

**MINUTES
OF THE JOINT MEETING OF THE
EDINA HOUSING AND REDEVELOPMENT AUTHORITY
AND THE EDINA CITY COUNCIL
HELD AT CITY HALL
AUGUST 15, 2000 - 7:00 P.M.**

ROLLCALL. Answering rollcall were Members Faust, Hovland, Johnson, and Mayor Maetzold.

CONSENT AGENDA ITEMS APPROVED Motion made by Member Johnson and seconded by Member Faust approving the Council Consent Agenda as presented.

Rollcall:

Ayes: Faust, Hovland, Johnson, Maetzold

Motion carried.

*MINUTES OF THE REGULAR MEETING OF AUGUST 1, 2000, APPROVED Motion made by Member Johnson and seconded by Member Faust approving the Minutes of the Regular Meeting of August 1, 2000.

Motion carried on rollcall vote - four ayes.

RESOLUTION NO. 2000-80 VACATION OF PUBLIC RIGHT-OF-WAY AND UTILITY AND DRAINAGE EASEMENTS APPROVED - (GRANDVIEW SQUARE PHASE 1) Engineer Hoffman explained the vacation of public use is a result of the Grandview Square redevelopment. New easements are being granted with the new plat. The only issue identified by abutting property owners is the need to maintain sewer service for 5244 Eden Circle and any utility relocation if identified by a utility. Engineer Hoffman reported we have no response from Time Warner, but the other utilities have approved the vacation request.

Engineer Hoffman said staff recommends vacating existing utility and roadway drainage easements in Grandview Square reserving the sanitary sewer service to 5244 Eden Circle during construction.

No public comment was heard.

Member Hovland made a motion closing the public hearing. Member Johnson seconded the motion.

Ayes: Faust, Hovland, Johnson, Maetzold

Motion carried.

Member Johnson introduced the following Resolution and moved its adoption:

**RESOLUTION NO. 2000-80
RESOLUTION VACATING PUBLIC RIGHT-OF-WAY,
UTILITY AND DRAINAGE EASEMENTS FOR
GRANDVIEW SQUARE PHASE 1**

WHEREAS, a motion of the City Council, on the 19TH day of July, 2000, fixed a date for a public hearing on a proposed vacation of public right-of-way, utility and drainage easements; and

WHEREAS, two weeks published and posted notice of said hearing was given and the hearing was held on the 15th day of August, 2000, at which time all persons desiring to be heard were given an opportunity to be heard thereon; and

WHEREAS, the Council deems it to be in the best interest of the City and of the public that said public right-of-way, utility and drainage easements be made; and

WHEREAS, the Council considered the extent the vacation affects existing easements within the area of the vacation and the extent to which the vacation affects the authority of any person, corporation, or municipality owning or controlling electric, telephone or cable television poles and lines, gas and sewer lines, or water pipes, mains, and hydrants on or under the area of the proposed vacation to continue maintaining the same, or to enter upon such easement area or portion thereof vacated to maintain, repair, replace, remove or otherwise attend thereto;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Edina, Hennepin County, Minnesota, that the following public street right-of-way, and utility and drainage easements are hereby vacated effective as of August 15, 2000:

The vacation of utility and drainage easement per Document No. 3613175 described as follows:

The south ten feet (10') of the east one hundred eighty feet (180') of Lot 2, Block 1, WANNER ADDITION

The vacation of utility and drainage easement per Document No. 3613176 described as follows:

A fifteen foot (15') wide easement lying seven and five tenths feet (7.5') on either side of the following described line: Commencing at a point in the south line of Eden Avenue, said point being three hundred sixty-five feet (365') east of the west line of Government Lot 8, Section 35, Township 117, Range 21; thence southerly parallel to the west line of said Government Lot 8 to an intersection with the easterly extension of the south line of Lot 2, Block 1 WANNER ADDITION; thence westerly to the southeast corner of said Lot 2, Block 1, WANNER ADDITION.

The vacation of roadway easement per Document No. 2419555 described as follows:

An easement over a part of Government Lot 8, Section 28, Township 117 North, Range 21 West, Hennepin County, Minnesota, for roadway purposes, 16 feet in width, being 8 feet on each side of the following described line, Commencing at a point on the south line of Eden Prairie Road, 358 feet due East from the West line of said Government Lot 8; thence south and parallel with west line of said Government Lot 8 to a point which is 612.9 feet north of the south line of said Lot 8; thence west at right angles to east line of Lot 2, Block 1, WANNER ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota.

The vacation of roadway easements per Document No. 2985877 described as follows:

An easement for roadway purposes over and across the South Twenty-five (25) feet of Lot Two (2), WANNER ADDITION, according to the recorded plat thereof on file and of record in the office of the Register of Deeds in and for Hennepin County, Minnesota and together with an easement for roadway purposes over and across the North Twenty-five (25) feet of Lot Three (3), WANNER ADDITION, according to the recorded plat thereof.

The vacation of an easement per Document No. 3561767 described as follows:

The west ten (10) feet of the south twenty-five (25) feet of Lot 2, Block 1, WANNER ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota.

BE IT FURTHER RESOLVED, that said vacation does not affect, and there are continued, reserved, and retained, by the said resolution ordering the vacation, the following existing easements and authority in, on and under the above vacated area.

The authority of Northern States Power Company, Quest Communications, Time Warner Cable Minnesota, or Reliant Energy Minnegasco to enter upon the above vacated area for the maintenance, replacement, repair and removal of and for otherwise attending to, underground conduit, manholes, cables, wires and poles required for utility service now in, on or under the above vacated area.

BE IT FURTHER RESOLVED that the City Clerk is authorized and directed to cause a notice of completion of proceedings to be prepared, entered in the transfer record of the County Auditor, and filed with the County Recorder, in accordance with Minnesota Statutes, Section 412.851.

Dated: August 15, 2000.

Motion seconded by Member Faust.

Rollcall:

Ayes: Faust, Hovland, Johnson, Maetzold

Resolution adopted.

RESOLUTION NO. 2000-75, AMENDMENT TO REDEVELOPMENT PLAN APPROVED - ESTABLISHMENT OF HAZARDOUS SUBSTANCE SUBDISTRICT

Manager Hughes explained that a public hearing must be conducted to establish a Hazardous Substance Subdistrict to the Grandview Tax Increment District. He presented amendments to the Grandview redevelopment plan and tax increment district taking actions as follows:

1. Clarify the authorized expenditures for the plan. The 1999 amendments were placed in categories that did not match the State-mandated reporting requirements. The proposed amendment places the dollars into the proper categories.
2. Clarify the amount of bonded indebtedness to be incurred pursuant to the Financing Plan. The original amendments authorized \$15,092,000 in additional expenditures. The amendment as presented states the bonded indebtedness cannot exceed this amount. The expenditures of tax increments to pay interest is authorized as well.
3. Authorize the establishment of a hazardous substance subdistrict and adopt a financing plan. This subdistrict is established to finance the environmental cleanup costs associated with the development project. This form of subdistrict utilizes the base taxes of the tax increment district to finance the cleanup cost. The district may last for 25 years or until the cleanup costs are paid off.

Manager Hughes presented comments from Hennepin County Deputy Administrator Richard Johnson. The County views this as a financing tool of "last resort" and acknowledges that this amendment satisfies the criteria established by the County Board for use of tax increment financing.

Council comments

Member Hovland inquired about the cost of the removal and remediation of the hazardous substances. Manager Hughes elaborated that remediation is still estimated to be at one million dollars or less.

Resident comments

John Menke, 5301 Pinewood Trail, asked; 1) why does the City want to establish a hazardous substance district, 2) has this been done before in Edina, 3) why for this private developer, and 4) will

this be a million dollar bonus for the developer. He said Opus Clark knew what they were doing, they made a bid and they should pay their own way.

Manager Hughes said the City's previous experience has been the clean-up of buried concrete found at Centennial Lakes, at a cost of three-quarters of a million dollars borne by that tax increment district. He added that this was a problem associated with older industrial areas that needs to be faced when the sites are redeveloped.

Member Johnson said it is the obligation of the City to deliver buildable property and this is not providing a subsidy, but fulfilling a contractual commitment to the developer and dealing with an environmental problem not of the making of the developer.

Manager Hughes informed the Council that all proposals that were received during the process included a caveat that assumed the land was clean.

Mayor Maetzold explained the State Legislature contemplated this type of thing happening and established a tax increment act that addresses hazardous subdistricts.

Member Johnson made a motion to close the Public Hearing. Member Hovland seconded the motion.

Ayes: Faust, Hovland, Johnson, Maetzold

Motion carried.

Member Hovland introduced the following resolution and moved its adoption:

RESOLUTION NO. 2000-75

RESOLUTION APPROVING MODIFICATION OF GRANDVIEW REDEVELOPMENT PROJECT NO. 1, GRANDVIEW AREA REDEVELOPMENT PLAN AND GRANDVIEW TAX INCREMENT FINANCING PLAN AND MAKING FINDINGS WITH RESPECT THERETO

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

1. The Commissioners of the Housing and Redevelopment Authority in and for the City of Edina, Minnesota (the "HRA") and the City of Edina, Minnesota (the "City"), have previously approved the Grandview Area Redevelopment Plan (the "Redevelopment Plan") and Grandview Redevelopment Project No. 1 (the "Redevelopment Project") to be undertaken pursuant thereto, and in order to finance the public redevelopment costs to be incurred by the City and the HRA in connection with the Redevelopment Plan and Redevelopment Project, the HRA and the City have approved Grandview Tax Increment Financing Plan (the "Financing Plan"), which establishes a tax increment financing district which is designated by the HRA as the Grandview Tax Increment Financing District (Hennepin County No. 1202) (the "District"). On April 7, 1997 and December 7, 1999, the HRA and City approved amendments to the Redevelopment Plan, Redevelopment Project and Financing Plan (the "Amendments"). The HRA has approved an amendment to the Redevelopment Project, the Redevelopment Plan and the Tax Increment Financing Plan, as amended by the Amendments, which is entitled "Modification of Grandview Redevelopment Project No. 1, Grandview Area Redevelopment Plan and Grandview Tax Increment Financing Plan for Tax Increment Finance District No. 1202" (the "2000 Amendment"). The 2000 Amendment establishes Hazard Substance Subdistrict No. 1 (the "HSS") within the District, and authorizes the use of tax increment revenues derived from the HSS to pay or reimburse costs specified within Minnesota Statutes, Section 469.176, subdivision 4c, within the HSS.

2. This Council on August 15, 2000, held a public hearing on the 2000 Amendment after notice of the public hearing was published in the official newspaper of the City not less than ten (10) days prior to the date of the hearing. At such public hearing all persons desiring to be heard with respect to the 2000 Amendment were given an opportunity to express their views with respect thereto.

3. This Council has previously found that the District is a redevelopment district within the scope of Minnesota Statutes, Section 469.174, subdivision 10 and the 2000 Amendment will not change such prior findings. The 2000 Amendment further serves the original goals and objectives of the City and HRA in approving the Redevelopment Plan, the Redevelopment Project and the Financing Plan and the Amendments, by redeveloping property in the City in order to prevent or reduce blight, blighting factors and the causes of blight, and by providing needed public facilities.

4. Pursuant to Minnesota Statutes, Section 469.175, subdivision 4, it is hereby found that:

(A) The District, is a redevelopment district, as defined in Minnesota Statutes, Section 469.174, subdivision 10, for the reasons set forth in previous findings by this Council, and the 2000 Amendment does not alter these previous findings.

(B) The proposed development to be undertaken in accordance with the Redevelopment Plan, as amended by the 2000 Amendment, in the opinion of this Council would not occur solely through private investment within the reasonably foreseeable future and therefor the use of tax increment financing and the HSS is deemed necessary.

(C) The Financing Plan, as amended by the 2000 Amendment, conforms to the general plan for the development of the City as a whole.

(D) The Financing Plan, as amended by the 2000 Amendment, will afford maximum opportunity consistent with the sound needs of the City as a whole for the development of the area subject to Redevelopment Plan by private enterprise.

(E) The City confirms its election of the method of tax increment computation set forth in Minnesota Statutes, Section 469.177, subdivision 3, clause (a) with respect to the District.

Passed by the Council this 15th day of August, 2000.

Dated: August 15, 2000.

Member Faust seconded the motion.

Rollcall:

Ayes: Faust, Hovland, Johnson, Maetzold

Resolution adopted.

RESOLUTION NO 2000-79, REDEVELOPMENT CONTRACT - GRANDVIEW SQUARE LLC

APPROVED Manager Hughes presented an executive summary of the redevelopment agreement with Grandview Square, highlighting points:

1. Project
2. Redevelopment Property
3. Redeveloper
4. Contingencies
5. Acquisition of Parcels; Eminent Domain
6. Environmental Remediation
7. Construction of Minimum Improvements

8. Sale of Library/Senior Center Site
9. Reimbursement of Public Redevelopment Costs; General Description
10. Grandview Equity Contribution; Debt Payoff
11. Public Easement and
12. Definitions

Staff recommends approval of the Resolution regarding the Redevelopment Agreement for Grandview Square, L.L.C. (Opus Northwest L.L.C. and R.E.C., Inc.

Council comments

Member Johnson asked if the Redevelopment Agreement Contract was approved, what further HRA approvals would be necessary as the developer moves forward. Manager Hughes said the only thing the HRA would see would be in Phase II, the Council would see final development plans for the next phase of condominiums for the library/senior center building. Adoption of this resolution would conclude the HRA part of the project. Member Johnson asked if this would not apply to Phase I as well. Manager Hughes explained Phase I had already been approved.

No public comments were heard.

Member Hovland made a motion to close the Public Hearing. Member Faust seconded the motion.

Ayes: Faust, Hovland, Johnson, Maetzold

Motion carried.

Member Faust introduced the following Resolution and moved its adoption:

**RESOLUTION NO. 2000-79
RESOLUTION RELATING TO GRANDVIEW AREA
REDEVELOPMENT PROJECT; APPROVING EXECUTION OF CITY
ASSURANCES RELATED TO CONTRACT FOR PRIVATE
REDEVELOPMENT BETWEEN EDINA HOUSING AND
REDEVELOPMENT AUTHORITY AND GRANDVIEW SQUARE,
L.L.C.**

BE IT RESOLVED by the City Council (the "Council") of the City of Edina, Minnesota (the "City"), as follows:

Section 1. Recitals.

1.01. Grandview Area Redevelopment Project and Tax Increment Financing Plan.

The Edina Housing and Redevelopment Authority (the "HRA") has approved a redevelopment plan, as defined in Minnesota Statutes, Section 469.002, subdivision 16, designated as Grandview Area Redevelopment Plan (the "Redevelopment Plan"), and a redevelopment project to be undertaken pursuant thereto, as defined in Minnesota Statutes, Section 469.002, subdivision 14, designated as the Grandview Area Redevelopment Project (the "Redevelopment Project").

1.02. Redevelopment Contract and City Assurances.

In connection with the Redevelopment Project, it has been proposed that the HRA enter into a Contract for Private Redevelopment (the "Redevelopment Contract"), with Grandview Square, L.L.C. (the "Redeveloper"), the form of which has been presented to this Council. The Redevelopment Contract provides for the execution and delivery by the City of the City Assurances (the "City Assurances") in the form attached to the Redevelopment Contract.

Section 2. Approvals.

2.01. Approval of City Assurances. The form the City Assurances is hereby approved, and the execution and delivery by the City of the City Assurances is hereby authorized. The Mayor and City Manager are hereby authorized and directed on behalf of the City to execute and deliver the City Assurances and the other agreements provided for in the Redevelopment Contract to be executed and delivered by the City (the "Other Agreements") in substantially the form presented hereto with such changes and modifications as may be approved by the officers executing the City Assurances. The execution and delivery of the City Assurances and the Other Agreements by the Mayor and the City Manager shall be conclusive evidence of the approval of any changes and modifications to the City Assurances and the Other Agreements by such officers.

Passed by the Council this 15th day of August, 2000.

Member Hovland seconded the motion.

Rollcall:

Ayes: Faust, Hovland, Johnson, Maetzold

Motion carried.

RESOLUTION 2000-81 - FINAL PLAT APPROVED - GRANDVIEW SQUARE Manager Hughes said the Final Plat is consistent with the approved Preliminary Plat. The Plat includes the HRA property and the property referred to as the TAGS property. The Plat creates a lot for the office building, the first phase condominium building and the park. The balance of the property is platted as outlots which will be replatted in future phases.

Member Faust introduced the following resolution and moved its adoption:

**RESOLUTION NO. 2000-81
RESOLUTION APPROVING
FINAL PLAT FOR GRANDVIEW SQUARE**

BE IT RESOLVED by the City Council of the City of Edina, Minnesota, that that certain plat entitled, "GRANDVIEW SQUARE", platted by R.E.C., Inc. and the Edina Housing and Redevelopment Authority and presented at the regular meeting of the City Council on August 15, 2000, be and is hereby granted final plat approval.

Member Hovland seconded the motion.

Ayes: Faust, Hovland, Johnson, Maetzold

Motion carried.

RESOLUTION 2000-82 - SALE OF BONDS SERIES 2000A AND RESOLUTION 2000-83 - 2000B APPROVED Rusty Fifield, Ehler's and Associates, said he was pleased to come forward with long overdue news regarding the City of Edina's general obligation bonds upgrade to a Aaa rating by Moody's Investors Service and Standard and Poor's. Of special note is Edina is only the fifth Aaa rated city in Minnesota to be given a Aaa rating by Moody's Investor's Service. The scale rates the credit worthiness of issuers of municipal bonds - Aaa is the pinnacle. He congratulated staff on their effort in creating a strong, well-run, wealthy City in the eyes of investors even noted from the ivory towers of Wall Street.

Mr. Fifield explained that Bond Series 2000A funds a portion of the costs of the new library and senior center as outlined in the redevelopment agreement. The 2000A Bonds are paid off at the end of the tax increment district. Of the six bidders, the low bidder was Dain Rauscher at 4.6885%.

Mr. Fifield said that Bond Series 2000B is a temporary taxable issue that serves two purposes. \$2.5 million of this issue refunds the temporary bond issue that was used to purchase the Kunz/Lewis property. As per the redevelopment agreement, this portion of the bond issue will be refunded at the time we receive the equity contribution from Grandview Square L.L.C. The balance of the 2000B issue

pays for the environmental cleanup costs attributed to the development area. The City will apply for grants from State and Metropolitan agencies and the balance of the cost will be paid for through the capture of the base value within the development area. Of the six bidders, USBank Corp, Piper, Jaffray, at 6.9074% was the low bidder.

Member Hovland introduced the following resolution and moved its adoption:

**RESOLUTION NO. 2000-82
RESOLUTION RELATING TO \$2,620,000 GENERAL OBLIGATION
TAX INCREMENT BONDS, SERIES 2000A; AUTHORIZING THE
ISSUANCE, AWARDING THE SALE, FIXING THE FORM AND
DETAILS, AND PROVIDING FOR THE EXECUTION AND
DELIVERY THEREOF AND THE SECURITY THEREFOR**

BE IT RESOLVED by the City Council (the "Council") of the City of Edina, Minnesota (the "City"), as follows:

Section 1. Authorization and Sale.

1.01. Authorization. This Council hereby determines that it is necessary and in the best interests of the City to issue and sell its General Obligation Tax Increment Bonds, Series 2000A (the "Bonds"), in the principal amount of \$2,620,000 pursuant to Minnesota Statutes, Chapter 475 and Section 469.178, to finance the construction by the Edina Housing and Redevelopment Authority (the "HRA") of a public library and senior center and other improvements of a public nature to be constructed by the HRA or the City (the "Project") incurred by the City or HRA in connection with the redevelopment project being undertaken by the HRA pursuant to the Grandview Area Redevelopment Plan of the HRA.

1.02. Sale of Bonds. The City has retained Ehlers & Associates, Inc., an independent financial advisor, to assist the City in connection with the sale of the Bonds. Pursuant to Minnesota Statutes, Section 475.60, subdivision 2, paragraph (9), the requirements as to public sale do not apply to the issuance of the Bonds. Proposals have been received for the sale of the Bonds, and the Council has publicly considered all proposals presented in conformity with the terms and conditions distributed by the City to potential purchasers of the Bonds. The most favorable of such proposals is ascertained to be that of Dain Rauscher, Inc. of Minneapolis, Minnesota, (the "Purchaser"), to purchase the Bonds at a price of \$2,609,598.60 plus accrued interest on all Bonds to the day of delivery and payment, on the further terms and conditions hereinafter set forth.

1.03 Award of Bonds. The sale of the Bonds is hereby awarded to the Purchaser and the Mayor and City Manager are hereby authorized and directed on behalf of the City to execute a contract for the sale of the Bonds in accordance with the terms of the bid. The good faith deposit of the Purchaser shall be retained and deposited by the City until the Bonds have been delivered and shall be deducted from the purchase price paid at settlement. The good faith checks of other persons who submitted proposals to purchase the Bonds shall be returned to them forthwith.

1.04. Issuance of Bonds. All acts, conditions and things which are required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen and to be performed precedent to and in the valid issuance of the Bonds having been done, existing, having happened and having been performed, it is now necessary for the Council to establish the form and terms of the Bonds, to provide security therefor and to issue the Bonds forthwith.

Section 2. Form of Bonds. The Bonds shall be prepared in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF HENNEPIN

CITY OF EDINA

GENERAL OBLIGATION TAX INCREMENT BOND, SERIES 2000A

<u>Rate</u>	<u>Maturity</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
		September 1, 2000	

REGISTERED
OWNER:

PRINCIPAL
AMOUNT:

DOLLARS

THE CITY OF EDINA, Hennepin County, Minnesota (the "City"), acknowledges itself to be indebted and, for value received, hereby promises to pay to the registered owner above named, the principal amount indicated above, on the maturity date specified above, with interest thereon from the date hereof at the annual rate specified above computed on the basis of the number of days elapsed in a 360-day year consisting of twelve 30-day months, payable on February 1 and August 1 in each year, commencing February 1, 2001, to the person in whose name this Bond is registered at the close of business on the 15th day (whether or not a business day) of the immediately preceding month, all subject to the provisions referred to herein with respect to the redemption of the principal of this Bond before maturity. The interest hereon and, upon presentation and surrender hereof at the office of the Finance Director in Edina, Minnesota, as Registrar, Transfer Agent and Paying Agent (the "Bond Registrar"), or its successor designated under the Resolution described herein, the principal hereof, are payable in lawful money of the United States of America by check or draft of the City or the Bond Registrar if a successor to the City Finance Director as Bond Registrar has been designated under the Resolution described herein.

This Bond is one of an issue in the aggregate principal amount of \$2,620,000 (the "Bonds"), all of like date and tenor except as to serial number, interest rate, redemption privilege and maturity date, issued pursuant to a resolution adopted by the City Council on August 15, 2000 (the "Resolution") to provide funds to finance certain public improvements and facilities to be constructed as a part of the redevelopment project being undertaken by the Edina Housing and Redevelopment Authority (the "HRA") pursuant to the Grandview Area Redevelopment Plan of the HRA, and is issued pursuant to and in full conformity with the provisions of the Constitution and laws of the State of Minnesota thereunto enabling, including Minnesota Statutes, Section 469.178 and Chapter 475. The Bonds are payable primarily from tax increments to be derived from

a tax increment financing district established by the HRA (the "District") which have been pledged to the payment of the Bonds by the Resolution. In addition, for the full and prompt payment of the principal and interest on the Bonds as the same become due, the full faith, credit and taxing power of the City have not been and are irrevocably pledged. The Bonds are issuable only as fully registered bonds, in denominations of \$5,000 or any integral multiple thereof, of single maturities.

Bonds maturing in the years 2002 through 2006 are payable on their respective stated maturity dates without option of prior payment, but Bonds having stated maturity dates in the years 2007 through 2011 are each subject to redemption and prepayment, at the option of the City and in whole or in part and if in part, in the maturities selected by the City and by lot, assigned in proportion to their principal amount, within any maturity, on February 1, 2006 and on any date thereafter, at a price equal to the principal amount thereof to be redeemed plus interest accrued to the date of redemption. At least thirty days prior to the date set for redemption of any Bond, notice of the call for redemption will be mailed to the Bond Registrar and to the registered owner of each Bond to be redeemed at his address appearing in the Bond Register, but no defect in or failure to give such mailed notice of redemption shall affect the validity of proceedings for the redemption of any Bond, not affected by such defect or failure. Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price herein specified and from and after such date (unless the City shall default in the payment of the redemption price) such Bond or portions of Bonds shall cease to bear interest. Upon the partial redemption of any Bond, a new Bond or Bonds will be delivered to the registered owner without charge, representing the remaining principal amount outstanding.

The Bonds have been designated by the City as "qualified tax-exempt obligations" pursuant to Section 265(b) of the Internal Revenue Code, as amended.

As provided in the Resolution and subject to certain limitations set forth therein, this Bond is transferable upon the books of the City at the principal office of the Bond Registrar, by the registered owner hereof in person or by his attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange, the City will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The City and the Bond Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Bond Registrar shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all acts, conditions and things required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen and to be performed precedent to and in the issuance of this Bond in order to make it a valid and binding general obligation of the City according to its terms have been done, do exist, have happened and have been performed as so required; that prior to the issuance hereof the City has pledged and appropriated to a sinking fund established for the payment of the Bonds

tax increments to be derived by the City from the District; that, if necessary for the payment of principal and interest on the Bonds, ad valorem taxes are required to be levied upon all taxable property in the City, which levy is not limited as to rate or amount; and that the issuance of this Bond does not cause the indebtedness of the City to exceed any constitutional or statutory limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been executed by the Bond Registrar by manual signature of the Bond Registrar, or in the event the City Finance Director is no longer acting as Bond Registrar, by one of the authorized representatives of the Bond Registrar.

IN WITNESS WHEREOF, the City of Edina, Hennepin County, State of Minnesota, by its City Council, has caused this Bond to be executed by the signatures of the Mayor and the City Manager and has caused this Bond to be dated as of the date set forth below.

Date of Authentication:

CITY OF EDINA

City Manager

Mayor

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds delivered pursuant to the Resolution mentioned within.

By _____
City Finance Director,
as Bond Registrar

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to the applicable laws or regulations:

TEN COM -- as tenants in common UNIF TRANS MIN ACT Custodian (Cust) (Minor)

TEN ENT -- as tenants by the entireties under Uniform Transfers to Minors Act _____ (State)

JT TEN -- as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____, the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated:

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE:

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatsoever.

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Bond Registrar, which requirements include membership or participation in the Securities Transfer Association Medallion Program (STAMP) or such other "signature guaranty program" as may be determined by the Bond Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

Section 3. Bond Terms, Execution and Delivery.

3.01. Maturities, Interest Rates, Denominations, Payment. The City shall forthwith issue and deliver the Bonds, which shall be denominated "General Obligation Tax Increment Bonds, Series 2000A". The Bonds shall be in the aggregate principal amount of \$2,620,000 and shall be issuable in the denomination of \$5,000 each or any integral multiple thereof, shall mature on February 1 in the years and amounts set forth below, and Bonds maturing in such years and amounts shall bear interest computed on the basis of the number of days elapsed in a 360-day year consisting of twelve 30-days months from date of original issue until paid or duly called for redemption at the rates per annum shown opposite such years and amounts as follows:

<u>Year</u>	<u>Amount</u>	<u>Rate</u>	<u>Year</u>	<u>Amount</u>	<u>Rate</u>
2002	\$210,000	4.30%	2007	\$265,000	4.55%
2003	220,000	4.35%	2008	280,000	4.60%

2004	230,000	4.40%	2009	290,000	4.65%
2005	240,000	4.45%	2010	305,000	4.70%
2006	255,000	4.50%	2011	325,000	4.80%

The Bonds shall be issuable only in fully registered form. The interest thereon and, upon surrender of each Bond, the principal amount thereof, shall be payable by check or draft issued by the Registrar described herein.

3.02. Dates; Interest Payment Dates. Each Bond shall bear a date of original issue of September 1, 2000, and shall be dated as of the date of authentication. Interest on the Bonds shall be payable on February 1 and August 1 in each year, commencing February 1, 2001, to the owner of record thereof as of the close of business on the fifteenth day of the immediately preceding month, whether or not such day is a business day.

3.03. Registration. The City shall appoint, and shall maintain, a bond registrar, transfer agent and paying agent (the "Registrar"). The effect of registration and the rights and duties of the City and the Registrar with respect thereto shall be as follows:

(a) Register. The Registrar shall keep at its principal corporate trust office a bond register in which the Registrar shall provide for the registration of ownership of Bonds and the registration of transfers and exchanges of Bonds entitled to be registered, transferred or exchanged.

(b) Transfer of Bonds. Upon surrender for transfer of any Bond duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Bonds of a like aggregate principal amount and maturity, as requested by the transferor. The Registrar may, however, close the books for registration of any transfer after the fifteenth day of the month preceding each interest payment date and until such interest payment date.

(c) Exchange of Bonds. Whenever any Bond is surrendered by the registered owner for exchange, the Registrar shall authenticate and deliver one or more new Bonds of a like aggregate principal amount and maturity, as requested by the registered owner or the owner's attorney duly authorized in writing.

(d) Cancellation. All Bonds surrendered upon any transfer or exchange shall be promptly canceled by the Registrar and thereafter disposed of as directed by the City.

(e) Improper or Unauthorized Transfer. When any Bond is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Bond or separate instrument of transfer is legally authorized. The Registrar shall incur no liability for its refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(f) Persons Deemed Owners. The City and the Registrar may treat the person in whose name any Bond is at any time registered in the bond register as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving

payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the City upon such Bond to the extent of the sum or sums so paid.

(g) Taxes, Fees and Charges. For every transfer or exchange of Bonds (except for an exchange upon a partial redemption of a Bond), the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

(h) Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall become mutilated or be lost, stolen or destroyed, the Registrar shall deliver a new Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Bond or in lieu of and in substitution for any such Bond lost, stolen or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Bond lost, stolen or destroyed, upon filing with the Registrar of evidence satisfactory to it that such Bond was lost, stolen or destroyed, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance and amount satisfactory to it, in which both the City and the Registrar shall be named as obligees. All Bonds so surrendered to the Registrar shall be canceled by it and evidence of such cancellation shall be given to the City. If the mutilated, lost, stolen or destroyed Bond has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new Bond prior to payment.

3.04. Appointment of Initial Registrar. The City hereby appoints the City Finance Director, as the initial Registrar. In the event that the City determines to discontinue the book entry-only system for the Bonds as described in paragraph (c) of Section 3.07, or DTC, as defined in Section 3.07, determines to discontinue providing its services with respect to the Bonds and a new securities depository is not appointed for the Bonds, the City will designate a suitable bank or trust company to act as successor Registrar if the City Finance Director is then acting as Registrar. The City reserves the right to remove any Registrar upon thirty (30) days' notice and upon the appointment of a successor Registrar, in which event the predecessor Registrar shall deliver all cash and Bonds in its possession to the successor Registrar and shall deliver the bond register to the successor Registrar.

3.05. Redemption. Bonds maturing in the years 2002 through 2006 shall not be subject to redemption prior to maturity, but Bonds maturing in the years 2007 through 2011 shall each be subject to redemption and prepayment, at the option of the City, in whole or in part, and if in part, in the maturities selected by the City and, within any maturity, in \$5,000 principal amounts selected by the Registrar by lot, on February 1, 2006 and on any date thereafter at a price equal to the principal amount thereof to be redeemed plus interest accrued to the date of redemption. At least thirty days prior to the date set for redemption of any Bond, the City Clerk shall cause notice of the call for redemption to be mailed to the Registrar and to the registered owner of each Bond to be redeemed, but no defect in or failure to give such mailed notice of redemption shall affect the validity of proceedings for the redemption of any Bond not affected by such defect or failure. The notice of redemption shall specify the redemption date, redemption price, the numbers, interest rates and CUSIP numbers of the Bonds to be redeemed and the place at which the Bonds are to be surrendered for payment, which is the principal office of the

Registrar. Official notice of redemption having been given as aforesaid, the Bonds or portions thereof so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions thereof shall cease to bear interest.

In addition to the notice prescribed by the preceding paragraph, the City shall also give, or cause to be given, notice of the redemption of any Bond or Bonds or portions thereof at least 35 days before the redemption date by certified mail or telecopy to the Purchaser and all registered securities depositories then in the business of holding substantial amounts of obligations of the character of the Bonds (such depositories now being The Depository Trust Company, of Garden City, New York; and Philadelphia Depository Trust Company, of Philadelphia, Pennsylvania) and one or more national information services that disseminate information regarding municipal bond redemptions; provided that any defect in or any failure to give any notice of redemption prescribed by this paragraph shall not affect the validity of the proceedings for the redemption of any Bond or portion thereof.

Bonds in a denomination larger than \$5,000 may be redeemed in part in any integral multiple of \$5,000. The owner of any Bond redeemed in part shall receive, upon surrender of such Bond to the Registrar, one or more new Bonds of such same series in authorized denominations equal in principal amount to the unredeemed portion of the Bond so surrendered.

3.06. Preparation and Delivery. The Bonds shall be prepared under the direction of the City Finance Director and shall be executed on behalf of the City by the signatures of the Mayor and the City Manager. In case any officer whose signature shall appear on the Bonds shall cease to be such officer before the delivery of any Bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. Notwithstanding such execution, no Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this resolution unless and until a certificate of authentication on such Bond has been duly executed by the manual signature of the Registrar, or in the event the City Finance Director is no longer acting as Registrar, an authorized representative of the Registrar. Certificates of authentication on different Bonds need not be signed by the same representative. The executed certificate of authentication on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution. When the Bonds have been so executed and authenticated, they shall be delivered by the City Finance Director to the Purchaser upon payment of the purchase price in accordance with the contract of sale heretofore made and executed, and the Purchaser shall not be obligated to see to the application of the purchase price.

3.07. Securities Depository. (a) For purposes of this Section the following terms shall have the following meanings:

“Beneficial Owner” shall mean, whenever used with respect to a Bond, the person in whose name such Bond is recorded as the beneficial owner of such Bond by a Participant on the records of such Participant, or such person’s subrogee.

“Cede & Co.” shall mean Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Bonds.

“DTC” shall mean The Depository Trust Company of New York, New York.

“Participant” shall mean any broker-dealer, bank or other financial institution for which DTC holds Bonds as securities depository.

“Representation Letter” shall mean the Representation Letter from the City to DTC with respect to the procedures of DTC presently on file with DTC.

(b) The Bonds shall be initially issued as separately authenticated fully registered bonds, and one Bond shall be issued in the principal amount of each stated maturity of the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered in the bond register in the name of Cede & Co., as nominee of DTC. The Registrar and the City may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, if any, giving any notice permitted or required to be given to registered owners of Bonds under this resolution, registering the transfer of Bonds, and for all other purposes whatsoever; and neither the Registrar nor the City shall be affected by any notice to the contrary. Neither the Registrar nor the City shall have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the Bonds under or through DTC or any Participant, or any other person which is not shown on the bond register as being a registered owner of any Bonds, with respect to the accuracy of any records maintained by DTC or any Participant, with respect to the payment by DTC or any Participant of any amount with respect to the principal of or interest on the Bonds, with respect to any notice which is permitted or required to be given to owners of Bonds under this resolution, with respect to the selection by DTC or any Participant of any person to receive payment in the event of a partial redemption of the Bonds, or with respect to any consent given or other action taken by DTC as registered owner of the Bonds. So long as any Bond is registered in the name of Cede & Co., as nominee of DTC, the Registrar shall pay all principal of and interest on such Bond, and shall give all notices with respect to such Bond, only to Cede & Co. in accordance with the Representation Letter, and all such payments shall be valid and effective to fully satisfy and discharge the City’s obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. No person other than DTC shall receive an authenticated Bond for each separate stated maturity evidencing the obligation of the City to make payments of principal and interest. Upon delivery by DTC to the Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the Bonds will be transferable to such new nominee in accordance with paragraph (d) hereof.

(c) In the event the City determines that it is in the best interest of the Beneficial Owners that they be able to obtain Bonds in the form of bond certificates, the City may notify DTC and the Registrar, whereupon DTC shall notify the Participants of the availability through DTC of Bonds in the form of certificates. In such event, the Bonds will be transferable in accordance with paragraph (e) hereof. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the City and the Registrar and discharging its responsibilities with respect thereto under applicable law. In such event the Bonds will be transferable in accordance with paragraph (d) hereof.

(d) In the event that any transfer or exchange of Bonds is permitted under paragraph (b) or (c) hereof, such transfer or exchange shall be accomplished upon receipt by the Registrar of the Bonds to be transferred or exchanged and appropriate instruments of transfer to the permitted transferee in accordance with the provisions of this resolution. In the event Bonds in the form of certificates are issued to owners other than Cede & Co., its successor as nominee for DTC as owner of all the Bonds, or another securities depository as owner of all the Bonds, the

provisions of this resolution shall also apply to all matters relating thereto, including, without limitation, the printing of such Bonds in the form of bond certificates and the method of payment of principal of and interest on such Bonds in the form of bond certificates.

Section 4. Use of Proceeds and Security Provisions.

Section 4.01. Use of Proceeds and Construction Fund. There is hereby established on the official books and records of the City a Series 2000A General Obligation Tax Increment Bond Construction Fund (the "Construction Fund"). To the Construction Fund there shall be credited all proceeds of the Bonds. From the Construction Fund there shall be paid by the City or HRA all costs and expenses of the Project and the issuance of the Bonds. After payment of all costs of the Project, the Construction Fund shall be discontinued and any Bond proceeds and other funds remaining therein shall be transferred to the Sinking Fund created pursuant to Section 4.02 hereof.

Section 4.02. General Obligation Tax Increment Bond Sinking Fund. The Bonds shall be payable from a separate Series 2000A General Obligation Tax Increment Bond Sinking Fund (the "Sinking Fund") which shall be created and maintained on the books of the City as a separate debt redemption fund until the Bonds, and all interest thereon, are fully paid. There shall be credited to the Sinking Fund the following:

- (a) Any amount deposited therein pursuant to Section 4.01 hereof.
- (b) Tax increments described in Section 4.03 to be received from the HRA.
- (c) All taxes levied and all other money which may at any time be received for or appropriated to the payment of the principal of or interest on the Bonds, including all collections of any ad valorem taxes levied for the payment of the Bonds.
- (d) Any other funds appropriated by the Council for the payment of the Bonds.

There are hereby established two accounts in the Sinking Fund, designated as the "Debt Service Account" and the "Surplus Account." All money appropriated or to be deposited in the Bond Fund shall be deposited as received into the Debt Service Account. On each February 1, the City Finance Director shall determine the amount on hand in the Debt Service Account. If such amount is in excess of one-twelfth of the debt service payable from the Bond Fund in the immediately preceding 12 months, the City Finance Director shall promptly transfer the amount in excess to the Surplus Account. The City appropriates to the Surplus Account any amounts to be transferred thereto from the Debt Service Account as herein provided and all income derived from the investment of amounts on hand in the Surplus Account. If at any time the amount on hand in the Debt Service Account is insufficient to meet the requirements of the Bond Fund, the City Finance Director shall transfer to the Debt Service Account amounts on hand in the Surplus Account to the extent necessary to cure such deficiency.

4.03. Tax Increment Financing District. Pursuant to Minnesota Statutes, Section 469.178, subdivision 2, the City has entered into a pledge agreement with the HRA whereby the HRA will pay to the City tax increments from the Grandview Area Tax Increment Financing District (Hennepin County No. 1202) (the "District") of the HRA in an amount sufficient, with other funds appropriated by the City to the Sinking Fund, to pay the principal of and interest on the Bonds when due. Such tax increments shall be deposited in the Sinking Fund. Nothing

herein shall preclude the City or the HRA from hereafter making further pledges and appropriations of the tax increments from the District for the payment of other obligations of the City or HRA or to pay costs eligible to be paid from the tax increments from the District.

4.04. Full Faith and Credit Pledged. The full faith and credit and taxing power of the City shall be and are hereby irrevocably pledged for the prompt and full payment of the principal of and interest on the Bonds. It is estimated that the tax increment from the District to be paid by the HRA to the City and other funds herein pledged for the payment of the Bonds will be collected in amounts not less than five percent in excess of the amounts needed to meet when due the principal of and interest on the Bonds as required by Minnesota Statutes, Section 475.61. Consequently, no ad valorem taxes are now levied to pay the Bonds or the interest to come due thereon, pursuant to Minnesota Statutes, Section 469.178, subdivision 2.

Section 5. Defeasance. When all of the Bonds have been discharged as provided in this section, all pledges, covenants and other rights granted by this resolution to the holders of the Bonds shall cease. The City may discharge its obligations with respect to any Bonds which are due on any date by depositing with the paying agent on or before that date a sum sufficient for the payment thereof in full; or, if any Bond should not be paid when due, it may nevertheless be discharged by depositing with the paying agent a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit. The City may also discharge its obligations with respect to any prepayable Bond called for redemption on any date when it is prepayable according to their terms, by depositing with the Registrar on or before that date a sum sufficient for the payment thereof in full; provided that notice of the redemption thereof has been duly given as provided in Section 3.05. The City may also at any time discharge its obligations with respect to any Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or securities which are general obligations of the United States or securities of United States agencies which are authorized by law to be so deposited, bearing interest payable at such time and at such rates and maturing on such dates as shall be required, without reinvestment, to pay all principal and interest to become due thereon to maturity or, if notice of redemption as herein required has been duly provided for, to such earlier redemption date.

Section 6. Registration, Certification of Proceedings, Investments of Moneys, Arbitrage and Official Statement.

6.01. Registration. The City Clerk is hereby authorized and directed to file a certified copy of this resolution with the County Auditor of Hennepin County, together with such other information as he shall require, and to obtain from the County Auditor a certificate that the Bonds have been entered on upon the Auditor's register as required by law.

6.02. Certification of Proceedings. The officers of the City and the County Auditor of Hennepin County are hereby authorized and directed to prepare and furnish to the Purchaser, and to Dorsey & Whitney LLP, Bond Counsel, certified copies of all proceedings and records of the City, and such other affidavits, certificates and information as may be required to show the facts relating to the legality and marketability of the Bonds as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates and affidavits, including any heretofore furnished, shall be deemed representations of the City as to the facts recited therein.

6.03. **Covenant.** The City covenants and agrees with the holders from time to time of the Bonds that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Bonds to become subject to taxation under the Internal Revenue Code of 1986, as amended (the "Code"), and Regulations promulgated thereunder (the "Regulations"), as such are enacted or promulgated and in effect on the date of issue of the Bonds, and covenants to take any and all actions within its powers to ensure that the interest on the Bonds will not become subject to taxation under such Code and Regulations. The Project to be financed with the Bonds will be owned and maintained by the HRA, the City, or another governmental entity and available for use by members of the general public on a substantially equal basis. The City shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the Project or security for the payment of the Bonds which might cause the Bonds to be considered "private activity bonds" or "private loan bonds" within the meaning of Section 141 of the Code.

6.04. **Arbitrage Rebate.** For purposes of complying with the requirements of Section 148(f)(4)(C) of the Code relating to the exemption of certain small governmental units from the rebate requirements of the Code, the City represents that:

- (i) the City is a governmental unit with general taxing powers;
- (ii) the Bonds are not "private activity bonds" as defined in Section 141 of the Code ("Private Activity Bonds");
- (iii) ninety-five percent of the net proceeds of the Bonds are to be used for the local governmental purposes of the City; and
- (iv) the aggregate face amount of all tax-exempt bonds (other than Private Activity Bonds) issued by the City in calendar year in which the Bonds are to be issued is not reasonably expected to exceed \$5,000,000.

Therefore, pursuant to the provisions of Section 148(f)(4)(B) of the Code, the City shall not be required to comply with the arbitrage rebate requirements of paragraphs (2) and (3) of Section 148(f) of the Code.

6.05. **Arbitrage Certification.** The Mayor and City Manager, being the officers of the City charged with the responsibility for issuing the Bonds pursuant to this resolution, are authorized and directed to execute and deliver to the Purchaser a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b)(2) of the Regulations, stating the facts and estimates in existence on the date of issue and delivery of the Bonds which make it reasonable to expect that the proceeds of the Bonds will not be used in a manner that would cause the Bonds to be arbitrage bonds within the meaning of said Code and Regulations.

6.06. **Interest Disallowance.** The City hereby designates the Bonds as "qualified tax-exempt obligations" for purpose of Section 265(b) of the Code relating to the disallowance of interest expenses for financial institutions. The City represents that in calendar year 2000 it does not reasonably expect to issue tax-exempt obligations which are not private activity bonds (not treating qualified 501(c)(3) bonds under Section 145 of the Code as private activity bonds for purposes of this representation) in an amount in excess of \$10,000,000.

6.07. **Official Statement.** The Official Statement relating to the Bonds, dated August 3, 2000 (the "Official Statement"), prepared and distributed on behalf of the City by Ehlers & Associates, Inc., is hereby approved. Ehlers & Associates, Inc., is hereby authorized of behalf of the City to prepare and distribute to the Purchaser a supplement to the Official Statement listing the offering price, the interest rates, other information relating to the Bonds required to be included in the Official Statement by Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934. Within seven business days from the date hereof, the City shall deliver to the Purchaser a reasonable number of copies of the Official Statement and such supplement. The officers of the City are hereby authorized and directed to execute such certificates as may be appropriate concerning the accuracy, completeness and sufficiency of the Official Statement.

Section 7. Continuing Disclosure.

(a) **Purpose and Beneficiaries.** To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit the original purchaser and other participating underwriters in the primary offering of the Bonds to comply with amendments to Rule 15c2-12 promulgated by the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12), relating to continuing disclosure (as in effect and interpreted from time to time, the "Rule"), which will enhance the marketability of the Bonds, the City hereby makes the following covenants and agreements for the benefit of the Owners (as hereinafter defined) from time to time of the Outstanding Bonds (as hereinafter defined). The City is the only "obligated person" in respect of the Bonds within the meaning of the Rule for purposes of identifying the entities in respect of which continuing disclosure must be made.

If the City fails to comply with any provisions of this Section 7, any person aggrieved thereby, including the Owners of any Outstanding Bonds, may take whatever action at law or in equity may appear necessary or appropriate to enforce performance and observance of any agreement or covenant contained in this Section 7, including an action for a writ of mandamus or specific performance. Direct, indirect, consequential and punitive damages shall not be recoverable for any default hereunder to the extent permitted by law. Notwithstanding anything to the contrary contained herein, in no event shall a default under this Section 8 constitute a default under the Bonds or under any other provision of this resolution.

As used in this Section 7, "Owner" or "Bondowner" means, in respect of a Bond, the registered owner or owners thereof appearing in the bond register maintained by the Registrar or any "Beneficial Owner" (as hereinafter defined) thereof, if such Beneficial Owner provides to the Registrar evidence of such beneficial ownership in form and substance reasonably satisfactory to the Registrar. As used herein, "Beneficial Owner" means, in respect of a Bond, any person or entity which (i) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, such Bond (including persons or entities holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of the Bond for federal income tax purposes. As used herein, "Outstanding " means when used with reference to Bonds means all Bonds which have been issued and authenticated by the Registrar except (i) Bonds which have been paid in full (ii) Bonds which have been cancelled by the Registrar or surrendered to the Registrar for cancellation and (iii) Bonds which have been discharged as provided in Section 5 hereof.

(b) Information To Be Disclosed. The City will provide, in the manner set forth in subsection (c) hereof, either directly or indirectly through an agent designated by the City, the following information at the following times:

(1) on or before 365 days after the end of each fiscal year of the City, commencing with the fiscal year ending December 31, 2000 the following financial information and operating data in respect of the City (the "Disclosure Information"):

(A) the audited financial statements of the City for such fiscal year, prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board as modified in accordance with the governmental accounting standards promulgated by the Governmental Accounting Standards Board or as otherwise provided under Minnesota law, as in effect from time to time, or, if and to the extent such financial statements have not been prepared in accordance with such generally accepted accounting principles for reasons beyond the reasonable control of the City, noting the discrepancies therefrom and the effect thereof, and certified as to accuracy and completeness in all material respects by the fiscal officer of the City; and

(B) To the extent not included in the financial statements referred to in paragraph (A) hereof, the information for such fiscal year or for the period most recently available of the type set forth below, which information may be unaudited, but is to be certified as to accuracy and completeness in all material respects by the fiscal officer of the City, to the best of his or her knowledge, which certification may be based on the reliability of information obtained from governmental or other third party sources:

Most recent population estimate; City Property Values; City Indebtedness; City Tax Rates; Levies and Collections; and Current General Fund Budget.

Notwithstanding the foregoing paragraph, if the audited financial statements are not available by the date specified, the City shall provide on or before such date unaudited financial statements in the format required for the audited financial statements as part of the Disclosure Information and, within 10 days after the receipt thereof, the City shall provide the audited financial statements.

Any or all of the Disclosure Information may be incorporated by reference, if it is updated as required hereby, from other documents, including official statements, which have been submitted to each of the repositories hereinafter referred to under subsection (b) or the SEC. If the document incorporated by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The City shall clearly identify in the Disclosure Information each document so incorporated by reference.

If any part of the Disclosure Information can no longer be generated because the operations of the City have materially changed or been discontinued, such Disclosure Information need no longer be provided if the City includes in the Disclosure Information a statement to such effect; provided, however, if such operations have been replaced by other City operations in respect of which data is not included in the Disclosure Information and the City determines that certain specified data regarding such replacement operations would be a Material Fact (as defined

in paragraph (2) of this subsection (b)), then, from and after such determination, the Disclosure Information shall include such additional specified data regarding the replacement operations.

If the Disclosure Information is changed or this Section 7 is amended as permitted by this paragraph (1) or subsection (d), then the City shall include in the next Disclosure Information to be delivered hereunder, to the extent necessary, an explanation of the reasons for the amendment and the effect of any change in the type of financial information or operating data provided.

(2) In a timely manner, notice of the occurrence of any of the following events which is a Material Fact (as hereinafter defined):

- (A) Principal and interest payment delinquencies;
- (B) Non-payment related defaults;
- (C) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (D) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (E) Substitution of credit or liquidity providers, or their failure to perform;
- (F) Adverse tax opinions or events affecting the tax-exempt status of the security;
- (G) Modifications to rights of security holders;
- (H) Bond calls;
- (I) Defeasances;
- (J) Release, substitution, or sale of property securing repayment of the securities;
- (K) Rating changes.

As used herein, a "Material Fact" is a fact as to which a substantial likelihood exists that a reasonably prudent investor would attach importance thereto in deciding to buy, hold or sell a Bond or, if not disclosed, would significantly alter the total information otherwise available to an investor from the Official Statement, information disclosed hereunder or information generally available to the public. Notwithstanding the foregoing sentence, a "Material Fact" is also an event that would be deemed "material" for purposes of the purchase, holding or sale of a Bond within the meaning of applicable federal securities laws, as interpreted at the time of discovery of the occurrence of the event.

(3) In a timely manner, notice of the occurrence of any of the following events or conditions:

(A) the failure of the City to provide the Disclosure Information required under paragraph (1) of this subsection (b) at the time specified thereunder;

(B) the amendment or supplementing of this Section 7 pursuant to subsection (d), together with a copy of such amendment or supplement and any explanation provided by the City under paragraph (2) of subsection (d);

(C) the termination of the obligations of the City under this Section 7 pursuant to subsection (d);

(D) any change in the accounting principles pursuant to which the financial statements constituting a portion of the Disclosure Information are prepared; and

(E) any change in the fiscal year of the City.

(c) Manner of Disclosure. The City agrees to make available the information described in subsection (b) to the following entities by telecopy, overnight delivery, mail or other means, as appropriate:

(1) the information described in paragraph (1) of subsection (b), to each then nationally recognized municipal securities information repository under the Rule and to any state information depository then designated or operated by the State of Minnesota as contemplated by the Rule (the "State Depository"), if any;

(2) the information described in paragraphs (2) and (3) of subsection (b), to the Municipal Securities Rulemaking Board and to the State Depository, if any; and

(3) the information described in subsection (b), to any rating agency then maintaining a rating of the Bonds and, at the expense of such Bondowner, to any Bondowner who requests in writing such information, at the time of transmission under paragraphs (1) or (2) of this subsection (c), as the case may be, or, if such information is transmitted with a subsequent time of release, at the time such information is to be released.

(d) Term; Amendments; Interpretation.

(1) The covenants of the City in this Section 7 shall remain in effect so long as any Bonds are Outstanding. Notwithstanding the preceding sentence, however, the obligations of the City under this Section 7 shall terminate and be without further effect as of any date on which the City delivers to the Registrar an opinion of Bond Counsel to the effect that, because of legislative action or final judicial or administrative actions or proceedings, the failure of the City to comply with the requirements of this Section 7 will not cause participating underwriters in the primary offering of the Bonds to be in violation of the Rule or other applicable requirements of the Securities Exchange Act of 1934, as amended, or any statutes or laws successory thereto or amendatory thereof.

(2) This Section 7 (and the form and requirements of the Disclosure Information) may be amended or supplemented by the City from time to time, without notice to (except as provided in paragraph (3) of subsection (b)) or the consent of the Owners of any Bonds, by a resolution of this Council filed in the office of the recording officer of the City accompanied by an opinion of Bond Counsel, who may rely on certificates of the City and others and the opinion may be subject to customary qualifications, to the effect that: (i) such amendment or supplement (a) is made in connection with a change in circumstances that arises from a change in law or regulation or a change in the identity, nature or status of the City or the type of operations conducted by the City, or (b) is required by, or better complies with, the provisions of paragraph (b)(5) of the Rule; (ii) this Section 7 as so amended or supplemented would have complied with the requirements of paragraph (b)(5) of the Rule at the time of the primary offering of the Bonds, giving effect to any change in circumstances applicable under clause (i)(a) and assuming that the Rule as in effect and interpreted at the time of the amendment or supplement was in effect at the time of the primary offering; and (iii) such amendment or supplement does not materially impair the interests of the Bondowners under the Rule.

If the Disclosure Information is so amended, the City agrees to provide, contemporaneously with the effectiveness of such amendment, an explanation of the reasons for

the amendment and the effect, if any, of the change in the type of financial information or operating data being provided hereunder.

(3) This Section 7 is entered into to comply with the continuing disclosure provisions of the Rule and should be construed so as to satisfy the requirements of paragraph (b)(5) of the Rule.

Section 8. Severability. If any section, paragraph or provision of this resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this resolution.

Section 9. Headings. Headings in this resolution are included for convenience of reference only and are not a part hereof, and shall not limit or define the meaning of any provision hereof.

Dated: August 15, 2000.

The motion for the adoption of the foregoing resolution was duly seconded by Council Member Johnson, and upon rollcall vote being taken thereon, the following voted in favor thereof: Faust, Hovland, Johnson, Maetzold; and the following voted against the same: All voted aye, whereupon said resolution was declared duly passed and adopted, and was approved and signed by the Mayor, whose signature was attested by the City Clerk.

Resolution adopted.

Member Johnson introduced the following resolution and moved its adoption:

RESOLUTION 2000-83

RESOLUTION RELATING TO \$3,565,000 TAXABLE GENERAL OBLIGATION TAX INCREMENT BONDS, SERIES 2000B; AUTHORIZING THE ISSUANCE, AWARDING THE SALE, FIXING THE FORM AND DETAILS, AND PROVIDING FOR THE EXECUTION AND DELIVERY THEREOF AND THE SECURITY THEREFOR

BE IT RESOLVED by the City Council (the "Council") of the City of Edina, Minnesota (the "City"), as follows:

Section 1. Authorization and Sale.

1.01. Authorization. This Council hereby determines that it is necessary and in the best interests of the City to issue and sell its Taxable General Obligation Tax Increment Bonds, Series 2000B (the "Bonds"), in the principal amount of \$3,565,000 pursuant to Minnesota Statutes, Chapter 475 and Section 469.178, subdivision 5(a). Proceeds of the Bonds will be used to refund the City's General Obligation Temporary Tax Increment Bonds, Series 1997B (the "Temporary Bonds"), and to finance certain removal and remedial actions with respect to hazardous substances and pollutants or contaminants or petroleum releases incurred by the City or the Edina Housing and Redevelopment Authority (the "HRA") in connection with the redevelopment project being undertaken by the HRA pursuant to the Grandview Area Redevelopment Plan of the HRA.

1.02. Sale of Bonds. Interest on the Bonds will not be excludable from gross income for purposes of federal income taxation. Pursuant to Minnesota Statutes, Section 475.60, subdivision 2, paragraph (6), the requirements as to public sale do not apply to the issuance of the Bonds. Proposals have been received for the sale of the Bonds, and the Council has publicly considered all proposals presented in conformity with the terms and conditions distributed by the City to potential purchasers of the Bonds. The most favorable of such proposals is ascertained to

be that of U.S. Bancorp Piper Jaffray, of Minneapolis, Minnesota, (the "Purchaser"), to purchase the Bonds at a price of \$3,529,528.25 plus accrued interest on all Bonds to the day of delivery and payment, on the further terms and conditions hereinafter set forth.

1.03 Award of Bonds. The sale of the Bonds is hereby awarded to the Purchaser and the Mayor and City Manager are hereby authorized and directed on behalf of the City to execute a contract for the sale of the Bonds in accordance with the terms of the bid. The good faith deposit of the Purchaser shall be retained and deposited by the City until the Bonds have been delivered and shall be deducted from the purchase price paid at settlement. The good faith checks of other persons who submitted proposals to purchase the Bonds shall be returned to them forthwith.

1.04. Issuance of Bonds. All acts, conditions and things which are required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen and to be performed precedent to and in the valid issuance of the Bonds having been done, existing, having happened and having been performed, it is now necessary for the Council to establish the form and terms of the Bonds, to provide security therefor and to issue the Bonds forthwith.

Section 2. Form of Bonds. The Bonds shall be prepared in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF HENNEPIN

CITY OF EDINA

TAXABLE GENERAL OBLIGATION TAX INCREMENT BOND, SERIES 2000B

<u>Rate</u>	<u>Maturity</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
	February 1, 2003	September 1, 2000	

REGISTERED
OWNER:

PRINCIPAL
AMOUNT:

DOLLARS

THE CITY OF EDINA, Hennepin County, Minnesota (the "City"), acknowledges itself to be indebted and, for value received, hereby promises to pay to the registered owner above named, the principal amount indicated above, on the maturity date specified above, with interest thereon from the date hereof at the annual rate specified above computed on the basis of the number of days elapsed in a 360-day year consisting of twelve 30-day months, payable on February 1 and August 1 in each year, commencing February 1, 2001, to the person in whose name this Bond is registered at the close of business on the 15th day (whether or not a business day) of the immediately preceding month, all subject to the provisions referred to herein with respect to the redemption of the principal of this Bond before maturity. The interest hereon and, upon presentation and surrender hereof at the office of the Finance Director in Edina, Minnesota, as Registrar, Transfer Agent and Paying Agent (the "Bond Registrar"), or its successor designated under the Resolution described herein, the principal hereof, are payable in lawful money of the United States of America by check or draft of the City or the Bond Registrar if a successor to the City Finance Director as Bond Registrar has been designated under the Resolution described herein.

This Bond is one of an issue in the aggregate principal amount of \$3,565,000 (the "Bonds"), all of like date and tenor except as to serial number, interest rate, redemption privilege and maturity date, issued pursuant to a resolution adopted by the City Council on August 15, 2000 (the "Resolution") to provide funds to refund outstanding bonds of the City and to finance certain costs of the redevelopment project being undertaken by the Edina Housing and Redevelopment Authority (the "HRA") pursuant to the Grandview Area Redevelopment Plan of the HRA, and is issued pursuant to and in full conformity with the provisions of the Constitution and laws of the State of Minnesota thereunto enabling, including Minnesota Statutes, Section 469.178 and Chapter 475. The Bonds are payable primarily from tax increments to be derived from a tax increment financing district established by the HRA (the "District") to be paid by the HRA to the City and which have been pledged to the payment of the Bonds by the Resolution. In addition, for the full and prompt payment of the principal and interest on the Bonds as the same become due, the full faith, credit and taxing power of the City have not been and are irrevocably pledged. The Bonds

are issuable only as fully registered bonds, in denominations of \$5,000 or any integral multiple thereof, of single maturities.

The Bonds having are each subject to redemption and prepayment, at the option of the City and in whole or in part and if in part, by lot, assigned in proportion to their principal amount, on February 1, 2002 and on any date thereafter, at a price equal to the principal amount thereof to be redeemed plus interest accrued to the date of redemption. At least thirty days prior to the date set for redemption of any Bond, notice of the call for redemption will be mailed to the Bond Registrar and to the registered owner of each Bond to be redeemed at his address appearing in the Bond Register, but no defect in or failure to give such mailed notice of redemption shall affect the validity of proceedings for the redemption of any Bond, not affected by such defect or failure. Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price herein specified and from and after such date (unless the City shall default in the payment of the redemption price) such Bond or portions of Bonds shall cease to bear interest. Upon the partial redemption of any Bond, a new Bond or Bonds will be delivered to the registered owner without charge, representing the remaining principal amount outstanding.

As provided in the Resolution and subject to certain limitations set forth therein, this Bond is transferable upon the books of the City at the principal office of the Bond Registrar, by the registered owner hereof in person or by his attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange, the City will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The City and the Bond Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Bond Registrar shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all acts, conditions and things required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen and to be performed precedent to and in the issuance of this Bond in order to make it a valid and binding general obligation of the City according to its terms have been done, do exist, have happened and have been performed as so required; that prior to the issuance hereof the City has pledged and appropriated to a sinking fund established for the payment of the Bonds tax increments to be derived by the City from the District; that to the extent principal of and interest on this Bond cannot be paid from tax increments or other funds appropriated for that purpose, the Bonds shall be paid from proceeds of general obligation bonds of the City offered for sale in advance of the maturity date of the Bonds; but the City has pledged its full faith and credit and taxing powers for the payment of the principal of and interest on this Bond when due and, if necessary for the payment of principal and interest on the Bonds, ad valorem taxes are required to be levied upon all taxable property in the City, which levy is not limited as to rate or amount; and that the issuance of this Bond does not cause the indebtedness of the City to exceed any constitutional or statutory limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been executed by the Bond Registrar by manual signature of the Bond Registrar, or in the event the City Finance Director is no longer acting as Bond Registrar, by one of the authorized representatives of the Bond Registrar.

IN WITNESS WHEREOF, the City of Edina, Hennepin County, State of Minnesota, by its City Council, has caused this Bond to be executed by the signatures of the Mayor and the City Manager and has caused this Bond to be dated as of the date set forth below.

Date of Authentication:

CITY OF EDINA

City Manager

Mayor

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____, the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated:

PLEASE INSERT SOCIAL SECURITY
OR OTHER IDENTIFYING NUMBER
OF ASSIGNEE:

/

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatsoever.

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Bond Registrar, which requirements include membership or participation in the Securities Transfer Association Medallion Program (STAMP) or such other "signature guaranty program" as may be determined by the Bond Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

Section 3. Bond Terms, Execution and Delivery.

3.01. Maturities, Interest Rates, Denominations, Payment. The City shall forthwith issue and deliver the Bonds, which shall be denominated "Taxable General Obligation Tax Increment Bonds, Series 2000B". The Bonds shall be in the aggregate principal amount of \$3,565,000 and shall be issuable in the denomination of \$5,000 each or any integral multiple thereof, shall mature on February 1, 2003, and the Bonds shall bear interest computed on the basis of the number of days elapsed in a 360-day year consisting of twelve 30-days months from date of original issue until paid or duly called for redemption at the rate of 6.45% per annum. The Bonds shall be issuable only in fully registered form. The interest thereon and, upon surrender of each Bond, the principal amount thereof, shall be payable by check or draft issued by the Registrar described herein.

3.02. Dates; Interest Payment Dates. Each Bond shall bear a date of original issue of September 1, 2000, and shall be dated as of the date of authentication. Interest on the Bonds shall be payable on February 1 and August 1 in each year, commencing February 1, 2001, to the owner of

record thereof as of the close of business on the fifteenth day of the immediately preceding month, whether or not such day is a business day.

3.03. Registration. The City shall appoint, and shall maintain, a bond registrar, transfer agent and paying agent (the "Registrar"). The effect of registration and the rights and duties of the City and the Registrar with respect thereto shall be as follows:

(a) Register. The Registrar shall keep at its principal corporate trust office a bond register in which the Registrar shall provide for the registration of ownership of Bonds and the registration of transfers and exchanges of Bonds entitled to be registered, transferred or exchanged.

(b) Transfer of Bonds. Upon surrender for transfer of any Bond duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Bonds of a like aggregate principal amount and maturity, as requested by the transferor. The Registrar may, however, close the books for registration of any transfer after the fifteenth day of the month preceding each interest payment date and until such interest payment date.

(c) Exchange of Bonds. Whenever any Bond is surrendered by the registered owner for exchange, the Registrar shall authenticate and deliver one or more new Bonds of a like aggregate principal amount and maturity, as requested by the registered owner or the owner's attorney duly authorized in writing.

(d) Cancellation. All Bonds surrendered upon any transfer or exchange shall be promptly canceled by the Registrar and thereafter disposed of as directed by the City.

(e) Improper or Unauthorized Transfer. When any Bond is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Bond or separate instrument of transfer is legally authorized. The Registrar shall incur no liability for its refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(f) Persons Deemed Owners. The City and the Registrar may treat the person in whose name any Bond is at any time registered in the bond register as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the City upon such Bond to the extent of the sum or sums so paid.

(g) Taxes, Fees and Charges. For every transfer or exchange of Bonds (except for an exchange upon a partial redemption of a Bond), the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

(h) Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall become mutilated or be lost, stolen or destroyed, the Registrar shall deliver a new Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Bond or in lieu of and in substitution for any such Bond lost, stolen or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Bond lost, stolen or destroyed, upon filing with the Registrar of evidence satisfactory to it that such Bond was lost, stolen or destroyed, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance and amount satisfactory to it, in which both the City and the Registrar shall be named as obligees. All Bonds so surrendered to the Registrar shall be canceled by it and evidence of such cancellation shall be given to the City. If the mutilated, lost, stolen or destroyed Bond has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new Bond prior to payment.

3.04. Appointment of Initial Registrar. The City hereby appoints the City Finance Director, as the initial Registrar. In the event that the City determines to discontinue the book entry-only system for the Bonds as described in paragraph (c) of Section 3.07, or DTC, as defined in Section 3.07, determines to discontinue providing its services with respect to the Bonds and a new securities depository is not appointed for the Bonds, the City will designate a suitable bank or trust company to act as successor Registrar if the City Finance Director is then acting as Registrar. The City reserves the right to remove any Registrar upon thirty (30) days' notice and upon the appointment of a successor Registrar, in which event the predecessor Registrar shall deliver all cash and Bonds in its possession to the successor Registrar and shall deliver the bond register to the successor Registrar.

3.05. Redemption. The Bonds shall each be subject to redemption and prepayment, at the option of the City, in whole or in part, and if in part, in \$5,000 principal amounts selected by the Registrar by lot, on February 1, 2002 and on any date thereafter at a price equal to the principal amount thereof to be redeemed plus interest accrued to the date of redemption. At least thirty days prior to the date set for redemption of any Bond, the City Clerk shall cause notice of the call for redemption to be mailed to the Registrar and to the registered owner of each Bond to be redeemed, but no defect in or failure to give such mailed notice of redemption shall affect the validity of proceedings for the redemption of any Bond not affected by such defect or failure. The notice of redemption shall specify the redemption date, redemption price, the numbers, interest rates and CUSIP numbers of the Bonds to be redeemed and the place at which the Bonds are to be surrendered for payment, which is the principal office of the Registrar. Official notice of redemption having been given as aforesaid, the Bonds or portions thereof so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions thereof shall cease to bear interest.

In addition to the notice prescribed by the preceding paragraph, the City shall also give, or cause to be given, notice of the redemption of any Bond or Bonds or portions thereof at least 35 days before the redemption date by certified mail or telecopy to the Purchaser and all registered securities depositories then in the business of holding substantial amounts of obligations of the character of the Bonds (such depositories now being The Depository Trust Company, of Garden City, New York; and Philadelphia Depository Trust Company, of Philadelphia, Pennsylvania) and one or more national information services that disseminate information regarding municipal bond redemptions; provided that any defect in or any failure to

give any notice of redemption prescribed by this paragraph shall not affect the validity of the proceedings for the redemption of any Bond or portion thereof.

Bonds in a denomination larger than \$5,000 may be redeemed in part in any integral multiple of \$5,000. The owner of any Bond redeemed in part shall receive, upon surrender of such Bond to the Registrar, one or more new Bonds of such same series in authorized denominations equal in principal amount to the unredeemed portion of the Bond so surrendered.

3.06. Preparation and Delivery. The Bonds shall be prepared under the direction of the City Finance Director and shall be executed on behalf of the City by the signatures of the Mayor and the City Manager. In case any officer whose signature shall appear on the Bonds shall cease to be such officer before the delivery of any Bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. Notwithstanding such execution, no Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this resolution unless and until a certificate of authentication on such Bond has been duly executed by the manual signature of the Registrar, or in the event the City Finance Director is no longer acting as Registrar, an authorized representative of the Registrar. Certificates of authentication on different Bonds need not be signed by the same representative. The executed certificate of authentication on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution. When the Bonds have been so executed and authenticated, they shall be delivered by the City Finance Director to the Purchaser upon payment of the purchase price in accordance with the contract of sale heretofore made and executed, and the Purchaser shall not be obligated to see to the application of the purchase price.

3.07. Securities Depository. (a) For purposes of this Section the following terms shall have the following meanings:

“Beneficial Owner” shall mean, whenever used with respect to a Bond, the person in whose name such Bond is recorded as the beneficial owner of such Bond by a Participant on the records of such Participant, or such person’s subrogee.

“Cede & Co.” shall mean Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Bonds.

“DTC” shall mean The Depository Trust Company of New York, New York.

“Participant” shall mean any broker-dealer, bank or other financial institution for which DTC holds Bonds as securities depository.

“Representation Letter” shall mean the Representation Letter from the City to DTC with respect to the procedures of DTC presently on file with DTC.

(b) The Bonds shall be initially issued as separately authenticated fully registered bonds, and one Bond shall be issued in the principal amount of each stated maturity of the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered in the bond register in the name of Cede & Co., as nominee of DTC. The Registrar and the City may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, if any, giving any notice permitted or required to be given to registered owners of

Bonds under this resolution, registering the transfer of Bonds, and for all other purposes whatsoever; and neither the Registrar nor the City shall be affected by any notice to the contrary. Neither the Registrar nor the City shall have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the Bonds under or through DTC or any Participant, or any other person which is not shown on the bond register as being a registered owner of any Bonds, with respect to the accuracy of any records maintained by DTC or any Participant, with respect to the payment by DTC or any Participant of any amount with respect to the principal of or interest on the Bonds, with respect to any notice which is permitted or required to be given to owners of Bonds under this resolution, with respect to the selection by DTC or any Participant of any person to receive payment in the event of a partial redemption of the Bonds, or with respect to any consent given or other action taken by DTC as registered owner of the Bonds. So long as any Bond is registered in the name of Cede & Co., as nominee of DTC, the Registrar shall pay all principal of and interest on such Bond, and shall give all notices with respect to such Bond, only to Cede & Co. in accordance with the Representation Letter, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. No person other than DTC shall receive an authenticated Bond for each separate stated maturity evidencing the obligation of the City to make payments of principal and interest. Upon delivery by DTC to the Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the Bonds will be transferable to such new nominee in accordance with paragraph (d) hereof.

(c) In the event the City determines that it is in the best interest of the Beneficial Owners that they be able to obtain Bonds in the form of bond certificates, the City may notify DTC and the Registrar, whereupon DTC shall notify the Participants of the availability through DTC of Bonds in the form of certificates. In such event, the Bonds will be transferable in accordance with paragraph (e) hereof. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the City and the Registrar and discharging its responsibilities with respect thereto under applicable law. In such event the Bonds will be transferable in accordance with paragraph (d) hereof.

(d) In the event that any transfer or exchange of Bonds is permitted under paragraph (b) or (c) hereof, such transfer or exchange shall be accomplished upon receipt by the Registrar of the Bonds to be transferred or exchanged and appropriate instruments of transfer to the permitted transferee in accordance with the provisions of this resolution. In the event Bonds in the form of certificates are issued to owners other than Cede & Co., its successor as nominee for DTC as owner of all the Bonds, or another securities depository as owner of all the Bonds, the provisions of this resolution shall also apply to all matters relating thereto, including, without limitation, the printing of such Bonds in the form of bond certificates and the method of payment of principal of and interest on such Bonds in the form of bond certificates.

Section 4. Use of Proceeds and Security Provisions.

Section 4.01. Use of Proceeds and Construction Fund. Proceeds of the Bonds shall be applied on the date of issuance of the Bonds to pay the Temporary Bonds. There is hereby established on the official books and records of the City a Series 2000B Taxable General Obligation Tax Increment Bond Construction Fund (the "Construction Fund"). To the Construction Fund there shall be credited all proceeds of the Bonds remaining after payment of the Temporary Bonds. From the Construction Fund there shall be paid by the City or HRA all costs and expenses of the Project to be paid from proceeds of the Bonds and the issuance of the

Bonds. After payment of all costs of the Project, the Construction Fund shall be discontinued and any Bond proceeds and other funds remaining therein shall be transferred to the Sinking Fund created pursuant to Section 4.02 hereof.

Section 4.02. General Obligation Tax Increment Bond Sinking Fund. The Bonds shall be payable from a separate Series 2000B Taxable General Obligation Tax Increment Bond Sinking Fund (the "Sinking Fund") which shall be created and maintained on the books of the City as a separate debt redemption fund until the Bonds, and all interest thereon, are fully paid. There shall be credited to the Sinking Fund the following:

(a) Any amount deposited therein pursuant to Section 4.01 hereof.

(b) Tax increments described in Section 4.03 to be received from the HRA.

(c) To the extent necessary, the proceeds from the sale of definitive general obligation tax increment bonds, or the proceeds of a series of additional general obligation temporary tax increment bonds, required to be sold by the City in accordance with Minnesota Statutes, Section 469.178, subdivision 5, to provide funds for the payment of the principal of the Bonds at maturity.

(d) All taxes levied and all other money which may at any time be received for or appropriated to the payment of the principal of or interest on the Bonds, including all collections of any ad valorem taxes levied for the payment of the Bonds.

(e) Any other funds appropriated by the Council for the payment of the Bonds.

4.03. Tax Increment Financing District. Pursuant to Minnesota Statutes, Section 469.178, subdivision 2, the City will enter into a pledge agreement with the HRA whereby the HRA will pay to the City certain of the tax increments from the Grandview Area Tax Increment Financing District (Hennepin County No. 1202) (the "District") of the HRA as specified in such Pledge Agreement in an amount sufficient, with other funds appropriated by the City to the Sinking Fund, to pay the principal of and interest on the Bonds when due. Such tax increments shall be deposited in the Sinking Fund. Nothing herein shall preclude the City or the HRA from hereafter making further pledges and appropriations of the tax increments from the District for the payment of other obligations of the City or HRA or to pay costs eligible to be paid from the tax increments from the District.

4.04. Full Faith and Credit Pledged. The full faith and credit and taxing power of the City shall be and are hereby irrevocably pledged for the prompt and full payment of the principal of and interest on the Bonds. It is estimated that the tax increment from the District to be paid by the HRA to the City and other funds herein pledged for the payment of the Bonds will be collected in amounts not less than five percent in excess of the amounts needed to meet when due the principal of and interest on the Bonds as required by Minnesota Statutes, Section 475.61. Consequently, no ad valorem taxes are now levied to pay the Bonds or the interest to come due thereon, pursuant to Minnesota Statutes, Section 469.178, subdivision 2.

Section 5. Defeasance. When all of the Bonds have been discharged as provided in this section, all pledges, covenants and other rights granted by this resolution to the holders of the Bonds shall cease. The City may discharge its obligations with respect to any Bonds which are due on any date by depositing with the paying agent on or before that date a sum sufficient for the

payment thereof in full; or, if any Bond should not be paid when due, it may nevertheless be discharged by depositing with the paying agent a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit. The City may also discharge its obligations with respect to any prepayable Bond called for redemption on any date when it is prepayable according to their terms, by depositing with the Registrar on or before that date a sum sufficient for the payment thereof in full; provided that notice of the redemption thereof has been duly given as provided in Section 3.05. The City may also at any time discharge its obligations with respect to any Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or securities which are general obligations of the United States or securities of United States agencies which are authorized by law to be so deposited, bearing interest payable at such time and at such rates and maturing on such dates as shall be required, without reinvestment, to pay all principal and interest to become due thereon to maturity or, if notice of redemption as herein required has been duly provided for, to such earlier redemption date.

Section 6. Registration, Certification of Proceedings, Investments of Moneys, Arbitrage and Official Statement.

6.01. **Registration.** The City Clerk is hereby authorized and directed to file a certified copy of this resolution with the County Auditor of Hennepin County, together with such other information as he shall require, and to obtain from the County Auditor a certificate that the Bonds have been entered on upon the Auditor's register as required by law.

6.02. **Certification of Proceedings.** The officers of the City and the County Auditor of Hennepin County are hereby authorized and directed to prepare and furnish to the Purchaser, and to Dorsey & Whitney LLP, Bond Counsel, certified copies of all proceedings and records of the City, and such other affidavits, certificates and information as may be required to show the facts relating to the legality and marketability of the Bonds as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates and affidavits, including any heretofore furnished, shall be deemed representations of the City as to the facts recited therein.

6.03. **Official Statement.** The Official Statement relating to the Bonds, dated August 3, 2000 (the "Official Statement"), prepared and distributed on behalf of the City by Ehlers & Associates, Inc., is hereby approved. Ehlers & Associates, Inc., is hereby authorized of behalf of the City to prepare and distribute to the Purchaser a supplement to the Official Statement listing the offering price, the interest rates, other information relating to the Bonds required to be included in the Official Statement by Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934. Within seven business days from the date hereof, the City shall deliver to the Purchaser a reasonable number of copies of the Official Statement and such supplement. The officers of the City are hereby authorized and directed to execute such certificates as may be appropriate concerning the accuracy, completeness and sufficiency of the Official Statement.

Section 7. Continuing Disclosure.

(a) **Purpose and Beneficiaries.** To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit the original purchaser and other participating underwriters in the primary offering of the Bonds to comply with amendments to Rule 15c2-12 promulgated by the Securities and Exchange Commission (the

“SEC”) under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12), relating to continuing disclosure (as in effect and interpreted from time to time, the “Rule”), which will enhance the marketability of the Bonds, the City hereby makes the following covenants and agreements for the benefit of the Owners (as hereinafter defined) from time to time of the Outstanding Bonds (as hereinafter defined). The City is the only “obligated person” in respect of the Bonds within the meaning of the Rule for purposes of identifying the entities in respect of which continuing disclosure must be made.

If the City fails to comply with any provisions of this Section 7, any person aggrieved thereby, including the Owners of any Outstanding Bonds, may take whatever action at law or in equity may appear necessary or appropriate to enforce performance and observance of any agreement or covenant contained in this Section 7, including an action for a writ of mandamus or specific performance. Direct, indirect, consequential and punitive damages shall not be recoverable for any default hereunder to the extent permitted by law. Notwithstanding anything to the contrary contained herein, in no event shall a default under this Section 8 constitute a default under the Bonds or under any other provision of this resolution.

As used in this Section 7, “Owner” or “Bondowner” means, in respect of a Bond, the registered owner or owners thereof appearing in the bond register maintained by the Registrar or any “Beneficial Owner” (as hereinafter defined) thereof, if such Beneficial Owner provides to the Registrar evidence of such beneficial ownership in form and substance reasonably satisfactory to the Registrar. As used herein, “Beneficial Owner” means, in respect of a Bond, any person or entity which (i) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, such Bond (including persons or entities holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of the Bond for federal income tax purposes. As used herein, “Outstanding” means when used with reference to Bonds means all Bonds which have been issued and authenticated by the Registrar except (i) Bonds which have been paid in full (ii) Bonds which have been cancelled by the Registrar or surrendered to the Registrar for cancellation and (iii) Bonds which have been discharged as provided in Section 5 hereof.

(b) Information To Be Disclosed. The City will provide, in the manner set forth in subsection (c) hereof, either directly or indirectly through an agent designated by the City, the following information at the following times:

(1) on or before 365 days after the end of each fiscal year of the City, commencing with the fiscal year ending December 31, 2000 the following financial information and operating data in respect of the City (the “Disclosure Information”):

(A) the audited financial statements of the City for such fiscal year, prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board as modified in accordance with the governmental accounting standards promulgated by the Governmental Accounting Standards Board or as otherwise provided under Minnesota law, as in effect from time to time, or, if and to the extent such financial statements have not been prepared in accordance with such generally accepted accounting principles for reasons beyond the reasonable control of the City, noting the discrepancies therefrom and the effect thereof, and certified as to accuracy and completeness in all material respects by the fiscal officer of the City; and

(B) To the extent not included in the financial statements referred to in paragraph (A) hereof, the information for such fiscal year or for the period most recently available of the type set forth below, which information may be unaudited, but is to be certified as to accuracy and completeness in all material respects by the fiscal officer of the City, to the best of his or her knowledge, which certification may be based on the reliability of information obtained from governmental or other third party sources:

Most recent population estimate; City Property Values; City Indebtedness; City Tax Rates; Levies and Collections; and Current General Fund Budget.

Notwithstanding the foregoing paragraph, if the audited financial statements are not available by the date specified, the City shall provide on or before such date unaudited financial statements in the format required for the audited financial statements as part of the Disclosure Information and, within 10 days after the receipt thereof, the City shall provide the audited financial statements.

Any or all of the Disclosure Information may be incorporated by reference, if it is updated as required hereby, from other documents, including official statements, which have been submitted to each of the repositories hereinafter referred to under subsection (b) or the SEC. If the document incorporated by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The City shall clearly identify in the Disclosure Information each document so incorporated by reference.

If any part of the Disclosure Information can no longer be generated because the operations of the City have materially changed or been discontinued, such Disclosure Information need no longer be provided if the City includes in the Disclosure Information a statement to such effect; provided, however, if such operations have been replaced by other City operations in respect of which data is not included in the Disclosure Information and the City determines that certain specified data regarding such replacement operations would be a Material Fact (as defined in paragraph (2) of this subsection (b)), then, from and after such determination, the Disclosure Information shall include such additional specified data regarding the replacement operations.

If the Disclosure Information is changed or this Section 7 is amended as permitted by this paragraph (1) or subsection (d), then the City shall include in the next Disclosure Information to be delivered hereunder, to the extent necessary, an explanation of the reasons for the amendment and the effect of any change in the type of financial information or operating data provided.

(2) In a timely manner, notice of the occurrence of any of the following events which is a Material Fact (as hereinafter defined):

- (A) Principal and interest payment delinquencies;
- (B) Non-payment related defaults;
- (C) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (D) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (E) Substitution of credit or liquidity providers, or their failure to perform;
- (F) Adverse tax opinions or events affecting the tax-exempt status of the security;
- (G) Modifications to rights of security holders;
- (H) Bond calls;

- (I) Defeasances;
- (J) Release, substitution, or sale of property securing repayment of the securities;
- (K) Rating changes.

As used herein, a "Material Fact" is a fact as to which a substantial likelihood exists that a reasonably prudent investor would attach importance thereto in deciding to buy, hold or sell a Bond or, if not disclosed, would significantly alter the total information otherwise available to an investor from the Official Statement, information disclosed hereunder or information generally available to the public. Notwithstanding the foregoing sentence, a "Material Fact" is also an event that would be deemed "material" for purposes of the purchase, holding or sale of a Bond within the meaning of applicable federal securities laws, as interpreted at the time of discovery of the occurrence of the event.

(3) In a timely manner, notice of the occurrence of any of the following events or conditions:

(A) the failure of the City to provide the Disclosure Information required under paragraph (1) of this subsection (b) at the time specified thereunder;

(B) the amendment or supplementing of this Section 7 pursuant to subsection (d), together with a copy of such amendment or supplement and any explanation provided by the City under paragraph (2) of subsection (d);

(C) the termination of the obligations of the City under this Section 7 pursuant to subsection (d);

(D) any change in the accounting principles pursuant to which the financial statements constituting a portion of the Disclosure Information are prepared; and

(E) any change in the fiscal year of the City.

(c) Manner of Disclosure. The City agrees to make available the information described in subsection (b) to the following entities by telecopy, overnight delivery, mail or other means, as appropriate:

(1) the information described in paragraph (1) of subsection (b), to each then nationally recognized municipal securities information repository under the Rule and to any state information depository then designated or operated by the State of Minnesota as contemplated by the Rule (the "State Depository"), if any;

(2) the information described in paragraphs (2) and (3) of subsection (b), to the Municipal Securities Rulemaking Board and to the State Depository, if any; and

(3) the information described in subsection (b), to any rating agency then maintaining a rating of the Bonds and, at the expense of such Bondowner, to any Bondowner who requests in writing such information, at the time of transmission under paragraphs (1) or (2) of this subsection (c), as the case may be, or, if such information is transmitted with a subsequent time of release, at the time such information is to be released.

(d) Term; Amendments; Interpretation.

(1) The covenants of the City in this Section 7 shall remain in effect so long as any Bonds are Outstanding. Notwithstanding the preceding sentence, however, the obligations of the City under this Section 7 shall terminate and be without further effect as of any date on which the City delivers to the Registrar an opinion of Bond Counsel to the effect that, because of legislative action or final judicial or administrative actions or proceedings, the failure of the City to comply with the requirements of this Section 7 will not cause participating underwriters in the primary offering of the Bonds to be in violation of the Rule or other applicable requirements of the Securities Exchange Act of 1934, as amended, or any statutes or laws successory thereto or amendatory thereof.

(2) This Section 7 (and the form and requirements of the Disclosure Information) may be amended or supplemented by the City from time to time, without notice to (except as provided in paragraph (3) of subsection (b)) or the consent of the Owners of any Bonds, by a resolution of this Council filed in the office of the recording officer of the City accompanied by an opinion of Bond Counsel, who may rely on certificates of the City and others and the opinion may be subject to customary qualifications, to the effect that: (i) such amendment or supplement (a) is made in connection with a change in circumstances that arises from a change in law or regulation or a change in the identity, nature or status of the City or the type of operations conducted by the City, or (b) is required by, or better complies with, the provisions of paragraph (b)(5) of the Rule; (ii) this Section 7 as so amended or supplemented would have complied with the requirements of paragraph (b)(5) of the Rule at the time of the primary offering of the Bonds, giving effect to any change in circumstances applicable under clause (i)(a) and assuming that the Rule as in effect and interpreted at the time of the amendment or supplement was in effect at the time of the primary offering; and (iii) such amendment or supplement does not materially impair the interests of the Bondowners under the Rule.

If the Disclosure Information is so amended, the City agrees to provide, contemporaneously with the effectiveness of such amendment, an explanation of the reasons for the amendment and the effect, if any, of the change in the type of financial information or operating data being provided hereunder.

(3) This Section 7 is entered into to comply with the continuing disclosure provisions of the Rule and should be construed so as to satisfy the requirements of paragraph (b)(5) of the Rule.

Section 8. Severability. If any section, paragraph or provision of this resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this resolution.

Section 9. Headings. Headings in this resolution are included for convenience of reference only and are not a part hereof, and shall not limit or define the meaning of any provision hereof.

Dated: August 15, 2000.

The motion for the adoption of the foregoing resolution was duly seconded by Council Member Faust, and upon rollcall vote being taken thereon, the following voted in favor thereof: Faust, Hovland, Johnson, Maetzold; and the following voted against the same: all voted in favor; whereupon said resolution was declared duly passed and adopted, and was approved and signed by the Mayor, whose signature was attested by the City Clerk.

Resolution adopted.

RESOLUTION NO. 2000-84 - PRELIMINARY PLAT APPROVED - JANCO, INC., BRENDAN GLENN (6709 INDIAN HILLS ROAD) Planner Larsen informed the Council the subject property is a developed single dwelling lot comprising an area of 4.53 acres. There is an existing home in the northeasterly portion of the property. An application has been submitted to subdivide the property into six lots served by a cul-de-sac off Indian Hills Road. The existing home would be removed.

The subdivision ordinance requires that all lots in a new subdivision meet or exceed the median average lot width, depth and area of all lots within 500 feet of the property proposed for subdivision. In this case, there are 39 lots in the 500 foot neighborhood. The proposed six lots exceed all ordinance requirements for lot width, depth and area and are large enough and wide enough to handle the expected large homes. Highway noise is a major issue in this neighborhood. The developer should mitigate noise through a combination of fencing, berming and plantings. Staff recommends approval of the proposed preliminary plat subject to the following:

1. Final Plat approval
2. Subdivision dedication
3. Developer's Agreement including noise mitigation approved by City Engineer
4. Watershed District permits
5. Purchaser of Lots 5 and 6 asked to join homeowner's association that manages/maintains the pond

The Planning Commission gave unanimous approval for the preliminary plat at their July 26, 2000, meeting.

Resident comment:

Fred Richards, 7225 Fleetwood Drive, personal representative for the developer, introduced Don Nelson, property owner, Jan and Tom Graham, the developers and Paul Cherne, Engineer on the project. Mr. Richards explained the developer will build a noise mitigation barrier between MacCauley and Highway 169, similar to what exists in the area at present. The developer's plan includes berming east of MacCauley Trial on the westerly edge of the property as well as vegetation. Mr. Richards elaborated that drainage issues have been re-worked so drainage now exits the plat to the west into a piping system and will not discharge into the lake.

Member Johnson made a motion to close the public hearing. Member Faust seconded the motion.

Ayes: Faust, Hovland, Johnson, Maetzold

Motion carried.

Member Johnson introduced the following resolution and moved its adoption:

**RESOLUTION NO. 2000-84
RESOLUTION APPROVING
PRELIMINARY PLAT FOR JANCO, INC.,
6709 INDIAN HILLS ROAD**

BE IT RESOLVED by the City Council of the City of Edina, Minnesota, that that certain plat entitled, "BRENDAN GLENN", platted by Janco, Inc., and presented at the regular meeting of the City Council on August 15, 2000, be and is hereby granted preliminary plat approval conditioned upon, 1) Final Plat approval, 2) Subdivision Dedication, 3) Developer's Agreement including noise mitigation approved by City Engineer, 4) Watershed District permits, and 5) purchasers of Lots 5 and 6 asked to join homeowner's association that manages/maintains the pond.

Passed and adopted by the Edina City Council this 15th day of August, 2000.

Member Hovland seconded the motion.

Rollcall:

Ayes: Faust, Hovland, Johnson, Maetzold

Motion carried.

ORDINANCE NO. 2000-9 ADOPTED WITH WAIVER OF SECOND READING - AN ORDINANCE AMENDING SECTION 715 REGARDING PLACEMENT OF RECYCLABLES FOR COLLECTION Coordinator Wilmot explained the proposed amendment changes the location for the collection of residential recycling from garage side to street or curb side.

No comments were heard from the audience.

Member Johnson made a motion closing the public hearing. Member Hovland seconded the motion.

Ayes: Faust, Hovland, Johnson, Maetzold

Motion carried.

Following a brief Council discussion, **Member Johnson introduced the following ordinance amendment and moved its adoption with waiver of second reading:**

**ORDINANCE NO. 2000-9
AN ORDINANCE AMENDING SECTION 715-03
BY PROVIDING FOR CURBSIDE COLLECTION OF RECYCLABLES**

Section 1.

Subd. 2 of Subsection 715.03 is hereby replaced with the following:

"Subd. 2 **Containers for Recyclables.** Containers for storage of recyclables shall be kept in the same location as is designated by Section 705 of this Code for refuse containers. Residents of those dwellings described at (i) and (ii) of the definition of Premises in Subsection 715.02, residents of townhouses as defined in Section 850 of this Code, and residents of dwelling units in buildings with eight units or less (in this Code called "Multi-unit buildings"), not earlier than 12 hours prior to the day scheduled for collection of their recyclables, shall place the container holding the recyclables next to the street or at the curb adjoining the dwelling property or multi-unit property or at the alley if the dwelling or multi-unit building has refuse collection service at the alley. After the scheduled collection, the containers and any recyclables or material not collected shall be returned by the resident of such dwelling to the same location designated for storage by this Subsection."

Section 2: Effective date, January 1, 2001.

This ordinance shall be in full force and effect after its date of adoption and publication according to the law.

Attest: _____
City Clerk

Mayor

Member Hovland seconded the motion.

Rollcall:

Ayes: Faust, Hovland, Johnson, Maetzold
Ordinance adopted.

***TRAFFIC SAFETY STAFF REPORT OF AUGUST 1, 2000, APPROVED Motion made by Member Johnson and seconded by Member Faust approving the Traffic Safety Staff Review of August 15, 2000, Section A, as recommended by staff as follows:**

- 1. Installation of temporary "DO NOT BLOCK INTERSECTION" sign to be placed on West 50th Street at Halifax Avenue for eastbound traffic during the construction period, and**

Section B and C.

Motion carried on rollcall vote - four ayes.

PUBLIC HEARING HELD ON FOUNTAIN WOODS CONDOMINIUM'S NOISE VIOLATION

Sanitarian Velde informed the Council that Fountain Woods Condominiums residents are requesting either a clarification of the noise ordinance or an amendment to the noise ordinance exempting air conditioning equipment from compliance with the night time noise standard.

Mr. Velde explained that Fountain Woods Condominiums I and II consists of four buildings. During the summer of 1997, the chiller for the 6670 Vernon Avenue building (near Walnut Drive) was found to be in violation of the nighttime noise standard. The equipment violated the 50 dBA sound level limit established by Minnesota Rules and Edina City Ordinance. Modifications were made to the structure surrounding the chiller and subsequent measurements have found that the equipment is meeting the standard when properly maintained.

In May 1998, staff investigated a complaint about air conditioning noise at 6710 and 6730 Vernon Avenue:

- Noise measurements were found that exceeded state nighttime noise standard
- Enclosure replaced for 6710 Vernon Avenue
- Enclosure and equipment modified for 6730 Vernon Avenue
- Noise reduced from 57-59 dBA to 53-54 dBA
- Still a violation of state nighttime noise standard
- Exceeds 50 dBA fifty percent of the time in a one hour period between 10:00 P.M. and 7:00 A.M.

Fountain Woods is requesting the term "Noises necessary for the protection or preservation of property or of the health, safety, life or limb of a human being." (Code Section 1040.02A) be clarified to include air conditioning noise and add a new paragraph D. to Code Section 1040.02 exempting air conditioning equipment from the nighttime noise standard.

Staff is recommending relocation of the equipment increasing the distance from air conditioning equipment to adjacent property lines.

Mr. Velde outlined three possibilities for the Council to consider;

1. Confirm staff's interpretation of the City Code and require that Fountain Woods comply with noise standards;
2. Exempt air-conditioning equipment from the nighttime noise standard (City wide); or
3. Grant a variance to Fountain Woods from compliance with the nighttime noise standard.

Correspondence received regarding this matter are as follows: Brian Timerson, Noise Program Coordinator - Air Quality Division, Minnesota Pollution Control Agency; Peter Rocheford, Manager

for Fountain Woods II Condominium Association; John Rocheford, President, Rockford, Inc., Managing Agent for Associations; Pamela Albinson, 6115 Lincoln Drive; Don and Sandy Flamm, 6115 Lincoln Drive #355; Gloria Belschner, 6115 Lincoln Drive #245; Walter and Valentina Grabner, 6115 Lincoln Drive #147; and Michelle Nordtorp-Madson and Lennart Nordtorp Nielsen, 6009 Walnut Drive.

Member Hovland inquired what the age is of the equipment that doesn't comply with noise standards. Mr. Rocheford responded it is from 1984 and not original to the building. Member Hovland asked if equipment replacement costs were acquired as well as suggestions for relocation of the existing equipment.

Resident comments

John Rocheford, President of Rockford, Inc., Managing Agents for Associations, stated that they, 1) have worked on the noise problem since 1992; 2) have worked with at least 4 acoustical firms to correct the noise; 3) have spent \$4,000 on pads to cut noise; and 4) have installed lattice work and cones and improved fans at a cost of \$3,600. Mr. Rocheford presented information about decibel levels at nighttime hours and stated they have been working for eight years to correct the problem. He said it is important to note that the equipment does meet the daytime and nighttime standards on the east side (Walnut Drive). The problem is meeting nighttime standards facing Edina West. With help from Mr. Velde, the Pollution Control Agency brought their sophisticated equipment over and installed it between Fountain Woods and Edina West. The equipment was on for 24 hours and gave read-outs every hour. He stated the times that are of special concern are from 10:00 P.M., to 7:00 A.M. Mr. Rocheford presented readings from 9:00 P.M. through the night until 5:00 A.M. where it hit the peak at 59 dBA. The area has a lot of freeway noise from Highway 169 and 62 Crosstown. Mr. Rocheford said Carrier Corporation could not even guarantee that new equipment would be quieter. It has been suggested to move the equipment; 1) away from the property line at a cost of \$50,000 - \$60,000 per chiller and does not include installing the slab it sits on nor does it include moving the walls for the sound; or 2) the unit could be moved to the roof where there would be structural issues and cost a great deal more. He believes that air conditioners should be exempt in the ordinance.

Member Johnson observed that traffic is greater between 9:00 and 10:00 A.M. than at 3:00 and 4:00 A.M. Mr. Rocheford reminded that there is a noise problem at that location even before the air conditioners are turned on and everyone's tolerance of noise is different.

Mr. Velde explained how decibel levels are measured and concluded that distance helps as well as the newer panels. He told that in order to make the panels quieter, the lower portion is closed off inhibiting air circulation on the equipment. With the closure, the equipment has a tendency to over-heat.

Resident comments

Dan Mulvehill, 5940 Walnut Drive, stated his family is tremendously disturbed by the noise and they cannot be outside.

Walter Mathison, 6710 Vernon Avenue, lives 45 feet from the "green monster" and the noise does not bother them.

Pam Albinson, 6115 Lincoln Drive, thanked City staff for their work on this problem. She purchased her second floor unit when air conditioners were not on. Her screened in balcony is an extension of her home and she must keep her windows shut when the air conditioning is on. Her unit is on the back of the building so she is not bothered by freeway noise.

Marti Nelson, 6012 Walnut Drive, visited her neighbor, Dan Mulvehill at 8:45 P.M. From the Mulvehill screen porch there is a dull roar. She pointed out, 1) the air conditioning and its effect on noise in the Council Chambers, 2) technology has changed a great deal since 1984 as far as engineering of quieter equipment, and 3) there are other manufacturer's of air conditioning equipment other than Carrier.

Raoul Heifetz, 6115 Lincoln Drive, explained they have a northeast corner unit and he has the noise from both units. He is installing a new air conditioning unit at his business and today units are smaller, more efficient and quieter. Mr. Heifetz said he is unable to hear the television when his patio doors are open and that is beyond reasonable. He added he purchased his at Fountain Woods unit in the off season.

Leonard Spira, 6115 Lincoln Drive, said Fountain Wood should try harder. He voiced concern with the word 'exemption'. If Fountain Woods is exempt what recourse would the residents have if the noise escalates.

Gloria Belschner, 6115 Lincoln Drive, said she is a long time resident of Edina because the City is maintained at a high level. Because she has hearing loss, the noise is less ominous to her but does not blame her neighbors for wanting a resolution.

John Menke, 5301 Pinewood Trail, urged the Council not to exempt air conditioners from the noise ordinance.

Trish Montgomery, 6004 Walnut Drive, wants to be an honest seller when she sells her home and not have to sell during off-times for air conditioning.

Agnes Widga, 6730 Vernon Avenue #212, believes the parking lot is noisier than the air conditioner.

Paul Peters, 6670 Vernon Avenue South, said there are porches on the Walnut Drive side. No matter where you live when it is hot you must close windows and turn on the air conditioner. He believes everything is being done that can be done by the management.

Dick McGinley, 6730 Vernon Avenue South, voiced concern with 1) noise from Highway 62, 2) Highway 169, and, 3) Northwest Airlines. He stated there is less noise from the "green monster" than from the other three.

Kelsey Smith, 4801 West 44th Street, told that he owns property at Fountain Wood. He reminded the Council that the Ordinance was enacted in 1970 when sound wasn't a big thing. He implored everyone to look at the issue in a reasonable manner.

John Rocheford reiterated that Fountain Woods does meet the daytime and nighttime standards on Walnut. They also meet the daytime standards facing Edina West and are close on the nighttime standards.

Mike Shamblin, 6670 Vernon Avenue South, indicated concern with the health of the 400 residents. He explained a substantial portion of them are elderly and some are disabled. Shutting off the air conditioning would be injurious to their health.

Dan Mulvehill, 5940 Walnut Drive, asked that more of an effort be done to deaden the noise.

Member Faust made a motion to close the hearing. Member Johnson seconded the motion.

Ayes: Faust, Hovland, Johnson, Maetzold

Motion carried.

Council comments

Member Faust explained her mother lives at Edina West and is not affected by the noise. She visited the area and the noise was terrible. Member Faust elaborated that the plywood structure is an eyesore and asked about the health of the people who live above the equipment. The amount of money spent to mitigate noise by moving/replacing equipment would be recaptured with the appreciation of the property values. She suggested that more research be done on air conditioning units that meet state standards.

Member Hovland reiterated that Fountain Woods I and II stated that air conditioning is a noise necessary for the protection or preservation of property or of the health, safety, life or limb of a human being. He said it is the business of the condominium association if the air conditioning is turned off and can't believe they would do that. While he appreciates the attempts by Fountain Woods to ameliorate the problems, the job has not been done. He said it would be poor public policy to exempt air conditioning equipment from nighttime noise standards and he would not be in favor of doing so. Admittedly, this has been a problem for eight years and ambient noise has not created an eight year old problem. The problem is the equipment does not meet standards and a decision will need to be made by the association to move it or replace it. Member Hovland said he is not in favor of either of the requests and he is in favor of leaving the law as written. He further agrees with staff's recommendation requiring that they move it to a location where standards are met.

Member Johnson concurs but has a reservation with the recommendation that would compel moving the equipment. If new equipment in the same location with proper noise abatement could be below the standards, that would be acceptable. He said he agrees the noise is not of the neighbors making and the situation requires action.

Mayor Maetzold concurred with the Council and believes that adjoining property owners have a right to quiet and Fountain Woods is creating something disturbing that. quiet He agrees that the ordinance should remain as written.

Member Johnson made a motion encouraging staff to work with the Fountain Woods Condominium Association to reach an acceptable solution before May 1, 2001, before the air-conditioning season begins. Member Hovland seconded the motion.

Ayes: Faust, Hovland, Johnson, Maetzold

Motion carried.

***COOPERATIVE AGREEMENT - MINNEHAHA CREEK WATERSHED DISTRICT AND CITY OF EDINA** Motion made by Member Johnson and seconded by Member Faust approving the Cooperative Agreement between the Minnehaha Creek Watershed District (MCWD) and the City of Edina for the Pamela Park Water Quality Improvement Project.

Motion carried on rollcall vote - four ayes.

CLAIMS PAID Motion made by Member Johnson approving payment of the following claims as shown in detail on the Check Register dated August 9, 2000, and consisting of 54 pages: General Fund \$199,643.06; CDBG \$25.00; Communications Fund \$2,796.29; Working Capital \$23,950.17; Construction Fund \$476,878.80; Art Center \$8,521.33; Golf Dome Fund \$470.70; Aquatic Center

Fund \$17,708.47; Golf Course Fund \$52,942.18; Ice Arena Fund \$6,221.20; Edinborough/Centennial Lakes \$18,915.76; Liquor Fund \$273,218.44; Utility Fund \$16,829.96; Storm Sewer Utility Fund \$23,551.92; Recycling Fund \$37,935.20; HRA Fund \$1,251.00; Payroll Fund \$265,000.00; TOTAL \$1,425,859.48. Member Faust seconded the motion.

Rollcall:

Ayes: Faust, Hovland, Johnson, Maetzold

Motion carried.

There being no further business on the Council Agenda, Mayor Maetzold adjourned the Council Meeting at 9:15 P.M.

City Clerk