

**RESOLUTION PETITIONING THE STATE OF MINNESOTA
FOR CONCURRENT DETACHMENT AND ANNEXATION OF
PROPERTY CURRENTLY IN THE CITY OF MINNETONKA**

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

Section 1. Background.

1.01. Certain contiguous properties ("Properties") located in the City of Minnetonka and the City of Deephaven are owned in common. The Properties are legally described as follows:

Lot 7, Block 1, MINNETONKA GROVELAND PARK 2ND ADDITION, according to the plat thereof, and situate in Hennepin County, Minnesota,

ALSO,

Outlot 1, LEEMANS MINNETONKA HIGHLANDS 2ND ADDITION, according to the recorded plat thereof, and situate in Hennepin County, Minnesota,

ALSO,

That part of Sullivan Road as dedicated to the public in the plat of "MINNETONKA GROVELAND PARK" which lies west of the northerly extension of the East line of Outlot 1, LEEMANS MINNETONKA HIGHLANDS 2ND ADDITION and which lies East of the southerly extension of the west line of Lot 7, Block 1, MINNETONKA GROVELAND PARK 2ND ADDITION.

- 1.02. The Properties have historically been used in common for industrial and commercial uses that have resulted in conditions of concern to Minnetonka, Deephaven, and their residents.
- 1.03. The owner of the Properties plans to sell them for coordinated residential development that would be compatible with the nearby residential area and would eliminate these problematic conditions.
- 1.04. The location of the municipal boundary impedes this desirable re-development because there is insufficient land in Deephaven to meet the minimum area needed for a planned unit development.
- 1.05. In addition, Minnetonka believes that the higher density planned for the Properties creates an opportunity to include affordable housing to serve the area. In exchange for the provision of this housing, Minnetonka is willing to detach an amount of land necessary to meet the Deephaven minimum size requirement and Deephaven is willing to annex such land to Deephaven. That portion of the Properties is referred to as the Annexation Property and is legally described as:

That part of Outlot 1, LEEMAN'S MINNETONKA HIGHLANDS 2ND ADDITION, which lies westerly of the following described line: Commencing at the most westerly corner of said Outlot 1; thence on an assumed bearing of North 67 degrees

13 minutes 20 seconds East along the westerly portion of the south line of said Outlot 1 a distance of 291.80 feet to the point of beginning of the line being described; thence North 22 degrees West to the north line of said Outlot 1, and said line there ending,

ALSO

The northerly 8.00 feet of that part of said Outlot 1 which lies easterly of the following described line: Commencing at the northeast corner of said Outlot 1; thence on an assumed bearing of South 82 degrees 11 minutes 05 seconds West along the northerly line of said Outlot 1 a distance of 180.96 feet to a point of curve in said northerly line; thence along a tangential curve concave to the south having a central angle of 16 degrees 40 minutes and radius of 972.74 feet a distance of 282.96 feet to the point of beginning of the line being described; thence South 28 degrees 24 minutes 55 seconds East a distance of 10.00 feet, and said line there ending.

Section 2. Conclusions, Petition.

- 2.01. It is in the best interests of the public and both cities to have the Properties developed in common for residential use, and the best way to have this occur is to detach the Annexation Property from Minnetonka and annex it to Deephaven in order to meet Deephaven's minimum size requirement for a planned unit development.
- 2.02. The Annexation Property is properly subject to concurrent detachment and annexation by agreement of the two municipalities pursuant to Minn. Stat. §414.061.
- 2.03. The Deephaven City Council hereby petitions the State of Minnesota to approve the concurrent detachment of the Annexation Property from the City of Minnetonka and the annexation to the City of Deephaven.
- 2.04. The detachment and annexation is subject to the terms of the attached agreement between the two cities.
- 2.05. The Deephaven City Clerk is directed to send a certified copy of this resolution to the State of Minnesota, Department of Administration, Municipal Boundary Adjustments, and request an order confirming the concurrent detachment and annexation of the Annexation Property.

Motion: Clm. Crockett *Second:* Clm. Middleton

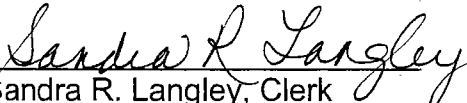
Ayes 5 , **Nays** 0

PASSED THIS 6th DAY OF DECEMBER 2004 BY THE CITY COUNCIL OF THE CITY OF DEEPhAVEN, MINNESOTA.

CITY OF DEEPHAVEN

ATTEST:

By 
Tom L. Anderson, Mayor


Sandra R. Langleley, Clerk

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


Sandra R. Langeley, City Clerk

DETACHMENT AND ANNEXATION AGREEMENT

This agreement is between the City of Deephaven ("Deephaven") and the City of Minnetonka ("Minnetonka"), both of which are Minnesota municipal corporations with the power to initiate a concurrent detachment and annexation of property pursuant to Minn. Stat. §414.061 and which are the principal parties to this agreement. This agreement is also consented and agreed to by Deephaven Cove, LLC ("Owner").

Certain contiguous properties ("Properties") located in Minnetonka and Deephaven are owned in common by Owner. The Properties are legally described as follows:

Lot 7, Block 1, MINNETONKA GROVELAND PARK 2ND ADDITION, according to the plat thereof, and situate in Hennepin County, Minnesota,

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Outlot 1, LEEMANS MINNETONKA HIGHLANDS 2ND ADDITION, according to the recorded plat thereof, and situate in Hennepin County, Minnesota,

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That part of Sullivan Road as dedicated to the public in the plat of "MINNETONKA GROVELAND PARK" which lies west of the northerly extension of the East line of Outlot 1, LEEMANS MINNETONKA HIGHLANDS 2ND ADDITION and which lies East of the southerly extension of the west line of Lot 7, Block 1, MINNETONKA GROVELAND PARK 2ND ADDITION.

The Properties have historically been used in common by a prior owner for industrial and commercial uses that have resulted in conditions of concern to Minnetonka, Deephaven, and their residents. The Owner wishes to re-develop the Properties into residential units, which would eliminate the problematic conditions and be of benefit to Minnetonka, Deephaven and their residents. The city boundary through the Properties impedes this re-development because there is insufficient land in Deephaven to meet the minimum area needed for a planned unit development. A portion of the Properties in Minnetonka legally described as follows ("Annexation Property") could be transferred from Minnetonka to Deephaven to meet this requirement:

That part of Outlot 1, LEEMAN'S MINNETONKA HIGHLANDS 2ND ADDITION, which lies westerly of the following described line: Commencing at the most

REC'D BY
M.M.B.

JAN 25 2005

westerly corner of said Outlot 1; thence on an assumed bearing of North 67 degrees 13 minutes 20 seconds East along the westerly portion of the south line of said Outlot 1 a distance of 291.80 feet to the point of beginning of the line being described; thence North 22 degrees West to the north line of said Outlot 1, and said line there ending,

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In addition, Minnetonka believes that the higher density planned for the Properties creates an opportunity to include affordable housing to serve the area. In exchange for the provision of this housing, Minnetonka is willing to detach the Annexation Property and annex it to Deephaven to meet the Deephaven requirement.

Deephaven also is not able to provide public water to the Properties, and the Deephaven sanitary sewer system is at a higher elevation than Minnetonka's system. Minnetonka is willing to provide public water and sanitary sewer to the Properties if the housing will be lowered to minimize the impact on nearby Minnetonka residents. Accordingly, Deephaven and Minnetonka agree that the Annexation Property may be detached from Minnetonka and annexed to Deephaven, subject to the following conditions:

1. The city councils of each city must adopt similar resolutions requesting that the State of Minnesota order the detachment of the Annexation Property from Minnetonka and the annexation to Deephaven.
2. Deephaven will be responsible for processing the matter before the appropriate state officials, including providing the necessary documents and paying any required fees. Deephaven also will provide Minnetonka with a CAD (computer aided drafting) drawing of the boundary change upon completion.
3. This detachment and annexation is contingent upon compliance with all of the following conditions:
 - a. The Properties must be developed in compliance with all of the conditions imposed by the Minnetonka City Council on October 4, 2004, in approving the townhome development on the Properties, a copy of which is attached as Exhibit A.

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JUN 25 2005

- b. Five of the residential units must be sold to Minnetonka or an affordable housing entity designated by Minnetonka for no more than \$193,700 each. Deephaven agrees to cooperate with Minnetonka in making grant applications and otherwise seeking funds to pay for the units that are located in Deephaven. Deephaven also agrees that Minnetonka may seek credit for 2.5 affordable housing units from the Metropolitan Council even if some of the units are located in Deephaven. The plans and specifications for the five units must be reasonably reviewed and approved by Minnetonka before construction begins.
4. If Deephaven fails to comply with its requirements in paragraph 3, Minnetonka may bring an action at law or in equity against Deephaven to enforce these requirements and will be entitled to recover from Deephaven its costs and reasonable attorneys fees for such an action. If Owner fails to comply with its requirements under paragraph 3, Minnetonka may bring an action at law or in equity against Owner to enforce these requirements and will be entitled to recover from Owner its costs and reasonable attorneys fees for such action.
 5. The street on the Properties must remain a private street, and neither Deephaven nor Minnetonka will provide construction, maintenance, or repair to the street. All sanitary sewer and water main laterals to the west of their connection with Minnetonka utilities in the County Road 101 right-of-way are to be owned and maintained by the City of Deephaven.
 6. Minnetonka will supply, at utility connections in County Road 101, potable water and sanitary sewer continuously to all of the Properties, except for temporary interruptions for repairs and maintenance. This service will be in an amount required to service the needs of the Properties and in compliance with applicable state and federal regulations, subject to the following conditions:
 - a. Deephaven or Developers must pay to Minnetonka a lump sum fee of \$87,900.49 to cover trunk and lateral sewer and water fees for the Minnetonka and Deephaven properties. This fee must be paid to Minnetonka before the issuance of any permits.
 - b. Deephaven or Developers must at its own expense construct the necessary systems in Deephaven and make the connections to the Minnetonka systems, in accordance with plans and specifications approved by the Minnetonka city engineer and public works director. Deephaven and Developers must provide as-built plans and the necessary measurement to all valves and service connections upon completion of construction. All portions of the system in Deephaven, including hydrants, pipe, and meters, must meet the construction and maintenance requirements of the Minnetonka city engineer and public works director.
 - c. Only the Properties may be connected to the Minnetonka service, and the water and sanitary sewer services may be used on for customary residential uses

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consistent with the plans approved for development.

- d. Minnetonka will at least quarterly read the meters for the Properties and supply to Deephaven a reading and the dollar amount charged by Minnetonka for the water usage in Deephaven. Deephaven must pay to Minnetonka the total amount of the charges within 30 days. Charges will be billed at the rate of 125% of the rate charged in Minnetonka for the same services. Deephaven will receive no deductions for billing or other administrative functions performed by it. Deephaven must require that properties served by Minnetonka have street numbers on the buildings. Minnetonka will have the authority to enter properties served by Minnetonka to read meters.
- e. Minnetonka will not charge for sanitary sewer as long as the metropolitan agency responsible for the regional sewer system subtracts the Deephaven units from the charges that it bills to Minnetonka. If Minnetonka does not receive this credit, then it may charge for sanitary sewer in the same manner as for water.
- f. Unless an emergency situation arises, valves may not be shut off without first notifying the Minnetonka public works department. Hydrants may not be used or operated by anyone except fire department personnel or personnel of the Deephaven or Minnetonka public works department. Minnetonka will not be responsible for, and Deephaven indemnifies Minnetonka against, all costs, including attorneys' fees, arising out of failures, freeze-ups or leaks in that portion of the system located in Deephaven, unless caused by actions of Minnetonka within Minnetonka. If Minnetonka is to make repairs to the portions of the systems located in Deephaven, it shall be done on a time-and-material basis if requested by Deephaven. Minnetonka will not be responsible for settlements in the road surface over the sewer and water mains or services.
- g. Deephaven will abide by and enforce against the users of the Minnetonka systems in Deephaven all reasonable, nondiscriminatory rules and regulations imposed by Minnetonka on its own sewer and water users, including sprinkling restrictions. Minnetonka will have the right to turn off the mains for reasonable lengths of time to repair or service the mains and, if practicable, will notify affected users before the shutoff.
- h. Minnetonka is not obligated to approve future extensions of the Minnetonka sewer or water systems within Deephaven.
- i. If Deephaven constructs systems capable of serving the Deephaven portion of the Properties in the same manner as the Minnetonka systems, either party may terminate the provisions of paragraph 6 of this agreement by a written notice mailed to the other at least six months before the intended date of termination.
- j. Deephaven agrees to indemnify and hold harmless Minnetonka, its officers and employees, against all damages and costs, including attorneys' fees, resulting

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from any claims or litigation arising out of this agreement, except for damages and costs related to the acts or omissions of Minnetonka, its officers or employees, in operating, maintaining or administering the Minnetonka sewer and water systems within Minnetonka's municipal boundaries.

7. This agreement runs with the Properties and is binding on, and inures to the benefit of Deephaven, Minnetonka, Owner, the Developers, and their heirs, successors, and assigns.
8. This agreement will be effective upon the last date of execution by a principal party or a consenting party. This agreement will terminate automatically if the State of Minnesota does not order the concurrent detachment and annexation as requested by the petitions referenced in paragraph 1.

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JAN 25 2005

CITY OF DEEPHAVEN

Date: 1/5/05

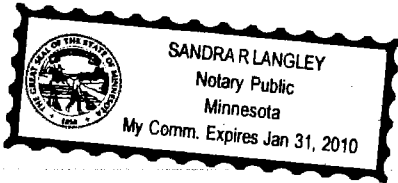
By [Signature]
Its Mayor

And [Signature]
Its Administrator

STATE OF MINNESOTA }
COUNTY OF HENNEPIN } SS

The foregoing instrument was acknowledged before me this 5 day Jan, 2005 by Tom Anderson and Dana Young, the Mayor and Administrator respectively of the City of Deephaven.

[Signature]
Notary Public



RECORDED BY
M.M.B.

JAN 25 2005

CITY OF MINNETONKA

Date: 1-3-05

By Karen J. Anderson
Its Mayor

And John Dilling
Its City Manager

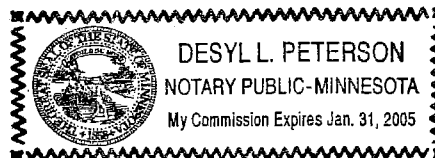
STATE OF MINNESOTA

COUNTY OF HENNEPIN

} SS

The foregoing instrument was acknowledged before me this 3rd day January, 2005, by the mayor and city manager of the City of Minnetonka, Karen J. Anderson and John Dilling,

Desyl L. Peterson
Notary Public



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MMS JAN 25 2005

DEEPHAVEN COVE, LLC

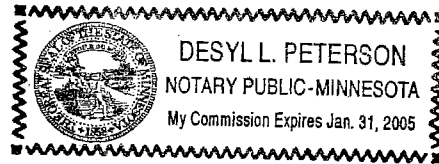
Date: 1/04/05

By [Signature]
Its ADMINISTRATIVE MEMBER

STATE OF MINNESOTA }
COUNTY OF HENNEPIN } SS

The foregoing instrument was acknowledged before me this 4th day January, 2005, by Scott Bader, the administrative manager of the corporation.

[Signature]
Notary Public



Drafted by:

Minnetonka City Attorney
14600 Minnetonka Blvd.
Minnetonka, MN 55345
952-939-8260

**Conditions Imposed by the Minnetonka City Council on October 4, 2004,
As Amended on December 6, 2004**

The rezoning of the property was approved subject to the following conditions:

- a. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:

- site plan date-stamped September 23, 2004.
- grading and drainage plans date-stamped September 23, 2004.
- landscaping plan date-stamped September 30, 2004.
- preliminary plat date-stamped September 23, 2004.
- interior building elevations date-stamped September 23, 2004 and the rear building elevations of the southerly and northerly buildings date stamped September 30, 2004.
- sign plan date-stamped August 5, 2004.

The above plans are hereby adopted as the master development plan and as final site and building plans.

- b. The following must be completed before the city issues a grading permit or any site work is started:

- (1) Final street, utility, grading, drainage and erosion control plans must be submitted for staff approval. The properties must be built and maintained according to these staff-approved plans under both the temporary and final ponding situations. Maintenance must include, but not be limited to, the periodic removal of sedimentation at the base of the pond and any adjacent drainage ditches, keeping a vegetative cover within the ditches and pond, and removing any blockage of swales or culverts that may impede the drainage of the site that was approved.
- (2) Final landscaping plans must be submitted for Minnetonka staff approval before any development work starts. Before the city approves the plan, the developer must offer to meet with neighborhood representatives from Deephaven and Minnetonka to get their input on the landscaping. The Colorado spruce trees shown on the plans must be replaced with Black Hills spruce,

Austrian pine, or Norway pine trees.

- (3) A letter of credit or cash escrow for 150% of the estimated cost to comply with grading and landscaping permit requirements and restore the site must be submitted to the city. The city will not release the letter of credit or cash escrow until the developer submits as-built drawings and a letter certifying that the utilities, driveway, and grading have been completed according to the plans approved by the city.
 - (4) All trees to be preserved must be fenced and erosion control measures must be installed for staff approval.
 - (5) A construction management plan must be submitted for staff approval.
 - (6) If required, submit evidence of the watershed district approval. The city may require revisions to the preliminary plat to meet the district's requirements.
 - (7) An engineering/utility inspection fee.
 - (8) Payment for traffic signs and installation, as required by the city engineer.
 - (9) A signed agreement with the city that guarantees that the developer will complete all public improvements and meet all city requirements. This agreement must include an escrow to ensure that the developer completes all public improvements and complies with all city regulations. This escrow must be a letter of credit or cash deposit. The amount must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.
- c. The following must be submitted to the city before the city issues a building permit:
- (1) A grading and tree preservation plan for each lot, subject to staff approval. The plans must be in substantial compliance with the agreed building areas as required with the final plat. The sewer and water services must be shown to minimize impact to the significant trees.
 - (2) The installation and maintenance of a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot must be installed, subject to review and approval of the city's environmental resources coordinator.
 - (3) A copy of the recorded plat and any easements or covenants

required to be recorded.

- (4) A park dedication fee of \$2,375 per unit.
 - (5) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If the grading for proposed streets has not been completed, the planning director may approve a time extension to this requirement.
- d. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing and erosion control fencing must be maintained.
 - e. Trees must be planted to compensate for significant trees removed from each site that would be outside of the building pad and driveway area. The trees must be primarily species native to the area. They must be at least 2 1/2 inches in diameter for deciduous trees and 6 feet tall for coniferous trees. The property owner or original developer must replace the required trees if they die within one year after installation.
 - f. The south half of the ponding area must remain in a natural state. The south side may not be mowed to the water's edge.
 - g. Deephaven, Owner, and Developers must pay a part of Minnetonka costs to implement the downstream storm sewer improvements within Minnetonka, including engineering, easement acquisition, and administration costs. The amount will be based on the contributing area of the Deephaven part of the site, but not to exceed \$78,475. When the final costs are tabulated, Minnetonka will bill Deephaven for the Properties' share of the costs, and Deephaven must pay within 35 days after the date of the invoice. Deephaven may choose to charge by assessment or other means the costs back to the Owner and Developers. On behalf of themselves and all future owners of the Properties, Owner and Developers waive all rights to notice and hearing for the proposed assessment and all rights to appeal assessment of this amount.
 - h. No fill may be placed in the temporary pond area nor building permits issued for Units 25 - 28 until Minnetonka's downstream storm sewer improvement project in the vicinity of Susan Lane is substantially complete. Substantially complete means a functioning storm sewer system in accordance with the requirements of Minnetonka's water resources management plan and the feasibility study for the project.
 - i. The downstream storm sewer improvements planned by Minnetonka may impact property in Deephaven where the storm water is discharged across municipal boundaries from Minnetonka into Deephaven. Deephaven must defend and indemnify Minnetonka from all damage and liability within Deephaven's boundaries caused by these improvements.

- j. Before any development work commences on the Properties, the following must be provided to Minnetonka: copies of public drainage and utility easements covering areas of permanent and temporary ponding on the Properties, a county driveway permit, and a watershed district permit, if applicable.
 - k. Conservation easements must be placed over the mature trees along the south lot lines subject to review and approval of the Minnetonka city staff. The intent of the easement is to protect those trees intended to be saved on the approved grading plan. The conservation easement must be written to allow either city to enforce the terms of the conservation easement.
 - l. Five of the residential units must be sold to Minnetonka or an affordable housing entity designated by Minnetonka for no more than \$193,700 each. The plans and specifications for the five units must be reviewed and approved by Minnetonka city staff before construction begins.
2. The Deephaven Cove preliminary plat, date-stamped September 23, 2004, was approved subject to the following conditions:
- a. Show the following on the final plat before final plat approval:
 - (1) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven-foot-wide drainage and utility easements along all other exterior lot lines
 - (2) Utility easements over existing or proposed public utilities, as determined by the city engineer
 - (3) Drainage and utility easements over wetlands and storm water ponds, as determined by the city engineer
 - b. The following items must be submitted to the city before the city releases the final plat:
 - (1) An electronic CAD file of the final plat in microstation or DXF.
 - (2) The following documents for the city attorney's approval:
 - (a) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
 - (b) Conservation easements over the areas as shown on page A49 of the October 4, 2004, staff report and a drawing of the easements for the approval of the city attorney. The easements and drawing must be recorded with the final plat.

- (c) Documents establishing a homeowners' association. The association must be responsible for maintaining any common areas, common drives, the required drainage pond and any other required drainage improvements approved by the City. Maintenance will include, but not be limited to, the periodic removal of sedimentation at the base of the pond and any adjacent drainage ditches, keeping a vegetative cover within the ditches and pond, and removing any blockage of the swale or culvert that may impede the drainage of the site, as approved with the building permits.
- (d) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions that have not been met as of the release of the plat. These covenants must first be submitted for the city attorney's approval.

These documents must be recorded with the final plat, and a drawing of any easements must be attached to the easement deed.

- (3) Any other requirements included with final plat approval.
- c. The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

RESOLUTION NO. 2004-132

**RESOLUTION PETITIONING THE STATE OF MINNESOTA
FOR CONCURRENT DETACHMENT AND ANNEXATION OF
PROPERTY CURRENTLY IN THE CITY OF MINNETONKA**

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

Section 1. Background.

1.01. Certain contiguous properties ("Properties") located in the City of Minnetonka and the City of Deephaven are owned in common. The Properties are legally described as follows:

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1.02. The Properties have historically been used in common for industrial and commercial uses that have resulted in conditions of concern to Minnetonka, Deephaven, and their residents.

1.03. The owner of the Properties plans to sell them for coordinated residential development that would be compatible with the nearby residential area and would eliminate these problematic conditions.

1.04. The location of the municipal boundary impedes this desirable re-development because there is insufficient land in Deephaven to meet the minimum area needed for a planned unit development.

1.05. In addition, Minnetonka believes that the higher density planned for the Properties creates an opportunity to include affordable housing to serve the area. In exchange for the provision of this housing, Minnetonka is willing to detach an amount of land necessary to meet the Deephaven minimum size requirement. That portion of the Properties is referred to as the Annexation Property and is legally described as:

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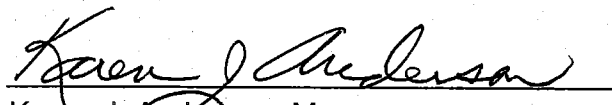
ALSO

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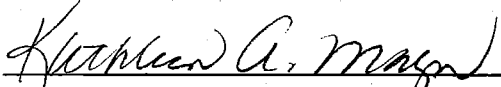
Section 2. Conclusions, Petition.

- 2.01. It is in the best interests of the public and both cities to have the Properties developed in common for residential use, and the best way to have this occur is to detach the Annexation Property from Minnetonka and annex it to Deephaven in order to meet Deephaven's minimum size requirement for a planned unit development.
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- 2.05. The Minnetonka City Clerk is directed to send a certified copy of this resolution to the State of Minnesota, Department of Administration, Municipal Boundary Adjustments, and request an order confirming the concurrent detachment and annexation of the Annexation Property.

Adopted by the City Council of the City of Minnetonka, Minnesota, on October 4, 2004.


Karen J. Anderson, Mayor

ATTEST:



Kathleen A. Magrew, City Clerk

ACTION ON THIS RESOLUTION:

Motion for adoption: Wiersum

Seconded by: Wagner

Voted in favor of: Anderson, Callison, Schneider, Thomas, Wagner, Wiersum

Voted against:

Abstained:

Absent: Ellingson

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on October 4, 2004.



Kathleen A. Magrew, City Clerk

DETACHMENT AND ANNEXATION AGREEMENT

This agreement is between the City of Deephaven ("Deephaven") and the City of Minnetonka ("Minnetonka"), both of which are Minnesota municipal corporations with the power to initiate a concurrent detachment and annexation of property pursuant to Minn. Stat. §414.061 and which are the principal parties to this agreement. This agreement is also consented and agreed to by Deephaven Cove, LLC ("Owner").

Certain contiguous properties ("Properties") located in Minnetonka and Deephaven are owned in common by Owner. The Properties are legally described as follows:

Lot 7, Block 1, MINNETONKA GROVELAND PARK 2ND ADDITION, according to the plat thereof, and situate in Hennepin County, Minnesota,

ALSO,

Outlot 1, LEEMANS MINNETONKA HIGHLANDS 2ND ADDITION, according to the recorded plat thereof, and situate in Hennepin County, Minnesota,

ALSO,

That part of Sullivan Road as dedicated to the public in the plat of "MINNETONKA GROVELAND PARK" which lies west of the northerly extension of the East line of Outlot 1, LEEMANS MINNETONKA HIGHLANDS 2ND ADDITION and which lies East of the southerly extension of the west line of Lot 7, Block 1, MINNETONKA GROVELAND PARK 2ND ADDITION.

The Properties have historically been used in common by a prior owner for industrial and commercial uses that have resulted in conditions of concern to Minnetonka, Deephaven, and their residents. The Owner wishes to re-develop the Properties into residential units, which would eliminate the problematic conditions and be of benefit to Minnetonka, Deephaven and their residents. The city boundary through the Properties impedes this re-development because there is insufficient land in Deephaven to meet the minimum area needed for a planned unit development. A portion of the Properties in Minnetonka legally described as follows ("Annexation Property") could be transferred from Minnetonka to Deephaven to meet this requirement:

That part of Outlot 1, LEEMAN'S MINNETONKA HIGHLANDS 2ND ADDITION, which lies westerly of the following described line: Commencing at the most

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westerly corner of said Outlot 1; thence on an assumed bearing of North 67 degrees 13 minutes 20 seconds East along the westerly portion of the south line of said Outlot 1 a distance of 291.80 feet to the point of beginning of the line being described; thence North 22 degrees West to the north line of said Outlot 1, and said line there ending,

ALSO

The northerly 8.00 feet of that part of said Outlot 1 which lies easterly of the following described line: Commencing at the northeast corner of said Outlot 1; thence on an assumed bearing of South 82 degrees 11 minutes 05 seconds West along the northerly line of said Outlot 1 a distance of 180.96 feet to a point of curve in said northerly line; thence along a tangential curve concave to the south having a central angle of 16 degrees 40 minutes and radius of 972.74 feet a distance of 282.96 feet to the point of beginning of the line being described; thence South 28 degrees 24 minutes 55 seconds East a distance of 10.00 feet, and said line there ending.

In addition, Minnetonka believes that the higher density planned for the Properties creates an opportunity to include affordable housing to serve the area. In exchange for the provision of this housing, Minnetonka is willing to detach the Annexation Property and annex it to Deephaven to meet the Deephaven requirement.

Deephaven also is not able to provide public water to the Properties, and the Deephaven sanitary sewer system is at a higher elevation than Minnetonka's system. Minnetonka is willing to provide public water and sanitary sewer to the Properties if the housing will be lowered to minimize the impact on nearby Minnetonka residents. Accordingly, Deephaven and Minnetonka agree that the Annexation Property may be detached from Minnetonka and annexed to Deephaven, subject to the following conditions:

1. The city councils of each city must adopt similar resolutions requesting that the State of Minnesota order the detachment of the Annexation Property from Minnetonka and the annexation to Deephaven.
2. Deephaven will be responsible for processing the matter before the appropriate state officials, including providing the necessary documents and paying any required fees. Deephaven also will provide Minnetonka with a CAD (computer aided drafting) drawing of the boundary change upon completion.
3. This detachment and annexation is contingent upon compliance with all of the following conditions:
 - a. The Properties must be developed in compliance with all of the conditions imposed by the Minnetonka City Council on October 4, 2004, in approving the townhome development on the Properties, a copy of which is attached as Exhibit A.

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- b. Five of the residential units must be sold to Minnetonka or an affordable housing entity designated by Minnetonka for no more than \$193,700 each. Deephaven agrees to cooperate with Minnetonka in making grant applications and otherwise seeking funds to pay for the units that are located in Deephaven. Deephaven also agrees that Minnetonka may seek credit for 2.5 affordable housing units from the Metropolitan Council even if some of the units are located in Deephaven. The plans and specifications for the five units must be reasonably reviewed and approved by Minnetonka before construction begins.
4. If Deephaven fails to comply with its requirements in paragraph 3, Minnetonka may bring an action at law or in equity against Deephaven to enforce these requirements and will be entitled to recover from Deephaven its costs and reasonable attorneys fees for such an action. If Owner fails to comply with its requirements under paragraph 3, Minnetonka may bring an action at law or in equity against Owner to enforce these requirements and will be entitled to recover from Owner its costs and reasonable attorneys fees for such action.
5. The street on the Properties must remain a private street, and neither Deephaven nor Minnetonka will provide construction, maintenance, or repair to the street. All sanitary sewer and water main laterals to the west of their connection with Minnetonka utilities in the County Road 101 right-of-way are to be owned and maintained by the City of Deephaven.
6. Minnetonka will supply, at utility connections in County Road 101, potable water and sanitary sewer continuously to all of the Properties, except for temporary interruptions for repairs and maintenance. This service will be in an amount required to service the needs of the Properties and in compliance with applicable state and federal regulations, subject to the following conditions:
 - a. Deephaven or Developers must pay to Minnetonka a lump sum fee of \$87,900.49 to cover trunk and lateral sewer and water fees for the Minnetonka and Deephaven properties. This fee must be paid to Minnetonka before the issuance of any permits.
 - b. Deephaven or Developers must at its own expense construct the necessary systems in Deephaven and make the connections to the Minnetonka systems, in accordance with plans and specifications approved by the Minnetonka city engineer and public works director. Deephaven and Developers must provide as-built plans and the necessary measurement to all valves and service connections upon completion of construction. All portions of the system in Deephaven, including hydrants, pipe, and meters, must meet the construction and maintenance requirements of the Minnetonka city engineer and public works director.
 - c. Only the Properties may be connected to the Minnetonka service, and the water and sanitary sewer services may be used on for customary residential uses

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consistent with the plans approved for development.

- d. Minnetonka will at least quarterly read the meters for the Properties and supply to Deephaven a reading and the dollar amount charged by Minnetonka for the water usage in Deephaven. Deephaven must pay to Minnetonka the total amount of the charges within 30 days. Charges will be billed at the rate of 125% of the rate charged in Minnetonka for the same services. Deephaven will receive no deductions for billing or other administrative functions performed by it. Deephaven must require that properties served by Minnetonka have street numbers on the buildings. Minnetonka will have the authority to enter properties served by Minnetonka to read meters.
- e. Minnetonka will not charge for sanitary sewer as long as the metropolitan agency responsible for the regional sewer system subtracts the Deephaven units from the charges that it bills to Minnetonka. If Minnetonka does not receive this credit, then it may charge for sanitary sewer in the same manner as for water.
- f. Unless an emergency situation arises, valves may not be shut off without first notifying the Minnetonka public works department. Hydrants may not be used or operated by anyone except fire department personnel or personnel of the Deephaven or Minnetonka public works department. Minnetonka will not be responsible for, and Deephaven indemnifies Minnetonka against, all costs, including attorneys' fees, arising out of failures, freeze-ups or leaks in that portion of the system located in Deephaven, unless caused by actions of Minnetonka within Minnetonka. If Minnetonka is to make repairs to the portions of the systems located in Deephaven, it shall be done on a time-and-material basis if requested by Deephaven. Minnetonka will not be responsible for settlements in the road surface over the sewer and water mains or services.
- g. Deephaven will abide by and enforce against the users of the Minnetonka systems in Deephaven all reasonable, nondiscriminatory rules and regulations imposed by Minnetonka on its own sewer and water users, including sprinkling restrictions. Minnetonka will have the right to turn off the mains for reasonable lengths of time to repair or service the mains and, if practicable, will notify affected users before the shutoff.
- h. Minnetonka is not obligated to approve future extensions of the Minnetonka sewer or water systems within Deephaven.
- i. If Deephaven constructs systems capable of serving the Deephaven portion of the Properties in the same manner as the Minnetonka systems, either party may terminate the provisions of paragraph 6 of this agreement by a written notice mailed to the other at least six months before the intended date of termination.
- j. Deephaven agrees to indemnify and hold harmless Minnetonka, its officers and employees, against all damages and costs, including attorneys' fees, resulting

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from any claims or litigation arising out of this agreement, except for damages and costs related to the acts or omissions of Minnetonka, its officers or employees, in operating, maintaining or administering the Minnetonka sewer and water systems within Minnetonka's municipal boundaries.

7. This agreement runs with the Properties and is binding on, and inures to the benefit of Deephaven, Minnetonka, Owner, the Developers, and their heirs, successors, and assigns.
8. This agreement will be effective upon the last date of execution by a principal party or a consenting party. This agreement will terminate automatically if the State of Minnesota does not order the concurrent detachment and annexation as requested by the petitions referenced in paragraph 1.

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M/M/B JAN 25 2005

CITY OF DEEPHAVEN

Date: 1/05/05

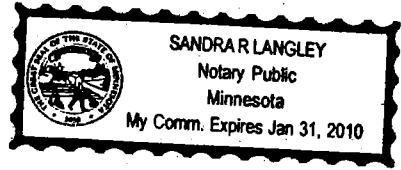
By [Signature]
Its Mayor

And [Signature]
Its Administrator

STATE OF MINNESOTA }
COUNTY OF HENNEPIN } SS

The foregoing instrument was acknowledged before me this 5 day January, 2005 by Tom L Anderson and Dana Young, the Mayor and Administrator respectively of the City of Deephaven.

[Signature]
Notary Public



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M M B

JAN 25 2005

CITY OF MINNETONKA

Date: 1-3-05

By Karen J. Anderson
Its Mayor

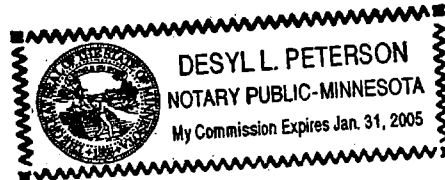
And John Guayon
Its City Manager

STATE OF MINNESOTA }
COUNTY OF HENNEPIN } SS

*Karen J. Anderson
and John Guayon,*

The foregoing instrument was acknowledged before me this 3rd day January, 2005, by the mayor and city manager of the City of Minnetonka.

Desyl L. Peterson
Notary Public



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MMB

JAN 25 2005

DEEPHAVEN COVE, LLC

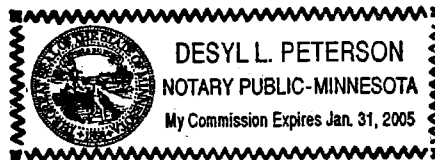
Date: 1/4/05

By [Signature]
Its ADMINISTRATIVE MEMBER

STATE OF MINNESOTA }
COUNTY OF HENNEPIN } SS

The foregoing instrument was acknowledged before me this 4th day January, 2005, by Scott Bader, the administrative of the member corporation.

[Signature]
Notary Public



Drafted by:

Minnetonka City Attorney
14600 Minnetonka Blvd.
Minnetonka, MN 55345
952-939-8260

**Conditions Imposed by the Minnetonka City Council on October 4, 2004,
As Amended on December 6, 2004**

The rezoning of the property was approved subject to the following conditions:

- a. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:

- site plan date-stamped September 23, 2004.
- grading and drainage plans date-stamped September 23, 2004.
- landscaping plan date-stamped September 30, 2004.
- preliminary plat date-stamped September 23, 2004.
- interior building elevations date-stamped September 23, 2004 and the rear building elevations of the southerly and northerly buildings date stamped September 30, 2004.
- sign plan date-stamped August 5, 2004.

The above plans are hereby adopted as the master development plan and as final site and building plans.

- b. The following must be completed before the city issues a grading permit or any site work is started:
- (1) Final street, utility, grading, drainage and erosion control plans must be submitted for staff approval. The properties must be built and maintained according to these staff-approved plans under both the temporary and final ponding situations. Maintenance must include, but not be limited to, the periodic removal of sedimentation at the base of the pond and any adjacent drainage ditches, keeping a vegetative cover within the ditches and pond, and removing any blockage of swales or culverts that may impede the drainage of the site that was approved.
 - (2) Final landscaping plans must be submitted for Minnetonka staff approval before any development work starts. Before the city approves the plan, the developer must offer to meet with neighborhood representatives from Deephaven and Minnetonka to get their input on the landscaping. The Colorado spruce trees shown on the plans must be replaced with Black Hills spruce,

Austrian pine, or Norway pine trees.

- (3) A letter of credit or cash escrow for 150% of the estimated cost to comply with grading and landscaping permit requirements and restore the site must be submitted to the city. The city will not release the letter of credit or cash escrow until the developer submits as-built drawings and a letter certifying that the utilities, driveway, and grading have been completed according to the plans approved by the city.
 - (4) All trees to be preserved must be fenced and erosion control measures must be installed for staff approval.
 - (5) A construction management plan must be submitted for staff approval.
 - (6) If required, submit evidence of the watershed district approval. The city may require revisions to the preliminary plat to meet the district's requirements.
 - (7) An engineering/utility inspection fee.
 - (8) Payment for traffic signs and installation, as required by the city engineer.
 - (9) A signed agreement with the city that guarantees that the developer will complete all public improvements and meet all city requirements. This agreement must include an escrow to ensure that the developer completes all public improvements and complies with all city regulations. This escrow must be a letter of credit or cash deposit. The amount must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.
- c. The following must be submitted to the city before the city issues a building permit:
- (1) A grading and tree preservation plan for each lot, subject to staff approval. The plans must be in substantial compliance with the agreed building areas as required with the final plat. The sewer and water services must be shown to minimize impact to the significant trees.
 - (2) The installation and maintenance of a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot must be installed, subject to review and approval of the city's environmental resources coordinator.
 - (3) A copy of the recorded plat and any easements or covenants

required to be recorded.

- (4) A park dedication fee of \$2,375 per unit.
 - (5) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If the grading for proposed streets has not been completed, the planning director may approve a time extension to this requirement.
- d. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing and erosion control fencing must be maintained.
 - e. Trees must be planted to compensate for significant trees removed from each site that would be outside of the building pad and driveway area. The trees must be primarily species native to the area. They must be at least 2 1/2 inches in diameter for deciduous trees and 6 feet tall for coniferous trees. The property owner or original developer must replace the required trees if they die within one year after installation.
 - f. The south half of the ponding area must remain in a natural state. The south side may not be mowed to the water's edge.
 - g. Deephaven, Owner, and Developers must pay a part of Minnetonka costs to implement the downstream storm sewer improvements within Minnetonka, including engineering, easement acquisition, and administration costs. The amount will be based on the contributing area of the Deephaven part of the site, but not to exceed \$78,475. When the final costs are tabulated, Minnetonka will bill Deephaven for the Properties' share of the costs, and Deephaven must pay within 35 days after the date of the invoice. Deephaven may choose to charge by assessment or other means the costs back to the Owner and Developers. On behalf of themselves and all future owners of the Properties, Owner and Developers waive all rights to notice and hearing for the proposed assessment and all rights to appeal assessment of this amount.
 - h. No fill may be placed in the temporary pond area nor building permits issued for Units 25 - 28 until Minnetonka's downstream storm sewer improvement project in the vicinity of Susan Lane is substantially complete. Substantially complete means a functioning storm sewer system in accordance with the requirements of Minnetonka's water resources management plan and the feasibility study for the project.
 - i. The downstream storm sewer improvements planned by Minnetonka may impact property in Deephaven where the storm water is discharged across municipal boundaries from Minnetonka into Deephaven. Deephaven must defend and indemnify Minnetonka from all damage and liability within Deephaven's boundaries caused by these improvements.

- j. Before any development work commences on the Properties, the following must be provided to Minnetonka: copies of public drainage and utility easements covering areas of permanent and temporary ponding on the Properties, a county driveway permit, and a watershed district permit, if applicable.
 - k. Conservation easements must be placed over the mature trees along the south lot lines subject to review and approval of the Minnetonka city staff. The intent of the easement is to protect those trees intended to be saved on the approved grading plan. The conservation easement must be written to allow either city to enforce the terms of the conservation easement.
 - l. Five of the residential units must be sold to Minnetonka or an affordable housing entity designated by Minnetonka for no more than \$193,700 each. The plans and specifications for the five units must be reviewed and approved by Minnetonka city staff before construction begins.
2. The Deephaven Cove preliminary plat, date-stamped September 23, 2004, was approved subject to the following conditions:
- a. Show the following on the final plat before final plat approval:
 - (1) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven-foot-wide drainage and utility easements along all other exterior lot lines
 - (2) Utility easements over existing or proposed public utilities, as determined by the city engineer
 - (3) Drainage and utility easements over wetlands and storm water ponds, as determined by the city engineer
 - b. The following items must be submitted to the city before the city releases the final plat:
 - (1) An electronic CAD file of the final plat in microstation or DXF.
 - (2) The following documents for the city attorney's approval:
 - (a) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
 - (b) Conservation easements over the areas as shown on page A49 of the October 4, 2004, staff report and a drawing of the easements for the approval of the city attorney. The easements and drawing must be recorded with the final plat.

- (c) Documents establishing a homeowners' association. The association must be responsible for maintaining any common areas, common drives, the required drainage pond and any other required drainage improvements approved by the City. Maintenance will include, but not be limited to, the periodic removal of sedimentation at the base of the pond and any adjacent drainage ditches, keeping a vegetative cover within the ditches and pond, and removing any blockage of the swale or culvert that may impede the drainage of the site, as approved with the building permits.
- (d) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions that have not been met as of the release of the plat. These covenants must first be submitted for the city attorney's approval.

These documents must be recorded with the final plat, and a drawing of any easements must be attached to the easement deed.

(3) Any other requirements included with final plat approval.

- c. The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

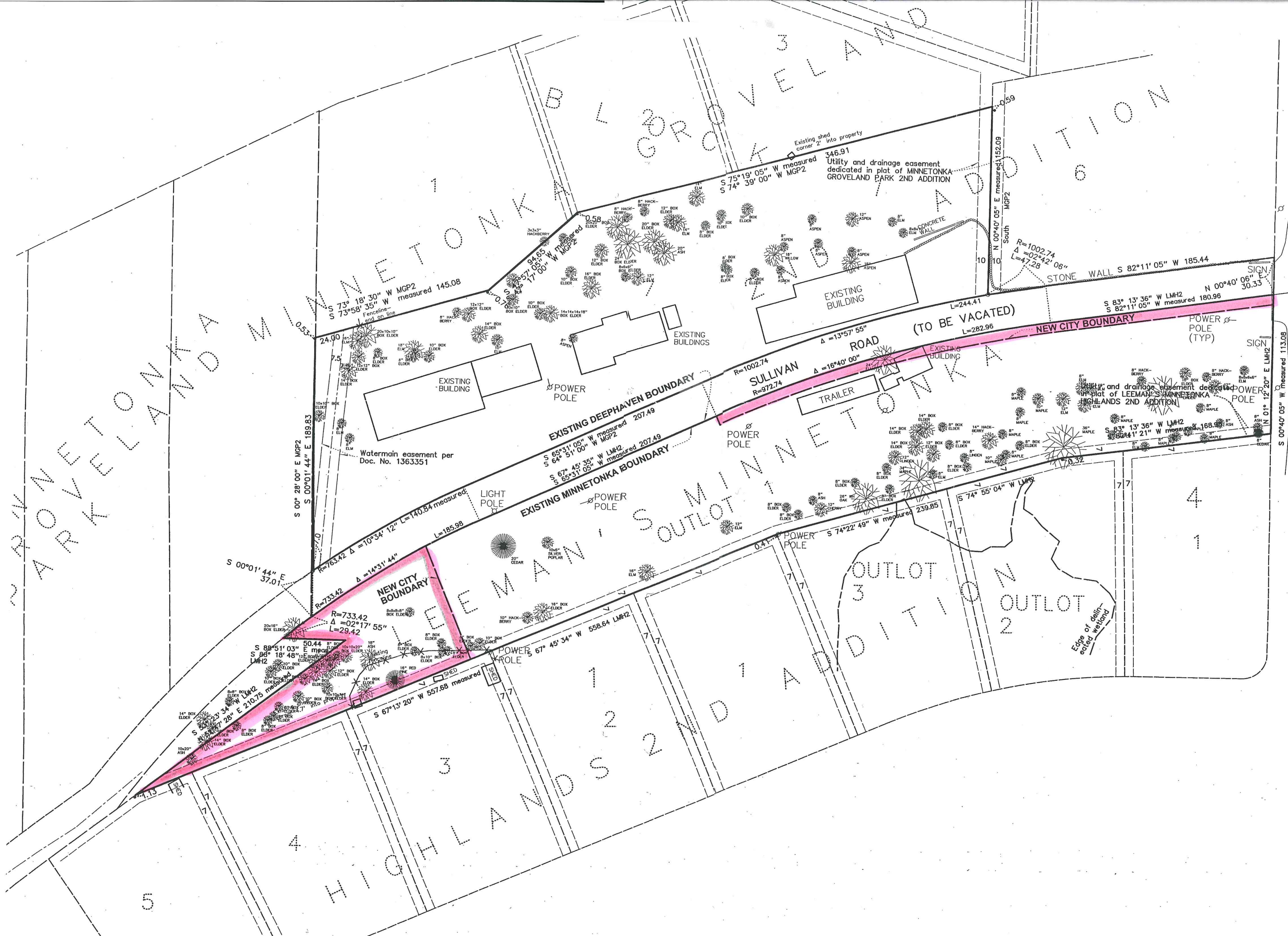
Legal Description of the Annexation Property

That part of Outlot 1, LEEMAN'S MINNETONKA HIGHLANDS 2nd ADDITION, which lies westerly of the following described line: Commencing at the most westerly corner of said Outlot 1; thence on an assumed bearing of North 67 degrees 13 minutes 20 seconds East along the westerly portion of the south line of said Outlot 1 a distance of 291.80 feet to the point of beginning of the line being described; thence North 22 degrees West to the north line of said Outlot 1, and said line there ending,

ALSO

The northerly 8.00 feet of that part of said Outlot 1 which lies easterly of the following described line: Commencing at the northeast corner of said Outlot 1; thence on an assumed bearing of South 82 degrees 11 minutes 05 seconds West along the northerly line of said Outlot 1 a distance of 180.96 feet to a point of curve in said northerly line; thence along a tangential curve concave to the south having a central angle of 16 degrees 40 minutes and radius of 972.74 feet a distance of 282.96 feet to the point of beginning of the line being described; thence South 28 degrees 24 minutes 55 seconds East a distance of 10.00 feet, and said line there ending.

The property consists of 0.4 acres.



MINNETONKA GROVELAND PARK 2ND ADDITION
MINNETONKA GROVELAND 3RD ADDITION
MINNETONKA GROVELAND 4TH ADDITION
MINNETONKA GROVELAND 5TH ADDITION

MINNETONKA
LEEMAN'S MINNETONKA HIGHLANDS 2ND ADDITION
EXISTING DEEPAVEN BOUNDARY
EXISTING MINNETONKA BOUNDARY
NEW CITY BOUNDARY
SULLIVAN ROAD (TO BE VACATED)
EXISTING BUILDINGS
TRAILER
POWER POLE
LIGHT POLE
WATERMAIN EASEMENT per Doc. No. 1363351
EXISTING SHED
CONCRETE ELM WALL
STONE WALL
Edge of delineated wetland

HIGHLANDS 2ND ADDITION
OUTLOT 1
OUTLOT 2
OUTLOT 3
OUTLOT 4