

Memo

To: Honorable Mayor and City Council
From: Joe Kohlmann, City Administrator
Date: October 28th, 2014
Re: South Shore Center – Shorewood Letter

The City has received a letter from the City of Shorewood. Shorewood has provided background and proposal in their letter. There are three explicit requests in the letter:

- 1) "Given the responses from the founding cities, we are asking that each City avail itself of the "Termination" clause outlined in Section 6 of the March 4, 1996 Cooperative Agreement For The Southshore Senior/Community Center." *Attached*
- 2) "In light of the stalemate of the cities to participate in the costs of the operation and capital maintenance, the City of Shorewood requests that the non-participating cities provide Notice of Termination of their participation in the Cooperative Agreement".
- 3) "We request the non-participating cities approve the attached Notice of Termination. We further respectfully request the non-participating cities approve, execute and return the Notice of Termination to the City of Shorewood no later than November 26, 2014."

Attachment to the letter includes a Capital Maintenance Plan through 2030

Attachment to the letter includes a Notice of Termination

Attachment to the letter includes Exhibit A

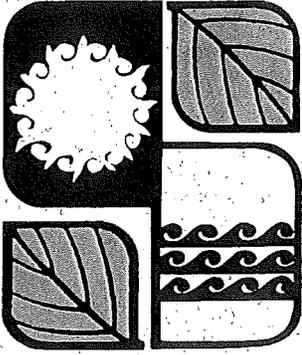
Attachment to the letter includes the Cooperative Agreement from 1996

Attachment to the letter includes a Quit Claim Deed with Legal Description

Staff is uncertain how the *attached* AGREEMENT FOR THE LEASE AND OPERATION OF THE SOUTHSORE COMMUNITY CENTER dated June 25th, 2009 relates to Shorewood's letter. Also, Staff has *attached* an article from the Sun Sailor about this request.

Council Action Requested:

Review and discuss the letter from the City of Shorewood.



CITY OF SHOREWOOD

5755 COUNTRY CLUB ROAD • SHOREWOOD, MINNESOTA 55331-8927 • (952) 960-7900
FAX (952) 474-0128 • www.ci.shorewood.mn.us • cityhall@ci.shorewood.mn.us

October 20, 2014

Mayor Gerry De La Vega
City of Tonka Bay
and Members of the City Council
4901 Manitou Road
Tonka Bay, MN 55331-9561

VIA U.S. MAIL

RECEIVED

OCT 22 2014

CITY OF TONKA BAY

Re: Southshore Center

Dear Mayors and City Council Members:

This letter is offered on behalf of the Shorewood City Council relating to the Southshore Center. The last communication from Mayor Zerby to each of you on June 3, 2014, addressed the issues of the potential for collaboration and continued joint ownership. The purpose of this letter is to request consideration of each of the non-participating cities to go on record expressing their intention to terminate participation with the preservation of equity for each city so that Shorewood may proceed in the best interest of the Southshore Center and its constituent users.

Background

Earlier this summer, the City of Shorewood asked each of the councils of the founding cities of the Southshore Center (SSC) to determine if they were interested in continued participation in the operation and funding of the SSC. This was asked after the Advisory Committee had spent many months investigating options for the continued operation of the SSC as a joint community center.

The responses received from the founding cities are summarized below:

- Deephaven: Not interested in future participation.
- Tonka Bay: Not interested in further participation but not willing to give up its initial equity position.
- Greenwood: Not interested in further participation but not willing to give up its initial equity position.
- Excelsior: Interested in continued support and membership in the Center but unwilling to fully fund their portion.

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There was a question raised by Tonka Bay and Greenwood as to whether a city could forfeit its equity position given the current language of the 1996 Joint Powers Agreement. Shorewood acknowledges protecting the interest of the initial investment in the Center of the participating cities in the event of sale or liquidation of the Center.

After the receipt of the above listed responses and after extensive work by our staff and City Attorney, the City of Shorewood has reached the following conclusions:

- The Center's most appropriate use is to continue service as a community meeting space.
- The Center, operating at its current level, will continue to run a yearly operating deficit of approximately \$70,000.
- Realistic CIP costs for the Center through 2020, including the COVE proposal updates are approximately \$345,000 (calculation attached).
- The City Council of Shorewood has determined that it will assume the responsibility for the continued operation and upkeep of the Center without the participation of the other founding cities.

Given the responses received from the founding cities, we are asking that each City avail itself of the "Termination" clause outlined in Section 6 of the March 4, 1996 Cooperative Agreement For The Southshore Senior/Community Center (document attached). This clause allows founding cities to terminate their participation and financial responsibility while not forfeiting their ownership interest.

The City of Shorewood intends to continue operation of the Center as a public resource for the community and would ask that we have clear and unilateral authority to do this.

Proposal

The formation document for the Southshore Center was the Cooperative Agreement dated March 4, 1996. There have been many changes since that time in the Southshore Center, its management, the lease, and the dissolution of the Friends of the South Lake Minnetonka Senior Community Center.

Under the terms of the ownership structure set forth in the Cooperative Agreement, termination and dissolution provisions continue to govern the underlying ownership. In light of the stalemate of the cities to participate in the costs of the operation and capital maintenance, the City of Shorewood requests that the non-participating cities provide Notice of Termination of their participation in the Cooperative Agreement. The termination provision in Section 6 of the Cooperative Agreement allows that a withdrawing city will not have the right to continued participation in decisions relating to the Cooperative Agreement. Withdrawal, however, will not result in forfeiture of the withdrawing cities' share of proceeds resulting from the sale or

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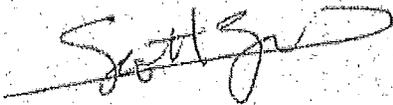
liquidation of the Center net of future capital investments by the City of Shorewood as provided in Section 6 of the Cooperative Agreement.

To that end, we request the non-participating cities approve the attached Notice of Termination. We further respectfully request the non-participating cities approve, execute and return the Notice of Termination to the City of Shorewood no later than November 26, 2014.

It had been our hope that all of the cities would find a way to continue this asset as a joint venture. We hope by allowing for the continuance of your respective ownership interests, you will provide clear operational authority for the City of Shorewood to move forward to support and maintain the Center.

Thank you in advance for your assistance and cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Zerby", written over a horizontal line.

Mayor Scott Zerby
and the Shorewood City Council

Enclosure

South Shore Community Center, 5735 Country Club Rd Prepared by: Joe Pazandak
 Capital Maintenance Plan, 2014, with expected expense through 2030

BUILDING Component	Const Year	Age	CMP Strategy	Useful Life	Replacement Year	Current cost	Replacement cost	Projected funding need, to 2014	Projected expended cost to 2020, 10
Roof	1996	18	4. a	21	2017, Note 7. c. & f.	\$ 38,675.00	\$ 40,995.50	\$ 35,139.00	\$43,000.00
Building structure	1996	18	4. b						
Siding	1996	18	4. a	40	2036	\$ 9,000.00	\$ 12,960.00	\$ 5,832.00	\$ 2,000.00
Exterior painting and caulking	1996	18	4. a	20	2016	\$ 1,800.00	\$ 1,872.00	\$ 1,684.80	\$ 2,000.00
Doors, exterior	1996	18	4. b	40	2036	\$ 9,000.00	\$ 12,960.00	\$ 5,832.00	
Windows	1996	18	4. b	30	2026	\$ 13,600.00	\$ 16,864.00	\$ 10,118.40	\$ 17,000.00
Mechanical systems, Furnace & AC	1996	18	4. a	22	2018	\$ 36,000.00	\$ 38,880.00	\$ 31,810.91	\$ 42,000.00
Electrical systems, light fixtures	1996	18	4. b	25	2021	\$ 56,000.00	\$ 69,840.00	\$ 45,964.80	\$ 64,000.00
Plumbing systems, plumbing fixtures	1996	18	4. b	30	2026	\$ 6,000.00	\$ 7,440.00	\$ 4,464.00	\$ 7,000.00
Water heater	1996	18	4. a	20	2016	\$ 2,200.00	\$ 2,288.00	\$ 2,059.20	\$ 2,400.00
Kitchen exhaust mechanical system	1996	18	4. c	25	2021	\$ 12,000.00	\$ 13,680.00	\$ 9,850.00	\$ 14,000.00
Fire suppression sprinkler sys	1996	18	4. b	25	2021	\$ 20,000.00	\$ 22,800.00	\$ 16,416.00	\$ 23,000.00
Gutters	1996	18	4. b	25	2021	\$ 7,000.00	\$ 7,980.00	\$ 5,745.60	\$ 8,000.00
Retaining walls	1996	18	4. b	25	2021	\$ 8,000.00	\$ 9,120.00	\$ 6,566.40	\$ 9,000.00
Fence	1996	18	4. b	15	2011	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
Cove Now elements, 8									\$ 45,000.00
Cove Future elements, 9									\$ 50,000.00
Exterior landscaping and patio, 11									\$ 15,000.00
Parking and driveway, 12									
Total								\$ 182,483.11	\$ 344,400.00

Notes:

- Scope of Capital Maintenance Plan (CMP) is intended to address replacement of major building components.
- CMP does not address maintenance or replacement of minor building elements.
- Some maintenance and repair comments may be included.
- CMP Strategy:
 - Set useful life and cost, used for elements that will have a generally determinate useful life or life cycle and the end of the life cycle will have issues for building use or durability.
 - Components that have a longer life cycle that may become obsolete, become inefficient with new technology, deteriorate slowly, repairs or maintenance exceed return on investment over a given time.
 - Components that due to performance should have a strategy established to address issues prior to components life cycle.
- CMP Program will be reviewed each year for adjustments.
- Useful Life, Replacement Year and Costs are estimates.
- Additional comments:
 - Kitchen equipment and related mechanical systems should have a cost/benefit analysis evaluation due to operation and maintenance costs.
 - Sidewalk at side of building needs adjustment. Repaired in 2014.
 - Roofing needs repair. Roofing condition ranges from 2.5 to 7.0 (average 5.5) on a scale of 0 to 10.
 - Exterior paint and caulking is about 60%.
 - Gutters need repair.
 - Roofing is continuing to split/crack. This may move replacement forward. 2016; Some splits/cracks repaired, to extend roof.
 - Cove Now elements, rounded to nearest 1,000.
 - Cove Future elements, increased for future cost increase and rounded to nearest 1,000.
 - Projected costs, have been adjusted to show general expected cost and rounded to nearest 1,000.
 - Landscaping and patio outside large Meeting Room, could be considered.
 - Parking and driveway, have not been included.

NOTICE OF TERMINATION

This Notice of Termination is provided by the City of Tonka Bay this ____ day of November, 2014, to the City of Shorewood pursuant to the terms of that Cooperative Agreement dated March 4, 1996.

RECITALS

1. The City of Tonka Bay entered into the Cooperative Agreement with other member cities, making an initial contribution in the amount set forth in the attached Exhibit A.
2. The City of Shorewood has requested participating cities to participate in the cost of the capital maintenance and replacement of key building components.
3. The City of Tonka Bay intends to not make further capital contributions to the Southshore Center and withdraw as a participating city.
4. The Cooperative Agreement provides the process for orderly termination by notice and withdrawal whereby a terminating and withdrawing city shall have its share of initial investment preserved upon liquidation or sale of the Southshore Center.
5. The City of Shorewood shall proceed on its own to fund the capital requirements and operational costs of the Southshore Center.

AGREEMENT

In consideration of the terms of the Cooperative Agreement, the City of Tonka Bay does hereby provide this Notice of Termination pursuant to the terms of the Cooperative Agreement and does further provide a quit claim deed in the form attached relinquishing its real property interests in the Southshore Center.

In the event of a sale or liquidation of the Southshore Center to a third party, the City of Shorewood shall distribute proceeds adjusted to reflect the investments in facilities by Shorewood after that date of this Notice to each withdrawing member City consistent with the original capital contribution of each withdrawing member city as provided in the Cooperative Agreement.

City of Tonka Bay

ACCEPTED by City of Shorewood

By: _____
Its: Mayor

By: _____
Its: Mayor

By: _____
Its: City Administrator

By: _____
Its: City Administrator

EXHIBIT A

City	\$ Contribution	% Contribution
Shorewood	\$ 311,000	50.00%
Excelsior	90,812	14.60%
Greenwood	24,569	3.95%
Deephaven	139,639	22.45%
Tonka Bay	55,980	9.00%
	<hr/> \$ 622,000	<hr/> 100.00%

COOPERATIVE AGREEMENT
FOR THE
SOUTHSHORE SENIOR/COMMUNITY CENTER

THIS COOPERATIVE AGREEMENT FOR THE SOUTHSHORE SENIOR/COMMUNITY CENTER is made on this 4 day of March, 1996, by and among the City of Deephaven, a Minnesota municipal corporation (Deephaven), the City of Excelsior, a Minnesota municipal corporation (Excelsior), the City of Greenwood, a Minnesota municipal corporation (Greenwood), the City of Shorewood, a Minnesota municipal corporation (Shorewood), and the City of Tonka Bay, a Minnesota municipal corporation (Tonka Bay), (hereinafter collectively referred to as "Cities").

RECITALS:

FIRST: Cities desire to develop a senior/community center (Center). The Center shall be used by senior citizens for educational and recreational activities, including, but not limited to, arts, crafts, music and other various programs of enrichment. In addition, the Center shall be used by citizens for banquets, receptions, reunions and other public and private events and other community-based activities such as those commonly provided at community centers throughout the area.

SECOND: Cities desire to combine resources pursuant to Minn. Stat. § 471.59 to develop and construct the Center.

NOW, THEREFORE, the parties covenant and agree as follows:

1.) Purpose. The parties have determined that each City is more economically and efficiently served by constructing and operating the Center together rather than each City constructing and operating its own community center. The parties agree that the Center shall be used by senior citizens for educational and recreational activities, including, but not limited to, arts, crafts, music and other various programs of enrichment. The Center shall also be used by citizens for banquets, receptions, reunions and other public and private events and other community-based activities such as those commonly provided at community centers throughout the area. Such programs and activities shall be consistent with the use of the surrounding and adjoining facilities. The overall guiding principle embodied in this Agreement is the mutual desire of the parties to maximize the use of the Center by all members of the Cities' respective constituencies.

2.) Ownership. The development and construction of the Center shall be financed through a pooling of resources from Cities and The Friends of the South Lake Minnetonka Senior Community Center, a Minnesota non-profit corporation with tax-exempt status pursuant to §§ 170(c)(2) and 501(c)(3) of the Internal Revenue Code of 1986 (Friends). Cities shall own the Center as tenants in common, with the ownership interest of each City proportionate to each City's investment in the Center. The amount of each City's investment and the proportionate ownership of each City is set forth in Exhibit A attached hereto which may be amended from time to time upon unanimous approval of the cities.

The Center shall be constructed on property conveyed by Shorewood to Cities for One and 00/100 Dollar (\$1.00), and other good and valuable consideration, and which is legally described on Exhibit B attached hereto. Shorewood shall be responsible for the design and construction of the Center in accordance with the preliminary site plan and building elevation as set forth on Exhibit C attached hereto.

3.) Funding. All amounts due from Cities for the development and construction of the Center shall be remitted to Shorewood within sixty (60) days of the date of the execution of this Agreement by an authorized representative of each City. Shorewood shall be the finance manager and manager of the construction of the Center during the design and construction of the Center and shall establish separate books of account to monitor the payment of funds. The Cities shall be under no further obligation, pursuant to the terms of this Cooperative Agreement, to fund the maintenance, operation, programming or staffing of the Center or any other costs, expenses or capital investments relating to the Center.

4.) Excess Funds. Upon completion of construction of the Center, excess funds shall be held in a restricted capital reserve account for the purpose of repairs and capital replacement of the Center. This account shall be controlled by the Friends, however, no expenditure in excess of Five Thousand and 00/100 Dollars (\$5,000) shall be made without the approval of a majority of the Cities. This reserve is not intended for day-to-day maintenance such as snow removal, routine building maintenance and cleaning or for any other operating costs.

5.) Lease. Cities shall lease the Center to Friends (Friends' Lease). The term of the Friends' Lease shall be twenty-five (25) years and the rental rate shall be One and 00/100 Dollar (\$1.00) per year and other good and valuable consideration. The Friends' Lease shall provide for four (4) renewal periods of five (5) years each.

Friends shall operate and maintain the Center. Friends shall be required to pay for any and all forms of insurance to adequately insure the Center against any and all risks associated with operating and maintaining the Center, both known and unknown, including worker's compensation insurance for Center employees and general liability insurance up to the statutory limits of liability relating to the Center. Each policy shall name Cities as additional insureds.

By entering into this Agreement, Cities do not agree to assume any risk or responsibility for the acts or omissions relating to the operation and maintenance of the Center by Friends, or for the procurement, or failure to procure, by Friends of insurance against all insurable risks, both known and unknown, related to the Center, or for the acts or omissions of any other City.

6.) Termination. Any City may terminate its participation in this Agreement at any time for any reason upon thirty (30) days written notice to the remaining Cities. The remaining Cities shall not have a right to object to any City's withdrawal from this Agreement. A withdrawing city will not have the right to participate in decisions relating to this Agreement. Withdrawal from this Agreement will not result in the forfeiture of the withdrawing City's undivided ownership interest in the Center but the withdrawing City's share of the costs incurred by the Cities pursuant to this Agreement, if any, shall be recovered out of the withdrawing City's share of any proceeds resulting from the sale or liquidation of the Center.

At the termination of the lease term or termination by action and approval of the Cities, the Center may be sold subject to the following:

(a) Shorewood Option. The City of Shorewood may retain the Center by repayment to each of the remaining Cities an amount equal to their original capital contribution. Shorewood may pay the remaining Cities in cash, or at its option, Shorewood may make installment payments to the Cities over a period not to exceed ten (10) years payable in equal annual installments of principal and interest at the rate of eight percent (8%) per annum from and after the date of Termination.

(b) Sale to Third Party. The Center may be sold to a third party for fair market value. In the event of sale to a third party, the City of Shorewood will assure adequate access to the Center. The proceeds of said sale shall be allocated and paid to each City proportionate to its original capital contribution as provided in the attached Exhibit A.

(c) Proceeds from Future Gain. Should Shorewood sell the Center to a third party within ten (10) years of exercising alternative (a), the net proceeds of said sale beyond the original capital contribution paid by each of the Cities shall be allocated and paid to each City proportionate to its original capital contribution as provided in the attached Exhibit A.

7.) Dissolution, Amendment, Termination. The following may only be undertaken based on the written approval of two-thirds of the Cities: (a) Sale of the Center; (b) Amendment of this Agreement; or (c) Termination of the Lease with The Friends of South Lake Minnetonka Senior Community Center, or any renewal, extension, assignment or subleasing thereof or successor thereto. The following may be undertaken upon written approval of a majority of the Cities: (a) Capital improvements; or (b) City directed changes in the operation of the Center.

8.) Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the Cities of Deephaven, Excelsior, Greenwood, Shorewood and Tonka Bay, in accordance with the authorizing resolution from their respective City Councils, have caused this Agreement to be duly executed.

CITY OF DEEPAVEN

Dated: 3/4/96

By: Wanda R. Langley
Its: City Clerk Treasurer

By: [Signature]
Its: Mayor

CITY OF EXCELSIOR

Dated: 2/28/96
By: Carl Zisman
Its: City Manager

By: [Signature]
Its: Mayor

CITY OF GREENWOOD

Dated: 2/28/96
By: Wanda R Langley
Its: City (Clerk) Administrator

By: [Signature]
Its: Mayor

CITY OF SHOREWOOD

Dated: 2/28/96
By: James C Hurm
Its: City (Clerk) Administrator

By: [Signature]
Its: Mayor

CITY OF TONKA BAY

Dated: 2/28/96
By: [Signature]
Its: City (Clerk) Administrator

By: [Signature]
Its: Mayor

(Top 3 inches reserved for recording data)

QUIT CLAIM DEED
Business Entity to Business Entity

Minnesota Uniform Conveyancing Blanks
Form 10.3.5 (2013)

eCRV number: _____

DEED TAX DUE: \$ _____

DATE: _____
(month/day/year)

FOR VALUABLE CONSIDERATION, City of Tonka Bay
(insert name of Grantor)

a municipal corporation under the laws of the State of Minnesota ("Grantor"),
hereby conveys and quitclaims to the City of Shorewood
(insert name of Grantee)

a municipal corporation under the laws of the State of Minnesota ("Grantee"),
real property in Hennepin County, Minnesota, legally described as follows:

See Exhibit A attached

Check here if all or part of the described real property is Registered (Torrens)

together with all hereditaments and appurtenances belonging thereto.

Check applicable box:

- The Seller certifies that the Seller does not know of any wells on the described real property.
- A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: _____.)
- I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Grantor

City of Tonka Bay
(name of Grantor)

By: _____
(signature)

Its: _____
(type of authority)

By: _____
(signature)

Its: _____
(type of authority)

State of Minnesota, County of Hennepin

This instrument was acknowledged before me on _____, by _____
(month/day/year) *(name of authorized signer)*
_____ as _____
(type of authority)

and by _____
(name of authorized signer)
as _____ of City of Tonka Bay _____
(type of authority) *(name of Grantor)*

(Stamp)

(signature of notarial officer)

Title (and Rank): _____

My commission expires: _____
(month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:
(insert name and address)

Kutak Rock LLP
U.S. Bank Plaza South, Suite 1750
220 South Sixth Street
Minneapolis, MN 55402
(TJK)

TAX STATEMENTS FOR THE REAL PROPERTY DESCRIBED IN THIS
INSTRUMENT SHOULD BE SENT TO:
(insert legal name and residential or business address of Grantee)

EXHIBIT A
LEGAL DESCRIPTION

That part of Lot 12, Block 2, ECHO HILLS 2ND ADDITION, and of Lot 27, Auditors Subdivision 133, according to the plats on file in the office of the County Recorder, Hennepin County, Minnesota, described as follows:

Commencing at a point in the centerline of Smithtown Road distant 645.00 feet easterly from an intersection of the northerly extension of the west line of said Lot 27 with said centerline; thence southerly parallel with the west line of said Lot 27 a distance of 34.19 feet to the point of beginning of the land to be described; thence South 00 degrees 29 minutes 57 seconds East, assumed bearing, along a line parallel with the west line of said Lot 27 and the west line of said Lot 12 a distance of 104.00 feet; thence South 76 degrees 20 minutes 42 seconds East 45.00 feet; thence South 15 degrees 30 minutes 36 seconds East 45.00 feet; thence South 76 degrees 20 minutes 42 seconds East 57.05 feet; thence North 66 degrees 48 minutes 24 seconds East 34.92 feet; thence North 34 degrees 25 minutes 43 seconds East 30.00 feet; thence North 00 degrees 29 minutes 57 seconds West, parallel with the west line of said Lots 12 and 27, a distance of 160.00 feet to a point in the north line of said Lot 12; thence South 84 degrees 37 minutes 48 seconds West 94.66 feet; thence South 74 degrees 29 minutes 24 seconds West 68.00 feet to the point of beginning.

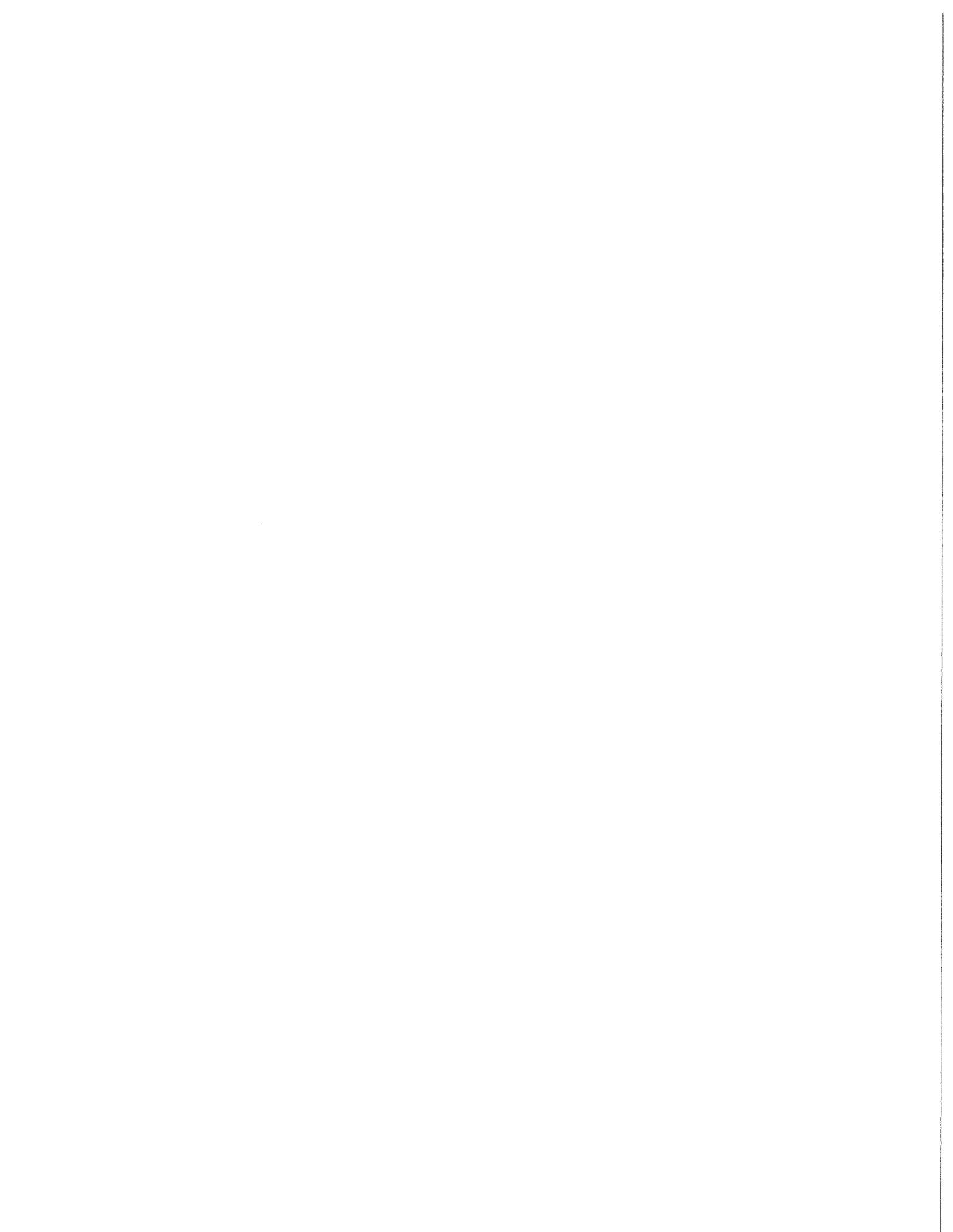
Said parcel contains 26,000 square feet more or less.

Together with a permanent easement for parking purposes over, under and across that part of said Lots 12 and 27 described as follows:

Commencing at a point in the centerline of Smithtown Road distant 645.00 feet easterly from an intersection of the northerly extension of the west line of said Lot 27 with said centerline; thence South 00 degrees 29 minutes 57 seconds East 138.19 feet to the southwest corner of the above described parcel and to the point of beginning of the easement to be described; thence South 00 degrees 29 minutes 57 seconds East 27.00 feet; thence South 74 degrees 29 minutes 24 seconds West 4.00 feet; thence South 15 degrees 30 minutes 36 seconds East 55.00 feet; thence South 74 degrees 29 minutes 24 seconds West 55.00 feet; thence North 15 degrees 30 minutes 36 seconds West 55.00 feet; thence South 74 degrees 29 minutes 24 seconds West 91.00 feet; thence South 00 degrees 29 minutes 57 seconds East 139.77 feet; thence North 74 degrees 29 minutes 24 seconds East 284.59 feet; thence North 00 degrees 29 minutes 57 seconds West 58.60 feet; thence North 34 degrees 25 minutes 43 seconds East 22.40 feet to the southeasterly corner of the above described parcel; thence westerly and northwesterly along the southwesterly line of said above described parcel to the point of beginning.

Together with the right of ingress and egress to and from the Country Club Road.

Contains 31,452 square feet more or less.



AGREEMENT FOR THE LEASE

AND OPERATION OF THE SOUTHSHORE COMMUNITY CENTER

THIS LEASE AND OPERATION AGREEMENT, is made this 25 day of June, 2009, between the City of Deephaven, the City of Excelsior, the City of Greenwood, the City of Shorewood, and the City of Tonka Bay (the "Cities" or "Landlord"), and the City of Shorewood ("Tenant").

RECITALS

WHEREAS, the Cities desire to provide a Center for use by senior citizens for education, cultural participation, socializing, recreation, arts, crafts, music and similar programs of enrichment; and

WHEREAS, the Cities desire that the Landlord undertake its best efforts to make the Center widely available to all citizens and residents; and

WHEREAS, the Cities desire to provide a congregate dining facility to serve the needs of senior citizens; and

WHEREAS, the Cities desire to provide a facility to be used by citizens for municipal use, community organizations, meetings, banquets, receptions, reunions and similar public and private activities; and

WHEREAS, the Cities agree that it is to their mutual benefit that Tenant operate the Center consistent with the terms of this Lease for the purpose of providing the most efficient service to the public and avoiding future conflict regarding the Center's operation;

NOW, THEREFORE, the parties do hereby agree and covenant as set forth below:

IN CONSIDERATION OF the mutual covenants and promises as hereinafter set forth, the parties agree as follows:

1. Premises. Landlord hereby leases to Tenant and Tenant takes from Landlord, subject to the terms and conditions of this Lease, a building and land situated at 5735 Country Club Road, containing approximately 26,000 square feet of space and legally described on Exhibit A attached hereto ("Premises"), together with a permanent easement for the non-exclusive use of forty-seven (47) parking stalls, entrances, restrooms and exits adjacent to the Premises.

2. Term. The term of this Lease shall commence on July 1, 2009 and shall terminate on December 31, 2012. The term of this Lease shall renew for successive three year terms unless the Tenant or Landlord provides written notice in accordance with Section 3 of this agreement.

3. Termination. The Tenant may terminate this Lease at any time for any reason upon 90 days written notice to the Landlord. Landlord may terminate this Lease upon 90 days written notice to Tenant only in the event of default by Tenant as described in paragraph 13

4. Nature of Occupancy. Tenant shall use the Premises for use by senior citizens for educational and recreational activities, including, but not limited to, arts, crafts, music and other various programs of enrichment. The Center shall also be used by citizens for banquets, receptions, reunions

and other public and private events and other community-based activities such as those commonly provided at community centers throughout the area.

5. Rent. The Tenant agrees to pay the Landlord as rent for the Premises the amount of one and 00/100 dollars (\$1.00) per year during the term of this lease agreement.

6. Utilities. The Tenant shall pay all the charges for all public utility services rendered or furnished to the Premises, including, but not limited to, heat, air conditioning, water, gas, electricity and sewer, garbage or waste removal, telephone and any other expenses arising out of or incidental to the use and occupancy of the Premises.

7. Insurance. The Tenant shall keep and hold property, casualty, and general liability insurance naming the Landlord as an additional insured, subject to any limits specified under Minnesota State Statute Chapter 466.

8. Repairs, Maintenance, and Alterations. Tenant agrees to maintain the Premises in good order, condition and repair during the term of this Lease, including plowing and maintenance of the parking area referred to in Paragraph 1 above. Tenant shall repair or replace at its own expense any improvement or part thereof on the Premises necessary to so maintain it, and to return the Premises at the end of the term of this Lease in the same condition as it was received, reasonable wear and tear, casualty losses and acts of God excepted. Any improvements, expansion or structural modifications made by the Tenants to the Premises shall become the property of the Landlord at the termination of the Lease. Tenant shall obtain written approval from 2/3rds of the Landlord before undertaking any expansion or structural modification of the Premises.

9. Compliance with Laws and Regulations. In its operation of the Center, Tenant shall comply with all statutes, ordinances, rules, orders, regulations and requirements of all federal, state, city and local governments and their agencies.

10. Signs. Tenant shall have the right to install and maintain signs advertising Tenant's business, provided the signs conform to law and to the requirements of all appropriate governmental authorities.

11. Management of Center. Tenant may, at its sole discretion, enter into an agreement with a contractor of its choosing or hire staff as Tenant deems reasonable for the operation and management of the Center; furthermore, the Tenant may enter into long-term rental agreements and partnerships as it deems appropriate and in keeping with the intended use of the Center as provided for in Section 4 above.

12. Rental Fees. Tenant, in its sole discretion, may determine rental rates and any other fees or costs associated with use and rental of the Center. Tenant shall retain all revenue generated through the operation of the Center.

13. Destruction of Premises. Tenant shall give immediate notice to Landlord of any damage to or destruction of the Premises.

14. Default. The following shall constitute a default by Tenant and breach of this Lease:

(a) Failure to perform the terms, covenants and conditions of this Lease within ten (10) days after notice of breach and request for performance is given by Landlord.

(b) Failure of the Tenant to use the Premises as provided in Paragraph 4.

14. Indemnification. Subject to the limits in Minnesota Statutes Chapter 466, Tenant and Landlord agree to be responsible for any loss, damage, cost, expense (including attorneys' fees), liability, or claims for personal injury or property damage incurred or occurring in, on, or about the Premises caused by their respective employees, agents, or representatives.

15. Quiet Enjoyment. Landlord covenants that Tenant, upon payment of rent and upon performance by Tenant of the terms, conditions and covenants of this Lease, Tenant shall peaceably and quietly have, hold and enjoy the Premises for the entire term of this Lease; Landlord further covenants that it has good right to make this Lease for its entire term.

16. Right of Inspection. Landlord shall at all times have the right to enter upon the Premises to inspect its condition, and at its election, to make reasonable and necessary repairs thereon for the protection and preservation thereof, but nothing herein shall be construed to require Landlord to make such repairs, and Landlord shall not be liable to Tenant, or any other person or persons, for failure or delay in making said repairs, or for damages or injury to person or property caused in or by the making of such repairs, or the doing of such work. Landlord shall have the right during the last ninety (90) days of the term of this Lease to advertise the Premises for rent and to place and maintain on the Premises the usual notices and to show the Premises to prospective tenants.

17. Notices. All written notices required shall be given by certified mail to the parties at the addresses stated below:

If to Landlord:	City Administrator City of Deephaven 20225 Cottagewood Road Excelsior, MN 55331 City Manager City of Excelsior 339 Third Street Excelsior, MN 55331 City Administrator City of Greenwood 20225 Cottagewood Road Excelsior, MN 55331 City Administrator City of Shorewood 5755 Country Club Road Shorewood, MN 55331 City Administrator
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City of Tonka Bay
4901 Manitou Road
Tonka Bay, MN 55331

If to Tenant: City Administrator

City of Shorewood
5755 Country Club Road
Shorewood, MN 55331

18. Binding Effect. Except to the extent otherwise provided herein, this Lease and the terms, conditions and covenants contained herein shall be binding upon and inure to the benefit of Landlord and Tenant, and their respective successors, heirs and legal representatives and assigns.

19. Governing Law. This Lease shall be construed under and governed by the laws of the State of Minnesota.

20. Severability. In the event any provision of this Lease shall be found invalid or unenforceable, that provision shall be severed from this Lease, and the remaining portions hereof shall continue in full force and effect pursuant to their terms.

21. Entire Agreement. This Lease contains the entire agreement between the parties, and any amendment hereafter made shall be ineffective to alter, modify or discharge any provision hereof unless the amendment is in writing and signed by the party against whom enforcement is sought.

22. Tenant Improvements. Any improvements made by Tenant to the Premises, except trade fixtures, shall become the property of Landlord at Landlord's option at the termination of the Lease. If Landlord does not choose to own said improvements at the termination of the Lease, Tenant shall remove said improvements at Tenant's sole cost and expense and return the Premises to the same condition it was received, normal wear and tear and acts of God excepted.

23. Action by Landlord. Action authorized by "Landlord" under paragraphs 2,3, 10 or 16 of this Lease may only be taken if four of the five Cities provide written approval of such action by their respective city councils.

24. Headings. The headings used in this Lease are for convenience only and shall not have any bearing or meaning with respect to the content or context of this instrument.

IN WITNESS WHEREOF, Landlord and Tenant have respectively signed this Lease as of the date first above written.

CITY OF DEEPHAVEN

Dated: 6-25-09

By: Dana H. Garry
Its: City (Clerk) Administrator

Dated: 6-25-09

By: Paul Ashman
Its: Mayor

CITY OF EXCELSIOR

Dated: 7/6/09

By: Kit L
Its: City Manager

Dated: 7/6/09

By: [Signature]
Its: Mayor

CITY OF GREENWOOD

Dated: 6/25/09

By: Roberta Whipple
Its: City (Clerk) Administrator

Dated: 6/25/09

By: Mark Glend
Its: Mayor

CITY OF SHOREWOOD

Dated: 7/3/09

By: [Signature]
Its: City (Clerk) Administrator

Dated: 7/9/09

By: Christie Lizee
Its: Mayor

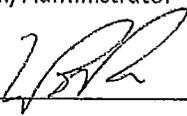
CITY OF TONKA BAY

Dated: 7/7/09

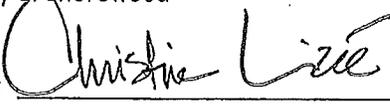
By: Jessica Jettus

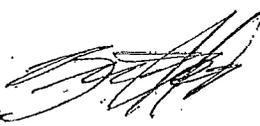
Its: City (Clerk) Administrator

Dated: 7/9/09

By: 
Its: Mayor

TENANT:
City of Shorewood

By: 
Its: Mayor

By: 

Its Administrator

Shorewood: 'it's gone on long enough'

By Stephanie Gonyou

October 20, 2014 at 5:54 pm

City council votes to ask other owner cities to terminate participation in Southshore Center

The time has come for South Lake cities to get serious about the future of the Southshore Center.

At Shorewood's Oct. 13 City Council meeting, it was determined to send a letter to Deephaven, Excelsior, Greenwood and Tonka Bay to ask for a termination of each city's participation in the 1996 Cooperative Agreement under which the center operates.

After months of communication between Shorewood and the other owner cities, during which Deephaven and Greenwood both withdrew from participation in the center but none of the cities offered monetary support for the center or relinquished their ownership position, Shorewood is pushing to wrap the conversation by the end of the year.

"I'd hate to re-educate a whole new set of councils," Shorewood Mayor Scott Zerby said.

The draft letter explained Shorewood wishes to "request consideration of each of the nonparticipating cities to go on record expressing their intention to terminate participation with the preservation of equity for each city so that Shorewood may proceed in the best interest of the Southshore Center and its constituent users."

Shorewood City Council believes it's not fair for the other owner cities to leave Shorewood with the burden of funding the center's approximately \$70,000 annual deficit, a point to which Shorewood City Administrator Bill Joynes attests.

"We've invited any of the cities to remain partners if they want to do that," Joynes said. "But there needs to be meaningful participation. I cannot recommend to you as an administrator that we continue ... as we have. It's unfair to the citizens of Shorewood."

In previous discussions over the center this year, the question was raised about amending the original cooperative agreement. As the agreement was never amended, this request for cities to terminate their participation in the agreement altogether is Shorewood's next reasonable step.

"The (letter) does what most of them wanted to do, which was to find a way not to be committed to future capital improvements," Joynes said. "It also eliminates any involvement they would have in the operational decisions they would have in the center ... it does, as clause six states in the original document, allow them to withdraw but preserve their equity position in the shared construction costs they incurred in 1996."

The proposal Shorewood approved at the Oct. 13 meeting is for the uninterested cities to terminate their participation in the cooperative agreement, but also states their original investment in the construction of the center remain intact.

This means if Deephaven, Excelsior, Greenwood and Tonka Bay do indeed terminate their participation and Shorewood were to sell the center to a third party, the nonparticipating cities would still be entitled to their share of the proceeds consistent with their original capital contribution.

However, because each of the five cities currently own the building, they are each obligated to fund the maintenance of the asset. To that end, the proposal states future capital improvements will be deducted proportionally from all five cities' ownership shares until those shares reach zero.

As much as an approximate \$700,000 in capital improvements would be necessary to eliminate all five cities' ownership shares.

"Shorewood anticipates making important capital investments to keep the building in usable, functional form. And it would be anticipated that once those capital expenditures are incurred, that they would be in effect a reduction in principal." Shorewood City Attorney Timothy Keane said.

Per this proposal, Shorewood agrees to keep the center open to the other owner cities' residents in the same capacity as Shorewood residents.

Still, if the Southshore Center is never sold, none of the five owner cities, including Shorewood, would see any of the proceeds.

Joynes said he has been and would be willing to work with cities if they want to be involved.

Shorewood City Council Member Richard Woodruff said it's time for the other cities to make a decision whether or not they will be involved with the center in the future, a sentiment the rest of the council shares.

"Shorewood isn't going to get any money out of this ... we're not asking for any money right now," Woodruff said. "We are clarifying the control of the asset and the financial responsibilities of the parties."

After the dissolution of the Friends of the Southshore Center, Shorewood assumed responsibility for the operation of the center. The tension, however, stems from a lack of paperwork filed in regard to Shorewood's responsibilities.

"Mr. Woodruff pointed out that the cities had agreed to allow Shorewood to run it," Zerby said. "There was an agreement drafted; however, it was never executed by any of the cities, so we are short any legal documentation as to how we are operating the center."

Zerby even suggested past and future operating costs be deducted from each city's ownership share to compensate for that fact; but city council chose not to take that recommendation.

Joynes said while it is not Shorewood's intention to sell the center, this issue needs to be straightened out so Shorewood can knowingly budget for the center in the future and not simply assume it will be funding it.

The proposal was expected to be sent to the other member cities sometime this week. Shorewood requested response from each owner city before the end of the year.

Contact Stephanie Gonyou at stephanie.gonyou@ecm-inc.com