East Lake Street
7.	Water Treatment Plant 3	408 Gardner Street
8.	Water Treatment Plant 2	499 Lake Street West

EXHIBIT D
PUBLIC BUILDINGS TO BE PROVIDED WITH TWO-WAY CAPABILITY

1. As of the effective date of this Franchise, the Wayzata West Junior High (149 Barry Avenue North) and City Hall (600 Rice Street) have been activated and equipped with two-way capability. Grantee shall have no obligation to provide any additional or replacement equipment to these locations after the effective date of this Franchise.

2. At the below listed sites, two-way capability shall be satisfied by establishing a cable modem connection allowing upload speeds of 5 mbps or faster. Grantee and the City shall enter a separate agreement establishing the terms and conditions for such cable modem service or other means and System extension if required as mutually agreed upon at the below listed locations. The parties agree that the purpose of such agreement shall be to facilitate live PEG programming from such locations to avoid the need for the installation of costly infrastructure to accomplish the same purpose using capital dollars. The parties further agree that any periodic costs associated with the System extension or provision of such cable modem equipment and cable modem service to facilitate live PEG programming may be paid for by the City out of the PEG Fee and such use of the PEG Fee for this purpose shall not be deducted from or credited or offset against the Franchise Fee.

	FACILITY NAME	ADDRESS
1.	Fire Station	600 Rice Street
2.	Wayzata Public Works	299 Wayzata Boulevard West
3.	Wayzata Public Library	620 Rice Street

EXHIBIT E
FRANCHISE FEE PAYMENT WORKSHEET

TRADE SECRET/CONFIDENTIAL - TO THE EXTENT PERMISSIBLE UNDER
APPLICABLE LAW

	Month/Year	Month/Year	Month/Year	Total
Cable Service Revenue				
Installation Charge				
Franchise Fee Revenue				
Advertising Revenue				
Home Shopping Revenue				
Equipment rental				
Other Revenue				
REVENUE				
Fee Calculated				
Franchise Fees				

Fee Factor: 5%

THE CITY OF WAYZATA, MINNESOTA

**CABLE TELEVISION
FRANCHISE AGREEMENT**

MAY 28, 1998

*effective June 2, 1998
Sub total =*

Prepared by:

BRIAN T. GROGAN, ESQ.

**Moss & Barnett
A Professional Association
4800 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-4129
(612) 347-0340**

TABLE OF CONTENTS

SECTION 1.	GENERAL PROVISIONS.....	1
1.1)	Definitions.....	1
1.2)	Written Notice.....	1
SECTION 2.	RENEWAL OF FRANCHISE.....	2
2.1)	Grant.....	2
2.2)	Right of Grantor to Issue and Renew Franchise.....	2
2.3)	Effective Date of Renewal.....	2
2.4)	Term.....	3
2.5)	Franchise Not Exclusive.....	3
2.6)	Ownership of Grantee.....	3
SECTION 3.	GENERAL REQUIREMENTS.....	3
3.1)	Governing Requirements.....	3
3.2)	Franchise Fee.....	3
3.3)	Not Franchise Fees.....	4
3.4)	Recovery of Processing Costs.....	4
3.5)	Liability Insurance.....	5
3.6)	Indemnification.....	6
3.7)	Grantee's Insurance.....	7
3.8)	Workers' Compensation Insurance.....	7
3.9)	Security Fund.....	7
3.10)	Procedure for Enforcing Franchise Agreement.....	8
3.11)	Reservation of Rights.....	8
3.12)	Annual Report.....	8
SECTION 4.	DESIGN PROVISION.....	9
4.1)	Minimum Channel Capacity.....	9
4.2)	System Design.....	9
4.3)	Operation and Maintenance of System.....	10
4.4)	Special Testing.....	10
4.5)	FCC Reports.....	10
4.6)	Emergency Alert Capability.....	10
4.7)	Parental Control Lock.....	11
4.8)	Technical Standards.....	11
4.9)	Right of Inspection.....	11
4.10)	Periodic Evaluation, Review and Modification.....	11
SECTION 5.	SERVICES AND PROGRAMMING.....	12
5.1)	Services and Programming.....	12
5.2)	Leased Channel Service.....	12
5.3)	Periodic Subscriber Survey.....	12
SECTION 6.	PUBLIC ACCESS PROVISIONS.....	13
6.1)	Public, Educational and Government Access.....	13
6.2)	Grantee Support for PEG Usage.....	13

SECTION 7.	REGULATION.....	13
7.1)	Amendment of Franchise Agreement.	13
7.2)	Conflict Between Ordinance and Agreement.	14
7.3)	Force Majeure.	14
7.4)	Rate Regulation.	14
EXHIBIT A	GRANTEE'S OWNERSHIP INFORMATION	
EXHIBIT B	FRANCHISE FEE PAYMENT WORKSHEET	
EXHIBIT C	ANNUAL PERFORMANCE REVIEW CHECKLIST	
EXHIBIT D	CHANNEL LINE-UP	
EXHIBIT E	GRANTEE COMMITMENT TO PEG ACCESS FACILITIES AND EQUIPMENT	
EXHIBIT E1	SERVICE TO PUBLIC FACILITIES	
EXHIBIT E2	PUBLIC BUILDINGS TO BE PROVIDED WITH TWO-WAY CABLE	
EXHIBIT F	DESCRIPTION OF SYSTEM UPGRADE	

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (hereinafter the "Agreement"), made and entered into this _____ day of _____, 1998, by and between the City of Wayzata, a municipal corporation of the State of Minnesota (hereinafter the "City" or "Grantor"), and Triax Midwest Associates, L.P. (hereinafter the "Grantee").

W I T N E S S E T H

WHEREAS, pursuant to Ordinance No. 602 A (the "Ordinance"), the City is authorized to grant and renew one or more nonexclusive revocable Franchises to operate, construct, maintain and reconstruct a cable television system within the City; and

WHEREAS, the City, after due evaluation of the Grantee's technical ability, financial condition and legal qualifications, and after public hearings, has determined that it is in the best interest of the City and its residents to renew the Franchise held by the Grantee.

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

SECTION 1.

GENERAL PROVISIONS

1.1) Definitions.

Capitalized terms used in this Agreement shall be defined as set forth in the Ordinance unless (i) otherwise defined herein, or (ii) the context otherwise requires.

1.2) Written Notice.

All notices, reports or demands required or permitted to be given under this Agreement and/or the Ordinance shall be in writing and shall be deemed to be given when delivered personally to the party designated below, or when five (5) days have elapsed after it has been deposited in the United States mail in a sealed envelope, with registered or certified mail, postage prepaid thereon, or on the next business day if sent by express mail or nationally recognized overnight air courier addressed to the party to which notice, report or demand is being given, as follows:

If to City:	City Clerk
	600 Rice Street
	Wayzata, MN 55391

If to Grantee: Regional Manager
 Triax Cablevision
 212 - 15th Avenue NE
 Suite 2010
 Waseca, MN 56093

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

SECTION 2.

RENEWAL OF FRANCHISE

2.1) Grant.

Upon acceptance of this Franchise by Grantee, the Franchise granted pursuant to Ordinance No. 427, passed and adopted on the 20 day of December, 1983 and now held by Triax Midwest Associated, L.P., is hereby replaced and superseded by the provisions of the Ordinance, subject to the terms and conditions of this Agreement. This Franchise hereby provides Grantee with the authority, right and privilege to construct, reconstruct, operate and maintain a Cable Television System to provide Cable Services within the Franchise Area.

2.2) Right of Grantor to Issue and Renew Franchise.

Grantee acknowledges and accepts the right of Grantor to issue and/or renew the Franchise under the law as it existed on the Effective Date hereof and Grantee agrees that it shall not now or at any time hereafter challenge any lawful exercise of this right by Grantor in any local, State or Federal court.

2.3) Effective Date of Renewal.

The renewal of the Franchise provided for in this Agreement shall be effective on the date that both parties have executed this Agreement (the "Effective Date"), provided that said date is no later than thirty (30) days after the date the City Council, by Ordinance, approves this Agreement (the "Approval Date"). The renewal of the Franchise provided for in this Agreement is further contingent upon the filing by Grantee with the City Clerk of the City, of this Agreement duly executed by Grantee together with the security fund and insurance certificates provided for in this Agreement and the Ordinance, except that if such filing does not occur within sixty (60) days after the Approval Date, the Grantor may, in its sole discretion, declare the renewal of the Franchise provided for herein to be null and void.

2.4) Term.

The term of the Franchise renewed pursuant to this Agreement shall be for the period of fifteen (15) years commencing on the Effective Date, at which time it shall expire and be of no force or effect unless the Franchise is then renewed in accordance with the Ordinance and Applicable Laws.

2.5) Franchise Not Exclusive.

The Franchise renewed pursuant to this Agreement shall not be construed as limiting the right of Grantor, through its proper offices, and in accordance with the Ordinance and Applicable Law, to grant other Franchises containing terms and conditions that are no more favorable or less burdensome than those imposed on Grantee in the same Franchise Area the Grantee is entitled to occupy by this Agreement, permit or otherwise; provided, however, that such additional grants shall not operate to materially modify, revoke or terminate any rights granted to Grantee herein and shall be in accord with the provisions of the Ordinance.

2.6) Ownership of Grantee.

Grantee represents and warrants to Grantor that the names of the shareholders, partners, members or other equity owners of the Grantee and of any of the shareholders, partners, members and/or other equity owners of Grantee are as set forth in Exhibit A hereto.

SECTION 3.

GENERAL REQUIREMENTS

3.1) Governing Requirements.

Grantee shall comply with all lawful requirements of this Agreement, the Ordinance and Applicable Laws.

3.2) Franchise Fee.

(a) In consideration of the renewal of the Franchise provided for herein, the Grantee shall, at all times during the term of this Agreement, pay to Grantor a Franchise Fee of five percent (5%) of Grantee's Gross Revenues as defined in the Ordinance but excluding any Access Operating Fee funds collected. The Franchise Fee shall be payable quarterly within thirty (30) days of the expiration of the preceding calendar quarter. Each payment shall be certified by Grantee's controller or chief financial officer and shall be accompanied by a report in such form as the City may reasonably request showing the computation of the Franchise Fee as it relates specifically to the Wayzata franchise area (CUID # MN0569) for the preceding calendar quarter and such other relevant facts as may be required by the City, including the completion of a Franchise Fee Payment Worksheet

in the form attached hereto as Exhibit B. Grantee shall annually provide a "Report of Independent Public Accountants" in a form substantially the same as attached hereto as Exhibit B.

3.3) Not Franchise Fees.

(a) Grantee acknowledges and agrees that the Franchise Fees payable by Grantee to the City pursuant to Section 3.2 hereof shall take precedence over all other payments, contributions, Services, equipment, facilities, support, resources or other activities to be provided or performed by the Grantee pursuant to this Agreement and/or the Ordinance and that the Franchise Fees provided for in Section 3.2 of this Agreement shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other fees and charges which the Grantee shall be required to pay to the City and/or to any other Governmental Authority, all of which shall be separate and distinct obligations of Grantee.

(b) Grantee shall not apply or seek to apply or make any claim that all or any part of the Franchise Fees or other payments or contributions to be made by Grantee to Grantor pursuant to this Agreement and/or the Ordinance shall be deducted from or credited or offset against any taxes, fees or assessments of general applicability levied or imposed by the City or any other Governmental Authority, including any such tax, fee or assessment imposed on both utilities and cable operators or their services.

(c) Grantee shall not apply or seek to apply all or any part of any taxes, fees or assessments of general applicability levied or imposed by the City or any other Governmental Authority (including any such tax, fee or assessment imposed on both utilities and cable operators or their services) as a deduction or other credit from or against any of the Franchise Fees or other payments or contributions to be paid or made pursuant by Grantee to Grantor to this Agreement and/or the Ordinance, each of which shall be deemed to be separate and distinct obligations of the Grantee.

3.4) Recovery of Processing Costs.

(a) During the term of this Agreement, if the Grantee initiates a request for approval regarding the transfer of this Franchise or a change in control of the Grantee, the Grantee shall, to the extent permitted by Applicable Laws, reimburse the Grantor for all reasonable out-of-pocket costs, including attorneys' and consultants' fees and costs, incurred by the Grantor in connection with Grantor's review and processing of Grantee's request up to a mutually agreed upon reasonable cap.

(b) To aid in the analysis and resolution of any future disputed matters relative to this Agreement, the Grantor and Grantee may, by mutual written agreement (both as to whether to hire and whom to hire), employ the services of technical, financial and/or legal consultants, as mediators. All reasonable fees of the consultants incurred by the Grantor and/or the Grantee in this regard shall, unless the parties otherwise agree, be borne equally by Grantor and Grantee.

3.5) Liability Insurance.

(a) Upon the Effective Date, the Grantee shall, at its sole expense and in addition to all required insurance under Section 1.27 of the Ordinance, take out and maintain during the term of this Agreement public liability insurance with a company licensed to do business in the State of Minnesota with a rating by A.M. Best & Co. of not less than "A" that shall protect the Grantee, the Grantor and their officials, officers, directors, employees and agents from claims which may arise from operations under this Agreement, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Two Million Dollars (\$2,000,000.00). The following endorsements shall be attached to the liability policy:

- (1) The policy shall provide coverage on an "occurrence" basis.
- (2) The policy shall cover personal injury as well as bodily injury.
- (3) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (4) Broad form property damage liability shall be afforded.
- (5) The Grantor shall be named as an additional insured on the policy.
- (6) An endorsement shall be provided which states that the coverage is primary insurance and that no other insurance maintained by the Grantor will be called upon to contribute to a loss under this coverage.
- (7) Standard form of cross-liability shall be afforded.
- (8) An endorsement stating that the policy shall not be canceled without thirty (30) days notice of such cancellation given to the Grantor.

(b) Grantor reserves the right to adjust the insurance limit coverage requirements of this Agreement no more often than once every three (3) years. Any such adjustment by the Grantor will be no greater than the increase in the State of Minnesota Consumer Price Index (all consumers) for such three (3) year period.

(c) Grantee shall submit to Grantor documentation of the required insurance, including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements.

3.6) Indemnification.

(a) In addition to Grantee's indemnification obligations under Section 1.26 of the Ordinance, Grantee shall indemnify, defend and hold Grantor, its officers, boards, commissions, agents and employees (collectively the "Indemnified Parties") harmless from and against any and all lawsuits, claims, causes of action, actions, liabilities, demands, damages, judgments, settlements, disability, losses, expenses (including attorney's fees and disbursements of counsel) and costs of any nature that any of the Indemnified Parties may at any time suffer, sustain or incur arising out of, based upon or in any way connected with the Grantee's operations, the exercise of the Franchise renewed pursuant to this Agreement, the breach by Grantee of its obligations under this Agreement or the Ordinance and/or the activities of Grantee, its subcontractor, employees and agents hereunder. Grantee shall be solely responsible for and shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all matters relative to payment of Grantee's employees, including compliance with Social Security and withholdings.

(b) The indemnification obligations of Grantee set forth in this Agreement are not limited in any way by the amount or type of damages or compensation payable by or for Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitations of any insurance held by Grantee.

(c) Grantor does not, and shall not, waive any rights against Grantee which it may have by reason of the indemnification provided for in this Agreement, because of the acceptance by Grantor, or the deposit with Grantor by Grantee, of any of the insurance policies described in this Agreement.

(d) The indemnification of Grantor by Grantee provided for in this Agreement shall apply to all damages and claims for damages of any kind suffered by reason of any of the Grantee's operations referred to in this Agreement, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

(e) Grantee shall not be required to indemnify Grantor for negligence or misconduct on the part of Grantor or its officials, boards, commissions, agents, or employees. Grantor shall hold Grantee harmless, subject to the limitations in Minnesota Statutes Chapter 466 or any other statutory limit of liability for a municipality, for any damage resulting from the negligence or misconduct of the Grantor or its officials, boards, commissions, agents, or employees in utilizing any PEG access channels, equipment, or facilities and for any such negligence or misconduct by Grantor in connection with work

performed by Grantor and permitted by this Agreement, on or adjacent to the Cable System.

3.7) Grantee's Insurance.

Grantee shall not commence any Cable System reconstruction work or permit any subcontractor to commence work until all insurance required under this Agreement and the Ordinance has been obtained. Said insurance shall be maintained in full force and effect until the expiration of this Agreement.

3.8) Workers' Compensation Insurance.

Grantee shall obtain and maintain Workers' Compensation Insurance for all of Grantee's employees, and in case any work is sublet, Grantee shall require any subcontractor similarly to provide Workers' Compensation Insurance for all of their employees, all in compliance with State laws, and to fully indemnify the Grantor from and against any and all claims arising out of occurrences on the work. Grantee hereby indemnifies Grantor for any and all costs, expenses (including attorneys' fees and disbursements of counsel), damages and liabilities incurred by Grantor as a result of any failure of either Grantee or any subcontractor to take out and maintain such insurance. Grantee shall provide the Grantor with a certificate of insurance indicating Workers' Compensation coverage on the Effective Date.

3.9) Security Fund.

(a) Within sixty (60) days of the Approval Date, Grantee shall establish and provide to Grantor a security fund, as security for the full and timely payment and performance by Grantee of all of its obligations under this Agreement and the Ordinance. The security fund shall consist of two (2) parts. The first part shall be in the amount of One Hundred Thousand Dollars (\$100,000) and shall be in the form of a performance bond, which shall be in a form acceptable to Grantor's City Attorney. The second part shall be in the amount of at least Five Thousand Dollars (\$5,000) and shall be in the form of an irrevocable letter of credit, established in a local bank.

(b) The first part of the security fund shall be maintained at the One Hundred Thousand Dollar (\$100,000) level until the System upgrade and/or rebuild provided for in Section 4.1 hereof is completed, at which time that part of the fund shall be released, provided there are then no outstanding material violations or breaches of this Agreement or the Ordinance by Grantee. The second part of the security fund shall be maintained at the Five Thousand Dollar (\$5,000) level throughout the term of this Franchise Agreement. If, at any time during the term of this Franchise, Grantee seeks consent to a transfer or assignment of its rights hereunder, Grantor may unilaterally increase the security fund up to Twenty Thousand Dollars (\$20,000) if it so chooses.

(c) The security fund may be drawn upon by Grantor for those purposes specified in Section 3.10 hereof, in accordance with the procedures of Section 3.10 and

the Ordinance. Grantee's recourse, in the event Grantee believes that Grantor's actions in taking any security funds is improper, shall be through legal action after the security has been drawn upon. Actions brought by Grantee hereunder may be subject to 47 U.S.C. §555A – Limitations of Franchising Authority Liability – which is hereby incorporated by reference as if fully set forth herein.

(d) Nothing herein shall be deemed a waiver of the normal permit requirements and/or fees made of all contractors working within the City's rights-of-way pursuant to Minnesota Statutes Section 237.162.

3.10) Procedure for Enforcing Franchise Agreement.

(a) The procedures for enforcing violations or breaches of this Franchise Agreement and/or the Ordinance shall be consistent with the procedures set forth in the Ordinance.

(b) In the event the Council finds that a material violation or breach exists and that Grantee has not cured the same in a satisfactory manner, has not diligently commenced correction of such violation or breach or has not diligently proceeded to fully remedy such violation or breach, the Council may impose liquidated damages, assessable from the security fund, of up to Three Hundred Dollars (\$300) per day or per incident, for unexcused violations or breaches of the System upgrade and/or rebuild completion schedule provided in Section 4.1 herein, and up to One Hundred and Seventy-Five Dollars (\$175) per day or per incident for all other violations or breaches of this Agreement and/or the Ordinance, provided that all violations or breaches of a similar nature occurring at the same time shall be considered one (1) incident.

3.11) Reservation of Rights.

Grantor and Grantee reserve all rights that they may possess under Applicable Laws unless expressly waived herein.

3.12) Annual Report.

In addition to the requirements of Section 1.20 and 1.29 of the Ordinance, Grantee shall submit a written end of the year report to Grantor utilizing the format outlined in the Annual Performance Review Checklist attached hereto as Exhibit C. In addition, Grantee and Grantor agree that the Annual Performance Review Checklist may be modified from time to time by mutual agreement of Grantee and Grantor. In accordance with Section 1.18 of the Ordinance, Grantee shall also provide City with a quarterly customer service compliance report utilizing the format outlined in Exhibit F attached hereto.

SECTION 4.

DESIGN PROVISION

4.1) Minimum Channel Capacity.

(a) On or before December 31, 1998, Grantee shall develop, construct and operate within the City a 750 MHz fiber/coaxial hybrid cable system which shall be capable of delivering a minimum of eighty (80) video program channels and which shall initially deliver to all subscribers capable of receiving said channels a minimum of sixty (60) video program channels.

(b) All programming decisions remain the sole discretion of Grantee provided that Grantee complies with federal law regarding notice to City and Subscribers prior to any channel additions, deletions, or realignments, and further subject to Grantee's signal carriage obligations pursuant to 47 U.S.C. §§ 531-536, and subject to City's rights pursuant to 47 U.S.C. § 545. Grantee shall conduct programming surveys from time to time to obtain input on programming decisions from Subscribers.

4.2) System Design.

(a) The System required herein will be engineered and built to provide a minimum of eighty (80) channels using a 750 MHz bandwidth technology. Grantee shall meet with City to review its system design and construction plans prior to the commencement of construction and shall, at the request of City, participate in a public meeting designed to inform residents of City of said design and construction plans. In those residential areas where fiber optic cable will be deployed, the system shall incorporate multiple strands of fiber and serve an average of five hundred (500) homes per fiber node. The System shall at all times meet the technical standards established by the FCC as they may be amended from time to time and shall be operated so as to minimize disruption of signal to Subscribers. The precise System specifications are outlined in Exhibit F, which is incorporated herein by reference.

(b) Grantee shall only be authorized to construct a cable system with eight fiber-optic pairs to each node and a total of 154 fibers throughout the system.

(c) On or about thirty (30) days prior to construction of the upgraded system, affected subscribers will receive a letter notifying them of same which letter shall include Grantee's telephone number that subscribers can use to contact Grantee with any questions or concerns they may have. Approximately forty-eight (48) hours before construction, all affected houses will receive door tags notifying them of Grantee's construction schedule which door tag will also include Grantee's telephone number. Upon completion of system construction, Grantee shall comply with the cable industry's on-time guaranty as endorsed by the National Cable Television Association. This on-time guaranty generally provides that if installation is not accomplished within the time frame specified by the operator, installation shall be free for the subscriber and operator shall

provide said subscriber with a Twenty Dollar (\$20) credit. Moreover, Grantee shall provide subscribers with a Twenty Dollar (\$20) credit for any missed appointments pursuant to Section 1.18(b) (5) of the Regulatory Ordinance. (See Exhibit E (6) regarding enforcement of this credit).

4.3) Operation and Maintenance of System.

The Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruption, to the extent feasible, shall be preceded by notice in accordance with Section 1.2 herein and all applicable provisions of the Ordinance, and shall occur during periods of minimum use of the System.

4.4) Special Testing.

City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing. Before ordering such tests, Grantee shall be afforded thirty (30) days to correct problems or complaints upon which tests were ordered. The City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by a qualified engineer selected by City. In the event that special testing is required by City to determine the source of technical difficulties, the cost of said testing shall be borne by the Grantee if the testing reveals the source of the technical difficulty to be within Grantee's reasonable control. If the testing reveals the difficulties to be caused by factors which are beyond Grantee's reasonable control then the cost of said test shall be borne by City.

4.5) FCC Reports.

The results of tests required to be filed by Grantee with the FCC shall also be copied to City.

4.6) Emergency Alert Capability.

Grantee shall at all times comply with all Applicable Laws regarding the provision of emergency alert services. At a minimum, Grantee shall at all times have the capability for an emergency override alert.

4.7) Parental Control Lock.

Grantee shall provide, for sale or lease, to Subscribers, upon request, a parental control locking device or digital code that permits inhibiting the video and audio portions of any Channels offered by Grantee.

4.8) Technical Standards.

Grantee shall, at a minimum, comply at all times with all applicable Federal Communications Commission (FCC) Rules and Regulations, including but not limited to, Part 76, Subpart K (Technical Standards), as may be amended from time to time.

4.9) Right of Inspection.

Grantor shall have the right to inspect all construction, reconstruction or installation work performed by Grantee under the provisions of this Agreement and Applicable Laws, to ensure Grantee's compliance and to protect the health, safety and welfare of Grantor's citizens.

4.10) Periodic Evaluation, Review and Modification.

Grantor and Grantee acknowledge and agree that the field of cable television is a relatively new and rapidly changing one which may see many regulatory, technical, financial, marketing and legal changes during the term of this Agreement. Therefore, in order to provide for the maximum degree of flexibility in this Agreement, and to help achieve a continued, advanced and modern Cable System, the following evaluation provisions will apply:

(a) The City reserves the right to adopt rules and regulations controlling the procedures as set forth below and the subjects for evaluation sessions. In the absence of any City action taken to exercise these rights, Grantee shall be subject to the procedures and the subjects described in this Section 4.10.

(b) The City may require, in its sole discretion, that the Grantee participate in evaluation sessions with the City at any time and from time to time during the term of this Agreement; provided, however, there shall not be more than one (1) evaluation session during any calendar year.

(c) Topics which may be discussed at any evaluation session include, but are not limited to, rates, channel capacity, the System performance, programming, PEG access, municipal uses of the System, Subscriber complaints, judicial rulings, FCC rulings and any other topics the City or Grantee may deem relevant.

(d) During an evaluation session, Grantee shall fully cooperate with the City and shall provide without cost and in a timely manner such information and documents as the City may request to perform the evaluation.

(e) As a result of an evaluation session, the City or Grantee may determine that an amendment in the terms of this Agreement may be required, that the requirements of the System or this Agreement should be updated, changed or revised, and/or that additional services should be provided by Grantee (collectively a "Proposed Modification"). If the Proposed Modification is consistent with the terms of this Agreement, the Ordinance, the needs of the City and existing state-of-the-art technology, including what is provided by Grantee in other Systems owned, operated or managed by it, its parent company or any affiliated company, Grantee and the City will, in good faith, review the terms of the Proposed Modification and consider amending this Agreement accordingly.

SECTION 5.

SERVICES AND PROGRAMMING

5.1) Services and Programming.

Grantee shall provide Grantor with a list of programming services and other services offered, which list shall be attached hereto as Exhibit D (the "Channel Line-up"). The Channel Line-up shall include all applicable charges and pricing schedules. The Channel Line-up shall be updated each time a change is made by Grantee. Grantee shall not alter the number of program services or other services without thirty (30) days prior written notification to the Grantor and System Subscribers.

5.2) Leased Channel Service.

Grantee shall offer leased channel service on reasonable terms and conditions and in accordance with Applicable Laws.

5.3) Periodic Subscriber Survey.

(a) To the extent Grantee conducts customer surveys with respect to all or a portion of the system serving the City, it shall provide the City with all non-confidential information and findings from such surveys.

(b) As a part of each annual report, Grantee shall provide the City with the results of any survey conducted and shall report in writing what steps Grantee is taking to implement the findings of the survey, such as correcting problems and expanding services.

SECTION 6.

PUBLIC ACCESS PROVISIONS

6.1) Public, Educational and Government Access.

(a) City or its designee is hereby designated to operate, administer, promote, and manage access (public, education, and government programming) (hereinafter "PEG access") to the cable system established pursuant to this Section 6. Grantee shall have no responsibility whatsoever for PEG access except as expressly stated in this Section 6.

6.2) Grantee Support for PEG Usage.

In accordance with the provisions of the Cable Act and Minn. Stat. § 238.084, Grantee shall provide and make available for public, educational and governmental (PEG) access usage within the Service Area the following:

(a) Provision and use of the grant funds and Channels designated in Exhibit E of this Agreement for local educational and governmental programming and access use at no charge in accordance with the requirements of Exhibit E.

(b) Maintenance of the Access Facilities and Channels, and support of educational and governmental programming to the extent specified in Exhibit E of this Agreement.

(c) Provision of free public building Installation and cable service as more clearly specified in Exhibit E, and provision of two-way capability to the locations specified in Exhibit E.

(d) Access Facilities shall be operated by the City.

SECTION 7.

REGULATION

7.1) Amendment of Franchise Agreement.

Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 4.10 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws. City shall act pursuant to local law pertaining to an amendment of the cable television regulatory ordinance.

7.2) Conflict Between Ordinance and Agreement.

In the event of any conflict between the terms and conditions of this Franchise Agreement and the provisions of the Ordinance, the provisions of this Franchise Agreement shall control. Grantee expressly acknowledges and agrees that the City hereby retains all of its police powers and the City may unilaterally amend the Ordinance in the exercise of its police powers and Grantee shall comply with said Ordinance as may be amended; provided, however that City hereby agrees to use reasonable efforts to address public health, welfare and safety needs without resorting to amending the Ordinance. By executing this Franchise Agreement both City and Grantee acknowledge and agree that neither is aware of any conflicts between this Franchise Agreement and the Ordinance.

7.3) Force Majeure.

In accordance with Section 1.31 of the Ordinance, in the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Agreement or the Ordinance is prevented or impaired due to any cause beyond its reasonable control, such inability to perform shall be deemed to be excused for the period of such inability and no penalties or sanctions shall be imposed as a result thereof, provided Grantee has notified Grantor in writing within ten (10) days of its discovery of the occurrence of such an event. Such causes beyond Grantee's reasonable control shall include, but shall not be limited to, acts of God, civil emergencies and labor unrest or strikes, untimely delivery of equipment, inability of Grantee to obtain access to an individual's property and inability of Grantee to secure all necessary permits to utilize utility poles and conduit so long as Grantee utilizes due diligence to timely obtain said permits.

7.4) Rate Regulation.

Nothing in this Agreement shall in any way prevent Grantor from regulating any rates charged by Grantee. If Grantor elects to so regulate, Grantor shall follow the procedures outlined in Section 1.19 of the Ordinance or Applicable Laws.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement the day, month and year first above written.

CITY OF WAYZATA, MINNESOTA

Dated:

6/16/98

By:


Mayor

ATTEST:

By:


Its: City Manager

(SEAL)

TRIAx MIDWEST ASSOCIATES, L.P.

Dated:

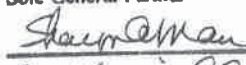
7/1/98

(CORPORATE SEAL)

By:

Its: **TRIAx MIDWEST ASSOCIATES, L.P.**
BY: Triax Midwest General Partner, L.P.
Managing General Partner
BY: Triax Midwest L.L.C.
Sole General Partner

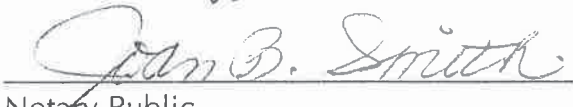
BY:
ITS:

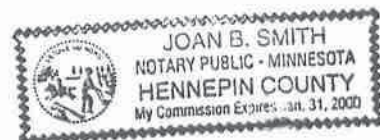

Authorized Signatory

STATE OF MINNESOTA)

COUNTY OF Hennepin) ss.

The foregoing instrument was acknowledged before me on June 16, 1998, by Barry Ketzer the Mayor of the City of Wayzata on behalf of the City.


Notary Public



STATE OF MINNESOTA)
COUNTY OF Denver) ss.

The foregoing instrument was acknowledged before me on July 8, 1998, by Sharon Mue, the Authorized of Triax Midwest Associates, L.P. on behalf of the Company. Signature

My Commission Expires
September 28, 2000

Lefete Carter Aaron
Notary Public

EXHIBIT A

OWNERSHIP

TRIAX MIDWEST ASSOCIATES, L.P.
is a [wholly owned subsidiary of parent name].

EXHIBIT A

**TRIAX MIDWEST ASSOCIATES L.P.
LIST OF GENERAL PARTNERS AND LIMITED PARTNERS HOLDING
AN EQUITY INTEREST OF MORE THAN 5%**

(a) Triax Midwest General Partner, L.P. 100 Fillmore Street Suite 600 Denver, CO 80206	Triax Cable General Partner, L.P. 100 Fillmore Street Suite 600 Denver, CO 80205	DD Cable Partners, L.P. 235 Montgomery Suite 420 San Francisco, CA 94104	DD Cable Holdings, Inc. and Subsidiaries 235 Montgomery Suite 420 San Francisco, CA 94104	VS&A-TMA, LLC 350 Park Avenue 20 th Floor New York, NY 10022	DJL Investment Partners, L.P. 140 Broadway New York, NY 10005	AMTILE, Inc. c/o Desai Capital Management, Inc. 540 Madison Avenue New York, NY 10022	Triax Investors Midwest, L.P. 100 Fillmore Street Suite 600 Denver, CO 80206
(b) Delaware limited partnership	Missouri limited partnership	California limited partnership	Wisconsin Corporation	Delaware Limited Liability Corporation	Delaware Limited Partnership	Delaware Corporation	Missouri Limited Partnership
(c) Managing General Partner	Non-Managing General Partner	Limited Partner	Limited Partner	Limited Partner	Limited Partner	Limited Partner	Limited Partner
(d) see (c)	see (c)	see (c)	see (c)	see (c)	see (c)	see (c)	see (c)
(e) N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(f) N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

EXHIBIT B
FRANCHISE FEE PAYMENT WORKSHEET

Triax Midwest Associates, L.P.

_____ (Wayzata) Subs _____ Franchise Fee: 5% Gross

Date _____, 1998

Revenue Source	
Basic	
Pay	
Tier	
Advertising and Pay-Per-View	
Other	
Total	\$ _____

ARTHUR ANDERSEN LLP

REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

To Triax Midwest Associates, L.P.:

We have audited, in accordance with generally accepted auditing standards, the balance sheet of Triax Midwest Associates, L.P. (the "Partnership") as of December 31, 1995, and the related statements of operations, partners' deficit and cash flows for the year then ended, and have issued our report thereon dated April 9, 1996.

In connection with our audit, nothing came to our attention that caused us to believe that (a) the Partnership was not in compliance with any of the terms, covenants, provisions, or conditions of Article VI Section 4B of the Cable Television Franchise Ordinance, dated April 18, 1984 between the City of Chanhassen, Minnesota, and the Partnership, insofar as they relate to accounting matters, although our audit was not directed primarily toward obtaining knowledge of such noncompliance, and (b) the information set forth and as defined in the accompanying Exhibit I is not fairly stated, in all material respects, in relation to the financial statements from which it has been derived.

This report is intended solely for the information and use of the management of the Partnership and the City of Chanhassen, Minnesota, and should not be used for any other purpose.

Denver, Colorado,
April 9, 1996.

Arthur Andersen LLP

City of Wayzata, Minnesota

EXHIBIT I

Basic Revenues	\$ 359,794
Tier Revenues	398,790
A/O Revenues	1,793
Late Charge	25,652
Guides	335
Equipment	8,089
Install	13,257
HBO	59,238
Showtime	21,925
TMC	8,129
Cinemax	18,270
Disney	10,904
DCR	1,830
PPV	4,317
Encore	26,232
Home Wiring	521
Starz	3,263
Sega	934
Advertising	15,352
HSN Commission	<u>1,808</u>
Gross Revenues	\$ 980,433
Franchise Fee Rate	<u>5%</u>
	<u>\$ 49,022</u>
Payments Made Within 90 Days of December 31, 1995	<u>\$ 49,022</u>

EXHIBIT C

ANNUAL PERFORMANCE REVIEW CHECKLIST

Check
Where
Applicable

1. RATES AND CHARGES

No change

Changed

Notices sent to City and subscriber

Changes in rates and costs identified by attachment

Change "reasonable" and consistent with the standards prescribed by the FCC

Other (describe in attachment)

2. PROGRAMS AND SERVICES

No change in programs and services

New programs and services added

Identify new programs and services and decision for introduction

The programs and service changes meet demand expressed in customer satisfaction surveys

Other (describe in attachment)

3. PUBLIC, GOVERNMENTAL AND EDUCATIONAL ACCESS

Check
Where
Applicable

4. CUSTOMER SERVICE

Customer service requirements complied with

Summary of complaints (attached)

System outages summary (attached)

Description of new customer services, promotions (attached)

5. FILINGS WITH FCC

Summary of all filings with FCC described in attachment

6. PERFORMANCE TEST IN FRANCHISE COMPLETED

Summary of performance test results (attached)

7. FRANCHISE FEE PAYMENTS MADE (ATTACH COMPLETED
FRANCHISE FEE PAYMENT WORKSHEETS - EXHIBIT B TO
FRANCHISE AGREEMENT)

8.

9. COMPLETION OF CONSTRUCTION

Upgrade/rebuild (summary attached)

Check
Where
Applicable

New technologies incorporated into System

Channel capacity increased

Service extended to new areas

Other

10. NEW SERVICES

No Changes

Services other than programming made available in the subscriber network (summary attached)

11. TERMS AND CONDITIONS IN THE FRANCHISE AGREEMENT HAVE BEEN COMPLIED WITH

Company participated in planning studied and Cable Advisory Committee activities (summary attached)

All insurance, bonds and deposits are updated and filed with City

12. OTHER PERFORMANCE HIGHLIGHTS OR PLANS TO BE INTRODUCED WITHIN THE NEXT TWELVE (12) MONTHS (SUMMARY ATTACHED)

Dated this ____ day of _____, 19____, by _____, a duly authorized Officer of _____.

City of _____, Minnesota Verification:

The above Annual Performance Review has been filed by Triax Midwest Associates, L.P. as required. The Office of _____ for the City of _____ has reviewed the information and finds that the filing is complete ____/is not complete _____. The following matters are deemed incomplete and require further information and/or compliance by _____, 19____.

THE CITY OF _____, MINNESOTA

Dated:

By: _____
Its:

EXHIBIT D

CHANNEL LINE-UP

Service	Description	Rate/ Charge
---------	-------------	-----------------

EXHIBIT E

GRANTEE COMMITMENT TO PEG ACCESS FACILITIES AND EQUIPMENT

1. PUBLIC, EDUCATIONAL AND GOVERNMENT (PEG) ACCESS CHANNELS

Grantee shall provide to each of its subscribers who receive some or all of the services offered on the Cable System, reception on at least one (1) specially designated noncommercial public access channel available for use by the general public on a first-come, first-served, nondiscriminatory basis; at least one (1) specially designated access channel for use by local educational authorities; at least one (1) specially designated access channel available for government use (hereinafter collectively referred to as the "PEG Channels"); and at least one (1) specially designated access channel available for lease on a first-come, first-served, nondiscriminatory basis by commercial and noncommercial users. The VHF spectrum must be used for at least one (1) of the PEG Channels required in this paragraph. No charges may be made for channel time or playback of prerecorded programming on the specially designated noncommercial access channels. Personnel, equipment and production costs may be assessed, however, for live studio presentations exceeding five (5) minutes in length. Charges for those production costs and fees for use of other public access channels must be consistent with the goal of affording the public a low-cost means of television access.

Whenever the PEG Channels are in use during eighty percent (80%) of the weekdays, Monday to Friday, for eighty percent (80%) of the time for any consecutive three (3) hour period for six (6) weeks running, and there is demand for use of an additional channel for the same purpose, the Grantee shall then have six (6) months in which to provide a new PEG Channel for the same purpose, provided that provision of the additional channel or channels must not require the Cable System to install converters.

The PEG Channels shall be dedicated for PEG use for the term of the Franchise Agreement, provided that Grantee may, utilize any portions of the PEG Channels not scheduled for PEG use. Grantor shall establish rules and procedures for such scheduling in accordance with Section 611 of the Cable Act (47 U.S.C. § 531). Grantee acknowledges Grantor's desire to produce only educational and governmental programming and that Grantor will not be producing public access programming. Grantor acknowledges Grantee's statutory obligations with respect to public access programming and recognizes that public access programming from other jurisdictions served by Grantee may be cablecast on the City's public access channel. Grantee, however, shall have the right under Minn. Stat. Chapter 238 to use the channel capacity on the public access channel for other programming such as mind extension university, the learning channel or any other programming Grantee, in its sole discretion, deems appropriate.

Grantee shall also designate the standard VHF channel 6 for uniform regional channel usage currently provided by "Metro Channel 6" as required by Minn. Stat. § 238.43. Programming on this regional channel shall include a broad range of informational, educational, and public service programs and materials to cable television subscribers throughout the Twin Cities metropolitan area.

2. PEG OPERATIONS

Grantor may in its sole discretion, negotiate agreements with neighboring jurisdictions served by the same Cable System, educational institutions or others to share the operating expenses of the PEG Channels. Grantor and Grantee may negotiate an agreement for management of PEG facilities, if so desired by both parties.

3. TITLE TO PEG EQUIPMENT

Grantor shall retain title to all PEG equipment and facilities purchased or otherwise acquired pursuant to the previous Wayzata franchise Ordinance No. ____.

4. PROMOTION OF PEG ACCESS

Grantee shall allow the Grantor to place bill stuffers in Grantee's Subscriber statements at a cost to the Grantor not to exceed Grantee's cost, no less frequently than twice per year upon the written request of the Grantor and at such times that the placement of such materials would not materially and adversely effect Grantee's cost for the production and mailing of such statements. The Grantor agrees to pay Grantee in advance for the actual cost of such bill stuffers. Grantee shall also make available access information provided by Grantor in Subscriber packets at the time of Installation and at the counter in the System's business office within the Service Area. Grantee shall also distribute, at no charge to Grantor, through advertising insertion equipment, 28 weekly promotional and awareness commercial spots at randomly selected times in unpurchased advertising space on a "run of schedule basis" produced at the Grantor's cost and submitted by the Grantor in a format compatible with such advertising insertion equipment once Grantee has acquired and activated such capability. Grantee shall also include a listing of the known programming to be cablecast on PEG access Channels in or on any program guide of services for the Cable System.

5. SERVICE TO PUBLIC BUILDINGS

(a) One (1) cable drop connection and the highest level of cable service excluding pay-per-view and pay-per-channel programming shall be provided free of charge to each public building listed in Exhibit E-1 with no Installation charges or monthly service charges. Said drop connection and service provision shall be concurrent with the construction schedule required by Section 4.1 of the Agreement. Grantee shall, in any public building hereinafter built, provide all materials, design specifications and technical advice for any one cable outlet to be installed during the construction of such building,

without cost to the Grantor and Grantee shall provide the same service to such new public building as required in this paragraph (a).

(b) Two-way capability shall be provided to the public buildings listed in Exhibit E-2.

(c) To the extent any educational facilities in the City of Orono, Minnesota desire two-way capability and Grantee agrees to provide such capability, Grantee is hereby authorized to use the Grantor's streets, if necessary, to provide such two-way capability.

6. PEG ACCESS OPERATING SUPPORT.

Grantee shall also collect on behalf of City a per Subscriber fee of sixty cents (\$.60) per month solely to fund educational and governmental access -related expenditures (hereinafter "Access Operating Fee"). In the event Grantee becomes subject to "effective competition" as defined by Applicable Law, from another Multi-Channel Video Programming Distributor, the Access Operating Fee shall, following ninety (90) days written notice to City, be reduced to the level of expenditure at which the multi-channel video Programming Distributor, is obligated or fifty cents (\$.50) per subscriber per month, whichever is greater. If Grantee chooses to discontinue the requirement to provide a Twenty Dollar (\$20.00) credit to subscribers for missed service appointments (See Section 4.2 (c) herein and Section 1.18 (b) (5) of the Regulatory Ordinance), the City shall have the right, upon sixty (60) days advance written notice, to unilaterally increase the Access Operating Fee up to eighty-four cents (\$.84) per month, per subscriber. Grantee shall thereafter cooperate with City by providing information (to the extent legally permissible) which will allow City to provide such Twenty Dollar (\$20.00) credits to affected subscribers.

EXHIBIT E1

SERVICE TO PUBLIC FACILITIES

1. PUBLIC BUILDINGS:

CITY OF WAYZATA, MINNESOTA BUILDINGS;

City Council Chambers	600 Rice Street
Wayzata West Junior High	149 Barry Avenue North
Fire Station	600 Rice Street
Wayzata Public Works	500 Wayzata Blvd.
Wayzata Public Library	620 Rice Street
New City Library	[location to be determined at a later date so long as within 1000 feet of existing Grantee's existing distribution system]

EXHIBIT E2

1. PUBLIC BUILDINGS TO BE PROVIDED WITH ACTIVATED TWO-WAY CAPABILITY:

City Council Chambers	600 Rice Street
Wayzata West Junior High	149 Barry Avenue North
Fire Station	600 Rice Street
Wayzata Public Works	500 Wayzata Blvd.
Wayzata Public Library	620 Rice Street
New City Library	[location to be determined at a later date so long as within 1000 feet of Grantee's existing distribution system]
Wayzata Community Church	125 Wayzata Blvd. E.
Redeemer Church	115 Wayzata Blvd. W.
St. Bart's	630 Wayzata Blvd. E.
Unitarian Church	605 Rice Street

2. Buildings to be provided with live cable casting capability: *

1. Wayzata Country Club	200 Wayzata Boulevard West
2. The Boardwalk	150 Central Avenue South
3. Wayzata Bay Center	900 Superior Blvd.

*the first aerial 500 feet or underground 250 feet of connection shall be borne by Grantee, any remaining installation/construction shall be performed by Grantee but the costs associated therewith shall be the responsibility of the institution on a time and materials basis.

3. The Wayzata West Junior High and City Hall shall be provided both activated and equipped two-way capability.

EXHIBIT F

Wayzata SYSTEM UPGRADE OVERVIEW

System Capacity

The upgraded HFC (hybrid fiber/coax) network required pursuant to Section 4.1 of the Agreement will be designed to operate with a bandwidth of 5 MHz to 750 MHz, with 50 MHz to 550 MHz being allocated for video services. The remaining upper 200 MHz of bandwidth will be reserved for compressed digital signals.

The network will have return capability utilizing spectrums from 5 MHz to 40 MHz, and will be activated on both the coaxial and optical systems. The return system can be used to transmit both data and video, and will have the capacity to be used for insertion of locally-originated programming consistent with Exhibit E2, monitoring of certain key components in the network, and transmission of data from set-top terminals used for pay-per-view and other customer services.

Fiber optic transmitters, cable, and optical receivers will be used to transport the signals from the origination site, to at least one receiving location, or "node," in each community. There will be an average of 500 homes served from each node.

After each node is installed, the number of active electronics, or amplifiers, will be reduced to the minimum required to reach the limits of the community, while still maintaining measurable picture quality better than current FCC requirements. "Standby" power supplies will automatically provide battery power to the coaxial system for several hours in the event of a commercial power interruption. The batteries will be automatically recharged after power is restored.

Customers will have the option of an "addressable" set-top terminal to access programming carried on the network. Through the set-top terminal the customer can purchase special programming, such as "pay-per-view."

Fiber Optics and Coaxial Plant in the Network

The optical transmission system is the backbone of the new network. At the origination site, all programming to be carried on the system will be converted to optical signals, and transmitted out into the system by a network of fiber optic cables.

The optical network will provide 6 individual fibers to each node location. Each node will serve an average of 500 homes via coaxial cable.

The coaxial portion of the plant will begin at the node itself, where signals will be distributed over a short coax network, consisting of network amplifiers. The amplifiers are

designed to accommodate return transmission capability, surge protection, and remote monitoring capability.

The Upgrade Process

The first step will be to install the fiber optic network alongside the existing coaxial system. In areas where the cables are already carried on utility poles, the new fiber will be attached to the existing cables. In areas where existing cables are underground, additional construction will be required to install the new fiber optic cables. Any new coaxial cable required by the network design, in the path of the fiber optic cable, will be installed at the same time.

When testing of the optical network is complete, then the second phase, upgrading of the coaxial plant, will begin.

When the coaxial plant is upgraded each existing amplifier and distribution device will be removed, and replaced with a new, 750 MHz device. The new equipment will be activated and any customers served from that equipment will be switched to the new equipment. This process begins at the node, branching out through each leg of the coaxial plant. It is this portion of the upgrade that causes several brief interruptions in service. As the upgrade crews move further out into the coaxial system fewer and fewer customers will experience interruptions in service. When the upgrade of a node is finally complete all customers served from that node, are now receiving service, from the new network.

After the primary upgrade of each node is complete, installation upgrade crews will sweep through the same area, inspecting each of the service lines that connect customers' homes to the distribution system. Connections will be checked, updated splitting equipment will be installed, if necessary, and in some cases, the entire line will be replaced. At this point the upgrade of that node will be complete, and work will move on to the next node area.



**Planning Report
Wayzata City Council
July 7, 2015**

Project Name: Frenchwood Third Addition
File Number: PR 2015-5
Applicant/Owner: Zev and Kristi Oman
Address of Request: 250 Bushaway Road
Property ID #s: 05-117-22-34-0018
Prepared by: Bryan Gadow, Director of Planning and Building
Planning Commission Review: June 1, 2015
City Council Review: July 7, 2015
"120 Day" Deadline: July 29, 2015

PROJECT SUMMARY

Section 1. Development Application

- 1.1. General. The applicant and property owners, Zev and Kristi Oman (collectively, the "Applicant") have submitted a Development Application (the "Application") requesting concurrent preliminary and final plat subdivision approval (the "Subdivision" or the "Preliminary/Final Plat"), a variance from the Subdivision Ordinance for public street frontage for proposed Lot 3 (the "Frontage Variance"), and a variance from the Subdivision Ordinance for lot area under two acres (the "Lot Area Variance") for a three (3) lot subdivision (the "Project") at 250 Bushaway Road (the "Property"). Access to the Project would be through an existing private easement driveway that provides access to multiple parcels off of Bushaway Road. The existing residence on Lot 1 would remain. Building plans for the new structures on Lots 2 and 3 are not available at this time, so any approval recommendation should include a condition requiring the future owners of Lots 2 and 3 to provide building plans for review by the Planning Commission and City Council, and obtain Council approval, prior to building permit submittal.

Along with the Development Application, the following plans are included with the Application and attached to this Report as Attachment A:

- Narrative Letter
- Certificate of Survey and Preliminary Plat
- Final Plat
- Grading and Utility Plan

- Significant Tree Inventory Plan

1.2 Application Requests.

As part of the submitted Application, the Applicant is requesting approval of the following items:

- A. Concurrent Preliminary and Final Plat Subdivision to create three (3) lots (Section 805)
- B. Variances from Subdivision Ordinance to allow use of existing private driveway to serve Lot 3 (collectively, the "Frontage Variance"):
 - 1. Use of Private Roadways (Section 805.27.K)
 - 2. Lot Frontage on a Public Street (Section 805.26.E)
 - 3. Street Width Less Than Twenty-Six (26) feet (Section 805.29.A)
 - 4. Construction of Roadways Without Curbs and Gutters (Section 805.29.L)
- C. Variance from Subdivision Ordinance to allow for two (2) lots that do not conform with Comprehensive Plan guidance of Two (2) acre minimum in the Bushaway Conservation District (Section 805.14.E.1) (the "Lot Area Variance")

1.3 Project Location.

The proposed Subdivision would be on property located east of Bushaway Road/ CR 101.

Map 1: Project Location.



The property identification numbers and owners for the Property involved in the proposed Application is as follows:

250 Bushaway Road	05-117-22-34-0018	Zev and Kristi Oman
-------------------	-------------------	---------------------

1.4 Area Land Uses.

Land uses along Bushaway Road are single family residential with larger residential estates flanking the east side and R-2A residential on the west. The following table shows lot sizes of lots on the east side of Bushaway Road.

Address	Lot Size (acres)	Square Feet (SF)
200 Bushaway Road	5.1	223,993
218 Bushaway Road	1.7	72,779
240 Bushaway Road	2.32	101,068
250 Bushaway Road	4.78	208,265
270 Bushaway Road	3.29	143,116
100 Bushaway Road	5.61	244,245
258 Bushaway Road	2	87,273
260 Bushaway Road	2.15	93,757
262 Bushaway Road	1.88	81,779
264 Bushaway Road	2	87,331
266 Bushaway Road	2.03	88,333
268 Bushaway Road	1.83	79,829
310 Bushaway Road	1.91	83,602
314 Bushaway Road	1.84	80,394
318 Bushaway Road	1.94	84,912
322 Bushaway Road	2.18	94,832
324 Bushaway Road	1.99	87,006

1.5 Property Background.

The landscape features include upland deciduous trees, mainly maple, basswood and oak. A tree inventory identifies tree type and size for the proposed Lots 2 and 3 on the preliminary plat. A small wetland area is located in the northwest corner of the property on the proposed lot 1.

The existing home sits atop a knoll on the northeast corner of the property. Topography is steep, sloping to the west and south from the home site. Proposed Lots 2 and 3 slope to the south.

Access to the property is via a private easement over the neighboring property to which the City is not a party.

Bushaway Road is a Hennepin County (101) controlled roadway. Any new access points to the roadway would be controlled by a permit authorized by the County.

1.6 Previously Subdivision Proposal

The Applicant previously submitted an application for a preliminary plat for a two (2) lot subdivision in 2008, which the Planning Commission recommended approval 4-2 with conditions. The Application was withdrawn before City Council action in 2009.

1.7 Public Hearing Notice.

Zoning Ordinance Section 805.14 requires the Planning Commission to hold a public hearing on the Subdivision Application. The Notice of Public Hearing was published in the *Lakeshore Weekly* on May 19, 2015. A copy of the Notice of Public Hearing was also mailed to all property owners located within 350 feet of the subject Property on May 22, 2015.

1.8 Planning Commission Meeting Summary.

The Planning Commission reviewed the Application and held a Public Hearing on June 1, 2015. After conclusion of the Public Hearing, the Planning Commission voted six (6) in favor and zero (0) opposed to direct staff to prepare a draft *Planning Commission Report and Recommendation* for denial of the Application for review at the next meeting. On June 15, 2015, the Planning Commission reviewed the draft *Planning Commission Report and Recommendation* for denial of the Application, and voted six (6) in favor and zero (0) opposed to adopt the *Report*. A copy of the June 1, 2015 and June 15, 2015 Planning Commission meeting minutes are included as Attachments D and E. A copy of the *Planning Commission Report and Recommendation* is included as Attachment F. A draft Resolution based upon the *Planning Commission Report and Recommendation* is included as Attachment G.

Section 2. Analysis of Application

2.1 Lot Arrangement.

The Project would consist of three (3) parcels, together totaling 4.78 acres. The proposed lot sizes would be 123,122 SF (Lot 1), 40,066 SF (Lot 2), and 45,054 SF (Lot 3). Lots 2 and 3 would require approval of a variance from the Subdivision Ordinance to be less than the two (2) acre guidance for the Bushaway Conservation District in the City's Comprehensive Plan.

Table 1: Proposed Lot Sizes

Lot	Lot Size (SF)	Acre(s)
1	123,122	2.82
2	40,066	0.92
3	45,054	1.03

2.2 Housing Unit Density.

The Subdivision consists of 3 single-family homes on a 4.78 acre site. This yields a total project density of 1 dwelling unit per 1.59 acres, which would not meet the two (2) acre minimum density requirements of the Bushaway Conservation District guidance in the Comprehensive Plan. The Subdivision request would require approval of a variance from the Subdivision Ordinance requirement to confirm with Comprehensive Plan guidance.

2.3 Comprehensive Plan Guidance.

The Property is located within the Bushaway Conservation District land use category in the City's Comprehensive Plan. The Bushaway Conservation District land use category has the following description:

The properties east of Hwy 101 in the Bushaway neighborhood are generally larger lots that contain important natural resources, such as mature tree

coverage, wetlands, and steep slopes. Lot sizes should be a two (2) acre minimum. However, the City may on an individual case basis grant a variance to the lot area requirement in order to preserve trees, steep slopes, and/or wetlands. A special overlay district may be appropriate for this area to address the City's desire to preserve important natural resources.

As the proposed lot sizes for Lots 2 and 3 are less than two (2) acres, the proposed Subdivision would require City Council approval of a variance to allow less than two (2) acre lot sizes.

2.4 Zoning.

The Property is located in the R-1, Low Density Single Family District. The R-1 District prescribes minimum design criteria for the creation of lots and platting of land, in addition to Comprehensive Plan land use requirements for the Bushaway Conservation District noted above. The following minimum standards for the R-1 District apply to this Preliminary/Final Plat:

Table 4: R-1 Zoning District Requirements

R-1 District	Standard
Minimum Lot Area	40,000 square feet
Minimum Lot Width	150 feet
Minimum Lot Depth	150 feet
Front Yard Setback (min.)	45 feet
Side Yard Setback (min.)	20 feet
Rear Yard Setback (min.)	50 feet
Lot Coverage	15%
Impervious Surface	25%

As shown on the submitted Plat, the proposed division would result in two (2) buildable parcels that would meet minimum standards of the R-1 District and therefore would be conforming lots.

Table 5: Proposed Development Plan

	R-1 Requirements	Lot 1	Lot 2	Lot 3	Notes
Lot Area	40,000 SF, but Bushaway Conservation District requirement is two (2) acres.	123,122 SF	40,066 SF	45,054 SF	Lots 2 and 3 do not conform with Comprehensive Plan guidance. Requires approval of a Variance.
Lot Width (Public Street Frontage)	150 ft	164 ft	150 ft	304 ft, but not on a public street	Lot 3 requires approval of a Variance
Lot Depth	150 ft	567 ft	270 ft	150 ft	Conforms to Code
Front Yard	45 ft	250 ft	64 ft	50 ft	Conforms to

Setback					Code
Side Yard Setback	20 ft	26 ft and 73.7 ft	30 ft and 44 ft	48 ft and 150 ft	Conforms to Code
Rear Yard Setback	50 ft	93 ft	90 ft	54 ft	Conforms to Code
Potential Lot Coverage	15%	5.4% (6,627 SF)	8.0% (3,535 SF)	8.0% (3,600 SF)	Conforms to Code
Proposed Hardcover	25%	12.3% (15,128 SF)	15.3% (6,135 SF)	11.5%	Conforms to Code

Building plans for Lots 2 and 3 have not been provided at this time. Thus, the Planning Commission should consider recommending a condition of any approval be that any future owners of these Lots provide building plans for review by the Planning Commission and City Council prior to applying for a building permit. The Applicant has provided example building pads to highlight potential locations for future residential structures. All residential structures would need to conform to applicable setback, lot coverage, and hardcover requirements.

2.5 Access to Project.

The Project proposes to utilize the location of the existing private easement road to access the Property. This private easement road serves multiple properties within the eastern portion of Bushaway Road. As noted above, Lot 3 would not have direct public street frontage, and would require approval of a variance from the Subdivision Ordinance.

2.6 Tree Inventory.

The Application materials include a tree inventory of the Property, which shows a total of 349 significant trees on the property having a minimum diameter of 6 inches. The property includes a wide variety of species: Maple, Basswood, Oak, Ash, and Spruce.

The amount of trees proposed to be removed for the Project is:

Portion of Site	Number of Trees Proposed for Removal
Lot 1	0
Lot 2	23
Lot 3	32
Total	55 trees (out of 349) or 15.8

The amount of trees to be removed for the proposed subdivision is 55 trees, or 15.8% of the site.

2.7 Traffic.

Based on data from the Institute of Transportation Engineers (ITE) *Trip Generation, Ninth Edition*, a single family detached housing unit has approximately 9.5 trips per day. For a three lot single family development, the average daily trips would be approximately twenty nine (29) trips.

Section 3. Applicable Code Provisions for Review

3.1 Approval of Subdivisions and New Plats

Section 805.14(e) provides criteria for the Planning Commission to evaluate when reviewing a Preliminary Plat. In this review, the Planning Commission should determine if the proposed subdivision would have an adverse impact on the site or surrounding area. The following are the factors from this section for consideration. Included are Staff's comments on each of the factors.

- A. The proposed subdivision or lot combination shall be consistent with the Wayzata Comprehensive Plan.

The Property is guided for Bushaway Conservation District land use category within the Comprehensive Plan, which has a two acre minimum, unless a variance is granted by the City Council. Proposed Lots 2 and 3 would not meet the two acre minimum, at 0.92 acres and 1.03 acres, respectively. The Subdivision would require approval of a variance from the Subdivision Ordinance in order to proceed.

- B. Building pads that result from a subdivision or lot combination shall preserve sensitive areas such as lakes, streams, wetlands, wildlife habitat, trees and vegetation, scenic points, historical locations, or similar community assets.

The Applicant's submittal materials show that approximately fifty five (55) trees will need to be removed as a result of the Project. The Planning Commission and City Council should evaluate the impact of the amount of tree loss and preservation proposed as part of the Project.

- C. Building pads that result from subdivision or lot combination shall be selected and located with respect to natural topography to minimize filing or grading.

The proposed building pads for Lots 2 and 3 are located on an area for slope of twelve percent (12%) or greater. A grading plan was submitted as part of the Application and will need final approval by the City Engineer prior to any construction work so that land disruption is minimized.

- D. Existing stands of significant trees shall be retained where possible. Building pads that result from a subdivision or lot combination shall be sensitively integrated into existing trees.

The Applicant's submittal materials show that approximately fifty five (55) trees will need to be removed as a result of the Project. The Planning Commission and City Council should evaluate the impact of the amount of tree loss and preservation proposed as part of the Project.

- E. The creation of a lot or lots shall not adversely impact the scale, pattern or character of the City, its neighborhoods, or its commercial areas.

The proposed Lots 2 and 3 would be less than the size of other lots in the immediate area. The Subdivision Application would require approval of a variance from the Subdivision Ordinance to allow lot sizes less than two acres. Lot 1 would meet and exceed the two acre minimum.

- F. The design of a lot, the building pad, and the site layout shall respond to and be reflective of the surrounding lots and neighborhood character.

The proposed Lots 2 and 3 would be less than the size of other lots in the immediate area. The Subdivision Application would require approval of a variance from the Subdivision Ordinance to allow lot sizes less than two acres. Lot 1 would meet and exceed the two acre minimum.

- G. The lot size that results from a subdivision or lot combination shall not be dissimilar from adjacent lots or lots found in the surrounding neighborhood or commercial area.

The proposed Lots 2 and 3 would be less than the size of other lots in the immediate area. The Subdivision Application would require approval of a variance from the Subdivision Ordinance to allow lot sizes less than two acres. Lot 1 would meet and exceed the two acre minimum.

- H. The architectural appearance, scale, mass, construction materials, proportion and scale of roof line and functional plan of a building proposed on a lot to be divided or combined shall be similar to the characteristics and quality of existing development in the City, a neighborhood or commercial area.

Cannot comment at this time. The Applicant does not have building elevations or plans available for the proposed three lots at this time. As a condition of any approval this Application, the Planning Commission and City Council should consider requiring that the Applicant and/or future homeowner to submit plans for review and approval by the Planning Commission and the City Council depicting architectural appearance, scale, mass, construction materials, proportion and scale of roof line and functional plan of the buildings proposed to demonstrate similarity to the characteristics and quality of the existing homes in the neighborhood as required under Section 805.14.e.8 and 805.14.e.9.

- I. The design, scale and massing of buildings proposed on a subdivided or combined lot shall be subject to the architectural guidelines and criteria for the Downtown Architectural District, Commercial and Institutional Architectural Districts, and Residential Architectural Districts and the Design Review Board/City Council review process outline in Section 9 of the Wayzata Zoning Ordinance.

Not applicable, as the City does not have single family residential design standards.

- J. The proposed lot layout and building pads shall conform with all performance standards contained herein.

As noted above, due to the existing layout of the lot and the Applicant's proposal to utilize the existing private easement road to access the Property, the Project would need approval of a variance from the Subdivision Ordinance for public street frontage and use of a private easement road for proposed Lot 3.

- K. The proposed subdivision or lot combination shall not tend to or actually depreciate the values of neighboring properties in the area in which the subdivision or lot combination is proposed.

The proposed Lots 2 and 3 would be less than the size of other lots in the immediate area. The Subdivision Application would require approval of a variance from the Subdivision Ordinance to allow lot sizes less than two acres. Lot 1 would meet and exceed the two acre minimum.

- L. The proposed subdivision or lot combination shall be accommodated with existing public services, primarily related to transportation and utility systems, and will not overburden the City's service capacity.

The Project has access to City sanitary sewer and water services through a connection to Bushaway Road, and would not over-burden these systems.

- 3.2 Concurrent Preliminary/Final Plat. Section 805.15 of the Subdivision Ordinance allows the City to review the preliminary and final plat simultaneously. The final plat shall incorporate all changes, modifications, and revisions required by the City. Otherwise, it shall conform to the approved preliminary plat.

- 3.3 Variance Standards from Subdivision Ordinance. As noted above, the Applicant is requesting the following variances from the Subdivision Ordinance to allow for lot sizes less than two (2) acres for Lots 2 and 3, and the use of the existing private easement road to serve as access to the Property:

- A. Variance from Subdivision Ordinance to conform with Comprehensive Plan guidance of Two (2) acre minimum in the Bushaway Conservation District (Section 805.14.E.1)
- B. Use of Private Roadways (Section 805.27.k)
- C. Lot Frontage on a Public Street (Section 805.26.E)
- D. Street Width Less Than Twenty Six (26) feet (Section 805.29.a)
- E. Construction of Roadways Without Curbs and Gutters (Section 805.29.I)

Section 805.60 allows the City Council to approve variances from the minimum standards of the Subdivision Ordinance, when, in its opinion, undue hardship may result from strict compliance. In approving any variance, the City Council shall prescribe any conditions that it deems necessary to or desirable for the public interest. In making its approval, the City Council shall take into account the nature of the proposed use of land and the existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision and the probable effect of the proposed subdivision upon traffic conditions in the vicinity. A variance shall only be approved when the City Council finds:

- (1) That there are special circumstances or highly unique conditions affecting the property such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of his land.
- (2) That the granting of the variance will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which property is situated.

- (3) That the variance is to correct inequities resulting from an extreme physical hardship such as topography.
 - (4) Hardship relating to economic difficulties shall not be considered for the purpose of granting a variance.
 - (5) That the hardship is not a result of an action or actions by the owner, applicant, developer or any agent thereof.
- 3.4 Parkland Dedication Fee. Section 805.37 of the Subdivision Ordinance requires a parkland dedication of land or fee in lieu for new single family lots at the time of recording of the Final Plat. As the proposed Subdivision creates two (2) new lots, the Applicant would be required to dedicate land or pay a fee in lieu for the two (2) new lots.
- 3.5 Premature Subdivision. The Subdivision Ordinance requires the City Council to deny any preliminary plat of a proposed subdivision deemed premature for development. Section 805.16. The burden is on the applicant to show that the proposed subdivision is not premature. Section 805.18. Under Section 805.17 of the Subdivision Ordinance, a subdivision may be deemed premature should any of the conditions listed in Section 805.17 exist, including inadequate drainage, inadequate water supply, inadequate roads, inadequate waste disposal systems, and inconsistency with the Comprehensive Plan, in ability to provide public improvements, and MEQB policies.

Section 4. Staff Input.

City Staff has reviewed the proposed Project. Comments are as follows.

4.1 City Planner

- As the Application does not include architectural plans for each of the new single family residences that would be built on the lots, the Applicant should be aware that the Planning Commission and City Council are likely to place a condition on any approval of the proposed Subdivision, such that any future owners of the lots would be required to submit the proposed building plans and landscaping plans for review by the Planning Commission and approval by City Council prior to any building permits being issued for the Property.

4.2 Fire Marshal

- Lots 1 & 3 of the proposed addition are more than 150 ft from a public road (Bushaway), therefore I will require that the fire access road be widened to 20 ft to within 150 ft of the Lot 3 building as per Minnesota Fire State Code (MSFC) Section 503.1.1.
- Since Lots 1 & 3 of this addition are more than 400 ft from a fire hydrant on a public access road (Bushaway), a fire hydrant shall be added as per Section 508.5.1 of the MSFC. Location to be determined by the Wayzata Fire Marshal.

Section 5. Action Steps.

After considering the items outlined in this Report, the City Council should pursue one of the following actions:

1. Adopt the draft denial Resolution No. 27-2015 included as Attachment G of this Staff Report.
2. If the Council wishes to significantly modify the draft denial Resolution, direct staff to prepare a revised denial Resolution for review and adoption at the next Council meeting.
3. If the Council wishes to approve the Application, direct staff to prepare a new approval Resolution for review and adoption at the next Council meeting, based upon the Council's discussion at this meeting, including identification of factual findings to support approval of the Application.

Attachments:

- Attachment A: Applicant Submittals:
 - o Project Narrative
 - o Certificate of Survey and Preliminary Plat
 - o Proposed Grading and Utility Plan
 - o Tree Inventory Plan
- Attachment B: Received Public Comment
- Attachment C: Letter from Wayzata Fire Marshal
- Attachment D: Planning Commission Meeting Minutes – June 1, 2015
- Attachment E: Planning Commission Meeting Minutes – June 15, 2015
- Attachment F: Planning Commission Report and Recommendation
- Attachment G: Draft Resolution 27-2015

Attachment A

5/8/2015

To: Wayzata City Council

From: Zev and Kristi Oman
250 Bushaway Road
Wayzata, MN 55391

Re: Proposed Subdivision- VARIANCE REQUEST

We purchased our home at 250 Bushaway Road, Wayzata in April 2003. At that time the surrounding properties all contained large acreage and our property, which has 4.75 acres was one of the smaller parcels. Now, 12 years later all of our surrounding properties have been subdivided and we now feel like we live in a urban development. Our property used to have a private estate like feel to it, now it does not fit in with the neighboring homes.

To be consistent with the neighboring properties we are looking to subdivide into 3 lots. Because of the topography and access, our home would remain as the largest parcel and the two other lots are just shy of the 80,000sf minimum. It doesn't make sense to do a single lot split because the new lot/house would look out of place standing alone, and would not esthetically conform with the surrounding homes.

Also I would like point out some issues/mistakes made with neighboring properties which have negatively effected our property. In 1999 when 240 Bushaway Road was subdivided the city eliminated access to our lower level garages making it impossible to access them. Two years ago city allowed our neighbor at 270 Bushaway Road to install a pool at his property, even though the subdivision bilaws do not allow it, the pool was installed on the side of this home, not the back yard, so now every time I walk out my front door I see a swimming pool and the serene, quiet atmosphere is gone.

The Lecy Bros. development at 262 Bushaway Road contains two lots that do not conform with the 80,000sf lot minimum, our proposed two lots are similar in size with these lot sizes.

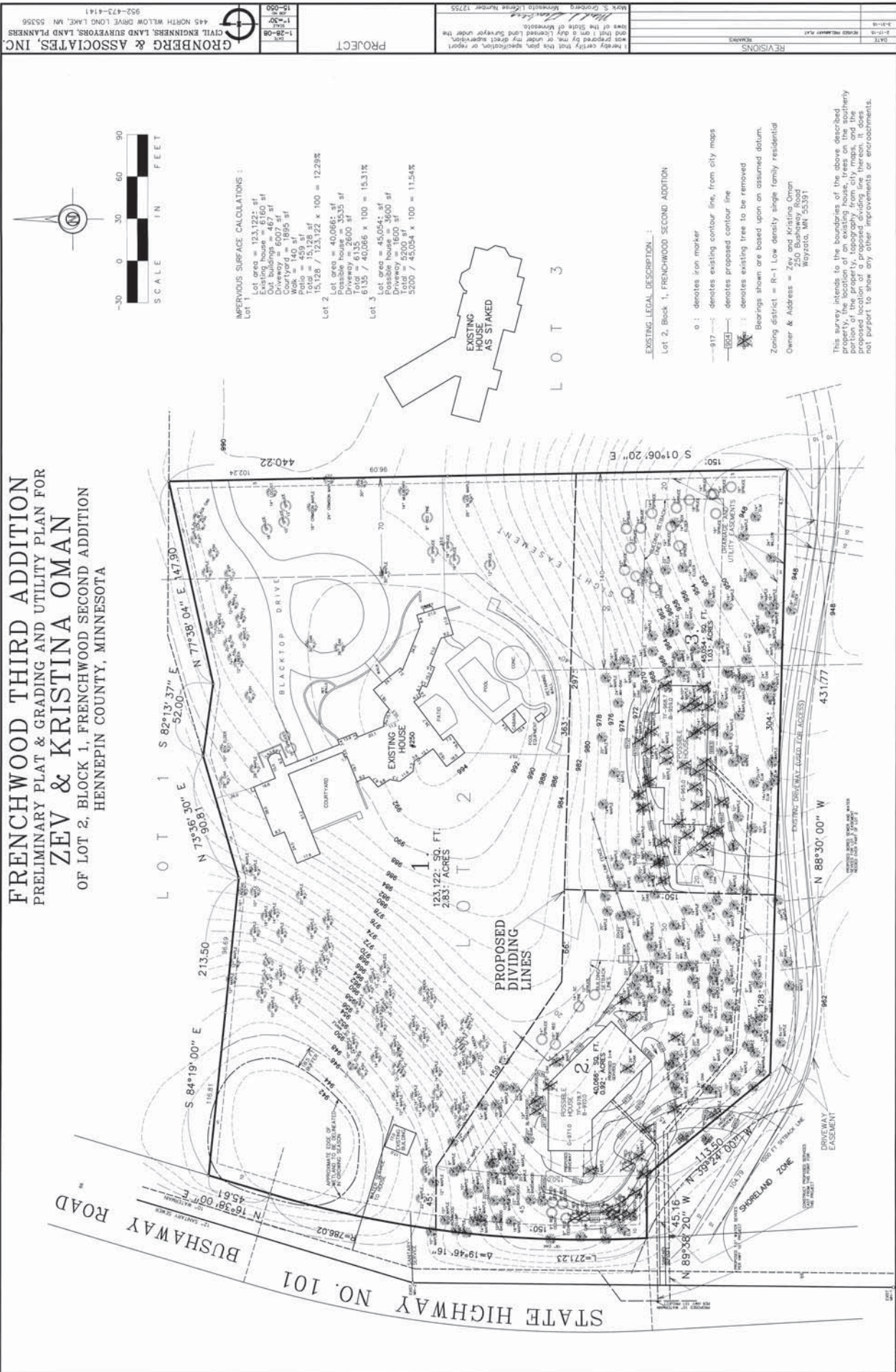
Lastly, I would like to point out that selling these proposed two additional lots would help me recoup some of the economic loss I have sustained; which was due to no fault of ours.

A handwritten signature in black ink, appearing to read 'K Oman', with a long horizontal flourish extending to the right.

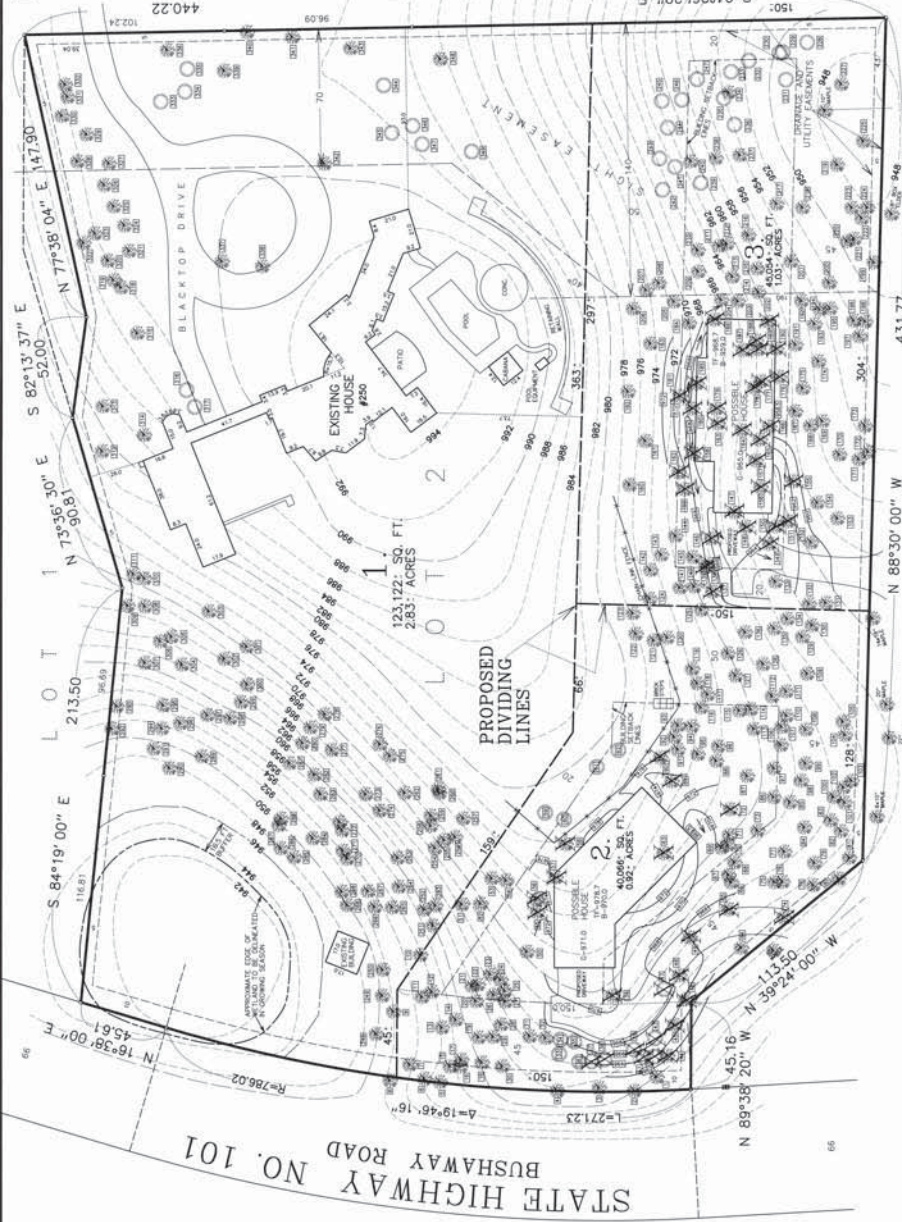
Attachment A



FRENCHWOOD THIRD ADDITION PRELIMINARY PLAT & GRADING AND UTILITY PLAN FOR ZEV & KRISTINA OMAN OF LOT 2, BLOCK 1, FRENCHWOOD SECOND ADDITION HENNEPIN COUNTY, MINNESOTA



FRENCHWOOD THIRD ADDITION
TREE PLAN FOR
ZEV & KRISTINA OMAN
OF LOT 2, BLOCK 1, FRENCHWOOD SECOND ADDITION
HENNEPIN COUNTY, MINNESOTA



EXISTING LEGAL DESCRIPTION:
Lot 2, Block 1, Frenchwood Second Addition

- o : denotes iron marker
 - denotes existing contour line, from city maps
 - - - denotes proposed contour line
 - X : denotes existing tree to be removed
- Bearings shown are based upon an assumed datum.
Zoning district = R-1 Low density single family residential
Owner & Address = Zev and Kristina Oman
250 Bushaway Road
Wayzata, MN 55391

This survey intends to the boundaries of the above described property, the location of an existing house, trees, topography, and the proposed location of the proposed dividing line. It is not intended to show any other improvements or encroachments.

Total copper inches = 5119
Total inches proposed to be removed = 667

REVISIONS	DATE	REVISIONS
1	10-10-10	1
2	10-10-10	2
3	10-10-10	3
4	10-10-10	4
5	10-10-10	5
6	10-10-10	6
7	10-10-10	7
8	10-10-10	8
9	10-10-10	9
10	10-10-10	10
11	10-10-10	11
12	10-10-10	12
13	10-10-10	13
14	10-10-10	14
15	10-10-10	15
16	10-10-10	16
17	10-10-10	17
18	10-10-10	18
19	10-10-10	19
20	10-10-10	20
21	10-10-10	21
22	10-10-10	22
23	10-10-10	23
24	10-10-10	24
25	10-10-10	25
26	10-10-10	26
27	10-10-10	27
28	10-10-10	28
29	10-10-10	29
30	10-10-10	30
31	10-10-10	31
32	10-10-10	32
33	10-10-10	33
34	10-10-10	34
35	10-10-10	35
36	10-10-10	36
37	10-10-10	37
38	10-10-10	38
39	10-10-10	39
40	10-10-10	40
41	10-10-10	41
42	10-10-10	42
43	10-10-10	43
44	10-10-10	44
45	10-10-10	45
46	10-10-10	46
47	10-10-10	47
48	10-10-10	48
49	10-10-10	49
50	10-10-10	50
51	10-10-10	51
52	10-10-10	52
53	10-10-10	53
54	10-10-10	54
55	10-10-10	55
56	10-10-10	56
57	10-10-10	57
58	10-10-10	58
59	10-10-10	59
60	10-10-10	60
61	10-10-10	61
62	10-10-10	62
63	10-10-10	63
64	10-10-10	64
65	10-10-10	65
66	10-10-10	66
67	10-10-10	67
68	10-10-10	68
69	10-10-10	69
70	10-10-10	70
71	10-10-10	71
72	10-10-10	72
73	10-10-10	73
74	10-10-10	74
75	10-10-10	75
76	10-10-10	76
77	10-10-10	77
78	10-10-10	78
79	10-10-10	79
80	10-10-10	80
81	10-10-10	81
82	10-10-10	82
83	10-10-10	83
84	10-10-10	84
85	10-10-10	85
86	10-10-10	86
87	10-10-10	87
88	10-10-10	88
89	10-10-10	89
90	10-10-10	90
91	10-10-10	91
92	10-10-10	92
93	10-10-10	93
94	10-10-10	94
95	10-10-10	95
96	10-10-10	96
97	10-10-10	97
98	10-10-10	98
99	10-10-10	99
100	10-10-10	100

Attachment B

Bryan Gadow

From: Robert Keith <rkeith@hunter-keith.com>
Sent: Wednesday, May 20, 2015 1:41 PM
To: Bryan Gadow
Subject: The 250 Bushaway Road variance

Hello Bryan:

My wife, Michele, and I reside at 100 Bushaway Road. We were recently made aware of the request for a variance by the residents at 250 Bushaway Road. We desire to make you, the Planning Commission and the City Council aware of our hope that the request to reduce the lot size below two acres not be approved. We feel a precedent for the two acre size has been established on our area of Bushaway Road by the Lecy Brothers and Stonecrest developments. It is our belief that allowing more dense development would negatively impact our area both aesthetically and financially.

Thank you and the various committees for considering this input.

Robert Keith

WAYZATA PLANNING DEPARTMENT

Lecy Bros. Homes developed Enchanted Woods, the six-home subdivision east of the proposed Oman subdivision. The six homes in Enchanted Wood, the Oman's and the home at 270 Bushaway all use the private road as access. As part of the developer's agreement, Lecy Bros. Homes widened and resurfaced the entire private road from Bushaway to the Enchanted Woods development.

Lecy Bros. Homes has sold or is under contract for five lots. Roy and Ruth Lecy individually own the sixth lot, Lot 2, Block 1, Enchanted Woods. Ruth and Roy Lecy do not represent the other five owners in Enchanted Woods. These are our questions, concerns and observations.

- 1) Where will construction trucks and heavy earth moving equipment turn around – The Enchanted Woods Homeowner's Association will not allow their trucks to drive through our development and turn around in our private cul-de-sac causing damage.
- 2) Where will construction workers park?
- 3) Road Damage During Construction – The private road, in our development, has been damaged by home construction – Lecy will repair the damage. There will be construction damage to the private road when homes are built on the Oman's proposed lots. How will the applicant or a new owner(s) be held accountable for damages to the private road?
- 4) How are New Lot(s) Owners going to pay their Fair Share for snow plowing; future upgrades and maintenance of the private road?
- 5) Each Enchanted Woods lot has a tree conservation area and each lot has a rain garden.
- 6) Emergency Vehicles - The Enchanted Woods development was required to build a 20' emergency vehicle only access road and a 90' cul-de-sac turnaround for firetrucks. Currently the Oman's home and the home at 270 Bushaway have only 16' access for emergency vehicles and there does not appear to be a turnaround area for firetrucks. With limited access, can the private road support emergency services for one or two additional homes?
- 7) 2-Acre lots were an absolute condition for Enchanted Woods. What is justification for 1-acre lots?

Attachment B

- 8) Lecy Bros. were sued by the Oman's claiming adding six additional homes would overburden the easement (private road). Lecy Bros. had to hire a traffic engineer and prove to a judge that six additional homes would not overburden the easement. The Oman's need to demonstrate that adding 1 or 2 additional homes and increasing traffic by up to 20% will not overburden the easement. The City Council would not approve Lecy Bros. project until the overburdening issue was resolved.
- 9) Approving one lot with access from Bushaway or very close to Bushaway would resolve several issues.

Roy and Ruth Lecy



Attachment C

WAYZATA FIRE DEPARTMENT

600 RICE STREET
WAYZATA, MN 55391
(952) 404-5337
FAX (952) 404-5336
fire@wayzata.org

5/19/2015

To; Brian Gadow
City of Wayzata Planner

Re; Proposed Frenchwood addition
Review,
Bushaway/Hwy101

Brian,

The proposed Frenchwood Third Addition is approved by the Wayzata Fire Department officer's with the following changes as per the Minnesota State Fire Code. (MSFC)

A- Lots 1&3 of the a proposed addition are more than 150 from a public road, (Bushaway) therefore I will require that the fire access road be widened to 20 feet to within 150 feet of the lot 3 building as per MSFC Sectin503.1.1. (Enclosed)

B- Since lot 1&3 of this addition are more than 400 feet from a fire hydrant on a public access road, (Bushaway) a fire hydrant shall be added as per Section 508.5.1 of the MSFC. (enclosed)
Location to be determined by the Wayzata Fire Marshal.

If you have any questions, I can be contacted at 612-490 2307

Sincerely

Bill Meyer,
Fire Marshal,
City of Wayzata

Cc; Kevin Klapprich, Wayzata Fire Chief

CHAPTER 5

FIRE SERVICE FEATURES

SECTION 501 GENERAL

501.1 Scope. Fire service features for buildings, structures and premises shall comply with this chapter.

501.2 Permits. A permit shall be required as set forth in Sections 105.6 and 105.7.

501.3 Construction documents. Construction documents for proposed fire apparatus access, location of fire lanes and construction documents and hydraulic calculations for fire hydrant systems shall be submitted to the fire department for review and approval prior to construction.

501.4 Timing of installation. When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction except when approved alternative methods of protection are provided. Temporary street signs shall be installed at each street intersection when construction of new roadways allows passage by vehicles in accordance with Section 505.2.

SECTION 502 DEFINITIONS

502.1 Definitions. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

FIRE APPARATUS ACCESS ROAD. A road that provides fire apparatus access from a fire station to a facility, building or portion thereof. This is a general term inclusive of all other terms such as fire lane, public street, private street, parking lot lane and access roadway.

FIRE COMMAND CENTER. The principal attended or unattended location where the status of the detection, alarm communications and control systems is displayed, and from which the system(s) can be manually controlled.

FIRE DEPARTMENT MASTER KEY. A limited issue key of special or controlled design to be carried by fire department officials in command which will open key boxes on specified properties.

FIRE LANE. A road or other passageway developed to allow the passage of fire apparatus. A fire lane is not necessarily intended for vehicular traffic other than fire apparatus.

■ **KEY BOX.** A secure device with a lock operable only by a fire department master key, and containing building entry keys and other keys that may be required for access in an emergency.

SECTION 503 FIRE APPARATUS ACCESS ROADS

503.1 Where required. Fire apparatus access roads shall be provided and maintained in accordance with Sections 503.1.1 through 503.1.3.

* **503.1.1 Buildings and facilities.** Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet (45 720 mm) of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility.

Exception: The fire code official is authorized to increase the dimension of 150 feet (45 720 mm) where:

1. The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3.
2. Fire apparatus access roads cannot be installed because of location on property, topography, waterways, nonnegotiable grades or other similar conditions, and an approved alternative means of fire protection is provided.
3. There are not more than two Group R-3 or Group U occupancies.

503.1.2 Additional access. The fire code official is authorized to require more than one fire apparatus access road based on the potential for impairment of a single road by vehicle congestion, condition of terrain, climatic conditions or other factors that could limit access.

503.1.3 High-piled storage. Fire department vehicle access to buildings used for high-piled combustible storage shall comply with the applicable provisions of Chapter 23.

503.2 Specifications. Fire apparatus access roads shall be installed and arranged in accordance with Sections 503.2.1 through 503.2.7.

503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm), except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches (4115 mm).

503.2.2 Authority. The fire code official shall have the authority to require an increase in the minimum access widths where they are inadequate for fire or rescue operations.

503.2.3 Surface. Fire apparatus access roads shall be designed and maintained to support the imposed loads of

506.1.1 Locks. An approved lock shall be installed on gates or similar barriers when required by the fire code official.

506.2 Key box maintenance. The operator of the building shall immediately notify the fire code official and provide the new key when a lock is changed or rekeyed. The key to such lock shall be secured in the key box.

SECTION 507 HAZARDS TO FIRE FIGHTERS

507.1 Trapdoors to be closed. Trapdoors and scuttle covers, other than those that are within a dwelling unit or automatically operated, shall be kept closed at all times except when in use.

507.2 Shaftway markings. Vertical shafts shall be identified as required by this section.

507.2.1 Exterior access to shaftways. Outside openings accessible to the fire department and which open directly on a hoistway or shaftway communicating between two or more floors in a building shall be plainly marked with the word SHAFTWAY in red letters at least 6 inches (152 mm) high on a white background. Such warning signs shall be placed so as to be readily discernible from the outside of the building.

507.2.2 Interior access to shaftways. Door or window openings to a hoistway or shaftway from the interior of the building shall be plainly marked with the word SHAFTWAY in red letters at least 6 inches (152 mm) high on a white background. Such warning signs shall be placed so as to be readily discernible.

Exception: Marking shall not be required on shaftway openings which are readily discernible as openings onto a shaftway by the construction or arrangement.

507.3 Pitfalls. The intentional design or alteration of buildings to disable, injure, maim or kill intruders is prohibited. No person shall install and use firearms, sharp or pointed objects, razor wire, explosives, flammable or combustible liquid containers, or dispensers containing highly toxic, toxic, irritant or other hazardous materials in a manner which may passively or actively disable, injure, maim or kill a fire fighter who forcibly enters a building for the purpose of controlling or extinguishing a fire, rescuing trapped occupants or rendering other emergency assistance.

SECTION 508 FIRE PROTECTION WATER SUPPLIES

508.1 Required water supply. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction.

508.2 Type of water supply. A water supply shall consist of reservoirs, pressure tanks, elevated tanks, water mains or other fixed systems capable of providing the required fire flow.

508.2.1 Private fire service mains. Private fire service mains and appurtenances shall be installed in accordance with NFPA 24.

508.2.2 Water tanks. Water tanks for private fire protection shall be installed in accordance with NFPA 22.

508.3 Fire flow. Fire flow requirements for buildings or portions of buildings and facilities shall be determined by an approved method.

508.4 Water supply test. The fire code official shall be notified prior to the water supply test. Water supply tests shall be witnessed by the fire code official or approved documentation of the test shall be provided to the fire code official prior to final approval of the water supply system.

508.5 Fire hydrant systems. Fire hydrant systems shall comply with Sections 508.5.1 through 508.5.6.

*** 508.5.1 Where required.** Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet (122 m) from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official.

Exceptions:

1. For Group R-3 and Group U occupancies, the distance requirement shall be 600 feet (183 m).
2. For buildings equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, the distance requirement shall be 600 feet (183 m).

508.5.2 Inspection, testing and maintenance. Fire hydrant systems shall be subject to periodic tests as required by the fire code official. Fire hydrant systems shall be maintained in an operative condition at all times and shall be repaired where defective. Additions, repairs, alterations and servicing shall comply with approved standards.

508.5.3 Private fire service mains and water tanks. Private fire service mains and water tanks shall be periodically inspected, tested and maintained in accordance with NFPA 25 at the following intervals:

1. Private fire hydrants (all types): Inspection annually and after each operation; flow test and maintenance annually.
2. Fire service main piping: Inspection of exposed, annually; flow test every 5 years.
3. Fire service main piping strainers: Inspection and maintenance after each use.

508.5.4 Obstruction. Posts, fences, vehicles, growth, trash, storage and other materials or objects shall not be placed or kept near fire hydrants, fire department inlet connections or fire protection system control valves in a manner that would prevent such equipment or fire hydrants from being immediately discernible. The fire department shall not be deterred or hindered from gaining immediate access to fire protection equipment or fire hydrants.

508.5.5 Clear space around hydrants. A 3-foot (914 mm) clear space shall be maintained around the circumference of fire hydrants except as otherwise required or approved.

**WAYZATA PLANNING COMMISSION
MEETING MINUTES
JUNE 1, 2015**

AGENDA ITEM 1. Call to Order, Roll Call and Approval of Minutes.

Vice Chair Iverson called the meeting to order at 7:00 p.m.

Present at roll call were Commissioners: Gonzalez, Ramy, Iverson, Gruber, Young, and Gnos. Absent and excused was: Chair Vanderheyden. Director of Planning and Building Gadow and City Attorney David Schelzel were also present.

Vice Chair Iverson asked for approval of the minutes from the May 4, 2015 meeting.

Commissioner Gruber requested the following changes: on page 3, line 44, change "suqare" to "square". On line 17, page 6, change "architecture" to "architect" and on page 9, line 1, is missing the name of the Commissioner who made the motion.

Commissioner Gonzalez stated she had emailed changes to Mr. Gadow.

City Attorney Schelzel stated he had sent grammatical changes to Mr. Gadow.

Commissioner Gruber made a motion, Seconded by Commissioner Gonzalez, to approve the May 4, 2015 meeting minutes as amended. The motion carried unanimously.

AGENDA ITEM 2. Regular Agenda Public Hearing Items:

a. 250 Bushaway Road – Zev and Kristi Oman

- i. Concurrent Preliminary and Final Plat for Three (3) Lot Subdivision**
- ii. Frontage Variance from Subdivision Ordinance**
- iii. Lot Area Variance from Subdivision Ordinance**

Mr. Gadow stated the property owners have submitted a Development Application requesting concurrent preliminary and final plat subdivision approval, a variance from the Subdivision Ordinance for public street frontage for proposed Lot 3, and a variance from the Subdivision Ordinance for lot area under 2-acres. He reviewed the Staff Report, certificate of survey and preliminary plat, the final plat, the grading and utility plan, and the significant tree inventory plan. He explained the Applicant does not have building elevations or plans available for the proposed three (3) lots at this time. He said that as a condition of any approval of this Application, the Planning Commission should consider requiring that the Applicant and/or future homeowner submit plans for review and approval by the Planning Commission and the City Council depicting appearance, scale, mass, construction materials, proportion and scale of roof line and functional plan of the buildings proposed to demonstrate similarity to the characteristics and quality of the existing homes in the neighborhood. The Fire Marshall had also reviewed the

1 application and Lots 1 and 3 would be more than 150-feet from a public road and would require
2 the fire access road be widened to 20-feet to within 150-feet of the Lot 3 building and a fire
3 hydrant be added.

4
5 Commissioner Gonzalez asked who owned the easement and had rights to this easement.

6
7 Mr. Gadow explained there were many property owners along this stretch that have various
8 rights and the City is not a party to this easement.

9
10 Mr. Peter Benincasa, Executive Real Estate, representing the Applicant, provided background on
11 the property and explained the Applicant would like to develop their property similar to the rest
12 of the neighborhood. He said the Applicant already has easement rights and the proposed lot
13 sizes meet the R1 District requirement, but the City made changes to the size requirements after
14 Mr. and Mrs. Oman purchased the property. The adverse feedback this Application has received
15 would be due to previous developments that had issues. The new development would be on the
16 first lot in the neighborhood so this would not impact traffic or provide heavy construction
17 equipment traffic throughout the neighborhood.

18
19 Commissioner Ramy asked if there would be a substantial amount of excavation to orient the
20 homes or provide back yards.

21
22 Mr. Benincasa stated there are several home designs that would fit into the property that would
23 not require substantial excavating.

24
25 Mr. Gadow stated the City would need more information when final plans are proposed in order
26 to understand the grading impacts.

27
28 Vice Chair Iverson asked Mr. Gadow if Lecy Brothers had requested variances for their
29 development.

30
31 Mr. Gadow explained Lecy Brothers had asked for variances for issues pertaining to the
32 roadway. The original PUD proposed by Lecy Brothers had been approved under the R1A
33 District standards, with an 80,000 square foot lot requirement. They had asked for variances
34 regarding the length of the cul-de-sac and the street width of less than 20-feet without curb and
35 gutter. Mr. Gadow said that the R1A Zoning District is more compatible with the Comp Plan's
36 Bushaway Conservation District.

37
38 Commissioner Ramy asked if any Wetland Conservation Districts had jurisdiction over the
39 wetland on Lot 3.

40
41 Mr. Gadow explained there would be no proposed impacts to wetlands with this Application as
42 submitted.

43
44 Commissioner Young asked for clarification on whether the requirements east of Bushaway
45 Road are different than the requirements on the west side of Bushaway Road.

1 Mr. Gadow stated the east side of Bushaway is part of the Bushaway Conservation District and
2 the lot size requirement for this district is 2-acres in order to recognize the larger lot estates. The
3 west side of Bushaway Road does have smaller lot sizes because that was the historical
4 development pattern at that time.

5
6 Vice Chair Iverson opened the public hearing at 7:24 p.m.
7

8 Mr. Roy Lecy, Lecy Brothers Homes and Remodeling, 15012 Highway 7, Minnetonka, stated he
9 owns one of the lots in the Enchanted Wood Development and was also the Developer for the six
10 (6) lot Enchanted Wood PUD Development. He stated at the time of the Enchanted Woods
11 Development they had tried to get approval for 1-acre lots but had been told only 2-acre lots
12 would be allowed in this area. They had also been required to increase the width of the existing
13 private roadway from 14-feet to 16-feet in some areas and 20-feet in other areas. He explained
14 the Applicant and two (2) other property owners had sued Lecy Brothers for over burdening the
15 easement. He would like to be sure that this Development is held to the same standards that the
16 Enchanted Woods Development had been held to. He asked where the construction vehicles
17 would turn around. As part of the Lecy Brothers development, the road had been newly
18 constructed from Hwy 101 to their development. He asked who would be responsible for
19 repairing the road damage during construction.
20

21 Commissioner Ramy asked how costs of maintenance of the road was divided among benefited
22 properties.
23

24 Mr. Lecy stated the maintenance was divided equally among the six (6) homes in the Enchanted
25 Wood Development, and they ask the Omans and one other homeowner to contribute to the snow
26 plowing. If there are homes added, then he would like to see a legal requirement or document
27 for these homeowners to pay for the maintenance and snow removal on this road.
28

29 Commissioner Gonzalez stated Lecy Brothers had been granted a variance to have a private
30 street in their development as long as it was widened to meet the requirements of the Fire
31 Marshal. She further noted that private streets are not usually allowed under the Subdivision
32 Ordinance.
33

34 Mr. Gadow stated the existing easement is a 20-foot easement and this does not allow for a full
35 build out of a 20-foot wide street. So, Mr. Lecy had been required to put in a secondary 20-foot
36 access road for the Fire Department. The Fire Marshal is recommending the Applicant work to
37 widen the easement to accommodate a 20-foot wide road.
38

39 Commissioner Gonzalez asked if the City had ever required homes to have sprinkler systems if it
40 is difficult for the Fire Department to access them.
41

42 Mr. Gadow stated the City might not be able to require this unless the home is large enough to
43 require a sprinkler system under the State Fire Code. If the roadway could not be widened, then
44 there are alternatives the Applicant could consider but these would need to be worked out with
45 the City Fire Marshal and potentially the State Fire Marshal.
46

1 Mr. Lecy stated the private street had been required. They had requested a public street that
2 came off of Holdrige and went into the Enchanted Wood Development. The City denied this
3 request due to the opposition from the Holdrige neighborhood. He explained the private road
4 had been widened to 16-feet at the recommendation of the Traffic Engineer.

5
6 Mr. Benincasa stated the Fire Marshal does not have a problem with the road width and the
7 Applicant could put in a fire hydrant. The proposed lots would be the first ones as you entered
8 the neighborhood. He explained Mr. Lecy's development should not be affected by the proposed
9 development.

10
11 There being no further comments, Vice Chair Iverson closed the public hearing at 7:40 p.m.

12
13 Commissioner Young stated the Applicant has commented that the Development would be
14 keeping with the character of the neighborhood. He asked if this would be referring to the lots
15 on the west side of Bushaway Road, which are smaller.

16
17 Mr. Benincasa stated this would be referencing the first home as you come into the
18 neighborhood, on the south or right.

19
20 Commissioner Ramy asked why the Applicant was departing from the previously approved two
21 (2) lot subdivision.

22
23 Mr. Benincasa explained the two (2) lot plan had been in 2009, prior to any development being
24 done. This would have conformed to what had been happening at that time.

25
26 Commissioner Gruber asked if any of the lots in the Enchanted Wood Development were non-
27 conforming.

28
29 Mr. Gadow stated the minimum lot size requirement for the R1A District is 80,000-square feet
30 and the Bushaway Conservation District minimum size requirement is 2-acres or about 86,000-
31 square feet. The 80,000-square foot requirement is more consistent with the Comprehensive
32 Plan guidance for this area. The Comprehensive Plan guides this property for 2-acres but the
33 corresponding Zoning is R1A.

34
35 Vice Chair Iverson asked if the Applicant would be held to the proposed lots and building pads if
36 approved.

37
38 Mr. Gadow explained the Applicant would be held to the lot configuration as shown in the final
39 plat if it were approved. This would be submitted to Hennepin County. The building pads could
40 be shifted within the plats but since there are no architectural renderings of the homes available
41 at this time, Staff would recommend a condition on any approval that any future
42 homeowner/buyer would have to have their building plans and pad layout approved by the
43 Planning Commission and City Council.

44
45 Vice Chair Iverson expressed concerns regarding the number of large trees that would be
46 removed with the proposed building pads and the potential for more if other plans are approved

1 in the future. She stated she would also like to know where the construction traffic would go and
2 how this traffic would not impact the trees. She stated she would like to see a tree preservation
3 plan for those trees that are located close to the proposed building pads. This plan would also
4 have to apply to the future owner of the property.

5
6 Commissioner Gruber asked if this would be considered a premature subdivision. She stated the
7 Commission should know what the criteria are and consider these as part of the Application.

8
9 Mr. Gadow stated there are a number of criteria under Section 805.17 of the Subdivision
10 Ordinance that should be reviewed in order to consider a subdivision premature. The burden is
11 on the Applicant to prove the subdivision is not premature.

12
13 Commissioner Gonzalez clarified the private road was on a private easement and this would not
14 involve the City unless there is a nuisance created for the City.

15
16 City Attorney Schelzel stated the City is not a party to the easement and if there are any issues
17 related to overburdening the easement, then the property owners need to work this out. He stated
18 he would have to look at the section of code on nuisances in order to know whether it would
19 apply in any way. He noted that the background information on the private access is important ,
20 however, because access is one of the criteria to be considered by the City under the Subdivision
21 Ordinance.

22
23 Vice Chair Iverson said would like to see a report that clearly lays out the grading impacts prior
24 to approving the subdivision.

25
26 City Attorney Schelzel stated that staff has suggested including a condition on any approval that
27 future homeowners provide building plans for review and approval to the Planning Commission
28 and City Council. The Planning Commission could add an additional condition to this that
29 when the plans are submitted they must include information on grading and building pads that
30 address Section 3.1.B of the Staff Report.

31
32 Commissioner Ramy stated the Applicant has not provided information showing hardship or
33 unique conditions of the property that would allow for a variance on the lot size.

34
35 Commissioner Young agreed with Commissioner Ramy in that the request for grading
36 information was premature because there are other things to consider prior to this. He stated that
37 when he evaluates this Application, this does not keep with the rhythm of the neighborhood, the
38 lots proposed are significantly smaller than what the Comprehensive Plan guides this property
39 for, the amount of tree loss is not clear and at a minimum is significant, and there is nothing
40 provided by the Applicant to show this is not a premature subdivision. He would like to see
41 these items resolved prior to looking at any grading concerns.

42
43 Commissioner Gonzalez stated page 9 of the Staff Report lays out the Variance Standards of the
44 Subdivision Ordinance. The Applicant would have to demonstrate an undue hardship and that
45 there are circumstances unique to the property that would deprive the Applicant of reasonable
46 use of the land. She said that this is not present in the Application. Granting a variance does not

1 correct inequities resulting from an extreme physical hardship such as topography. Any variance
2 that is granted requires the Applicant comply with the Comprehensive Plan and this Application
3 does not. The variance request for frontage is created by the Applicant and should not be
4 approved. She would not justify granting a variance because the owner is looking to maximize
5 their profit and economic considerations alone do not constitute a hardship.
6

7 Commissioner Gnos stated the Applicant's letter refers to a neighbor putting in a pool and
8 removing the serene, quiet atmosphere. He noted that the proposed subdivision would do the
9 same thing.
10

11 Commissioner Gruber asked if the Applicant had to prove to the Planning Commission that this
12 was not a premature subdivision, and whether this should be resolved prior to looking at the
13 variance requests.
14

15 Mr. Gadow stated that this would be one of the criteria to be considered by the Planning
16 Commission.
17

18 Commissioner Gruber made a motion, seconded by Commissioner Gonzalez, to direct Staff to
19 prepare a draft Report and Recommendation, for consideration at the next Planning Commission
20 meeting, recommending denial based on discussions of the Planning Commission, including the
21 variance standards criteria for the Subdivision Ordinance, the preliminary and final plat criteria,
22 and the premature subdivision standards. The motion carried unanimously.
23
24

25 **AGENDA ITEM 3. Other Items:**

26 **a. Review and adoption of Planning Commission Report and Recommendation on 532** 27 **Ferndale Rd W for Shoreland Conditional Use Permit and Variances** 28 29

30 Mr. Gadow reviewed the Report and recommendation of Approval of Shoreland Conditional Use
31 Permit, Front Yard Setback Variance, Impervious Surface Variance, and Tennis Court Variances
32 at 532 Ferndale Road West. He noted that this Application had been reviewed at the previous
33 Planning Commission and staff had been directed to prepare a draft Report and Recommendation
34 recommending approval on a 3-2 vote. The Planning Commission had indicated a condition of
35 approval should be that a landscape plan be provided to the City Council. He reviewed the
36 landscaping plan and the updated Stormwater Management Plan provided by the Applicant.
37

38 Mr. John Daly, Revision LLC, 153 E. Lake Street, Wayzata, representing the Applicant pointed
39 out updates that had been made to the proposed plans: the corners of the proposed tennis court
40 had been "clipped" to address some of the concerns about surface coverage, and the court had
41 been moved 5-feet further from the lake than originally proposed.
42

43 Commissioner Gruber asked if a grass court had been considered.
44

1 City Attorney Schelzel stated vendors would not have any right to stay in their current locations
2 once the lease expires.

3
4 Commissioner Gnos asked what the terms were for the existing leases.

5
6 Mr. Gadow stated they vary and expire between 2018 and 2021. Staff will continue to work on
7 clarifying the points in the Ordinance.

8
9
10 **AGENDA ITEM 3. Other Items:**

11
12 **a. Review and adoption of Planning Commission Report and Recommendation on 250**
13 **Bushaway Road for Subdivision and Variances**

14
15 Mr. Gadow reviewed the draft Report and Recommendation of denial for the subdivision request
16 to create three (3) lots and related concurrent preliminary and final plat, and denial of variances
17 from Subdivision Ordinance to allow use of private roadways, lot frontage on a public street,
18 street width less than 2-feet and construction of roadways without curbs and gutters. The City
19 Council would review this application at their July 7 meeting.

20
21 Commissioner Gonzalez stated the Applicant had stated they were driven by economic
22 considerations to maximize their profit. She asked if it should be included in Section 3.2.A.3.
23 that the variances being requested are being driven to a great extent by economic considerations.

24
25 Mr. Gadow stated these are variances from the Subdivision Ordinance and this has different
26 criteria than variances from the Zoning Ordinances.

27 Commissioner Gonzalez made a motion, Seconded by Commissioner Gnos to recommend
28 approval of the Planning Commission and Recommendation of Denial for 250 Bushaway Road
29 three (3) lot subdivision, concurrent preliminary and final plat, and denial of variances from
30 Subdivision Ordinance to allow use of private roadways, lot frontage on a public street, street
31 width less than 2-feet and construction of roadways without curbs and gutters. The motion
32 carried unanimously.

33
34
35 **b. Selection of Planning Commission Representative to Lake Effect Selection**
36 **Committee**

37
38 Mr. Gadow stated at the May 18 meeting, the City Council and their consultant, Mary deLaittre,
39 would be advancing the Lake Effect Project through a design request for proposals (RFP)
40 process to develop a signature project for construction along the City's waterfront. To assist
41 with the review of the RFP responses and selection of the winning design team, the City Council
42 is creating a Selection Committee composed of design professionals, City Councilmembers, a
43 representative from the Planning Commission, Park and Trails, HPB/Historical Society, and
44 representatives from area governmental jurisdictions such as Hennepin County, Three Rivers
45 Park District, and the Minnehaha Creek Watershed District.



WAYZATA PLANNING COMMISSION

June 15, 2015

**REPORT AND RECOMMENDATION ON APPLICATION FOR CONCURRENT
PRELIMINARY AND FINAL PLAT SUBDIVISION AND RELATED VARIANCES
AT 250 BUSHAWAY ROAD**

SUMMARY OF RECOMMENDATION

1. *Denial of Subdivision request to create 3 lots, and related Concurrent Preliminary and Final Plat*
2. *Denial of Variances from Subdivision Ordinance to allow:*
 - a. *Use of Private Roadways*
 - b. *Lot Frontage on a Public Street*
 - c. *Street Width Less Than 26 feet*
 - d. *Construction of Roadways Without Curbs and Gutters*
3. *Denial of Variance from Subdivision Ordinance to allow for 2 lots smaller than the two acre lot minimum in the Bushaway Conservation District*

REPORT AND RECOMMENDATION

Section 1. BACKGROUND

- 1.1. Project. Zev and Kristi Oman (the “Applicant”) have submitted a development application (the “Application”) requesting approval of a three (3) lot subdivision (the “Project”) and related variances at 250 Bushaway Road (the “Property”).
- 1.2. Application Requests. As part of the Application, the Applicant is requesting approval of the following items:
 - A. Subdivision to create three (3) lots and related Concurrent Preliminary and Final Plat (Section 805) (collectively, the “Proposed Subdivision”)
 - B. Variances from Subdivision Ordinance to allow use of existing private driveway to serve Lot 3 (collectively, the “Roadway Variances”):
 1. Use of Private Roadways (Section 805.27.K)
 2. Lot Frontage on a Public Street (Section 805.26.E)
 3. Street Width Less Than Twenty-Six (26) feet (Section 805.29.A)

Attachment F

4. Construction of Roadways Without Curbs and Gutters (Section 805.29.L)
- C. Variance from Subdivision Ordinance to allow for two (2) lots that do not conform with Comprehensive Plan guidance of two (2) acre lot minimum in the Bushaway Conservation District (Section 805.14.E.1) (the “Lot Area Variance”)

- 1.3 Property. The street address, property identification number and owner of the Property are:

250 Bushaway Road	05-117-22-34-0018	Zev and Kristi Oman
-------------------	-------------------	---------------------

- 1.4 Land Use. Land uses along Bushaway Road are single family residential with larger residential estates flanking the east side, and R-2A residential on the west. The Property is zoned R-1, Low Density Single Family District (40,000 SF minimum lot sizes). The Property falls within the Comprehensive Plan’s Bushaway Conservation District, which proscribes a two acre lot minimum unless a variance is granted by the City Council.
- 1.5 Notice and Public Hearing. Notice of the public hearing on the Application was published in the *Lakeshore Weekly* on May 19, 2015. A copy of the notice was mailed to all property owners located with 350 feet of the Property on May 22, 2015. The public hearing was held at the June 1, 2015 Planning Commission meeting.

Section 2. STANDARDS

- 2.1 Subdivision and Plat Approval. Chapter 805 of the Wayzata City Code, (the “Subdivision Ordinance”) sets forth the procedure and substantive review criteria for applications for a subdivision. Before any plat can be recorded or of any validity, it must be referred to the City Planning Commission and approved by the City Council as having fulfilled the requirements of the Subdivision Ordinance. Section 805.15 of the Wayzata Subdivision Ordinance allows the City to review a proposed preliminary and final plat simultaneously.
- A. Goals. Under Section 805.2.b of the Subdivision Ordinance, subdivisions approved under the Subdivision Ordinance must be guided by the following:
1. Preserve and enhance Wayzata’s “small town” character (Comprehensive Plan).
 2. Respect the existing scale, character and pattern of the City, recognizing existing neighborhoods and commercial areas (Wayzata Physical Plan).

Attachment F

3. Provide a balanced housing supply available for all people no matter their income, age, race or ethnicity (Comprehensive Plan).
 4. Support a pedestrian environment at a human, not automotive scale (Wayzata Physical Plan).
 5. Relate development/redevelopment to the natural characteristics of the land to enhance the development through the preservation of attractive natural amenities (i.e., lakes, wetlands, creeks, wooded areas, slopes, etc.) (Comprehensive Plan).
- B. Criteria for Approval. Under Section 805.14.e of the Subdivision Ordinance, the Planning Commission must consider the possible adverse effects of a preliminary plat and report its findings and recommendation to City Council. Its judgment must be based upon, but not limited to, the following factors:
1. The proposed subdivision or lot combination shall be consistent with the Wayzata Comprehensive Plan.
 2. Building pads that result from a subdivision or lot combination shall preserve sensitive areas such as lakes, streams, wetlands, wildlife habitat, trees and vegetation, scenic points, historical locations, or similar community assets.
 3. Building pads that result from subdivision or lot combination shall be selected and located with respect to natural topography to minimize filling or grading.
 4. Existing stands of significant trees shall be retained where possible. Building pads that result from a subdivision or lot combination shall be sensitively integrated into existing trees.
 5. The creation of a lot or lots shall not adversely impact the scale, pattern or character of the City, its neighborhoods, or its commercial areas.
 6. The design of a lot, the building pad, and the site layout shall respond to and be reflective of the surrounding lots and neighborhood character.
 7. The lot size that results from a subdivision or lot combination shall not be dissimilar from adjacent lots or lots found in the surrounding neighborhood or commercial area.

Attachment F

8. The architectural appearance, scale, mass, construction materials, proportion and scale of roof line and functional plan of a building proposed on a lot to be divided or combined shall be similar to the characteristics and quality of existing development in the City, a neighborhood or commercial area.
9. The design, scale and massing of buildings proposed on a subdivided or combined lot shall be subject to the architectural guidelines and criteria for the Downtown Architectural District, Commercial and Institutional Architectural Districts, and Residential Architectural Districts and the Design Review Board/City Council review process outline in Section 9 of the Wayzata Zoning Ordinance.
10. The proposed lot layout and building pads shall conform with all relevant performance standards.
11. The proposed subdivision or lot combination shall not tend to or actually depreciate the values of neighboring properties in the area in which the subdivision or lot combination is proposed.
12. The proposed subdivision or lot combination shall be accommodated with existing public services, primarily related to transportation and utility systems, and will not overburden the City's service capacity.

2.2 Roadway Standards. The Subdivision Ordinance contains the following standards with respect to roadways associated with a new subdivision:

- A. Private Streets. Private streets, except in the case of planned unit developments, are prohibited. (Section 805.27.k)
- B. Lot Frontage. Every lot must have the minimum frontage on a City approved Public Street. (Section 805.26.E)
- C. Widths. Minimum right-of-way widths and pavement widths (face to face of curb) for local and marginal access streets or roads are 50 feet and 26 feet respectively. (Section 805.29.A)
- D. Curb and Gutter. Concrete curb and gutter must be included as part of the required street surface improvement and shall be designed for installation along both sides of all roadways. (Section 805.29.L)

2.3 Lot Area Standard. Under the Wayzata Comprehensive Plan, lots within the Bushaway Conservation District are guided for a two acre minimum, unless a variance is granted by the City Council.

2.4 Variances from Subdivision Ordinance. Section 805.60 of the Subdivision Ordinance allows the City Council to approve variances from the minimum

Attachment F

standards of the Subdivision Ordinance, when, in its opinion, undue hardship may result from strict compliance. In approving any variance, the City Council shall prescribe any conditions that it deems necessary to or desirable for the public interest. In making its approval, the City Council shall take into account the nature of the proposed use of land and the existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision and the probable effect of the proposed subdivision upon traffic conditions in the vicinity.

A variance shall only be approved when the City Council finds:

1. That there are special circumstances or highly unique conditions affecting the property such that the strict application of the provisions of the Subdivision Ordinance would deprive the applicant of the reasonable use of the applicant's land.
2. That the granting of the variance will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which property is situated.
3. That the variance is to correct inequities resulting from an extreme physical hardship such as topography.
4. Hardship relating to economic difficulties shall not be considered for the purpose of granting a variance.
5. That the hardship is not a result of an action or actions by the owner, applicant, developer or any agent thereof.

2.5 Premature Subdivision. The Subdivision Ordinance requires the City Council to deny any preliminary plat of a proposed subdivision deemed premature for development. Section 805.16. The burden is on the applicant to show that the proposed subdivision is not premature. Section 805.18. Under Section 805.17 of the Subdivision Ordinance, a subdivision may be deemed premature should any of the following conditions exist:

- a. Lack of Adequate Drainage: A condition of inadequate drainage shall be deemed to exist if:
 1. Surface or subsurface water retention and runoff is such that it constitutes a danger to the structural security of the proposed structures.
 2. The proposed subdivision will cause pollution of water sources or damage from erosion and siltation on downhill or downstream land.
 3. The proposed site grading and development will cause harmful and irreparable damage from erosion and siltation on downstream land.

Attachment F

Factors to be considered in making these determinations may include: average rainfall for the area; the relation of the land to flood plains; the nature of soils and subsoils and their ability to adequately support surface water runoff and waste disposal systems; the slope of the land and its effect on effluents; and the presence of streams as related to effluent disposal.

- b. **Lack of Adequate Water Supply:** A proposed subdivision shall be deemed to lack an adequate water supply if the proposed subdivision does not have adequate sources of water to serve the proposed subdivision if developed to its maximum permissible density without causing an unreasonable depreciation of existing water supplies for surrounding areas.
- c. **Lack of Adequate Roads or Highways to Serve the Subdivision:** A proposed subdivision shall be deemed to lack adequate roads or highways to serve the subdivision when:
 - 1. Roads which serve the proposed subdivision are of such a width, grade, stability, vertical and horizontal alignment, site distance and surface condition that an increase in traffic volume generated by the proposed subdivision would create a hazard to public safety and general welfare, or aggravate an already hazardous condition, and when, with due regard to the advice of Hennepin County and/or the Minnesota Department of Transportation, said roads are inadequate for the intended use, or
 - 2. The traffic volume generated by the proposed subdivision would create unreasonable highway congestion or unsafe conditions on highways existing at the time of the application or proposed for completion within the next two (2) years.
- d. **Lack of Adequate Waste Disposal Systems:** A proposed subdivision shall be deemed to lack adequate waste disposal systems if in subdivisions for which sewer lines are proposed, there is inadequate sewer capacity in the present system to support the subdivision if developed to its maximum permissible density indicated in the Wayzata Comprehensive Plan, as may be amended.
- e. **Consistency with Comprehensive Plan:** The proposed subdivision must be consistent with goals, standards and objectives of the City's Comprehensive Plan. Those include, but are not limited to, the limitation of development on slopes that are in excess of 12% to ensure that there is preservation of vegetation and other practices to assure soil stabilization and development that would enhance natural amenities.

- f. Providing Public Improvements: If public improvements, such as recreational facilities, streets and utilities, reasonably necessitated by the subdivision, which must be provided at public expense, cannot be provided for within the next two (2) fiscal years.
- g. MEQB Policies: The proposed subdivision is inconsistent with the policies the Minnesota Environmental Quality Board (MEQB), as may be amended, and could adversely impact critical environmental areas or potentially disrupt or destroy historic areas which are designated or officially recognized by the City Council in violation of Federal and State historical preservation laws.

Section 3. FINDINGS

Based on the Application materials, staff reports, comments presented at the public hearing, and the standards set forth in Wayzata's Subdivision Ordinance, the Planning Commission of the City of Wayzata makes the following findings of fact with respect to the Proposed Subdivision, the Roadway Variances, and the Lot Area Variance:

3.1 Proposed Subdivision and Plats.

- A. Goals. The Proposed Subdivision is not consistent with all of the goals of the Subdivision Ordinance.
 - 1. The lots and building pads associated with the Proposed Subdivision would not respect the scale, character and pattern of the existing neighborhood. As noted elsewhere in this Report, lots 2 and 3 of the Proposed Subdivision would not conform with the minimum lot size in the Comp Plan's Bushaway Conservation District, and would not be reflective of the size and layout of adjacent properties and the surrounding neighborhood.
 - 2. While the Applicant would be required to make a Parkland dedication pursuant to the Subdivision Ordinance, there would nonetheless be a significant loss of trees, and natural vegetation and topography that give the wooded neighborhood its distinctive natural character and provide important sound and visual buffers for the neighborhood.
- B. Criteria for Approval.
 - 1. Lots 2 and 3 of the Proposed Subdivision would not meet the two acre minimum for the Bushaway Conservation District, at 0.92 acres and 1.03 acres, respectively.

Attachment F

2. The building pads associated with the Project would negatively impact sensitive areas of trees, and natural vegetation and topography that give the wooded neighborhood its distinctive natural character and provide important sound and visual buffers for the neighborhood.
3. Existing stands of significant trees and natural vegetation would be lost. The Application materials show that approximately fifty five (55) trees would need to be removed as a result of the Project.
4. The Proposed Subdivision would adversely impact the scale, pattern or character of the surrounding neighborhood, as it would result in the loss of natural vegetation and topography that give the wooded neighborhood its distinctive natural character and provide important sound and visual buffers for the neighborhood. It would also not be consistent with the surrounding area in terms of creating 2 new smaller lots which do not fit the scale, pattern and character of the surrounding neighborhood.
5. The design of the lots, the proposed building pads, and the site layout of the Proposed Subdivision is not reflective of the surrounding lots and neighborhood character, as noted elsewhere in this Section.

3.2 Roadway Variances and Lot Area Variance.

- A. With respect to the Roadway Variances and Lot Area Variance requested in the Application:
 1. There are no special circumstances or highly unique conditions affecting the Property such that the strict application of the provisions of the Subdivision Ordinance would deprive the Applicant of the reasonable use of the Applicant's land.
 2. Granting of the Roadway Variances and Lot Area Variance would be detrimental to other property in the territory in which Property is situated, as noted elsewhere in this Report.
 3. That the Roadway Variances and Lot Area Variance are not to correct inequities resulting from an extreme physical hardship such as topography.

3.3 Premature Subdivision. Based on the standards outlined in Section 2 and the findings outlined in this Section 3, the Applicant has failed to meet its burden to show that the Subdivision is not premature, including failing to adequately

address issues related to drainage/grading/runoff, roadways and Comprehensive Plan consistency.

Section 4. RECOMMENDATION

- 4.1 Planning Commission Recommendation. Based on the findings in section 3 of this Report, the Planning Commission recommends denial of the Proposed Subdivision, the Roadway Variances and the Lot Area Variance requested in the Application.

Adopted by the Wayzata Planning Commission this 15th day of June 2015.

Voting In Favor: Gnos, Gonzalez, Gruber, Iverson, Ramy, Vanderheyden

Voting Against: None

Abstaining: None

Chair, Planning Commission

DRAFT RESOLUTION NO. 27-2015**RESOLUTION DENYING APPLICATION FOR CONCURRENT PRELIMINARY AND
FINAL PLAT SUBDIVISION AND RELATED VARIANCES
AT 250 BUSHAWAY ROAD****BE IT RESOLVED** by the City Council of Wayzata, Minnesota as follows:**Section 1. BACKGROUND**

1.1. Project. Zev and Kristi Oman (the “Applicant”) have submitted a development application (the “Application”) requesting approval of a three (3) lot subdivision (the “Project”) and related variances at 250 Bushaway Road (the “Property”).

1.2. Application Requests. As part of the Application, the Applicant is requesting approval of the following items:

- A. Subdivision to create three (3) lots and related Concurrent Preliminary and Final Plat (Section 805) (collectively, the “Proposed Subdivision”)
- B. Variances from Subdivision Ordinance to allow use of existing private driveway to serve Lot 3 (collectively, the “Roadway Variances”):
 - 1. Use of Private Roadways (Section 805.27.K)
 - 2. Lot Frontage on a Public Street (Section 805.26.E)
 - 3. Street Width Less Than Twenty-Six (26) feet (Section 805.29.A)
 - 4. Construction of Roadways Without Curbs and Gutters (Section 805.29.L)
- C. Variance from Subdivision Ordinance to allow for two (2) lots that do not conform with Comprehensive Plan guidance of two (2) acre lot minimum in the Bushaway Conservation District (Section 805.14.E.1) (the “Lot Area Variance”)

1.3. Property. The street address, property identification number and owner of the Property are:

250 Bushaway Road	05-117-22-34-0018	Zev and Kristi Oman
-------------------	-------------------	---------------------

1.4. Land Use. Land uses along Bushaway Road are single family residential with larger residential estates flanking the east side, and R-2A residential on the west. The Property is zoned R-1, Low Density Single Family District (40,000 SF minimum lot sizes). The Property falls within the Comprehensive Plan’s Bushaway Conservation District, which proscribes a two acre lot minimum unless a variance is granted by the City Council.

1.5. Notice and Public Hearing. Notice of the public hearing on the Application was published in the *Lakeshore Weekly* on May 19, 2015. A copy of the notice was mailed to all property owners located with 350 feet of the Property on May 22,

2015. The public hearing was held at the June 1, 2015 Planning Commission meeting.

- 1.8 Planning Commission Meeting Summary. The Planning Commission reviewed the Application and held a Public Hearing on June 1, 2015. After conclusion of the Public Hearing, the Planning Commission voted six (6) in favor and zero (0) opposed to direct staff to prepare a draft *Planning Commission Report and Recommendation* for denial of the Application for review at the next meeting. On June 15, 2015, the Planning Commission reviewed the draft *Planning Commission Report and Recommendation* for denial of the Application, and voted six (6) in favor and zero (0) opposed to adopt the *Report*.

Section 2. STANDARDS

- 2.1 Subdivision and Plat Approval. Chapter 805 of the Wayzata City Code, (the "Subdivision Ordinance") sets forth the procedure and substantive review criteria for applications for a subdivision. Before any plat can be recorded or of any validity, it must be referred to the City Planning Commission and approved by the City Council as having fulfilled the requirements of the Subdivision Ordinance. Section 805.15 of the Wayzata Subdivision Ordinance allows the City to review a proposed preliminary and final plat simultaneously.

- A. Goals. Under Section 805.2.b of the Subdivision Ordinance, subdivisions approved under the Subdivision Ordinance must be guided by the following:

1. Preserve and enhance Wayzata's "small town" character (Comprehensive Plan).
2. Respect the existing scale, character and pattern of the City, recognizing existing neighborhoods and commercial areas (Wayzata Physical Plan).
3. Provide a balanced housing supply available for all people no matter their income, age, race or ethnicity (Comprehensive Plan).
4. Support a pedestrian environment at a human, not automotive scale (Wayzata Physical Plan).
5. Relate development/redevelopment to the natural characteristics of the land to enhance the development through the preservation of attractive natural amenities (i.e., lakes, wetlands, creeks, wooded areas, slopes, etc.) (Comprehensive Plan).

- B. Criteria for Approval. Under Section 805.14.e of the Subdivision Ordinance, the Planning Commission must consider the possible adverse

effects of a preliminary plat and report its findings and recommendation to City Council. Its judgment must be based upon, but not limited to, the following factors:

1. The proposed subdivision or lot combination shall be consistent with the Wayzata Comprehensive Plan.
2. Building pads that result from a subdivision or lot combination shall preserve sensitive areas such as lakes, streams, wetlands, wildlife habitat, trees and vegetation, scenic points, historical locations, or similar community assets.
3. Building pads that result from subdivision or lot combination shall be selected and located with respect to natural topography to minimize filling or grading.
4. Existing stands of significant trees shall be retained where possible. Building pads that result from a subdivision or lot combination shall be sensitively integrated into existing trees.
5. The creation of a lot or lots shall not adversely impact the scale, pattern or character of the City, its neighborhoods, or its commercial areas.
6. The design of a lot, the building pad, and the site layout shall respond to and be reflective of the surrounding lots and neighborhood character.
7. The lot size that results from a subdivision or lot combination shall not be dissimilar from adjacent lots or lots found in the surrounding neighborhood or commercial area.
8. The architectural appearance, scale, mass, construction materials, proportion and scale of roof line and functional plan of a building proposed on a lot to be divided or combined shall be similar to the characteristics and quality of existing development in the City, a neighborhood or commercial area.
9. The design, scale and massing of buildings proposed on a subdivided or combined lot shall be subject to the architectural guidelines and criteria for the Downtown Architectural District, Commercial and Institutional Architectural Districts, and Residential Architectural Districts and the Design Review Board/City Council review process outline in Section 9 of the Wayzata Zoning Ordinance.

10. The proposed lot layout and building pads shall conform with all relevant performance standards.
11. The proposed subdivision or lot combination shall not tend to or actually depreciate the values of neighboring properties in the area in which the subdivision or lot combination is proposed.
12. The proposed subdivision or lot combination shall be accommodated with existing public services, primarily related to transportation and utility systems, and will not overburden the City's service capacity.

2.2 Roadway Standards. The Subdivision Ordinance contains the following standards with respect to roadways associated with a new subdivision:

- A. Private Streets. Private streets, except in the case of planned unit developments, are prohibited. (Section 805.27.k)
- B. Lot Frontage. Every lot must have the minimum frontage on a City approved Public Street. (Section 805.26.E)
- C. Widths. Minimum right-of-way widths and pavement widths (face to face of curb) for local and marginal access streets or roads are 50 feet and 26 feet respectively. (Section 805.29.A)
- D. Curb and Gutter. Concrete curb and gutter must be included as part of the required street surface improvement and shall be designed for installation along both sides of all roadways. (Section 805.29.L)

2.3 Lot Area Standard. Under the Wayzata Comprehensive Plan, lots within the Bushaway Conservation District are guided for a two acre minimum, unless a variance is granted by the City Council.

2.4 Variances from Subdivision Ordinance. Section 805.60 of the Subdivision Ordinance allows the City Council to approve variances from the minimum standards of the Subdivision Ordinance, when, in its opinion, undue hardship may result from strict compliance. In approving any variance, the City Council shall prescribe any conditions that it deems necessary to or desirable for the public interest. In making its approval, the City Council shall take into account the nature of the proposed use of land and the existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision and the probable effect of the proposed subdivision upon traffic conditions in the vicinity.

A variance shall only be approved when the City Council finds:

1. That there are special circumstances or highly unique conditions affecting the property such that the strict application of the provisions of the Subdivision Ordinance would deprive the applicant of the reasonable use of the applicant's land.

2. That the granting of the variance will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which property is situated.
3. That the variance is to correct inequities resulting from an extreme physical hardship such as topography.
4. Hardship relating to economic difficulties shall not be considered for the purpose of granting a variance.
5. That the hardship is not a result of an action or actions by the owner, applicant, developer or any agent thereof.

2.5 Premature Subdivision. The Subdivision Ordinance requires the City Council to deny any preliminary plat of a proposed subdivision deemed premature for development. Section 805.16. The burden is on the applicant to show that the proposed subdivision is not premature. Section 805.18. Under Section 805.17 of the Subdivision Ordinance, a subdivision may be deemed premature should any of the following conditions exist:

- a. Lack of Adequate Drainage: A condition of inadequate drainage shall be deemed to exist if:
 1. Surface or subsurface water retention and runoff is such that it constitutes a danger to the structural security of the proposed structures.
 2. The proposed subdivision will cause pollution of water sources or damage from erosion and siltation on downhill or downstream land.
 3. The proposed site grading and development will cause harmful and irreparable damage from erosion and siltation on downstream land.

Factors to be considered in making these determinations may include: average rainfall for the area; the relation of the land to flood plains; the nature of soils and subsoils and their ability to adequately support surface water runoff and waste disposal systems; the slope of the land and its effect on effluents; and the presence of streams as related to effluent disposal.

- b. Lack of Adequate Water Supply: A proposed subdivision shall be deemed to lack an adequate water supply if the proposed subdivision does not have adequate sources of water to serve the proposed subdivision if developed to its maximum permissible density without causing an unreasonable depreciation of existing water supplies for surrounding areas.

- c. Lack of Adequate Roads or Highways to Serve the Subdivision: A proposed subdivision shall be deemed to lack adequate roads or highways to serve the subdivision when:
 - 1. Roads which serve the proposed subdivision are of such a width, grade, stability, vertical and horizontal alignment, site distance and surface condition that an increase in traffic volume generated by the proposed subdivision would create a hazard to public safety and general welfare, or aggravate an already hazardous condition, and when, with due regard to the advice of Hennepin County and/or the Minnesota Department of Transportation, said roads are inadequate for the intended use, or
 - 2. The traffic volume generated by the proposed subdivision would create unreasonable highway congestion or unsafe conditions on highways existing at the time of the application or proposed for completion within the next two (2) years.
- d. Lack of Adequate Waste Disposal Systems: A proposed subdivision shall be deemed to lack adequate waste disposal systems if in subdivisions for which sewer lines are proposed, there is inadequate sewer capacity in the present system to support the subdivision if developed to its maximum permissible density indicated in the Wayzata Comprehensive Plan, as may be amended.
- e. Consistency with Comprehensive Plan: The proposed subdivision must be consistent with goals, standards and objectives of the City's Comprehensive Plan. Those include, but are not limited to, the limitation of development on slopes that are in excess of 12% to ensure that there is preservation of vegetation and other practices to assure soil stabilization and development that would enhance natural amenities.
- f. Providing Public Improvements: If public improvements, such as recreational facilities, streets and utilities, reasonably necessitated by the subdivision, which must be provided at public expense, cannot be provided for within the next two (2) fiscal years.
- g. MEQB Policies: The proposed subdivision is inconsistent with the policies the Minnesota Environmental Quality Board (MEQB), as may be amended, and could adversely impact critical environmental areas or potentially disrupt or destroy historic areas which are designated or officially recognized by the City Council in violation of Federal and State historical preservation laws.

Section 3. FINDINGS

The City Council of the City of Wayzata hereby confirms and memorializes that the Proposed Subdivision, Roadway Variances, and Lot Area Variance depicted in the Application do not meet the applicable requirements of Wayzata's Subdivision Ordinance, based upon the following findings of fact made on the record (as well as all Application materials, staff reports, public comment presented at the hearing, and the Recommendation of the Planning Commission):

3.1 Proposed Subdivision and Plats.

A. Goals. The Proposed Subdivision is not consistent with all of the goals of the Subdivision Ordinance.

1. The lots and building pads associated with the Proposed Subdivision would not respect the scale, character and pattern of the existing neighborhood. As noted in the Planning Commission Report, lots 2 and 3 of the Proposed Subdivision would not conform with the minimum lot size in the Comprehensive Plan's Bushaway Conservation District, and would not be reflective of the size and layout of adjacent properties and the surrounding neighborhood.
2. While the Applicant would be required to make a Parkland dedication pursuant to the Subdivision Ordinance, there would nonetheless be a significant loss of trees, and natural vegetation and topography that give the wooded neighborhood its distinctive natural character and provide important sound and visual buffers for the neighborhood.

B. Criteria for Approval.

1. Lots 2 and 3 of the Proposed Subdivision would not meet the two acre minimum for the Bushaway Conservation District, at 0.92 acres and 1.03 acres, respectively.
2. The building pads associated with the Project would negatively impact sensitive areas of trees, and natural vegetation and topography that give the wooded neighborhood its distinctive natural character and provide important sound and visual buffers for the neighborhood.
3. Existing stands of significant trees and natural vegetation would be lost. The Application materials show that approximately fifty five (55) trees would need to be removed as a result of the Project.

4. The Proposed Subdivision would adversely impact the scale, pattern or character of the surrounding neighborhood, as it would result in the loss of natural vegetation and topography that give the wooded neighborhood its distinctive natural character and provide important sound and visual buffers for the neighborhood. It would also not be consistent with the surrounding area in terms of creating 2 new smaller lots which do not fit the scale, pattern and character of the surrounding neighborhood.
5. The design of the lots, the proposed building pads, and the site layout of the Proposed Subdivision is not reflective of the surrounding lots and neighborhood character, as noted elsewhere in this Section.

3.2 Roadway Variances and Lot Area Variance.

- A. With respect to the Roadway Variances and Lot Area Variance requested in the Application:
 1. There are no special circumstances or highly unique conditions affecting the Property such that the strict application of the provisions of the Subdivision Ordinance would deprive the Applicant of the reasonable use of the Applicant's land.
 2. Granting of the Roadway Variances and Lot Area Variance would be detrimental to other property in the territory in which Property is situated, as noted elsewhere in this Resolution.
 3. The Roadway Variances and Lot Area Variance are not to correct inequities resulting from an extreme physical hardship such as topography.
 4. Economic considerations appear to be the basis for the Roadway Variances and Lot Area Variance needed to create the Proposed Subdivision of three lots.

3.3 Premature Subdivision. Based on the standards outlined in Section 2 and the findings outlined in this Section 3, the Applicant has failed to meet its burden to show that the Subdivision is not premature, including failing to adequately address issues related to drainage/grading/runoff, roadways and Comprehensive Plan consistency.

Section 4. CITY COUNCIL ACTION

- 4.1 Based on the Findings of this Resolution, the request for approval of the Proposed Subdivision, Roadway Variances, and Lot Area Variance as set forth in the Application (Attachment A), is hereby **DENIED**.

Adopted by the Wayzata City Council this ____ day of July, 2015.

Mayor Ken Willcox

ATTEST:

City Manager Heidi Nelson

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 Wayzata, Minnesota, at a duly authorized meeting held on _____, 2015.

Becky Malone, Deputy City Clerk
SEAL

Attachment A

Applicant Submittals

5/8/2015

To: Wayzata City Council

From: Zev and Kristi Oman
250 Bushaway Road
Wayzata, MN 55391

Re: Proposed Subdivision- VARIANCE REQUEST

We purchased our home at 250 Bushaway Road, Wayzata in April 2003. At that time the surrounding properties all contained large acreage and our property, which has 4.75 acres was one of the smaller parcels. Now, 12 years later all of our surrounding properties have been subdivided and we now feel like we live in a urban development. Our property used to have a private estate like feel to it, now it does not fit in with the neighboring homes.

To be consistent with the neighboring properties we are looking to subdivide into 3 lots. Because of the topography and access, our home would remain as the largest parcel and the two other lots are just shy of the 80,000sf minimum. It doesn't make sense to do a single lot split because the new lot/house would look out of place standing alone, and would not esthetically conform with the surrounding homes.

Also I would like point out some issues/mistakes made with neighboring properties which have negatively effected our property. In 1999 when 240 Bushaway Road was subdivided the city eliminated access to our lower level garages making it impossible to access them. Two years ago city allowed our neighbor at 270 Bushaway Road to install a pool at his property, even though the subdivision bilaws do not allow it, the pool was installed on the side of this home, not the back yard, so now every time I walk out my front door I see a swimming pool and the serene, quiet atmosphere is gone.

The Lecy Bros. development at 262 Bushaway Road contains two lots that do not conform with the 80,000sf lot minimum, our proposed two lots are similar in size with these lot sizes.

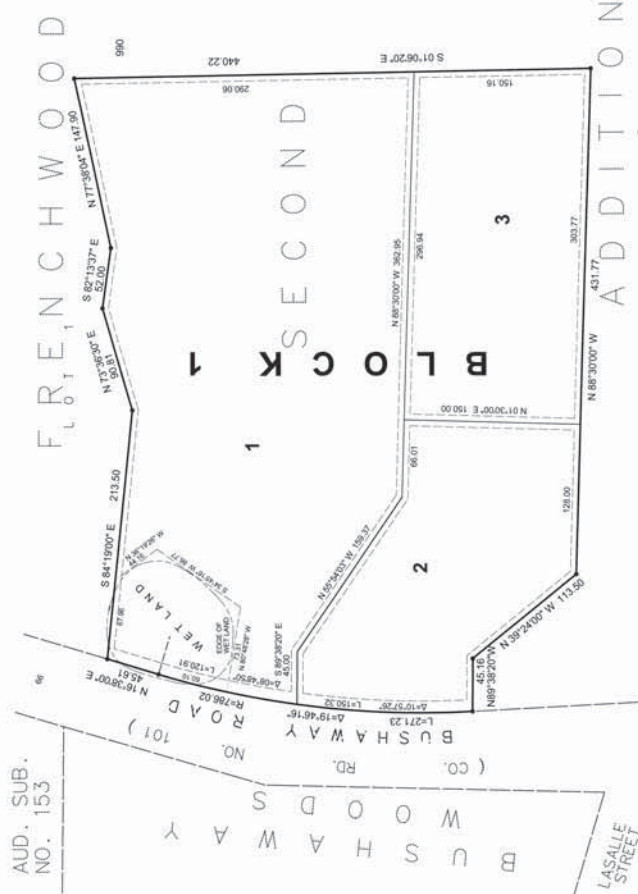
Lastly, I would like to point out that selling these proposed two additional lots would help me recoup some of the economic loss I have sustained; which was due to no fault of ours.

A handwritten signature in black ink, appearing to read 'K Oman', with a long horizontal flourish extending to the right.

[illegible]

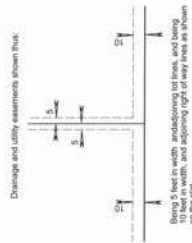
Attachment A

FRENCHWOOD THIRD ADDITION



1. PRUSTER IRON MARKER FOUND
BY M.N. L.C. NO. 12755
DATE 08/28/2014
THE SOUTH
LINE OF LOT 101 OF FRENCHWOOD SECOND
ADDITION HAS AN ASSUMED BEARING OF
N 88°30' W

Drainage and utility elements shown that:



C.R.DOC.NO. _____

Know all persons that Zev Oman and Kristina M. Oman, husband and wife, fee owners of the following described property situated in the County of Hennepin, State of Minnesota, to wit:

Lot 2, Block 1, FRENCHWOOD SECOND ADDITION

Has caused the same to be surveyed and platted as FRENCHWOOD THIRD ADDITION, and does hereby dedicate to the public for public use forever the fringe and utility easements as shown on the plat.

In witness whereof Zev Oman and Kristina M. Oman, husband and wife, have hereunto set their hands this _____ day of _____, 20____.

ZEV OMAN

KRISTINA M. OMAN

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by Zev Oman and Kristina M. Oman, husband and wife.

Notary Public, _____ County, _____ Notary's printed name

My commission expires _____

I, Mark S. Gronberg, do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that I am duly sworn and qualified in accordance with the laws of the State of Minnesota; and that the above described plat is a true and correct copy of the original plat as the same appears in my office. I have caused the same to be surveyed and platted as FRENCHWOOD THIRD ADDITION, and does hereby dedicate to the public for public use forever the fringe and utility easements as shown on the plat.

Mark S. Gronberg, Licensed Land Surveyor and Engineer

Minnesota License Number 12755

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by Mark S. Gronberg, Land Surveyor and Engineer.

Notary Public, _____ County, _____ Notary's printed name

My commission expires _____

WAYZATA, MINNESOTA

This plat of FRENCHWOOD THIRD ADDITION was approved and accepted by the City Council of Wayzata, Minnesota, at a regular meeting held this _____ day of _____, 20____. If applicable, the written comments and recommendations of the Commissioner of the State of Minnesota, as provided by Minnesota Statutes, Section 265.05, Subd. 2, are hereby adopted and incorporated into this plat. The plat is hereby adopted and incorporated into this plat without receipt of such comments and recommendations, as provided by Minnesota Statutes, Section 265.05, Subd. 2.

CITY COUNCIL OF THE CITY OF WAYZATA, MINNESOTA

Mayor _____

City Clerk _____

RESIDENT AND REAL ESTATE SERVICES, HENNEPIN COUNTY, MINNESOTA

I hereby certify that taxes payable in 20____ and prior years have been paid for land described on this plat. Dated this _____ day of _____, 20____.

MARK V. CHAPIN, HENNEPIN COUNTY AUDITOR

By _____ Deputy

SURVEY DIVISION, HENNEPIN COUNTY, MINNESOTA

Pursuant to MINN. STAT. Sec. 338.05, (1995), this plat has been approved this _____ day of _____, 20____.

By _____

CHRIS F. MAVIS, HENNEPIN COUNTY SURVEYOR

COUNTY RECORDER, HENNEPIN COUNTY, MINNESOTA

I hereby certify that the value plat of FRENCHWOOD THIRD ADDITION was recorded in this office this _____ day of _____, 20____ at _____ o'clock _____ M.

MARKIN MCCORMICK, HENNEPIN COUNTY RECORDER

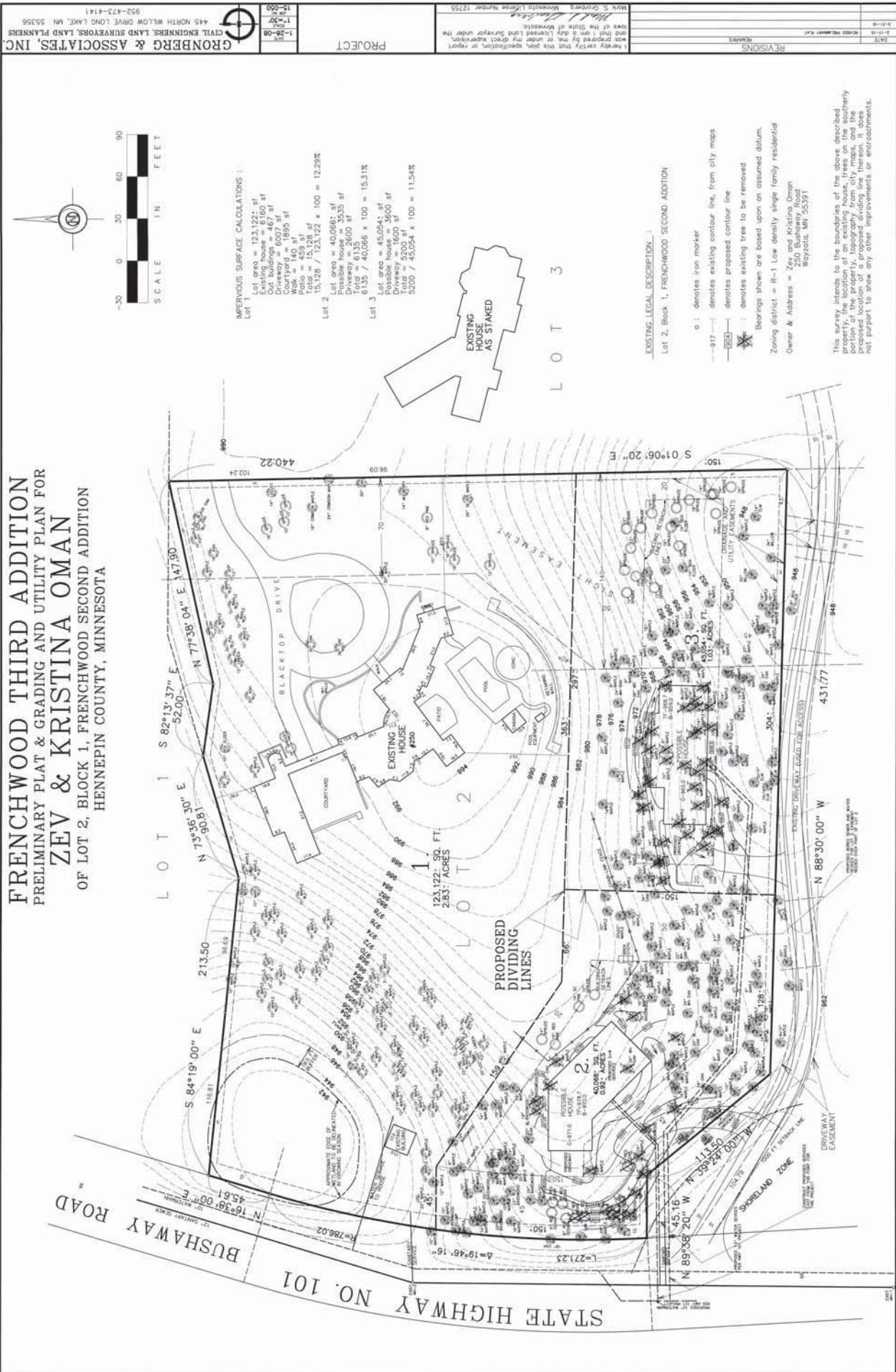
By _____ Deputy

GRONBERG & ASSOCIATES, INC.

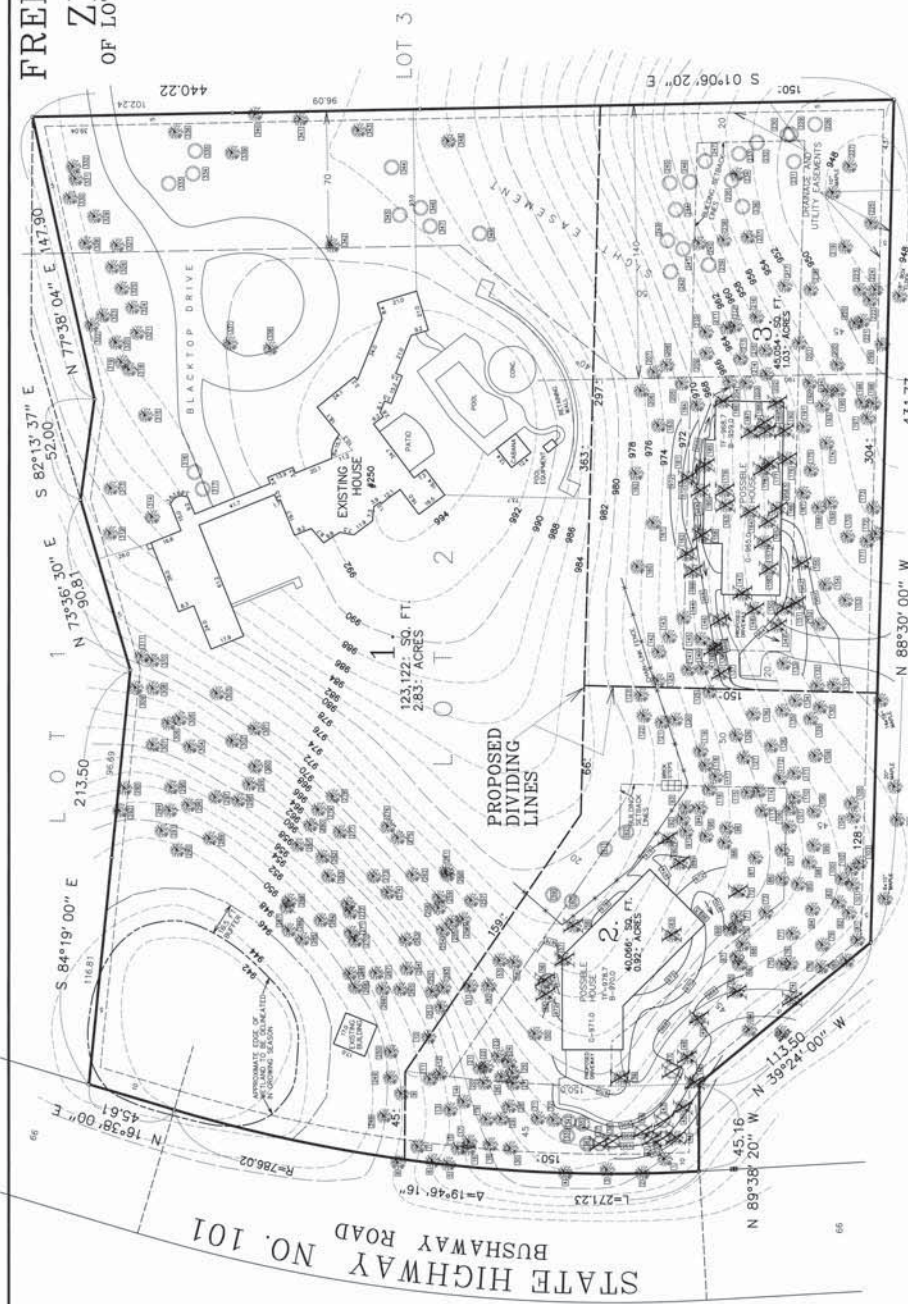
ENGINEERS, LAND SURVEYORS, PLANNERS

Attachment A

FRENCHWOOD THIRD ADDITION
PRELIMINARY PLAT & GRADING AND UTILITY PLAN FOR
ZEV & KRISTINA OMAN
OF LOT 2, BLOCK 1, FRENCHWOOD SECOND ADDITION
HENNEPIN COUNTY, MINNESOTA



FRENCHWOOD THIRD ADDITION
TREE PLAN FOR
ZEV & KRISTINA OMAN
OF LOT 2, BLOCK 1, FRENCHWOOD SECOND ADDITION
HENNEPIN COUNTY, MINNESOTA



EXISTING LEGAL DESCRIPTION :
Lot 2, Block 1, FRENCHWOOD SECOND ADDITION

0 : denotes iron marker
 - 917 - denotes existing contour line, from city maps
 - 902 - denotes proposed contour line
 X denotes existing tree to be removed

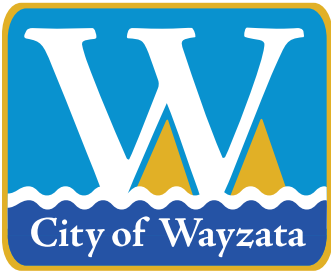
Bearings shown are based upon an assumed datum.
 Zoning district = R-1 Low density single family residential

Owner & Address = Jay and Kristina Oman
 260 Bayview Road
 Weymouth, MA 02591

This survey intends to the boundaries of the above described property, the location of an existing house, trees, topography from city maps, and the proposed location of a proposed dividing line thereon. It does not purport to show any other improvements or encroachments.

[illegible]

Total coiper inches = 5119
Total inches proposed to be removed = 567



City of Wayzata

600 Rice Street

Wayzata, MN 55391-1734

Mayor:

Ken Willcox

City Council:

Bridget Anderson

Johanna McCarthy

Andrew Mullin

Steven Tyacke

City Manager:

Heidi Nelson

Date: July 1, 2015

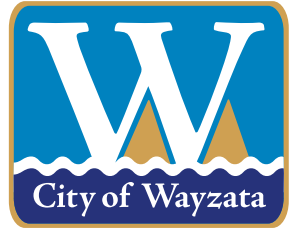
To: Mayor Willcox and Councilmembers

From: Heidi Nelson, City Manager

Subject: Consider Approval of Updated Strategic Plan

Attached to this memo please find a draft of the updated Strategic Plan. This update is based upon the Strategic Planning Session Report that was reviewed by the Council on June 2nd following the April 30/May 1 Strategic Planning Session. Staff is seeking feedback regarding the updates made to the plan, which removed items that were completed (based upon April 21 review of the current Strategic Plan), revised and added items based upon this year's planning.

Staff intends to provide quarterly updates on the progress on Strategic Plan items as part of the regular Council agenda.



A BLUEPRINT FOR THE FUTURE

Five Year Vision for the Community: Wayzata in 2017

Wayzata
is a well
maintained
and safe
community.

Wayzata is
an active
community
with a
“Home
Town” feel.

Wayzata
provides
a world-
class guest
experience.

Wayzata
celebrates its
proud history
on the lake.

Wayzata
offers an
exceptional
lakefront
destination.

Wayzata has
a strong,
stable
financial
foundation.

STRATEGIC DIRECTION:

Ensuring Financial Stability

Strategic Priority	Key Outcome Indicator	Measure	Target	Strategic Initiatives
Financial Strength FINANCE	Capital maintenance demand	Long-term costs	Incorporate in 2016/2017 budget	1) 10-year maintenance plan 2) Capital maintenance funding strategy
	Fiscal strength	Bond rating	AAA	1) Monitor bond rating criteria against policy/performance
	Telecom Site	Relocation of Telecomm site(s)	Complete relocation by 2019	1) Complete amendments to Telecom Ordinance with in 6 month moratorium period (Sept. 2015) 2) Coordinate lease expiration /water tower painting for relocation of tower 3) Ensure city remains driver of site selction process for what is best community outcome
	Muni	Improved financial performance, customer service, food quality and consistency	Increase profitability by 5% by December 2016	1) Update Muni business plan by Sept. 30, 2015 2) Ensure appropriate mgmt/staffing per business plan 3) Within new business plan address restaurant competition/ liquor competion and parking challenges 4) Focus on customer service, food quality and consistency
Proactive Development & Redevelopment GROWTH	Bay Center	Retail leases	75% leased by June 2016	1) Presbyterian Homes sales/marketing strategy
	Downtown Parking	Parking Saces	20% increase by Dec. 2017	1) Implement Parking Pilot Programs for Summer 2015 2) Measure Parking Pilot Programs and plan for long term implementation of parking management tools 3) Define Parking District cost/benefits by Aug. 2015 4) Complete pre-design/programming for Mill St. Ramp Sept. 2015 5) Define plan of finance for ramp construction by Sept. 2015 6) Draft Parking Ordinance amendments by Sept. 2015 7) Draft Parking Ordinance amendments by Sept. 2015 8) Begin site plan submittal/rezone/plat process Oct. 2015 9) Continue collaboration with Carish's re public use of parking ramp 10) Determine procurement process for ramp construction by Dec. 2015 11) Site plan process/entitlement complete by Dec. 2015 12) Ramp consturction start Oct. 2016
	Targeted multi-family complexes	Reinvest-ment	2 complexes improved by Dec. 2016	1) Marketing campaign - multi-family investment program 2) Improve rental inspection coordination with reinvestment 3) Increase and implement rental housing inspection standards 4) Promote development of diversity of housing stock.
	Signage	Increased wayfinding into and within city	Roll out second phase wayfinding by June 2016 New directional signage by June 2016	1) Improve directional signage on freeway 2) Monument signage of Muni
	Marketing	Marketing plan in place	Establish marketing/branding campaign by June 2016	1) Develop marketing/branding campaign for city

STRATEGIC DIRECTION: Sustaining Our Community

Strategic Priority	Key Outcome Indicator	Measure	Target	Strategic Initiatives
Organizational Sustainability	Institutional Knowledge	Documentation/ SOPs	All depts. by July 2016	1) Documentation project - all depts. 2) Succession plan - all depts.
WORKFORCE	Shared services	Executed agreement	Long Lake PW by June 2016	1) Develop options for shared service 2) Implement Long Lake opportunity
Focused Community Engagement	Citizens' Academy	Participation	20 participants by June 2016	1) Create a Citizens' Academy
CUSTOMER	Website	Visits	Implemented by June 2016	1) Incorporate paperless technology into website

STRATEGIC DIRECTION: Enhancing City Assets

Strategic Priority	Key Outcome Indicator	Measure	Target	Strategic Initiatives
Operational Effectiveness	Business and permits	Online forms availability	80% by June 2016	1) Program funding and implementation for a line permits/business apps
OPERATIONS	Staff time	Utility bill processing	20% reduction June 2016	1) Document current staffing metrics 2) Establish improvement program
	Ordinance/policy priorities	Ordinances revised/ established	All complete by moratorium end date or June 2016	1) Telecomm Ordinance 2) Parking Ordinance 3) Neighborhood Zoning Standards Ordinance 4a) Tree Preservation Ordinance 4b) Signage Ordinance 5a) Medical Marijuana Ordinance 5b) Alternative Energies Ordinance 6) Meeting Minute-taking policy
Maintain and Enhance Community Amenities	Lake Effect Projects	Shovel ready signature project	Phase One of signature project start construction by June 2016	1) Complete RFP process for design of signature central lakefront project 2) Cultivate project partners with Council leadership 3) Complete design of signature central lakefront project in alignment with broader scope of parking/does/ connections/corridors 4) Transition completion of design into phased project implementation 5) Increase community engagement throughout process - communicate progress, highlight current projects, funder cultivation, celebrate milestones 6) Ensure "Be Wayzata" is reflected in the process and design
MAINTENANCE				

Strategic Planning Overview

The Strategic Planning Session took place in Wayzata on April 30 & May 1, 2015. Participants included: Mayor Ken Willcox, Council Members Bridget Anderson, Johanna McCarthy, Andrew Mullin and Steven Tyacke with City Manager Heidi Nelson. Staff included Bryan Gadow, Director of Planning and Building; Dave Dudinsky, Public Services Director; Mike Risvold, Police Chief; Kevin Klapprich, Fire Chief; Don Uram, Administrative Services Director; and Kristin Classey, Communications Specialist.

During the session, council relations and the strategic initiatives outlined on the previous pages were discussed.

