



To: Members of the Edina Housing & Redevelopment Authority **Agenda Item #:** III.

From: Bill Neuendorf
Economic Development Manager

Action
Discussion
Information

Date: February 5, 2013

Subject: Resolution No. 2013- 02, Authorizing Purchase Agreement for Property at 3930 West 49-1/2 Street

Action Requested:

Adopt Resolution.

Information / Background:

The City / Housing and Redevelopment Authority (HRA) has studied the parking availability at the 50th and France business district and found that additional public parking is needed to support the continued success.

The study confirmed that the existing North Parking Ramp at 3936-3940 West 49-1/2 Street has the ability to be expanded to provide additional public parking for customers and employees. Construction of additional parking at the North Ramp is preferred prior to the renovation of the South and Middle Ramps. This new parking will make up for the temporary loss of spaces during the renovation process.

The two story office building at 3930 West 49-1/2 Street is currently available for lease or for sale. The current tenants will be relocating in Spring 2013, leaving the property vacant.

The City/HRA has negotiated terms of a purchase agreement with the owner.

- The purchase price will be no more than \$2,650,000.
- The closing date shall be on or about June 3, 2013.
- During the due diligence period, the City/HRA retains the rights to further investigate the property.
- An independent third-party appraisal will be obtained to validate the value of the property.
- A Phase I environmental study will also be conducted. In the event that environmental contamination is identified, the City/HRA is not obligated to purchase the site.
- The current owner are responsibility for removing any asbestos, prior to closing.
- All tenants must vacate the building prior to closing.
- The City/HRA must complete due diligence by April 3, 2013.

Existing TIF monies are anticipated to be used to fund the purchase. Presuming that the public parking ramp is expanded on the site, long-term debt may be issued to finance acquisition over a multi-year period.

Attachments:

Resolution No. 2013-02
Purchase Agreement

**RESOLUTION NO. 2013-02
AUTHORIZING PURCHASE AGREEMENT FOR
PROPERTY AT 3930 WEST 49-1/2 STREET**

WHEREAS, the Edina Housing and Redevelopment Authority (HRA) may acquire real property and may operate and maintain public parking facilities in connection with any of its projects pursuant to the authority provided under Minn. Stat. 469.012; and

WHEREAS, the HRA has previously constructed a public parking facility located at 3936-3940 West 49-1/2 Street; and

WHEREAS, studies have confirmed the need for additional parking in the business district as well as the viability of the existing garage to be expanded to provide additional parking; and

WHEREAS, terms of a Purchase Agreement have been reached with the owner of the property located at 3930 West 49-1/2 Street, Edina, Minnesota, 55424 and;

WHEREAS, the HRA declares its official intent to reimburse itself for the costs of the acquisition from the proceeds of bonds pursuant to the Internal Revenue Service regulations, Section 1.150-2.

NOW, THEREFORE, BE IT RESOLVED, the Edina Housing and Redevelopment Authority approves the Purchase Agreement for the property located at 3930 West 49-1/2 Street and authorizes the Chair and Executive Director to execute the documents necessary to purchase the property.

Dated: February 5, 2013.

Attest: _____

Ann Swenson, Secretary

James B. Hovland, Chair

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) SS
CITY OF EDINA)

CERTIFICATE OF EXECUTIVE DIRECTOR

I, the undersigned duly appointed and acting Executive Director for the Edina Housing and Redevelopment Authority do hereby certify that the attached and foregoing Resolution is a true and correct copy of the Resolution duly adopted by the Edina Housing and Redevelopment Authority at its Regular Meeting of February 5, 2013, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this _____ day of _____, _____.

Executive Director

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT (“Agreement”), dated as of the ____ day of February, 2013 (the **“Contract Date”**), by and between **3930 BUILDING, LLC**, a Minnesota limited liability company (**“Seller”**) and the **HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA, MINNESOTA**, a body politic and corporate under the laws of the State of Minnesota (**“Purchaser”**).

1. PROPERTY. In consideration of the mutual promises, covenants, and agreements hereinafter contained, Seller agrees to sell and convey to Purchaser, and Purchaser agrees to buy the real property, legally described on Exhibit “A” attached hereto from Seller, upon the terms and conditions hereinafter set forth, together with all and singular rights and appurtenances pertaining to the real property including, but not limited to all right, title and interest of Seller in and to adjacent streets, rights of way, easements, utility agreements, parking and other shared use agreements and all hereditaments and appurtenances pertaining thereto, if any (hereinafter referred to as the **“Property”**).

2. PURCHASE PRICE AND MANNER OF PAYMENT. The total purchase price (**“Purchase Price”**) for the Property shall be payable by Purchaser to Seller by wire transfer at Closing (as hereinafter defined) in the amount of Two Million Six Hundred Fifty Thousand and No/100 (\$2,650,000.00) Dollars.

3. TITLE TO BE DELIVERED. Seller shall deliver to Purchaser, or cause to be delivered to Purchaser, at Closing, an executed Limited Warranty Deed (**“Deed”**) in recordable form conveying fee simple title to the Property subject to the terms of this Agreement and:

- (a) Reservations of minerals or mineral rights by the State of Minnesota;
- (b) Building, zoning and subdivision laws and regulations consistent with the current use of the Property;
- (c) The lien of real estate taxes and installments of special assessments which are payable by Purchaser pursuant to the terms of this Agreement;
- (d) Applicable laws, regulations, zoning regulations and ordinances, whether federal, state or local;
- (e) Exceptions to title which constitute encumbrances, restrictions, or easements which have been disclosed to Purchaser and accepted by Purchaser in writing; and
- (f) The additional exceptions to title listed on the attached Exhibit “B”.

(hereinafter **“Permitted Encumbrances”**).

4. RELOCATION BENEFITS. Seller is aware of Seller’s rights and payments that Seller may be eligible to receive pursuant to the Uniform Relocation Assistance Act (the **“Act”**). Seller acknowledges that Seller has been given the opportunity to seek and receive the

advice of legal counsel with respect to relocation, moving, reestablishment and other costs, if any, that may be available under the Act.

Seller hereby acknowledges that the payment of the Purchase Price does not include a payment for Relocation Benefits. At Closing and as a condition precedent to Closing, Seller will waive any right to receive any relocation payments pursuant to the Act (or other federal or state law provisions) with respect to the Property. Seller acknowledges that Seller will make such a waiver of Seller's own volition and with full knowledge of the specific relocation benefits to which Seller may be entitled.

Seller and Purchaser agree that this is a voluntary sale by Seller. Purchaser represents that Purchaser would not acquire the Property in the event that negotiations between Seller and Purchaser had failed to result in an amicable agreement. Prior to any action by Purchaser indicating intent to acquire the Property, Seller placed the Property on the market for sale. Thereafter, upon inquiry by the Purchaser, Seller requested that Purchaser acquire the Property through negotiation. Seller clearly showed intent to sell the Property on the open market prior to any discussions, inquiries or negotiations by Purchaser.

If the transaction set forth by this Agreement is not completed, Purchaser has no present intent to acquire the property by eminent domain and has not considered the use of eminent domain. If this Agreement is terminated for any reason, Seller is free to retain ownership of the Property or to sell the Property on the private market.

As Purchaser and Seller agree that this is a voluntary sale, state and federal law permit the Purchaser to request a waiver of relocation benefits from Seller, as provided under Minnesota Statute Section 117.521. Prior to and as a condition of Closing, Seller will be required to sign a relocation waiver, the form of which is substantially the same as shown on Exhibit "C" and the final form will be subject to the approval of Purchaser ("**Relocation Waiver**"). Purchaser will arrange for a relocation consultant to meet with Seller prior to Closing. The relocation consultant will determine the amount of any relocation benefits for which Seller would be eligible if this were a non-voluntary sale. If Seller does not waive relocation benefits, this Agreement will be terminated and Seller will be free to retain ownership of the Property or sell on the private market.

5. LEASE.

- (a) Seller has disclosed and Purchaser acknowledges that the Property is currently occupied pursuant to that certain lease dated November 26, 2002 by and between Seller and Edina Realty, Inc. (the "**Existing Tenant**"), as the same has been amended (collectively, the "**Lease**");
- (b) Seller represents that the Lease will expire on May 31, 2013, extinguishing the Existing Tenant's and its sub-tenants' rights of possession.
- (c) As used herein, the "**Lease Condition**" shall be satisfied upon the occurrence of the following events: (i) vacation of the Property by the Existing Tenants and any subtenants; and (ii) delivery of the Estoppel, as defined below. In no event shall

Purchaser agree to accept title to the Property subject to the Lease or any rights of sub-tenants.

- (d) As used herein, the “**Estoppel**” or “**Estoppel Certificate**” shall mean a written statement signed by the Existing Tenant that in pertinent part confirms that the Lease will expire and the Existing Tenant’s and sub-tenant’s rights thereunder, including, but not limited to, rights of possession, will terminate no later than May 31, 2013.
- (e) In the event that Seller is unable to satisfy the Lease Condition by the date set for the Closing Date, then either party shall have the right to extend the date for satisfying the Lease Condition and the date for Closing for up to thirty (30) days in order for Seller to attempt to satisfy the Lease Condition. In the event Seller is unable to timely satisfy the Lease Condition by the Closing Date, as the same may have been so extended, Purchaser shall have the option to either proceed to close as otherwise provided herein or terminate this Agreement.

6. EVIDENCE OF TITLE.

- (a) Within twenty (20) days following the date of execution of this Purchase Agreement, Purchaser shall obtain a commitment for an ALTA Owner’s Form title insurance policy (the “**Commitment**”) issued by Land Title, Inc. (the “Title Company”), pursuant to which the Title Company agrees to issue to the Purchaser upon the recording of the documents of conveyance referred to herein an Owner’s title insurance policy insuring the Property in an amount equal to the Purchase Price. The Commitment shall include proper searches covering bankruptcies, state and federal judgments and liens and levied and pending special assessments, which Commitment:

- (1) Insures that Purchaser has marketable title of record to the Property, free and clear of all liens, encumbrances, leases, claims and charges, all material easements, rights-of-way, covenants, conditions and restrictions and any other matters affecting title, except for Permitted Encumbrances.

- (2) Waives or agrees to insure over the following standard exceptions:

- (A) Facts which would be disclosed by a comprehensive survey of the Property, if Purchaser obtains, prior to the Closing Date, at Purchaser’s sole expense, a survey satisfactory to the Title Company for purpose of waiving the standard exception for survey matters;
- (B) Rights and claims of parties in possession; and
- (C) Mechanic’s, contractor’s and material liens and lien claims.

- (b) Purchaser shall have fifteen (15) days after receipt of the Commitment to deliver to Seller written objections to title based on marketability of the Property (“Objections”) and Seller shall have sixty (60) days to have such Objections removed or satisfied, during which period the Closing Date shall be postponed, if necessary. If Seller fails or is unable to have such Objections removed within said time, Purchaser may, at its sole election, do any of the following:
- (1) Termination. Terminate this Agreement without any liability on its part in exchange for a quit claim deed for the Property.
 - (2) Escrow for Cure. If the parties agree to an escrow, Seller shall escrow an amount sufficient to assure cure of the Objection(s). Any amount so escrowed will be placed in an escrow with title pending such cure. If such escrow is established, the parties agree to execute and deliver such documents as may be reasonably required by the Title Company, and Seller agrees to pay the charges of the Title Company to create and administer the escrow.
 - (3) Purchaser Cure. To the extent an Objection can be satisfied by the payment of money, Purchaser shall have the right to pay the amount necessary to satisfy such Objection and the amount so applied shall be reimbursed to Purchaser by Seller at the Closing, provided, that the amount due to the third-party claimant is an undisputed liquidated amount for which Seller’s liability is undisputed. Notwithstanding the limitation, waiver, and relinquishment of remedies in Section 18, if Purchaser funds such a cure of monetary objection, and is not reimbursed at Closing by Seller, Purchaser shall have a right of action to recover from Seller an amount equal to the dollar amount of Seller’s undisputed and liquidated liability.
 - (4) Waiver. Waive such objections and take title to the Property subject to such objections.

7. REPRESENTATIONS OF SELLER. On information and belief, without special investigation, Seller hereby represents to Purchaser:

- (a) That Seller has the requisite power and authority to enter into this Purchase Agreement and the closing documents relating thereto to be signed by it; that the execution, delivery and performance by Seller of such documents do not conflict with or result in violation of any judgment, order or decree of any court to which Seller is a party; such documents are valid and binding obligations of Seller.
- (b) There are no existing claims, actions, suits or other proceedings pending, or to the knowledge of Seller, threatened by any governmental department or agency, or any other corporation, partnership or entity or person whomsoever against Seller or the Property, which in any manner or to any extent may detrimentally affect the

Property or Purchaser's right, title or interest in and to any part or all of the Property after Closing.

- (c) Other than Seller and the Existing Tenant there are no other tenants or occupants of the Property.
- (d) On the Date of Closing there will be no (i) outstanding leases or occupancy agreements, or (ii) outstanding contracts made by Seller for any improvements to the Property which have not been fully paid for or for which Seller shall not have made arrangements to pay off, at Closing, or that will affect the Property or be binding upon Purchaser or upon the Property subsequent to Closing without Purchaser's written consent; and Seller shall cause to be discharged all mechanic's or materialmen's liens arising from any labor or materials furnished to the Property that were made at the request of Seller, its agents, or contractors, prior to the Date of Closing and any mortgages or other such similar encumbrances.
- (e) Until the Date of Closing, except as otherwise provided in this Agreement, Seller shall maintain the land associated with the Property in its present condition, reasonable wear and tear and damage by casualty excepted.
- (f) Seller is not a foreign person; as such term is defined in Section 1445(f) (3) of the Internal Revenue Code of 1986, as amended, and shall deliver an affidavit to that effect at closing, which shall be in form and substance reasonably acceptable to Purchaser.
- (g) To Seller's knowledge, except as disclosed in the documentation provided to Purchaser pursuant to Section 8, (i) no toxic materials, hazardous wastes or hazardous substances, as such terms are defined in the Resource Conservation and Recovery Act of 1996, as amended (42 U.S.C. §6901, et seq.) or in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601, et seq.), including, without limitation, any asbestos or asbestos-related products or materials and any oils, petroleum-derived compounds or pesticides ("Hazardous Materials") have been generated, treated, stored, released or disposed of or otherwise placed, deposited in or located on the Property; and (ii) the Property is free of Hazardous Materials and is not subject to any "superfund" type liens or claims by governmental regulatory agencies or third parties arising from the release or threatened release of hazardous substances in, on, or about the Property.
- (h) To Seller's knowledge, the conveyance of the Property pursuant hereto will not violate any currently existing applicable statute, ordinance, governmental restriction or regulation, or any private restriction or agreement to which Seller is a party.

- (i) To Seller's knowledge, there are no underground storage tanks or wells on the Property, it being understood that the representation as to wells shall be recited in the Deed to be delivered by Seller at Closing.
- (j) To the best of Seller's knowledge, Seller represents that methamphetamine production has not occurred on the Property.
- (k) Solely for purposes of satisfying the requirements of Minn. Stat. § 115.55, Seller certifies that, to Seller's knowledge, there is no "individual sewage treatment system" (within the meaning of that statute) on or serving the Property. Seller certifies that sewage generated on the Property goes to a facility permitted by the Minnesota Pollution Control Agency.

Except as herein expressly stated, including, without limitation, the requirements of Section 10(d) below, Purchaser is purchasing the Property based upon its own investigation and inquiry and is not relying on any representation of Seller or other person and is agreeing to accept and purchase the Property "as is, where is" subject to the conditions of examination herein set forth and the express warranties herein contained. The representations set forth in this section shall be continuing and shall be true and correct as of the Date of Closing with the same force and effect as if made at that time and shall survive the Closing for a period of two (2) years.

8. REVIEW OF DOCUMENTS AND ACCESS TO PROPERTY. Within twenty (20) days of the execution of this Agreement, Seller agrees to provide Purchaser with all of the following documentation:

- (a) True and correct copies of all existing environmental assessment reports, soil reports and results of all soil tests and environmental assessments in Seller's possession;
- (b) Surveys, permits, licenses, leases, complete copies of all contracts currently affecting the Property readily available or in the possession of Seller ("**Other Agreements**"), and notices received within the last 90 days from the city, state or other governmental authorities pertaining to uncured violations of any law, ordinance or regulation.

Seller's obligation to provide the foregoing documentation shall continue for any such documentation that Seller receives following execution of this Agreement and prior to Closing.

Seller acknowledges that Purchaser and Purchaser's agents shall have access to the Property without charge and at reasonable times for the purpose of Purchaser's survey, environmental investigation and testing of the Property ("**Environmental Investigation**"); provided, however, Purchaser shall perform its Environmental Investigation in such a manner as to not unreasonably disturb the Existing Tenant. If the Existing Tenant vacates the Property prior to the expiration of the Lease and permits Seller and Purchaser to do so, Seller shall permit Purchaser to return to the Property to perform additional Environmental Investigation, if recommended by Purchaser's Phase I environmental assessment. Purchaser shall pay all costs and expenses of Environmental

Investigation and Purchaser shall hold harmless and indemnify the Property and Seller, its employees, agents and affiliates, from and against any and all claims, suits, losses, liabilities, and expenses (including attorney's fees, expert's fees, and other expenses of litigation) on account of injury to or death of any persons (including Purchaser's or the Existing Tenant's employees, contractors and agents) or damage to property or contamination of or adverse effects on the environment or liens against Seller or the Property, caused by Purchaser's entry onto the Property. Purchaser's obligations under this Section 8 shall survive the termination of this Agreement or the Closing. Purchaser shall repair and restore any damage to the Property caused by or occurring during Purchaser's Environmental Investigation and return the Property to substantially the same condition as existed prior to any Environmental Investigation. Purchaser shall have the right in its sole discretion to contact various public officials and administrators to verify information regarding the status of the Property and to determine that the Property is suitable for Purchaser's intended use.

9. SELLER'S CONTINGENCIES. The obligations of Seller under this Agreement are expressly contingent upon the following:

- (a) Vacation of the Property by the Existing Tenants and any subtenants on or before the Closing Date.

The contingencies set forth in this section are for the sole and exclusive benefit of Seller, and Seller shall have the right to waive the contingencies by giving notice to Purchaser.

10. PURCHASER'S CONTINGENCIES. The obligations of Purchaser under this Agreement are expressly contingent upon the following:

- (a) The representations of Seller contained in this Agreement must be true now and as of the Closing Date, as if made on the Closing Date and Seller shall have delivered to Purchaser on the Closing Date, a certificate, signed by Seller, certifying that such representations are true as of the Closing Date (the "**Bring-down Certificate**"), except to the extent that the representations are no longer true and acceptable to Purchaser.
- (b) Title to the Property and easements to be acquired under this Agreement shall be held by Seller on the Closing Date, and shall be free and clear of all encumbrances except the Permitted Encumbrances.
- (c) On or before April 3, 2013, Purchaser shall be satisfied, in its reasonable discretion, with the results of any Environmental Investigation and remediation of Hazardous Materials conducted by Purchaser or Seller on the Property.
- (d) Within the time period provided under Section 8, Seller shall have caused Braun Intertec to perform a pre-demolition survey of Hazardous Materials in the existing building on the Property and provided the survey to Purchaser;

- (e) Seller having caused the removal and proper disposal of any Hazardous Materials identified by Braun Intertec in the pre-demolition survey required under subsection (d) of this Section that is capable of being removed without demolition of such building, at Seller's sole cost and expense, on or before the Closing Date, in accordance with applicable laws.
- (f) Existing Tenant providing the Estoppel Certificate pursuant to Section 5 confirming that the Lease will expire prior to the Closing Date.
- (g) Seller, as owner of the Property, agrees to sign a voluntary waiver of all relocation assistance, services, payments and benefits as set forth in Minnesota Statute Section 117.521, as required under Section 4.
- (h) Seller shall perform all of the obligations required to be performed under this Agreement, as and when required by this Agreement, except as waived by Purchaser.
- (i) On or before April 3, 2013, Purchaser having determined that it is satisfied with its review and analysis of all documents required to be provided by Seller under Section 8.
- (j) On or before February 15, 2013, Purchaser shall have received a so-called "Restricted Report" appraisal of the current value of Property at or above the Purchase Price by Shenhon Company pursuant to the letter proposal from Shenhon Company to Bill Neuendorf of the City of Edina, dated December 27, 2012, a copy of which is attached Exhibit "D." The standard of value used by the appraiser shall mean the price a willing buyer and a willing seller would agree upon as a fair price for the Property in its present location and physical condition, neither being under any compulsion to buy or sell. Seller and Purchaser shall allocate the cost of the appraisal pursuant to Sections 14(a)(8) and 14(b)(6) below. Notwithstanding the foregoing, if Shenhon Company provides a range of values instead of a single value, this contingency shall be deemed satisfied if the Purchase Price is within the range.

If the contingencies set forth in subsections (c), (i) and (j) above have not been satisfied or waived by Purchaser on or before the respective dates set forth therein or any of the other contingencies set forth above have not been satisfied or waived by Purchaser by the Closing Date, as otherwise extended, Purchaser may terminate this Agreement by written notice to Seller within 3 business days after the expiration of the time period for Purchaser to satisfy or waive any such contingency, in which event this Agreement shall terminate and neither party shall have any further obligations hereunder, except for Purchaser's indemnity obligations pursuant to Section 8. The contingencies set forth in this section are for the sole and exclusive benefit of Purchaser, and Purchaser shall have the right to waive the contingencies by giving notice to Seller, provided Purchaser abides by the time requirements set forth above.

11. CLOSING. The closing hereof shall take place on June 3, 2013, except as otherwise extended or terminated as provided under this Agreement (the “**Closing**” or “**Date of Closing**”). The Closing shall take place at the offices of the Title Company. If Closing does not occur on or before June 30, 2013, this Agreement shall be null and void, Purchaser shall execute a quit claim deed for the Property in favor of Seller, and neither party shall have any further obligations hereunder, except for Purchaser’s indemnity obligations pursuant to Section 8. At Closing, Seller and Purchaser shall disclose their Social Security Numbers or Federal Tax Identification Numbers for the purpose of completing state and federal tax forms.

12. SELLER’S OBLIGATIONS AT CLOSING. On or prior to the Date of Closing, Seller shall:

- (a) Execute, acknowledge and deliver to Purchaser the Deed to the Property conveying to Purchaser marketable fee simple title to the Property subject only to the Permitted Encumbrances.
- (b) Execute and/or deliver to Purchaser such other documents as may be required by this Agreement or as may be reasonably required by Title Company, including well disclosures and sewage treatment system disclosures.
- (c) Deliver to Purchaser a standard form affidavit by the Seller indicating that on the Date of Closing there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving Seller or the Property; that there has been no skill, labor or material furnished to the Property for which payment has not been made or for which mechanic’s liens could be filed; and that there are no other unrecorded interests in the Property.
- (d) Deliver to Purchaser a “bring-down” certificate, certifying that all of the representations made by Seller in this Agreement remain true as of the Date of Closing, subject to exceptions or events occurring subsequent to this Purchase Agreement that are acceptable to Purchaser.
- (e) Deliver to Purchaser the Estoppel Certificate.
- (f) Execute and deliver to Purchaser a waiver of relocation benefits as required under Section 4.
- (g) Deliver to Purchaser a written indemnity that shall indemnify, defend and hold Purchaser free and harmless of and against any and all claims, obligations, and liability (and attorney fees and court costs in connection therewith) associated with any claim asserted by the Existing Tenant for relocation benefits pursuant to the Federal or Minnesota Uniform Relocation Act.

13. PURCHASER’S OBLIGATIONS AT CLOSING. At Closing and subject to the terms, conditions, and provisions hereof and the performance by Seller of its obligations as set forth above, Purchaser shall:

- (a) Deliver to Seller by wire transfer the balance of the Purchase Price, less any adjustments.
- (b) Execute and/or deliver to Seller such other documents as may be required by this Agreement or as may be reasonably required by Title Company.

14. CLOSING COSTS. The following costs and expenses shall be paid as follows in connection with the Closing:

- (a) Seller shall pay:
 - (1) Seller's attorneys' fees;
 - (2) The cost of preparing the Commitment;
 - (3) The cost of recording the satisfaction of any existing mortgage and any other reasonable document(s) necessary to make title marketable;
 - (4) The cost of preparation of the Deed and other documents of conveyance prepared by Seller and the cost for state deed tax;
 - (5) The cost of engineers or other consultants, if any, engaged by Seller for the pre-demolition survey and removal of Hazardous Materials from the building on the Property, to the extent required by Section 10(d);
 - (6) Operating expenses relating to the Property incurred for the period prior to the Closing Date; and
 - (7) One-half of the closing fee charged by Title Company for the Closing between Seller and Purchaser.
 - (8) One-half the cost of the Shenhon Company opinion of value referred to in Section 10(i) above, up to a maximum amount of \$3,000.00.
- (b) Purchaser shall pay the following costs in connection with the Closing:
 - (1) The cost of the premium and endorsements issued pursuant to the Commitment.
 - (2) Filing fee required to record the Deed and costs and filing fees for documents to be recorded that are not required to be paid by Seller.
 - (3) Purchaser's attorneys' fees.

- (4) One-half of the closing fee charged by Title Company for the Closing between Seller and Purchaser.
- (5) The cost of engineers or other consultants, if any, engaged by Purchaser regarding the Property.
- (6) The balance of the cost of the Shenehon Company opinion of value referred to in Section 10(i) above.

15. UTILITIES, TAXES AND SPECIAL ASSESSMENTS.

- (a) Seller shall pay all utilities, general real estate taxes and installments of special assessments due and payable in the year prior to the Date of Closing and in years prior thereto. Utilities, real estate taxes and installments of special assessments due and payable in and for the year of closing shall be prorated between Seller and Purchaser on a calendar year basis to the actual Date of Closing;
- (b) Purchaser shall pay utilities, real estate taxes and installments of special assessments due and payable after the actual Date of Closing.

16. CONTROL OF PROPERTY. Prior to the Date of Closing, Seller shall have the full responsibility and the entire liability for any and all damages or injuries of any kind whatsoever to the Property, to any and all persons, whether employees or otherwise, except liability arising from the activities of Purchaser, its agents, contractors or employees. Any removable fixtures, equipment or personal property left at the Property after the Date of Closing, shall be considered abandoned by Seller and Purchaser shall be free to dispose of these items in any manner it chooses at its sole discretion. Except as otherwise provided under the terms of this Agreement, Seller shall indemnify, defend and hold Purchaser free and harmless from and against any and all claims, obligations and liability (and attorneys' fees and court costs in connection therewith) arising out of the Property or any portion thereof from any event, occurrence, act, or failure to act prior to Closing and Purchaser shall indemnify, defend and hold Seller free and harmless from and against any and all claims, obligations and liability (and attorneys' fees and court costs in connection therewith) arising out of the Property or any portion thereof from any event, occurrence, act, or failure to act after Closing.

17. POSSESSION. Seller shall deliver possession of the Property to Purchaser on the Date of Closing.

18. DEFAULT; REMEDIES. If Seller has performed or is ready, willing and able to perform all obligations required by this Agreement and Purchaser shall fail or refuse to perform this Agreement within the time and in the manner provided, then Seller's sole remedy shall be termination of this Agreement, in which case the parties shall have no further rights and obligations hereunder other than those rights and/or obligations which are expressly stated to survive expiration or termination of this Agreement.

If Purchaser has performed or is ready, willing and able to perform all obligations required by this Agreement and Seller shall fail or refuse to perform this Agreement within the

time and in the manner provided, then Purchaser, at its option may terminate this Agreement by giving written notice thereof to Seller, in which case the parties shall have no further rights and obligations hereunder other than those rights and/or obligations which are expressly stated to survive expiration or termination of this Agreement.

19. MISCELLANEOUS. The following general provisions govern this Agreement:

- (a) Time is of the Essence. The Date of Closing, as the same may be extended pursuant to the terms of this Agreement, is of the absolute essence.
- (b) Governing Law. This Agreement is made and executed under and in all respects is to be governed and construed under the laws of the State of Minnesota.
- (c) Notices. Any notice required to be given to Seller or Purchaser pursuant to this Agreement is given in accordance with this Agreement if it is in writing and if it is directed to Seller by delivering it personally to an officer of Seller, or if it is directed to Purchaser, by delivering it personally to the Executive Director of Purchaser, or if mailed in a sealed wrapper by United States registered or certified mail, return receipt requested, postage prepaid, or if deposited cost paid with a nationally recognized reputable overnight courier, property addressed as follows:

Seller: 3930 Building, LLC
81 S. 9th Street, Suite 310
Minneapolis, MN 55402
Attention: James W. Nelson

With a copy to: Dorsey & Whitney LLP
50 S. 6th Street, Suite 1500
Minneapolis, MN 55402
Attention: Mark E. Hamel

Purchaser: Edina HRA
Attn: Executive Director
4801 West 50th Street
Edina, MN 55424

With a copy to: Andrea McDowell Poehler
Campbell Knutson, P.A.
317 Eagandale Office Center
1380 Corporate Center Curve
Eagan, MN 55121

Notices shall be deemed effective on the earlier of the date of receipt or the date of deposit as aforesaid, provided, however, that if notice is given by deposit, the time for response to any notice by the other party shall commence to run one business day after any such deposit. Any party may change its address for the

service of notice by giving written notice of such change to the other party, in any manner above specified, 10 days prior to the effective date of such change.

- (d) Purchaser's Waiver Rights. Purchaser may, at its option, waive any right conferred upon the Purchaser by this Agreement. Except as otherwise provided herein, such waiver may be made only by giving Seller written notice specifically describing the right waived.
- (e) Survival. Except as otherwise stated herein, all of the terms of this Agreement will survive and be enforceable for a period of two (2) years after the Closing.
- (f) Amendment. This Agreement shall be amended only by a written instrument signed by Seller and Purchaser.
- (g) Brokerage. Each party hereby agrees to indemnify and hold the other harmless of any claim made by a broker or sales agent or similar party for a commission due or alleged to be due on this transaction on the basis of an agreement with said broker made by the indemnifying party. The parties' obligations set forth in this section shall survive termination or consummation of this Agreement.
- (h) Assignment. Neither Seller nor Purchaser shall assign this Agreement or its rights hereunder without the express written consent of the other, which may be withheld by the other in its sole discretion.
- (i) Benefit. This Agreement shall be binding upon and inure to the benefit of Seller and Purchaser and their respective successors and assigns
- (j) Construction. The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as defining or as limiting in any way the scope or intent of the provisions hereof. Wherever the context requires or permits, the singular shall include the plural, the plural shall include singular, and the masculine, feminine and neuter shall be freely interchangeable.
- (k) Counterparts. For the convenience of the parties, any number of counterparts hereof may be executed and each such executed counterpart shall be deemed an original, but all such counterparts together shall constitute one in the same Agreement.
- (l) IRC 1033. Purchaser agrees to cooperate with Seller in Seller's quest for tax deferral pursuant to Section 1033 of the Internal Revenue Code, as amended. Seller acknowledges that any exchange shall be at no cost to Purchaser and shall not release or diminish Seller's obligations and liability under this Agreement.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above, in multiple counterparts, each of which shall be deemed an original and all of which shall evidence but one agreement.

SELLER:

3930 BUILDING, LLC

By: _____

James W. Nelson

Its Sole Member

PURCHASER:

**HOUSING AND REDEVELOPMENT AUTHORITY
OF EDINA, MINNESOTA**

By: _____
James B. Hovland, Its Chair

And: _____
Scott Neal, Its Executive Director

EXHIBIT A

Legal Description of Property

That part of the North 1/2 of Lot 34, Auditor's Subdivision Number 172, lying Southerly of the Westerly extension of the North line of the South 177.5 feet of Lot 32.

EXCEPT: The West 14.75 feet thereof.

ALSO: The South 177.5 feet of Lot 32, Auditor's Subdivision Number 172.

Together with an easement for driveway purposes, filed of record as Document No. 2542948.

EXHIBIT B

Additional Permitted Encumbrances

None

EXHIBIT C

Agreement Regarding Release, Payment and Assignment of Relocation Benefits

THIS AGREEMENT REGARDING WAIVER AND ASSIGNMENT OF RELOCATION BENEFITS (this “Agreement”) is made as of _____, 2013, by and between **3930 BUILDING, LLC**, a Minnesota limited liability company (“**Seller**”) and the **HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA, MINNESOTA**, a body politic and corporate under the laws of the State of Minnesota (“**Purchaser**”).

RECITALS:

Seller and Purchaser entered into a purchase agreement (the “Purchase Agreement”) dated as of February ____, 2013, related to property located at _____, Edina, Minnesota.

Seller has been advised of its rights and payments that Seller may be eligible to receive pursuant to the Uniform Relocation Assistance Act (the “Act”), including payments for Minimum Compensation under Minn. Stat. 117.87.

Seller acknowledges it has sought and received the advice of legal counsel and has been specifically advised as to relocation, moving, reestablishment, and other costs that may be available to the Seller under the Act.

Seller and Purchaser desire to enter into this Agreement to confirm their understanding of the Seller’s release, sale and assignment of any claim for any relocation benefits and/or other relocation costs due or payable to Seller, whether pursuant to the Act or otherwise.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Effective as of the date hereof, Seller hereby acknowledges that the payment of the Purchase Price includes payment for Relocation Benefits and Minimum Compensation Benefits and hereby releases Purchaser from any liability for payment of additional relocation payments pursuant to the Act (or other federal or state law provisions) with respect to the Property.
2. Effective as of the date hereof, Seller hereby sells, transfers and assigns to Purchaser any benefits, payments, claims, or other rights due or payable to Seller pursuant to the Act (or other federal or state law provisions) with respect to the Property.
3. Seller acknowledges that it has freely waived such rights of its own volition.
4. Seller acknowledges that it has waived such rights with full knowledge of the specific relocation benefits to which it would otherwise be entitled.

5. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

6. This Agreement shall be null and void if the Purchase Agreement shall terminate or if Closing under the Purchase Agreement shall fail to occur for any reason.

IN WITNESS WHEREOF, this Waiver of Relocation Benefits Agreement has been executed by the parties hereto as of the day and year first above written.

SELLER:

3930 BUILDING, LLC

By: _____

James W. Nelson
Its Sole Member

PURCHASER:

**HOUSING AND REDEVELOPMENT AUTHORITY
OF EDINA, MINNESOTA**

By: _____

James B. Hovland, Its Chair

And: _____

Scott Neal, Its Executive Director

EXHIBIT D

(See Attached)



SHENEHON COMPANY

BUSINESS & REAL ESTATE VALUATIONS

December 27, 2012

Mr. Bill Neuendorf
City of Edina
4801 West 50th Street
Minneapolis, MN 55424

RE: Proposal for a Market Value Appraisal of the Edina Realty Property at
Located at 3930 49 ½ Street, Edina, Minnesota

Dear Mr. Neuendorf:

We are pleased to submit a proposal to appraise the Edina Realty Building located at 3930 West 49 ½ Street for the intended use in a potential purchase. The valuation date of the appraisal will be current. Please keep in mind that an appraisal of the same property with a different valuation date constitutes a new assignment. We understand that you are our client in this matter and responsible for ensuring our fees are paid in a timely manner.

SCOPE OF THE ASSIGNMENT

We will identify the problem to be solved and determine the appropriate scope of work to produce credible assignment results. Scope of work is the type and extent of research and analysis in the assignment. Determining the scope of work is an ongoing process in an assignment. After discussion with you and applying our experience at 50th & France, it has become clear that the scope of this assignment should include a thorough highest and best use considering all reasonable market alternatives. Information or conditions discovered during the course of an assignment might cause the appraiser to reconsider the scope of work. The appraisal will comply with the requirements and guidelines of the Uniform Standards of Professional Appraisal Practice (USPAP).

RESTRICTED REPORT

Shenehon Company will prepare a restricted appraisal report using all relevant approaches to value to estimate the market value of the subject property. A restricted report is one of the three narrative report options; the difference among the reports is the level of detail of presentation. Our report will summarize all information significant to the solution of the appraisal problem, with supporting data retained in our workfile. You may review the workfile at any time.

88 SOUTH TENTH STREET | SUITE 400 | MINNEAPOLIS | MINNESOTA | 55403 | 612/333-6533 | FAX: 612/344-1635

WWW.SHENEHON.COM | E-MAIL: VALUE@SHENEHON.COM

MEMBER OF THE AMERICAN BUSINESS APPRAISERS NETWORK

APPRAISAL FEE STRUCTURE

Our fees for this engagement are not contingent upon any predetermined appraised value or the results of our services. Rather, our fees will be based on our hourly rates. Our estimated fees for these services are below. Note these are estimated fees, and our actual fees may differ. In the event we encounter unusual circumstances that would require us to expand the scope of the engagement or if we anticipate our fees will significantly exceed the estimated amount, we will advise you accordingly. We will provide two copies of the appraisal report; however, extra copies are available at our cost. In addition, you agree to reimburse us for any of our out-of-pocket costs incurred in connection with the performance of our services, including, but not limited to, travel expenses, color copies, and long-distance telephone calls.

Restricted Report

Not to Exceed \$6,000

The fee is due and payable upon completion of the assignment. We reserve the right to require payment before the appraisal is released. Invoices unpaid 30 days past the billing date may be deemed delinquent and any balance owed may be subject to interest charges at the annual rate allowed by law. A retainer is not necessary.

We anticipate that our appraisal will be completed shortly after the beginning of 2013 assuming written authorization and requested information and documents have been received.

DESCRIPTION OF FIRM

Shenhon Company is a real estate and business valuation firm serving both the public and private sectors throughout the United States, although our geographic concentration is the Upper Midwest. We have worked in over 40 states and are qualified to work in any state. If a property is in a state where we are not permanently licensed, we can secure a temporary license to appraise in that state. Shenhon Company is dedicated to providing its clients with quality valuations prepared by knowledgeable appraisers and analysts. Staff members incorporate extensive and ongoing education with practical experience performing a wide variety of real estate and business valuations.

TECHNICAL QUALIFICATIONS

Many of our appraisers hold professional designations that are highly regarded in the appraisal industry. Our appraisers are also active members of various boards and trade associations. Our senior appraisers serve as review appraisers, arbitrators, mediators, commissioners, special magistrates, and lecturers. Over the years, our appraisers have published articles in local and national trade journals.

Mr. Bill Neuendorf
Page 3
December 27, 2012

SPECIAL QUALIFICATIONS

We have previously valued numerous properties at 50th and France, giving us the knowledge and experience to meet the competency provision outlined in USPAP. Shenehon appraisers have testified for many purposes, such as condemnation actions, property tax appeals, special assessment appeals, marriage dissolution proceedings, and the like. We have represented clients in state and federal courts, as well as arbitration panels and public service commissions. Appraisal reports prepared for litigation comprise a significant portion of our practice. Our methods are recognized and respected, and our analyses are relied upon by the courts.

We have enclosed a copy of our company brochure and most recent newsletter, along with resumes of our principals. For more information on Shenehon Company, please visit our website at www.shenehon.com.

If this proposal and attached appraisal contract conditions are acceptable, please indicate your approval below and return it to the undersigned. Thank you for considering Shenehon for your appraisal needs. We look forward to working with you.

Sincerely,

SHENEHON COMPANY



Robert J. Strachota, MAI, CRE[®], MCBA, FIBA
President, Shareholder
Minnesota License No. 4000882
Certified General Appraiser

rjs/kaj

Enclosure

CITY OF EDINA

AUTHORIZATION TO PROCEED

Signature: 

Name: BILL NEUENDORF

Date: 3 JANUARY 2013

APPRAISAL CONTRACT CONDITIONS

1. Shenehon Company warrants that the services will be performed in a professional manner, in accordance with established appraisal industry standards. The firm makes no further warranty of any kind, expressed or implied.
2. Disclosure of the contents of this appraisal report is governed by the bylaws and regulations of the professional appraisal organizations with which various appraisers in the firm are affiliated. These include the Appraisal Institute, the Institute of Business Appraisers, the American Society of Appraisers, and The Counselors of Real Estate®.
3. Shenehon Company will preserve the confidential nature of information received from the client, in accordance with established appraisal industry standards. The client agrees to preserve the confidential format and content of the appraisal report. The report and the appraiser's identity may not be used in whole or part, outside the client's organization, without prior written approval, except for review by auditors and legal counsel, and by the representatives of taxing authorities.
4. The persons authorizing the engagement on behalf of the client and Shenehon Company are empowered to do so.
5. The client agrees that Shenehon Company does not, by entering into this contract or by performing the services rendered, assume, abridge, abrogate, or undertake to discharge any duty of the client to any other entity.
6. Any use of the appraisal report, by the client, is conditioned upon payment of all fees in accordance with the agreed terms.
7. The fee charged for the appraisal is not contingent upon values concluded by Shenehon Company or any future event such as the securing of financing.
8. The proposed delivery schedule indicated in the engagement letter (unless otherwise stated) assumes that:
 - a. Written authorization and/or the retainer are received by a specified date or in a timely manner.
 - b. All information requested by Shenehon Company is readily available or provided by the client in a timely manner.
 - c. The appraisers employed by Shenehon Company will have ready access to the property to be appraised.
9. All fees set forth in the engagement letter are due and payable upon completion of the specified assignment regardless of whether the valuation conclusions reached coincide with the client's expectations.

10. No opinion is intended to be expressed for matters that require legal or other specialized expertise, investigation, or knowledge beyond that customarily employed by appraisers in the evaluation of real estate or businesses.
11. Unless specific conditions are brought to the appraiser's attention, the appraiser will assume that there are no hidden or unexpected conditions of the asset to be appraised that would adversely affect or enhance the value.
12. Hazardous substances, if present within a property or business operation, may result in an actual or potential liability that will adversely affect the marketability and value of the asset. Such liability may be in the form of immediate recognition of existing hazardous conditions or future liability that could stem from the release of currently known hazardous contaminants.

In the development of the opinion of value, no consideration will be given to such liability, or its impact on value, unless Shenehon Company is specifically retained to perform or prepare an environmental or toxic contamination analysis. Nonetheless, in the event that such a report is prepared, the client releases the appraiser from any and all future environmental liability.

13. If Shenehon Company is compelled to produce documents or testify regarding work performed, the client will reimburse the appraiser for all costs and expenses incurred.
14. In consideration for performing the services rendered at the fee charged, Shenehon Company expressly limits its liability to five (5) times the fee amount paid or \$100,000, whichever is less.
15. Shenehon Company expressly disclaims liability as an insurer or guarantor. Any persons seeking greater protection from loss or damage than is provided for herein should obtain appropriate insurance.
16. The client will indemnify and hold Shenehon Company and its employees harmless against all claims by any third party or any judgment for loss or damage relating to the performance or nonperformance of any services by the appraisal firm.
17. In the event of a dispute involving interpretation or application of this agreement, the parties agree that this agreement will be governed under the laws of the state of Minnesota.
18. Shenehon Company reserves the right to assess interest charges on all unpaid accounts.
19. Shenehon Company reserves the right to refuse an assignment if a party other than the addressee of the letter signs the engagement letter.
20. Shenehon Company reserves the right to assess for any collection time incurred.
21. Liability for appraisal fees is the responsibility of the party signing the appraisal contract or the organization on whose behalf the individual is signing.

22. Shenhon Company and/or the appraisers are not qualified to render expert opinions regarding structural issues, water damage, environmental assessments (such as mold), engineering/mechanical issues, ADA and/or building code compliance, land planning, architectural expertise, soil conditions, audit/accounting opinions, legal opinions, credit opinions, or federal/state tax matters. If requested, Shenhon Company will recommend qualified experts in these fields to assist the client and/or advance the appraisal process.