



**REGULAR HOUSING AND REDEVELOPMENT AUTHORITY MEETING  
RICHFIELD MUNICIPAL CENTER, COUNCIL CHAMBERS  
SEPTEMBER 18, 2017  
7:00 PM**

Call to Order

Approval of the minutes of the: (1) Regular Housing and Redevelopment Authority meeting of August 21, 2017; and (2) Special Housing and Redevelopment Authority meeting of August 29, 2017.

**AGENDA APPROVAL**

1. Approval of the Agenda
2. **Consent Calendar contains several separate items which are acted upon by the HRA in one motion. Once the Consent Calendar has been approved, the individual items and recommended actions have also been approved. No further HRA action on these items is necessary. However, any HRA Commissioner may request that an item be removed from the Consent Calendar and placed on the regular agenda for HRA discussion and action. All items listed on the Consent Calendar are recommended for approval.**
  - A. Consideration of the approval of a resolution authorizing an Amendment to the Purchase Agreement for the purchase of real property at 6409 16th Avenue.  
Staff Report No. 34
  - B. Consideration of the authorization of initiation of foreclosure proceedings on an unpaid Deferred Loan at 209 Pillsbury Lane.  
Staff Report No. 35
  - C. Consideration of the approval of a contract with the Center for Energy and Environment to provide loan and remodeling advising services to Richfield homeowners for the remainder of 2017 and 2018.  
Staff Report No. 36
  - D. Consideration of the approval of an agreement with Scene Clean, Inc., to clean out 6839 Cedar Avenue.  
Staff Report No. 37
3. Consideration of items, if any, removed from Consent Calendar

**RESOLUTIONS**

4. Consideration of the approval of a resolution amending a loan agreement (and related documents) with Aeon Seasons Park LLC.  
Staff Report No. 38

**OTHER BUSINESS**

5. Consideration of the acceptance of the Richfield Housing and Redevelopment Authority Tax Increment District Status Update.

**HRA DISCUSSION ITEMS**

6. HRA Discussion Items

**EXECUTIVE DIRECTOR REPORT**

7. Executive Director's Report

**CLAIMS AND PAYROLLS**

8. Claims and Payrolls
9. Adjournment

**Auxiliary aids for individuals with disabilities are available upon request. Requests must be made at least 96 hours in advance to the City Clerk at 612-861-9738.**



# HOUSING AND REDEVELOPMENT AUTHORITY MEETING MINUTES

Richfield, Minnesota

Regular Meeting

August 21, 2017

## CALL TO ORDER

The meeting was called to order by Chair Supple at 7:00 p.m.

*HRA Members Present:* Mary Supple, Chair; Pat Elliott; Michael Howard; Doris Rubenstein; and Sue Sandahl.

*Staff Present:* John Stark, Community Development Director; and Julie Urban, Housing Manager.

## APPROVAL OF THE MINUTES OF THE REGULAR HRA MEETING OF MAY 15, 2017

M/Elliott, S/Sandahl to approve the minutes of the: (1) Regular Housing and Redevelopment Authority meeting of July 17, 2017; and (2) Special Housing and Redevelopment Authority meeting of August 3, 2017.

Motion carried 5-0.

<b>Item #1</b>	<b>HRA APPROVAL OF THE AGENDA</b>
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M/Elliott, S/Sandahl, to approve the agenda.

Motion carried 5-0.

<b>Item #2</b>	<b>CONSENT CALENDAR</b>
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Executive Director Devich presented the consent calendar.

- A. Consideration of the approval of a resolution consenting to the inclusion by Inland Development Partners/Chamberlain LLC of certain property with respect to land use approvals (S.R. No. 28).

M/Elliott, S/Howard to approve the consent calendar.

Motion carried 5-0.

<b>Item #3</b>	<b>CONSIDERATION OF ITEMS, IF ANY, REMOVED FROM CONSENT CALENDAR</b>
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None.

<b>Item #4</b>	<b>CONSIDERATION OF THE APPROVAL OF A RESOLUTION AUTHORIZING THE PURCHASE OF REAL PROPERTY AT 6409 16<sup>TH</sup> AVENUE (S.R. NO. 29)</b>
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Housing Manager Urban presented staff report no. 29 regarding the purchase of property located at 6409 16<sup>th</sup> Avenue.

In response to a question from Commissioner Sandahl, Dan Schertner (property owner) explained that he was asking for \$205,000, \$7,000 more than the appraised value of \$198,000, based on his review of current listings, because of the uncertainty of redevelopment plans, and due to the negative impact of the changing character of the neighborhood.

Commissioner Howard stated that meeting in the middle between Mr. Schertner's original request of \$210,000 and the appraisal was reasonable.

M/Rubenstein, S/Howard to approve a resolution authorizing the purchase of real property at 6409 16<sup>th</sup> Avenue in the amount of \$205,000.

Motion carried 5-0.

<b>Item #5</b>	<b>CONSIDERATION OF APPROVAL OF A RESOLUTION APPROVING A LOAN TO AEON SEASONS PARK LLC IN THE AMOUNT OF \$150,000 TO ASSIST WITH THE PURCHASE OF THE SEASONS PARK APARTMENT COMPLEX. (S.R. NO. 30)</b>
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Community Development Director Stark presented staff report no. 30.

Blake Hopkins, Project Manager for Aeon, explained the plans to purchase the complex and Aeon's tenant criteria. He explained that 100 percent of the building would be affordable at 60 percent of the area median income (AMI).

Commissioner Elliott confirmed that that income requirement would provide sufficient cash flow to maintain the building.

Commissioner Howard asked for details regarding rehabilitation plans. Mr. Hopkins explained that immediate issues, such as flooding impacts, would be addressed right away but that other improvements would happen over time. He stated that Aeon is talking to a variety of organizations regarding funding for the rehabilitation work.

Discussion followed regarding affordability levels and the 4d tax classification. He asked that the HRA offer some latitude to staff and the HRA Attorney to make some adjustments to the loan documents. Chair Supple clarified that three issues would be changing: changing the affordability level to 60 percent AMI, qualifying tenants by income at initial lease-up only, and that Aeon would be required to accept Section 8.

M/Howard, S/Rubenstein to approve a resolution approving a loan to Aeon Seasons Park LLC in the amount of \$150,000 to assist with the purchase of the Seasons Park apartment complex giving staff discretion to work out the details of the loan documents to require that 20 percent of the units be affordable at 60 percent AMI, tenants be income-qualified initially only, and a minimum of 9 units be reserved for Section 8 tenants.

Motion carried 5-0.

<b>Item #6</b>	<b>CONSIDERATION OF THE APPROVAL OF RESOLUTIONS APPROVING PROPOSED PROPERTY TAX LEVY FOR PAYABLE 2018 FOR CERTIFICATION TO HENNEPIN COUNTY (S.R. NO. 31)</b>
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Community Development Director Stark presented staff report no. 31 and gave a presentation on the proposed Housing and Redevelopment Authority budget.

Executive Director Devich gave an update on the Penn Avenue liquor store remodeling.

M/Rubenstein, S/Sandahl to approve a resolution approving proposed property tax levy for payable 2018 for certification to Hennepin County.

Motion carried 5-0.

<b>Item #7</b>	<b>CONSIDERATION OF THE RATIFICATION OF AN ESCROW AGREEMENT IN WHICH THE HOUSING AND REDEVELOPMENT AUTHORITY AGREE TO PAY UP TO \$30,000 FOR REMEDIATION OF ENVIRONMENTAL CONTAMINATES AND \$1,400 FOR WELL-SEALING ON PROPERTY SOLD TO INTERSTATE DEVELOPMENT LLC BY THE HOUSING AND REDEVELOPMENT AUTHORITY FOR DEVELOPMENT OF THE PLAZA 66 COMMERCIAL DEVELOPMENT. (S.R. NO. 32)</b>
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Community Development Director Stark presented staff report no. 32.

M/Sandahl, S/Elliott to ratify an Escrow Agreement in which the Housing and Redevelopment Authority agree to pay up to \$30,000 for remediation of environmental contaminants and \$1,400 for well-sealing on property sold to Interstate Development LLC by the Housing and Redevelopment Authority for development of the Plaza 66 commercial development.

Motion carried 5-0.

<b>Item #8</b>	<b>HRA DISCUSSION ITEMS</b>
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Community Development Director Stark clarified that the Cedar Point II market analysis has not been completed yet.

<b>Item #9</b>	<b>EXECUTIVE DIRECTOR REPORT</b>
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None.

<b>Item #10</b>	<b>CLAIMS AND PAYROLL</b>
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M/Elliott, S/Howard, that the following claims and payroll be approved:

<b>U.S. BANK</b>	<b>8/21/17</b>
Section 8 Checks: 128969-129058	\$150,110.06
HRA Checks: 33174-33219	\$307,729.80
<b>TOTAL</b>	<b>\$457,839.86</b>

Motion carried 5-0.

**ADJOURNMENT**

The meeting was adjourned by unanimous consent at 8:14 p.m.

Date Approved: September 19, 2017

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Mary B. Supple  
HRA Chair

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Julie Urban  
Housing Manager

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Steve Devich  
Executive Director



# HOUSING AND REDEVELOPMENT AUTHORITY MEETING MINUTES

Richfield, Minnesota

## Special Meeting

## August 29, 2017

**CALL TO ORDER**

The meeting was called to order by Vice Chair Elliott at 7:45 p.m.

*HRA Members Present:* Mary Supple, Chair; Pat Elliott; Michael Howard; and Sue Sandahl.

*HRA Members Absent:* Doris Rubenstein.

*Staff Present:* Steven L. Devich, Executive Director and John Stark, Community Development Director.

<b>ITEM #1</b>	<p><b>SPECIAL MEETING ITEMS</b></p> <ul style="list-style-type: none"> <li><b>CONSIDERATION OF THE APPROVAL OF A RESOLUTION APPROVING A CONTRACT FOR PRIVATE DEVELOPMENT WITH INLAND DEVELOPMENT PARTNERS FOR THE CEDAR POINT SOUTH REDEVELOPMENT AREA (S.R. NO. 33)</b></li> </ul>
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Community Development Director Stark reviewed Staff Report No. 33.

Commissioner Elliott asked for a historical background of this project area. Community Development Director Stark responded with a synopsis of the project history. Mr. Stark discussed the timing and financial obstacles that were encountered in putting this development together.

Commissioner Howard asked the developer to work with the neighbors on project aspects that would impact them. Steve Schwanke, Inland Development responded they would do that.

All Commissioners stated their support for this project and the culmination of years of work to making this project a reality.

Commissioner Howard asked Mr. Stark to forecast the next official actions concerning this project. Mr. Stark responded that the TIF plan and TIF district establishment would be next. He stated that there would be a first reading on land use approvals on September 12 and a second reading on September 26. He also stated that around December or January, staff would come to the City with a TIF plan and district.

M/Howard, S/Elliott to approve a resolution approving a contract for private redevelopment with Inland Development Partners.

Motion carried 4-0.

**ADJOURNMENT**

The meeting was adjourned by unanimous consent at 8:25 p.m.

Date Approved: September 18, 2017

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Mary Supple  
Chair

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Julie Urban  
Housing Manager

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Steven L. Devich  
Executive Director





**STAFF REPORT NO. 34**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**9/18/2017**

REPORT PREPARED BY: Kate Aitchison, Housing Specialist

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director  
9/12/2017

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director  
9/13/2017

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the approval of a resolution authorizing an Amendment to the Purchase Agreement for the purchase of real property at 6409 16th Avenue.**

**EXECUTIVE SUMMARY:**

On August 21, 2017, the HRA approved the purchase of the home located at 6409 16th Avenue. The home is located in the Cedar Point Housing Redevelopment area and was purchased by the HRA for \$205,000. Following the meeting the homeowner asked for \$3,500 in earnest money to assist him with the costs associated with moving. The \$3,500 will be deducted from the sale price, with further funds distributed at closing.

**RECOMMENDED ACTION:**

**By motion: Approve the resolution authorizing the Amendment to the Purchase Agreement for the purchase of real property at 6409 16th Avenue.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- On August 21, 2017, the HRA authorized the Purchase Agreement for \$205,000.
- Previous purchases in the Cedar Point Housing Redevelopment Area have included earnest money when requested by the selling party, typically in the 1-3% range.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

- The Purchase Agreement includes terms to cover the distribution of earnest money prior to closing.

**C. CRITICAL TIMING ISSUES:**

- The homeowner needs to begin the process of moving in order to meet the deadline established in the Purchase Agreement.
- Closing is required to occur before October 31, 2017.

**D. FINANCIAL IMPACT:**

- Funding is available through the HRA's Development Fund.

**E. LEGAL CONSIDERATION:**

- The HRA attorney has drafted and approved the Amendment to the Purchase Agreement.

**ALTERNATIVE RECOMMENDATION(S):**

- Do not authorize the resolution approving an Amendment to the Purchase Agreement for the purchase of 6409 16th Avenue.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

N/A

**ATTACHMENTS:**

	Description	Type
☐	Resolution	Resolution Letter
☐	Amendment to Purchase Agreement	Contract/Agreement

**HOUSING AND REDEVELOPMENT AUTHORITY  
IN AND FOR THE CITY OF RICHFIELD, MINNESOTA**

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING AN AMENDMENT TO PURCHASE AGREEMENT FOR  
PROPERTY LOCATED AT 6409 16<sup>TH</sup> AVENUE SOUTH**

WHEREAS, the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the "Authority") and Daniel E. Schertner (the "Seller") entered into a Purchase Agreement, dated August 21, 2017 (the "Original Agreement"), pursuant to which the Authority agreed to purchase property from the Seller located at 6409 16<sup>th</sup> Avenue South in the City of Richfield, Minnesota, and legally described as Lots 2, Block 2, Iverson's Second Addition (the "Property"); and

WHEREAS, Section 2 of the Original Agreement provided that no earnest money would be paid by the Authority to the Seller; and

WHEREAS, the Authority and the Seller wish to amend the terms of the Purchase Agreement so that the Authority is required to pay earnest money to the Seller in the amount of \$3,500 for the purchase of the Property; and

WHEREAS, there has been presented before this Board a form of Amendment to Purchase Agreement (the "Amendment") proposed to be entered into between the Authority and the Seller, which amends the amount of earnest money set forth in the Original Agreement; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota as follows:

1. The Amendment is hereby in all respects authorized, approved, and confirmed, and the Chair and the Executive Director are hereby authorized and directed to execute the Amendment for and on behalf of the Authority in substantially the form now on file with the Community Development Director but with such modifications as shall be deemed necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of their approval of any and all modifications therein.

2. The Authority shall pay to the Seller earnest money for the purchase of the Property in the amount of \$3,500.

3. The Chair and the Executive Director are hereby authorized to execute and deliver any and all documents deemed necessary to carry out the intentions of this resolution.

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 19<sup>th</sup> day of September, 2017.

\_\_\_\_\_  
Mary Supple, Chair

ATTEST:

\_\_\_\_\_  
Doris Rubenstein, Secretary

**AMENDMENT TO PURCHASE AGREEMENT**

This Amendment is made as of the 18<sup>th</sup> day of September, 2017, by and between the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota a public body corporate and politic under the laws of the State of Minnesota (the “Buyer”) and Daniel E. Schertner (the “Seller”), an individual.

WITNESSETH:

**WHEREAS**, the Buyer and the Seller entered into a Purchase Agreement, dated August 21, 2017 (the “Agreement”) pursuant to which the Buyer agreed to purchase property from the Seller located at 6409 16th Avenue South and legally described as Lot 2, Block 2, Iverson’s Second Addition; and

**WHEREAS**, the parties wish to amend the Agreement as hereinafter set forth.

**NOW, THEREFORE**, in consideration of the premises and mutual obligations of the parties under the Agreement and this Amendment, the parties hereby agree that the Agreement is amended as follows:

1. Amendment to Section 2B(1). Section 2B(1) is hereby deleted in its entirety and replaced with the following:

(1): **EARNEST MONEY**. The sum of Three Thousand Five Hundred Dollars (\$3,500.00) (the “Earnest Money”) shall be paid by Buyer to Seller.

2. Confirmation of Agreement. Except as specifically amended herein, the Agreement is hereby ratified and confirmed, and remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto, by their authorized representatives, have hereunto set their hands as of the date and year first written above.

**Buyer:**  
**THE HOUSING AND REDEVELOPMENT  
AUTHORITY IN AND FOR THE CITY OF  
RICHFIELD, MINNESOTA**

By

\_\_\_\_\_  
Its Chairperson

By

\_\_\_\_\_  
Its Executive Director

Seller:

\_\_\_\_\_  
Daniel E. Schertner



**STAFF REPORT NO. 35**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**9/18/2017**

REPORT PREPARED BY: Julie Urban, Housing Manager

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director  
9/11/2017

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director  
9/13/2017

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the authorization of initiation of foreclosure proceedings on an unpaid Deferred Loan at 209 Pillsbury Lane.**

**EXECUTIVE SUMMARY:**

In 2006, the Housing and Redevelopment Authority (HRA) issued a Deferred Loan in the amount of \$24,295 to Herbert and Sandra Keissling (the "Homeowners") at 209 Pillsbury Lane (the "Property"). The Homeowners have since died. The loan was due and payable upon the death of Sandra in 2014; however, the loan has not been repaid.

In seeking repayment for the loan, HRA staff found that while probate proceedings were commenced, they were never completed, leaving the Property's ownership uncertain. Further research has shown that the amount of debt owed exceeds the value of the Property, which is likely why the probate process was never completed.

The Homeowners' nephew has been living at the Property; however, he has not maintained the property well, and the City has received numerous complaints over the past three years.

After consulting with the HRA Attorney to determine the HRA's options for getting repaid and for resolving the ownership of the Property, staff determined that the most effective option is to foreclose on the property. The HRA would then obtain ownership of the Property for the cost of its lien, plus attorney fees and expenses.

Once the HRA owned the Property, it could be rehabilitated through the New Home Program and sold to an income-qualified buyer. Sales proceeds would then be available to reimburse the Deferred Loan Program for the original loan amount.

**RECOMMENDED ACTION:**

**By motion: Authorize the Housing and Redevelopment Authority Attorney to commence a civil action to foreclose on its lien against 209 Pillsbury Lane.**

**BASIS OF RECOMMENDATION:**

A. **HISTORICAL CONTEXT**

- The HRA issued a \$24,295 Deferred Loan to the Homeowners to make repairs and improvements to the Property on August 8, 2006.
- Herbert passed away in 2010 and Sandra passed away in 2014. The loan was due and payable upon Sandra's death; however, the loan remains unpaid.
- An informal probate proceeding was commenced for Sandra in 2015 but was not completed. No probate was commenced for Herbert.
- In addition to the HRA Deferred Loan Repayment Agreement, the property title is subject to a Mortgage in the amount of \$28,664 in favor of Hennepin County and a Notice of Potential Claim in favor of the Department of Human Services (DHS) in the amount of \$660,318.14.
- The HRA lien is senior to both Hennepin County's mortgage and the DHS claim.
- Probate proceedings presumably stalled because of the significant debt leveraged against the property.
- The homeowners' nephew was named Personal Representative for the estate and currently lives at the property. Code Enforcement staff have handled numerous complaints relating to the property since the death of the homeowners. Addressing the complaints has proven difficult given the fact that the nephew does not own the property.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

- The Deferred Loan Program offers loans to homeowners earning less than 80 percent of the area median income to make safety and maintenance-related improvements to their home. The loan charges no interest; however, it matures when the home is sold, is no longer the principal residence for the homeowners, or upon the death of the homeowners. The loan is forgiven if none of these events occurs within 30 years.
- The Deferred Loan Program provides a valuable resource to homeowners with limited incomes. There are currently 24 people on the waiting list for the program. Loan repayments are a source of funding for the program, along with annual allocations from the federal Community Development Block Grant (CDBG) Program.
- The New Home Program provides affordable homeownership opportunities through new construction and the acquisition and rehabilitation of existing houses, using CDBG funds. The Property would be purchased and rehabilitated through this program and sold to an income-qualified buyer.

**C. CRITICAL TIMING ISSUES:**

- The length of the foreclosure proceedings is likely to exceed one year.

**D. FINANCIAL IMPACT:**

- Upon conclusion of the foreclosure process, the HRA will hold title to the property for the cost of the Deferred Loan (\$24,295), attorney fees (estimated at \$5,000, plus expenses), and any unpaid real estate taxes (currently \$0) and/or state or federal tax liens (currently \$0).
- The junior creditors could also redeem the property in the foreclosure process; however, they would be required to pay the HRA for the Deferred Loan along with attorney fees and expenses.
- If an objection is filed to the foreclosure, the HRA could decide to stop the proceedings. The cost to the HRA would be attorney fees and expenses to date.
- CDBG funds are available to use for this project.

**E. LEGAL CONSIDERATION:**

- The HRA Attorney has advised the HRA that foreclosure is an option for collecting the money it is owed. Following the successful completion of that process, the HRA would then own the property free and clear of all liens or encumbrances (other than any unpaid real estate taxes).
- A second option would be to attempt to purchase the property from the owner(s); however, since probate was never completed, the HRA would be required to commence probate proceedings on behalf of both decedents and then seek purchase agreements from all identified heirs. This process would take longer, cost more and the outcome is less certain.

**ALTERNATIVE RECOMMENDATION(S):**

- Decide not to initiate foreclosure proceedings, accepting the loss of the Deferred Loan repayment.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

N/A



**STAFF REPORT NO. 36**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**9/18/2017**

REPORT PREPARED BY: Julie Urban, Housing Manager

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director  
9/11/2017

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director  
9/13/2017

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the approval of a contract with the Center for Energy and Environment to provide loan and remodeling advising services to Richfield homeowners for the remainder of 2017 and 2018.**

**EXECUTIVE SUMMARY:**

For several years, the Housing and Redevelopment Authority (HRA) has contracted with the Greater Metropolitan Housing Corporation (GMHC) to provide housing services (e.g., Fix-Up Loans, housing information, remodeling advising) to Richfield residents through their Housing Resource Center (HRC). The HRC is closing at the end of this year and therefore is no longer able to provide services to residents.

The Center for Energy and Environment's (CEE) Lending Center provides similar housing services to other communities and is able to offer services to Richfield. Under the proposed contract, CEE would begin offering Fix-Up Fund Loans and remodeling advising services to homeowners in October. The Contract would expire at the end of 2018, at which time the HRA would determine whether or not to continue utilizing CEE to provide these services.

**RECOMMENDED ACTION:**

**By Motion: Authorize a Contract with the Center for Energy and Environment to provide lending and remodeling advising services for the remainder of 2017 and 2018.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- Since 2004, GMHC has offered Fix-Up Fund loans at three percent and free remodeling advising visits to Richfield homeowners through its Housing Resource Center. GMHC is closing the HRC at the end of the year.
- The HRA has contracted with CEE to provide Home Energy Squad Enhanced visits to Richfield residents since 2013.
- CEE's Lending Center has extensive experience in providing lending and remodeling services and currently offers these services to several other communities in the metro area.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**



- The Contract with CEE would enable the city to continue offering valuable remodeling resources to its residents and meet the goals to support the rehabilitation and upgrading of the existing housing stock.

**C. CRITICAL TIMING ISSUES:**

- GMHC hasn't been able to accept new Fix-Up Fund applications since the beginning of July, leaving a gap in services.
- The city's remodeling programs are featured on the Tour of Remodeled Homes on October 7th. It is important to have a new service provider in place in time for the tour.
- CEE will need to hire personnel in order to expand its services to Richfield (and other communities formerly served by GMHC), so they are asking for a 15-month commitment to warrant this investment.

**D. FINANCIAL IMPACT:**

- The HRA would pay CEE a \$1,500 loan set-up fee to create the reduced-rate Fix-Up Fund loan program, which includes applying to Minnesota Housing for funding, setting up loan documents and files, adding information to their website.
- The HRA would pay CEE a loan origination fee of \$125 for each loan processed and \$225 for each remodeling advising visit.
- The prior contract with GMHC was an all-inclusive annual cost of \$10,000 per year.
- Funds are available in the 2017 budget and designated in the 2018 HRA budget for these expenses.
- In addition, HRA funds are available to write down the Fix-Up Fund interest rate to three percent.

**E. LEGAL CONSIDERATION:**

The HRA Attorney reviewed the contract.

**ALTERNATIVE RECOMMENDATION(S):**

Decide not to authorize the contract.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

N/A

**ATTACHMENTS:**

Description	Type
☐ Contract with CEE	Contract/Agreement
☐ Attachment: Program Guidelines, CEE	Contract/Agreement
☐ Attachment: Program Budget, CEE	Contract/Agreement

## LOAN ORIGINATION AGREEMENT

This LOAN ORIGINATION AGREEMENT ("Agreement") is made by and between the HOUSING AND REDEVELOPMENT AUTHORITY in and for the City of Richfield, with offices at 6700 Portland Ave, Richfield, MN 55423 ("Authority"), and CENTER FOR ENERGY AND ENVIRONMENT, with offices at 212 3<sup>rd</sup> Avenue North, Suite 560, Minneapolis, Minnesota 55401 ("CEE").

### RECITALS

- A. The Authority has a need for certain professional services and desires to retain CEE to provide said services, all subject to the terms and conditions contained in this Agreement.
- B. CEE is qualified to provide the desired professional services and desires to provide said services for the Authority, all subject to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained in this Agreement, the parties agree as follows:

### **1. Services/Scope of Work**

- 1.1 CEE shall in conjunction with the Authority develop and deliver the City of Richfield Home Improvement Loan Program (hereinafter the "Program") and more fully described in Exhibit A attached hereto. All activities delivered under the Program shall be coordinated with the Authority's designated Community Development Director John Stark.
- 1.2 CEE shall assist the Authority staff in marketing the Program. CEE shall insure that the Authority's sponsorship of the program is a prominent part of any marketing effort. (optional and at an hourly rate)
- 1.3 The funding source is exclusively from the Authority and the program will be referred to as the Authority Funded Program.

### **2. Compensation**

- 2.1 The Authority shall compensate CEE for services provided under this agreement according to the following schedule and more fully described in Exhibit B attached hereto:

<u>Loan Set-Up Fee</u>	\$1,500.00
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The Authority shall pay CEE a one time loan set-up fee. This shall compensate CEE for time and labor to create the loan program.

Remodeling Advisor Visit Fee(RAV) \$225.00

CEE will provide City of Richfield homeowners with rehabilitation counseling services to assist in evaluating projects, bids and how to move forward with their project. The visit fee is for each site visit or trip to the property. Phone calls, emails and other forms of communication are included in the fee.

Loan Origination Fee (optional) \$125.00

The Authority shall pay CEE an Origination Fee for each loan closed using the Authority Funded Program to subsidize the Minnesota Housing Finance Agency (MHFA) interest rate. The Origination Fee shall compensate CEE for assisting borrowers with loan applications, preparation of loan documents, loan closing and other direct costs of processing loans. Mortgage filing fees, credit report, flood, title work and a 1% Origination Fee shall be paid by the borrower. CEE shall provide a copy of the MHFA purchase approval as documentation of the loan closing.

MHFA Interest Subsidy varies

The Authority shall pay CEE the MFHA Interest Subsidy amount for each loan closed using the Authority Funded Program to subsidize the Minnesota Housing Finance Agency (MHFA) interest rate. The subsidy is calculated by MHFA and is based on interest rate, loan term and loan amount. CEE shall provide a copy of the MHFA purchase approval as documentation of the loan closing.

The Authority shall compensate CEE only for services completed.

Upon request, CEE will provide marketing services for the following fees:

CEE Labor - Marketing Coordinator \$65.00/hr

Hourly rates are inclusive of all overhead expenses and will be charged only for hours directly related to marketing. CEE will be reimbursed by the Authority for any non-labor, out-of-pocket expenses, relating to these services on a dollar-for-dollar basis with no mark-up.

- 2.2 CEE shall invoice the Authority not more than two times each month for the principal of loans and administrative fees. The Authority shall pay CEE within 20 days of receipt of the invoice.

### **3. CLIENT's Obligations**

- 3.1 If requested by CEE, the Authority shall make reasonable efforts to respond promptly to requests from CEE for information and approvals regarding the services to be provided under this Agreement.

- 3.2 If requested by CEE, the Authority shall make reasonable efforts to obtain information and or permission for access from clients which may be necessary for CEE to provide the services under this Agreement.
- 3.3 The Authority shall provide sufficient funding to fund eligible Authority funded loans. The Authority shall determine the amount of funds allocated to the Program.
- 3.4 The Authority shall establish eligibility for the Authority Funded Program and shall provide these criteria in writing to CEE prior to commencement of any marketing efforts .
- 3.5 The Authority shall make reasonable efforts to respond promptly to requests from CEE for information and approvals regarding the services to be provided under this Agreement.

#### **4. CEE's Obligations**

- 4.1 CEE shall use its best efforts to provide services under this Agreement in a professional manner consistent with the care and skill used by reputable members of CEE's profession.
- 4.2 CEE, and all of its employees or agents, shall comply with all statutes, ordinances, rules, regulations and other laws applicable to the provision of services under this Agreement.
- 4.3 CEE shall secure all permits and licenses required for performance of the services under this Agreement.
- 4.4 CEE shall not engage in discriminatory employment practices against any employee or applicant for employment and shall in all respects comply with all federal, state and local laws, regulations and orders, including without limitation, Chapter 363 of the Minnesota Statutes, as amended from time to time. Failure to comply with the provisions hereof shall be deemed a material default under this Agreement.

#### **5. Term and Termination**

- 5.1 Unless earlier terminated as provided in the following paragraphs, this Agreement shall become effective on October 1, 2017, and continue through December 31, 2018.
- 5.2 This Agreement may be terminated by either party, for any reason or no reason, immediately upon written notice to the other party. In the event this Agreement is terminated by CEE prior to the expiration of the term set forth in paragraph 5.1, the Authority shall compensate CEE for all services delivered up the date of termination and CEE shall provide the Authority with such information as the Authority may request regarding the status of the Authority Funded Program.
- 5.3 Any termination of this Agreement shall not release either party from their respective obligations under sections 7 and 8 of this Agreement.

## 6. Insurance

6.1 During the term of this Agreement, CEE will obtain and maintain insurance in the amounts listed below:

General Liability	\$2,000,000	Aggregate Limit
Automobile Liability	\$1,000,000	Combined Single Limit
Excess Liability	\$1,000,000	Aggregate Limit
Workers Compensation		Statutory Limit

## 7. Liability and Indemnification

- 7.1 CEE represents that the services to be provided under this Agreement are reasonable in scope and that CEE has the experience and ability to provide the services.
- 7.2 CEE warrants that any services provided hereunder shall be done in a professional and workmanlike manner.
- 7.3 CEE shall indemnify, defend and hold harmless Authority and its officers, directors, employees and agents from and against any and all claims, damages, losses, injuries and expenses (including attorneys' fees and damages for death, personal injury and property damage) which Authority may incur as a result of any act or omission by CEE in providing services under this Agreement.
- 7.4 Authority shall indemnify, defend and hold harmless CEE and its officers, directors, employees and agents from and against any and all claims, damages, losses, injuries and expenses (including attorneys' fees and damages for death, personal injury and property damage) which CEE may incur as a result of any act or omission by Authority in discharging its duties under this Agreement.

## 8. Confidentiality

Unless otherwise agreed by Authority in writing, CEE shall maintain in confidence and not disclose to any third party any information obtained regarding the Authority and/or any of Authority's clients for which CEE is providing services; provided, however, that this obligation to maintain confidentiality shall not apply to:

- a) Information in the public domain at the time of disclosure;
- b) Information which becomes part of the public domain after disclosure through no fault of CEE; or
- c) Information which CEE can demonstrate was known by it prior to the date of this Agreement.

Notwithstanding the foregoing, CEE shall be entitled to disclose the documents or client information covered by this paragraph to governmental authorities to the extent CEE reasonably believes it has a legal obligation to make such disclosures and to the extent CEE reasonably deems to be necessary; provided, however, that if CEE believes that any

such disclosure is required by law, it shall provide advance notice to the Authority to provide the Authority with a reasonable opportunity to attempt to obtain an injunction or other protective order preventing such disclosure.

## **9. Relationship of Parties**

CEE will provide services as an independent contractor under this Agreement. Neither CEE, nor any of its employees or agents, shall be considered employees of the Authority for any purpose, and neither shall CEE be eligible for any compensation or benefits which the Authority may provide to its employees from time to time. CEE shall be solely responsible for all employment and other taxes applicable to providing services hereunder, and the Authority will not withhold any taxes or contributions from the compensation payable to CEE under this Agreement.

## **10. Notices**

All notices, requests, demands and other communications required to be given in writing under this Agreement shall be given to the other party in person or by mail as provided in this section. If delivered personally, notice shall be deemed to have been duly given on the date of delivery. If delivered by mail, such notice shall be sent via first class U.S. mail, postage prepaid, to the address set forth at the beginning of this Agreement or such other address as a party may otherwise request by written notice, and notice shall be deemed duly given three (3) business days after mailing.

## **11. Assignment**

This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns; provided, however, that neither party shall assign or transfer in any manner, this Agreement or any portion hereof without the prior written consent of the other party, and any attempt to assign or transfer without prior written consent shall be void and of no effect.

## **12. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

## **13. Miscellaneous**

- 13.1 Headings and captions used in this Agreement are for convenience only and shall not affect the meaning of this Agreement.
- 13.2 This Agreement contains the entire agreement of the parties and supersedes all prior agreements, discussions and representations, written or oral, concerning the subject matter hereof.
- 13.3 No waiver by the Authority of any term or condition of this Agreement or any document referred to herein shall, whether by conduct or otherwise, be construed as a waiver or release of any other term or condition of this Agreement.

- 13.4 This Agreement may only be amended in a written agreement signed by both parties.
- 13.5 Except as expressly set forth in section 7, the rights and benefits under this Agreement shall inure solely to the benefit of the Authority and CEE, and this Agreement shall not be construed to give any rights, benefits or causes of action to any third party.
- 13.6 The invalidity or partial invalidity of any provision of this Agreement shall not invalidate the remaining provisions, and the remainder shall be construed as of the invalidated portion shall have never been a part of this Agreement.
- 13.7 CEE shall comply with the provisions of Minnesota Statutes Chapter 13 (Government Data Practices) that are applicable to the Authority and shall not disseminate any information concerning loan requests of the borrowers without the prior written approval of the Authority.
- 13.8 This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

HOUSING AND REDEVELOPMENT AUTHORITY in and for the City of Richfield

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

Print Name \_\_\_\_\_

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

Print Name \_\_\_\_\_

Date: \_\_\_\_\_

CENTER FOR ENERGY & ENVIRONMENT

By: \_\_\_\_\_ Its: Corporate Secretary

Jennifer Amendt

Date: \_\_\_\_\_ Tax ID # 41-1647799

# **EXHIBIT A**

## **PROGRAM GUIDELINES**

This document includes guidelines for the  
MHFA Interest Subsidy Program



## **RICHFIELD LOAN PROGRAM GUIDELINES**

The HOUSING AND REDEVELOPMENT AUTHORITY is making funds available for homeowners to assist with home maintenance and energy improvements. The Richfield Interest Subsidy Program is designed to supplement existing loan programs available from MHFA, CEE, private lenders and other housing resources. This program is not intended to be the sole source of improvement funds available to the City. Center for Energy and Environment shall serve as the administrator for the Richfield Interest Subsidy Program and will secure the most beneficial financing based on the borrower's needs independent of the funding source.

### **Richfield Interest Subsidy Program**

**Interest Rate:** 3% fixed

**Amortization Type:** Amortizing. Closed-end (Monthly Payments Required)

**Loan Amount:** Minimum of \$2,000 and Maximum of \$50,000.

**Total Project Cost:** The borrower must have sufficient funds necessary to cover the cost of the entire project (as outlined in the bid(s)). Additional funds may come from personal savings, gifts, or other loan funds.

**Loan term:** Generally, one year per \$1,000 borrowed. This will be somewhat flexible depending on the size of the loan and the borrower's ability to repay the loan. The minimum term is 1 year; the maximum term will be 20 years.

**Eligible Properties:** 1-4 unit owner-occupied properties located within the geographical boundaries of the City of Richfield. Townhomes and Condominiums are eligible, subject to Association Bylaws. Properties may be held in a Contract for Deed.

**Ineligible Properties:** Dwellings with more than 4 units, cooperatives, manufactured homes, time shares, properties held in the name of a trust and properties used for commercial purposes.

**Eligible Borrowers:** All borrowers must be legal residents of the United States, as evidenced by a social security number, including: U.S. Citizens, Permanent Resident Aliens, Non-Permanent Resident Aliens. TAX IDENTIFICATION NUMBERS (ITIN) ARE NOT ACCEPTABLE.

**Ineligible Borrowers:** Including but not limited to: - Businesses, Foreign Nationals, Non-Occupant Co-Borrowers, and Properties held in the name of a trust.

**Ownership/Occupancy:** Owner- occupied only.

**Loan - to - Value Ratio:** The ratio of all loans secured by the property, including the new loan, should not exceed 110% of the property value. Half of the improvement value may be added to the initial property value.

**Income Limit:** \$104,000 as determined by MHFA. This limit adjusts annually.

**Debt - to - Income Ratio:** Applicant must have the ability to repay the loan. An applicant who has a debt to income ratio in excess of 48% will be ineligible to receive financing.

**Credit Requirements:** All borrowers must have a minimum credit score of 620 and: 1) All mortgage payments must be current and reflect no 30 day late payments history in the past 12 month period (without reasonable explanation) 2) All real estate taxes must be current. 3) No outstanding judgements or collections (excluding medical). 4) Bankruptcy must have been discharged for at least 18 months prior to loan closing. 5) The redemption period on prior foreclosures must have occurred at least 18 months prior to the loan application date. 6) Generally, no more than two 60-day late payments on credit report. Any 60 day late requires a documented explanation and reasonable reasons; medical, unemployment, divorce. 7) No defaulted government loans.

**Multiple Loans per Property:** More than one loan per property is allowed, however, the outstanding balance(s) cannot exceed \$50,000.

**Eligible Use of Funds:** Same as the current MHFA guidelines

**Ineligible Use of Funds:** Payment for work initiated prior to the loan being approved and closed, unless due to emergency. Recreation or luxury projects (pools, lawn sprinkler systems, playground equipment, saunas, whirlpools, etc.), furniture, non-permanent appliances, and funds for working capital, debt service, homeowner labor or refinancing existing debts are NOT allowed.

**Bids:** Only one bid/estimate is are required. All contractors must be properly licensed

**Sweat Equity / Homeowner Labor:** Work may be performed by property owners on a “sweat equity” basis. Loan funds may be used only for the purchase of materials. Loan funds cannot be used to rent tools/ equipment or compensate for labor. The property owner will provide evidence to CEE that they have the ability to complete the work and complete a Homeowner Labor Agreement.

**Remodeling Advisor Visit (RAV):** The Remodeling Advisor Visit provides rehabilitation and/or remodeling advice upon request of the resident. The intent is to help residents improve their homes by providing technical assistance before and during the bidding and construction process. All home-owners are eligible for this service regardless if applying for the Richfield Interest Subsidy Program or not. This visit is not required.

**Loan Security:** Determined by MHFA requirements.

**Borrower Fees:** Borrower will be responsible for a 1% origination Fee (which may be financed), mortgage filing and service fees, flood certificate and credit report.

**Underwriting Decision:** Applicants must have acceptable credit history. CEE will approve or deny loans based on a credit report, income verification and other criteria as deemed necessary through CEE's underwriting guidelines. CEE's decision shall be final.

**Work Completion:** All work must be completed within 9 months of the loan closing.

### **General Program Conditions**

**Application Processing:** Loans will be distributed on a first come first serve basis as borrowers qualify. **Applicants must provide a completed application package including the following in order to be considered for funding.**

- Completed and signed application form
- Proof of income
- Proof of Identity (drivers license, passport, etc.)
- Bids or estimates for proposed projects
- Other miscellaneous documents that may be required.

**Program Costs:** Loan origination, interest subsidy and remodeling advisor visit fees will be paid out of the Program Budget. Loan program marketing efforts will be billed directly to the City of Richfield and is a separate expense should the city choose to commission CEE for marketing support

**Total Project Cost:** It is the borrower's responsibility to obtain the amount of funds necessary to finance the entire cost of the work. In the event the final cost exceeds the original loan amount, the borrower must obtain the additional funds and show verification of the additional funds in order to be approved for the loan.

**Disbursement Process:** Funds are disbursed to the borrower(s)

# EXHIBIT B

## TOTAL PROGRAM BUDGET \$TBD

### RICHFIELD LOAN PROGRAM BUDGET

<b>A. MHFA Interest Subsidy Program Budget Allocation (includes Loan Set Up Fee, Origination Fees and interest subsidy):</b>	<b>2017 - \$27,125; 2018 - \$25,625</b>
<b>Remodeling Advisor Visit Budget:</b>	<b>2017 - \$3,375; 2018 - \$14,625</b>

#### Budget Notes:

1. CEE shall submit monthly invoices for origination fees, interest subsidy and remodeling advisor visits for that period.

2. Services performed by CEE will initially be funded from the Total Program Budget as stated above and paid in accordance with the following schedule.

(1) Loan Set-Up Fee	\$1,500 (one time)
(2) Origination Fee: MHFA Interest Subsidy	\$125.00 per loan closed
(3) MHFA Interest Subsidy	\$varies
(4) Remodeling Advisor Visit	\$225.00 per inspection

3. Marketing  
Marketing efforts will be supported by CEE and marketing costs are not included in the administrative budget. Hourly rates are inclusive of all overhead expenses and will be charged only for hours directly related to the labor of all program marketing. CEE will also be reimbursed by City of Minnetonka for any non-labor, out-of-pocket expenses relating to these services on a dollar-for-dollar basis.



**STAFF REPORT NO. 37**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**9/18/2017**

REPORT PREPARED BY: Julie Urban, Housing Manager

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director  
9/11/2017

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director  
9/13/2017

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the approval of an agreement with Scene Clean, Inc., to clean out 6839 Cedar Avenue.**

**EXECUTIVE SUMMARY:**

The Housing and Redevelopment Authority (HRA) purchased 6839 Cedar Avenue (the "Property") in July 2017. The Property was affected by a significant fire in late 2016. It was purchased "as-is," with a significant number of possessions left behind in the house and garage. Staff has determined that it is most cost-effective and environmentally responsible to have the property cleaned out before soliciting demolition bids.

The following two bids were received for cleaning out the Property:

Scene Clean, Inc.: \$23,607.37  
DCI: \$26,480.00

Staff recommends an agreement be executed with the low bidder, Scene Clean, Inc., to complete the work.

**RECOMMENDED ACTION:**

**By motion: Approve execution of an agreement with Scene Clean, Inc., to clean out 6839 Cedar Avenue.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- In 2014, the house at 6839 Cedar Avenue was declared uninhabitable due to unsafe conditions caused by the amount of possessions stored inside the house and garage.
- In December 2016, a fire damaged the home. The Property is located in the Cedar Avenue Corridor Redevelopment Area and cannot be rebuilt as a single-family home, so the HRA agreed to purchase the property.
- On May 15, 2017, the HRA authorized the purchase of the property as-is, including any contents the homeowner was unable to retrieve. Closing occurred on July 12, 2017.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

- The Property has been boarded up since it was damaged by fire in December 2016. It is the

HRA's policy to remove hazardous and unsightly structures as soon as possible.

**C. CRITICAL TIMING ISSUES:**

- Scene Clean, Inc., can complete the work by the end of September.
- Once the Property is empty, the Property will be surveyed for hazardous materials and any identified materials will be removed.
- The HRA will be asked to approve a demolition contract in October. Demolition work will be completed by the end of November.

**D. FINANCIAL IMPACT:**

- Funds are available in the Development Fund to pay for the clean out and anticipated abatement and demolition work.
- The HRA purchased the Property for \$56,000.

**E. LEGAL CONSIDERATION:**

- The city has used the services of Scene Clean, Inc., in the past and the City Attorney has reviewed and approved the agreement.

**ALTERNATIVE RECOMMENDATION(S):**

- Decide not to approve execution of a contract with Scene Clean, Inc.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

N/A

**ATTACHMENTS:**

Description	Type
□ Contract for Professional Services, Scene Clean	Contract/Agreement



### **Bio-Remediation Services**

All Bio-remediation work will be billed at an hourly rate per technician (See Price List BH, GF), plus expenses including, but not limited to, disposal fees, PPE (personal protective equipment) fees, the retail cost of all chemicals used, and other miscellaneous related fees and items. The minimum fee is \$600.00. See, without limitation, section (3) of the General Terms and Conditions attached hereto. If initialed by Customer, Customer hereby requests Company to dispose of **any and all** items of personal property at the job address regardless of whether any particular item of personal property has or has not been contaminated. \_\_\_\_\_

### **Water Damage Remediation Services**

All Water Damage Remediation work is billed within industry standard rates and billed to your insurance company depending on water loss category, time of callout, etc. (See Price List WDR). Additional fees will apply for items such as drying equipment, waste removal, structure cleaning, etc. A final itemized invoice will be provided to Customer or Customer's insurance company upon completion. Customer understands that water remediation is an emergency service and it is not always possible to get an estimate of services prior to commencement of work. Uninsured Customers will be billed based off the current price list.

### **Hoarding/Gross Filth Remediation Services**

All Hoarding/Gross Filth Remediation work will be billed at an hourly rate per technician, plus base charge. (See Price List HC, GF) Additional fees may apply for waste removal, structure cleaning, etc. Additional costs will be incurred for certain circumstances, including whether the Hoarder is present, whether the condition is so grossly filthy as to exceed the estimated hours required, unforeseen bio-hazards (such as fecal droppings from vermin), etc. Additional costs also will be incurred if additional dumpsters are needed to complete the Work, or additional "bulk items" are deposited in the dumpster. See the General Terms and Conditions attached hereto. The company is under no obligation to remove appliances from the home.

### **Tear Gas Removal**

All Tear Gas Removal Services will be billed at an hourly rate per technician (See Price List TGR), plus expenses including, but not limited to, PPE fees, retail cost of chemicals used, etc.. A final invoice will be provided to Customer or Customer's insurance company upon completion. Customer understands that with Tear Gas removal is not always possible to get an estimate of services prior to commencement of work.

### **Mold Removal**

Mold Removal Services (MLD) will be billed as time and materials, by sq. footage or as a combination of the two as determined by the initial estimate. Mold removal services include removal and disposal of mold on a structure by means of actual removal of materials or cleaning. Mold removal services are just that, removal of the mold. It does not included correction of the issues to which the mold was allowed to form. Should the client determine they want to have corrections made to correct the cause of the mold a separate construction contract will be signed. The Company strongly suggests corrections should be made prior to or shortly after mold removal has or will occur to prevent future mold growth.

### **Fees and Invoices**

A retainer of \$ \_\_\_\_\_ (100% or 80% of estimates over \$2000) or full deductible amount \$ \_\_\_\_\_ (if being billed to insurance) is required before Company shall begin Work, with the balance due receipt of the final invoice. Customer understands and agrees that it is not possible to estimate the total time that will be required to complete the work. This is because it is impossible for Company to control many factors that affect the final cost of the Work. Company cannot and does not give a hard cap or limit on fees, unless agreed to in writing. Company may give Customer a broad range of possible costs associated with its Work in conjunction with the required retainer amount. Any estimate is only that – a non-binding and broad range of possible fees and costs that may be associated with the Work. It is not a guarantee of maximum or minimum cost. Customer's total fees will be based upon the time devoted to the Work plus expenses and costs rather than a flat fee. A sales tax may apply to all labor associated fees.

Customer or their insurance, if applicable, will be issued a final invoice upon substantial completion of Work. Customer also understands and agrees that Customer is responsible for payment of Company's invoices for Work, regardless of approval or payment by any insurance company for Customer, and that failure to pay any invoice when due is a material breach of the Agreement. Insurance deductibles are due prior to work commencement unless otherwise arranged in writing. Failure of the Company to collect prior to work commencement does not waive Customer's obligation to pay deductible upon demand.

Payment is due upon completion of the job, unless agreed in writing by both parties. All past-due payments shall bear an interest at 1.5% of balance owed monthly plus a late penalty fee of \$50 or 1% (whichever is more) of owed balance every 30 days past due.

**Credit card payments will incur a 3% convenience fee.**



If Customer has concerns with the accuracy or amount of any invoice, he or she agrees to notify Company in writing of any such concern, request, or objection within five (5) days of receipt of the invoice. Failure to give notice within five days of receipt of the invoice constitutes a waiver of objection and Company's fees and costs will be deemed acknowledged as due and owing.

If Customer fails to pay Company any payment(s) due under the terms of this Agreement, Company may suspend its Work without further notice to Customer. Upon any suspension of Work by Company for nonpayment by Customer, Customer will remain liable to Company for all payments due up to the time that Work is suspended, and for all losses or damages sustained or suffered by Company, whether direct or consequential, including any costs to suspend or mobilize Work. Company shall restart work only upon payment by Customer of all money due to Company, including any losses damages sustained or suffered by Company.

Upon the request of the client the Company will submit and handle paperwork such as invoices, documentation and photos with the insurance company directly. The Company does not ever guarantee insurance coverage on any claim. Coverage questions must be handled by the client with the assigned insurance adjuster. At no time does the Company handle, negotiate or claim that personal property will have insurance coverage (if applicable). The Companies only obligation is to assist with the structural claim.

### Scene Clean, Inc. Labor Price List (updated March 2017)

Prices are subject to change at any time for any reason

- **Bio-Hazard Removal (BH);** All jobs require at least one supervisor level tech.
  - o Billed per Hr. per tech
    - \$240 Bio-clean tech supervisor
    - \$225 Bio-clean tech
- **Gross Filth Removal (GF);** All jobs require at least one supervisor tech.
  - o Billed per Hr. per tech
    - \$140.00 Master or Clean Tech
- **Hoarding Cleanup (HC)**
  - o Labor per hour per tech
    - Supervisor \$95.00
    - Technician \$90.00
- **Tear Gas Removal (TGR)**
  - o \$140 hr. per technician
- **Mold Removal (MLD)**
  - o 140 hr. per technician (if billed hourly)
- **Water Damage Restoration (WDR)**
  - o **All hours are per tech except content manipulation**
  - o Category 1 Losses
    - Supervisor \$85.00 hr.
    - Technician \$60.00 hr.
  - o Category 2 Losses
    - Supervisor \$85.00 hr.
    - Technician \$65.00 hr.
  - o Category 3 Losses
    - Supervisor \$110.00 hr.
    - Technician \$85.00 hr.
  - o All water losses
    - Content Manipulation \$55 hr.
- **Misc. Fees (If Applicable)**
  - o Service Call \$150.00, trip charge \$150.00
  - o Mileage above 30 miles (one way) .85¢ a mile
  - o Bio-Waste \$199.30 per box, incl. packing, packaging, transport, storage and disposal
  - o Bio Manifest Fee, federal record keeping of bio-waste manifest \$375.00
  - o Crew and Equipment cleanup \$55.00 per crew member
  - o Admin fees \$95 hr. (completing and filing paperwork, insurance, etc.)
  - o General job specific labor \$90 hr. per person
  - o Transport (travel) fees per crew member \$45.00 hr. (Invoiced as General labor)
  - o Equipment usage fee \$40.00 (covers use of tools for hoarding)

Hourly rates billed in 15 minute increments.

Sales tax may apply to all labor, travel and service charges.

This list is in no way meant to be exclusive; it is representative of the most common fees used for all jobs.

## GENERAL TERMS AND CONDITIONS

**SCOPE OF WORK.** The Work may include, if indicated below, (a) the removal of the remains from the Property; (b) the removal of Bio-hazardous Waste from the Property and the proper disposal of same; (c) the cleaning of Contaminated Property at the Property which may reasonably be cleaned; (d) the removal and proper disposal of Contaminated Property at the Property which may not reasonably be cleaned; (e) remediating the Property of offensive or obnoxious odors, to the extent reasonably possible; (f) Cleaning of hoarding/gross filth properties; (g) tear gas removal; (h) removal of vermin feces, urine or remains; and (i) water damage remediation, (j) mold removal.

Company shall remediate only those bio-hazardous materials that are included within the meaning of the scope of the work listed above. **Company shall have no obligation to remove from the Property or otherwise remediate any other hazardous material which may be found located within the Property, including, but not limited to, radon gas, asbestos, household chemicals, electronics (including appliances) and illegal substances. Company will refer Customer to the proper contact for remediation of other materials upon request. COMPANY IS UNDER NO OBLIGATION TO REMOVE APPLIANCES FROM A HOME.**

Unless indicated otherwise above, Customer shall be responsible for obtaining any required permits, permissions, authorizations, or other approvals for proceeding with the Work.

**CONTAMINATED PROPERTY” AND DISCARDING OF PERSONAL PROPERTY.** “Contaminated property” is any real or personal property contaminated with a potential bio-hazard, (any item with evidence or containing blood or any bodily fluids which could contain microbial organisms and the potential to contain or spread disease(s)) waste, is waterlogged or water damaged, contains tear gas, or which is part of a hoarding / gross filth cleanup.

Company will make every reasonable effort to decontaminate the Property with a minimum of destruction to the Contaminated Property. However, Customer understands and agrees that:

(i) In order to decontaminate certain painted surfaces, it may be necessary for Company to remove the paint and texture from such surfaces. Similarly, it may be necessary for Company to remove portions of walls, ceilings, baseboards, carpets, sub-flooring, woodwork, and other building materials to decontaminate such surfaces. Customer understands and agrees that it may not be possible for Company to match existing paint, paneling, woodwork, wallpaper, carpet, texture, trim, and other related building materials exactly. Likewise, Company shall use its best efforts to match existing building materials, as applicable, but Customer understands and agrees that exact matches may not be possible. All build back (reconstruction) will be done upon approved scope/fees with the insurance company, if applicable.

(ii) Due to the nature of the Work to be rendered by Company under this Agreement, Customer understands and acknowledges (a) that oftentimes it is cost-prohibitive for Company to clean certain items of personal property and (b) that Company, acting through its authorized agents, must exercise discretion in determining which items should be decontaminated and which items should be discarded. Customer hereby authorizes Company to exercise such discretion and to salvage as much of the Contaminated Property as is reasonably possible. In exercising such discretion with respect to any particular item of personal property, the Company shall consider, among other factors, the condition and value of such item and the cost to decontaminate same. If Customer requests Company to dispose of any item of personal property that, in the Company's judgment, is not contaminated, then Customer hereby authorizes Company to make any disposition of such item as Company may deem appropriate in Company's sole discretion, even if the Company elects to retain such item for the Company's own benefit. Company shall not salvage items from Hoarding/Gross Filth jobs and all items from such jobs will be considered contaminated property or soft goods and disposed of properly.

(iii) Most contaminated Soft Goods (defined as soft or absorbent items of personal property, often made in whole or in part of fabric, and including, without limitation, bedding, clothing, towels, linens, mattresses, box springs, draperies, carpeting and rugs, padding, upholstered furniture, etc.) will have to be discarded or destroyed. All contaminated property will be disposed, except items excluded according to subsections (iv), (v) and (vi) of this Section.

(iv) If Customer desires Company to save, without the decontamination/destruction thereof, any particular item of Contaminated Property that Company otherwise would have discarded or destroyed, then Customer shall so indicate to Company **in writing** prior to the commencement of the Work by Company. Company shall set such item aside for Customer whenever possible; Company does not guarantee recovery of any requested items but when make every attempt to do so. It shall be Customer's sole responsibility to decontaminate/dispose such item. If Customer remains on Premise during the cleanup they agree to stay clear of the potentially dangerous work area(s).

(v) If Customer desires Company to attempt the decontamination of any particular item of personal property that Company otherwise would have discarded or destroyed, then Customer shall so indicate to Company **in writing** prior to the commencement of the Work by Company. Company shall attempt to decontaminate such item, but Company does not warrant that such decontamination shall be successful, and the Customer understands and agrees that the item may be permanently damaged. Company specifically disclaims any such warranty as to any item on which decontamination is attempted.

(vi) Company shall take no responsibility and liability to secure confidential documents (e.g., taxes, paystubs, contracts, anything else considered confidential, etc.). Securing these items must be done by the Customer prior to commencement of the Work. Any documents remaining on the premise upon commencement of the Work will be subject to removal and disposal by Company (unless Customer has specifically indicated **in writing**, prior to the commencement of Company's Work, that Customer would like Company to attempt to preserve such documents.

(vii) Rates for biohazards are determined by the Company depending on the type of bio-material found at the worksite and are subject to change due to circumstances found while on the jobsite. Human waste and body fluids will normally be billed as BH rates. Animal waste and body fluids may be billed as either BH or GF as determined by the Company.

(viii) Gross Filth jobs will be normally billed as GF rates but the Company reserves the right to change all or portions of the hourly rates to BH rates as determined by the Company if the Company finds the contents being remediated have changed and warrants such change.

**REMEDICATION OF RESIDUAL ODORS.** Customer understands and agrees that there may be residual odors after all Bio-Hazardous Wastes have been removed from the Property, especially in cases where Decedent's remains have begun to decompose. In order to eliminate all offensive and obnoxious odors from the Property, it may be necessary for Company to perform certain additional Work, including: (a) cleaning the HVAC system in the Property, including all duct work, (b) sealing painted surfaces in the Property with a sealer, (c) re-painting such surfaces, (d) replacing carpeting and padding, (e) washing, dry-cleaning, or steam-cleaning soft goods, (f) having furniture professionally cleaned, and (g) ventilating the Property. This list is illustrative only and is not intended to be complete. Every incident presents special problems unique to such incident, which must be handled on a case-by-case basis. **Remediation of residual odors is often a slow process requiring multiple treatments and airings by the Company.** If additional treatments are required and Company returns to re-treat the Property, this is in no way a reflection of Company's workmanship or craftsmanship, but rather a reflection of the fact that when dealing with odor control, odor control is NOT a guaranteed service. The only true and complete cure of odors is to completely remove the odor source, which may not be possible in many situations. The Company reserves the right to charge for additional treatments or deny further treatments relating to odor removal upon the Company's sole discretion. In addition, Customer understands and agrees that it is possible that some persons may experience “psychological odors” at the Property even after Company has completed its Work. For example, a person who experienced

odors at the Property due to Hoarding, Gross Filth, or bio-hazard conditions may continue to believe that those odors are present even after remediation has been completed and the odors have been removed. Therefore, Customer agrees that the determination of whether all offensive or obnoxious odors have been eliminated from the Property shall be made by the Company, subject to Company's warranty contained herein.

**BROKEN GLASS.** Company shall use its best efforts to clean up and remove any broken glass from the Property. However, Company makes no warranty that every single shard or sliver of glass shall be removed, and specifically disclaims any such warranty.

**ALLERGIES.** Customer hereby warrants and represents to Company that any individuals who may be allergic or sensitive to bio-hazardous wastes or to any chemical which may be used by Company in rendering the Work has been evacuated from the Property and will not be allowed to return to the Property until the Company's Work has been completed.

**COSTS OF COLLECTION OR ENFORCEMENT.** In any action, lawsuit, or other proceeding to enforce this Agreement or collect monies owed to it by Customer arising out of or in connection with this Agreement, or any other action, lawsuit, or other proceeding relating or pertaining to, arising from, or in any way connected with this Agreement or the Work rendered by Company hereunder (including, but not limited to, actions in tort), Company shall be entitled to have and recover from Customer all of Company's attorney's fees, costs, and disbursements incurred, including pre-judgment interest at the rate of 8% per annum on any unpaid amounts, or the highest rate allowable by law (whichever rate may be greater).

**PAYMENTS BY CREDIT/DEBIT CARD.** The Customer may leave a credit / debit card number on file to charge any unpaid balances as incurred on said card. The Customer's signature on this agreement authorizes Company to charge the Customer's credit / debit card at the time Company sends an invoice to the client for any services rendered, unless otherwise agreed to in advance and in writing. The credit/debit card authorization will remain valid until the Customer revokes it in writing or the representation has ended and all balances have been paid in full. The Customer further agrees that upon conclusion of the representation, the Company may, within 60 days, charge the credit/debit card for the final fees and costs of the services rendered, unless the Customer has revoked authorization in writing. Customer further agrees that, if the Customer revokes credit/debit card authorization, Customer nonetheless will remain responsible for payment of services. **A 3% convenience fee will be added to all credit card payments.**

**PROPOSED PROJECT SCHEDULE.** Company shall not commence Work until the retainer/deductible has been paid by Customer. Upon payment of the retainer, Company shall commence the Work, and all Work shall be substantially complete within 30 days after commencement of Work. Substantial completion shall mean completion of all work with the exception of any final punch list items.

Customer agrees that Company is not responsible for delays in completion of the Work due to acts of God, weather, strikes, war, shortage or delay in obtaining materials, shortage or delay in labor or subcontracting, government regulations, court actions, strikes, delays in obtaining materials, or any other causes beyond Company's control, including any delays caused by Customer (specifically including, but not limited to, Customer's failure to make any payment to Company when due), Customer's agents, representatives, or guests, or any other persons, parties, or causes not under Company's control. In the event of any such delay, Company's time to achieve Substantial Completion shall be extended by a period equal to the time lost by reason of such delay. However, if Work remains suspended for a period of 7 consecutive days, Company may, at its option, treat this Agreement as having been breached by Customer, and pursue all available remedies and damages.

**CHANGE ORDERS.** Customer may request changes within the general scope of the Work. Any material change will only be effective if it is the form of a written Change Order signed by Customer and Company. Customer agrees that only one signature shall be required to execute and authorize a Change Order on behalf of Customer. Customer agrees that a Change Order may result in an increase in the amount of the Contract Price, or in the amount of time allowed for Substantial Completion. Company shall not be obligated to proceed with the Change Order until the value of such Change Order and its effect on the time of performance or on warranties has been agreed upon, and a Change Order has been signed by Customer and Company.

**LIMITED WARRANTY.** Company warrants that all work shall be completed in a good and workmanlike manner and in compliance with all laws, codes, governmental regulations, and applicable building standards and practices. In addition, to the extent that the Work constitutes a major structural changes or addition to a residential building, the statutory warranties of Section 327A.02 would apply. Company shall not be responsible for repairs due to causes or damage beyond the control of Company.

**MECHANICS LIEN NOTICE.** Pursuant to Minn. Stat. §514.011, every person who enters into a contract with the Customer for the improvement of real property and who has contracted or will contract with any subcontractors or material suppliers to provide labor, skill or materials for the improvement shall include in any written contract with the Customer the following notice, and shall provide the Customer with a copy of the written contract:

**“(A) ANY PERSON OR COMPANY SUPPLYING LABOR OR MATERIALS FOR THIS IMPROVEMENT TO YOUR PROPERTY MAY FILE A LIEN AGAINST YOUR PROPERTY IF THAT PERSON OR COMPANY IS NOT PAID FOR THE CONTRIBUTIONS.**

**(B) UNDER MINNESOTA LAW, YOU HAVE THE RIGHT TO PAY PERSONS WHO SUPPLIED LABOR OR MATERIALS FOR THIS IMPROVEMENT DIRECTLY AND DEDUCT THIS AMOUNT FROM OUR CONTRACT PRICE, OR WITHHOLD THE AMOUNTS DUE THEM FROM US UNTIL 120 DAYS AFTER COMPLETION OF THE IMPROVEMENT UNLESS WE GIVE YOU A LIEN WAIVER SIGNED BY PERSONS WHO SUPPLIED ANY LABOR OR MATERIAL FOR THE IMPROVEMENT AND WHO GAVE YOU TIMELY NOTICE.”**

Customer shall reimburse Company for all charges associated with any lien filings or any suit to foreclose any mechanic's lien.

**ASSIGNMENT AND PAYMENT OF ANY INSURANCE PROCEEDS.** To the fullest extent permitted by applicable law and any applicable policy of property insurance, Customer hereby assigns unto Company all proceeds ("Proceeds") payable under any such policy by reason of the Work rendered by Company under this Agreement. Customer shall prosecute diligently any claim for Proceeds. Furthermore, Customer shall cooperate fully with Company in any attempt by Company to obtain the Proceeds. Customer hereby orders, instructs, and directs any applicable insurer to pay the Proceeds directly to Company, naming the Company as sole payee on any check, draft, or other item. If the applicable policy of insurance requires that any check, draft, or other item be payable to the order of Customer, then Customer hereby orders, instructs, and directs the insurer to name Company as a co-payee. If, despite this assignment, an insurer pays all or any portion of the Proceeds to Customer or to any person or entity under the care, custody, or control of Customer, then Customer or such other person or entity shall hold such Proceeds in trust for the benefit of Company. Customer shall immediately deliver the Proceeds to Company, or cause such person or entity to do so, as the case may be. Customer assumes all of the fiduciary duties of a trustee for the benefit of Company with respect to such Proceeds, and shall be subject to criminal penalties for the misappropriation of any such Proceeds. ~~Company is entitled to and shall receive any and all Overhead and Profit (O&P) amounts paid by insurance above and beyond the final invoice amount.~~

**ASSIGNMENT OF AGREEMENT AND SUBCONTRACTS.** Customer shall not assign any duties, rights or obligations hereunder without the prior written consent of the Company, which consent shall not be unreasonably withheld. Company shall have the right to assign any part of the work to any subsidiary or affiliated Company, and Customer agrees to execute any documents reasonably required to affect the transfer to such Company of all rights and obligations associated with such portion of work. Alternately, Company may, at its discretion, engage subcontractors to perform services under this Agreement, but Company shall remain responsible for proper completion of this Agreement.

**WEATHER POLICIES.** The Company takes the safety of its employees very seriously. The Company reserves the right to postpone any job due to weather at its sole discretion. Any job requiring outdoor work is subject to postponement. During the winter months any job scheduled to start when the temperature is 0 degrees or colder by means of ambient air OR wind chill will be postponed until it is safe to resume. Any weather related delay will resume on the next available timeslot.

**CANCELLATION.** For scheduled services such as hoarding, odor removal, infectious disease, animal/vermin cleanup etc. you must cancel the job at a minimum of 3 days prior to the start date and NOT including Saturdays and Sundays. Deposits for jobs not cancelled outside of the 3 days will become non-refundable.

**INSURANCE.** Company agrees to maintain adequate insurance to comply with any requirements of statute or law. Customer agrees, upon request of Company prior to commencement of the Work, to provide Company with a copy of Customer's property insurance policy showing coverage for property damage and liability claims.

**MODIFICATION / WAIVER.** This Agreement shall not be altered, amended, or modified by oral representation made before or after the execution of this Agreement. Any modifications to this Agreement must be in writing and duly executed by all Parties. Any waiver of any requirement of this Agreement must be in writing, and shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term of this Agreement.

**INDEMNIFICATION.** Customer agrees to indemnify and hold harmless Company from any physical damage to property or injury to persons, including death, to the extent resulting directly from negligence of Customer or its agents under or arising out of this Agreement. In the event any such damage or injury is caused by the joint or concurrent negligence of Company and Customer, the loss shall be borne by each party in proportion to its negligence.

Customer hereby releases Company from, and agrees to indemnify and hold harmless Company against or from any and all claims by any person or entity pertaining or relating to, arising from, or any way connected with (a) the destruction or other disposition of Contaminated Property by Company; and (b) the removal of any property from the Property at the request of Customer and the disposition thereof, and (c) any claim that might arise from Company not being allowed to finish its work or that arises from failure by Customer to follow recommended procedures (such as drying equipment being removed prematurely) (d) damage caused by any equipment used in conjunction with performing its job such as but not limited to dumpsters, etc.

**NON-DISPARAGEMENT AGREEMENT:** Customer agrees not to disparage or comment negatively about the Company, its employees, or management in any public forum, including any websites, blogs, or other similar forums, regarding any matter as it relates to the services provided by Company to Customer. For purposes of this Section, disparage and/or negative comment(s) shall mean any negative statement, whether written or oral, about the Company, its employees, managers, or services.

**BINDING EFFECT / ASSIGNMENT.** This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, agents, representatives, successors, and assignees. Any individuals whose signatures are affixed to this Agreement in a representative capacity represent and warrant that they are authorized to execute the Agreement on behalf of and to bind the entity on whose behalf the signature is affixed.

**ENTIRE AGREEMENT.** This Agreement, along with any addenda hereto, represents a single, integrated, written contract expressing the entire understanding and agreement between the Parties concerning the subject matter hereof and supersedes any prior agreements, whether written or oral, relating thereto.

**SEVERABILITY.** The provisions of this Agreement are severable. If any portion, provision, or part of this Agreement is held, determined, or adjudicated by a court of competent jurisdiction to be invalid, unenforceable or void for any reason whatsoever, each such portion, provision or part shall be severed from the remaining portions, provisions or parts of this Agreement and shall not affect the validity or enforceability of any remaining portions, provisions or parts, which remaining portions, provisions or parts shall be enforced as amended.

**REVIEW OF AGREEMENT.** By signing this Agreement, Customer hereby agrees that the opportunity has been given to review this Agreement, that the Agreement and its provisions have been read and are understood and agreed to, that it is understood that this Agreement may affect legal rights or claims, that an opportunity has been provided to consult with counsel of the Customer's own choosing before entering into this Agreement, that Customer has either reviewed the Agreement and discussed it with counsel of Customer's choosing or has expressly elected not to do so with full knowledge of the consequences thereof, and that Customer has entered into the Agreement of his/her/its own free will. In reviewing and executing this Agreement, each of the Parties has relied solely upon his or its own judgment, belief, and knowledge, and upon the advice and recommendations of independently-selected counsel (if any), concerning the nature, extent, and duration of the rights and claims of each of the Parties.

**NO PRESUMPTION AGAINST DRAFTER.** By signing this Agreement, the Parties hereby agree that the Agreement has been the product of negotiation by the Parties, and that the Parties each shall be considered to be the author of the Agreement. If any ambiguity should be found in the Agreement, such ambiguity shall not be resolved by construing the terms of the agreement in favor of or against any Party, but shall be resolved by construing the terms of the Agreement as a whole, according to their fair meaning.

**APPLICABLE LAW.** This Agreement is entered into in the State of Minnesota, and shall be governed by the laws of the State of Minnesota. Customer and Company consent to jurisdiction and venue in the courts of the State of Minnesota. Customer hereby waives, to the fullest extent permitted by law, the right to trial by jury on any issues arising out of, or relating to this Agreement.

**CUSTOMER WARRANTY OF NO PENDING LITIGATION.** Customer represents and warrants that Customer is not aware of any pending or threatened litigation, action or administrative proceeding against Customer with respect to the Property, nor is Customer aware of any basis or grounds for any such litigation, action or proceeding against Customer or the Property. No unpaid work, labor, or materials have been supplied to the Property upon which anyone could base a mechanics' lien, equitable lien, or any other type of lien against the Property.

**COVENANTS OF CUSTOMER TO SURVIVE THE AGREEMENT.** All representations, warranties, covenants and indemnities of Customer made or agreed to in this Agreement and any certificates delivered in connection herewith shall survive the expiration, termination or cancellation of this Agreement for any reason.

**CAPTIONS FOR CONVENIENCE ONLY.** The captions in this Agreement are for convenience only and shall not define or limit any of the terms hereof.

**RECONSTRUCTION AGREEMENT (OPTIONAL AGREEMENT)**

REBUILDING. Customer agrees the Company will work with your insurance company to determine the cost and scope of work needed to rebuild the property after remediation services are performed. Rebuilding will be done by Twin Cities Restoration (TCR), also referred to as "Company". If the Company cannot come to an agreement with the insurance company the Company suggests hiring an independent insurance adjuster or attorney. The Company does reserve the right to withdraw from performing the rebuild should an agreement with the insurance company on scope of work or money needed to complete the rebuild cannot be achieved and the Customer is not willing to pay the additional monies needed out of pocket. Customer may cancel the rebuild portion of this contract 3 days after signing this agreement in writing. If Customer decides to cancel the rebuild portion of a job for any reason after the rescission period your deductible will be non-refundable any and all incurred costs including labor and materials will be immediately invoiced and due upon receipt. Cancellation of rebuild portion of the contract does affect the terms of the remediation.

Customer understands that the Company will do its best to match like materials to those used previously but understand this may not be possible to obtain an exact match; a same or similar principal will be applied. If Customer decides to go above and beyond the scope of work provided by your insurance company, the Customer will be responsible for payment out of pocket for those services and materials. Customer agrees to hold the Company harmless of poor workmanship from previous work. Hidden damages may be present and found during construction and the Company is not responsible to repair or incur costs to repair hidden damages. Any hidden damages found during construction will require a supplemental adjustment by insurance or a change order for additional expense out of your pocket.

Customer will not hire or make separate contracts with any of companies subcontractors or suppliers unless Customer has companies prior, written consent. Customer will not hire outside contractors or suppliers to do any part of the construction without the written permission from the Company. Customer will not contact any of company's subcontractors or suppliers in regards to scheduling, or to adjust scheduling.

Work scope to include as needed;

- Flooring replacement
- Sheetrock Repairs
- Entry door(s)
- Painting
- Interior millwork
- Full repairs of all demo work that was required after remediation
- Other

**(i) CUSTOMERS WARRANTIES DURING REBUILD.**

- a. Prior to beginning the Work, upon request of Company, Customer will provide Company with a copy of Customer's property insurance policy showing coverage for property damage and liability claims. Customer will be responsible for losses not covered by Company's insurance, including any deductible.
- b. Company retains the right to file, perfect and commence a lawsuit to enforce mechanic's lien rights against the Property.
- c. Customer warrants to Company that Customer has fee title to (owns) the Property on which the Work is being done, or otherwise has full legal authority to authorize the Work and enter into this Agreement.
- d. Customer agrees to allow placement of a lock box and agrees to allow access to house by Company six days per week from 7:00 am to 7:00 pm. Should an emergency arise necessitating Company to work outside these hours to timely complete the Work or prevent damage to the Property due to extreme weather or otherwise, the Company will be allowed to work any hours as needed except those regulated by city code.
- e. Customer agrees to allow Company to place advertising signage in yard at Company's desired location during term of contract. Customer will apply any permits to interior side of glass at front of house. Company may also place temporary signage in yard directing suppliers to unload materials at specific locations, as allowed and regulated by city code.
- f. Customer agrees to allow all personnel access to electric panel at all times without the use of a key.
- g. Customer agrees to allow on site storage of building materials and dumpster for material disposal as allowed and regulated by city code.
- h. Customer agrees to allow building inspectors to visit the property at will.

**(ii) REBUILD PAYMENT SCHEDULE.** The rebuild portion of a claim is often times paid after the remediation phase in two lump sums. In order to begin rebuilding the property the Company requires 50% of the total agreed amount of the rebuild upfront to begin work. A second payment of 75% of the remaining balance is owed upon half of the project's completion and the final payment due upon final completion of the project. The final payment amount is subject to any additions/change orders and insurance supplements and therefore may increase from the original price. The Company may require change orders to be paid upon the change, not collecting the money for a change order immediately does not waive the obligation of the Customer to pay such change order upon completion of the job.

**I choose TCR to be my licensed contractor to restore the property upon completion of the remediation.** Client Acceptance Initials \_\_\_\_\_





**STAFF REPORT NO. 38**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**9/18/2017**

REPORT PREPARED BY: John Stark, Community Development Director

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director  
9/12/2017

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director  
9/13/2017

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the approval of a resolution amending a loan agreement (and related documents) with Aeon Seasons Park LLC.**

**EXECUTIVE SUMMARY:**

On August 21, 2017 the Richfield Housing and Redevelopment Authority (HRA) approved a resolution to enter into a loan agreement (and related documents) with the non-profit developer Aeon Inc. for their use in purchasing the apartment complex known as Seasons Park. This loan was granted, in part, to address concerns about the preservation of "naturally occurring affordable housing" (NOAH).

One of the provisions of the loan is that Aeon is required to rent twenty percent (20%) of the units to tenants earning 60% or less of the Area Median Income (AMI) at the time they initially rent the unit. Aeon is now requesting that the language in the Loan Agreement (and related documents) be amended to require the rental of 100% of the units to tenants earning 60% or less of the AMI at the time they initially rent the unit. This requirement will allow Aeon to apply for 4d property tax classification of the properties and have that classification apply to the entirety of the property. The current 20% requirement would only allow a pro-rated application of the 4d class rate. The city's Finance Manager has determined that a full application of the 4d property tax classification would result in an annual tax savings of \$66,000 (under current assumptions) to Aeon and that such a reduction would result in decreased property tax revenue of approximately \$26,000/year to the City of Richfield.

The following information was provided by Aeon to illustrate that both the current rental rates and their projected rental rates with pending increases would be less than the standard of affordability for households earning 60% or less of the AMI:

Seasons Park Rent Table		
	One Bedroom	Two Bedroom
Average Current Rent	\$920	\$1,070
Maximum Rents in 2018 (\$50 increase)	\$970	\$1,120
2017 Hennepin County 60% AMI Rent	\$1,017	\$1,221
Difference between Current and 60%	\$97	\$151
Difference between Maximum and 60%	\$47	\$101

A requirement that the rents be kept affordable at 60% of the AMI, therefore, would not affect actual rents in practice.

The attached documents show "redlined" changes from the documents as approved by the HRA on August 21 (including a requirement to accept Section 8 voucher holders). Other than the change to the percentage of affordable units, none of these changes are substantive and all will be approved as part of the recommended motion.

**RECOMMENDED ACTION:**

**By motion: Approve a resolution amending a loan agreement (and related documents) with Aeon Seasons Park LLC.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- In an effort to preserve naturally occurring affordable housing (NOAH), the City and HRA were supportive of Aeon's purchase of the Season's Park apartment complex.
- On August 21, 2017 the HRA approved a resolution that included a \$150,000 loan to Aeon to assist in acquiring the property and preserving affordable housing.
- On September 7, 2017 Aeon closed on the purchase of the property.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

- None

**C. CRITICAL TIMING ISSUES:**

- Aeon needs to resolve the issue of whether the 4d property tax classification will be applied on a pro-rated basis (thought to be a 20% pro-ration) or to the entirety of the property's value.

**D. FINANCIAL IMPACT:**

- The city's Finance Manager has determined that a full application of the 4d property tax classification would result in an annual tax savings of \$66,000 (under current assumptions) to Aeon and that such a reduction would result in decreased property tax revenue of approximately \$26,000/year to the City of Richfield.

**E. LEGAL CONSIDERATION:**

- HRA legal counsel has been involved in relevant discussions and drafted the resolution.

**ALTERNATIVE RECOMMENDATION(S):**

- Do not approve the resolution amending a loan agreement (and related documents) with Aeon Seasons Park LLC.
- Approve the resolution amending a loan agreement (and related documents) with Aeon Seasons Park LLC with modifications to the documents to reflect an affordability requirement between 20% and 100% of the units as affordable to households earning 60% or less of the AMI.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

Blake Hopkins, Vice President, Aeon



**ATTACHMENTS:**

Description	Type
▢ Resolution	Resolution Letter
▢ Letter from Aeon	Backup Material
▢ Subordination Agreement	Contract/Agreement
▢ Mortgage	Backup Material
▢ Loan Agreement	Backup Material
▢ promisory note	Backup Material
▢ declaration of covenants	Backup Material

**HOUSING AND REDEVELOPMENT AUTHORITY  
IN AND FOR THE CITY OF RICHFIELD, MINNESOTA**

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING A LOAN AND THE EXECUTION AND DELIVERY OF CERTAIN  
DOCUMENTS RELATED TO AN AFFORDABLE HOUSING PROJECT IN THE CITY OF  
RICHFIELD**

WHEREAS, Aeon Seasons Park LLC, Minnesota limited liability company or another affiliate of Aeon (the “Borrower”), proposes to acquire the 422 unit Seasons Park apartment complex (the “Project”) on certain property located at 951 East 77<sup>th</sup> Street in the City of Richfield, Minnesota (the “City”); and

WHEREAS, the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “Authority”) has proposed to make a loan to the Borrower in the principal amount of \$150,000 (the “Authority Loan”) in order to make the Project more economically feasible and to preserve affordable housing in the City, pursuant to the terms of a Loan Agreement (the “Loan Agreement”) between the Authority and the Borrower; and

WHEREAS, the Borrower will execute and deliver to the Authority a Promissory Note (the “Note”) and a Mortgage (the “Mortgage”) to secure its repayment obligations to the Authority and will also execute and deliver a Declaration of Restrictive Covenants (the “Declaration”) which will set forth the affordability covenants for the Project; and

WHEREAS, the Borrower will obtain a loan for the acquisition of the Project from Fannie Mae (the “Senior Lender”) which requires that such loan be secured by a mortgage, among other security; and

WHEREAS, pursuant to a Subordination Agreement (Conventional) (the “Subordination Agreement”) proposed to be entered into between the Senior Lender, the Borrower, and the Authority, the Senior Lender requires that the Authority subordinate its interests under the Loan Agreement and the Note to the interests of the Senior Lender under the Senior Lender’s loan documents; and

WHEREAS, the Authority previously approved the Loan Agreement, the Note, and the Mortgage at its meeting on August 21, 2017, and the Borrower requested additional changes to the Loan Agreement, the Note, and the Mortgage which require review and approval of the Authority; and

WHEREAS, there has been presented before this Board forms of the Loan Agreement, the Note, the Mortgage, the Declaration, and the Subordination Agreement, as amended; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota as follows:

1. The Authority Loan is hereby approved and shall be a deferred loan, the repayment of which shall be as provided by the terms of the Loan Agreement.
2. The Loan Agreement, the Declaration, and the Subordination Agreement are hereby in all respects authorized, approved, and confirmed, and the Chair and the Executive Director are hereby authorized and directed to execute the Loan Agreement, the Declaration, and the Subordination Agreement for and on behalf of the Authority in substantially the forms now on file with the Community Development Director but

with such modifications as shall be deemed necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of their approval of any and all modifications therein.

3. The Authority hereby approves the forms of the Note and the Mortgage in substantially the forms on file.

4. The Chair and the Executive Director are hereby authorized to execute and deliver any and all documents deemed necessary to carry out the intentions of this resolution.

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 19<sup>th</sup> day of September, 2017.

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Mary Supple, Chair

ATTEST:

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Doris Rubenstein, Secretary



September 12, 2017

Steve Devich, Executive Director  
Richfield Housing and Redevelopment Authority  
6700 Portland Ave. S.  
Richfield, MN 55423

Re: SEASONS PARK APARTMENTS

Steve,

As you are aware, we successfully closed on Seasons Park on September 7<sup>th</sup>. This important achievement would not have been possible without the hard work and support of many different entities and organizations, including the City of Richfield and the Richfield Housing and Redevelopment Authority (HRA). This support was evident from the HRA's commitment of a \$150,000 deferred loan at their August 21<sup>st</sup> Board Meeting which will be utilized to the perform capital improvements at the property.

Since the August 21<sup>st</sup> Meeting, we have worked with John Stark and Julie Eddington to revise the loan documents to reflect the direction of the HRA Board. One revision that was not made at the administrative level but is necessary for the long-term viability of the project is to amend the income and rent restrictions from 20% of the units at 50% AMI to 100% of the units at 60% AMI. As such, we are requesting that this revision be approved by the HRA Board at their September 18<sup>th</sup> meeting.

The 100% restriction at 60% AMI will allow the property taxes for 100% of the site to fall under the Low Income Rental Classification (LIRC). This is a classification that Aeon utilizes for all of our properties and is a vital tool used in the State of Minnesota for stabilizing rents while maintaining operating funds for improvements. As shown in the table below, the current rents at Seasons Park are well below the 60% AMI cap even when a \$50 per unit per month increase is applied. This indicates that the 60% AMI limit will not have a negative impact on the property's ability to achieve the underwritten rents or make debt service payments.

Seasons Park Rent Table		
	One Bedroom	Two Bedroom
Average Current Rent	\$920	\$1,070
Maximum Rents in 2018 (\$50 increase)	\$970	\$1,120
2017 Hennepin County 60% AMI Rent	\$1,017	\$1,221
Difference between Current and 60%	\$97	\$151
Difference between Maximum and 60%	\$47	\$101

Should you have any questions regarding this request, please do not hesitate to call me at (612) 746-0517.

Thank you,

Blake Hopkins  
Vice President, Housing Development

----- [Space Above This Line For Recording Data] -----

**SUBORDINATION AGREEMENT  
(Conventional)**

This SUBORDINATION AGREEMENT (this “**Agreement**”) dated as of September \_\_, 2017, is executed by and among (i) **FANNIE MAE**, the corporation duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 V.S.C. § 1716 et seq. and duly organized and existing under the laws of the United States (“**Senior Lender**”), (ii) the **HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA**, a public body corporate and politic of the State of Minnesota (“**Subordinate Lender**”), and (iii) **AEON SEASONS PARK LLC**, a Minnesota limited liability company (“**Borrower**”).

**RECITALS:**

A. Pursuant to that certain Multifamily Loan and Security Agreement dated as of the date hereof, executed by and between Borrower and Senior Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Senior Loan Agreement**”), Senior Lender has made a loan to FREG Buena Vista Associates LLC which was assumed by Borrower in the original principal amount of Twenty-Two Million Four Hundred Twenty Thousand and 00/100 Dollars (\$22,420,000.00) (the “**Senior Loan**”), as evidenced by that certain Amended and Restated Multifamily Note dated as of September 4, 2015, executed by Borrower’s predecessor-in-interest, FREG Buena Vista Associates, LLC, a Colorado limited liability company, and made payable to the order of Senior Lender in the amount of the Senior Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Senior Note**”).

B. In addition to the Senior Loan Agreement, the Senior Loan and the Senior Note are also secured by a certain Amended and Restated Multifamily Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of September 4, 2015 and recorded on September 11, 2015 as Document No. A10240688 (Abstract) and as Document No. T05289651 (Torrens) in the land records of Hennepin County, Minnesota (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Senior Security Instrument**”), encumbering the property described in the Senior Security Instrument as the

“**Mortgaged Property**” and legally described on Exhibit A attached hereto and incorporated herein.

C. Borrower has requested Senior Lender to permit that certain subordinate loan in the amount of \$150,000.00 (the “**Subordinate Loan**”) from Senior Lender to Borrower and to allow the Subordinate Loan to be secured by a mortgage lien against the Mortgaged Property.

D. Senior Lender has agreed to permit the Subordinate Loan and to allow the subordinate mortgage lien against the Mortgaged Property subject to all of the conditions contained in this Agreement.

### **AGREEMENTS:**

NOW, THEREFORE, in order to induce Senior Lender to permit the Subordinate Loan to Borrower and to allow a subordinate mortgage lien against the Mortgaged Property, and in consideration thereof, Senior Lender, Subordinate Lender and Borrower agree as follows:

#### **1. Recitals.**

The recitals set forth above are incorporated herein by reference.

#### **2. Definitions.**

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

“**Affiliate**” means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual Controlled by, under common Control with, or which Controls such Person, and in all cases any other Person that holds fifty percent (50%) or more of the ownership interests in such Person.

“**Borrower**” means the Person named as such in the first paragraph on page 1 of this Agreement, any successor or assign of Borrower, including without limitation, a receiver, trustee or debtor-in-possession and any other Person (other than Senior Lender) who acquires title to the Mortgaged Property after the date of this Agreement.

“**Business Day**” means any day other than (a) a Saturday, (b) a Sunday, (c) a day on which Senior Lender is not open for business, or (d) a day on which the Federal Reserve Bank of New York is not open for business.

“**Condemnation Action**” means any action or proceeding, however characterized or named, relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect.

“**Control**” (including with correlative meanings, the terms “Controlling,” “Controlled by” and “under common Control with”), as applied to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or operations of such

entity, whether through the ownership of voting securities, ownership interests or by contract or otherwise.

**“Declaration of Restrictive Covenants”** means the Declaration of Restrictive Covenants of even date herewith by and between Borrower and Subordinate Lender.

**“Default Notice”** means: (a) a copy of any written notice from Senior Lender to Borrower and Subordinate Lender stating that a Senior Loan Default has occurred under the Senior Loan Documents; or (b) a copy of the written notice from Subordinate Lender to Borrower and Senior Lender stating that a Subordinate Loan Default has occurred under the Subordinate Loan Documents. Each Default Notice shall specify the default upon which such Default Notice is based.

**“Person”** means an individual, an estate, a trust, a corporation, a partnership, a limited liability company or any other organization or entity (whether governmental or private).

**“Senior Lender”** means the Person named as such in the first paragraph on Page 1 of this Agreement, its successors and assigns and any other Person who becomes the legal holder of the Senior Loan after the date of this Agreement.

**“Senior Loan Default”** means the occurrence of an “Event of Default” as that term is defined in the Senior Loan Documents.

**“Senior Loan Documents”** means the Senior Note, the Senior Security Instrument, the Senior Loan Agreement and all other “Loan Documents” as that term is defined in the Senior Loan Agreement.

**“Subordinate Lender”** means the Person named as such in the first paragraph on Page 1 of this Agreement, any successor or assign of Subordinate Lender, including without limitation, a receiver, trustee or debtor-in-possession and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

**“Subordinate Loan Agreement”** means the Loan Agreement of even date herewith by and between Borrower and Subordinate Lender.

**“Subordinate Loan Default”** means a default by Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

**“Subordinate Loan Documents”** means the Subordinate Note, the Subordinate Mortgage, the Subordinate Loan Agreement, the Declaration of Restrictive Covenants and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan.

**“Subordinate Mortgage”** means the mortgage, deed of trust or deed to secure debt encumbering the Mortgaged Property as security for the Subordinate Loan, which Subordinate Lender will cause to be recorded among the applicable land records immediately before this Agreement.

“**Subordinate Note**” means the promissory note of even date herewith issued by Borrower to Subordinate Lender, or order, to evidence the Subordinate Loan.

### **3. Permission to Place Mortgage Lien Against Mortgaged Property.**

Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Mortgaged Property contained in the Senior Loan Documents and subject to the provisions of this Agreement, to permit Subordinate Lender to record the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Mortgaged Property to secure Borrower’s obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of Borrower to Subordinate Lender under and in connection with the Subordinate Loan.

### **4. Borrower’s and Subordinate Lender’s Representations and Warranties.**

Borrower and Subordinate Lender each makes the following representations and warranties to Senior Lender:

#### **(a) Subordinate Loan Documents.**

The Subordinate Loan is evidenced by the Subordinate Note and is secured by the Subordinate Mortgage, the Subordinate Loan Agreement and the Subordinate Loan Documents.

#### **(b) Subordinate Note.**

The Subordinate Note contains the following provision:

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a Multifamily Note (and any schedules) dated as of even date herewith in the original principal amount of \$22,420,000.00, executed by FREG Buena Vista Associates LLC and assumed by Aeon Seasons Park LLC and payable to the order of Walker & Dunlop LLC and assigned to Fannie Mae (“**Senior Lender**”), to the extent and in the manner provided in that certain Subordination Agreement dated as of even date herewith between the payee of this Note, and Senior Lender and Aeon Seasons Park LLC (the “**Subordination Agreement**”). The Mortgage, Deed of Trust or Deed to Secure Debt (and any exhibits) securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Multifamily Mortgage, Deed of Trust or Deed to Secure Debt (and any exhibits) securing the Multifamily Note and the terms, covenants and conditions of the Multifamily Loan and Security Agreement evidencing the terms of the Multifamily Note, as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Mortgage, Deed of Trust or Deed to Secure Debt (and any exhibits) securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder’s acquisition of the Note, to have agreed to perform and



observe all of the terms, covenants and conditions to be performed or observed by Subordinate Lender under the Subordination Agreement.

**(c) Terms of the Subordinate Loan.**

The original principal amount of the Subordinate Note is \$150,000. There is no interest payable on the Subordinate Note, which rate may not be increased without the prior written consent of Senior Lender. The Subordinate Note is due and payable in full on September \_\_\_, 2047 (“**Maturity**”). The principal of the Subordinate Note will have a balloon principal payment of \$150,000 due at Maturity. The Subordinate Note does not obligate Borrower to make monthly payments.

**(d) Relationship of Borrower to Subordinate Lender and Senior Lender.**

Subordinate Lender is not an Affiliate of Borrower and is not in possession of any facts which would lead it to believe that Senior Lender is an Affiliate of Borrower.

**(e) Term.**

The term of the Subordinate Note does not end before the stated term of the Senior Note.

**(f) Subordinate Loan Documents.**

The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement.

**5. Deliveries.**

Borrower shall submit the following items to Senior Lender the later of (a) ten (10) Business Days after the date on which the proceeds of the Subordinate Loan are disbursed to Borrower, and (b) the effective date of the Senior Loan Documents:

**(a) Title Policy Endorsement.**

An endorsement to the policy of title insurance insuring the lien of the Senior Security Instrument which insures that (1) there are no liens or other encumbrances affecting the Mortgaged Property, other than “Permitted Encumbrances” (as defined in the Senior Security Instrument), the Subordinate Mortgage, and other Subordinate Loan Documents filed or recorded against the Mortgaged Property, (2) the lien of the Subordinate Mortgage is subordinate to the lien of the Senior Security Instrument, and (3) this Agreement has been recorded among the applicable land records.

**(b) Certification.**

A certification from Borrower and Subordinate Lender to Senior Lender that the Subordinate Loan Documents do not contain any changes from the Subordinate Loan Documents submitted to, and approved by, Senior Lender prior to the date of this Agreement.

**(c) Loan Documents.**

A complete set of the fully executed Subordinate Loan Documents, certified by Borrower to be true, correct and complete upon the later of (1) the execution and delivery of the Subordinate Loan Documents, and (2) the effective date of the Senior Loan Documents.

**6. Terms of Subordination.**

**(a) Agreement to Subordinate.**

Senior Lender and Subordinate Lender agree that (1) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment in full of the Indebtedness evidenced by the Senior Loan Documents, and (2) the liens, terms, covenants and conditions of the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject to and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Security Instrument and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (A) protecting or further securing the lien of the Senior Security Instrument, curing defaults by Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Loan Documents, or (B) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property).

**(b) Subordination of Subrogation Rights.**

Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the Senior Security Instrument, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Security Instrument.

**(c) Payments Before Senior Loan Default.**

Until Subordinate Lender receives a Default Notice (or otherwise acquires actual knowledge) of a Senior Loan Default, Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents.

**(d) Payments After Senior Loan Default.**

Borrower agrees that, after it receives a Default Notice (or otherwise acquires actual knowledge) of a Senior Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the Subordinate Loan Documents) without Senior Lender's prior written consent. Subordinate Lender agrees that, after it receives a Default Notice (or otherwise acquires actual knowledge) of a Senior Loan Default, it will not accept any payments under or pursuant to the Subordinate

Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the Subordinate Loan Documents) without Senior Lender's prior written consent. If Subordinate Lender receives written notice from Senior Lender that the Senior Loan Default which gave rise to Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by Senior Lender, the restrictions on payment to Subordinate Lender in this Section 6 shall terminate, and Senior Lender shall have no right to any subsequent payments made to Subordinate Lender by Borrower prior to Subordinate Lender's receipt of a new Default Notice from Senior Lender in accordance with the provisions of this Section 6(d).

**(e) Receipt of Payment Not Permitted Hereunder.**

If, after Subordinate Lender receives a Default Notice (or otherwise acquires actual knowledge) of a Senior Loan Default, Subordinate Lender receives any payments under the Subordinate Loan Documents, or if Subordinate Lender receives any other payment or distribution of any kind from Borrower or from any other Person in connection with the Subordinate Loan or the Subordinate Loan Documents which Subordinate Lender is not permitted by this Agreement to retain for its own account, Subordinate Lender agrees to notify (telephonically or via email, followed by written notice) Senior Lender of Subordinate Lender's receipt of such amounts, and that such payment or other distribution will be received and held in trust for Senior Lender and unless Senior Lender otherwise notifies Subordinate Lender, will be promptly remitted, in kind, to Senior Lender, properly endorsed to Senior Lender, to be applied to the principal of, interest on and other amounts due under Senior Loan Documents in such order and in such manner as Senior Lender shall determine in its sole and absolute discretion. Subordinate Lender hereby irrevocably designates, makes, constitutes and appoints Senior Lender (and all Persons designated by Senior Lender) as Subordinate Lender's true and lawful attorney in fact in the Subordinate Lender's name, place and stead, with full power of substitution, to (1) take any and all actions as are permitted in this Agreement, including the power to endorse the name of Subordinate Lender upon any checks representing payments referred to in this subsection, and (2) carry out any remedy provided for in this Agreement. The Subordinate Lender hereby acknowledges that the constitution and appointment of such attorney-in-fact is coupled with an interest and is irrevocable.

**(f) Notice of Payment from Other Persons.**

Subordinate Lender agrees to notify (telephonically or via email, followed by written notice) Senior Lender of Subordinate Lender's receipt from any Person other than Borrower of a payment with respect to Borrower's obligations under the Subordinate Loan Documents, promptly after Subordinate Lender obtains knowledge of such payment.

**(g) Agreement Not to Commence Bankruptcy Proceeding.**

Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings against or with respect to Borrower, without Senior Lender's prior written consent.

**7. Default Under Subordinate Loan Documents.**

**(a) Notice of Subordinate Loan Default and Cure Rights.**

Subordinate Lender agrees to deliver a Default Notice of each Subordinate Loan Default to Senior Lender within five (5) Business Days after the occurrence of the Subordinate Loan Default. Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within the same time period for curing a default which is given to Borrower under the Subordinate Loan Documents, except that Senior Lender's time period for cure shall begin on the date on which it receives notice of the Subordinate Loan Default. All amounts advanced or expended by Senior Lender to cure a Subordinate Loan Default shall be deemed to have been advanced by Senior Lender pursuant to, and shall be secured by, the Senior Loan Agreement and the Senior Security Instrument.

**(b) Subordinate Lender May Not Exercise Remedies Without Senior Lender's Written Consent.**

If a Subordinate Loan Default occurs and is continuing, Subordinate Lender agrees that, without Senior Lender's prior written consent, it will not commence foreclosure proceedings with respect to the Mortgaged Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents, including, but not limited to accelerating the Subordinate Loan (and enforcing any "due on sale" provision included in the Subordinate Loan Documents), collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder.

**(c) Effect of Foreclosure by Subordinate Lender.**

Subordinate Lender acknowledges that any conveyance or other transfer of title to the Mortgaged Property pursuant to a foreclosure of the Subordinate Mortgage (including a conveyance or other transfer of title pursuant to the exercise of a power of sale contained in the Subordinate Loan Documents), or any deed or assignment in lieu of foreclosure or similar arrangement, shall be subject to the transfer provisions of the Senior Loan Documents; and the Person (including Subordinate Lender) who acquires title to the Mortgaged Property pursuant to the foreclosure proceeding (or pursuant to the exercise of a power of sale contained in the Subordinate Loan Documents) shall not be deemed to be automatically approved by Senior Lender.

**(d) Cross Default.**

Borrower and Subordinate Lender agree that a Subordinate Loan Default shall constitute a Senior Loan Default under the Senior Loan Documents and Senior Lender shall have the right to exercise all rights or remedies under the Senior Loan Documents in the same manner as in the case of any other Senior Loan Default.

## **8. Default Under Senior Loan Documents.**

### **(a) Senior Loan Notices.**

Senior Lender shall deliver to Subordinate Lender a Default Notice within five (5) Business Days in each case where Senior Lender has given a Default Notice to Borrower. Failure of Senior Lender to send a Default Notice to Subordinate Lender shall not prevent the exercise of Senior Lender's rights and remedies under the Senior Loan Documents, nor shall such failure constitute a default by Senior Lender under this Agreement.

### **(b) Cross Default.**

Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Loan Default shall not constitute a default under the Subordinate Loan Documents (if no other default has occurred under the Subordinate Loan Documents) until either (1) Senior Lender has accelerated the maturity of the Senior Loan, or (2) Senior Lender has taken affirmative action to exercise its rights under the Senior Loan Documents to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Loan Documents. If at any time Borrower cures any Senior Loan Default to the satisfaction of Senior Lender, any default under the Subordinate Loan Documents arising from such Senior Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such Senior Loan Default had never occurred.

## **9. Conflict.**

Borrower and Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall control. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default, as the case may be; give Borrower the right to notice of any Senior Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

## **10. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents.**

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

### **(a) Subordinate Loan Notices.**

Subordinate Lender shall deliver to Senior Lender a copy of each notice which it delivers to Borrower in connection with the Subordinate Loan simultaneously with the delivery of such notice to Borrower.

**(b) Protection of Security Interest.**

Subordinate Lender shall not, without the prior written consent of Senior Lender in each instance, (1) take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that Subordinate Lender shall have the right to advance funds pursuant to the Subordinate Loan Documents for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Mortgaged Property and curing other defaults by Borrower under the Subordinate Loan Documents, or (2) appear in, defend or bring any action to protect its interest in the Mortgaged Property.

**(c) Condemnation or Casualty.**

Following the occurrence of (1) a Condemnation Action, or (2) a fire or other casualty resulting in damage to all or a portion of the Mortgaged Property (collectively, a “**Casualty**”), at any time or times when the Senior Security Instrument remains a lien on the Mortgaged Property the following provisions shall apply:

(A) Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation Action or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation Action or a Casualty shall be and remain subject and subordinate in all respects to Senior Lender’s rights under the Senior Loan Documents, and Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Condemnation Action or a Casualty made by Senior Lender;

(B) all proceeds received or to be received on account of a Condemnation Action or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Loan) in the manner determined by Senior Lender in its sole discretion; provided, however, that if Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Loan shall be paid to, and may be applied by, Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents; and

(C) Subordinate Lender agrees to execute and deliver, at no expense to Senior Lender, all documents, instruments, agreements or further assurances required to effectuate the provisions of this subsection.

**(d) Insurance.**

Subordinate Lender agrees that all original policies of insurance required pursuant to the Senior Security Instrument shall be held by Senior Lender. The preceding sentence shall not preclude Subordinate Lender from requiring that it be named as a loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to

the Mortgaged Property, provided such action does not affect the priority of payment of the proceeds of property damage insurance under the Senior Security Instrument, or that it be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

**(e) Termination of Subordinate Mortgage.**

If, after the occurrence of a Senior Loan Default, Senior Lender acquires title to the Mortgaged Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale contained in) the Senior Loan Documents, the lien of the Subordinate Mortgage and the other Subordinate Loan Documents shall automatically terminate upon Senior Lender's acquisition of title.

**(f) No Modification of Subordinate Loan Documents.**

Borrower and Subordinate Lender each agree that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender in each instance, (1) amend, modify, increase, extend, renew or replace the Subordinate Loan Documents or (2) assign any interest in the Subordinate Loan. Any amendment of the Subordinate Loan Documents or assignment of Subordinate Lender's interest in the Subordinate Loan without Senior Lender's consent shall be void ab initio and of no effect whatsoever.

**11. Modification or Refinancing of Senior Loan Documents.**

Subordinate Lender consents to any agreement or arrangement in which Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Loan (including reasonable and necessary costs associated with the closing and/or the refinancing); and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the Senior Loan, the Senior Note, the Senior Loan Agreement, the Senior Security Instrument, the Senior Loan Documents and Senior Lender shall mean, respectively, the refinance loan, the refinance note loan agreement, the mortgage securing the refinance note, all documents evidencing securing or otherwise pertaining to the refinance note and the holder of the refinance note.

**12. Default by Subordinate Lender.**

If Subordinate Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by Subordinate Lender under this Agreement, Senior Lender shall have the right to all available legal and equitable relief. In addition, Subordinate Lender agrees to indemnify and hold harmless Senior Lender from and against (a) all damage, loss and liability incurred by Senior Lender as a result of such default, and (b) all costs and expenses (including reasonable attorneys' fees and disbursements) incident to the matters referred to in clause (a), whether or not litigation is commenced.

**13. Reinstatement.**

To the extent that Borrower makes a payment to Senior Lender or Senior Lender receives any payment or proceeds of the collateral securing the Senior Loan for Borrower's benefit, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable doctrine, then to the extent of such payment or proceeds received and not retained by Senior Lender, this Agreement shall be reinstated and continue in full force and effect until full and final payment shall have been made to Senior Lender. Subordinate Lender agrees to hold in trust for Senior Lender and promptly remit to Senior Lender any payments received by Subordinate Lender after such invalidated, rescinded or returned payment was originally made.

**14. Non-Approval of Subordinate Financing Terms.**

This Agreement does not constitute an approval by Senior Lender of the terms of the Subordinate Loan or limit any of Borrower's rights to negotiate the terms of the Subordinate Loan Documents with Subordinate Lender.

**15. Notices.**

**(a) Process of Serving Notice.**

All notices under this Agreement shall be:

- (1) in writing and shall be:
  - (A) delivered, in person;
  - (B) mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
  - (C) sent by overnight courier; or
  - (D) sent by electronic mail with originals to follow by overnight courier;
- (2) addressed to the intended recipient at the address(es) below the signature block, as applicable; and
- (3) deemed given on the earlier to occur of:
  - (A) the date when the notice is received by the addressee; or
  - (B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or any express courier service.



**(b) Change of Address.**

Any party to Agreement may change the address to which notices intended for it are to be directed by means of notice given to the other parties identified in this Agreement.

**(c) Receipt of Notices.**

Senior Lender, Subordinate Lender or Borrower shall not refuse or reject delivery of any notice given in accordance with this Agreement. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

**16. General.**

**(a) Assignment/Successors.**

This Agreement shall be binding upon and shall inure to the benefit of the respective legal successors, transferees and assigns of Borrower, Senior Lender and Subordinate Lender. Borrower shall not assign any of its rights and obligations under this Agreement without the prior written consent of Senior Lender.

**(b) No Partnership or Joint Venture.**

Senior Lender's permission for the placement of the Subordinate Loan does not constitute Senior Lender as a joint venturer or partner of Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

**(c) Senior Lender's Consent.**

Wherever Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Senior Lender in its sole and absolute discretion.

**(d) Further Assurances.**

Upon the demand of Senior Lender from time to time, Subordinate Lender agrees to execute and deliver all additional instruments and/or documents required by Senior Lender in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the Senior Loan Documents, or to further evidence the intent of this Agreement.

**(e) Amendment.**

This Agreement shall not be amended except by written instrument signed by all parties hereto.

**(f) Governing Law.**

This Agreement shall be governed by the laws of the jurisdiction in which the Mortgaged Property is located without giving effect to any choice of law provisions thereof that would result

in the application of the laws of another jurisdiction. Senior Lender, Subordinate Lender and Borrower agree that any controversy arising under or in relation to this Security Instrument shall be litigated exclusively in the jurisdiction in which the Mortgaged Property is located. The state and federal courts and authorities with jurisdiction in such locale shall have exclusive jurisdiction over all controversies that arise under or in relation to this Agreement. The parties hereto irrevocably consent to service, jurisdiction, and venue of such courts for any such litigation and waive any other venue to which any might be entitled by virtue of domicile, habitual residence or otherwise.

**(g) Severable Provisions.**

If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**(h) Term.**

The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (1) the payment in full of the principal of, interest on and other amounts payable under the Senior Loan Documents; (2) the payment in full of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to Section 6 of this Agreement; (3) the acquisition by Senior Lender of title to the Mortgaged Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale contained in) the Senior Loan Documents; or (4) the acquisition by Subordinate Lender of title to the Mortgaged Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale contained in), the Subordinate Loan Documents, but only if such acquisition of title does not violate any of the terms of this Agreement.

**(i) Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall constitute one and the same instrument.

**(j) Sale of the Senior Loan.**

Nothing in this Agreement shall limit Senior Lender's (including any assignee or transferee of Senior Lender) right to sell or transfer the Senior Loan, or any interest in the Senior Loan. The Senior Loan or a partial interest in the Senior Loan (together with this Agreement and the other Loan Documents) may be sold one or more times without prior notice to Subordinate Lender or Borrower.

**[Remainder of Page Intentionally Blank]**

IN WITNESS WHEREOF, Borrower, Senior Lender and Subordinate Lender have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by a duly authorized representative. Where applicable law so provides, Borrower, Senior Lender and Subordinate Lender intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

**SENIOR LENDER:**

**FANNIE MAE**

a corporation duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. §1716 et seq. and duly organized and existing under the laws of the United States

By: **WALKER & DUNLOP, LLC**  
a Delaware limited liability company  
Attorney-in-Fact

By: \_\_\_\_\_ (SEAL)  
Aisha James  
Closing Officer

Notice Address:  
c/o Walker & Dunlop, LLC  
7501 Wisconsin Avenue, N.W., Suite 1200E  
Washington, DC 20814

With a copy to:  
Fannie Mae  
Attention: Multifamily Operations - Asset Management  
Drawer AM  
3900 Wisconsin Avenue, N.W.  
Washington, DC 20016

**ACKNOWLEDGMENT**

STATE OF MARYLAND

COUNTY OF MONTGOMERY

This instrument was acknowledged before me on August \_\_\_\_, 2017, by \_\_\_\_\_, \_\_\_\_\_ of Walker & Dunlop, LLC, a Delaware limited liability company, Attorney-in-Fact for Fannie Mae, a corporation duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. §1716 et seq. and duly organized and existing under the laws of the United States.

\_\_\_\_\_

Notary Public

Printed Name: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

**SUBORDINATE LENDER:**

**HOUSING AND REDEVELOPMENT  
AUTHORITY IN AND FOR THE CITY OF  
RICHFIELD, MINNESOTA**

By \_\_\_\_\_  
Its Chair

By \_\_\_\_\_  
Its Executive Director

Address: 6700 Portland Avenue South  
Richfield, MN 55423

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2017, by Mary B. Supple, the Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Steven L. Devich, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

**BORROWER:**

**AEON SEASONS PARK LLC**  
a Minnesota limited liability company

By: \_\_\_\_\_(SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: 901 North Third Street, Suite 150  
Minneapolis, MN 55401

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, the \_\_\_\_\_ of Aeon Seasons Park LLC, a Minnesota limited liability company, on behalf of the Mortgagor.

\_\_\_\_\_  
Notary Public

## EXHIBIT A

### Parcel 1:

That part of Government Lot 1, Section 34, Township 28, Range 24, Hennepin County, Minnesota, described as follows: Beginning at a point in the South line of said Section 34, distant 660 feet West of the Southeast corner of said Section; thence West along the South line of said Section 34 a distance of 256.65 feet; thence at a right angle North 462 feet; thence at a right angle East 256.65 feet; thence at a right angle South 462 feet to the point of beginning.

Hennepin County, Minnesota  
Abstract Property

### Parcel 2:

The East Half of the Southwest Quarter of the Southeast Quarter of the Southwest Quarter and the West Half of the Southeast Quarter of the Southeast Quarter of the Southwest Quarter, all in Section 35, Township 28 North, Range 24, West of the 4th Principal Meridian, according to the U.S. Government Survey thereof, Hennepin County, Minnesota.

Abstract Property

### Parcel 3:

That part of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 35, Township 28, Range 24 described as: Beginning at the Northeast corner of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence West along the North line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter a distance of 656.28 feet; thence South to a point on the South line of the North 132.5 feet of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter distant .57 of a foot East from the West line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence West along said South line a distance of .57 of a foot to said West line; thence South along said West line to the North line of the South 432 feet of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence East along the last mentioned North line to the East line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence North along said East line to the point of beginning.

The South 432 feet of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 35, Township 28, Range 24 except that part of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter described as: Beginning at the Southeast corner of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence North along the East line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter a distance of 209 feet; thence West at a right angle a distance of 209 feet; thence South at a right angle to the South line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence East to the point of beginning.

That part of the East half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 35, Township 28, Range 24 lying South of the North 132.5 feet of said East half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter, Hennepin County, Minnesota.

Torrens Property  
Torrens Certificate No. 1332090

## MORTGAGE

THIS MORTGAGE, made as of September \_\_\_, 2017 (the "Mortgage"), is by **AEON SEASONS PARK LLC**, a Minnesota limited liability company, as mortgagor (the "Mortgagor"), in favor of the **HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA, MINNESOTA**, a public body corporate and politic of the State of Minnesota, as mortgagee (the "Mortgagee").

### WITNESSETH:

That the Mortgagor, in consideration of the sum of One Hundred Fifty Thousand (\$150,000.00) Dollar and other good, valuable and sufficient consideration, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, and convey unto the Mortgagee, its successors and assigns, forever, all the tract or parcel of land lying and being in the County of Hennepin and State of Minnesota and legally described in EXHIBIT A attached hereto (the "Land").

To have and to hold the same, together with the hereditaments and appurtenances thereto belonging to the Mortgagee, its successors and assigns, forever. And the Mortgagor, for itself, and its successors and assigns, does covenant with the Mortgagee, its successors and assigns, as follows: That it is lawfully seized of said premises and has good right to sell and convey the same; that the same are free from all encumbrances, save and except reservations, restrictions and easements set forth on EXHIBIT B attached hereto; that the Mortgagee, its successors and assigns, shall quietly enjoy and possess the same; and that the Mortgagor will warrant and defend the title to the same against all lawful claims not hereinbefore specifically excepted; and

Provided, nevertheless, that if the Mortgagor, its successors and assigns, shall keep and perform each and every one of its obligations under and pursuant to that certain Promissory Note of even date herewith (the "Note"), given by the Mortgagor to the Mortgagee, and shall keep and perform all the covenants and agreements herein contained, then this deed to be null and void, and to be released at the Mortgagor's expense.

This Mortgage secures a principal debt in the amount of One Hundred Fifty Thousand Dollars (\$150,000) payable by the Mortgagor to the Mortgagee under the terms of the Note and the Loan Agreement of even date herewith (the "Loan Agreement") between the Mortgagor and the Mortgagee, which Note matures no later than September \_\_\_, 2047, unless extended by written agreement between the Mortgagor and the Mortgagee.

Notwithstanding the provisions of this Mortgage or any other document, the Mortgagor shall not be personally liable for payment of the indebtedness evidenced by the Note, and the Mortgagee's sole recourse



for payment of such indebtedness upon the occurrence of an Event of Default (hereinafter defined) shall be to pursue the security provided by this Mortgage and other instruments securing payment of the Note. Nothing in this Section shall affect, limit or impair (i) the security provided by this Mortgage or any other document, (ii) the right to seek monetary judgment against the Mortgagor or any owner of the mortgaged property to the extent necessary to permit foreclosure of this Mortgage by action (except that the Mortgagor shall not be personally liable for payment of any such judgment to the extent that the judgment is for payment of the indebtedness evidenced by the Note and no deficiency judgment will be sought or obtained against the Mortgagor for payment of the indebtedness evidenced by the Note), (iii) the enforcement by the Mortgagee of any other legal or equitable rights or remedies or any other provision of any instrument by which the Note is secured, or (iv) the personal liability of the Mortgagor for the failure to observe or perform any of the covenants or obligations of the Mortgagor and other instruments securing payment of the Note other than the obligation to pay the indebtedness evidenced by the Note.

1. The Mortgagor, for itself, and its successors and assigns, does hereby covenant and agree with the Mortgagee, its successors and assigns, to perform its obligations as above specified, to pay all taxes and assessments now due or that may hereafter become liens against said premises at least ten (10) days before penalty attaches thereto; to pay, when due, both principal and interest of all prior liens or encumbrances, if any, above mentioned and to keep said premises free and clear of all other prior liens or encumbrances; to commit or permit no waste on said premises and to keep them in good repair; to complete forthwith any improvements which may hereafter be under course of construction thereon, and to pay any other expenses and attorneys' fees incurred by the Mortgagee, its successors or assigns, by reason of litigation with any third party for the protection of the lien of this Mortgage.

2. The Mortgagor does further covenant and agree that if any lien for labor, skill or material shall be filed for record during the life of this Mortgage, upon or against the premises hereby mortgaged, the Mortgagor will, within thirty (30) days after the date of its filing for record, either pay off the said lien and secure its satisfaction of record, or will protect the Mortgagee against any loss or damage growing out of its enforcement, by furnishing a bond for the same amount in the form and with the sureties to be approved by the Mortgagee.

3. In case of failure to pay said taxes and assessments, prior liens or encumbrances, expenses and attorneys' fees as above specified, or to insure said buildings and deliver the policies as aforesaid, the Mortgagee, its successors or assigns, may pay such taxes, assessments, prior liens, expenses and attorneys' fees and interest thereon, or effect such insurance, and the sums so paid shall bear interest at the highest rate permitted by law from the date of such payment, shall be impressed as an additional lien upon said premises, and be immediately due and payable from the Mortgagor, its successors or assigns, to the Mortgagee, its successors or assigns, and this Mortgage shall from date thereof secure the repayment of such advance with interest.

4. In case of default in any of the foregoing covenants (each an "Event of Default"), the Mortgagor confers upon the Mortgagee the option, of declaring a default and hereby authorizes and empowers the Mortgagee, its successors and assigns, to foreclose this Mortgage by judicial proceedings or to sell said premises at public auction and convey the same to the purchaser in fee simple in accordance with the statute, and out of the money arising from such sale to retain all sums secured hereby, with interest and all legal costs and charges of such foreclosure and the maximum attorneys' fee permitted by law, which costs, charges and fees the Mortgagor herein agrees to pay.

5. Any member or partner of the Mortgagor shall have the right, but not the obligation, to cure any Event of Default by the Mortgagor under this Mortgage or any default under the Note, the Loan Agreement, or the Declaration of Restrictive Covenants, and the Mortgagee shall accept performance by the member or partner of the Mortgagor of any obligation of the Mortgagor thereunder as though tendered

by the Mortgagor itself, provided such performance by the member or partner of the Mortgagor has occurred during the applicable cure period, if any, provided to the Mortgagor thereunder with respect to such default or Event of Default.

~~INCLUDE IF SUBORDINATION REQUIRED~~ 6. The indebtedness evidenced by the Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a promissory note in the principal amount of \$~~\_\_\_\_\_~~, 22,420,000, executed by the Mortgagor and payable to the order of ~~\_\_\_\_\_~~ (the "~~\_\_\_\_\_~~ Walker & Dunlop LLC, which Note has been assigned to Fannie Mae (the "Fannie Mae Note")", to the extent and in the manner provided in that certain Subordination Agreement of even date herewith (the "Subordination Agreement") between the Mortgagor, ~~\_\_\_\_\_~~ Fannie Mae, and the Mortgagee. This Mortgage (and any exhibits) securing the Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the mortgage securing the ~~\_\_\_\_\_~~ Fannie Mae Note, as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of the Note under this Mortgage (and any exhibits) securing the Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of the Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Mortgagee under the Subordination Agreement. Any capitalized terms used specifically in this Section that are otherwise not defined shall have the meanings assigned such terms in the Subordination Agreement. }

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



## EXHIBIT A

### DESCRIPTION OF LAND

#### Parcel 1:

That part of Government Lot 1, Section 34, Township 28, Range 24, Hennepin County, Minnesota, described as follows: Beginning at a point in the South line of said Section 34, distant 660 feet West of the Southeast corner of said Section; thence West along the South line of said Section 34 a distance of 256.65 feet; thence at a right angle North 462 feet; thence at a right angle East 256.65 feet; thence at a right angle South 462 feet to the point of beginning.

Hennepin County, Minnesota

Abstract Property

#### Parcel 2:

The East Half of the Southwest Quarter of the Southeast Quarter of the Southwest Quarter and the West Half of the Southeast Quarter of the Southeast Quarter of the Southwest Quarter, all in Section 35, Township 28 North, Range 24, West of the 4th Principal Meridian, according to the U.S. Government Survey thereof, Hennepin County, Minnesota.

Abstract Property

#### Parcel 3:

That part of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 35, Township 28, Range 24 described as: Beginning at the Northeast corner of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence West along the North line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter a distance of 656.28 feet; thence South to a point on the South line of the North 132.5 feet of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter distant .57 of a foot East from the West line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence West along said South line a distance of .57 of a foot to said West line; thence South along said West line to the North line of the South 432 feet of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence East along the last mentioned North line to the East line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence North along said East line to the point of beginning.

The South 432 feet of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 35, Township 28, Range 24 except that part of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter described as: Beginning at the Southeast corner of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence North along the East line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter a distance of 209 feet; thence West at a right angle a distance of 209 feet; thence South at a right angle to the South line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence East to the point of beginning.

[Insert legal description]

That part of the East half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 35, Township 28, Range 24 lying South of the North 132.5 feet of said East half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter, Hennepin County, Minnesota.

Torrens Property

Torrens Certificate No. 1332090

## EXHIBIT B

### PERMITTED ENCUMBRANCES

1. Terms and conditions of Declaration of Restrictive Covenants by and between Aeon Seasons Park LLC, a Minnesota limited liability company and the Housing and Redevelopment Authority in and for the city of Richfield, Minnesota, as recorded.
2. Mortgage, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement, and Fixture Filing, dated as of July 30, 2013, filed August 2, 2013, as Document Nos. A09988452 and T05102845 by and between FREG Buena Vista Associates, LLC, a Colorado limited liability company and KeyBank National Association, in the original principal amount of \$20,420,000.00., assigned by Assignment of Mortgage dated September 4, 2015, filed September 22, 2015, as Document No. A10240687 and filed September 11, 2015, as Document No. T05289650 wherein KeyBank National Association, assigns their interest to Walker & Dunlop, LLC, a Delaware limited liability company, amended by Amended and Restated Multifamily Mortgage, Assignment of Leases and Rents, security Agreement and Fixture Filing dated as of September 4, 2015, filed September 22, 2015, as Document No. A10240688 and filed September 11, 2015, as Document No. T05289651, increasing the original principal amount of the mortgage to \$22,450,000.00., further assigned by Assignment of Amended and Restated Mortgage dated as of September 4, 2015, filed September 22, 2015, as Document No. A10240689 and filed September 11, 2015, as Document No. T05289652 assigned to Fannie Mae, assumed by Aeon Seasons Park LLC, a Minnesota limited liability company by Assumption and Release Agreement dated \_\_\_\_\_, 2017, as recorded.
3. UCC Financing Statement filed September 29, 2015, as Document No. A10243320 and filed September 24, 2015, as Document No. T05293271 by and between FREG Buena Vista Associates, LLC, as Debtor, Walker & Dunlop, LLC, as assignor secured part, and Fannie Mae, as assignee of assignor secured party, amended by UCC Financing Statement Amendment filed \_\_\_\_\_, 2017, as recorded.
4. Real Estate taxes payable in 2<sup>nd</sup> half of 2017 and thereafter.
5. Levied and pending special assessments hereafter levied.
6. Easement for street purposes, if favor of the Village, now City of Richfield, a Minnesota municipal corporation created in Document No. 3214866 in Book 2242 of Deeds, Page 432.
7. Easement for highway purposes in favor of the State of Minnesota created in Document No. 3431114 in Book 2408, Pate 259, partially assigned to the City of Richfield by Quit Claim Deed Document No. 5110315 which restricts the right of access to Highway 494.
8. Easement for street purposes in favor of the Village now City of Richfield created in Document No. 3101157 in Book 2157, Page 296.
9. Easement for electric transmission line purposes in favor of Northern States Power Company, a Minnesota corporation, filed July 17, 1964, as Document No. 3486822 in Book 2450 of Deeds, Page 183.

10. Easement for gas main purposes in favor of Minneapolis Gas Company, a Delaware corporation, in document filed August 25, 1964, as Document No. 3494239 in Book 2455 of Deeds, Page 546.

11. Easement for electric transmission line purposes in favor of Northern States Power Company, a Minnesota corporation filed January 29, 1965 as Document No. 3525898 in Book 2483, Page 65.

~~[Insert list of permitted encumbrances]~~

12. Subject to the easements, restrictions and incidental rights in favor of Minneapolis Gas Company, a Delaware corporation contained in Book 2412 of Deeds, Pages 503, 507 and 511, Document Nos. 3437028, 3437029, and 3437030 over the North 20 feet of the South 420 feet of the East Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter, over the North 20 feet of the South 440 feet of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter, and over the West 19 feet of that part of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter lying North of the South 400 feet thereof, excepting those parts taken for street or highway purposes, in Section 35, Township 28, Range 24, all as shown by recital on the Certificate of Title.

13. Easement for electric transmission and distribution purposes in favor of Northern States Power Company, a Minnesota corporation, in document filed Mary 14, 1978 as Document No. 1263961.

Document comparison by Workshare Compare on Tuesday, September 12, 2017  
10:42:02 AM

<b>Input:</b>	
Document 1 ID	PowerDocs://DOCSOPEN/505476/1
Description	DOCSOPEN-#505476-v1-RHRA_Aeon_Mortgage
Document 2 ID	PowerDocs://DOCSOPEN/505476/2
Description	DOCSOPEN-#505476-v2-RHRA_Aeon_Mortgage
Rendering set	Standard

<b>Legend:</b>	
<u>Insertion</u>	
<del>Deletion</del>	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	50
Deletions	16
Moved from	0
Moved to	0
Style change	0
Format changed	0
<b>Total changes</b>	<b>66</b>

## LOAN AGREEMENT

THIS LOAN AGREEMENT is made this September \_\_\_\_, 2017 (the “Agreement”), between **AEON SEASONS PARK LLC**, a Minnesota limited liability company (the “Borrower”), and the **HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA**, a public body corporate and politic of the State of Minnesota (the “Lender”).

### RECITALS

The Borrower has proposed to acquire the 422 unit Seasons Park apartment complex (the “Project”) on certain property located at 951 East 77<sup>th</sup> Street in the City of Richfield, Minnesota (the “City”) and legally described in EXHIBIT A attached hereto (the “Property”). In order to make the Project more economically feasible and to preserve affordable housing in the City, the Lender has proposed to make a loan to the Borrower in the amount of \$150,000 (the “Loan”).

In consideration for the Loan, the Borrower will execute and deliver to the Lender a Declaration of Restrictive Covenants of even date herewith (the “Declaration of Restrictive Covenants”), setting forth the affordability covenants for the Project.

~~[IF SUBORDINATION NEEDED~~ The repayment of the Loan by Borrower shall be subordinate to the repayment obligation of the Borrower with respect to a loan in the principal amount of \$ \_\_\_\_\_ (the “\_\_\_\_\_ Loan”) to be advanced to the Borrower by \_\_\_\_\_ under the [loan agreement]. ~~The \_\_\_\_\_ Loan is being provided to Borrower in connection with the Project. The terms of the subordination is 22,420,000 (the “Fannie Mae Loan”) as~~ set forth in the Subordination Agreement of even date herewith (the “Subordination Agreement”) between the Borrower, \_\_\_\_\_ Fannie Mae, and the Lender.]

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

1. The Loan Amount. Subject to and upon the terms and conditions of this Agreement, the Lender agrees to make the Loan to the Borrower in the amount of One Hundred Fifty Thousand and no/100ths Dollars (\$150,000), or so much thereof as is disbursed to Borrower in accordance with this Agreement. The Loan shall be evidenced by a Promissory Note of even date herewith (the “Note”), payable by the Borrower to the Lender, which Note shall be secured by a Mortgage of even date herewith (the “Mortgage”) from the Borrower in favor of the Lender.

2. Repayment of Loan. The Loan shall be repaid as follows:

(a) So long as no Event of Default (hereinafter defined) exists under this Agreement or the Declaration of Restrictive Covenants, interest shall not accrue on the Loan.

(b) The entire unpaid balance of principal and interest shall be due and payable in full on the earliest of the following: (i) subject to Section 11 hereof, thirty (30) days after written notification by the Lender to the Borrower of the occurrence of an Event of Default which is not



[cured](#) and demand of payment according to Section 6 hereof; or (ii) ten (10) days after the Borrower makes or allows to be made any total or partial transfer, sale, assignment, conveyance, lease (except a lease to a residential tenant of a unit within the Project), or transfer in any other mode, of the Project; or (iii) September \_\_\_, 2047, unless extended by written agreement between the Lender and the Borrower.

3. Disbursement of Loan Proceeds.

(a) The Loan proceeds shall be paid to the Borrower on the date hereof or such other date as the parties hereto agree (the "Loan Closing Date").

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

(i) the Borrower having provided evidence of financing for the acquisition of the Project to the Authority;

(ii) the Borrower having executed and delivered to the Lender on or prior to the Loan Closing Date, without expense to the Lender, executed copies of this Agreement, the Mortgage, the Declaration of Restrictive Covenants, and the Note;

(iii) the Borrower having paid all attorney fees, costs, and expenses incurred by the Lender in connection with this Agreement, the Mortgage, the Declaration of Restrictive Covenants, and the Note.

4. Representations and Warranties. The Borrower represents and warrants to the Lender that:

(a) The Borrower is a limited liability company duly organized and existing in good standing under the laws of the State of Minnesota.

(b) The Borrower is duly authorized and empowered to execute, deliver, and perform this Agreement, the Note, the Declaration of Restrictive Covenants, and the Mortgage and to borrow money from the Lender.

(c) The execution and delivery of this Agreement, and the performance by the Borrower of its obligations hereunder, do not and will not violate or conflict with any provision of law or the operating agreement of the Borrower 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 the Borrower.

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

(e) The Borrower warrants that it shall keep and maintain books, records, and other documents relating directly to the receipt and disbursements of Loan proceeds and that any duly authorized representative of the Lender shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of the Borrower respecting the Loan until the completion of all closeout procedures and the final settlement and conclusion of all issues arising out of this Loan.

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

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

(a) any breach or failure of Borrower to perform any term or condition of this Agreement, the Note, the Declaration of Restrictive Covenants, or the Mortgage and such failure continues for thirty (30) days after the Lender has given written notice to the Borrower specifying such default or breach unless the Lender 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 Lender will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Borrower 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 the Borrower herein or in any document, instrument, or certificate given in connection with this Agreement, is materially false when made; or

(c) the Borrower 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).

6. Lender’s Remedies upon Borrower’s Default. Upon an Event of Default by the Borrower and after receipt of written notice from the Lender, the Lender shall, subject to the terms of the Note, have the right to exercise any or all of the following remedies (and any other rights and remedies available to it):

(a) declare the principal amount of the Loan and any accrued interest thereon to be immediately due and payable upon providing written notice to Borrower;

(b) suspend its performance under this Agreement; and

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

7. Lender’s Costs of Enforcement of Agreement. If an Event of Default has occurred as provided herein, then upon demand by the Lender, the Borrower will pay or reimburse the Lender for all expenses, including all reasonable fees and disbursements of legal counsel, incurred by the Lender in connection with the enforcement of this Agreement, or in connection with the protection or enforcement of the interests of the Lender 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.

8. 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 the Borrower and its successors and assigns and shall inure to the benefit of the Lender and its successors and assigns. All rights and powers specifically conferred upon the Lender may be transferred or delegated by the Lender to any of its successors and assigns. The Borrower's rights and obligations under this Agreement may be assigned only when such assignment is approved in writing by the Lender.

(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 the Borrower and the Lender shall survive the execution, delivery and performance of this Agreement and the creation and payment of any indebtedness to the Lender. The Borrower waives notice of the acceptance of this Agreement by the Lender.

(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 Lender:                   Housing and Redevelopment Authority in and for the  
City of Richfield, Minnesota  
6700 Portland Avenue South  
Richfield, MN 55423  
Attention: Executive Director

To the Borrower:               Aeon Seasons Park LLC  
[ADDRESS]  
c/o Aeon  
901 North 3<sup>rd</sup> Street, Suite 150  
Minneapolis, MN 55401  
Attn: \_\_\_\_\_Blake Hopkins

9. Indemnification. The Borrower shall and does hereby agree to indemnify against and to hold the Lender, 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 Lender, 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 Lender, the amount thereof, including costs, expenses, and reasonable attorneys' fees, shall bear interest thereon at the rate then in effect on the Note, shall be added to the Loan, and the Borrower shall reimburse the Lender for the same immediately upon demand, and upon the failure of the Borrower so to do, the Lender may declare the Loan immediately due and payable.

10. Nonrecourse. Notwithstanding anything to the contrary herein or in the Note, the Loan shall be nonrecourse as to the Borrower, and the Lender's sole recourse with respect to the Loan shall be as set forth in the Mortgage.

11. Subordination. The indebtedness evidenced by the Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a promissory in the principal amount of \$~~\_\_\_\_\_~~, 22,420,000, executed by the Borrower and payable to the order of ~~\_\_\_\_\_~~ (the "~~\_\_\_\_\_~~ Walker & Dunlop LLC, which Note has been assigned to Fannie Mae (the "Fannie Mae Note"), to the extent and in the manner provided in the Subordination Agreement. The Mortgage (and any exhibits) securing the Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the mortgage securing the ~~\_\_\_\_\_~~ Fannie Mae Note, as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of the Note under the Mortgage (and any exhibits) securing the Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of the Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Lender under the Subordination Agreement. Any capitalized terms used specifically in this Section that are otherwise not defined shall have the meanings assigned such terms in the Subordination Agreement.

12. Extended Low-Income Housing Commitment. The Borrower agrees that at all times during the Qualified Project Period (as defined in the Declaration of Restrictive Covenants), ~~at least twentyone hundred~~ percent (~~20~~100%) of the units within the Project shall be reserved for occupancy by individuals whose income is sixty percent (60%) or less of the area's median gross income ~~constructed and satisfy the income requirements for a qualified residential rental project as defined in Section 142(d) of the Internal Revenue Code of 1986, as amended (the "Code"). The Declaration of Restrictive Covenants shall be recorded against the Property and that rents shall be restricted at the sixty percent (60%) area median income level. Income certification will only take place at the time of initial occupancy for new residents and existing households as of the date of the acquisition will be grandfathered in and will not be required to be income certified.~~

13. Cure Rights. Any member or partner of the Borrower shall have the right, but not the obligation, to cure any Event of Default by the Borrower under this Agreement or any default under the Note, the Declaration of Restrictive Covenants, or the Mortgage, and the Lender shall accept performance by the member or partner of the Borrower of any obligation of the Borrower thereunder as though tendered by the Borrower itself, provided such performance by the member or partner of the Borrower has occurred during the applicable cure period, if any, provided to the Borrower thereunder with respect to such default or Event of Default.

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

IN WITNESS WHEREOF, the undersigned officers of the Lender and the Borrower have executed this Loan Agreement as of the date and year first written above.

**HOUSING AND REDEVELOPMENT  
AUTHORITY IN AND FOR THE CITY OF  
RICHFIELD, MINNESOTA**

By \_\_\_\_\_  
Its Chair

By \_\_\_\_\_  
Its Executive Director

Execution page of Borrower to the Loan Agreement, dated as of the date and year first written above.

**AEON SEASONS PARK LLC**

By \_\_\_\_\_

Its \_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

#### Parcel 1:

That part of Government Lot 1, Section 34, Township 28, Range 24, Hennepin County, Minnesota, described as follows: Beginning at a point in the South line of said Section 34, distant 660 feet West of the Southeast corner of said Section; thence West along the South line of said Section 34 a distance of 256.65 feet; thence at a right angle North 462 feet; thence at a right angle East 256.65 feet; thence at a right angle South 462 feet to the point of beginning.

Hennepin County, Minnesota  
Abstract Property

#### Parcel 2:

The East Half of the Southwest Quarter of the Southeast Quarter of the Southwest Quarter and the West Half of the Southeast Quarter of the Southeast Quarter of the Southwest Quarter, all in Section 35, Township 28 North, Range 24, West of the 4th Principal Meridian, according to the U.S. Government Survey thereof, Hennepin County, Minnesota.

Abstract Property

~~[Insert legal description]~~

#### Parcel 3:

That part of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 35, Township 28, Range 24 described as: Beginning at the Northeast corner of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence West along the North line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter a distance of 656.28 feet; thence South to a point on the South line of the North 132.5 feet of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter distant .57 of a foot East from the West line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence West along said South line a distance of .57 of a foot to said West line; thence South along said West line to the North line of the South 432 feet of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence East along the last mentioned North line to the East line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence North along said East line to the point of beginning.

The South 432 feet of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 35, Township 28, Range 24 except that part of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter described as: Beginning at the Southeast corner of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence North along the East line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter a distance of 209 feet; thence West at a right angle a distance of 209 feet; thence South at a right angle to the South line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence East to the point of beginning.

That part of the East half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 35, Township 28, Range 24 lying South of the North 132.5 feet of said East half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter, Hennepin County, Minnesota.

Torrens Property  
Torrens Certificate No. 1332090





Document comparison by Workshare Compare on Tuesday, September 12, 2017  
10:40:14 AM

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## PROMISSORY NOTE

\$150,000

September \_\_\_, 2017

~~Aeon Seasons Park~~AEON SEASONS PARK LLC, a Minnesota limited liability company (the “Maker”), for value received, hereby promises to pay to the ~~Housing and Redevelopment Authority in and for the City of Richfield, Minnesota~~HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA, a public body corporate and politic of the State of Minnesota (the “Authority”), or its assigns (the Authority and any assigns are hereinafter referred to as the “Holder”), at its designated principal office or such other place as the Holder may designate in writing, the principal sum of One Hundred Fifty Thousand and No/100ths Dollars (\$150,000), or so much thereof as may be advanced under this Note, with interest as hereinafter provided, in any coin or currency which at the time or times of payment is legal tender for the payment of private debts in the United States of America. All terms capitalized herein and not defined have the definitions given such terms in the Loan Agreement of even date herewith (the “Loan Agreement”) between the Maker and the Holder.

The principal of and interest on this Note is due and payable as follows:

1. The funds loaned by the Holder to the Maker (the “Loan”) pursuant to the terms of the Loan Agreement shall not bear interest ~~as long as no default exists under the Loan Agreement or the Declaration of Restrictive Covenants.~~
2. The entire unpaid balance of principal shall be due and payable in full on the earliest of the following: (i) subject to Section 12 hereof, thirty (30) days after written notification by the Holder to the Maker of the occurrence of an Event of Default which is not cured and demand of payment according to Section 6 of the Loan Agreement; or (ii) ten (10) days after Maker makes or allows to be made any total or partial transfer, sale, assignment, conveyance, lease (except a lease to a residential tenant of a unit within the Project (as defined in the Loan Agreement)), or transfer in any other mode, of the Project; or (iii) September \_\_\_, 2047, unless extended by written agreement between the Maker and the Holder.
3. The Maker shall have the right to fully or partially prepay this Note at any time without penalty. Any partial prepayment shall be applied first to any unpaid, accrued interest with the balance, if any, applied to principal.
4. This Note is given pursuant to the Loan Agreement, as the same may be amended from time to time, and is secured by a Mortgage of even date herewith (the “Mortgage”) by the Maker in favor of the Authority, covering certain real property located in Hennepin County and legally described in the Mortgage (the “Property”). All of the agreements, conditions, covenants, provisions, and stipulations contained in the Loan Agreement, the Declaration of Restrictive Covenants, and the Mortgage are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein. It is agreed that time is of the essence of this Note.
5. If an Event of Default occurs under the Loan Agreement or the Declaration of Restrictive Covenants, then the Holder of this Note may, at its right and option, but subject in all respects to Section 12 hereof, declare immediately due and payable the principal balance of this Note and interest accrued thereon, without notice, demand or presentment for payment to Maker or others. The remedies of Holder, as provided herein and in the Loan Agreement, the Declaration of Restrictive Covenants, and the Mortgage,



by virtue of such holder's acquisition of this Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Holder under the Subordination Agreement. Any capitalized terms used specifically in this Section that are otherwise not defined shall have the meanings assigned such terms in the Subordination Agreement.†

13. IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, and things required to exist, happen, and be performed precedent to or in the issuance of this Note do exist, have happened, and have been performed in regular and due form as required by law.

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

IN WITNESS WHEREOF, the Maker has caused this Note to be duly executed as of the date and year first written above.

**AEON SEASONS PARK LLC**

By \_\_\_\_\_

Its \_\_\_\_\_

Document comparison by Workshare Compare on Tuesday, September 12, 2017  
10:41:11 AM

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## DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS is made this September \_\_\_\_, 2017 (the “Declaration”), by **AEON SEASONS PARK LLC**, a Minnesota limited liability company (the “Borrower”), for the benefit of the **HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA**, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”).

### RECITALS

WHEREAS, the Borrower has proposed to acquire the 422 unit Seasons Park apartment complex (the “Project”) on certain property located at 951 East 77<sup>th</sup> Street in the City of Richfield, Minnesota (the “City”) and legally described in EXHIBIT A attached hereto (the “Property”); and

WHEREAS, the Authority and the Borrower entered into that certain Loan Agreement of even date herewith (the “Loan Agreement”) pursuant to which the Authority agreed to make a loan to the Borrower in the amount of \$150,000 (the “Loan”) in order to make the Project more economically feasible and to improve and retain affordable housing in the City; and

WHEREAS, in consideration for the Loan, the Borrower will agree to cause compliance with certain affordability covenants for the Project; and

WHEREAS, the Borrower 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 the Borrower; and

WHEREAS, capitalized terms in this Declaration have the meaning provided in the Loan Agreement unless otherwise defined herein.

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, the Borrower agrees as follows:

1. Term of Restrictions.

(a) Occupancy Restrictions. The term of the Occupancy Restrictions set forth in Section 3 of this Declaration will commence on the date hereof. The period from commencement to termination is the “Qualified Project Period.”

(b) Termination of Declaration. This Declaration will terminate upon the date that is the earlier of thirty (30) years after the commencement of the Qualified Project Period or a voluntary repayment of the loan by the Borrower, in which case the Borrower recognizes that any benefit of the Loan, including the 4d tax classification, would be forfeited.

(c) Removal from Real Estate Records. Upon termination of this Declaration, the Authority will, upon request by the Borrower or its assigns, file any document appropriate to remove this Declaration from the real estate records of Hennepin County, Minnesota.

2. Project Restrictions.

(a) the Borrower 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 lessee:

(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 family income at the time the lease is executed will be deemed substantial and material obligation of the lessee's tenancy; that the lessee will comply promptly with all requests for income and other information relevant to determining low or moderate income status from the Borrower or the Authority, and that the lessee'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 lessee's tenancy.

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

3. Occupancy Restrictions.

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

(i) Qualifying Tenants. From the commencement of the Qualified Project Period, ~~at least twentyone hundred~~ percent (20%) ~~(i.e., \_\_\_\_\_100%)~~ of the rental units on the Property (the "Rental Housing Units") will be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Qualifying Tenants. Qualifying Tenants means those persons and families who are determined ~~fromat the~~ time ~~to time~~ of initial occupancy after the date hereof by the Borrower to have combined adjusted income that does not exceed sixty percent (60%) of the Minneapolis-St. Paul metropolitan statistical area (the "Metro Area") median income for the applicable calendar year. ~~For purposes of this definition, the occupants of a residential unit will not be deemed to be Qualifying Tenants if all the occupants of such residential unit at any time are "students," as defined in Section 151(e)(4) of the Internal Revenue Code of 1986, as amended (the "Code"), not entitled to an exemption under the Code~~ Rents for all Rental Housing Units shall not exceed 30 percent of 60 percent of the greater of area or state median income, adjusted for family size, as determined by the U.S. Department of Housing and Urban Development. The determination of whether an individual or family is of low or moderate income will be made at the time ~~the tenancy commences. If during the tenancy a Qualifying Tenant's income exceeds one hundred forty percent (140%) of the maximum income qualifying as low or moderate income for a~~



~~family of its size, the next available unit (determined in accordance with the Code and applicable regulations) (the “Next Available Unit Rule”) must be leased to a Qualifying Tenant or held vacant and available for occupancy by a Qualifying Tenant. If the Next Available Unit Rule is violated, such unit will not continue to be treated as a Qualifying Unit~~ a new tenant commences occupancy of a unit through a review of the self-reported income by the potential tenant on their rental application. In order to avoid displacement, existing tenants as of the date of the acquisition will be grandfathered in and will not be required to be income certified, even if the composition of the household changes.

(ii) Certification of Tenant Eligibility. As a condition to initial ~~and continuing~~ 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 the Borrower 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 Authority (the “Eligibility Certification”), in which the prospective Qualifying Tenant certifies as to qualifying as low or moderate income. In addition, the person will be required to provide whatever other information, documents, or certifications are deemed necessary by the Authority to substantiate the Eligibility Certification. Eligibility Certifications will be maintained on file by the Borrower with respect to each Qualifying Tenant who resides in a Project unit or resided therein during the immediately preceding calendar year.

(iii) Lease. The form of lease to be utilized by the Borrower in renting any 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 ~~immediate~~ 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. The Borrower covenants and agrees that during the term of this Declaration, it will prepare and submit to the Authority on or before January 31 of each year, a certificate substantially in the form of EXHIBIT C hereto, executed by the Borrower, (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 Qualifying 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 best 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 the Borrower was not otherwise in default under this Declaration during the year.

(v) Notice of Non-Compliance. The Borrower will immediately notify the Authority 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. The Borrower shall accept tenants who are 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, and shall reserve at least nine (9) Housing Units for holders of Section 8 certificates/vouchers. During the term of this Declaration, the Borrower shall not adopt any policies specifically excluding rental to tenants holding Section 8 certificate/voucher holders.

4. Transfer Restrictions. The Borrower covenants and agrees that the Borrower 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 the Rental Restrictions and Occupancy Restrictions provided herein (the “Transfer”) that the transferee of the Project pursuant to the Transfer assume in writing, in a form acceptable to the Authority, all duties and obligations of the Borrower under this Declaration, including this Section 5, in the event of a subsequent Transfer by the transferee prior to expiration of the Rental Restrictions and Occupancy Restrictions provided herein (the “Assumption Agreement”). The Borrower will deliver the Assumption Agreement to the Authority prior to the Transfer.

5. Enforcement.

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

(b) The Borrower will submit any other information, documents or certifications requested by the Authority which the Authority deems reasonably necessary to substantial the Borrower’s continuing compliance with the provisions specified in this Declaration.

(c) The Borrower acknowledges that the primary purpose for requiring compliance by the Borrower with the restrictions provided in this Declaration is to ensure compliance of the property with the housing affordability covenants set forth in the Loan Agreement, and by reason thereof, the Borrower, in consideration for assistance provided by the Authority under the Loan Agreement that makes possible the construction of the Project on the Property, hereby agrees and consents that the Authority 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 enforce specific performance by the Borrower of its obligations under this Declaration in a state court of competent jurisdiction. The Borrower hereby further specifically acknowledges that the Authority cannot be adequately compensated by monetary damages in the event of any default hereunder.

(d) The Borrower 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 Authority may exercise any remedy available to it under the Loan Agreement.

6. Indemnification. The Borrower hereby indemnifies, and agrees to defend and hold harmless, the Authority 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 the Borrower to comply with the terms of this Declaration, or on account of any representation or warranty of the Borrower 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. The Borrower and the Authority 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 Authority: Housing and Redevelopment Authority  
in and for the City of Richfield, Minnesota  
6700 Portland Avenue South  
Richfield, MN 55423  
Attn: Executive Director

To the Borrower: Aeon Seasons Park LLC  
~~{ADDRESS}~~  
c/o Aeon  
901 North 3<sup>rd</sup> 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 the Borrower to enforce the provisions of this Declaration, the Borrower agrees to pay the reasonable attorneys' fees and other reasonable expenses paid or incurred by the Authority 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 the Borrower and its successors and assigns and all subsequent owners of the Project or any interest therein, and the benefits will inure to the Authority and its successors and assigns for the term of this Declaration as provided in Section 1(b) hereof.

12. Notice of Sale. In consideration for the Loan, the Borrower agrees to provide the Authority with at least ninety (90) days' notice of any sale of the Project.

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



This Declaration is acknowledged and consented to by:

**HOUSING AND REDEVELOPMENT  
AUTHORITY IN AND FOR THE CITY OF  
RICHFIELD, MINNESOTA**

By \_\_\_\_\_  
Its Chair

By \_\_\_\_\_  
Its Executive Director

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2017, by Mary B. Supple, the Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this     day of    , 2017, by Steven L. Devich, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

## EXHIBIT A

### LEGAL DESCRIPTION

#### Parcel 1:

That part of Government Lot 1, Section 34, Township 28, Range 24, Hennepin County, Minnesota, described as follows: Beginning at a point in the South line of said Section 34, distant 660 feet West of the Southeast corner of said Section; thence West along the South line of said Section 34 a distance of 256.65 feet; thence at a right angle North 462 feet; thence at a right angle East 256.65 feet; thence at a right angle South 462 feet to the point of beginning.

Hennepin County, Minnesota

Abstract Property

#### Parcel 2:

The East Half of the Southwest Quarter of the Southeast Quarter of the Southwest Quarter and the West Half of the Southeast Quarter of the Southeast Quarter of the Southwest Quarter, all in Section 35, Township 28 North, Range 24, West of the 4th Principal Meridian, according to the U.S. Government Survey thereof, Hennepin County, Minnesota.

Abstract Property

#### Parcel 3:

That part of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 35, Township 28, Range 24 described as: Beginning at the Northeast corner of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence West along the North line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter a distance of 656.28 feet; thence South to a point on the South line of the North 132.5 feet of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter distant .57 of a foot East from the West line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence West along said South line a distance of .57 of a foot to said West line; thence South along said West line to the North line of the South 432 feet of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence East along the last mentioned North line to the East line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence North along said East line to the point of beginning.

The South 432 feet of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 35, Township 28, Range 24 except that part of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter described as: Beginning at the Southeast corner of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence North along the East line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter a distance of 209 feet; thence West at a right angle a distance of 209 feet; thence South at a right angle to the South line of said Southeast Quarter of the Southwest Quarter of the Southwest Quarter; thence East to the point of beginning.

[Insert legal description]

That part of the East half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 35, Township 28, Range 24 lying South of the North 132.5 feet of said East half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter, Hennepin County, Minnesota.

Torrens Property

Torrens Certificate No. 1332090



**EXHIBIT B**

**CERTIFICATION OF TENANT ELIGIBILITY**

**(INCOME COMPUTATION AND CERTIFICATION)**

Project: ~~951 East 77<sup>th</sup> Street, Richfield, Minnesota~~

Owner: \_\_\_\_\_

Unit Type: \_\_\_\_\_ 1 BR \_\_\_\_\_ 1 BR + Den \_\_\_\_\_ 2 BR

1. ~~I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully, frankly and personally each of the following questions for all persons (including minors) who are to occupy the unit in the above apartment development for which application is made, all of whom are listed below:~~

<del>Name of Members of the Household</del>	<del>Relationship To Head of Household</del>	<del>Age</del>	<del>Place of Employment</del>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Income Computation

2. ~~The anticipated income of all the above persons during the 12-month period beginning this date;~~

~~(a) including all wages and salaries, overtime pay, commissions, fees, tips and bonuses before payroll deductions; net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness); interest and dividends; the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts; payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay; the maximum amount of public assistance available to the above persons; periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling; and all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; but~~

~~(b) excluding casual, sporadic or irregular gifts; amounts which are specifically for or in reimbursement of medical expenses; lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains and settlement for personal or property losses; amounts of educational scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for these types of purposes; special pay to a serviceman head of a~~



~~family who is away from home and exposed to hostile fire; relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; foster child care payments; the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged for the allotments; and payments received pursuant to participation in ACTION volunteer programs, is as follows: \$\_\_\_\_\_.~~

~~3. If any of the persons described above (or whose income or contributions was included in item 2) has any savings, bonds, equity in real property or other form of capital investment, provide:~~

~~(a) the total value of all such assets owned by all such persons: \$\_\_\_\_\_;~~

~~(b) the amount of income expected to be derived from such assets in the 12 month period commencing this date: \$\_\_\_\_\_; and~~

~~(c) the amount of such income which is included in income listed in item 2: \$\_\_\_\_\_.~~

~~4. (a) Will all of the persons listed in item 1 above be or have they been full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?~~

~~Yes \_\_\_\_\_ No \_\_\_\_\_~~

~~(b) Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return?~~

~~Yes \_\_\_\_\_ No \_\_\_\_\_~~

~~THE UNDERSIGNED HEREBY CERTIFY THAT THE INFORMATION SET FORTH ABOVE IS TRUE AND CORRECT. THE UNDERSIGNED ACKNOWLEDGE THAT THE LEASE FOR THE UNIT TO BE OCCUPIED BY THE UNDERSIGNED WILL BE CANCELLED UPON 10 DAYS WRITTEN NOTICE IF ANY OF THE INFORMATION ABOVE IS NOT TRUE AND CORRECT.~~

\_\_\_\_\_  
Head of Household

\_\_\_\_\_  
Spouse

FOR COMPLETION BY OWNER  
(OR ITS MANAGER) ONLY

~~1. Calculation of Eligible Tenant Income:~~

~~(a) Enter amount entered for entire household in 2 above: \$\_\_\_\_\_~~

~~(b) If the amount entered in 3(a) above is greater than \$5,000, enter the greater of (i) the amount entered in 3(b) less the amount entered in 3(c) or (ii) 10% of the amount entered in 3(a):  
\$ \_\_\_\_\_~~

~~(c) TOTAL ELIGIBLE INCOME (Line 1(a) plus Line 1(b)): \$ \_\_\_\_\_~~

~~2. The amount entered in 1(c) is less than or equal to sixty percent (60%) of median income for the area in which the Project is located, as defined in the Declaration. Sixty percent (60%) is necessary for status as a "Qualifying Tenant" under Section 3(a) of the Declaration.~~

~~3. Rent:~~

~~(a) The rent for the unit is \$ \_\_\_\_\_.~~

~~(b) The amount entered in 3(a) is less than or equal to the maximum rent permitted under the Declaration.~~

~~4. Number of apartment unit assigned: \_\_\_\_\_.~~

~~5. This apartment unit was \_\_\_\_\_ was not \_\_\_\_\_ last occupied for a period of at least 31 consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit was less than or equal to sixty percent (60%) of Median Income in the area.~~

~~6. Check as applicable: \_\_\_\_\_ Applicant qualifies as a Qualifying Tenant (tenants of at least \_\_\_\_\_ units must meet), or \_\_\_\_\_ Applicant otherwise qualifies to rent a unit.~~

~~THE UNDERSIGNED HEREBY CERTIFIES THAT HE/SHE HAS NO KNOWLEDGE OF ANY FACTS WHICH WOULD CAUSE HIM/HER TO BELIEVE THAT ANY OF THE INFORMATION PROVIDED BY THE TENANT MAY BE UNTRUE OR INCORRECT.~~





## TENANT INCOME CERTIFICATION

Initial Certification     
  Recertification     
  Other \_\_\_\_\_

### PART I - DEVELOPMENT DATA

Property Name: \_\_\_\_\_ County: \_\_\_\_\_  
 Address: \_\_\_\_\_ Unit Number: \_\_\_\_\_

### PART II. HOUSEHOLD COMPOSITION

HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)
1			HEAD	
2				
3				
4				
5				
6				
7				

### PART III. ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance
<b>TOTALS</b>			

Add totals from (A) through (D), above      **TOTAL INCOME**

### PART IV. INCOME FROM ASSETS

Hshld Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset
<b>TOTALS:</b>			

Total Cash Value \_\_\_\_\_ Passbook Rate \_\_\_\_\_  
 If (H) is over \$5000 \_\_\_\_\_ X 0.06% = (J) Imputed Inc.

Enter the greater of the total of column I, or J: imputed income      **TOTAL INCOME FROM ASSETS (K)**

(L) Total Annual Household Income from all Sources Add (E) and (K)

### HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each member of the household an acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any change in income, moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any change in household composition.

Under penalties of perjury, I/We certify that the information presented in this Certification is true and accurate to the best of our belief. The undersigned further understands that providing false representations herein constitutes an act of fraud and information may result in the termination of the lease agreement.

Signature	(Date)	Signature
Signature	(Date)	Signature

**PART V. DETERMINATION OF INCOME ELIGIBILITY**

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: From item (L) on page 1 _____  Current Maximum Income Limit per Family Size: Household Income at Move-in _____	Household Meets Income Restriction at: <input checked="" type="radio"/> 60% <input type="radio"/> 50% <input type="radio"/> 40% <input type="radio"/> 30% <input type="radio"/> _____%	Current Income Limit x 140%: _____ Household Income exceeds 140% at recertification: <input type="radio"/> Yes <input type="radio"/> No
Household Size at Move-in: _____		2

**PART VI. RENT**

Tenant Paid Rent _____ Utility Allowance _____  GROSS RENT FOR UNIT: (Tenant paid rent plus Utility Allowance & other non-optional charges) _____  Maximum Rent Limit for this unit: _____	Rent Assistance: _____    RA Type _____ Other non-optional charges: _____  Unit Meets Rent Restriction at: <input checked="" type="radio"/> 60% <input type="radio"/> 50% <input type="radio"/> 40% <input type="radio"/> 30% <input type="radio"/> _____%
--	---

**PART VII. STUDENT STATUS**

ARE ALL OCCUPANTS FULL TIME STUDENTS? If yes, choose a student explanation*(also attach documentation) <input type="radio"/> Yes <input checked="" type="radio"/> No	* Student Explanation _____ <input type="radio"/> TANF assistance <input type="radio"/> Previously in Foster Care <input type="radio"/> Job Training Program <input type="radio"/> Single parent/dependent child <input type="radio"/> Married/joint return
--	--

**PART VIII. PROGRAM TYPE**

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.

<input type="checkbox"/> HOME  Income Status <input type="radio"/> <=50% AMGI <input type="radio"/> <=60% AMGI <input type="radio"/> <=80% AMGI <input type="radio"/> OI**	<input type="checkbox"/> Tax Exempt  Income Status <input type="radio"/> Eligible <input type="radio"/> 50% AMGI <input type="radio"/> OI**	<input type="checkbox"/> AHDP  Income Status <input type="radio"/> VLI <input type="radio"/> LI <input type="radio"/> OI**	<input type="checkbox"/> Other (specify below) _____ (Name of Program) Income Status <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> OI**
--	--	---	--

\*\* Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked above.

**SIGNATURE OF OWNER/REPRESENTATIVE**

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

\_\_\_\_\_  
SIGNATURE OF OWNER/REPRESENTATIVE

\_\_\_\_\_  
DATE

By \_\_\_\_\_  
Its \_\_\_\_\_

**EXHIBIT C**

**CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

Certificate of  
Continuing Program Compliance

Date: \_\_\_\_\_

The following information with respect to the Project located at 951 East 77<sup>th</sup> Street, Richfield, Minnesota (the “Project”), is being provided by Aeon Seasons Park LLC (the “Owner”) to the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “Authority”), pursuant to that certain Declaration of Restrictive Covenants dated September \_\_\_\_, 2017 (the “Declaration”), with respect to the Project:

(A) The total number of residential units which are available for occupancy is 422. The total number of these units occupied is \_\_\_\_\_.

(B) The following residential units (identified by unit number) are currently occupied by “Qualifying Tenants,” as the term is defined in the Declaration (for a total of \_\_\_\_ units):

1 BR Units:

1 BR + Den Units:

2 BR Units:

(C) The following residential units which are included in (B) above, have been re-designated as units for Qualifying Tenants since \_\_\_\_\_, 20\_\_\_\_, the date on which the last “Certificate of Continuing Program Compliance” was filed with the Authority by the Owner:

Unit Number	Previous Designation of Unit (if any)	Replacing Unit Number
_____	_____	_____
_____	_____	_____



(D) The following residential units are considered to be occupied by Qualifying Tenants based on the information set forth below:

Unit Number	Name of Tenant	Number of Persons Residing in the Unit	Number of Bedrooms	Total Adjusted Gross Income	Date of Initial Occupancy	Rent
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						
26						
27						
28						
29						
30						

(E) The Owner has obtained a “Certification of Tenant Eligibility,” in the form provided as EXHIBIT B to the Declaration, from each Tenant named in (D) above, and each such Certificate is being maintained by the Owner in its records with respect to the Project. Attached hereto is the most recent “Certification of Tenant Eligibility” for each Tenant named in (D) above who signed such a Certification since \_\_\_\_\_, \_\_\_\_\_, the date on which the last “Certificate of Continuing Program Compliance” was filed with the Authority by the Owner.

(F) 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); and none of the units listed in (D) above have been rented for occupancy entirely by students, no

one of which is entitled to file a joint return for federal income tax purposes. All of the residential units in the Project have been rented pursuant to a written lease, and the term of each lease is at least twelve (12) months.

(G) 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 “Certification of Tenant Eligibility” obtained from the Tenants named herein, is inaccurate or incomplete in any respect.

(H) The Project is in continuing compliance with the Declaration.

(I) The Owner certifies that as of the date hereof at least \_\_\_ 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.

(J) 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 SEASONS PARK LLC**

By \_\_\_\_\_

Its \_\_\_\_\_

Document comparison by Workshare Compare on Tuesday, September 12, 2017 10:43:01 AM

Input:	
Document 1 ID	PowerDocs://DOCSOPEN/505515/2
Description	DOCSOPEN-#505515-v2-RHRA_Aeon_Declaration_of_Restrictive_Covenants
Document 2 ID	PowerDocs://DOCSOPEN/505515/4
Description	DOCSOPEN-#505515-v4-RHRA_Aeon_Declaration_of_Restrictive_Covenants
Rendering set	Standard

Legend:	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	36
Deletions	84
Moved from	0
Moved to	0
Style change	0

Format changed	0
Total changes	120



**STAFF REPORT NO. 39**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**9/18/2017**

REPORT PREPARED BY: Myrt Link, Community Development Accountant

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director  
9/12/2017

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director  
9/13/2017

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the acceptance of the Richfield Housing and Redevelopment Authority Tax Increment District Status Update.**

**EXECUTIVE SUMMARY:**

The Tax Increment District Status Update (TIF Status Update) is presented to the Richfield Housing and Redevelopment Authority (HRA) annually for review. There are currently 10 active TIF Districts. This year, the TIF Status Update shows that the HRA is able to meet all of its Pay-As-You-Go Note and General Obligation Tax Increment Bond obligations.

HRA staff and financial consultant, Rebecca Kurtz, will provide a brief summary of the TIF Status Update at this meeting.

**RECOMMENDED ACTION:**

**By motion: Accept the Richfield Housing and Redevelopment Authority Annual Tax Increment District Status Update.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- The annual TIF Status Update is provided to the HRA to summarize tax increment financial activity and comment on the status of the HRA's ability to meet its tax increment obligations.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

- The TIF Status Update is presented annually to keep the HRA informed of the ability to meet outstanding obligations.

**C. CRITICAL TIMING ISSUES:**

- None

**D. FINANCIAL IMPACT:**

- See detailed TIF Status Update attached.

**E. LEGAL CONSIDERATION:**

- N/A

**ALTERNATIVE RECOMMENDATION(S):**

- Reject the conclusions made in the TIF Status Update.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

Rebecca Kurtz, Ehlers & Associates

**ATTACHMENTS:**

Description	Type
☐ Tax Increment District Status Update	Backup Material
☐ Map	Backup Material



# Tax Increment District Status Update



**Richfield Housing and Redevelopment Authority**

**September 18, 2017**

# Tax Increment Financing District Summary

The City of Richfield and the Housing and Redevelopment Authority (“HRA”) have utilized tax increment financing (“TIF”) for key redevelopment and housing projects in the City since the 1980s. Utilizing this tool to accomplish the various goals of the City and HRA has strengthened the overall diversity of housing options, land uses and tax base, while redeveloping blighted sites and increasing employment opportunities.

## Project Area and TIF Districts

The HRA has 10 active TIF districts:

- Interchange (Dick’s Sporting Goods)
- Urban Village (Oaks on Pleasant and Houlihan’s)
- Gramercy (Gramercy Park Senior Housing)
- Interchange West/Lyndale Gateway (Best Buy and Main Street Village)
- City Bella (City Bella Housing Cooperative)
- Lyndale Gateway West (Kensington Park)
- Cedar Corridor (along Cedar Ave.)
- 2010 – 1 Housing (Lyndale Plaza / Woodlake Housing)
- Lyndale Gardens (Lakewinds Co-op and former Lyndale Gardens site)
- 2014-1 TIF District (former City garage site)

All of the Districts are located within the Richfield Redevelopment Project area. In 2005, the boundaries of the Project Area were expanded to be coterminous with the City boundaries. This expansion provides a greater area of tax increment spending authority and provides the HRA an opportunity to expand housing program service areas.

## Obligations

Three types of obligations are associated with the HRA’s TIF districts:

1. **Pay-As-You-Go TIF Revenue Note.** Pay-As-You-Go Notes pledges to the note holder a certain percent of the available tax increment from the specific district or specific parcels. With this type of obligation, the developer pays for the expenses and is reimbursed with tax increment over the term of the TIF district. Less tax increment revenue results in lower pay-as-you-go note payments, and the obligation may not be paid in full at the time of decertification of the TIF district. To the extent that the increment is not available to make a payment, the HRA is not obligated to make up any shortfalls. This type of obligation provides the lowest risk to the City and HRA.
2. **General Obligation Tax Increment Bond.** General Obligation (“G.O.”) Bonds are intended to be paid with tax increment revenue; however, they are general obligations of the City and pledge the City’s full faith and credit. If on an annual basis there is not enough tax increment to pay the debt service payment, the City agrees to levy a property tax to pay the shortfall. This type of obligation provides the most risk to the City and tax payers.
3. **Interfund Loan.** Interfund Loans are issued when the City or HRA provides up-front money from various sources to assist with projects. Most interfund loans have a maximum amount and are used to reimburse the HRA for administration and preliminary expenses. The outstanding loan may be less than the maximum set forth in the resolution and the outstanding balance may increase or decrease over time, depending on the status of the project.



An interfund loan resolution must be adopted prior to the expenditure in order to use tax increment to reimburse for the expenditure. The loans are normally repaid from tax increment or land sale revenue. This type of obligation provides some risk to the City and HRA that the loan may not be repaid in full. It is not a general obligation, so taxes do not need to be levied to pay the loan, and the City and HRA have the option to write-off the loan or unpaid balances.

### **Administration**

In all Districts, the City may retain a maximum of 10% of the tax increment revenue for administration expenses. The revenue can only be spent on qualified administration expenses for the TIF districts, and the amount taken for administration is included in the maximum pooling limit. In addition, the HRA must have documentation of administration expenses.

### **Pooling**

The HRA is able to retain a maximum of 25% through pooling for *some* redevelopment TIF districts. These funds are redevelopment tax increment and *must* be spent on qualified redevelopment expenses. The funds may be spent outside the boundaries of the tax increment district but must be spent within the boundaries of the Project Area.

The 25% maximum includes the amount retained for administration. For example, if the HRA is retaining 10% for administration, an additional 15% of the tax increment from the District may be retained for activities outside the TIF district but within the Project Area. If less than 10% is retained for administration, the amount available for redevelopment expenditures may increase.

Currently, pooling funds are being used to fund the Housing and Redevelopment Fund.

### **Assumptions**

All projections are based on the most conservative assumptions. The calculations do not include inflation on property market values or interest on invested cash.

## Interchange TIF District

The Interchange District is a redevelopment project comprised of the **Dick’s Sporting Goods** store located along I-494 and I-35W.

- TIF District Adopted: 10/28/1996
- Certification Date: 4/3/1997
- First Year of Increment: 1998
- Required Decertification: 2023 or after the obligation is paid
- Pooling: No

Obligations	Funding Source / Repayment Source
\$3,323,309 Pay-As-You-Go Note	Developer / TIF
\$400,000 HRA Interfund Loan	HRA Capital Improvement Fund / Repaid with 90% from TIF

In August 2011, the HRA adopted a Spending Plan, as authorized by the 2010 Jobs Bill and extended by the Legislature in 2011. A portion of the cash balance from the Interchange TIF District was included in the Spending Plan.

### Conclusions

The HRA will be able to meet all its obligations. In January, 2017 the HRA received an invoice from the County for \$330,676.56 due to over payment of tax increment. The County had settled several years of market value petitions for the Dick’s Sporting Goods development, and the settlement resulted in a reduced market value and overpayment of past years’ tax increment. The HRA established an Interfund Loan on February 21, 2017, to make the payment to Hennepin County, and beginning in February 2017, tax increment from the District will be used to make payments on the Interfund Loan. Payments will not resume on the Pay-As-You-Go Note until the Interfund Loan has been paid in full.

In addition, the Development Agreement states a final payment date of February 1, 2019 for the Pay-As-You-Go Note. Due to changes in the property tax class rates and market values, the annual amount of tax increment decreased. As a result, the Pay-As-You-Go Note in this district will never be paid in full; however, the HRA is not required to pay the shortfall.

There will be sufficient increment to pay the Interfund Loan in full prior to decertification of the District. It is anticipated that the Interfund Loan will be paid in February 2021. If the Interfund Loan is paid prior to February 1, 2019, payments on the Pay-As-You-Go Note will resume until February 2019.

The District is required to be decertified after the earlier of the obligations being paid in full or 2023. After the Interfund Loan is paid in full, the District may be decertified, and the project will be on the tax roll at full value.

## Urban Village TIF District

The Urban Village TIF District is a mixed-use redevelopment project located on the **southeast corner of Lyndale and 66<sup>th</sup> Street**. Development includes **Houlihan's, the Oaks on Pleasant apartments, and BMO Bank**. Tax increment revenue is pledged to assist with property acquisition and excess site development expenses.

- TIF District Adopted: 11/23/1998
- Certification Date: 7/15/1999
- First Year of Increment: 2000
- Decertification: 2025
- Pooling: Maximum of 15%

Obligations	Funding Source / Repayment Source
\$2,500,000 Tax Exempt Pay-As-You-Go Note, Series 2001A	Developer / TIF
\$7,000,000 Taxable Pay-As-You-Go Note, Series 2001B	Developer / TIF

### Conclusions

The HRA will be able to meet all of its Pay-As-You-Go obligations. Due to changes in the property tax class rates and market values, the annual amount of tax increment decreased. As a result, the Pay-As-You-Go Notes in this district may not be paid in full; however, the HRA is not required to pay the shortfall.

## Gramercy TIF District

The Gramercy TIF District is a redevelopment project that includes the **Gramercy Park Senior Housing Cooperative**. Tax increment revenue is pledged to the project to assist with property acquisition expenses.

- TIF District Adopted: 6/22/1998
- Certification Date: 4/22/1999
- First Year of Increment: 2000
- Decertification: 2025 or after the obligation is paid
- Pooling: Maximum of 15%

Obligations	Funding Source / Repayment Source
\$1,977,000 Pay-As-You-Go Note	Developer / TIF

### Conclusions

The HRA will be able to meet its Pay-As-You-Go obligation.

The District is required to be decertified after the earlier of the obligations being paid in full or 2025. After the Pay-As-You-Go Note is paid in full, the District may be decertified, and the project will be on the tax roll at full market value.

## Interchange West / Lyndale Gateway TIF District

The Interchange West / Lyndale Gateway TIF District has two components: (1) Interchange West; and (2) Lyndale Gateway.

- TIF District Adopted: 6/14/1999
- Certification Date: 7/29/1999
- First Year of Increment: 2000 (Full increment for Lyndale Gateway – 2002; Full increment for Best Buy -- 2004)
- Decertification: 2025
- Pooling: Maximum of 15%

### Interchange West Component

The Interchange West component is comprised of the **Best Buy Corporate Headquarters** located on the intersection of I-494 and Penn Ave. Tax increments are pledged to the Best Buy project to assist with site assembly activities. The HRA retains 25% of the annual tax increment for administration (up to 10% maximum) and for the Housing and Redevelopment Fund for use on TIF eligible, redevelopment expenses.

Obligations	Funding Source / Repayment Source
\$6,355,000 Tax Exempt General Obligation Tax Increment Refunding Bonds, Series 2010B*	Bonds of 2001A / TIF
\$48,073,127 Pay-As-You-Go Note	Developer / TIF

*\*Refunded the \$8,350,000 Tax Exempt General Obligation Tax Increment Bond, Series 2001A*

### Conclusions

The HRA will be able to meet all obligations related to the Interchange West component. Due to changes in the property tax class rates and market values, the annual amount of tax increment is lower than projections at the time the district was established. The Development Agreement with Best Buy includes an Assessment Agreement with a minimum market value of \$18,500,000. It is projected that the minimum market value is sufficient to generate increment in excess of that required for the Bond payments.

As a result of the decreased tax increment, the Pay-As-You-Go Note will never be paid in full; however, the HRA is not required to pay the shortfall.

Best Buy filed tax petitions to reduce the market values for 2015, 2016, 2017 and 2018. Hennepin County recently notified the City that the petitions have been settled, and the market values were reduced for each year. With the reduction in market value, Best Buy's property taxes and, in turn, the amount of tax increment generated for those years, was also reduced. The HRA has adopted a policy to retain any tax increment that would otherwise go to service Pay-As-You-Go Notes in cases where that tax increment is generated by taxes which are subject to a pending property tax petition. Instead, this tax increment, generated by taxes over and above the petition amount, will be reserved until the petition has been settled and then distributed accordingly. With the recent settlement, the HRA is in the process of reconciling the tax increment and will then return funds to the County and pay any due increment to Best Buy.

Based on prior TIF calculations (which have since been revised), the HRA has collected an excess amount of TIF for pooling. The HRA will need to continue to monitor these expenses for this District to

ensure that it meets statutory limits within the life of the TIF District. Based on both the allocation of TIF stated in the Contract for Private Development and the projected collection of increment over the life of the District, it is anticipated that the HRA will not be able to annually collect the full 25% allowed for administration and pooling through the term of the District.

### Lyndale Gateway Component

The Lyndale Gateway component is comprised of the Richfield Senior Housing project (**Main Street Village**) and the Minnstar Builders, Inc. project (**Casteel Place Townhouses**). Tax increment revenue is pledged to the project to assist with site assembly expenses.

Obligations	Funding Source / Repayment Source
\$4,155,944 Pay-As-You-Go Note	Developer / TIF

The Contract for Private Redevelopment for the Casteel Place Townhomes included a “look back” provision that required a review of the developer’s costs. To the extent that certain costs would go up or down under the estimate, the associated Pay-As-You-Go Note would be reduced by a like amount. The “look back” provision analysis was completed in 2002, which called for a reduction in the Pay-As-You-Go Note from \$100,000 to \$19,985.23, and the obligation was paid in 2005. The cost savings of this tax increment is being used as additional gap funding for the Cornerstone/ Kensington Park redevelopment project in the Lyndale Gateway West District.

### Conclusions

The HRA will be able to meet its Pay-As-You-Go obligation. Due to changes in the property tax class rates and market values, the annual amount of tax increment decreased. As a result, the Pay-As-You-Go Note in this district will never be paid in full; however, the HRA is not required to pay the shortfall.

## City Bella TIF District

The **City Bella** project is a redevelopment district consisting of a housing project with a retail component located on Lyndale Ave. and 66<sup>th</sup> Street. Tax increment revenue is pledged to the project to assist with property acquisition and site improvement expenses.

- TIF District Adopted: 6/11/2002
- Certification Date: 5/8/2003
- First Year of Increment: 2005
- Decertification: 2030
- Pooling: Maximum of 15%

Obligations	Funding Source / Repayment Source
\$8,473,460 Pay-As-You-Go Note	Developer / TIF

The Pay-As-You-Go Note was sold to a third party, but for HRA purposes, the Note is a Pay-As-You-Go Note. The City and HRA made no representation that the increment collected would be sufficient to amortize the debt and gave no opinion to the structuring of the sale of the Note.

The obligations included a \$450,000 Interfund Loan for land acquisition, which was being paid with 15% of the tax increment. The Loan was paid in full in December 2016. Starting in 2017, 15% of the annual tax increment will be contributed to the Housing and Redevelopment Fund for use on TIF eligible redevelopment and housing expenses.

### Conclusions

The HRA will be able to meet its Pay-As-You-Go obligation. Due to changes in the property tax class rates and market values, the annual amount of tax increment decreased. As a result, the Pay-As-You-Go Note in this district will never be paid in full; however, the HRA is not required to pay the shortfall.

## Lyndale Gateway West TIF District

The Lyndale Gateway West TIF District is comprised of the Cornerstone / **Kensington Park** mixed-use redevelopment project located on Lyndale Avenue. Development in this District includes **condominiums and townhomes along with Chipotle, Noodles & Company, Starbuck’s, and Potbelly**. Tax increment revenue is pledged to the project to assist with site assembly expenses.

- TIF District Adopted: 12/10/2002
- Certification Date: 5/8/2003
- First Year of Increment: 2004 (full increment in 2006)
- Decertification: 2029
- Pooling: No

Obligations	Funding Source / Repayment Source
\$2,970,000 Taxable G.O. Tax Increment Refunding Bonds, Series 2012B*	Bond of 2003C / TIF
\$1,100,000 Interfund Loan	Bonds of 1996 / TIF
\$650,000 Interfund Loan	HRA General Fund/ TIF

\* *Refunded the 3,470,000 Taxable General Obligation Tax Increment Bonds, Series 2003C*

The \$1,100,000 Interfund Loan was originally two loans. It was anticipated that \$500,000 of the Loan would be paid by the developer in 2012 or at the time of refinancing; however, the project went into bankruptcy in 2012. The balance of \$600,000 of the Loan was to be paid from excess tax increment after the Bond payments. The interest on the entire Loan was to be paid from tax increment.

Fifteen percent (15%) of the tax increment from the Casteel Place town home project in the Lyndale Gateway District is being used to pay debt service on the General Obligation Bonds related to the Kensington project. An annual calculation must be completed to insure that the City is not in violation of the pooling rules.

### Conclusions

Currently it is anticipated that the HRA will be able to meet its debt obligation solely with tax increment funds for the Series 2012B bonds *by the time the District is decertified in 2029*. As in past years’ projections, ultimately, there will be money to pay the Bonds solely from TIF. However, starting in 2016, projections estimate 10 years where the annual increment will not be sufficient to cover debt payments.

The maximum cumulative shortfall is estimated to be \$286,600 in 2025, which is the year the Bonds mature. This estimate is likely to change – either increase or decrease – depending on future tax increment. To address the shortfall, the HRA adopted an Interfund Loan Resolution to allow reimbursement through future tax increment after the Bonds are paid in full. It is projected that the loan could be paid off in 2026 from the increment after the Bonds mature in 2025. These Bonds are general obligations of the City, so the City also has the option to levy taxes for the shortfall.

In addition, it is projected that there will not be sufficient tax increment to pay the \$1,100,000 Interfund Loan in its entirety (principal and interest). Currently it is projected that \$832,000 will be available to pay a portion of the \$1,100,000 Interfund Loan. To the extent that market values increase or increment is pooled from other TIF districts, the shortfall could be reduced. However, to the extent that market values decrease, the shortfall may be larger than currently estimated. The HRA is not required to repay itself for the loan and interest.



## Cedar Corridor TIF District

The Cedar Corridor TIF District is a redevelopment district comprised of the commercial/retail redevelopment in the Airport Noise Impact Area. This area is located **along Cedar Avenue** and 66<sup>th</sup> Street. This District was established in 2006 using Special Legislation from the *Laws of Minnesota 2005, Chapter 152, Article 2, Section 25*.

The term of the District was extended by 10 years through Special Legislation in 2017.

- TIF District Adopted: 9/26/2006
- Certification Date: May 21, 2007
- First Year of Increment: 2008
- Decertification: 2043 (extended from 2033)
- Pooling: Maximum of 15%

Obligations	Funding Source / Repayment Source
\$200,000 maximum Interfund Loan for administration and qualified costs	HRA General Fund / TIF Administration (anticipated)
\$550,000 maximum Interfund Loan for land acquisition	Development Fund / Land sale proceeds (anticipated)
\$780,000 Interfund Loan for HRA assessments related to Richfield Parkway	City PIR Fund / Land sale proceeds or TIF (anticipated)

### Conclusions

The District currently does not have any financial obligations with a third party. Development and increment will be needed to repay the interfund loans. It is intended that the Loan from the PIR Fund will be paid at the time the land is sold; however, the first payment is scheduled for 2017.

## 2010-1 Housing TIF District

The 2010-1 Housing TIF District is a housing district comprised of the **Lyndale Plaza / Woodlake Housing** development at the site of the former Woodlake Plaza Shopping Center site. The apartment complex contains 94 units of rental housing, including 19 units that are affordable to families at or below 50% of the area median income for Hennepin County, as determined annually by the Minnesota Housing Finance Agency. These units will remain affordable for the term of the Pay-As-You-Go Note.

- TIF District Adopted: 2002
- Certification Date: March 29, 2012
- First Year of Increment: 2014
- Decertification: 2039
- Pooling: No

Obligations	Funding Source / Repayment Source
\$85,000 HRA Property Reimbursement Note for land acquisition	HRA General Fund / TIF
\$822,000 Pay-As-You-Go Note A	Developer / TIF
\$500,000 Pay-As-You-Go Note B	Developer / TIF
\$200,000 maximum Interfund Loan for administration and qualified costs	HRA General Fund / TIF Administration

### Conclusions

The HRA will be able to meet its debt obligations. Tax increment is first pledged to the set semi-annual payment on the HRA Note. Second priority is the set semi-annual payment for the Pay-As-You-Go Note A. Any remaining increment is pledged to the Pay-As-You-Go Note B.

The HRA will continue to annually collect and monitor information on residents' income for compliance with the requirement that 20% of the units be available for persons at or below 50% of Area Median Income (AMI), per TIF Statutes and the Development Agreement.

## Lyndale Gardens TIF District

The Lyndale Gardens TIF District is a redevelopment district comprised of the **former Lyndale Gardens site**, located at 6400 Lyndale Avenue South. To date the development includes the **Lakewinds Food Co-op**. Additional development is proposed to include 156 units of market-rate rental housing. The development is also anticipated to include public space and trail connections in a quasi-public setting.

- TIF District Adopted: 8/9/2011
- Certification Date: March 29, 2013
- First Year of Increment: 2014
- Decertification: 2039
- Pooling: No

Obligations	Funding Source / Repayment Source
None	

### Conclusions

The District currently does not have any financial obligations with a third party. The past agreement expired due to lack of activity. The Interfund Loan for administration and other HRA qualified expenses has been paid in full from increment generated from the Lakewinds development. In the near term, future administration will continue to be paid with increment from Lakewinds.

The Five-Year Rule deadline for the District was extended to seven years through Special Legislation in 2017. By March 29, 2020, one of the following activities must occur: (1) Revenues are paid to a third party; (2) Bonds are issued and sold to a third party; (3) Contracts with a third party are entered into and the revenues are spent under the contractual obligation; or (4) Costs with respect to the activity are paid and the revenues are spent to reimburse for payment of the costs, including interest on unreimbursed costs.

## 2014-1 TIF District

The 2014-1 TIF District is a redevelopment district located on the **former City garage site** and adjacent parcels between 76<sup>th</sup> and 77<sup>th</sup> Streets and Pleasant and Pillsbury Avenues. The HRA has entered into an Agreement with Mesaba Capital Development for the development of 60 assisted living units and 28 memory care units. Construction is anticipated to begin by September 1 and be completed by December 2017.

- TIF District Adopted: March 18, 2014
- Certification Date: March 28, 2016
- First Year of Increment: est. 2018
- Decertification: est. 2043
- Pooling: Maximum of 15%

Obligations	Funding Source / Repayment Source
\$2,400,000 Pay-As-You-Go Note	Developer / TIF
\$244,000 Loan for Land Reimbursement to the HRA	HRA / TIF

The Interfund Loan for demolition and other qualified costs was paid in full at the time the land was sold to the Developer. Payments on the \$244,000 HRA Loan for land will begin after the Pay-As-You-Go Note to the developer is paid in full.

### Conclusions

The Pay-As-You-Go Note has not been issued, and will be issued after the developer submits qualified costs. The amount of the Pay-As-You-Go Note is subject to change depending on the assessed market value at the time of completion of the project. It is anticipated that the first year of tax increment will be 2018 and full increment will be generated starting in 2019.

## Conclusion

Based on current estimates and projections, the HRA will be able to meet all of its Pay-As-You-Go Note obligations. It is also projected that the HRA will be able to meet the bond obligation for the Interchange West (Best Buy) district.

It is projected that the HRA will be able to meet its bond obligation for Lyndale Gateway West (Kensington Park) bonds by the time the District is decertified after 2029. However, starting in 2016, projections estimate 10 years where the annual increment will not be sufficient to cover the debt payments. Revenues from another funding source will be needed during those years to pay the debt service.

Current projections show that the HRA will be able to meet all except one of its interfund loan obligations on districts that are currently generating increment. It is projected that there will not be sufficient tax increment to pay the Interfund Loan in the Lyndale Gateway West (Kensington Park) District in its entirety. The HRA is not required to repay itself for the loan and interest.

The ability to pay-off loans on the Cedar Corridor and 2014-1 TIF District (former garage site) will be dependent on development and the generation of tax increment.

## Decertified Tax Increment Financing Districts

The HRA has decertified six TIF Districts.

<b>District</b>	<b>Type</b>	<b>Decertified</b>
Interstate-Lyndale-Nicollet (ILN)	Redevelopment	12/31/2012
Pre-1999 Richfield Rediscovered	Scattered Site Redevelopment	12/31/2010
Post-1999 Richfield Rediscovered	Scattered Site Redevelopment	12/31/2010
Lyndale-Hub-Nicollet (LHN)	Redevelopment	12/31/2002
Cedar Avenue Business Area (CABA)*	Economic Development	12/31/1996
Penn Avenue and Sixty-Sixth Street (PASSS)**	Redevelopment	1996

*\*Accounting transactions to close the District were completed by December 31, 2000.*

*\*\* District was established in 1989 and terminated in 1996 due to a lack of feasible redevelopment opportunities.*

## Housing and Redevelopment Fund

The Housing and Redevelopment Fund (the “Fund”) is a revenue source comprised of tax increment from the Gramercy, Urban Village, Interchange West/Lyndale Gateway, and City Bella TIF Districts. The purpose of the Fund is to fund a variety of housing needs for the community, including but not limited to, new construction of single-family homes and town homes; single-family home renovation and rehabilitation; and apartment rehabilitation.

These funds are tax increment from redevelopment TIF districts, therefore, funds must be spent on eligible, redevelopment tax increment expenses.

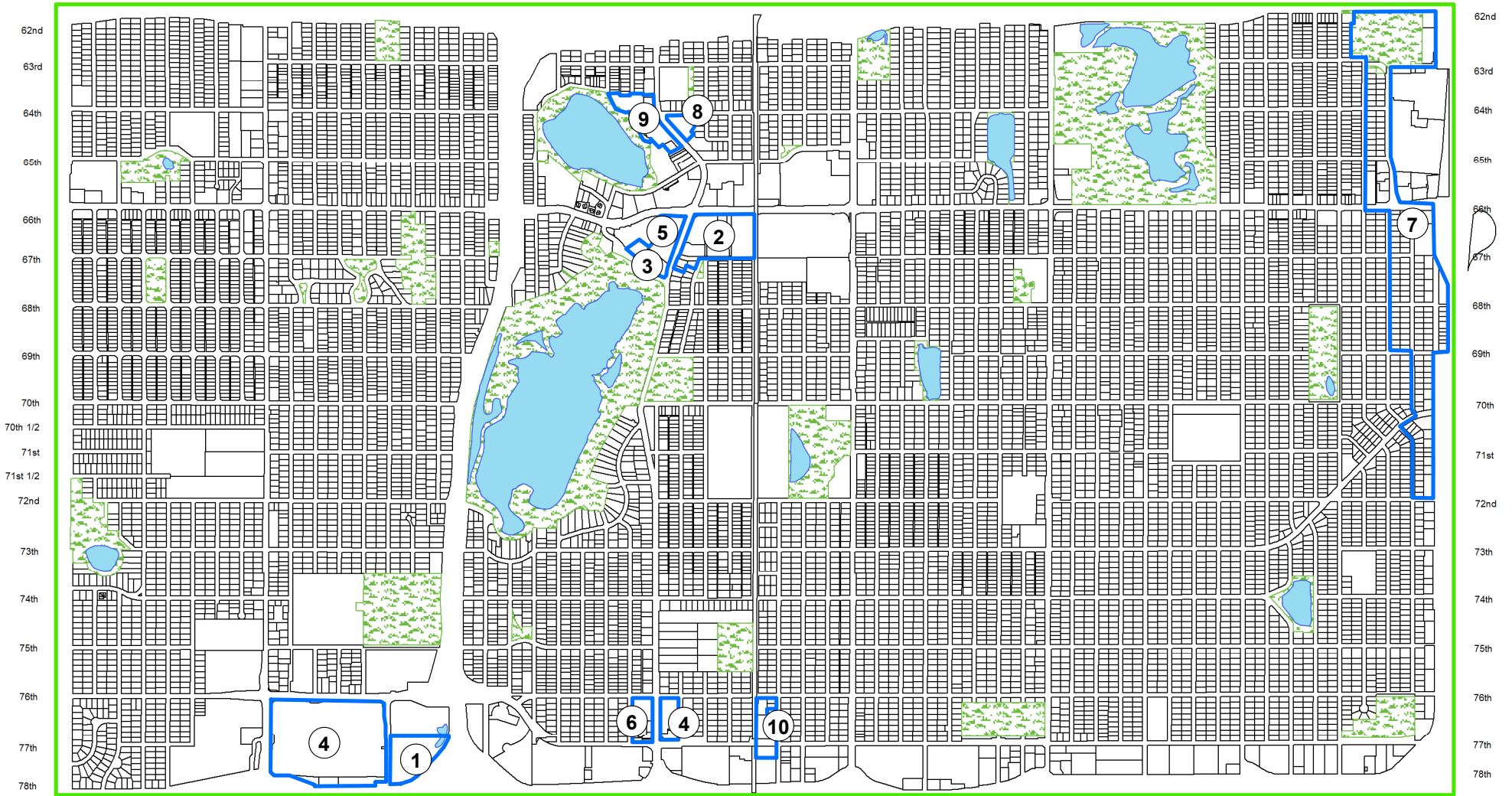
Currently, a portion of the tax increment revenue from these Districts is being transferred to the Fund to support the Richfield Rediscovered Loan Program. A breakdown of the cash balances as of December 31, 2016, follows:

Gramercy	\$ 244,533
Interchange West*	1,780,250
Urban Village	579,759
<b>Total Housing and Redevelopment Fund:</b>	<b>\$ 2,604,542</b>

*\*Cash balance may be overstated due to outstanding market value petitions from Best Buy.*

# RICHFIELD REDEVELOPMENT PROJECT AREA BOUNDARY

XERXES WASHBURN VINCENT UPTON THOMAS SHERIDAN RUSSELL QUEEN PENN OLIVER NEWTON MORGAN LOGAN KNOX JAMES IRVING HUMBOLDT GIRARD FREMONT EMERSON DUPONT COLFAX BRYANT ALDRICH LYNDALE GARFIELD HARRIET GRAND PLEASANT PILLSBURY WENTWORTH BLAISDELL NICOLLET 1st STEVENS 2nd 3rd CLINTON 4th 5th PORTLAND OAKLAND PARK COLUMBUS CHICAGO ELLIOT 10th 11th 12th 13th 14th 15th BLOOMINGTON 16th 17th CEDAR



1 - 494

XERXES WASHBURN VINCENT UPTON THOMAS SHERIDAN RUSSELL QUEEN PENN OLIVER NEWTON MORGAN LOGAN KNOX JAMES IRVING HUMBOLDT GIRARD FREMONT EMERSON DUPONT COLFAX BRYANT ALDRICH LYNDALE GARFIELD HARRIET GRAND PLEASANT PILLSBURY WENTWORTH BLAISDELL NICOLLET 1st STEVENS 2nd 3rd CLINTON 4th 5th PORTLAND OAKLAND PARK COLUMBUS CHICAGO ELLIOT 10th 11th 12th 13th 14th 15th BLOOMINGTON 16th 17th 18th CEDAR

**Legend**

- ▬ Richfield Redevelopment Project Area Boundary
- TIF Districts

**TIF DISTRICTS:**

1 - Interchange	5 - City Bella
2 - Urban Village	6 - Lyndale Gateway West
3 - Gramercy	7 - Cedar Corridor
4 - Interchange West/Lyndale Gateway	8 - Housing District 2010-1 (Lyndale Plaza)
	9 - Lyndale Garden
	10 - 2014-1 (former City Garage/Mortuary)

