

**2014 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
UDAC BUILDING REFORMATION PROJECT
PUBLIC FACILITES
PART I
SECOND AMENDMENT**

THIS SECOND AMENDMENT is entered into this _____ day of _____, 2018, by and between the City of Duluth (the "City") and Udac, Inc., a non-profit corporation under the laws of the State of Minnesota (the "Agency").

WHEREAS, on June 11, 2014, the City entered into an agreement (City Contract No. 22231) with the Agency pursuant to which the Agency used Community Development Block Grant ("CDBG") funds for the purpose of rehabilitating the Udac building located at 500 East 10th Street in Duluth, MN (the "Original Location"); and

WHEREAS, on December 15, 2015, the parties entered into a first amendment to the agreement to increase the amount payable thereunder (the agreement and first amendment are hereinafter referred to as the "Agreement"); and

WHEREAS, as required by the Agreement, the Agency executed a Lien Agreement dated January 4, 2017 with respect to the Original Location (the "Lien Agreement"); and

WHEREAS, the Agency desires to sell the building at the Original Location and transfer its programming to a newly purchased building located at 4724 Mike Colalillo Drive in the City of Duluth, County of St. Louis, Minnesota, which property is legally described as follows:

That part of Lots 4, 5 and 6, Block 3, Oneota Industrial Park First Addition lying Southwesterly of a line drawn parallel to and 241.76 feet Southwesterly of the Southwest line of Lot 2, Block 3 of Oneota Industrial Park First Addition, extended, EXCEPT that part described as follows: Beginning at the intersection of a line drawn parallel to and 241.76 feet Southwesterly of the Southwest line of said Lot 2, Block 3 and the Easterly right of way line of Colalillo Drive; thence Southeasterly parallel with the Southwesterly line of Lot 2, Block 3 a distance of 418.00 feet; thence deflecting to the right 90 degrees for a distance of 120.25 feet; thence deflecting to the right 90 degrees for a distance of 118.00 feet; thence deflecting to the left 55 degrees 06 minutes 28 seconds a distance of 72.99 feet to the Easterly right of way line of Colalillo Drive; thence Northwesterly along the Easterly right of way of Colalillo Drive a distance of 314.86 feet to the point of beginning.

AND

Outlot A, Block 3, Oneota Industrial Park First Addition
(the "Property"); and

WHEREAS, the Agency has requested that the Lien Agreement be released and replaced with a new Mortgage Lien on the Property; and

WHEREAS, the City desires to assist the Agency in continuing its programming at the new location as set forth below.

NOW, THEREFORE, the parties do mutually agree as follows:

1. Upon execution of this Second Amendment, the City agrees to execute a Release of Lien, substantially in the form of that attached hereto as Exhibit A, releasing the Lien Agreement. Immediately upon execution of the Release of Lien, the Agency agrees to record the Release of Lien in the office of the St. Louis County Registrar of Titles and to pay all costs associated therewith. Upon recording, the Agency shall immediately submit to the City an executed original of the Release of Lien showing the date and document numbers of record, or a duly certified copy of the filed original.
2. Immediately upon execution of this Second Amendment, the Agency agrees to execute a Mortgage Lien, substantially in the form of that attached hereto as Exhibit B, in favor of the City. The amount of the Mortgage Lien shall be the greater of: 1) the full amount of the sum granted to the Agency which is \$302,510.00; or 2) an amount equal to the fair market value at the time of the sale of the Property or conversion to another use without the City's consent, less any portion of said value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the Property.

The Mortgage Lien imposed on the Property shall continue until February 27, 2027, unless the lien is terminated earlier as provided for in the Agreement.

Upon execution of the Mortgage Lien, the Agency agrees to record the Mortgage Lien in the office of the St. Louis County Registrar of Titles and to pay all costs associated therewith. Upon recording, the Agency shall immediately submit to the City an executed original of the Mortgage Lien showing the date and document numbers of record, or a duly certified copy of the filed original.

It is agreed between the parties that the Agreement and the Mortgage Lien imposed herein shall be deemed to run with the land and all of its provision shall be enforceable by the parties' respective heirs and assigns. The Manager, on behalf of the City, may, in her or his sole discretion, decide to subordinate the Mortgage Lien to liens of other parties. Said consent of the Manager shall be deemed valid only when reduced to writing.

3. Except as provided in this Second Amendment, all terms and provisions of the Agreement shall remain in force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above shown.

CITY OF DULUTH

UDAC, INC

Mayor

By _____
Karen D. Herman, Executive Director

ATTEST:

By _____
Mike Dosan, Jr., Chair of Board of Directors

City Clerk

APPROVED AS TO FORM:

City Attorney

COUNTERSIGNED:

City Auditor

EXHIBIT A

RELEASE OF LIEN AGREEMENT

Date: _____, 2018

FOR VALUABLE CONSIDERATION, the real property located at 500 East 10th Street, in the City of Duluth, County of St. Louis County, Minnesota, and legally described as follows:

Lots 81, 83, 85 and 87, Block 124, Duluth Proper Third Division, according to the recorded plat thereof;

AND

That part of Lots 89,91 and 93, Block 124, Duluth Proper Third Division, according to the recorded plat thereof which lies northerly of a line Run parallel with and distant 33 feet southerly of Line 1 described below:

Line 1. Beginning at a point on the center line of Sixth Avenue East in the City of Duluth, distant 511.41 feet southeasterly of its intersection with the center line of East Tenth Street; thence run northwesterly on said Sixth Avenue East center line for 100 feet; thence deflect to the left on a 23 degree 59 minute 32 second curve, having a radius of 240.56 feet and a delta angle of 46 degrees 10 minutes 49 seconds for 192.48 feet; thence on tangent to said curve for 400 feet and there terminating
(the "Property")

is hereby released from that Lien Agreement owned by the undersigned dated January 4, 2017, and filed for record in the Office of the St. Louis Registrar of Titles on March 23, 2017, as Document Number 983256.

CITY OF DULUTH

Emily Larson, Mayor

ATTEST:

Chelsea Helmer, City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Emily Larson and Chelsea Helmer, the Mayor and City Clerk, respectively, of the City of Duluth, a municipal corporation under the laws of the State of Minnesota, on behalf of the corporation.

Notary

THIS INSTRUMENT WAS DRAFTED BY:

Joan M. Christensen
Assistant City Attorney
410 City Hall
411 West First Street
Duluth MN 55802
218-730-5490

EXHIBIT B

MORTGAGE LIEN

THIS MORTGAGE LIEN is made into this ____ day of _____, 2018, by Udac, Inc., a non-profit corporation under the laws of the State of Minnesota (the “Agency”) in favor of the City of Duluth, a municipal corporation under the laws of the State of Minnesota (the “City”).

WHEREAS, on January 4, 2017, the Agency executed a Lien Agreement (the “Lien Agreement”) in favor of the City related to the provision by the City to the Agency of Community Development Block Grant (“CDBG”) funds for the purpose of rehabilitating the Udac building located at 500 East 10th Street in Duluth, MN; and

WHEREAS, the Agency has or will sell the building located at the 500 East 10th Street location and transfer its programming for low- and moderate income individuals with disabilities to a newly purchased building located at 4724 Mike Colalillo Drive in the City of Duluth, County of St. Louis, Minnesota, which property is legally described as follows:

That part of Lots 4, 5 and 6, Block 3, Oneota Industrial Park First Addition lying Southwesterly of a line drawn parallel to and 241.76 feet Southwesterly of the Southwest line of Lot 2, Block 3 of Oneota Industrial Park First Addition, extended, EXCEPT that part described as follows: Beginning at the intersection of a line drawn parallel to and 241.76 feet Southwesterly of the Southwest line of said Lot 2, Block 3 and the Easterly right of way line of Colalillo Drive; thence Southeasterly parallel with the Southwesterly line of Lot 2, Block 3 a distance of 418.00 feet; thence deflecting to the right 90 degrees for a distance of 120.25 feet; thence deflecting to the right 90 degrees for a distance of 118.00 feet; thence deflecting to the left 55 degrees 06 minutes 28 seconds a distance of 72.99 feet to the Easterly right of way line of Colalillo Drive; thence Northwesterly along the Easterly right of way of Colalillo Drive a distance of 314.86 feet to the point of beginning.

AND

Outlot A, Block 3, Oneota Industrial Park First Addition
(the “Property”); and

WHEREAS, the Agency has requested that the Lien Agreement be released and a new Mortgage Lien be placed on the Property; and

WHEREAS, the City has executed a release of the Lien Agreement; and

WHEREAS, the Agency hereby agrees to enter into this Mortgage Lien on the Property in favor of the City.

NOW, THEREFORE, the Agency agrees that there is created and imposed on the Property a mortgage lien as required by CDBG rules and regulations. The amount of the mortgage lien shall be the greater of: 1) the full amount of the sum granted to the Agency which is \$302,510; or 2) an amount equal to the fair market value at the time of sale of the Property or conversion to another use without the City's consent, less any portion of said value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the Property. It is agreed between the parties that the mortgage lien imposed herein shall be deemed to run with the land and all of its provisions shall be enforceable by the parties' representatives, heirs and assigns.

Said Mortgage Lien shall be in full force and effect until February 27, 2027. The City may, in its sole discretion and upon the prior written consent of the Manager of the City's Community Development Division, agree to subordinate said Mortgage Lien to liens of other parties.

Upon execution of this Mortgage Lien by all parties, the Agency shall record this Mortgage Lien in the office of the St. Louis County Registrar of Titles and pay all costs associated therewith. Upon recording, the Agency shall immediately submit to the City an executed original of this Mortgage Lien showing the date and document number of record, or a duly certified copy of the filed original.

The abandonment or sale of the Property by the Agency or the conversion of the Property without the City's consent to any use other than as a facility providing services to low- and moderate-income individuals with disabilities during the Mortgage Lien period shall constitute a default of this Agreement.

In the event of default by the Agency, the City shall have the right to avail itself of the following remedies. Said remedies shall not be deemed to be mutually exclusive.

- 1) Enforce or foreclose the lien imposed by this Agreement upon the Property in the full amount specified above.
- 2) Seek such other relief as may be available to the City at law or in equity.

This Mortgage Lien is entered into for the benefit of the City and its respective successors and assigns, and shall be binding upon the Agency and its successors and assigns, and may not be modified or amended in any respect without the prior written consent of the City and its respective successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

UDAC INC.

By _____
Karen D. Herman, Executive Director

By _____
Mike Dosan, Jr., Chair of Board of Directors

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Karen D. Herman and Mike Dosan, Jr., the Executive Director and the Chair of the Board of Directors, respectively, of Udac, Inc., a non-profit corporation, on behalf of the corporation.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
Joan M. Christensen
Assistant City Attorney
410 City Hall
Duluth, MN 55802

This mortgage is exempt from mortgage registration tax pursuant to Minn. Stat. 287.04(f).