

## ***Agenda***

### **Minnetonka Economic Development Authority**

**Monday, February 29, 2016**

**6:30 p.m.**

**Council Chambers**

1. Call to Order
2. Roll Call: Acomb-Wiersum-Bergstedt-Wagner-Ellingson-Allendorf-Schneider
3. Approval of Agenda
4. Approval of Minutes: December 21, 2015 EDA meeting
5. Business Items:
  - A. Resolution amending the Glen Lake contract  
Recommendation: Adopt the resolution approving the time extension
6. Adjourn

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**Minutes**  
**Minnetonka Economic Development Authority**  
**Monday, December 21, 2015**

**1. Call to Order**

Schneider called the meeting to order at 7:23 p.m.

**2. Roll Call**

Commissioners Tim Bergstedt, Tony Wagner, Bob Ellingson, Dick Allendorf, Patty Acomb, Brad Wiersum, and President Terry Schneider were present.

**3. Approval of Agenda**

Bergstedt moved, Acomb seconded a motion to accept the agenda, as presented. All voted "yes." Motion carried.

**4. Approval of Minutes: November 23, 2015**

Wagner moved, Bergstedt seconded a motion to approve the November 23, 2015 minutes. All voted "yes." Motion carried.

**5. Business Items:**

**A. 2016 HRA Levy**

City Manager Geralyn Barone gave the staff report.

Allendorf commended Wagner for raising the issue of not wanting to use the HRA levy for the comprehensive guide plan process. The process now would be paid for using the budget stabilization fund where it belongs. He thought the housing programs and the business outreach were good uses for the HRA levy. He continued to think residents should not be paying \$3 million more in addition to the tax payments that were already made and will be made when the light rail stations are built and needed to be enhanced. He said he wasn't going to vote against the HRA levy but he could not support it.

Wiersum moved, Bergstedt seconded a motion to adopt Resolution 2015-010 setting the 2016 HRA levy. Bergstedt, Wagner, Ellingson, Acomb, Wiersum, and Schneider voted "yes." Allendorf abstained. Motion carried.

**6. Adjournment**

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 7:27 p.m.  
All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda  
City Clerk

**EDA Agenda Item #5A**  
**Meeting of February 29, 2016**

<b>Brief Description</b>	Resolution amending the Glen Lake contract
<b>Recommendation</b>	Adopt the resolution approving the time extension

**Background**

The city of Minnetonka originally approved the Glen Lake Redevelopment contract in 2006. The original development had three parts: the Exchange Building (now the Oaks Apartment building with commercial space on the ground floor); the northern portion of the grocery store property (now St. Therese/The Glenn) and Kinsel Point on Stewart Lane (now Zvago). The city has processed various changes to the development contract over the years including: number of affordable housing units, types of units (condominiums to rental) and various time extensions.

The developer and builder of the Zvago project are proceeding through the HUD (Housing and Urban Development) financing for the project. The developer has also applied for a building permit for the project. HUD has requested various changes to the document including:

- Assignment of the contract to the new entity.
- Waiving of the city's right to purchase the property. This essentially occurred when the city approved the Zvago project, but for clarity, the requirement is being stricken from the contract.
- Replatting of the property can also be met by tax combining the two existing properties that comprise the Kinsel site.

If the project does not proceed by the date identified in the contract, March 31, 2016, the contract would be considered in default. Remedies for default are noted in the contract and remedies include withholding tax increment. The original contract noted that if construction commenced, albeit with several revised dates, the option to purchase the property terminated.

**Staff Recommendation**

Staff has reviewed the changes and recommends approval of the Resolution for the Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment Between the Economic Development Authority in And For The City Of Minnetonka, The City Of Minnetonka, And Glen Lake Redevelopment LLC on pages A1-A3.

Both the EDA and city council are required to take action on this item.

Submitted through:

Geralyn Barone, City Manager

Originated by:

Julie Wischnack, AICP, Community Development Director

## Resolution No. 2016-xx

### **Resolution approving a fifth amendment to second amended and restated contract for private redevelopment between the Economic Development Authority in and for the City of Minnetonka, the City of Minnetonka, and Glen Lake Redevelopment LLC**

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Be it resolved by the Board of Commissioners (the "Board") of the Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority") as follows:

#### Section 1. Background.

- 1.01. The City of Minnetonka (the "City") and the Authority have approved the creation of the Glenhaven Tax Increment Financing District (the "TIF District") within the housing development and redevelopment project known as the Glen Lake Housing Development and Redevelopment Project (the "Project"), and have adopted a tax increment financing plan for the purpose of financing certain improvements within the Project.
- 1.02. The Authority and City entered into an Amended and Restated Contract for Private Redevelopment, dated May 15, 2007 (the "Original Contract"), with Glen Lake Redevelopment LLC, a Minnesota limited liability company (the "Redeveloper"), which set forth the terms and conditions of the housing and commercial redevelopment project to be constructed by the Redeveloper within the TIF District in three separate phases designated as "Phase I," "Phase II," and "Phase III."
- 1.03. To address changes in the housing market, timing of construction, and other development details, the Authority, the City, and the Redeveloper modified the Original Contract and entered into a Second Amended and Restated Contract for Private Redevelopment, dated January 4, 2010 (the "Second Amended Contract"). The Second Amended Contract has been subsequently amended by the First Amendment to Second Amended and Restated Contract for Private Redevelopment, the Second Amendment to Second Amended and Restated Contract for Private Redevelopment, the Third Amendment to Second Amended and Restated Contract for Private Redevelopment, and the Fourth Amendment to Second Amended and Restated Contract for Private Redevelopment.
- 1.04. The Redeveloper has requested that the Second Amended Contract related to Phase III of the redevelopment project be further amended to remove the Authority's option to purchase the property on which the Phase III of the project is located (the "Phase III Property") in the event that the Redeveloper does not commence construction by March 31, 2016, as set forth in the Fourth Amendment to Amended and Restated Contract for Private Redevelopment.
- 1.05. The Redeveloper has informed the Authority that it will assign its obligations with respect to Phase III of the redevelopment project to Zvago Cooperative at Glen Lake,

a Minnesota cooperative (the "Cooperative"), which will construct and own the senior housing cooperative, all as permitted under Section 8.2 of the Second Amended Contract, as heretofore amended.

- 1.06. There has been presented to this Board a Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment (the "Fifth Amendment to Second Amended Contract"), which removes the Authority's option to purchase the Phase III Property in the event of a default by the Redeveloper.
- 1.07. There has been presented to this Board an Assignment and Assumption Agreement (the "Assignment and Assumption") between the Redeveloper and the Cooperative setting forth the assignment and assumption of the obligations by the Cooperative with respect to Phase III of the redevelopment project.
- 1.08. The Board has reviewed the Fifth Amendment to Second Amended Contract, and finds that the execution thereof by the Authority and performance of the Authority's obligations thereunder are in the best interest of the City and its residents.

## Section 2. Board Action.

- 2.01. The Fifth Amendment to Second Amended Contract is approved in substantially the form on file in City Hall, subject to modifications that do not alter the substance of the transaction and are approved by the President and Executive Director of the Authority; provided that execution of the document will be conclusive evidence of their approval.
- 2.02. The Assignment and Assumption to the Cooperative is hereby approved in substantially the form on file in City Hall, subject to modifications that do not alter the substance of the transaction and are approved by the President and Executive Director; provided that execution of the document will be conclusive evidence of their approval.
- 2.03. The President and Executive Director are authorized and directed to execute the Fifth Amendment to Second Amended Contract, the Assignment and Assumption, and any other documents or certificates necessary to carry out the transactions described therein, including estoppel certificates requested by the Cooperative's lender.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota this 29th day of February, 2016.

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Terry Schneider, President

Attest:

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David E. Maeda, Secretary

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 Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a duly authorized meeting held February 29, 2016.

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Secretary

**FIFTH AMENDMENT TO  
SECOND AMENDED AND RESTATED  
CONTRACT FOR PRIVATE REDEVELOPMENT**

THIS FIFTH AMENDMENT TO SECOND AMENDED AND RESTATED CONTRACT FOR PRIVATE REDEVELOPMENT, made on or as of the 29 day of February, 2016 (the “Fifth Amendment to Agreement”), is by and between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, a public body corporate and politic (the “Authority”), established pursuant to Minnesota Statutes, Sections 469.090 to 469.1081 (hereinafter referred to as the “Act”), the CITY OF MINNETONKA, a Minnesota municipal corporation (the “City”) and GLEN LAKE REDEVELOPMENT LLC, a Minnesota limited liability company (the “Redeveloper”), and consented to by The Exchange Development LLC, a Minnesota limited liability company (“The Exchange Development”), Kinsel Point Development LLC, a Minnesota limited liability company (“Kinsel Point Development”), Glen Lake Senior Housing, LLC, a Minnesota limited liability company, and Zvago Cooperative at Glen Lake, a Minnesota cooperative, all as permitted assignees hereunder.

WITNESSETH:

WHEREAS, the Authority, the City, and the Redeveloper previously entered into that certain Second Amended and Restated Contract for Private Redevelopment, dated January 4, 2010 (the “Original Agreement”), which amended and restated a Contract for Private Redevelopment, dated January 31, 2006, between the Authority, the City, and the Redeveloper, as amended and restated by the Amended and Restated Contract for Private Redevelopment, dated May 15, 2007, which was partially assigned to The Exchange Development and Kinsel Point Development; and

WHEREAS, pursuant to the Original Agreement, the Redeveloper agreed to develop the real property in the City legally described in EXHIBIT A attached hereto (the “Redevelopment Property”) in three separate phases designated as “Phase I,” “Phase II,” and “Phase III”; and

WHEREAS, the Original Agreement was previously amended by the First Amendment to Second Amended and Restated Contract for Private Redevelopment (the “First Amendment”) to extend the time period in which Phase III of the redevelopment could occur; and

WHEREAS, the Original Agreement was previously amended by the Second Amendment to Second Amended and Restated Contract for Private Redevelopment (the “Second Amendment”) to further extend the time period in which Phase III of the redevelopment could occur; and

WHEREAS, the Original Agreement was previously amended by the Third Amendment to Second Amended and Restated Contract for Private Redevelopment (the “Third Amendment”) to modify the terms of the Phase III portion of the Minimum Improvements to replace the construction of for-sale condominium housing units with the construction of a residential senior cooperative building with approximately 54 dwelling units and to further extend the time period in which Phase III of redevelopment could occur; and

WHEREAS, the Original Agreement was previously amended by the Fourth Amendment to Second Amended and Restated Contract for Private Redevelopment (the “Fourth Amendment”) to further extend the time period in which Phase III of the redevelopment could occur; and

WHEREAS, the Original Agreement, as amended by the First Amendment, Second Amendment, Third Amendment, and Fourth Amendment, shall be referred to herein as the “Agreement”; and

WHEREAS, pursuant to the terms of an Assignment and Assumption Agreement of even date herewith (the “Assignment and Assumption”), the Redeveloper will assign its obligations with respect to Phase III under the Original Agreement, as amended, to Zvago Cooperative at Glen Lake, a Minnesota cooperative (the “Cooperative”), which will construct and own the senior housing cooperative; and

WHEREAS, the Authority has agreed to waive its option to purchase the Phase III Property in the event that the Redeveloper fails to commence construction of Phase III by the date required in the Original Agreement, as amended; and

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

Section 1. Amendment to Section 7.1(d) of the Original Agreement. Section 7.1(d) of the Original Agreement is deleted in its entirety and replaced with the following:

(d) In order to facilitate the securing of other financing, the Authority agrees to subordinate its rights under this Agreement provided that such subordination shall be subject to such reasonable terms and conditions as the Authority and Holder mutually agree in writing. The Authority shall waive its option to purchase the Phase II Property pursuant to Section 9.5 upon the earlier of (i) receipt of evidence reasonably acceptable to the Authority that the Redeveloper or Phase II Subdeveloper has commenced construction (as defined in Section 9.5) of the Phase II Minimum Improvements, or (ii) receipt of a written evidence that Redeveloper or Phase II Subdeveloper will finance the Phase II Minimum Improvements in part through a loan from HUD and HUD requires such waiver in order to proceed with such financing, in which case the waiver will be in a form acceptable to HUD. Any subordination agreement shall include the provision described in Section 7.1(c).

Section 2. Amendment to Section 9.6 of the Original Agreement. Section 9.6 of the Original Agreement is deleted in its entirety and replaced with the following:

Section 9.6. Phase III (Kinsel) Default. If the ~~Redeveloper~~Phase III Subdeveloper fails to commence the Minimum Improvements on the Phase III Property (which shall mean pouring cement for the building foundation, or placing footings in the ground, for the first building in Phase III) on or prior to March 31, 2016, the Authority may exercise any remedies available to the Authority pursuant to Section 9.2 hereof.

Section 3. Platting of Phase III Property. Replatting ~~or the combination~~ of the ~~two tax parcels that comprise the~~ Phase III Property is not required pursuant to Section 3.4(a) of the Original Agreement.

Section 4. Building Permit. The Phase III Subdeveloper will take all actions necessary to obtain a building permit for Phase III.

Section 5. Phase III Pro Forma. Pursuant to Section 3.7(d), the City and the Authority must review and approve the Phase III Redeveloper's pro forma for the Phase III Minimum Improvements.

Section ~~5.6.~~ Previous Amendments to Original Agreement. The First Amendment, Second Amendment, Third Amendment, and Fourth Amendment to the Original Agreement are set forth in EXHIBIT B attached hereto and are incorporated herein by reference.

Section ~~6.7.~~ Effective Date. The amendments and supplements made to the Original Agreement, as amended and supplemented by this Fifth Amendment to Agreement, shall be effective as of February 29, 2016.

Section ~~7.8.~~ Certain Defined Terms. Terms used in this Fifth Amendment to Agreement and not defined herein shall have the meanings given in the Agreement.

Section ~~8.9.~~ Confirmation of Agreement. Except as specifically amended by this Fifth Amendment to Agreement, the Agreement is hereby ratified and confirmed and remains in full force and effect.

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



Execution page of the City to the Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment, dated as of the date and year first written above.

**CITY OF MINNETONKA, MINNESOTA**

By \_\_\_\_\_  
Its Mayor

By \_\_\_\_\_  
Its City Manager

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of ~~\_\_\_\_\_~~ February, 2016, by Terry Schneider, the Mayor of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the City.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of ~~\_\_\_\_\_~~ February, 2016, by Geralyn Barone, the City Manager of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the City.

\_\_\_\_\_  
Notary Public

Execution page of the Redeveloper to the Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment, dated as of the date and year first written above.

**GLEN LAKE REDEVELOPMENT LLC**

By \_\_\_\_\_  
Its Chief Manager

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by Thomas Wartman, the Chief Manager of Glen Lake Redevelopment LLC, a Minnesota limited liability company, on behalf of the Redeveloper.

\_\_\_\_\_  
Notary Public

This Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment, dated as of the date and year first written above, is acknowledged and consented to by the undersigned as a permitted assignee under the Original Agreement.

**THE EXCHANGE DEVELOPMENT LLC**

By \_\_\_\_\_  
Its Chief Manager

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by Thomas Wartman, the Chief Manager of The Exchange Development LLC, a Minnesota limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public

This Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment, dated as of the date and year first written above, is acknowledged and consented to by the undersigned as a permitted assignee under the Original Agreement.

**KINSEL POINT DEVELOPMENT LLC**

By \_\_\_\_\_  
Its Chief Manager

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by Thomas Wartman, the Chief Manager of Kinsel Point Development LLC, a Minnesota limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public

This Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment, dated as of the date and year first written above, is acknowledged and consented to by the undersigned as a permitted assignee under the Original Agreement and owner of the Phase II Property.

**GLEN LAKE SENIOR HOUSING, LLC**

By \_\_\_\_\_  
Its Chief Manager

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by Michael Pagh, the Chief Manager of Glen Lake Senior Housing, LLC, a Minnesota limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public

This Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment, dated as of the date and year first written above, is acknowledged and consented to by the undersigned as a permitted assignee under the Original Agreement and future owner of the Phase III Property.

**ZVAGO COOPERATIVE AT GLEN LAKE**, a  
Minnesota cooperative

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MINNESOTA            )  
  ) ss.  
COUNTY OF HENNEPIN        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of February, 2016, by \_\_\_\_\_, the \_\_\_\_\_ of Zvago Cooperative at Glen Lake, a Minnesota cooperative, on behalf of the cooperative.

\_\_\_\_\_  
Notary Public

## **EXHIBIT A**

### **DESCRIPTION OF REDEVELOPMENT PROPERTY**

#### **Phase I (Exchange) Property**

Lot 1, Block 1, The Exchange, according to the recorded plat thereof, Hennepin County, Minnesota

#### **Phase II Property**

Lot 2, Block 1, Glen Haven Shopping Center, according to the recorded plat thereof, Hennepin County, Minnesota.

#### **Phase III (Kinsel) Property**

Lot 1, "Glen Lake Park", except the East 570 feet of Lot 1, according to the recorded plat thereof, Hennepin County, Minnesota.

**EXHIBIT B**

**PRIOR AMENDMENTS TO ORIGINAL AGREEMENT**

## ASSIGNMENT AND ASSUMPTION

THIS ASSIGNMENT AND ASSUMPTION (this “Assignment”) is executed and delivered by and between Glen Lake Redevelopment LLC, a Minnesota limited liability company (“Assignor” or “Redeveloper”), and Zvago Cooperative at Glen Lake, a Minnesota cooperative (“Assignee” or “Phase III Subdeveloper”), as of February 1, 2016. Assignor and Assignee are referred to collectively in this Assignment as the “Parties.” All capitalized terms not defined herein shall have the meaning given such term in the Contract (as defined herein).

### RECITALS

- A. Assignor, together with the Economic Development Authority in and for the City of Minnetonka, Minnesota, a Minnesota public body corporate and politic (the “EDA”) and the City of Minnetonka, Minnesota, a Minnesota municipal corporation (the “City”), entered into that certain Second Amended and Restated Contract for Private Redevelopment dated January 4, 2010, recorded in the office of the County Recorder, Hennepin County, Minnesota, on September 16, 2010, as Document No. A9560087, as amended by the First Amendment to Second Amended and Restated Contract for Private Redevelopment, dated May 13, 2013, as amended by the Second Amendment to Second Amended and Restated Contract for Private Redevelopment, dated ~~\_\_\_\_\_~~, June 23, 2014, as amended by the Third Amendment to Second Amended and Restated Contract for Private Redevelopment, dated ~~\_\_\_\_\_~~, January 26, 2015, as amended by the Fourth Amendment to Second Amended and Restated Contract for Private Redevelopment, dated November 6, 2015, and as further amended by the Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment, dated February 29, 2016, to be recorded in the office of the County Recorder, Hennepin County, Minnesota (collectively, the “Contract”), in connection with the redevelopment of certain real property located in the City further defined therein (the “Redevelopment Property”). Unless otherwise provided in this Assignment, all capitalized terms used herein shall have the meaning assigned to them in the Contract.
- B. Under the Contract, Assignor is obligated to undertake certain redevelopment activities in connection with the Redevelopment Property (including, without limitation, the construction of certain Minimum Improvements thereon). Pursuant to Article VIII of the Contract, Assignor is permitted to transfer (or permit the transfer of) portions of the Redevelopment Property to a Subdeveloper, to assign certain rights and obligations of the

Redeveloper under the Contract to a Subdeveloper, and be released from the assigned obligations, all upon the written approval of the EDA.

- C. The terms of this Assignment are effective on the date of closing on conveyance of the Phase III Property by the Phase III Property Owners to Assignee (the “Effective Date”).
- D. Assignor possesses all right, title and interest in and to the Contract and now desires to sell, assign and transfer to Assignee the following rights and obligations under the Contract in connection with Phase III and the Phase III Property (the “Transferred Obligations”):
1. Sections 2.1 and 2.2, to the extent such representations and warranties relate to Phase III and the Phase III Property.
  2. The Parties acknowledge that replatting ~~or the combination of the two tax parcels that comprise the Phase III Property~~ is not required pursuant to Section 3.4(a) of the Original Agreement.
  3. Section 3.4(c), to the extent such covenants relate to Phase III and the Phase III Property. The parties agree and understand that the park dedication fee allocated to Phase III is \$\_\_\_\_\_, and that SAC and WAC charges and any other Phase III City fees will be the obligation of the Assignee.
  4. Section 3.5, to the extent such covenants relate to the Phase III Property.
  5. Section 3.7(b), to the extent such section relates to the Phase III Property.
  6. Section 3.7(d).
  - ~~7. Section 3.9, to the extent Authority Costs are incurred: (1) in connection with this Agreement; (2) in connection with revisions to the Contract requested by Assignee between \_\_\_\_\_ 1, 2016 and the date of this Agreement; and (iii) in connection with Phase III from and after the date of this Agreement.~~
  7. ~~8.~~ Sections 4.1 through 4.4, to the extent such sections relate to Phase III; Section 4.10 to the extent Assignee holds records that relate to Phase III.
  8. ~~9.~~ Article V, to the extent such insurance covenants relate to Phase III.
  9. ~~10.~~ Sections 6.1 through 6.4, to the extent such covenants relate to Phase III and the Phase III Property.
  10. ~~11.~~ Article VII, to the extent such financing covenants relate to Phase III and the Phase III Property.
  11. ~~12.~~ Sections 8.1 and 8.2, to the extent such sections relate to Phase III and the Phase III Property.

- 12. ~~13.~~ Section 8.3, to the extent such covenants relate to Phase III and the Phase III Property.
- 13. ~~14.~~ Sections 9.1 through 9.4, to the extent they relate to an Event of Default by the Phase III Subdeveloper in connection with any Transferred Obligations.
- 14. ~~15.~~ Section 9.6.
- 15. ~~16.~~ Article X, to the extent such covenants relate to Phase III and the Phase III Property; and provided that the notice address for the Assignee for purposes of Section 10.6 is as follows:

Zvago Cooperative at Glen Lake  
3530 Lexington Avenue North #100  
Shoreview, MN 55126  
Attn: Julie Murray

- E. Assignee desires to assume the Transferred Obligations under the terms and conditions hereinafter set forth.
- E. Assignee will take all action necessary to obtain a building permit for Phase III.
- G. ~~F.~~ The EDA and the City have consented to the transfer of the Phase III Property and the assignment and assumption of the Transferred Obligations by Assignor to Assignee.

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

## ASSIGNMENT AND ASSUMPTION

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Assignment. Assignor does hereby sell, assign, transfer, convey, set over and deliver the Transferred Obligations to Assignee, effective as of the Effective Date.
2. Assumption. Assignee hereby accepts the foregoing assignment and transfer of the Transferred Obligations and promises and agrees to assume all liabilities of the Transferred Obligations, and faithfully perform all covenants, stipulations, agreements and commitments thereto appertaining, effective as of the Effective Date.
3. Release of Assignor. As of the Effective Date, Assignor shall be released of the Transferred Obligations.
4. Status of Contract / Amendment to Prevail. The Contract remains in full force and effect, and is not modified except as expressly provided in this Assignment.
5. Binding Effect; Governing Law. This Assignment shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns. This Assignment shall be governed by, construed and enforced under the laws of the State of Minnesota. This Assignment shall only be effective and shall be contingent upon the consent of the EDA, in writing below. The Parties shall execute and deliver such further and additional instruments, agreements and other documents as may be reasonably necessary to evidence or carry out the provisions of this Assignment.
6. Governing Law. This Agreement is made and executed in the State of Minnesota and shall be governed by the laws of said State.
7. Counterparts. This Assignment may be executed in any number of counterparts, each of which when so executed and delivered shall constitute an original, but together shall constitute one and the same instrument.

[Signature pages follow]





**CONSENT OF EDA**

The EDA hereby consents to the foregoing Assignment on the terms set forth above, including without limitation the modification to the Contract as it applies to the Assignee and the Phase III Property as described therein. This consent shall not be construed as a consent to any future assignment of all or any portion of the interests and obligations of the Assignor under the Contract, whether to Assignee or any other Subdeveloper.

Dated: February \_\_\_\_, 2016

**ECONOMIC DEVELOPMENT AUTHORITY  
IN AND FOR THE CITY OF MINNETONKA,  
MINNESOTA**, a Minnesota public body corporate  
and politic

By: \_\_\_\_\_  
Terry Schneider  
Its: President

By: \_\_\_\_\_  
Geraldyn Barone  
Its: Executive Director

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of February, 2016, by Terry Schneider and Geraldyn Barone, the President and Executive Director, respectively, of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body politic and corporate, on behalf of the Authority.

\_\_\_\_\_  
Notary Public



## **EXHIBIT A**

### Legal Description of Phase III Property

Lot 1, "Glen Lake Park", except the East 570 feet of Lot 1, according to the recorded plat thereof, Hennepin County, Minnesota.