REPORT/RECOMMENDATION

To:	**MAYOR AND COUNCIL**	**Agenda Item**	**Item No. III (HRA Agenda)**
From:	**Cary Teague** **Planning Director**	☒	**Action**
		☐	**Discussion**
Date:	**January 17, 2012**	☐	**Information**
Subject:	**Expanded Walkway Easement Agreement between Jerry's Enterprises, Inc. and the City of Edina.**		

ACTION REQUESTED:
Approve the proposed Amendment to the Easement and Parking Ramp Agreement between Jerry's Enterprises and the City of Edina to expand the southern pedestrian bridge between the parking ramp and Jerry's Hardware and Grocery.

INFORMATION/BACKGROUND:
Jerry's Enterprises is requesting consideration by the City of Edina's Housing and Redevelopment Authority (HRA) to expand the existing pedestrian bridge that currently connects the City parking ramp to Jerry's Grocery Store. The existing bridge is four feet wide, and used as an exit from the grocery store. (See attached pictures.) The bridge is located on property owned by the City of Edina. Therefore, as the property owner, the decision to expand the bridge and amend the Easement rests with the HRA.

With the change of use of Jerry's Pharmacy to Jerry's Hardware, Jerry's is requesting that the pedestrian bridge be expanded from four to ten feet wide to provide a direct access to the hardware store in addition to the grocery store. The new entrance would be used to provide a customer access to the rental and repair area of the hardware store. In doing so, the bridge would be widened for customers bringing in or taking out larger equipment, such as lawn mowers and snow blowers. This access would allow an alternative to bringing in and taking out this type of equipment through the front of the store. One parking stall would have to be removed from the parking ramp.

Jerry's Enterprises would pay for and construct the proposed new pedestrian ramp. The plans for the new pedestrian ramp are attached to the agreement and labeled as Exhibit

D. The city attorney has reviewed the attached agreement, and found it to be acceptable, if the City Council is agreeable to allowing the expansion of this pedestrian bridge.

ATTACHMENTS:

- Pictures of the existing pedestrian ramps that connect from the parking ramp to Jerry's
- Proposed Amendment to the Easement and Parking Ramp Agreement

SUBJECT
RAMP/BRIDGE

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RAMP/BRIDGE

THIRD AMENDMENT TO
EASEMENT AND PARKING RAMP AGREEMENT

THIS THIRD AMENDMENT TO EASEMENT AND PARKING RAMP AGREEMENT (this "Third Amendment") is made as of January ___, 2012, by and among the **CITY OF EDINA,** a Minnesota municipal corporation ("City"), the **HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA, MINNESOTA,** a body politic and corporate under the laws of the State of Minnesota ("HRA"), and **JERRY'S ENTERPRISES, INC.**, a Minnesota corporation ("Jerry's").

RECITALS

WHEREAS, the City, the HRA and Jerry's entered into that certain Easement and Parking Ramp Agreement dated as of February 1, 1987, recorded in the office of the Hennepin County Recorder on March 19, 1987, as Document Number 5242349 and in the office of the Hennepin County Registrar of Titles on January 29, 1988, as Document Number 1905238 ("Original Easement"), as amended by (a) that certain First Amendment to Easement and Parking Ramp Agreement dated as of May 28, 1987, recorded in the office of the Hennepin County Recorder on April 26, 1988, as Document Number 5400795 and in the office of the Hennepin County Registrar of Titles on April 22, 1988, as Document Number 1922982 ("First Amendment") and (b) that certain Second Amendment to Easement and Parking Ramp Agreement dated as of July 7, 2011, recorded in the office of the Hennepin County Recorder on July 11, 2011, as Document Number A9671595 and in the office of the Hennepin County Registrar of Titles on July 11, 2011, as Document Number T4869991 ("Second Amendment").

WHEREAS, the City is the owner of certain real property legally described on Exhibit A attached to this Third Amendment ("City Property").

WHEREAS, a parking ramp is constructed on the City Property ("Parking Ramp").

WHEREAS, Jerry's is the owner of certain real property legally described on Exhibit B attached to this Third Amendment ("Jerry's Property").

WHEREAS, a multi-story office and commercial building is constructed on the Jerry's Property ("Building").

WHEREAS, the Original Easement, the First Amendment and the Second Amendment are collectively referred to as the "Easement" in this Third Amendment. Terms not otherwise defined in this Third Amendment shall have the meanings ascribed in the Easement.

WHEREAS, Section 2(B) of the Original Easement provided Jerry's with the right to construct pedestrian bridges connecting the Building to the Parking Ramp ("Pedestrian Bridges").

WHEREAS, Exhibit C attached to the Original Easement depicts the location of the Pedestrian Bridge Easement in the location in which a Pedestrian Bridge was originally constructed.

WHEREAS, Exhibit C attached to the Original Easement fails to depict an additional initial Pedestrian Bridge which was constructed in conjunction with the construction of the Parking Ramp and has been used since that time, which additional initial Pedestrian Bridge is located southerly of the Pedestrian Bridge Easement shown on Exhibit C attached to the Original Easement and which southerly Pedestrian Bridge is depicted by crosshatching on Exhibit C attached to this Third Amendment.

WHEREAS, Jerry's now desires to widen that southerly Pedestrian Bridge, to encompass the entire area depicted on Exhibit C attached to this Third Amendment as the southerly Pedestrian Bridge Easement.

WHEREAS, the parties desire to correct the Easement to accurately indicate the existence of the southerly Pedestrian Bridge Easement and to provide for the widened area of that southerly Pedestrian Bridge Easement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Southerly Pedestrian Bridge.** The Easement is hereby corrected to accurately provide for an expanded southerly Pedestrian Bridge Easement with a maximum width of 10 feet in the location depicted on Exhibit C (page 1) attached to this Third Amendment and as depicted on the Exhibit attached hereto as Exhibit C (page 2).

2. **Exhibit C.** Exhibit C attached to the Original Easement is hereby stricken in its entirety and replaced with Exhibit C attached to this Third Amendment.

3. **Confirmation**. Except as specifically set forth in this Third Amendment, the Easement is hereby confirmed and ratified.

IN AGREEMENT, the parties have executed this Third Amendment to Easement and Parking Ramp Agreement as of the date and year first above written.

CITY OF EDINA

By_____
Its Mayor

And by_____
Its City Manager

HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA, MINNESOTA

By_____
Its Chairman

And by _____
Its Secretary

JERRY'S ENTERPRISES, INC.

By_____
Its President

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing Third Amendment to Easement and Parking Ramp Agreement was acknowledged before me this ____ day of January, 2012, by James Hovland, the Mayor, and by Scott Neal, the City Manager, of the City of Edina, a Minnesota municipal corporation, on behalf of the municipal corporation.

_____
Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing Third Amendment to Easement and Parking Ramp Agreement was acknowledged before me this ____ day of January, 2012, by James Hovland, the Chairman, and by Ann Swenson, the Secretary, of the Housing and Redevelopment Authority of Edina, Minnesota, a Minnesota body politic and corporation, on behalf of the Authority.

_____
Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing Third Amendment to Easement and Parking Ramp Agreement was acknowledged before me this ____ day of January, 2012, by Robert N. Shadduck, the President of Jerry's Enterprises, Inc., a Minnesota corporation, on behalf of the corporation.

_____
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
LINDQUIST & VENNUM P.L.L.P. (DKP)
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55403
(612) 371-3528

CONSENT BY MORTGAGEE

Allstate Life Insurance Company, an Illinois insurance corporation, as the Mortgagee of a portion of the Jerry's Property, as described in the foregoing Third Amendment to Easement and Parking Ramp Agreement, pursuant to that certain Mortgage dated May 16, 1995 and recorded May 17, 1995 in the office of the Hennepin County Recorder, as Document No. 6428384 and in the office of the Hennepin County Registrar of Titles, as Document No. 2608876 hereby consents to the terms and conditions of the foregoing Third Amendment to Easement and Parking Ramp Agreement.

ALLSTATE LIFE INSURANCE COMPANY

By_____
Its_____

And_____
Its_____

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

The foregoing Consent by Mortgagee was acknowledged before me this ____ day of January, 2012, by _____ and _____, each an Authorized Signatory of Allstate Life Insurance Company, an Illinois insurance corporation, on behalf of the insurance corporation.

_____
Notary Public

EXHIBIT A

Legal Description of City Property

Tracts A and C, Registered Land Survey No. 1393, Files of the Registrar of Titles, Hennepin County, Minnesota.

Lots 7, 8, 9 and 10, Block 3, Grand View Heights, according to the recorded plat thereof, Hennepin County, Minnesota.

EXHIBIT B

Legal Description of Jerry's Property

Lots 19, 20, 21 and 22, Block 3, Grand View Heights, according to the plat thereof on file or of record with the County Recorder, Hennepin County, Minnesota.

Lots 11, 12, 13, 14, 15, 16, 17 and 18, Block 3, and Lots 17, 18, 19 and 20, Block 4, Grand View Heights, according to the plat thereof on file or of record with the County Recorder, Hennepin County, Minnesota, except that portion thereof taken for highway purposes.

That part of Lots 13 to 15 inclusive, Block 4, Grand View Heights, and that part of the adjacent portion of West Half of vacated Summit Avenue adjoining Lots 13 to 15 inclusive, lying between the Easterly extensions across said Avenue of the North line of said Lot 13 and the South line of said Lot 15, all of which lies Easterly of a line parallel with and 90 feet Easterly of the center line of State Highway No. 5, according to the plat thereof on file or of record in the office of the Register of Deeds in and for said County.

That part of Lot 16 lying East of a line drawn from a point on the South line thereof distant 28 feet East of the Southwest corner of said Lot 16 to a point on the North line of said lot distant 47 feet East of the Northwest corner thereof, Block 4, "Grand View Heights" and that part of the West Half of the adjoining vacated Summit Avenue lying between the extensions across it of the North and South lines of said Lot 16, according to the plat thereof on file or of record in the office of the Register of Deeds in and for said County.

EXHIBIT C – page 1

Depiction of Pedestrian Bridges

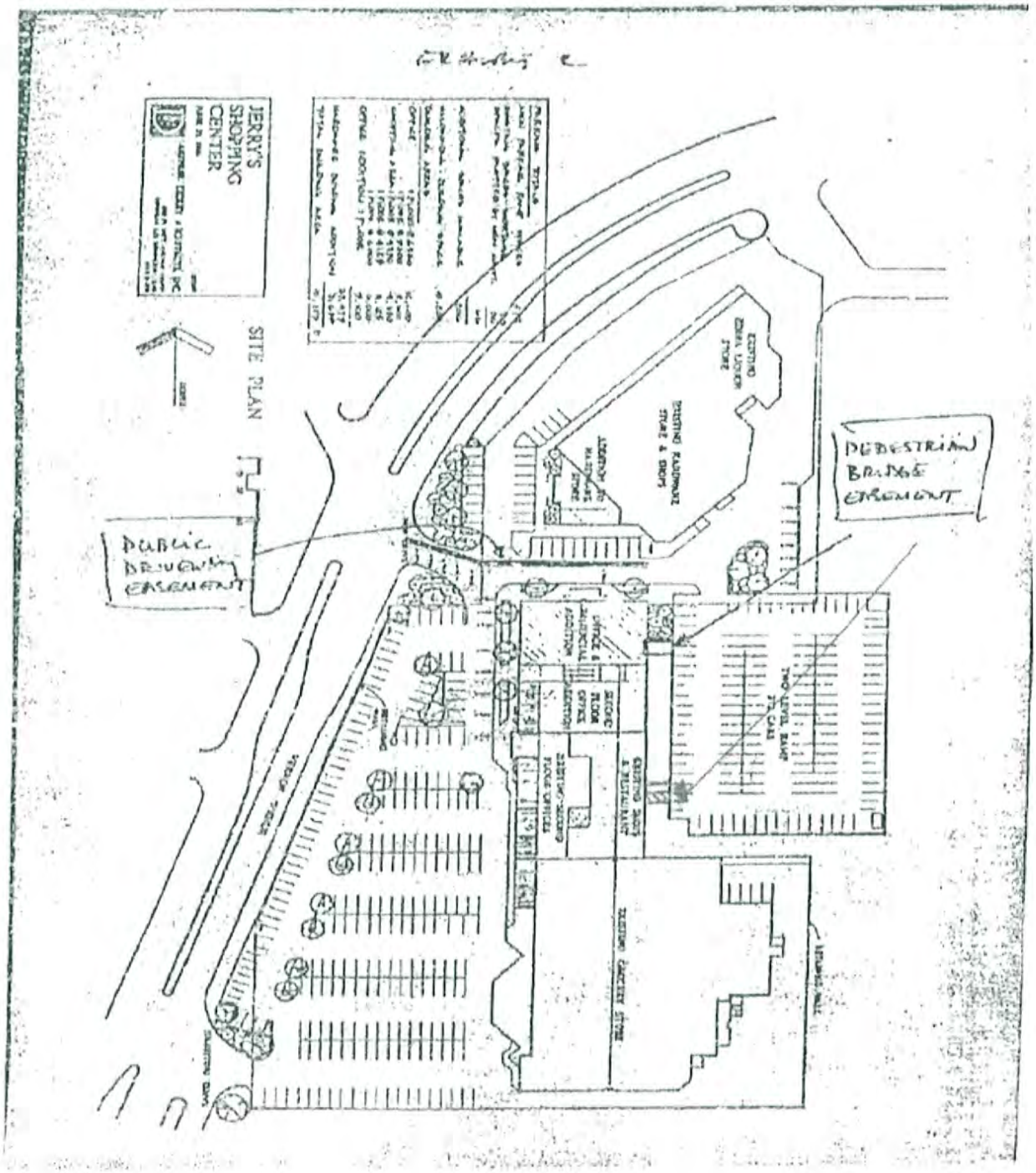
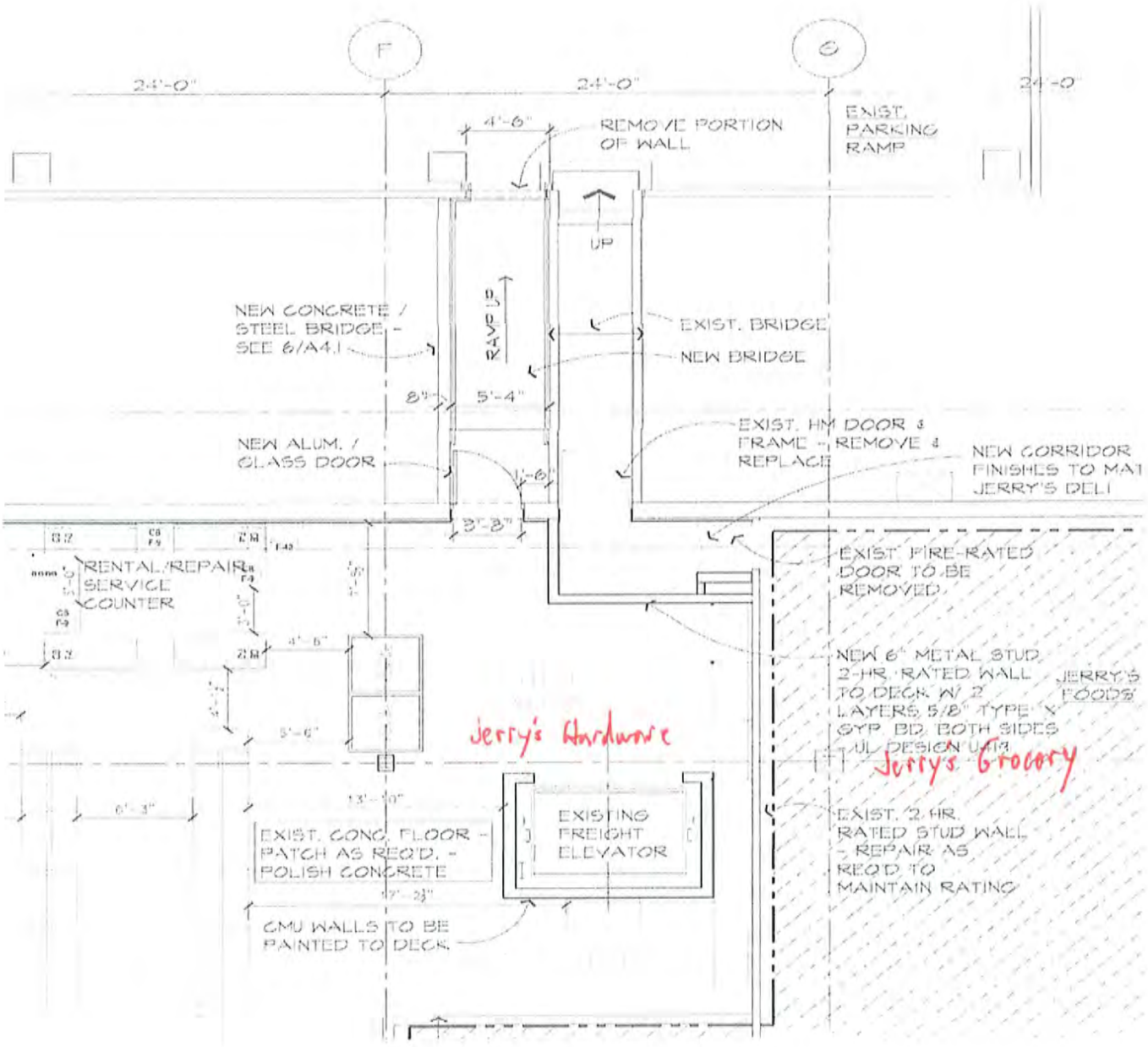


EXHIBIT C – page 2

Depiction of Southerly 10 Foot Wide Pedestrian Bridge