

Item # 11c

**City of Carson City  
Agenda Report**

**Date Submitted:** 10/7/08

**Agenda Date Requested:** 10/16/08  
**Time Requested:** 10 Min.

**To:** Mayor and Supervisors  
**From:** City Manager

**Subject Title:** Action to adopt the Amendment to the Ground Lease by and between Carson City and the Seasons Limited Partnership.

**Staff Summary:** In 2005, the Board of Supervisors entered into a Ground Lease with The Seasons, LP for the Autumn Village Senior Housing Project. Previously, the Board of Supervisors took action to declare The Seasons, LP in breach of the Ground Lease for applying for and accepting an exception from property taxes provided pursuant to NRS 361.082. The proposed amendment would provide that The Seasons, LP would be entitled to take the property tax exemption for Fiscal Years 07-08, 08-09 and 09-10. Beginning Fiscal Year 10-11, The Seasons, LP would expressly agree not to apply for the property tax exemption. If The Seasons, LP applied for the property tax exemption or the property tax exemption would be effective without application, The Seasons, LP agrees to pay a payment in lieu of property tax in the amount of property tax that would otherwise have been due. Beginning in September 1, 2015, The Seasons, LP agrees to provided audited financial statements to Carson City and if The Seasons, LP has excess revenue after making certain required payments, The Seasons, LP would begin repayment of the property tax exemption taken in FY 07-08, 08-09 and 09-10.

**Type of Action Requested:** (check one)  
 Resolution  Ordinance  
 Formal Action/Motion  Other (Specify)

**Does This Action Require A Business Impact Statement:**  Yes  No

**Recommended Board Action:** I move to adopt the Amendment to the Ground Lease by and between Carson City and the Seasons Limited Partnership.

**Explanation for Recommended Board Action:** Approval of the Amendment to the Ground Lease would ensure that The Seasons, LP pays property tax after the 3 Fiscal Year period and provides for repayment of the property tax exemption.

**Applicable Statue, Code, Policy, Rule or Regulation:** N/A

**Fiscal Impact:** None

**Explanation of Impact:** N/A



**AMENDMENT NO.1**  
**TO THE GROUND LEASE BY AND BETWEEN**  
**CARSON CITY AND THE SEASONS LIMITED PARTNERSHIP**  
**DATED JANUARY 6, 2005**

**THIS AMENDMENT** is made and entered into this \_\_\_\_ day of October, 2008, by and between Carson City, Nevada, a consolidated municipality and political subdivision of the State of Nevada, hereinafter referred to as the "**LANDLORD**", and The Seasons Limited Partnership, hereinafter referred to as the "**TENANT**", and is made to amend the existing Ground Lease by and between LANDLORD and TENANT dated **January 6, 2005**.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, **LANDLORD** and **TENANT**, by and through their respective authorized representatives hereby agree to:

1. Amend, as a whole, the Ground Lease by and between LANDLORD and TENANT dated **January 6, 2005** by renumbering subparagraph (a) of paragraph 3 as sub-subparagraph (1) of subparagraph (a) of paragraph 3 and to amend the provisions of renumbered sub-subparagraph (1) of subparagraph (a) of paragraph 3 to provide in its entirety as follows:

**(a)(1) Payment by Tenant. Except as otherwise provided in sub-subparagraph (2) of this subparagraph**, Tenant shall pay all real estate taxes, special improvement and other assessments (ordinary and extraordinary), water rents and charges, and all other taxes, duties, charges, fees and payments imposed by any governmental or public authority, which shall be imposed, assessed or levied upon, or arise in connection with the use, occupancy or possession of the Premises or any part thereof during the terms of this Lease (collectively, "Governmental Impositions"). In each case Tenant shall deliver to Landlord prior to the last day upon which the same may be paid without penalty or interest, a receipt showing the payments thereof. The term "Governmental Impositions" shall not be deemed to include transfer, gift, inheritance, income, estate, intangible personal property, corporation, franchise or succession taxes or similar taxes.

2. Amend, as a whole, the Ground Lease by and between LANDLORD and TENANT dated **January 6, 2005** by adding a new sub-subparagraph, designated sub-subparagraph (2), to subparagraph (a) of paragraph 3 and to provide in its entirety as follows:

**(a)(2) Exceptions. For the fiscal years beginning July 1, 2007, July 1, 2008 and July 1, 2009, Landlord and Tenant hereby agree that Tenant**

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may apply for the exemption from real property taxes authorized pursuant to NRS 361.082. For the fiscal years beginning July 1, 2007, July 1, 2008 and July 1, 2009, Tenant hereby agrees that Tenant shall pay any and all other special improvement and other assessments (ordinary and extraordinary), water rents and charges, and all other taxes, duties, charges, fees and payments imposed by any governmental or public authority; provided however that Landlord shall not impose and Tenant shall not be obligated to pay any new assessments, taxes, fees or any other charges upon Tenant that are not imposed upon all property owners in Carson City generally. Landlord and Tenant hereby agree that for the fiscal year beginning July 1, 2010 and for each subsequent fiscal year, Tenant shall not apply for the exemption from real property taxes authorized pursuant to NRS 361.082 and shall be required to pay all real property taxes in addition to all other special improvement and other assessments (ordinary and extraordinary), water rents and charges, and all other taxes, duties, charges, fees and payments imposed by any governmental or public authority; provided however that Landlord shall not impose and Tenant shall not be obligated to pay any new assessments, taxes, fees or any other charges upon Tenant that are not imposed upon all property owners in Carson City generally. For the fiscal year beginning July 1, 2010 and for each subsequent fiscal year, Landlord and Tenant hereby agree that, in the event Tenant applies for the exemption from real property taxes authorized pursuant to NRS 361.082 or in the event that the exemption from real property taxes authorized pursuant to NRS 361.082 otherwise becomes applicable without Tenant being required to submit an application, Tenant shall pay to Landlord, on or before July 1 of the year for which Tenant applies for the exemption or for which the exemption becomes otherwise effective, an amount equal to the total amount of all real property taxes that would otherwise have been imposed but for the exemption by any governmental or public authority.

3. Amend, as a whole, the Ground Lease by and between LANDLORD and TENANT dated **January 6, 2005** by adding a new sub-subparagraph, designated sub-subparagraph (2), to subparagraph (a) of paragraph 3 and to provide in its entirety as follows:

**(a)(3) Repayment of Deferred Real Property Taxes. On or before**

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September 1, 2015 and on or before each subsequent September 1, Landlord and Tenant hereby agree that, if Tenant has revenue from the operation of the low-income housing project located on the Premises in excess of the revenue required to meet the minimum obligations of Tenant for the operation of the low-income housing project, including the minimum amounts of any payments that Tenant is required to pay to any investors of Tenant in the low-income housing project, and any amounts to be paid pursuant to Tenant's partnership agreement to the General Partner or affiliates of Tenant ("Excess Revenue"), Tenant shall pay to Landlord all such Excess Revenue until such time that Tenant has paid to Landlord an amount equal to the total amount of all real property taxes that Tenant was not required to pay by applying for or otherwise receiving the benefits of the real property tax exemption authorized pursuant to NRS 361.082. Landlord and Tenant hereby agree that the obligation of Tenant to pay to Landlord all such Excess Revenue shall terminate when Tenant has paid to Landlord an amount equal to the total amount of all real property taxes that Tenant was not required to pay by applying for or otherwise receiving the benefit of the real property tax exemption authorized pursuant to NRS 361.082. If Tenant claims that it lacks sufficient Excess Revenue to make such payment, Tenant shall provide Landlord with its audited financial statements for the prior year demonstrating the lack of Excess Revenue. Landlord may request that the financial statement provided by Tenant be reviewed by an independent auditor to be selected by Tenant from a list of three licensed independent auditors approved by Landlord. Landlord and Tenant hereby agree that the costs of the independent auditor shall be borne by Landlord unless the audit determines that the amount of Excess Revenue is a positive number and at least ten percent greater than reflected on the financial statement provided by Tenant, in which case the costs of the independent auditor shall be borne jointly by Landlord and Tenant.

4. Amend subparagraph (d) of paragraph 3 of the Ground Lease by and between LANDLORD and TENANT dated **January 6, 2005**, to provide in its entirety as follows:

(d) Contest of Taxes. **Except as otherwise provided in this subparagraph,** Tenant may contest, in good faith, any Governmental Imposition by

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appropriate proceedings conducted promptly at Tenant's expense, in Tenant's name, or (whenever necessary) in Landlord's name. **The right to contest any Governmental Imposition provided to the Tenant pursuant to this subparagraph does not include the right of Tenant to apply for or to otherwise seek the benefits of the real property tax exemption authorized pursuant to NRS 361.082 except for the fiscal years beginning July 1, 2007, July 1, 2008 and July 1, 2009.** Landlord agrees to cooperate reasonably with Tenant and to execute any documents or pleadings reasonably required for such purpose, but Landlord shall not be obligated to incur any expense or liability in connection therewith. Tenant may defer payment of the contested Governmental Impositions pending such contest, if such deferment shall not subject Landlord's interests in the Premises to forfeiture. Tenant shall deposit with Landlord, if Landlord so requests, funds which shall be at least equal in value to the payments so deferred plus estimated penalties and interest thereon and Landlord shall deposit such funds in an interest-bearing account. When all contested Governmental Impositions shall have been paid or cancelled, funds so deposited to secure the same and interest earned thereon which was not applied by Landlord to the payment thereof, shall be repaid to Tenant. In lieu of any such deposit, Tenant may, at its election, furnish a bond in a form, in an amount, and with a surety reasonably satisfactory to Landlord or other security reasonably satisfactory to Landlord. All refunds of taxes and assessments shall be the property of Tenant to the extent they may be based on payments made by Tenant, any balance being Landlord's property.

5. Add a new subparagraph (e) of paragraph 3 of the Ground Lease by and between LANDLORD and TENANT dated **January 6, 2005**, to provide in its entirety as follows:

(e) Value of Premises and solvency of Tenant. Landlord agrees that the value of the Premises for any and all Governmental Impositions shall not include any low income housing tax credits allocated to the Premises. To the extent that low income housing tax credits allocated to the Premises are included in the value of the Premises for the purpose of calculating the applicable amount of any and all Governmental Impositions, Tenant shall not be required to pay to Landlord any amount of such Governmental Impositions attributable to the inclusion of low income housing tax credits included in the value of the Premises.

**IT IS ALSO AGREED**, that all unaffected conditions, requirements and

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restrictions of the Ground Lease by and between LANDLORD and TENANT dated **January 6, 2005** remain in full force and effect for the duration of the term of the Ground Lease.

CARSON CITY

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_  
Marv Texeira, Mayor

THE SEASONS LIMITED PARTNERSHIP

ATTEST:

\_\_\_\_\_

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

STATE OF NEVADA        )  
                                      :SS  
CARSON CITY            )

On this \_\_\_ day of \_\_\_\_\_, 2008, before me, a notary public, appeared \_\_\_\_\_, who being by me duly sworn did day himself, that he, the said \_\_\_\_\_ is the authorized representative of The Seasons Limited Partnership, a Nevada limited partnership and non-profit entity and that the within and foregoing instrument was signed on behalf of said limited partnership with full authority to do so.

\_\_\_\_\_  
Notary Public  
Residing at Carson City, Nevada  
My Commission expires: \_\_\_\_\_

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STATE OF NEVADA        )  
  :SS  
CARSON CITY            )

On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, a notary public, appeared \_\_\_\_\_, who being by me duly sworn did day himself, that he, the said \_\_\_\_\_ is the authorized representative of Carson City, a consolidated municipality and political subdivision of the State of Nevada, and that the within and foregoing instrument was signed on behalf of Carson City by authority of its Board of Supervisors and said \_\_\_\_\_ duly acknowledged to me that said \_\_\_\_\_ executed the same.

\_\_\_\_\_  
Notary Public  
Residing at Carson City, Nevada  
My Commission expires: \_\_\_\_\_