



**CITY OF SPRING PARK  
WORK SESSION AGENDA  
FEBRUARY 22, 2022 – 6:00 PM  
SPRING PARK CITY HALL**

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(Work Session discussion times are approximate)

1. 6:00: 4444 Shoreline Drive Boat Storage (verbal update from Administrator)
2. 6:10: Sunset Drive - Lake Access: enclosed is a copy of the letter and encroachment agreement sent by attorney to property owner. Approval for Engineering services in Council agenda
3. 6:20: Electrical Undergrounding – Mike to provide update
  - a. West Arm West
  - b. Black Lake Road
4. 6:50: 2254 Lilac Road – Mason Property (verbal update from Administrator)
5. 7:00: Adjourn

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

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**County of Hennepin,****Court File No.: 27-CV-22-1089****Honorable James A. Moore****Plaintiff,**

v.

**ORDER FOR MEDIATION****Paul Berquist, Benjamin Field Wilson,  
Superior Dreams LLC,****Defendants.**

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The matter came on for hearing, via Zoom, on February 3, 2022, on Plaintiff's Motion for Temporary Injunction. Plaintiff was represented by Assistant Hennepin County Attorneys Charles H. Salter and James W. Keeler, Jr. Defendant Paul Berquist appeared and represented himself. Defendant Benjamin Field Wilson appeared and represented himself. There was no appearance on behalf of Defendant Superior Dreams LLC.<sup>1</sup>

The Court heard argument from Plaintiff and from the individual Defendants. Defendant Berquist told the Court that he had provided an affidavit to Plaintiff on February 2, 2022, but that he had not yet filed the affidavit with the Court. The Court also heard testimony from Sergeant Nicholas Folger of the Minnesota State Patrol. At the conclusion of the hearing, the Court ordered Defendant Berquist to file his affidavit with the Court by February 4, 2022. The Court stated that it would take the matter under advisement upon receipt of Defendant's affidavit.<sup>2</sup>

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<sup>1</sup> The Court noted at the hearing that an LLC must be represented by an attorney. *See Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753, 754 (Minn. 1992). Mr. Wilson stated that he intended to hire an attorney to represent Superior Dreams LLC within the next 30 days.

<sup>2</sup> This order is being issued prior to receipt of Mr. Berquist's affidavit. Upon further reflection, the Court believes that it is unlikely the affidavit would sufficiently resolve the factual issues raised by the pending motion and that

Based on the files, records, and proceedings herein, the Court makes the following:

**ORDER**

1. By 4:30 p.m. on February 4, 2022, Defendant Paul Berquist shall file with the Court the affidavit that he provided to Plaintiff.
2. By February 8, 2022, the parties shall jointly select a mediator for the case. If the parties are unable to agree upon a mediator, the Court will appoint one. Plaintiff shall advise the Court whether a mediator has been selected by 4:30 p.m. on February 8, 2022. Absent agreement of the parties to the contrary, the cost of mediation will be equally divided among the four parties to this action.
3. As soon as possible, but not later than February 18, 2022, the parties<sup>3</sup> shall engage in mediation and attempt to agree upon a way to quickly, safely, and legally move the yacht and trailer to a location where it can be legally stored. The parties shall negotiate in good faith to resolve the issue. All parties, and all persons with authority to bind the parties, shall be available to the mediator. The parties shall also have available at the mediation any insurance agents, licensing or permitting authorities, and any experts who may be necessary to achieve a full negotiated settlement of the issue of moving the yacht.<sup>4</sup>
4. If the mediation fails to produce an agreement as to how the yacht can be quickly, safely, and legally moved; each party shall submit to the Court by February 22, 2022,

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extensive discovery and further evidentiary hearing would be required. Under the circumstances, the Court has decided to set a more expeditious course for the case.

<sup>3</sup> Superior Dreams LLC must attend and participate in the mediation but if is not yet represented by counsel at the time of the mediation, it may participate in the mediation through corporate officers or officials who have the power to bind the LLC.

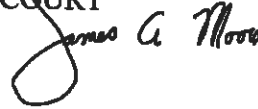
<sup>4</sup> Although a full and final resolution of all claims in the lawsuit is desirable, the focus of the mediation shall be on the issue of moving the yacht. Other issues, such as claims for damages, can be reserved for later consideration by the Court, if necessary.

its/their proposal as to how to accomplish that objective.<sup>5</sup> The parties' proposals submitted to the Court must include a cost estimate, a timeline for completion of the project, and must take into consideration the last mediation proposal by the opposing party and shall specifically address any perceived deficiencies in the opposing party's final mediation proposal. The Court will take the motion for temporary injunction under advisement upon receipt of the parties' submissions hereunder.

5. Plaintiff shall promptly provide Defendants with a copy of this Order.
6. The attached Memorandum is incorporated herein.

Dated: February 3, 2022

BY THE COURT



Moore, James  
Feb 4 2022 12:05 PM

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James A. Moore  
Judge of District Court

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<sup>5</sup> Defendants may submit a joint proposal or may submit individual proposals.

## Memorandum

This case involves a very real danger to the public. A large yacht sits precariously—subject to a whole range of outside forces that may cause it to topple. It is sitting on public land where children and interested observers may play and gather. Moreover, it has fuel in it that is subject to spill.

The Court and parties must act quickly to resolve the issue and to move the yacht to a place where it can be safely stored. Getting it there, though, will require navigating a complex web of highway safety regulations, engineering issues, permitting issues, equipment availability, and cost. Against this backdrop, the Court is asked to issue a blanket order abating the nuisance. Oh, were it that simple!

Minn. R. Civ. P. 65.04 requires that an order for a temporary injunction “be specific in terms; [and] shall describe in reasonable detail . . . the act or acts sought to be restrained.” Here, Plaintiff seeks a mandatory injunction—that is—an order to do something, rather than to prohibit someone from doing something. In either case the legal standard is the same. But the Court is in no position to issue any detailed order as to how this apparent nuisance should be abated. There are simply too many unknown variables, which prevent the Court from giving accurate instructions for moving the yacht. The parties are in a better position to coordinate moving the yacht and they must try to do so. If they cannot figure it out, the Court is prepared to issue orders. In the absence of a negotiated solution to the present problem, the process set forth in the foregoing Order will give the Court the information it needs to act.

J.A.M.



January 18, 2022

Don Bodin  
2835 SE St. Lucie Blvd  
Stuart, Florida  
34997

Donnybrook Service Center  
4444 Shoreline Drive  
Spring Park, Minnesota  
55384

RE. Outdoor Storage at 4444 Shoreline Drive

To whom it may concern.

At the end of December 2021, a 45 foot long boat traversed Lake Minnetonka, breaking through the ice to reach the Hennepin County boat launch in Spring Park. This boat now sits on a trailer at the Hennepin County boat launch. At some point the County will require this boat to be removed from their property. The Hennepin County Water Patrol and the Orono Police Chief has informed the City that the proposed destination of this boat is 4444 Shoreline Drive in Spring Park.

With this letter we are advising you that the transport and storage of this boat to property at 4444 Shoreline Drive in Spring Park is prohibited by the City zoning Code.

In 2000, Donnybrook Service Center was pursuing an automobile dealer's license for the property at 4444 Shoreline Drive in Spring Park. The automobile dealer's license application required the City to sign off on the application stating that the property was conforming to the City Zoning.

As a condition of the license approval, Donnybrook was required to bring their non-conforming site conditions into compliance with City requirements. The conditions of approval included:

City of Spring Park 4349 Warren Avenue, Spring Park, MN 55384  
Phone: (952) 471-9051 / Fax: (952) 471-9160 / Web: [www.ci.spring-park.mn.us](http://www.ci.spring-park.mn.us)

1. All outdoor storage shall be limited to restoration vehicles, auto parts and tires associated with the Donnybrooke Service Center business. No outdoor storage of trash or refuse will be permitted.
2. Add vegetative screening on the east side of the building to screen the east service door from the adjacent property.
3. All outdoor storage shall be limited to the area shown on the applicant's site plan behind the buildings and may not encroach into the required parking area.
4. No outdoor storage shall be stacked over seven (7) feet in height.

The City cooperated with you, to allow for the state license to be approved for your site. The relocation and storage of the boat to 4444 Shoreline Drive violates the City Zoning code related to outdoor storage and the past approval. The approved outdoor storage items for Donnybrooke Service Center do not include boat storage (personal watercraft) and the boat storage would also exceed the height limitation of the previous approval.

If you proceed to relocate the boat to 4444 Shoreline Drive, the City will immediately proceed with enforcement of its Zoning Code and revocation of all past approvals. The City will pursue legal remedies to have the boat removed from the City at your expense.

If you have any questions regarding this letter you may contact me at (763) 242-1100.

Sincerely

Alan Brixius  
Spring Park City Planner



*On Lake Minnetonka*

**Mayor**  
Jerome P. Rockvam  
471-9515

**Councilmembers**  
Wm. D. Weeks  
471-7285

Richard Dietz  
471-7799

Joanna E. Widmar  
471-9429

Thomas J. Scanlon  
471-7563

February 23, 2000

Don Bodin  
Vice President  
Donnybrooke Service Center  
4444 Shoreline Drive  
Spring Park, MN 55384

RE: Spring Park - Donnybrooke Service Center Auto  
Sales License  
FILE NO: 175.01 - 99.12

Dear Mr. Bodin:

This letter is in response to your request for City authorization of your auto sales license for the property located at 4444 Shoreline Drive. The City's planning consultant indicated that your site would be in compliance with the zoning standards in the C-1, General Commercial District provided that you meet and maintain the following standards:

1. All outdoor storage shall be limited to restoration vehicles, auto parts, and tires associated with your business. No outdoor storage of trash or refuse will be permitted.
2. Add vegetative screening on the east side of the building to screen the east service door from the adjacent property (please draw on the attached site plan the location, number and species of the proposed planting and return it with this letter).
3. All outdoor storage shall be limited to the area shown on the applicant's site plan behind the building and may not encroach into required parking areas (please draw in your designated outdoor storage area on the enclosed site plan and return it with this letter).
4. No outdoor storage shall be stacked over seven (7) feet in height.

*City of Spring Park*

P.O. BOX 452, SPRING PARK, MINNESOTA 55384-0452 • Phone: 471-9051 • Fax: 471-9160



If you agree to these conditions, the City finds that your site is in compliance with the zoning standards of the C-1, General Commercial District and can therefore sign off on your application for an auto sales license for the property at 4444 Shoreline Drive. Please indicate that you agree with and will maintain the standards cited in this letter by signing below, retaining a copy for your records, and returning the original to City Hall. Upon receipt, the City will authorize your auto sales license.

We appreciated your cooperation in this matter and wish you the best of luck with your business in Spring Park.

Sincerely,



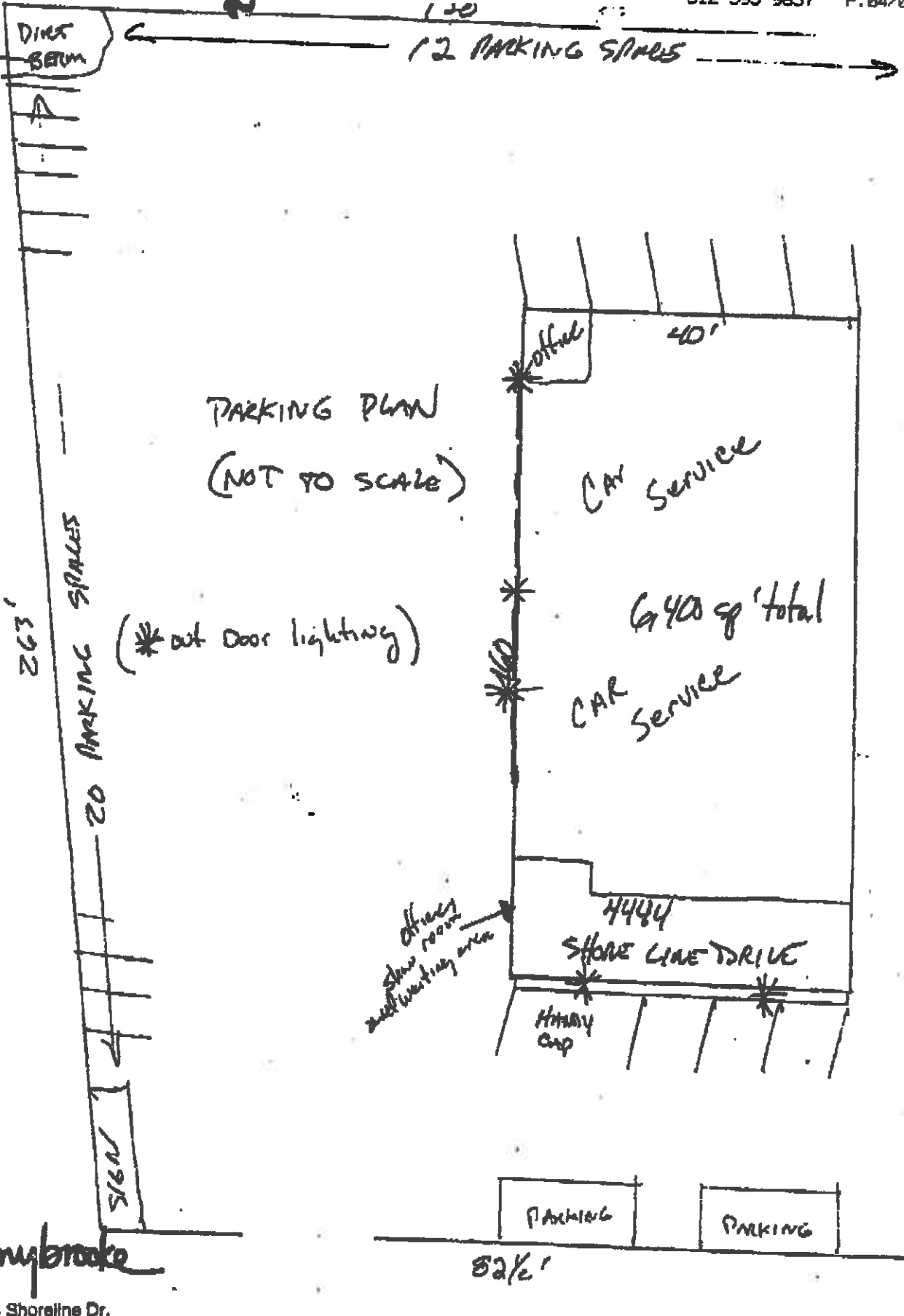
Patricia Higus,  
Administrator/Clerk/Administrator

I will maintain the above cited zoning standards.



4/14/00

Don Bodin



**Donnybrook**

4444 Shoreline Dr.  
Spring Park MN 55384  
(612) 471-8518 (800) 825-2502

*Handwritten signature*



Offices in  
Minneapolis  
Saint Paul  
St. Cloud

150 South Fifth Street  
Suite 700  
Minneapolis, MN 55402  
(612) 337-9300 telephone  
(612) 337-9310 fax  
[www.kennedy-graven.com](http://www.kennedy-graven.com)  
Affirmative Action, Equal Opportunity Employer

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**MARY D. TIETJEN**  
Attorney at Law  
Direct Dial (612) 337-9277  
Email: [mtietjen@kennedy-graven.com](mailto:mtietjen@kennedy-graven.com)

February 17, 2022

Joe Cheney  
Lake Minnetonka Condos, LLC  
4823 Twin Lake Avenue North  
Brooklyn Center, MN 55429

RE: 4000 Sunset Drive, Spring Park, MN

Dear Mr. Cheney:

As a follow up to your inquiry on the 4000 Sunset Drive ("Subject Property") lot line matter, I writing to inform you that the decision from the City is to rely on the Certificate of Survey from Wenck & Associates and to also make you aware that the City's intent is to proceed with an improvement project within the platted right-of-way ("ROW") adjacent to the Subject Property sometime this Spring/early Summer.

The City's Engineer will begin to stake out the boundary lines based on the Wenck survey, and the work will be conducted within the City's ROW area. Monuments will also be installed delineating the City's ROW.

The Subject Property at 4000 Sunset currently includes a two-story, two-family residence, along with an attached deck, deck stairway and landing, and a retaining wall in which parts or sections encroach upon the City's ROW.

The City is willing to agree to the following terms related to the existing encroachments pursuant to the enclosed License of Encroachment Agreement.

The essential terms are as follows:

- 1) The residence may continue to encroach but may not be expanded outside of the current location or footprint. If the current residence is torn down, it will need to comply with the setbacks, ROW, etc.

Joe Cheney  
February 17, 2022  
Page 2 of 2

- 2) The portions of the deck stairway and landing and the retaining wall that encroach into the ROW must be removed. The City's engineer can assist with identifying the portions of the retaining wall and deck stairway/landing that must be removed. The removal of these items will be at your expense. If they are not removed prior to the City's work within the ROW, the City will pay for removal and invoice you for the costs.
- 3) The City will be responsible for maintaining the ROW.

Executing and recording of the License of Encroachment Agreement will benefit you by allowing the residence to lawfully encroach into the ROW and will put future owners on notice of the encroachment, thereby creating a cleaner title. Allowing the illegal encroachments to continue without an agreement could create potential problems with future transactions involving the Subject Property and will allow uncertainty to continue for future owners.

Please execute the Encroachment Agreement and return to me by February 25, 2022.

Regards,

*Mary D. Tietjen*

Mary D. Tietjen  
Spring Park City Attorney

Enclosures

cc: Jim Brimeyer, Interim City Administrator  
Al Brixius, Planner  
Mike Nielson, Engineer  
Spring Park City Council  
Jamie Hoffman, City Clerk



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(top 3 inches reserved for recording data)

**LICENSE OF ENCROACHMENT**

THIS LICENSE OF ENCROACHMENT ("License"), made effective as of this \_\_\_\_ day of \_\_\_\_\_, 2022, is entered into by and between the CITY OF SPRING PARK, a Minnesota municipal corporation, whose address is 4349 Warren Avenue, Spring Park, Minnesota 55384 ("CITY"), and LAKE MINNETONKA CONDOS LLC, a Minnesota limited liability company, whose mailing address is 4823 Twin Lake Avenue North, Brooklyn Center, Minnesota 55429 ("LMC").

**RECITALS:**

A. LMC is the fee owner of certain real property commonly known as 4000 Sunset Drive, Spring Park, Hennepin County, Minnesota 55384, as legally described on Exhibit A attached hereto and made a part hereof (the "Property"); and

B. CITY is the fee owner of the platted right-of-way (the "ROW") depicted on the Certificate of Survey prepared by Wenck Associates dated January 19, 2021 (the "Survey") attached hereto and incorporated herein as Exhibit B.

C. A two story, two-family residence (the "Residence"), with an attached stairway and landing, and a retaining wall (collectively, the "Improvements") are situated on the Property as depicted on the Survey.

D. The Improvements encroach upon the ROW as depicted on the Survey.

E. LMC desires to obtain CITY's consent to use, maintain and repair that portion of the Improvements that encroach into the ROW, and CITY is willing to allow the same, but only to the extent consistent with the terms of this License.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties hereto, the parties agree as follows:

**AGREEMENT:**

1. Recitals. The foregoing Recitals are true and correct and incorporated into the substantive body of this License as though fully set forth here.

2. Encroachment Permitted; License Granted. CITY hereby grants to LMC a license for the continued location, use, maintenance and repair of the Residence in the ROW, strictly limited to the area existing as of the date

of this License, all as described and shown on the Survey ("**Approved Encroachment**"). This License constitutes a license to locate, use, maintain and repair the Residence only and does not authorize an expansion of the Residence outside of the Approved Encroachment. The rights granted under this License do not rise to the level of a real property interest in or to the ROW.

3. Encroachment Not Permitted. LMC must remove, at its own cost, the portion of the retaining wall that encroaches in the ROW. LMC must remove the portion of the stairway and landing that encroaches in the ROW or modify the stairway and landing so that they no longer encroach. The City will determine the extent of encroachment, and thus removal, of the stairway and landing and retaining wall at the time the City installs markers to delineate the ROW.

4. Maintenance; Repair. LMC agrees, at its sole cost and expense, to use, maintain and repair the Improvements in a manner consistent with all applicable laws, codes, and regulations. CITY shall be responsible for maintaining the ROW in a safe condition at all times.

5. No Other Encroachment Allowed. Except for the Approved Encroachment, LMC shall not create, erect or construct any other encroachment on, above or below the surface of the ground on the ROW, or change the grade or elevation of the ground surface on the ROW, or cause or permit any of these to be done by others.

6. Release; Indemnification. LMC hereby releases CITY, its representatives, employees and elected and appointed officials from any and all damages, claims, or liability with respect to the Improvements that may arise due to the CITY's and the public's use of the ROW or operation and maintenance of infrastructure within the ROW. LMC agrees that it shall indemnify, hold harmless and defend CITY, its representatives, employees and elected and appointed officials from and against all claims, damages, loss and expenses of any sort including reasonable attorney's fees and court costs, arising out of or resulting from the use, maintenance and repair of the Improvements.

7. Termination of License and Removal of Improvements. Upon the default by LMC under the terms of this License, CITY retains the right to immediately revoke this License by notifying LMC in writing at the address listed in the initial paragraph of this License. LMC shall remove the Improvements from the ROW within one hundred eighty (180) days of the date of the written notice to LMC. If LMC fails to timely remove the Improvements from the ROW, then CITY may remove same and charge the cost of removal to LMC. Should LMC fail to pay the costs of CITY's removal of the Improvements within thirty (30) days of invoice therefor, CITY may assess the costs against the Property pursuant to Minnesota Statutes Chapter 429. LMC acknowledges and agrees that the exact amount of the assessment cannot be determined at the present time and waives any rights to notice of a hearing and a hearing on the special assessment. LMC also waives all rights to an appeal or to otherwise challenge the levy of a special assessment. LMC further agrees that any requirements of Minnesota Statutes Chapter 429 are waived to the extent such requirements are not met.

8. No Waiver by City. Nothing in this License shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Any claims shall be subject to the City's governmental immunity defenses and the maximum liability limits provided in Minnesota Statutes Chapter 466. This License shall not constitute a waiver or an abandonment by the City of its property rights in the area in which the Approved Encroachment is located.

9. Binding Effect. This License shall be recorded and shall be binding upon the successors, heirs, executors, administrators, representatives, or assigns of the parties hereto, and upon all persons acquiring an interest thereunder and shall be a restrictive covenant running with the Property.

10. Controlling Laws. This License and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Minnesota, and all duly adopted ordinances, regulations and policies of CITY now in effect and those hereinafter adopted. The location for settlement of any and all claims, controversies, disputes, arising out of or relating to any part of this License, or any breach hereof, shall be in Hennepin County, Minnesota.

11. Savings Clause. If any sentence, phrase, paragraph, provision or portion of this License is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portions hereto.

12. Attorney's Fees. LMC agrees that it shall be liable for reasonable attorney's fees incurred by CITY, if CITY is required to take any actions, through litigation or otherwise, to terminate or enforce this License.

13. Entire Agreement. This License constitutes the entire agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Any amendments to or waivers of the provisions herein shall be made by the parties in writing. No other agreements, oral or otherwise, regarding the subject matter of this License shall be deemed to exist or to bind either party hereto.

14. Recording. LMC will record this License, at its expense, in the public land records of Hennepin County, Minnesota, where it shall encumber the Property.

IN WITNESS WHEREOF, the parties have executed this License on the day and year first written above.

LMC:

**LAKE MINNETONKA CONDOS LLC,**  
a Minnesota limited liability company

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

Name: Joseph M. Cheney  
Title: Sole Member

STATE OF MINNESOTA )  
                                  ) ss.  
COUNTY OF HENNEPIN )

This License of Encroachment was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2022, by Joseph M. Cheney, the sole member of Lake Minnetonka Condos LLC, a Minnesota limited liability company.

[Stamp]

\_\_\_\_\_  
{Signature}

Title and Rank: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



CITY:

CITY OF SPRING PARK,  
a Minnesota municipal corporation

By: \_\_\_\_\_  
Jerome P. "Jerry" Rockvam, Mayor

By: \_\_\_\_\_  
Jamie Hoffman, City Clerk

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )

This License of Encroachment was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2022, by Jerome Rockvam and Jamie Hoffman, the Mayor and City Clerk, respectively of the City of Spring Park, a Minnesota municipal corporation.

[Stamp]

\_\_\_\_\_  
[Signature]

Title and Rank: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

THIS INSTRUMENT WAS DRAFTED BY  
AND WHEN RECORDED RETURN TO:

Kennedy & Graven, Chartered (MDT)  
150 South Fifth Street, Suite 700  
Minneapolis, MN 55402-1299

EXHIBIT "A"

Legal Description of LMC's Property

That part of Lot 14, Skarp and Lindquist's Hazeldell Addition to Minnetonka described as follows: Beginning at a point in the Southeasterly line of said Lot 14 distant 367 feet Northeasterly measured along the Southeasterly line of said Lot 14 from the most Southerly corner thereof; thence North 55 degrees 22 minutes West to the shore of Lake Minnetonka; thence Northeasterly along the shore of said lake to the most Northerly corner of Lot 14; thence Southeasterly along the Northeasterly line of said Lot 14 to the most Easterly corner thereof; thence Southwesterly along the Southeasterly line of said Lot 14 a distance of 48.5 feet; more or less to the point of beginning, Hennepin County, Minnesota

PIN: 17-117-23-33-0031