

Agenda

Minnetonka Economic Development Authority

Monday, March 28, 2016

Following the Regular Meeting

Council Chambers

1. Call to Order
2. Roll Call: Bergstedt-Wagner-Ellingson-Allendorf-Acomb-Wiersum-Schneider
3. Approval of Agenda
4. Approval of Minutes: February 29, 2016 EDA meeting
5. Business Items:
 - A. Resolution approving HUD Subordination Language and Extension of Time to commence construction for Phase III of Glen Lake Development

Recommendation: Adopt the resolution
6. Adjourn

Minnetonka EDA meetings are broadcast live at www.eminnetonka.com and on cable channel 16. Replays of this meeting are available anytime at www.eminnetonka.com or on channel 16 on the following days and times:
Sundays at 9 p.m., Wednesdays at 12 p.m. and Fridays at 9 a.m.
For more information, please call 952.939.8200 or visit www.eminnetonka.com.

Minutes
Minnetonka Economic Development Authority
Monday, February 29, 2016

1. Call to Order

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

2. Roll Call

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

3. Approval of Agenda

Bergstedt moved, Wiersum seconded a motion to accept the agenda with an addendum to item 5A. All voted "yes." Motion carried.

4. Approval of Minutes: December 21, 2015 EDA meeting

Allendorf moved, Acomb seconded a motion to approve the minutes of the December 21, 2015 meeting, as presented. All voted "yes." Motion carried.

5. Business Items:

A. Resolution amending the Glen Lake contract

Community Development Director Julie Wischnack gave the staff report.

Tim Nichols from One Two One Development said the start date is getting closer. Currently 36 units have been pre-sold. Eight units will be paid for prior to the start of construction with nine others left. There are many prospective people who are interested.

Wiersum moved, Allendorf seconded a motion to adopt Resolution 2016-001 approving 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. All voted "yes." Motion carried.

6. Adjournment

Wiersum moved, Bergstedt seconded a motion to adjourn the meeting at 6:33 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk

EDA Agenda Item #5A
Meeting of March 28, 2016

Brief Description Resolution approving HUD Subordination Language and Extension of Time to commence construction for Phase III of Glen Lake Development

Recommendation Adopt the resolution

Background

The city council and economic development authority recently took action on revised subordination language (February 29, 2016) for the 54 unit cooperative housing project at 14217 and 14301 Stewart Lane. HUD is now requesting additional changes to the language.

Because the project is moving closer to the contractual start time for the project (March 31, 2016), staff is recommending an extension of time in the contract until May 31, 2016. Staff believes that the developer anticipated they would have the project financing finalized and did not request an extension in the previous action of the council.

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.

Recommendation

Staff recommends the city council adopt the resolution (pages A1-A4) approving HUD Subordination Language and Extension of Time to commence construction for Phase III of Glen Lake Development.

Submitted through:
 Geraldyn Barone, City Manager

Originated by:
 Julie Wischnack, AICP, Community Development Director

EDA Resolution. 2016-xx

Resolution approving HUD Subordination Language and Extension of Time for Phase III of Glen Lake Development

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.” 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, the Fourth Amendment to Second Amended and Restated Contract for Private Redevelopment, and the Fifth Amendment to Second Amended and Restated Contract for Private Development. The Second Amended Contract, as amended, is referred to herein as “the Contract.”
- 1.03. 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 corporation (the “Cooperative”), which will construct and own the senior housing cooperative, all as permitted under Section 8.2 of the Contract.
- 1.04. The Board has previously approved 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.

- 1.05. The Cooperative will be obtaining financing from the Department of Housing and Urban Development (“HUD”) to finance the senior housing cooperative. HUD has requested that the Assignment and Assumption Agreement be revised to include language subordinating the portion of the Contract related to Phase III of the Glen Lake development to the HUD loan and related financing documents, including a note, a mortgage, and a regulatory agreement.
- 1.06. There has been presented to the Board a revised Assignment and Assumption Agreement incorporating HUD’s required subordination language.
- 1.07 Pursuant to the Contract, the Redeveloper is currently required to commence construction on Phase III of the redevelopment project by March 31, 2016. The Fifth Amendment to Second Amended and Restated Contract for Private Redevelopment, as previously approved by the Board, removed the Authority’s option to purchase the property on which Phase III of the project is located (the “Phase III Property”) in the event of a default by the Redeveloper. The Redeveloper has subsequently requested an extension to the construction commencement date for Phase III of the redevelopment project to May 31, 2016.

Section 2. Board Action.

- 2.01. The revised 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.
- 2.02. The President and Executive Director are authorized and directed to execute the revised Assignment and Assumption, and any other documents or certificates necessary to carry out the transactions described therein.
- 2.03. The Board hereby approves the extension of the construction commencement date set forth in the Contract to May 31, 2016 and ratifies its agreement that it shall not have the option to purchase the Phase III Property in the event of a default by the Redeveloper.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota this 28th day of March, 2016.

Terry Schneider, President

ATTEST:

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 March 28, 2016.

Secretary

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 [corporation](#) (“Assignee” or “Phase III Subdeveloper”), as of February 29, 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 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 \$26,672, 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. 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. Article V, to the extent such insurance covenants relate to Phase III.
 - 9. Sections 6.1 through 6.4, to the extent such covenants relate to Phase III and the Phase III Property.
 - 10. Article VII, to the extent such financing covenants relate to Phase III and the Phase III Property.
 - 11. Sections 8.1 and 8.2, to the extent such sections relate to Phase III and the Phase III Property.
 - 12. Section 8.3, to the extent such covenants relate to Phase III and the Phase III Property.
 - 13. 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. Section 9.6.
15. 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.
- F. Assignee will take all action necessary to obtain a building permit for Phase III.
- G. 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.
- H. Dougherty Mortgage LLC, a Delaware limited liability company (“Lender”) has agreed to make a loan to the Phase III Subdeveloper in the original principal amount of Fourteen Million Eight Hundred Twenty-One Thousand Six Hundred and 00/100ths Dollars (\$ 14,821,600.00) (the “HUD-Insured Loan”) which loan shall be insured by the Federal Housing Administration (the “FHA”) of the United States Department of Housing and Urban Development (“HUD”) under Section 232213 of the National Housing Act of 1934, as amended, pursuant to the Commitment to Insure Upon Completion dated January 20, 2016 (FHA Project No. 092-23242), as amended (the “FHA Commitment”).
- I. The HUD-Insured Loan will be evidenced by that certain ~~Mortgage~~-Note (Multistate) dated March 1, 2016 (the “HUD Note”) executed by the Phase III Subdeveloper in favor of Lender in the original principal amount of the HUD-Insured Loan and will be secured in part by (i) that certain Multifamily Mortgage ~~dated~~ Assignment of Leases and Rents and Security Agreement dated March 1, 2016 (the “HUD Mortgage”) executed by the Phase III Subdeveloper in favor of Lender, and by (ii) the Regulatory Agreement for Multifamily Housing Projects dated March 1, 2016 (the “HUD Regulatory Agreement”) executed by and between ~~Landlord~~the Phase III Subdeveloper and the ~~Secretary~~United States Department of Housing and Urban Development. The HUD Note, the HUD Mortgage, the HUD Regulatory Agreement and all other loan and security documents executed in connection with the HUD-Insured Loan are collectively referred to herein as the “HUD Loan Documents.”
- J. As a condition to the making of the HUD-Insured Loan to the Phase III Subdeveloper, Lender and HUD require that the Contract, to the extent assigned to the Phase III Subdeveloper and as applicable to and encumbering the Phase III Property only, be

amended to include certain HUD provisions and that the Contract be subordinated to the [HUD-Insured](#) Loan and the HUD Loan Documents.

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. Contract Modified. The Assignee acknowledges that, in addition to the Transferred Obligations referenced above, the portion of the Contract transferred to and assumed by the Assignee is deemed modified to include the following Article XII:

ARTICLE XII

PHASE III PROPERTY - HUD REQUIREMENTS

This Article XII is applicable to and shall be enforced only with regard to the Phase III Property and the rights, duties and obligations of the parties under this Agreement with regard to the Phase III Property and ~~development~~[Phase III Minimum Improvements](#), operation and use of the ~~Minimum Improvements located on the Phase III Property~~[Phase III Minimum Improvements](#).

Section 12.1. ~~Notwithstanding anything in this Agreement to the contrary, except the requirements in 26 U.S.C. 42(h)(6)(E)(ii), this Agreement is expressly subordinate to (i) the Mortgage Note dated as of dated _____ (the "HUD Note") executed by the Phase III Subdeveloper in favor of Dougherty Mortgage LLC, a Delaware limited liability company ("Lender"), (ii) the Mortgage dated _____ (the "HUD Mortgage") executed by the Phase III Subdeveloper in favor of Lender, (iii) the Regulatory Agreement for Multifamily Projects dated _____ (the "HUD Regulatory Agreement") executed by and between the Phase III Subdeveloper and the Secretary for Housing and Urban Development ("HUD"), and (iv) all other documents executed by the Phase III Subdeveloper, Lender and/or HUD in connection with the HUD Note (collectively the "HUD Loan Documents") in connection with the Phase III Property, and is subordinate to all applicable HUD mortgage insurance (and Section 8 of the U.S. Housing Act of 1937, if applicable) regulations and related administrative requirements. In the event of any conflict between the provisions of this Agreement and the provisions of applicable HUD regulations, related HUD~~

~~administrative requirements, or HUD Loan Documents, the HUD regulations, related administrative requirements or HUD Loan Documents shall control.~~In the event of any conflict between any provision contained elsewhere in this Agreement (as it relates only to the Phase III Property and Phase III Minimum Improvements) and any provision contained in this Article XII, the provisions contained in this Article XII shall govern and be controlling in all respects as set forth more fully herein.

Section 12.2. ~~In the event of foreclosure or transfer of title by deed in lieu of foreclosure of the Phase III Property, any and all land use covenants contained herein encumbering and/or applicable to the Phase III Property shall automatically terminate except those requirements set out in 26 U.S.C. 42(h)(6)(E)(ii)~~The following terms shall have the following definitions:

“Code” means the Internal Revenue Code of 1986, as amended.

“HUD” means the United States Department of Housing and Urban Development.

“HUD Regulatory Agreement” means the Regulatory Agreement for Multifamily Projects between the Phase III Subdeveloper and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“Lender” means Dougherty Mortgage LLC, a Delaware limited liability company, its successors and assigns.

“Mortgage Loan” means the mortgage loan made by Lender to the Phase III Subdeveloper pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

“National Housing Act” means the National Housing Act of 1934, as amended.

“Phase III Subdeveloper” means Zvago Cooperative at Glen Lake, a Minnesota cooperative corporation, its successors and assigns.

“Program Obligations” has the meaning set forth in the Security Instrument.

“Security Instrument” means the mortgage or deed of trust from the Phase III Subdeveloper in favor of Lender, as the same may be supplemented, amended or modified.

Section 12.3. ~~Failure to comply with the covenants contained herein encumbering and/or applicable to the Phase III Property will not serve as a basis for default on any of the HUD Loan Documents.~~

~~—Section 12.4. The covenants contained in this Agreement encumbering and/or applicable to the Phase III Property are not included in any of the HUD Loan Documents.~~

~~—Section 12.5. Enforcement of the covenants contained herein encumbering and/or applicable to the Phase III Property will not result in any claim against the Phase III~~

~~Property, the proceeds from the HUD Mortgage, any reserve or deposit required by HUD in connection with the HUD Mortgage transaction, or the rents or other income from the Phase III Property other than from available Surplus Cash, as defined in the HUD Regulatory Agreement.~~

~~—Section 12.6. So long as the Phase III Property is subject to a mortgage insured or held by HUD, no amendment shall be made to this Agreement without the prior written consent of HUD.~~

~~—Section 12.7. This Agreement may not be foreclosed upon or sold, transferred, assigned or pledged, without the prior written consent of HUD of such foreclosure, conveyance, assignment or pledge.~~

~~—Section 12.8. With regard to the Phase III Property only, no action shall be taken in accordance with the rights granted herein or prohibiting the Phase III Subdeveloper or any of its successors or assigns from taking any action except in strict accordance with the U.S. Housing Act of 1937 (the “Housing Act”), applicable mortgage insurance regulations, the HUD Loan Documents, or applicable public housing regulations under Sections 5 and 9 of the Housing Act, or if applicable, Section 8 of the Housing Act and the regulations thereunder.~~

~~—Section 12.9. The covenants contained in this Agreement encumbering and/or applicable to the Phase III Property shall not be construed to conflict with any applicable HUD mortgage insurance regulation, applicable public housing regulations, or Section 8 of the Housing Act and the regulations thereunder.~~ Notwithstanding anything in this Agreement to the contrary, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). The Phase III Subdeveloper covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or this Agreement. In the event of any conflict between the provisions of this Agreement and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the EDA’s or the City’s ability to enforce the terms of this Agreement, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Phase III Subdeveloper represents and warrants that to the best of Phase III Subdeveloper’s knowledge this Agreement imposes no terms or requirements that conflict with the National Housing Act and related regulations.

5. 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.
6. 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.

7. Governing Law. This Agreement is made and executed in the State of Minnesota and shall be governed by the laws of said State.
8. 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]

**ASSIGNOR'S SIGNATURE PAGE
FOR
ASSIGNMENT AND ASSUMPTION**

IN WITNESS WHEREOF, the Parties hereto have executed this Assignment as of the date first above written.

ASSIGNOR:
GLEN LAKE REDEVELOPMENT LLC, a
Minnesota limited liability company

By: _____
Its Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

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

Notary Public

Drafted by:
KENNEDY & GRAVEN, CHARTERED (JAE)
200 South Sixth Street, Suite 470
Minneapolis, MN 55402
Telephone: 612-337-9300

**ASSIGNEE'S SIGNATURE PAGE
FOR
ASSIGNMENT AND ASSUMPTION**

IN WITNESS WHEREOF, the Parties hereto have executed this Assignment as of the date first above written.

ASSIGNEE:
ZVAGO COOPERATIVE AT GLEN LAKE, a
Minnesota cooperative [corporation](#)

By: _____
Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of March,
2016, by _____, the _____ of Zvago Cooperative
at Glen Lake, a Minnesota cooperative [corporation](#), on behalf of the cooperative [corporation](#).

Notary Public

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

CONSENT OF CITY

The City of Minnetonka 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

CITY OF MINNETONKA, MINNESOTA, a
Minnesota public body corporate and politic

By: _____
Terry Schneider
Its: Mayor

By: _____
Geraldyn Barone
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 and Geraldyn Barone, the Mayor and City Manager, respectively, of the City of Minnetonka, Minnesota, a public body politic and corporate, on behalf of the City.

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.

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 corporation (“Assignee” or “Phase III Subdeveloper”), as of February 29, 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 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 \$26,672, 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. 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. Article V, to the extent such insurance covenants relate to Phase III.
 - 9. Sections 6.1 through 6.4, to the extent such covenants relate to Phase III and the Phase III Property.
 - 10. Article VII, to the extent such financing covenants relate to Phase III and the Phase III Property.
 - 11. Sections 8.1 and 8.2, to the extent such sections relate to Phase III and the Phase III Property.
 - 12. Section 8.3, to the extent such covenants relate to Phase III and the Phase III Property.

13. 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. Section 9.6.
15. 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.
- F. Assignee will take all action necessary to obtain a building permit for Phase III.
- G. 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.
- H. Dougherty Mortgage LLC, a Delaware limited liability company (“Lender”) has agreed to make a loan to the Phase III Subdeveloper in the original principal amount of Fourteen Million Eight Hundred Twenty-One Thousand Six Hundred and 00/100ths Dollars (\$14,821,600.00) (the “HUD-Insured Loan”) which loan shall be insured by the Federal Housing Administration (the “FHA”) of the United States Department of Housing and Urban Development (“HUD”) under Section 213 of the National Housing Act of 1934, as amended, pursuant to the Commitment to Insure Upon Completion dated January 20, 2016 (FHA Project No. 092-23242), as amended (the “FHA Commitment”).
- I. The HUD-Insured Loan will be evidenced by that certain Note (Multistate) dated March 1, 2016 (the “HUD Note”) executed by the Phase III Subdeveloper in favor of Lender in the original principal amount of the HUD-Insured Loan and will be secured in part by (i) that certain Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement dated March 1, 2016 (the “HUD Mortgage”) executed by the Phase III Subdeveloper in favor of Lender, and by (ii) the Regulatory Agreement for Multifamily Housing Projects dated March 1, 2016 (the “HUD Regulatory Agreement”) executed by and between the Phase III Subdeveloper and the United States Department of Housing and Urban Development. The HUD Note, the HUD Mortgage, the HUD Regulatory Agreement and all other loan and security documents executed in connection with the HUD-Insured Loan are collectively referred to herein as the “HUD Loan Documents.”

- J. As a condition to the making of the HUD-Insured Loan to the Phase III Subdeveloper, Lender and HUD require that the Contract, to the extent assigned to the Phase III Subdeveloper and as applicable to and encumbering the Phase III Property only, be amended to include certain HUD provisions and that the Contract be subordinated to the HUD-Insured Loan and the HUD Loan Documents.

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. Contract Modified. The Assignee acknowledges that, in addition to the Transferred Obligations referenced above, the portion of the Contract transferred to and assumed by the Assignee is deemed modified to include the following Article XII:

ARTICLE XII

PHASE III PROPERTY - HUD REQUIREMENTS

This Article XII is applicable to and shall be enforced only with regard to the Phase III Property and the rights, duties and obligations of the parties under this Agreement with regard to the Phase III Property and Phase III Minimum Improvements, operation and use of the Phase III Minimum Improvements.

Section 12.1. In the event of any conflict between any provision contained elsewhere in this Agreement (as it relates only to the Phase III Property and Phase III Minimum Improvements) and any provision contained in this Article XII, the provisions contained in this Article XII shall govern and be controlling in all respects as set forth more fully herein.

Section 12.2. The following terms shall have the following definitions:

“Code” means the Internal Revenue Code of 1986, as amended.

“HUD” means the United States Department of Housing and Urban Development.

“HUD Regulatory Agreement” means the Regulatory Agreement for Multifamily Projects between the Phase III Subdeveloper and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“Lender” means Dougherty Mortgage LLC, a Delaware limited liability company, its successors and assigns.

“Mortgage Loan” means the mortgage loan made by Lender to the Phase III Subdeveloper pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

“National Housing Act” means the National Housing Act of 1934, as amended.

“Phase III Subdeveloper” means Zvago Cooperative at Glen Lake, a Minnesota cooperative corporation, its successors and assigns.

“Program Obligations” has the meaning set forth in the Security Instrument.

“Security Instrument” means the mortgage or deed of trust from the Phase III Subdeveloper in favor of Lender, as the same may be supplemented, amended or modified.

Section 12.3. Notwithstanding anything in this Agreement to the contrary, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). The Phase III Subdeveloper covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or this Agreement. In the event of any conflict between the provisions of this Agreement and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the EDA’s or the City’s ability to enforce the terms of this Agreement, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Phase III Subdeveloper represents and warrants that to the best of Phase III Subdeveloper’s knowledge this Agreement imposes no terms or requirements that conflict with the National Housing Act and related regulations.

5. 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.
6. 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.

7. Governing Law. This Agreement is made and executed in the State of Minnesota and shall be governed by the laws of said State.
8. 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]

**ASSIGNOR'S SIGNATURE PAGE
FOR
ASSIGNMENT AND ASSUMPTION**

IN WITNESS WHEREOF, the Parties hereto have executed this Assignment as of the date first above written.

ASSIGNOR:
GLEN LAKE REDEVELOPMENT LLC, a
Minnesota limited liability company

By: _____
Its Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

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

Notary Public

Drafted by:
KENNEDY & GRAVEN, CHARTERED (JAE)
200 South Sixth Street, Suite 470
Minneapolis, MN 55402
Telephone: 612-337-9300

**ASSIGNEE'S SIGNATURE PAGE
FOR
ASSIGNMENT AND ASSUMPTION**

IN WITNESS WHEREOF, the Parties hereto have executed this Assignment as of the date first above written.

ASSIGNEE:
ZVAGO COOPERATIVE AT GLEN LAKE, a
Minnesota cooperative corporation

By: _____
Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

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

Notary Public

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

CONSENT OF CITY

The City of Minnetonka 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

CITY OF MINNETONKA, MINNESOTA, a
Minnesota public body corporate and politic

By: _____
Terry Schneider
Its: Mayor

By: _____
Geraldyn Barone
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 and Geraldyn Barone, the Mayor and City Manager, respectively, of the City of Minnetonka, Minnesota, a public body politic and corporate, on behalf of the City.

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.

**Addendum
Minnetonka City Council
Meeting of March 28, 2016**

14A. Resolution approving HUD Subordination Language and Extension of Time to commence construction for Phase III of Glen Lake Development

Attached is a change memo from the city planner clarifying the voter requirement for the item.

**Addendum
Economic Development Authority
Meeting of March 28, 2016**

5A. Resolution approving HUD Subordination Language and Extension of Time to commence construction for Phase III of Glen Lake Development

Attached is a change memo from the city planner clarifying the voter requirement for the item.



Memorandum

To: City Council
From: Loren Gordon, AICP, City Planner
Date: March 28, 2016
Subject: Change Memo for March 28, 2016

14A – Resolution approving HUD Subordination Language and Extension of Time to commence construction for Phase III of Glen Lake Development

Voting was omitted from the agenda. The approval of the resolution requires a majority vote (4 votes).



Memorandum

To: Economic Development Authority
From: Loren Gordon, AICP, City Planner
Date: March 28, 2016
Subject: Change Memo for March 28, 2016

5A – Resolution approving HUD Subordination Language and Extension of Time to commence construction for Phase III of Glen Lake Development

Voting was omitted from the agenda. The approval of the resolution requires a majority vote (4 votes).