

Agenda
Edina Housing and Redevelopment Authority
City of Edina, Minnesota
Edina City Hall Council Chambers
Thursday, April 25, 2019
7:30 AM

- I. Call to Order
- II. Roll Call
- III. Approval of Meeting Agenda
- IV. Community Comment

During "Community Comment," the Edina Housing and Redevelopment Authority (HRA) will invite residents to share new issues or concerns that haven't been considered in the past 30 days by the HRA or which aren't slated for future consideration. Individuals must limit their comments to three minutes. The Chair may limit the number of speakers on the same issue in the interest of time and topic. Generally speaking, items that are elsewhere on today's agenda may not be addressed during Community Comment. Individuals should not expect the Chair or Commissioners to respond to their comments today. Instead the Commissioners might refer the matter to staff for consideration at a future meeting.

- V. Adoption of Consent Agenda

All agenda items listed on the consent agenda are considered routine and will be enacted by one motion. There will be no separate discussion of such items unless requested to be removed from the Consent Agenda by a Commissioner of the HRA. In such cases the item will be removed from the Consent Agenda and considered immediately following the adoption of the Consent Agenda. (Favorable rollcall vote of majority of Commissioners present to approve.)

- A. Minutes: Draft Minutes of Regular Meeting, April 11, 2019
- B. Receive Payment of Claims as Per Check Register Dated 4.18.19 TOTAL \$92,990.04
- C. Approve Amendment to Redevelopment Agreement with Orion 4500 France, LLC

- VI. Reports/Recommendations: (Favorable vote of majority of Commissioners present to approve except where noted)

- A. Approve Grant Agreement, Declaration of Restrictive Covenants and Accept

Public Access Easement with Aeon for 7008 Sandell Avenue

VII. Correspondence

A. Correspondence

VIII. HRA Commissioners' Comments

IX. Executive Director's Comments

X. Adjournment

The Edina Housing and Redevelopment Authority wants all participants to be comfortable being part of the public process. If you need assistance in the way of hearing amplification, an interpreter, large-print documents or something else, please call 952-927-8861 72 hours in advance of the meeting.



Edina Housing and Redevelopment
Authority
Established 1974

CITY OF EDINA
HOUSING & REDEVELOPMENT
AUTHORITY
4801 West 50th Street
Edina, MN 55424
www.edinamn.gov

Date: April 25, 2019

Agenda Item #: IV.A.

To: Chair & Commissioners of the Edina HRA

Item Type:
Minutes

From: Sharon Allison, City Clerk

Item Activity:
Action

Subject: Minutes: Draft Minutes of Regular Meeting, April 11,
2019

ACTION REQUESTED:

Approve the regular meeting minutes of April 11, 2019.

INTRODUCTION:

ATTACHMENTS:

Draft: Minutes, Regular Meeting April 11, 2019

**MINUTES
OF SPECIAL MEETING
OF THE EDINA HOUSING AND REDEVELOPMENT AUTHORITY
APRIL 11, 2019
7:30 A.M.**

I. CALL TO ORDER

Chair Hovland called the HRA meeting to order at 7:33 a.m.

II. ROLL CALL

Answering rollcall were Commissioners Anderson, Brindle, Fischer, Staunton, and Chair Hovland.

Absent: None.

III. APPROVAL OF MEETING AGENDA – AS AMENDED

Motion made by Commissioner Staunton seconded by Commissioner Anderson approving the meeting agenda as amended to table Item VI.A to the next regular meeting.

Ayes: Anderson, Brindle, Fischer, Staunton and Hovland

Motion carried.

IV. COMMUNITY COMMENT

None.

V. CONSENT AGENDA – APPROVED AS PRESENTED

Motion made by Commissioner Fischer seconded by Commissioner Brindle approving the consent agenda.

V.A. Approve Minutes of Special Meeting of March 19 and Regular Meeting of March 28, 2019

V.B. Request for Purchase, Awarding the Bid to the Recommended Low Bidder, Construction Services for Interlachen Boulevard and Vernon Avenue Roadway and Utility Improvements, SEH, Inc., \$92,286.00

V.C. Request for Purchase, Awarding the Bid to the Recommended Low Bidder, Interlachen Boulevard and Vernon Avenue Roadway and Utility Improvements, Pember Companies, Inc., \$994,141.46

Ayes: Anderson, Brindle, Fischer, Staunton and Hovland

Motion carried.

VI. REPORTS/RECOMMENDATIONS – (Favorable vote of majority of HRA HRA Members present to approve except where noted).

VI.A. GRANT AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS WITH AEON FOR 7008 SANDELL AVENUE – TABLED TO NEXT MEETING

VI.B. REDEVELOPMENT AGREEMENT WITH FRANCE EQUITIES, LLC, FOR 7200-7250 FRANCE AVENUE – APPROVED

Economic Development Manager Neuendorf stated the item pertained to redevelopment of property located at 7200-7250 France Avenue. He outlined the basics of Tax Increment Financing (TIF) for the project and the \$12 million gap request in TIF support to make the project viable. He said the gap could be resolved through a combination of additional developer equity, TIF, and outside grants which the developer intended to pursue. He outlined the minimum improvements for demolition and site preparation for the 5.19 acres, delivery of two apartment buildings with street level commercial space, for-sale townhomes, preservation of mature trees, and delivery of all easements. He outlined the total project cost of \$111 million and summarized the funding source then shared the project budget of \$22 million in costs and what improvements were allowed under Statute such as public realm improvements, stormwater, affordable housing, demolition and site work, structured parking, and professional fees. He stated staff recommended that a maximum of \$12 million be reimbursed in a limited number of categories.

The HRA asked for further clarification on budget versus actual and how funds could be applied towards future projects. Nick Anhut, Ehlers and Associates, explained how TIF required setting a budget for the life of the district and how the City was encompassing all TIF property for both affordable housing and townhomes, which was not pledged. He said the larger budget was only part as the City would retain 10% for future HRA project use and the \$12 million was paid up front then repaid over 20 years with interest of \$7-8 million. Mr. Anhut noted additional projects could be supported within this project as well. He said funds could be moved around and a cap needed to be established but did not obligate the City to spend this administrative funding.

The HRA spoke about project value if more than anticipated and if it was possible to accumulate enough TIF to pay off the note early. Mr. Anhut said they included a 1% appreciation but noted the City was only pledging 90% of the mixed-use project increment to the TIF note.

Mr. Neuendorf summarized the steps taken to date and next steps that included the term sheet approved in February, 20-year special housing district approved March, final site plan secured in April, and grants awarded from MN DEED and Metropolitan Council in the amount of \$500,000.

The HRA asked about the penalty should the need arise, if the entire project was sold at less than 15 years, and if the claw back provision had ever been collected upon. Mr. Neuendorf explained if the developer did not finish the townhomes on time the note would be reduced by \$500,000 and said he was not aware of the need for the provision in Edina and noted he had only done it once in his career.

Mr. Neuendorf summarized the final terms included how both parties would consider opportunities to extend the term past 25 years and spoke about how the 45% of land area included a public easement, conservation of 25,000 square feet of mature trees, covered parking for 217 stalls, road improvements paid for by developer of a portion of W. 72nd Street.

The HRA complimented staff on the thoroughness of the agreement and said this would be an iconic project in the City. The HRA said while the most attractive elements were stormwater mitigation and the affordable housing component, there was hesitation to commit \$5 million. There was interest for extensive affordability because Edina had an affordable housing issue to address and the computation was included in the gap. They spoke about equity that could be gained other places as there were ways to offset the interest commitment the City was making on the awarded TIF note and while they liked the project and its many aspects, it was worthy of TIF consideration as affordable housing was the biggest element.

Motion made by Commissioner Brindle seconded by Commissioner Fischer to approve the Redevelopment Agreement and authorize staff to implement the terms of the agreement.

Ayes: Brindle, Fischer, Staunton, and Hovland

Nays: Anderson

Motion carried.

VII. CORRESPONDENCE

VII.A. Correspondence – None

VIII. HRA COMMISSIONERS' COMMENTS – None

IX. EXECUTIVE DIRECTOR'S COMMENTS – None

X. ADJOURNMENT

There being no further business on the HRA Agenda, Chair Hovland declared the meeting adjourned at 8:27 a.m.

Respectfully submitted,

Scott Neal, Executive Director



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4801 West 50th Street
Edina, MN 55424
www.edinamn.gov

Date: April 25, 2019

Agenda Item #: IV.B.

To: Chair & Commissioners of the Edina HRA

Item Type:
Claims

From: Don Uram, Finance Director

Item Activity:
Action

Subject: Receive Payment of Claims as Per Check Register
Dated 4.18.19 TOTAL \$92,990.04

ACTION REQUESTED:
Approve Claims for payment.

INTRODUCTION:
Claim information for approval attached.

ATTACHMENTS:

HRA Check Register 04.18.19

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Check #	Date	Amount	Supplier / Explanation	PO#	Doc No	Inv No		BU	Obj	Sub	Subledger	Account Description	BU Description	Co	Dept	Div
7898	3/28/2019		100664 BRAUN INTERTEC													
		910.50	NORTH RAMP EXP -GEOTECH		486696	B163395		9243	6710			EQUIPMENT REPLACEMENT	50TH AND FRANCE 2 TIF DIS	09243	12	
		910.50														
433774	3/28/2019		141972 AP MIDWEST LLC													
		23,353.65	NORTH RAMP EXP-A&P PAY APP#13		486697	03212019		9243	6710			EQUIPMENT REPLACEMENT	50TH AND FRANCE 2 TIF DIS	09243	12	
		23,353.65														
433811	3/28/2019		100730 DORSEY & WHITNEY LLP													
		1,287.00	7008 SANDELL LEGAL		486576	3483749		9238	6131			PROFESSIONAL SERV - LEGAL	SOUTHDALE 2 TIF DISTRICT	09238	14	
		357.50	PENTAGON SOUTH TIF ESCROW		486706	3483746		9210	2066			ESCROW DEPOSITS	HRA ADMINISTRATION	09210	14	
		1,644.50														
433815	3/28/2019		100049 EHLERS & ASSOCIATES INC.													
		575.00	PENTAGON SOUTH-TIF ESCROW		486430	76843		9210	2066			ESCROW DEPOSITS	HRA ADMINISTRATION	09210	14	
		2,147.50	S2-TIF ANALYSIS-2 INVOICES		486704	79649		9238	6136			PROFESSIONAL SVC - OTHER	SOUTHDALE 2 TIF DISTRICT	09238	14	
		2,722.50														
433864	3/28/2019		100883 MESSERLI & KRAMER													
		6,250.00	SOUTHDALE 2-LEGAL		486705	362943		9238	6131			PROFESSIONAL SERV - LEGAL	SOUTHDALE 2 TIF DISTRICT	09238	14	
		6,250.00														
433904	3/28/2019		100995 SEH													
		3,002.84	VERNON - INTERLACHEN BLVD		486499	364616		9232	6133			PROFESS SERVICES-ENGINEERING	CENTENNIAL TIF DISTRICT	09232	14	
		3,002.84														
433908	3/28/2019		127004 SIGN SOURCE INC.													
		1,770.00	NORTH RAMP EXP SIGNAGE		486501	59399		9243	6710			EQUIPMENT REPLACEMENT	50TH AND FRANCE 2 TIF DIS	09243	12	
		1,770.00														
433920	3/28/2019		123129 TIMESAVER OFF SITE SECRETARIAL INC.													
		145.00	HRA MINUTES		486666	#M24550		9210	6136			PROFESSIONAL SVC - OTHER	HRA ADMINISTRATION	09210	14	
		145.00														
433990	4/4/2019		100730 DORSEY & WHITNEY LLP													
		1,755.00	NORTH RAMP EXP-LEGAL		486868	3483744		9243	6710			EQUIPMENT REPLACEMENT	50TH AND FRANCE 2 TIF DIS	09243	12	
		15,431.00	7200 FRANCE TIF ESCROW		486896	3483748		9210	2066			ESCROW DEPOSITS	HRA ADMINISTRATION	09210	14	
		17,186.00														
433996	4/4/2019		100049 EHLERS & ASSOCIATES INC.													
		172.50	W. 76TH TIF AEON-ESCROW		486895	79646		9210	2066			ESCROW DEPOSITS	HRA ADMINISTRATION	09210	14	
		6,000.00	7200 FRANCE TIF ESCROW		487059	79648		9210	2066			ESCROW DEPOSITS	HRA ADMINISTRATION	09210	14	
		6,172.50														
434038	4/4/2019		100883 MESSERLI & KRAMER													
		6,250.00	SOUTHDALE 2 LEGAL		487149	364143		9238	6131			PROFESSIONAL SERV - LEGAL	SOUTHDALE 2 TIF DISTRICT	09238	14	
		6,250.00														



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Date: April 25, 2019

Agenda Item #: IV.C.

To: Chair & Commissioners of the Edina HRA

Item Type:
Report / Recommendation

From: Bill Neuendorf, Economic Development Manager

Item Activity:
Action

Subject: Approve Amendment to Redevelopment Agreement
with Orion 4500 France, LLC

ACTION REQUESTED:

Approve the Amendment to the Redevelopment Agreement with Orion 4500 France, LLC and authorize staff to implement the amended terms of the Agreement.

INTRODUCTION:

This item pertains to the redevelopment of properties located primarily at 4500 France Avenue - the former Edina Cleaners site.

The Developer has requested that the terms of payment for the future TIF Note be clarified. This TIF Note is anticipated to be issued after completion of the project with annual payments sized on the actual annual returns to the Developer. This clarification pertains to the payments of the TIF Note if the project is sold to an unrelated party.

The HRA's legal counsel has prepared the proposed Amendment to provide clarification without changing the intention of the original Agreement. The HRA's financial advisor also helped craft the Amendment.

The Developer is agreeable to the clarified wording. Staff recommends that the Amendment to the Redevelopment Agreement be approved.

ATTACHMENTS:

Amendment #1 4500 France Ave

**FIRST AMENDMENT TO
REDEVELOPMENT AGREEMENT
(4500 France)**

THIS FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT (“Amendment”) is made and entered into as of _____, 2019, by and among the CITY OF EDINA, MINNESOTA, a Minnesota statutory city (the “City”), the HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA, MINNESOTA, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “Authority”) and ORION 4500 FRANCE, LLC, a Delaware limited liability company (“Developer”) (the City, the Authority, and Developer, collectively referred to herein as the “Parties”).

RECITALS

A. The City, the Authority and Developer are parties to a Redevelopment Agreement dated December 18, 2018 (the “Original Agreement”, and such Original Agreement as modified by this Amendment, collectively, the “Agreement”).

B. The Parties have agreed to amend the Redevelopment Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the Parties hereto, each of them does hereby covenant and agree with the other as follows:

1. Recitals; Definitions. The foregoing recitals are true and accurate and are incorporated herein as part of the agreement of the Parties. Any word or term with an initial capital letter shall have the meaning given to it in this Amendment or if not so defined herein shall have the meaning given to it in the Original Agreement.

2. Defined Terms. The following capitalized terms are hereby added to Section 1.1 of the Original Agreement, and such terms shall have the meanings set forth below for all purposes under the Agreement:

(a) “Commercial Element” means the element(s) of the Minimum Improvements consisting of commercial space, together with all shared elements, common elements, rights, and/or privileges appurtenant to such commercial space.

(b) “Element” or “Elements” means the Residential Element and/or the Commercial Element, as the context requires.

(c) “Residential Element” means the element(s) of the Minimum Improvements consisting of residential units, together with all shared elements, common elements, rights, and/or privileges appurtenant to such residential units.

3. Sale Lookback. Section 7.3(c) of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“(c) Sale Lookback.

(i) No later than 30 days after a sale of all of the Minimum Improvements a (“Full Sale”) or after a partial sale of the Minimum Improvements involving either just the Residential Element or just the Commercial Element (in either case, a “Partial Sale”), to any party other than a Related Party occurring prior to the date upon which the TIF Note is paid in full or terminated hereunder, Developer shall submit to the Authority and its Financial Advisor any reasonable and relevant information and documentation as the Authority and its Financial Advisor require in order to calculate the IRR for such sale, including, without limitation, a certified cost and revenue analysis for such sale prepared in accordance with generally accepted accounting principles, which requirements will be satisfied if substantially in the same form as an updated TIF Pro Forma (“Sale Pro Forma”). This analysis will include, without limitation, all acquisition costs, Qualified Redevelopment Costs, and all other improvement and redevelopment costs incurred by Developer for the Minimum Improvements, as well as historical Net Operating Income, debt service, and TIF Note payments. In the event of a Partial Sale, such costs (“Element Cost Allocation”) and such income (“Element Income Allocation”) shall be reasonably allocated between the Elements. Following the construction of the Minimum Improvements and prior to the issuance of the TIF Note, Developer shall propose to the Authority an Element Cost Allocation and Element Income Allocation based on the actual cost of the Minimum Improvements and an updated TIF Pro Forma. Developer shall provide to the Authority such additional information as is reasonably necessary to substantiate such proposed allocations, and upon the Authority’s approval of such allocations, which such approval shall not be unreasonably withheld or delayed, the parties will enter into an amendment to this Agreement to establish the Element Cost Allocation and the Element Income Allocation. The Authority may retain an accountant to audit the submitted Sale Pro Forma, at Developer’s cost. Developer shall pay to the Authority an amount equal to Developer’s proceeds of such sale which causes Developer’s IRR for such sale of the Minimum Improvements, or a part thereof, to exceed an IRR of 16.0% (the “Project Excess Return”). For purposes of clarity, in the event of a Partial Sale, the Project Excess Return for such Partial Sale shall be calculated using the Element Cost Allocation and Element Income Allocation for the Element which is the subject of such Partial Sale.

(ii) Developer shall pay the Project Excess Return to the Authority first, by a reduction of the outstanding principal amount of the TIF Note in the amount of up to 100% of the Project Excess Return. In the event of any sale of the Minimum Improvements (partial or full) in which the Project Excess Return exceeds the outstanding principal balance of the TIF Note, Developer shall pay such excess (the “Project TIF Adjustment”) in lawful money of the United States within 30 days from the date on which the Authority gives Developer notice of the amount of the Project TIF Adjustment due to the Authority; provided, however, in no event shall the

Project TIF Adjustment exceed the aggregate sum of all payments (both principal and interest) actually made by the Authority to Developer under the TIF Note. Until the Authority is paid the Project TIF Adjustment in full, the Authority shall have a lien in its favor upon the Minimum Improvements to secure the amount of the Project TIF Adjustment. Such lien shall attach and take effect from the date of the sale of the Minimum Improvements contemplated by this section. Any such lien may be foreclosed as a mortgage on real estate if the Project TIF Adjustment is not paid by the date required by this section. A lien under this section is prior to all other liens and encumbrances on the Minimum Improvements except (1) the first priority Mortgage on the Minimum Improvement Area; (2) liens for real estate taxes and other governmental assessments or charges against the Minimum Improvements; and (3) all leases executed prior to the date that the lien attaches and takes effect.

(iii) In connection with any Partial Sale, the TIF Note, as may be adjusted pursuant to clause (ii) above, shall be retained by Developer and, thereafter, Developer shall be entitled to continued payments under the TIF Note from Available Tax Increment generated from the entire Minimum Improvements Area, subject to the terms and conditions of Section 7.3(b), as the same are applicable to only the Element retained by Developer (i.e., the Cash-on-Cost Return and related calculations will be based on only the Residential Element or the Commercial Element, as the case may be, not the Minimum Improvements as a whole, using the allocation set forth in subsection (ii)).

(iv) In connection with any Full Sale (either a complete sale of the Minimum Improvements in a single event or the sale of the second Element, if the Developer retained ownership of an Element following the sale of the first Element), the TIF Note may be assigned to the transferee under such Full Sale, provided such transferee assumes all of the obligations of Developer under this Agreement in writing, specifically including the terms and conditions of Section 7.3(b). If, following any adjustment pursuant to clause (ii) above in connection with a Full Sale, there remains a principal balance under the TIF Note, the transferee of the TIF Note shall be entitled to continued payments thereunder subject to the terms and conditions of Section 7.3(b) as the same are applicable to only the Element(s) owned by the holder of the TIF Note.

(v) If, following any adjustment pursuant to clause (ii) above in connection with a Full Sale or Partial Sale, the principal balance of the TIF Note has been reduced to zero, then the Authority's obligations to make payments thereunder shall terminate, and upon payment of any applicable Project TIF Adjustment, the obligations under Section 7.3(b) and this Section 7.3(c) shall terminate.

(vi) For purposes of clarity, example calculations of the Project TIF Adjustment pursuant to this Section 7.3(c) is attached hereto as Exhibit K.

(vii) The annual lookback in Section 7.3(b) and the sale lookback in Section 7.3(c) shall only apply to Developer or its successor and assign who owns one or both of the Elements and holds the TIF Note.”

4. Ownership of the TIF Note. Notwithstanding anything to the contrary contained in the Agreement, Developer or its successor and assign who owns one or both of the Elements, shall at all times be the holder of the TIF Note, subject to any collateral assignment of the TIF Note pursuant to Section 8.4(a) of the Original Agreement.

5. Ratification. Except as specifically modified by this Amendment, the terms and provisions of the Original Agreement shall remain in full force and effect.

6. Binding Effect. This Amendment amends and supplements the Agreement. If there is a conflict between the provisions of the Original Agreement and this Amendment, the provisions of this Amendment shall control. This Amendment shall be binding upon and inure to the benefit of the City, the Authority, Developer, and their respective successors and assigns.

7. Counterparts. This Amendment may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or email copies shall be deemed originals.

[Remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the City, the Authority and Developer have caused this Amendment to be duly executed in their names and on their behalf, all on or as of the date first above written.

CITY OF EDINA, MINNESOTA

By: _____
James B. Hovland, Mayor

By: _____
Scott H. Neal, City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by James B. Hovland and Scott H. Neal, the Mayor and City Manager, respectively, of the City of Edina, Minnesota, on behalf of the City of Edina.

Notary Public

HOUSING AND REDEVELOPMENT
AUTHORITY OF EDINA, MINNESOTA

By: _____
James B. Hovland, Chair

By: _____
Michael Fischer, Secretary

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by James B. Hovland and Michael Fischer, the Chair and Secretary, respectively, of the Housing and Redevelopment Authority of Edina, Minnesota, on behalf of said Authority.

Notary Public

By: Orion Investments Edina II, LLC,
a Minnesota limited liability company
Its: Manager

Its: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, the _____ of Orion Investments Edina II, LLC, a Minnesota limited liability company, as the manager of ORION 4500 FRANCE, LLC, a Delaware limited liability company, on behalf of the limited liability company.

Notary Public

THIS DOCUMENT WAS DRAFTED BY:
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498



Edina Housing and Redevelopment
Authority
Established 1974

CITY OF EDINA
HOUSING & REDEVELOPMENT
AUTHORITY
4801 West 50th Street
Edina, MN 55424
www.edinamn.gov

Date: April 25, 2019

Agenda Item #: V.A.

To: Chair & Commissioners of the Edina HRA

Item Type:
Report / Recommendation

From: Stephanie Hawkinson, Affordable Housing
Development Manager

Item Activity:

Subject: Approve Grant Agreement, Declaration of Restrictive
Covenants and Accept Public Access Easement with
Aeon for 7008 Sandell Avenue

Action

ACTION REQUESTED:

Approve Grant Agreement, Declaration of Restrictive Covenants, and accept Public Access Easement for 7008 Sandell Avenue and authorize staff to implement the terms of the Agreements.

INTRODUCTION:

Aeon, a Minnesota non-profit affordable housing owner and developer, intends to acquire 7008 Sandell Avenue. With Edina Housing and Redevelopment Authority (HRA) assistance, Aeon will reduce the rents on 40 percent of the units to be affordable to households with incomes at or below 60 percent of Area Medium Income (AMI), with the remaining units remaining affordable to households with incomes at or below 80 percent of AMI. The affordability period will remain in place for 30 years.

With the assistance of legal and financial advisors, staff negotiated general terms and conditions. The terms were approved by the HRA February 28, 2019, and special counsel Dorsey & Whitney prepared a full Grant Agreement based on these terms.

Staff recommends approval of the Grant Agreement, Declaration of Restrictive Covenants, and acceptance of the Public Access Easement.

ATTACHMENTS:

Staff Report: Approve Grant Agreement, Declaration of Restrictive Covenants and Accept Public Access Easement
Grant Agreement

Declaration of Restrictive Covenants

Contribution Agreement

Public Access Easement

Staff Presentation



Date: April 25, 2019

To: Chair & Commissioners of the Edina HRA

From: Stephanie Hawkinson, Affordable Housing Development Manager

Subject: Approve Grant Agreement, Declaration of Restrictive Covenants and Accept Public Access Easement with Aeon for 7008 Sandell Avenue

Information / Background:

On February 28, 2019 the HRA approved a term sheet and \$350,000 grant to Aeon, a Minnesota nonprofit corporation, for the acquisition and rehabilitation of 7008 Sandell Avenue. The HRA further authorized staff to work with outside Counsel to draft a Grant Agreement and Declaration of Restrictive Covenants. Through a Contribution Agreement, Aeon will make a \$350,000 capital contribution with Aeon Villa Nova Preservation JV LLC who will own the site. Aeon is the Managing Member of Aeon Villa Nova Preservation JV LLC.

In exchange for the HRA financing, Aeon Villa Nova LLC has agreed to reduce the rents on five of the units to the 60 percent AMI limit. This will be secured through a Declaration of Restriction Covenants keeping the five units at 60 percent AMI with the remaining six units priced at or below 80 percent AMI for a minimum of 30-years.

In negotiating the final form of the Grant Agreement and Declaration of Restrictive Covenants, Aeon requested that the HRA waive the requirement that the HRA maintain a right of first offer on the project during the term of affordability as their intended lender, Freddie Mac, will not accept these terms. This waiver allows Aeon to efficiently secure and finalize the estimated \$18 Million loan from Freddie Mac.

The Grant Agreement requires that the funds be used for the acquisition and rehabilitation of an existing 11-unit apartment building. The scope of rehabilitation work will be in response to a Property Needs Assessment with particular focus on building systems, the roof, and windows and will repair or replace as needed, in addition to worked required within the building. The Agreement also contains a provision for the Developer to provide a permanent 10-15-foot public easement to the City of Edina along Sandell Avenue for a future public walkway, trail or street. If Aeon defaults on the 30-year affordability period as required by the Declaration, the HRA can seek repayment of the \$350,000.

Aeon is agreeable to the Grant Agreement and Declaration of Restrictive Covenants. They are prepared to pre-sign and place the funds in escrow for the funds to be available at the May 26 closing.

Summary:

Grant Amount	\$350,000
Declaration and Restrictive Covenants	30-years
Public Purpose	Preserve affordability of 11 2-bedroom apartment units Public Access Easement for future trail

Staff recommends approval of the Grant Agreement, Declaration of Restrictive Covenants, and acceptance of the Public Access Easement.

GRANT AGREEMENT

THIS GRANT AGREEMENT (the "Agreement") is made this _____, 2019 ("the "Effective Date"), between **AEON**, a Minnesota non-profit corporation ("Aeon"), and the **HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA, MINNESOTA**, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the "City").

RECITALS

Aeon is the managing member of Villa Nova Preservation JV LLC ("Owner") which as of the Effective Date acquired the 11 unit apartment complex (the "Project") on certain property located at 7008 Sandell Avenue, Edina, Minnesota and legally described in Exhibit A attached hereto (the "Property"). The City has agreed to make a grant to the Owner in the amount of \$350,000 (the "Grant").

In consideration for the Grant, Aeon will cause Owner to execute and deliver to the City a Declaration of Restrictive Covenants of even date herewith (the "Declaration"), setting forth the affordability covenants for the Project.

ACCORDINGLY, to induce the City to make the Grant to Aeon, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant Amount. Subject to and upon the terms and conditions of this Agreement, the City agrees to make the Grant to Aeon in the amount of Three Hundred Fifty Thousand and no/100ths Dollars (\$350,000), or so much thereof as is disbursed to Aeon in accordance with this Agreement.

2. Disbursement of Grant Proceeds.

(a) The Grant proceeds shall be paid to Aeon on the Effective Date or such other date as the parties hereto agree (the "Closing Date").

(b) The following events shall be conditions precedent to the payment of the Grant proceeds to Aeon on the Closing Date:

(i) Aeon having executed and delivered to the City on or prior to the Closing Date, without expense to the City, two (2) counterpart originals of this Agreement executed by Aeon and one (1) original Declaration of Restrictive Covenants in form attached hereto as Exhibit B (the "Declaration") executed by Owner;

(ii) Aeon shall have provided the City an executed copy of the Contribution Agreement between Aeon and Owner in form attached hereto as Exhibit C;

(iii) Aeon shall have executed and delivered to the City a Public Access Easement in form attached hereto as Exhibit D (the "Easement");

(iv) Aeon having provided a Certificate of Good Standing for Aeon and the Owner dated within thirty (30) days of the Effective Date;

(v) Aeon having executed and delivered Resolutions authorizing Aeon to execute, deliver, and perform this Agreement and the Contribution Agreement, and the

Owner to execute, deliver and perform the Declaration, the Public Access Agreement and the Contribution Agreement; and

(vi) Aeon having taken all steps necessary to cause the recording of the Declaration and the Easement and promptly provide a recorded copy of each such document to the City.

3. Representations and Warranties; Agreements.

Aeon represents and warrants to the City and agrees that:

(a) Aeon is a non-profit corporation duly organized and existing in good standing under the laws of the State of Minnesota.

(b) Aeon is duly authorized and empowered to execute, deliver, and perform this Agreement and the Contribution Agreement and Owner is duly authorized and empowered to execute, deliver and perform the Contribution Agreement, the Declaration and the Easement.

(c) The execution and delivery of this Agreement, and the performance by Aeon of its obligations hereunder, do not and will not violate or conflict with any provision of law or the operating agreement of Aeon and do not and will not violate or conflict with, or cause any default or event of default to occur under, any agreement binding upon Aeon.

(d) The execution and delivery of this Agreement has been duly approved by all necessary action of Aeon, and this Agreement has in fact been duly executed and delivered by Aeon and constitutes its lawful and binding obligation, legally enforceable against it.

(e) Aeon warrants and agrees that it shall keep and maintain books, records, and other documents relating directly to the receipt and disbursements of Grant proceeds and compliance by Aeon and Owner, as applicable, with the terms and conditions of the this Agreement, the Declaration, the Easement and the Contribution Agreement (collectively, the "Records"). Aeon agrees that any duly authorized representative of the City shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all Records.

(f) Aeon warrants that it has fully complied with all applicable state and federal laws pertaining to its business and will continue said compliance throughout the term of this Agreement. If at any time Aeon receives notice of noncompliance from any governmental entity, Aeon agrees to take any necessary action to comply with the state or federal law in question.

4. Restrictions on the Property. Aeon agrees that the Project will be operated in accordance with the Declaration, including, without limitation, Section 2, Section 3, and Section 4. It is the intention of the parties that five (5) units in the Project will be occupied by and affordable to Qualifying Tenants (as defined in the Declaration) with incomes at or below 60% of Metro Area AMI (as defined in the Declaration) and six (6) units will be occupied by and affordable to Qualifying Tenants with incomes at or below 80% of Metro Area AMI.

5. Restrictions on Use of the Grant Proceeds. Aeon agrees that the Grant proceeds shall be used only for the following purpose: to acquire and rehabilitate the existing improvements comprising the Project. Without prior written consent of the City, the Grant proceeds shall not be used to expand the existing structure or footprint of such improvements.

6. Event of Default by Aeon. The following shall be “Events of Default” under this Agreement:

(a) any breach or failure of Aeon or Owner, as applicable, to perform any term or condition of this Agreement, the Declaration, or the Contribution Agreement, and such failure continues for thirty (30) days after the City has given written notice to Aeon specifying such default or breach unless the City agrees in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the City will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Aeon within the applicable period and is being diligently pursued until the default is corrected, but no such extension shall be given for a default that can be cured by the payment of money (i.e., payment of taxes, insurance premiums, or other amounts required to be paid hereunder);

(b) any representation or warranty made by Aeon herein or in any document, instrument, or certificate given in connection with this Agreement, is materially false when made; or

(c) Aeon or Owner is dissolved, liquidated, or wound up, or fails to maintain its existence as a going concern in good standing (excepting, reorganizations, consolidations and/or mergers into or with affiliates owned by, owning or under common control of or with such entity or into the parent of such entity, provided the succeeding organization assumes and accepts such entity’s obligations hereunder).

7. The City’s Remedies upon Aeon’s Default. Upon an Event of Default by Aeon or Owner, as applicable, and after receipt of written notice from the City, the City shall have the right to exercise any or all of the following remedies (and any other rights and remedies available to it):

(a) suspend its performance under this Agreement;

(b) seek repayment of the Grant proceeds from Aeon; and

(c) take any action provided for at law to enforce compliance by Aeon or Owner with the terms of this Agreement or the Declaration.

8. The City’s Costs of Enforcement of Agreement. If an Event of Default has occurred as provided herein, then upon demand by the City, Aeon will pay or reimburse the City for all expenses, including all reasonable fees and disbursements of legal counsel, incurred by the City in connection with the enforcement of this Agreement, or in connection with the protection or enforcement of the interests of the City in any litigation or bankruptcy or insolvency proceeding or in any action or proceeding relating in any way to the transactions contemplated by this Agreement.

9. Miscellaneous.

(a) Waiver. The performance or observance of any promise or condition set forth in this Agreement may be waived only in writing. No delay in the exercise of any power, right or remedy operates as a waiver thereof, nor shall any single or partial exercise of any other power, right or remedy.

(b) Assignment. This Agreement shall be binding upon Aeon and its successors and assigns and shall inure to the benefit of the City and its successors and assigns. All rights and

powers specifically conferred upon the City may be transferred or delegated by the City to any of its successors and assigns. Aeon's rights and obligations under this Agreement may be assigned only when such assignment is approved in writing by the City.

(c) Law Governing; Other Matters. This Agreement shall be governed by the substantive laws of the State of Minnesota. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect, and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement or in any other agreement between Aeon and the City shall survive the execution, delivery and performance of this Agreement and the creation and payment of any indebtedness to the City. Aeon waives notice of the acceptance of this Agreement by the City.

(d) Notice. All notices required hereunder shall be given by depositing in the U.S. mail, postage prepaid, certified mail, return receipt requested, to the following addresses (or such other addresses as either party may notify the other):

To the City: Housing and Redevelopment Authority of Edina, Minnesota
4801 West 50th Street
Edina, MN 55424
Attn: _____

To Aeon: Aeon
901 North 3rd Street, Suite 150
Minneapolis, MN 55401
Attn: Blake Hopkins

9. Indemnification. Aeon shall and does hereby agree to indemnify against and to hold the City, and its officers, agents, and employees, harmless of and from any and all liability, loss, or damage which it may or might incur by reason of or arising from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained herein. Should the City, or its officers, agents, or employees incur any such liability or be required to defend against any such claims or demands, or should a judgment be entered against the City, the amount thereof, including costs, expenses, and reasonable attorneys' fees, shall bear interest thereon at 8% per annum, shall be added to the Grant, and Aeon shall reimburse the City for the same immediately upon demand.

10. Cure Rights. Owner shall have the right, but not the obligation, to cure any Event of Default by Aeon under this Agreement or any default under the Declaration, and the City shall accept performance by Owner of any obligation of Aeon thereunder as though tendered by Aeon itself, provided such performance by the member or partner of Aeon has occurred during the applicable cure period, if any, provided to Aeon thereunder with respect to such default or Event of Default.

11. Term. The term of this Agreement shall run concurrently with the term of the Declaration.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the undersigned officers of the City and Aeon have executed this Grant Agreement as of the date and year first written above.

CITY:

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

By _____

Its _____

By _____

Its _____

AEON:

AEON:

By _____

Its _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lot 2, Block 1, Rearrangement of Lot 1, Block 2, Stow's Edgemoor Addition, Hennepin County, Minnesota.

EXHIBIT B

DECLARATION OF RESTRICTIVE COVENANTS

[See Attached.]

EXHIBIT C
CONTRIBUTION AGREEMENT
[See Attached.]

EXHIBIT D
PUBLIC ACCESS EASEMENT
[See Attached.]

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this “Declaration”) is made this _____, 2019 (the “Effective Date”), by **VILLA NOVA PRESERVATION JV LLC**, a Minnesota limited liability company (“Owner”), for the benefit of the **HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA, MINNESOTA**, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “City”).

RECITALS

WHEREAS, Owner has acquired the apartment complex (the “Project”) on certain property located at 7008 Sandell Avenue in the City of Edina, Minnesota, and legally described in Exhibit A attached hereto and incorporated herein (the “Property”); and

WHEREAS, the Project consists of eleven (11) two-bedroom apartment units; and

WHEREAS, the City and Aeon entered into that certain Grant Agreement of even date herewith (the “Grant Agreement”) pursuant to which the City agreed to make a grant to Aeon in the amount of \$350,000 (the “Grant”) in order to make the Project more economically feasible and to improve and retain affordable housing in the City; and

WHEREAS, Aeon entered into a Contribution Agreement of even date herewith (the “Contribution Agreement”) pursuant to which Aeon contributed the grant to Owner and Owner agreed to assume Aeon’s obligations under the Grant Agreement; and

WHEREAS, in consideration for the Grant, Owner agrees to comply with certain affordability covenants for the Project and Owner has agreed to execute this Declaration to subject the Property to the same; and

WHEREAS, Owner intends, declares, and covenants that the restrictive covenants set forth herein will be and are covenants running with the Property for the term described herein and binding upon all subsequent owners of the Property for the term described herein, and are not merely personal covenants of Owner.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner agrees as follows:

1. Term.

(a) Termination of Declaration. The term (the “Term”) of this Declaration commences on the Effective Date and will expire upon the date that is the earlier of thirty (30) years after the Effective Date or the date of earlier termination in accordance with the Grant Agreement provided that the parties agree to negotiate an extension of the Term in good faith prior to expiration thereof. Notwithstanding the foregoing, in the event of a foreclosure or deed in lieu of foreclosure by a senior lender, this Declaration will terminate and have no further force or effect, unless the foreclosing lender and the City enter into a written agreement to continue the terms of this Declaration and record the written agreement in the real estate records of Hennepin County, Minnesota.

(b) Removal from Real Estate Records. Upon termination of this Declaration, the City will, upon request and at the expense of Owner or its assigns, execute and deliver a termination of this Declaration to Owner or its assigns for recording in the real estate records of Hennepin County, Minnesota.

2. Project Restrictions.

(a) Owner represents, warrants, and covenants that:

(i) All leases of units to Qualifying Tenants (as defined in Section 3(a)(i) hereof) will contain clauses, among others, wherein each individual tenant:

(1) Certifies the accuracy of the statements made in its application and Eligibility Certification (as defined in Section 3(a)(ii) hereof); and

(2) Agrees that the Eligibility Certification (as defined below) by a Qualifying Tenant will be deemed a substantial and material obligation of the Qualifying Tenant's lease; that the Qualifying Tenant will comply promptly with all requests for income and other information relevant to determining low or moderate income status from Owner or the City, and that the Qualifying Tenant's failure or refusal to comply with a request for information with respect thereto will be deemed a violation of a substantial obligation of the Qualifying Tenant's lease.

(ii) Upon reasonable prior notice, Owner will permit any duly authorized representative of the City to inspect the books and records of Owner pertaining to the income of Qualifying Tenants residing in the Project.

3. Occupancy Restrictions.

(a) Tenant Income Provisions. Owner represents, warrants, and covenants that:

(i) Qualifying Tenants. At all times during the Term, five (5) rental units on the Property (the "Low-Income Units") will be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Low-Income Tenants. "Low-Income Tenants" means those persons and families who are determined at the time of initial occupancy after the date hereof by Owner to have adjusted income that does not exceed sixty percent (60%) of the area median income for the Minneapolis-St. Paul metropolitan statistical area ("Metro Area AMI") for the applicable calendar year, adjusted for family size, as determined by the U.S. Department of Housing and Urban Development ("HUD"). Rents for all Low-Income Units shall not exceed 30 percent (30%) of 60% of Metro Area AMI, adjusted for family size, as determined by HUD. At all times during the Term, six (6) rental units on the Property (the "Moderate-Income Units") will be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Moderate-Income Tenants. "Moderate Income Tenants" means those persons and families who are determined at the time of initial occupancy after the date hereof by Owner to have adjusted income that does not exceed eighty percent (80%) of the Metro Area AMI for the applicable calendar year, adjusted for family size, as determined by HUD. Rents for all Moderate-Income Units shall not exceed 30% of 80% of the Metro Area AMI, adjusted for family size, as determined by HUD. The "Low-Income Units" and "Moderate-Income Units" are referred to as "Housing Units" and the "Moderate-Income Tenants" and "Low-Income Tenants" are referred to as "Qualifying Tenants". Notwithstanding any term herein to the contrary, in order to avoid displacement, existing tenants as of the Effective Date will be grandfathered in and will not be required to be income certified,

even if the composition of the household changes. Owner agrees to provide City with a rent roll identifying the existing tenants upon written request.

(ii) Certification of Tenant Eligibility. As a condition to initial occupancy, each person who is intended to be a Qualifying Tenant will be required at the commencement of the initial lease of the Housing Unit to sign and deliver to Owner a Certification of Tenant Eligibility substantially in the form attached as Exhibit B hereto, or in any other form as may be approved by the City (the “Eligibility Certification”), in which the prospective Qualifying Tenant certifies as to qualifying as a Low-Income Tenant or Moderate-Income Tenant. In addition, the person will be required to provide whatever other information, documents, or certifications are reasonably deemed necessary by the City to substantiate the Eligibility Certification. Eligibility Certifications will be maintained on file by Owner with respect to each Qualifying Tenant for not less than two (2) years following expiration or earlier termination of the lease by such Qualifying Tenant.

(iii) Lease. The form of lease to be utilized by Owner in renting Housing Units in the Project to any person who is intended to be a Qualifying Tenant will provide for termination of the lease and consent by the person to eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by the person with respect to the Eligibility Certification.

(iv) Annual Report. Owner covenants and agrees that during the Term of this Declaration, it will prepare and submit to the City on or before January 31 of each year, a certificate substantially in the form of Exhibit C hereto, executed by Owner, (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants in the Project, including the percentage of the dwelling units of the Project which were occupied by Low-Income Tenants and Moderate-Income Tenants (or held vacant and available for occupancy by Qualifying Tenants) at all times during the year preceding the date of the certificate; (b) describing all transfers or other changes in ownership of the Project or any interest therein; and (c) stating, that to the actual knowledge of the person executing the certificate after due inquiry, all the units were rented or available for rental on a continuous basis during the year to members of the general public and that Owner was not otherwise in default under this Declaration during the year.

(v) Notice of Non-Compliance. Owner will immediately notify the City if at any time during the term of this Declaration the dwelling units in the Project are not occupied or available for occupancy as required by the terms of this Declaration.

(b) Section 8 Housing. Owner shall accept tenants who are eligible recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor. During the Term of this Declaration, Owner shall not adopt any policies specifically excluding rental to tenants holding Section 8 certificate/voucher holders.

4. Transfer Restrictions. Owner covenants and agrees that Owner will cause or require as a condition precedent to any conveyance, transfer, assignment, or any other disposition of the Project prior to the termination of this Declaration (the “Transfer”) that the transferee of the Project pursuant to the Transfer assume in writing, in a form reasonably acceptable to the City, all duties and obligations of Aeon under the Grant Agreement, in the event of a subsequent Transfer by the transferee prior to termination of this Declaration provided herein (the “Assumption Agreement”). Owner will deliver the Assumption Agreement to the City prior to the Transfer.

5. Enforcement.

(a) Owner will permit, during normal business hours and upon reasonable notice, any duly authorized representative of the City to inspect any books and records of Owner regarding the Project with respect to the incomes of Qualifying Tenants.

(b) Owner will submit any other information, documents or certifications requested by the City which the City deems reasonably necessary to substantiate Owner's continuing compliance with the provisions specified in this Declaration.

(c) Owner acknowledges that the primary purpose for requiring compliance by Owner with the restrictions provided in this Declaration is to ensure compliance of the Property with the housing affordability covenants set forth in the Grant Agreement, and by reason thereof, Owner, in consideration for assistance provided by the City to Aeon under the Grant Agreement and to Owner pursuant to the Contribution Agreement, hereby agrees and consents that the City will be entitled, for any breach of the provisions of this Declaration, and in addition to all other remedies provided by law or in equity, to (i) enforce specific performance by Owner of its obligations under this Declaration in a state court of competent jurisdiction; or (ii) receive within ten (10) days of written demand repayment of the Grant proceeds from Aeon. Owner hereby further specifically acknowledges that the City cannot be adequately compensated by monetary damages in the event of any default hereunder.

(d) Owner understands and acknowledges that, in addition to any remedy set forth herein for failure to comply with the restrictions set forth in this Declaration, the City may exercise any remedy available to it under the Grant Agreement.

6. Indemnification. Owner hereby indemnifies, and agrees to defend and hold harmless, the City from and against all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, allegations, claims, demands, and judgments of any nature arising from the consequences of a legal or administrative proceeding or action brought against them, or any of them, on account of any failure by Owner to comply with the terms of this Declaration, or on account of any representation or warranty of Owner contained herein being untrue.

7. Severability. The invalidity of any clause, part or provision of this Declaration will not affect the validity of the remaining portions thereof.

8. Notices. All notices to be given pursuant to this Declaration must be in writing and will be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to any other place as a party may from time to time designate in writing. Owner and the City may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications are sent. The initial addresses for notices and other communications are as follows:

To the City: Housing and Redevelopment Authority of Edina, Minnesota
 4801 West 50th Street
 Edina, MN 55424
 Attn: _____

To Owner: Villa Nova Preservation JV LLC
 c/o Aeon
 901 North Third Street, Suite 150

Minneapolis, MN 55401
Attn: Blake Hopkins

9. Governing Law. This Declaration is governed by the laws of the State of Minnesota and, where applicable, the laws of the United States of America.

10. Attorneys' Fees. In case any action at law or in equity, including an action for declaratory relief, is brought against Owner to enforce the provisions of this Declaration, Owner agrees to pay the reasonable attorneys' fees and other reasonable expenses paid or incurred by the City in connection with the action.

11. Declaration Binding. This Declaration and the covenants contained herein will run with the real property comprising the Project and will bind Owner and its successors and assigns and all subsequent owners of the Project or any interest therein, and the benefits will inure to the City and its successors and assigns for the term of this Declaration as provided in Section 1(b) hereof.

12. Estoppel. Within thirty (30) days of written request from Owner, either the City Manager for the City of Edina or the Executive Director of the Housing and Redevelopment Authority for Edina, Minnesota, shall execute and deliver a statement certifying to his or her actual knowledge that (i) this Declaration is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified); and (ii) that Owner is not in default hereunder (or, if Owner is in default, describing the nature of such default in reasonable detail).

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, Owner has caused this Declaration of Restrictive Covenants to be signed by its respective duly authorized representatives, as of the day and year first written above.

VILLA NOVA PRESERVATION JV LLC

By _____

Its _____

STATE OF MINNESOTA)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, the _____ of Villa Nova Preservation JV LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public

This Declaration is acknowledged and consented to by:

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

By _____

Its _____

STATE OF MINNESOTA)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____, 2019, by _____, the _____ of the Housing and Redevelopment Authority of Edina, Minnesota, a public body corporate and politic organized and existing under the laws of the State of Minnesota on behalf of such body corporate and politic.

Notary Public

This instrument drafted by:

Faegre Baker Daniels (AMC)
22000 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
612-766-7000

EXHIBIT A

LEGAL DESCRIPTION

Lot 2, Block 1, Rearrangement of Lot 1, Block 2, Stow's Edgemoor Addition, Hennepin County, Minnesota.

EXHIBIT B

CERTIFICATION OF TENANT ELIGIBILITY

(INCOME COMPUTATION AND CERTIFICATION)

Insert Tenant Income Certification

EXHIBIT C

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Certification Dates: From _____ to _____

Date: _____

The following information with respect to the Project located at **7008 Sandell Avenue, Edina, Minnesota** (the "Project"), is being provided by **Aeon Sandell LLC** (the "Owner") to the Housing and Redevelopment Authority of Edina, Minnesota (the "City"), pursuant to that certain Declaration of Restrictive Covenants dated _____, 2019 (the "Declaration"), with respect to the Project:

- A. The total number of residential units which are available for occupancy is _____. The total number of these units occupied is _____, **including both grandfathered (existing) tenants and new tenants.**
- B. The following residential units were occupied by Qualifying Tenants at the commencement of the initial lease of the Housing Unit based on the information set forth below (see attachment from "Owner"):
 - a. Unit
 - b. Designation of Low-Income Unit and Moderate-Income Unit
 - c. Name of Tenant
 - d. Number of Household Members
 - e. Number of Bedrooms
 - f. Total Adjusted Gross Income
 - g. Date of Initial Occupancy
 - h. Rent
- C. The Owner has obtained a "Tenant Income Certification" from each Tenant named in (B) above, and each such Certificate is being maintained by the Owner in its records with respect to the Project.
- D. In renting the residential units in the Project, the Owner has not given preference to any particular group or class of persons (except for persons who qualify as Qualifying Tenants). All the residential units in the Project have been rented pursuant to a written lease, and the term of each lease has been agreed upon by the Qualifying Tenant Household and the Owner.
- E. The information provided in this "Certificate of Continuing Program Compliance" is accurate and complete, and no matters have come to the attention of the Owner which would indicate that any of the information provided herein, or in any "Tenant Income Certification" obtained from the Tenants named herein, is inaccurate or incomplete in any respect.
- F. The Project is in continuing compliance with the Declaration.
- G. The Owner certifies that as of the date hereof 100% of the residential dwelling units in the Project are occupied or held open for occupancy by Qualifying Tenants, as defined and provided in the Declaration.
- H. The rental levels for each Qualifying Tenant comply with the maximum permitted under the Declaration.

IN WITNESS WHEREOF, I have hereunto affixed my signature, on behalf of the Owner, on _____, 20____.

AEON SANDELL LLC

By: _____

Signature: _____

Title: _____

CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT entered into this _____ day of _____, 2019 by and between **AEON**, a Minnesota non-profit corporation (“Aeon”) and **VILLA NOVA PRESERVATION JV LLC**, a Minnesota limited liability company (“Owner”).

WITNESSETH:

WHEREAS, the City of Housing and Redevelopment Authority for Edina, Minnesota (the “City”) made a grant in the amount of \$350,000 (the “Grant”) to Aeon pursuant to the Grant Agreement dated _____, 2019 (the “Grant Agreement”); and

WHEREAS, Aeon used the funds to make a \$350,000 capital contribution to Owner; and

WHEREAS, [_Aeon is managing member of the Owner_]; and

WHEREAS, the parties desire to satisfy the City requirements with respect to the Grant; and

WHEREAS, Owner and Aeon desire to enter into this Agreement for the purpose of setting forth their respective responsibilities with respect to the use of the Grant for the ownership of a 11-unit residential rental project on land described on Exhibit A (the “Project”), in accordance with all Federal, State and Local laws.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, AEON AND THE OWNER DO HEREBY MUTUALLY AGREE AS FOLLOWS:

1. Grant Agreement. Owner hereby assumes Aeon’s obligations under the Grant Agreement and agrees to comply with the terms of the Grant Agreement. Specifically, Owner agrees to comply with the provisions of Section 4 of the Grant Agreement and to execute a Declaration of Restrictive Covenants in the form attached hereto as Exhibit B (the “Declaration”) and a Public Access Easement in the form attached hereto as Exhibit C.

2. Statement of Work/Scope of Services. Owner shall use the Grant solely for acquisition and rehabilitation of the Project and shall undertake those activities in accordance both with the terms of this Agreement and with the terms of the Grant Agreement.

3. Incorporation of Grant Agreement. Owner acknowledges and agrees that all terms, conditions and obligations contained in the Grant Agreement are incorporated herein and made a part of this Contribution Agreement. For purposes of enforcing this Contribution Agreement, Owner acknowledges, accepts and agrees that Aeon shall possess the rights and authority of the City as described in the Grant Agreement.

4. Reports and Records. Owner shall submit to Aeon documentation required to be submitted to the City pursuant to the Declaration at least ten (10) days before the document must

be submitted to the City. In addition, Owner shall maintain the records to be maintained by Aeon in accordance with the Grant Agreement and by Owner pursuant to the Declaration, and the City and Aeon shall have the right to examine those records upon reasonable notice.

5. Owner's Representations and Warranties. Owner represents and warrants that:

- a) Owner is a Minnesota limited liability company duly organized under the laws of the State of Minnesota, is duly authorized to operate in the State, has the power to enter into and execute this Agreement and by appropriate corporate action has authorized the execution and delivery of this Agreement.
- b) This Agreement and the Grant Agreement will not result in any breach of or constitute a default under any other mortgage, lease, loan, grant or credit agreement, corporate charter, by-law or other instrument to which Owner is a party or by which it may be bound or affected.
- c) This Agreement, the assumption of the Grant Agreement, and the execution of the Declaration will constitute legal and binding obligations enforceable against Owner as its interest appears.
- d) Owner has all necessary licenses and permits required for ownership and rehabilitation of the Project except those which cannot be obtained until completion of the Project.
- e) Owner shall permit the City and Aeon, upon reasonable notice, to examine all books and records pertaining to the Qualifying Tenants (as defined in the Declaration) in the Project and to make copies.

6. Liability Insurance. Owner agrees that it will obtain and keep in force during the term of this Agreement at its expense general liability insurance, and if applicable, automobile liability insurance, covering any injury caused by act or omission on the part of Owner, its partners, agents and employees in performance of or with relation to any of the work or services performed or furnished by Owner under the terms of this Agreement each with minimum coverage in the following amounts: \$1,000,000 per person and \$2,000,000 per occurrence.

7. Default. Any one or more of the following shall constitute an Event of Default under this Agreement:

- a) Owner shall be in default of any term, condition or obligation described in this Agreement, or any document incorporated herein.
- b) Any representation or warranty made by Owner herein or any document or certificate furnished by Owner shall prove at any time to be materially incorrect or misleading as of the date made.

- c) Owner uses any of the Grant funds contrary to this Agreement or the Grant Agreement.
- d) Owner fails to comply with the Grant Agreement.

Upon the occurrence of an event of default as described above, Aeon shall give Owner written notice of the default and Owner shall proceed to cure such default within thirty (30) days after the receipt of such notice. In the event the cure is not commenced or not diligently pursued or in the event that the default is not cured within a reasonable period of time. Aeon may bring an action to compel Owner to comply with the Grant Agreement and the Declaration.

8. Attorney's Fees and Expenses. In the event Owner should default under any of the provisions of this Agreement, and Aeon should employ attorneys or incur other expenses for the collection of amounts due hereunder or the enforcement of performance of any obligation of Agreement on the part of Owner, Owner will, on demand, reimburse Aeon for the reasonable fee of such attorneys and such other expenses so incurred.

9. Attachments. The following identified attachments are incorporated into and made part of this Agreement:

Attachment A – Legal Description

Attachment B – Declaration

10. Parties Affected. This Agreement shall be binding upon Owner and Owner's successors and assigns and shall inure to the benefit of Aeon and its successors and assigns.

11. Amendment, Governing Law. This Agreement shall not be amended or modified without the prior written approval of all parties hereto. This Agreement shall be construed in accordance with the laws of the State of Minnesota.

12. Notices. All notices required to be made or given under this Agreement shall be sent to the following:

OWNER: Villa Nova Preservation JV LLC
901 North Third Street, Suite 150
Minneapolis, MN 55401

AEON: Aeon
901 North Third Street, Suite 150
Minneapolis, MN 55401

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

OWNER:

VILLA NOVA PRESERVATION JV LLC

By: _____

Its: _____

AEON:

AEON

By: _____

Its: _____

EXHIBIT A

LEGAL DESCRIPTION

Lot 2, Block 1, Rearrangement of Lot 1, Block 2, Stow's Edgemoor Addition,
Hennepin County, Minnesota.

EXHIBIT B
DECLARATION OF RESTRICTIVE COVENANTS

[See Attached.]

EXHIBIT C
PUBLIC ACCESS EASEMENT

[See Attached.]

PUBLIC ACCESS EASEMENT

THIS PUBLIC ACCESS EASEMENT (this “Agreement”) is made as of _____, 2019 (“Effective Date”) by **VILLA NOVA PRESERVATION JV LLC**, a Minnesota limited liability company (“Grantor”), for the benefit of the **CITY OF EDINA, MINNESOTA**, a Minnesota statutory city (“City”).

RECITALS:

A. Grantor is the fee owner of certain real property located in the City of Edina, Minnesota, legally described on the attached Exhibit A (the “Property”).

B. As a condition to the HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA, MINNESOTA, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “Authority”), making a monetary grant in the amount of \$350,000.00 (the “Grant”) to Aeon, a Minnesota non-profit corporation and the managing member of Grantor (“Aeon”), pursuant to that certain Grant Agreement dated as of the Effective Date by and between the Authority and Aeon, the Authority requires that Grantor grant to the City, an easement over, upon, and across the surface of certain portions of the Property for sidewalk, bike trail and public access purposes, as more particularly described in this Agreement.

NOW, THEREFORE, Grantor makes the following grant, hereby specifying that this Agreement and the easement granted herein shall constitute covenants to run with the land and shall be binding on all parties in interest and their respective successors and assigns:

1. Grant of Easement. Grantor hereby conveys to the City a non-exclusive, perpetual easement (“Easement”) over, upon and across the surface of certain portions of the Property, as legally described and/or depicted on the attached Exhibit B (“Easement Area”), for the sole purpose of public access to, and use of, the sidewalks or bike trails now or in the future located thereon.

2. Term. The term of this Agreement shall commence on the Effective Date and shall remain in effect unless and until terminated pursuant to Section 6 of this Agreement.

3. Construction and Maintenance of Sidewalks. If in the future, the City determines that sidewalks or bike trails are desired within the Easement Area, the City shall upon not less than ten (10) days prior written notice be permitted to construct the same within the Easement Area. Following construction, the City, at its sole cost and expense, shall maintain, repair and replace any such sidewalks and bike paths to keep them in good condition and repair, free from obstructions, and otherwise in accordance with applicable law. Grantor shall have no obligation to repair or maintain any improvements installed by the City and Grantor shall have no obligation to remove ice, snow, or debris from any sidewalks or paths installed by the City in the Easement Area. Grantor reserves the right to use any portion of the Easement Area which is not improved with sidewalks or bike trails in any manner that does not impair the rights of the City under this Agreement.

4. Insurance. At all times during the term hereof, Grantor, at its cost and expense, shall keep the Easement Area insured, in amounts Grantor reasonably deems appropriate, against

liability and against loss or damage by casualties covered by extended coverage insurance and against vandalism and malicious mischief and against such other risks, of a similar or dissimilar nature, as are customarily covered with respect to improvements similar to those constructed on the Property.

5. Run with the Land. The Easement shall permanently run with the legal title to the Property and shall inure to the benefit of and be binding upon the parties hereto and their respective successors, and assigns.

6. Termination. This Agreement may be terminated only in a writing signed by Grantor and the City. Any such termination shall be recorded in the real property records of Hennepin County, Minnesota at the expense of Grantor, and upon such recording this Agreement shall terminate, subject to reconciliation of expenses and obligations incurred through the date of termination and the continuation of any provisions that specifically survive termination of this Agreement.

7. Notices. All communication required or permitted under this Agreement to be sent from one party to the other must be in writing and may be personally delivered, sent by a nationally recognized private carrier of overnight mail (e.g., Federal Express) or by United States certified mail, return receipt requested and postage prepaid to either party as set forth below, or at such other addresses as the parties may designate by written notice from time to time. All notices are deemed effective on receipt or refusal.

To Grantor: Villa Nova Preservation JV LLC
c/o Aeon
901 North 3rd Street, Suite 150
Minneapolis, MN 55401

To City: City of Edina, Minnesota
Attention: City Manager
4801 West 50th Street.
Edina, MN 55424

8. Miscellaneous. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement shall be construed and governed by the laws of the state of Minnesota.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Grantor has caused this Agreement to be executed as of the Effective Date.

GRANTOR:

VILLA NOVA PRESERVATION JV LLC,
a Minnesota limited liability company

By: _____

Name: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Public Access Easement Agreement was acknowledged before me this _____ day of _____, 2019 by _____, the _____ of Villa Nova Preservation JV LLC, a Minnesota limited liability company, on behalf of the limited liability company.

THIS INSTRUMENT DRAFTED BY:
DORSEY & WHITNEY LLP (ACS)
50 South Sixth Street
Suite 1500
Minneapolis, MN 55402
(612) 340-2600

EXHIBIT A

Legal Description of Property

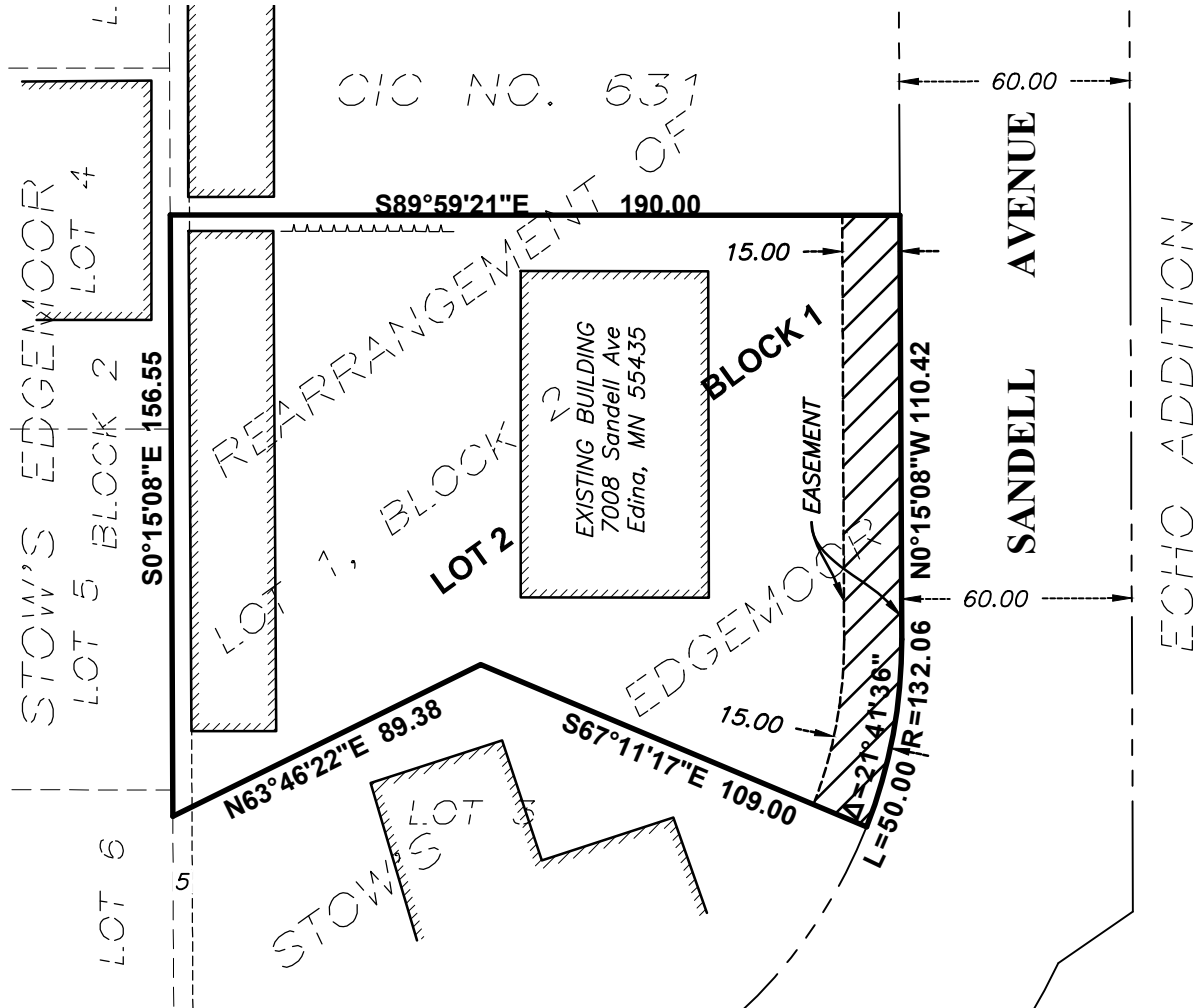
The following described land situated in the County of Hennepin and State of Minnesota:

Lot 2, Block 1, Rearrangement of Lot 1, Block 2, Stow's Edgemoor Addition.

Hennepin County, Minnesota

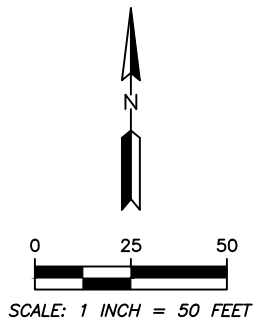
Torrens Property

EXHIBIT B



EASEMENT DESCRIPTION:

The east 15.00 feet of Lot 2, Block 1, REARRANGEMENT OF LOT 1, BLOCK 2, STOW'S EDGEMOOR ADDITION according to the recorded plat thereof, Hennepin County, Minnesota.



1802 WOODDALE DR.
WOODBURY, MN 55125
Ph:651-395-5212

Responsive partner. Exceptional outcomes.

CLIENT NAME

AEON

PROJECT TITLE

EASEMENT EXHIBIT

DWN BY CNA	CHK'D XXX	APP'D XXX	DWG DATE 4/23/2019
			SCALE 1" = 50'

PROJECT NO. 1653-0009	SHEET NO.
--------------------------	-----------

1 OF 1



The CITY of
EDINA

Affordable Housing Preservation

Grant Agreement for 7008 Sandell Avenue

Presentation to Edina Housing and Redevelopment Authority

Stephanie Hawkinson

Affordable Housing Development Manager

April 25, 2019



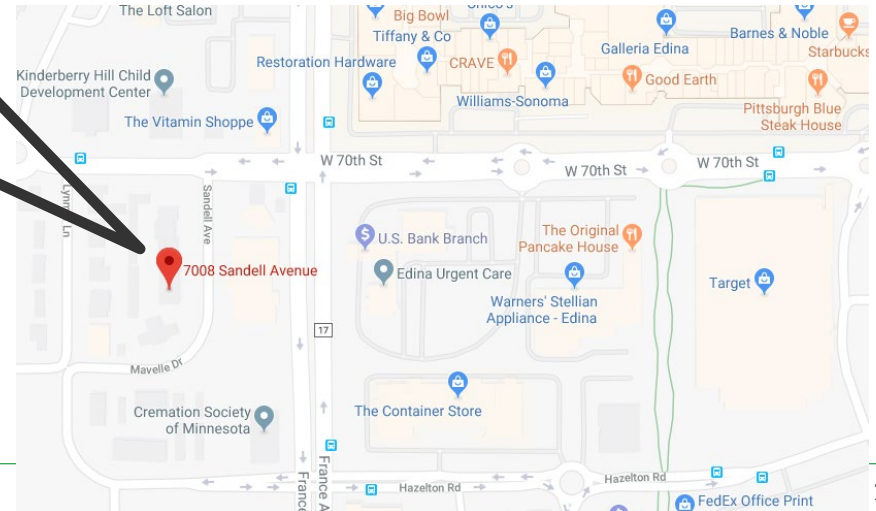
The CITY of
EDINA

7008 Sandell Avenue



- 11 units
- 2 story with garden level
- All 2-bedroom units
- Detached covered parking

- Built in 1961
- 0.6 acres
- Assessed Value = \$1,849,500 (2018)



Sources and Uses



The CITY of
EDINA

7008 Sandell is one of 16 buildings in a NOAH acquisition portfolio

Uses	
Acquisition	28,000,000
Rehabilitation	1,833,260
Transaction Costs	1,099,122
TOTAL	\$30,932,382

Sources		
Debt	18,212,213	59%
Investor Equity	7,820,169	25%
City of Minneapolis	4,550,000	15%
City of Edina	350,000	1%
TOTAL	\$30,932,382	

Actions



The CITY of
EDINA

- 1) The HRA's legal counsel has worked with Aeon's legal counsel in preparing a Grant Agreement, Declaration of Restrictive Covenants, Contribution Agreement, and Public Access Easement.
- 2) Grant is for \$350,000, with funding coming from existing incremental property taxes pooled from Southdale 2 TIF District
- 3) Documents to be pre-signed and held in escrow at Title until the May closing.



Ownership and Document Structure



Document	Signatures
Grant Agreement (\$350,000)	HRA and Aeon
Contribution Agreement (\$350,000)	Aeon and Aeon Villa Nova Preservation JV LLC
Declaration of Restrictive Covenants	HRA and Aeon Villa Nova Preservation JV LLC
Public Access Easement	Aeon Villa Nova Preservation JV LLC

Summary of Terms (February 28, 2019)



The CITY of
EDINA

- Retain existing 11 units building
- Moderate rehabilitation will be completed in fall 2019
- Retain affordability for at least 30-years
 - Five units (40%) to be affordable with rents at the 60% AMI level
 - Six units (60%) to be affordable with rents at the 80% AMI level
- No tenants will be displaced
- Provide 10-15 foot easement for future construction of a path along Sandell



The CITY of
EDINA

Questions?



Edina Housing and Redevelopment
Authority
Established 1974

CITY OF EDINA
HOUSING & REDEVELOPMENT
AUTHORITY
4801 West 50th Street
Edina, MN 55424
www.edinamn.gov

Date: April 25, 2019

Agenda Item #: VI.A.

To: Chair & Commissioners of the Edina HRA

Item Type:
Other

From: Jennifer Garske, Executive Assistant

Item Activity:
Information

Subject: Correspondence

ACTION REQUESTED:
None.

INTRODUCTION:
There has been no correspondence since the last meeting.