

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil No. \_\_\_\_\_

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 DOMINIUM MANAGEMENT )  
 SERVICES, INC. )  
 )  
 Defendant. )  
 )

**CONSENT DECREE**

WHEREAS, Plaintiff United States of America ("United States"), on behalf of the United States Department of Housing and Urban Development ("HUD") and the United States Environmental Protection Agency ("EPA"), has filed a complaint alleging that Defendant Dominion Management Services, Inc. ("Dominium") violated Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Section 1018"), 42 U.S.C. § 4852d; and

WHEREAS, Section 1018 and the implementing regulations, found at 24 C.F.R. Part 35, Subpart A, and 40 C.F.R. Part 745, Subpart F, require, among other things, that the owners and managing agents of apartment buildings subject to the law make certain disclosures and provide certain records concerning Lead-Based Paint and Lead-Based Paint Hazards to tenants when a new lease is entered into or, if the lease predates the effective date of Section 1018, at the first change to the terms of an existing lease, such as a rent increase; and

WHEREAS, Dominion owns and manages eighteen residential properties in Minnesota constructed prior to 1978 containing approximately 3,838 units; and

WHEREAS, Dominion owns and manages one residential property in Wisconsin constructed prior to 1978 containing approximately 278 units; and

WHEREAS, Dominion owns and manages two residential properties in South Dakota constructed prior to 1978 containing approximately 218 units; and

WHEREAS, Dominion owns and manages one residential property in Indiana constructed prior to 1978 containing approximately 140 units; and

WHEREAS, the United States alleges that Dominion failed to make certain disclosures required by Section 1018 in eighteen residential properties in Minnesota; and

WHEREAS, subsequent to HUD and EPA initiating their investigation, but prior to entry of this Consent Decree, Dominion retained certified Lead-Based Paint inspectors to conduct Lead-Based Paint inspections of all the residential properties for which it has an ownership and management interest to determine whether the properties contain Lead-Based Paint; and

WHEREAS, Dominion has agreed to abate all Lead-Based Paint identified in its residential properties rendering all Subject Properties Lead-Based Paint Free; and

WHEREAS, the United States alleges it is entitled to seek injunctive relief in a judicial action, including, but not limited to, an order requiring Dominion to comply with Section 1018 prospectively, and an order requiring Dominion to abate Lead-Based Paint; and

WHEREAS, the United States alleges that Dominion is subject to administrative civil penalties by HUD and EPA for violations of Section 1018 of up to \$11,000 per violation; and

WHEREAS, the United States and Dominion agree that settlement of the claims of the United States without further litigation is in the public interest and that entry of this Consent Decree is an appropriate means of resolving this matter; and

WHEREAS, the Parties agree that settlement and entry of this Consent Decree does not constitute admission or acknowledgment of liability or wrongdoing by Dominion, but is intended solely to settle all claims asserted by the United States against Dominion on the terms set forth herein.

NOW, THEREFORE, upon consent and agreement of the United States and Dominion, and the Court having considered the matter and

been duly advised,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

**I. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 4852d(b)(2) and has personal jurisdiction over Dominion. Dominion consents to this Court's jurisdiction over it with respect to properties it has an ownership and management interest in which are located in Wisconsin, South Dakota, and Indiana, to the extent the United States would allege that violations of Section 1018 occurred in those states prior to entry of this Consent Decree. Dominion also consents to, and shall not challenge entry of, this Consent Decree and the Court's jurisdiction to enter and enforce this Consent Decree.

2. Venue is proper in this Court pursuant to 42 U.S.C. § 4852d(b)(2) and 28 U.S.C. § 1391(b) & (c), because the lawsuit involves actions that took place, and eighteen Subject Properties are located, in the District of Minnesota.

**II. PARTIES BOUND**

3. This Consent Decree shall apply to and be binding on the United States and Dominion, and its successors and assigns.

4. Dominion shall remain liable to the United States for all the obligations set forth in this Consent Decree regardless

of whether Dominion sells or transfers any property subject to this Consent Decree.

### **III. DEFINITIONS**

5. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in the Residential Lead-Based Paint Hazard Reduction Act shall have the meaning given in the Act or in any regulations promulgated pursuant to the Act. Whenever other terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "CHIP" shall mean Child Health Improvement Project.

b. "Clearance Examination" shall mean an activity conducted after Lead-Based Paint abatement activities have been performed to determine that the abatement activities are complete and that no settled dust-lead hazards exist. The clearance process includes a visual assessment and collection and analysis of environmental samples. The appropriate clearance standards shall be the more restrictive of those set by the jurisdiction where the property is located or by Section 403 of the Toxic Substances Control Act ("TSCA") and its implementing regulations, 40 C.F.R. Part 745, Subpart D.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would

fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "HUD Guidelines" shall mean the edition of the "HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" in effect on the date the work is conducted pursuant to this Consent Decree.

e. "Interest" shall mean interest pursuant to 28 U.S.C. § 1961.

f. "Lead-Based Paint" shall mean paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

g. "Lead-Based Paint Free" shall mean housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

h. "Lead Abatement Supervisor" shall mean any person licensed by the State in which the property is located to perform lead abatement and mitigation, and supervise lead abatement workers who perform lead abatement and mitigation.

i. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or a lower case letter.

j. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

k. "Subject Properties" shall mean the properties listed on Appendix A, attached hereto.

**IV. COMPLIANCE WITH SECTION 1018**

6. Dominion shall comply with all requirements of Section 1018 and its implementing regulations.

7. To the extent not previously accomplished, upon lease renewal, but no later than twelve (12) months after entry of this Consent Decree, Dominion shall provide to each tenant in the Subject Properties a lead hazard information pamphlet approved by EPA, as well as a "lead paint disclosure form" which shall include at a minimum the following:

a. Any known information concerning Lead-Based Paint Hazards and/or Lead-Based Paint;

b. A list of any available records or reports, or summaries thereof, pertaining to Lead-Based Paint Hazards and/or Lead-Based Paint; and

c. A Lead Warning Statement containing the specific language set forth in regulations promulgated pursuant to Section 1018.

8. As set forth more fully in Paragraph 26.a., Dominion shall provide written notice to HUD and EPA in its first annual

report that it has complied with the requirements of Paragraph 7 of this Consent Decree.

**V. PAYMENT OF PENALTY**

9. Within thirty (30) days after entry of this Consent Decree, Dominion shall pay a civil penalty of \$10,000.00 to the United States, as an administrative penalty for past violations of Section 1018.

10. Payment of the civil penalty shall be rendered by wire transfer to the United States Department of Justice, in accordance with current wire transfer procedures, referencing USAO File Number 2003V00092 and the civil action case name and case number of the District of Minnesota. Payment shall be made in accordance with instructions provided to Dominion by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Minnesota. Any funds received after 11:00 a.m. (EST) shall be credited on the next business day.

11. Notification that payment of the civil penalty has been made, referencing the USAO File Number 2003V00092 and the civil action case name and case number of the District of Minnesota, shall be provided in accordance with the notification provisions of Section XVII.

12. If Dominion fails to make any payment under Paragraph 9, it shall be subject to Stipulated Penalties pursuant

to Paragraph 27 of this Consent Decree. In addition, Interest shall accrue on any unpaid amounts until the total amount due has been received.

13. Dominion shall not deduct the civil penalty paid to the United States, or any Interest or Stipulated Penalties, paid under this Consent Decree from its federal, state, or local income taxes, and the United States does not in any way release Dominion from any claims arising under Title 26 of the United States Code.

**VI. PERFORMANCE OF CHILD HEALTH IMPROVEMENT PROJECT**

          14. Dominion shall perform the following CHIP designed to reduce incidences of childhood lead poisoning: pay \$70,000 to The Sustainable Resources Center (SRC) to be used for lead hazard control work in homes in the Minneapolis area. The \$70,000 CHIP shall be paid as follows: within thirty (30) days after entry of this Consent Decree, Dominion shall pay \$35,000 and within six (6) months after entry of this Consent Decree the remaining \$35,000. These two payment shall be rendered by check or money order payable to: The Sustainable Resources Center. Payment shall be sent to Sue Gunderson, Executive Director, The Sustainable Resources Center, 1916 Second Ave., South Minneapolis, MN 55403, Phone: 612-872-3283, Fax: 612-870-0729. These payments shall be accompanied by a letter from Dominion to Ms. Gunderson specifying (1) the activities for which the CHIP funds may be used, as described above, and (2) that

Sustainable Resources Center will provide a report to Dominion and the United States within sixty (60) days after the funds have been used by The Sustainable Resources Center detailing all activities performed pursuant to the CHIP. Copies of the check or money order showing that the CHIP payment has been made and copies of the letter sent to The Sustainable Resources Center shall be provided in accordance with the notification provisions of Section XVII.

15. The United States does not in any way release Dominion from any claims arising under Title 26 of the United States Code with respect to the CHIP.

16. Except as explicitly provided in this Section, Dominion has not already received, is not currently negotiating to receive, and agrees that it will not receive, credit in any other federal or state enforcement action for the CHIP activity.

17. Any public statement, oral or written, in print, film, or other media, made by Dominion making reference to the CHIP under this Consent Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action brought by the United States."

#### **VII. WORK TO BE PERFORMED**

18. This Section shall govern the Lead-Based Paint inspection and abatement work to be performed under this Consent Decree at all Subject Properties.

19. In connection with this agreement, Dominion

inspected all Subject Properties for Lead-Based Paint consistent with Chapter 7 of the HUD Guidelines. For each Subject Property, Dominion provided a copy of each Lead-Based Paint inspection report ("Inspection Report") to HUD and EPA.

20.a. Additionally, Dominion has provided copies to HUD and EPA of a plan for Lead-Based Paint abatement ("Abatement Plan") for all Subject Properties where Lead-Based Paint has been identified. The Abatement Plan was prepared by a certified Lead Abatement Supervisor and includes a list of property addresses to be rendered Lead-Based Paint Free, a list of properties with children, information about the components to be abated, the method of abatement chosen, and the names of certified abatement contractors. The Abatement Plan was prepared to ensure that Lead-Based Paint abatement activities required by Section VII of this Consent Decree are conducted in accordance with Chapter 12 of the HUD Guidelines, and include abatement methods that will render the property Lead-Based Paint Free, such as paint removal, and component replacement. The Abatement Plan includes specifications as provided in the HUD Guidelines, Appendix 7.3. Lead-Based Paint Abatement Specification, or the equivalent.

b. After review of the Abatement Plan, HUD shall, in writing: (1) approve, in whole or in part, the submission; (2) approve the submission with modifications; or (3) disapprove, in whole or in part, the submission, directing Dominion to resubmit

the document after modification to address HUD's comments. HUD shall respond to Dominion's Abatement Plan within thirty (30) days after entry of the Consent Decree. If HUD disapproves of or requires revisions to the Abatement Plan, in whole or in part, Dominion shall amend and submit to HUD and EPA a revised Abatement Plan which is responsive to the directions in HUD's comments, within fifteen (15) days of receiving such comments. The Abatement Plan must be approved by HUD before any work is performed at the Subject Properties pursuant to this Consent Decree.

c. No later than thirty (30) days after approval of the Abatement Plan, Dominion shall submit a plan for ongoing operations and maintenance ("O&M Plan") for those properties that are not yet rendered Lead-Based Paint Free. After review of the O&M Plan, HUD shall, in writing: (1) approve, in whole or in part, the submission; (2) approve the submission with modifications; or (3) disapprove, in whole or in part, the submission, directing Dominion to resubmit the document after modification to address HUD's comments. HUD shall respond to Dominion's O&M Plan within thirty (30) days of submission of such plan. If HUD disapproves of or requires revisions to the O&M Plan, in whole or in part, Dominion shall amend and resubmit to HUD a revised O&M Plan which is responsive to the directions in HUD's comments, within fifteen (15) days of receiving such comments. The O&M Plan shall be prepared in accordance with Chapters 6 and 17 of the HUD Guidelines.

21. For each Subject Property where Lead-Based Paint has been identified, the following work shall be performed:

a. Ongoing operations and maintenance ("O&M") in all Subject Properties that are not certified Lead-Based Paint Free shall be implemented within 30 days of HUD's approval of the O&M Plan, and shall be in accordance with the O&M Plan and with Chapters 6 and 17 of the HUD Guidelines. If dust hazards are discovered as part of ongoing reevaluations, Dominion shall address them according to Chapter 11 of the HUD Guidelines.

b. Lead-Based Paint abatement to render the units and exteriors of each Subject Property Lead-Based Paint Free shall be completed within five (5) years after approval of the Abatement Plan. Abatement of the Subject Properties shall be in accordance with the Abatement Plan and with Chapter 12 of the HUD Guidelines.

c. No later than six (6) months after the approval of the Abatement Plan, abatement of any Lead-Based Paint identified in the interior common areas to render each Subject Property Lead-Based Paint Free shall be performed in accordance with the Abatement Plan and with Chapter 12 of the HUD Guidelines.

d. No later than six (6) months after the approval of the Abatement Plan, any bare soil identified on the grounds of each Subject Property shall be covered with a vegetative ground covering, mulch, or other appropriate covering in accordance with Chapter 11 of the HUD Guidelines.

e. Worksite preparation and occupant protection shall be in accordance with Chapter 8 of the HUD Guidelines.

f. Daily and final cleanups shall be in accordance with Chapter 14 of the HUD Guidelines.

g. Clearance Examinations shall be conducted by a certified Lead-Based Paint risk assessor in each building upon completion of final cleanup in accordance with Chapter 15 of the HUD Guidelines, TSCA Section 403, 15 U.S.C. § 2683 and 40 CFR 745.227(e)(8) and (9). Within fifteen (15) days of the receipt of the clearance examination report ("Clearance Report"), Dominion shall submit the Clearance Report to HUD. The Clearance Report shall contain all results of dust samples analyzed at an EPA-accredited laboratory. If the results indicate that the clearance standard is not achieved, Dominion shall repeat the cleaning procedures identified above under Paragraph 21.f., repeat dust clearance sampling within five (5) days after receipt of the failed Clearance Report, and repeat this procedure until the clearance standard has been attained. All additional Clearance Reports shall be submitted as described above.

h. At the completion of the Lead-Based Paint abatement and the Clearance Examinations for each Subject Property, Dominion shall submit a signed statement prepared by a certified risk assessor certifying that the property is Lead-Based Paint Free ("Lead-Free Certificate"), and that all Lead-Based Paint has been

identified, removed and clearance has been achieved in accordance with Paragraph 21.g. and that no surfaces containing Lead-Based Paint have been encapsulated or enclosed.

i. In each of the five years, Dominion shall make substantial and reasonable progress on the Lead-Based Paint Abatement agreed to in this Consent Decree and shall detail the progress made in the Annual Report required in Paragraph 26 of this Consent Decree. The Parties agree that substantial and reasonable progress shall mean completion of at least ten (10) percent of the total inventory of units in the first year, another ten (10) percent in the second year, twenty (20) percent in the third year, thirty (30) percent in the fourth year and the remaining thirty (30) percent in the fifth and final year.

22. All the requirements of this Section, except the timelines, shall apply where Dominion or any governmental entity is or becomes aware of a unit where a child with an elevated blood lead level resides or is a regular visitor. Dominion shall perform an inspection and complete abatement activity within five (5) months after Dominion is or becomes aware of a unit where a child with an elevated blood lead level resides or is a regular visitor. Defendant shall also comply with any work required by any other government entity, such as the City, County, or State.

**VIII. QUALIFICATIONS TO CONDUCT LEAD-BASED PAINT WORK**

23. All Lead-Based Paint inspections and other Lead-Based Paint work shall be consistent with the HUD Guidelines and conducted by individuals authorized to perform the work in accordance with the laws of the jurisdiction where the property is located. Persons performing interim controls, visual assessments for O&M, and general maintenance shall be trained in either HUD's one day "Lead Safe Work Practices" class or the HUD/EPA "Remodeling, Repair, and Painting" class.

24. Dominion shall ensure that Clearance Examinations are not conducted by the same individual and/or same business entity conducting the Lead-Based Paint abatement work that is being evaluated by the Clearance Examination.

25. Dominion shall ensure that Lead-Based Paint inspections are not done by the same individual and/or same business entity doing Lead-Based Paint abatement work on the Subject Properties.

**IX. REPORTING REQUIREMENTS**

26.a. On or before the one (1) year anniversary of the entry of this Consent Decree, and annually thereafter until completion of all Lead-Based Paint abatement, Dominion shall submit a written Annual Report to HUD and EPA. The Annual Report shall include, at a minimum: (1) the status of abatement activities, including the type of abatement and components abated, and a list

of the property addresses where abatement has been completed and properties have been rendered Lead-Based Paint Free during that reporting period; (2) the status of ongoing O&M activities in accordance with Paragraph 21; (3) any and all information concerning the cost of the inspections and abatement performed; (4) any Clearance Reports or Lead-Free Certificates that have not been previously provided to HUD under Paragraphs 21.g. and h.; and (5) any State or City notices relating to Lead-Based Paint violations at the Subject Properties. In addition to the information listed above, the first annual report submitted shall also include written notice by Dominion stating that it has complied with the requirements of Paragraph 7 of this Consent Decree, as referenced in Paragraph 8.

b. Dominion shall ensure contractor compliance with any State and/or City requirements for reporting Lead-Based Paint inspections and abatement work in accordance with the laws of the jurisdiction where the property is located.

**X. STIPULATED PENALTIES**

27. If Dominion fails to make timely payment of the penalty provided for in Section V or VI, Dominion shall be required to pay as Stipulated Penalties \$400 per day. Stipulated Penalties shall accrue until such time as the original penalty and all accrued Stipulated Penalties are paid.

28. If Dominion fails to conduct O&M or complete abatement as described in Paragraphs 20, 21, and 22, Dominion shall pay Stipulated Penalties of \$200 per day per violation per each unit, until the O&M is performed and/or abatement is completed. If any abatement fails because of Dominion's failure to follow the HUD Guidelines, those properties shall not be considered abated in accordance with this Consent Decree and Stipulated Penalties shall accrue.

29. If Dominion fails to submit any information or reports to HUD, as described in Paragraphs 20, 21, and 26 in accordance with the requirements and/or deadlines set forth in this Consent Decree, Dominion shall pay Stipulated Penalties of \$200 per day for each day each such submission is deemed inadequate and/or late.

30. Payment of Stipulated Penalties shall be made to the United States in the manner set forth in Paragraph 10 of this Consent Decree.

31. Stipulated Penalties shall accrue regardless of whether the United States has notified Dominion of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment, or until the required activity is performed. However, the United States may, in its unreviewable discretion, waive or reduce the amount of any

Stipulated Penalty. Nothing herein shall prevent the United States from seeking other relief that may be available for non-compliance, nor prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

**XI. FORCE MAJEURE**

32. If any event causes or may cause a delay in Dominion's compliance with any provision of this Consent Decree, Dominion shall notify the United States in writing as soon as practicable, but in any event within ten (10) days of when Dominion first knew of the event, or should have known of the event by the exercise of due diligence. In this notice, Dominion shall specifically reference this provision of the Consent Decree and describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by Dominion to prevent or minimize the delay, and the schedule by which those measures will be implemented. Dominion shall adopt all reasonable measures to avoid and minimize such delays.

33. Failure by Dominion to comply with the above notice requirements shall render this Section voidable by the United States as to the specific event for which Dominion failed to comply with such notice requirement, and, if voided, of no effect as to the particular event involved.

34. The United States shall notify Dominion of its agreement or disagreement with Dominion's claim of unavoidable

delay or impediment to performance within 30 days of receipt of the notice provided under this Section. If the United States agrees that the violation has been or will be caused entirely by circumstances beyond the control of Dominion or any entity controlled by Dominion, including its contractors, and that Dominion could not have foreseen and prevented such delay by the exercise of due diligence, the Parties shall stipulate to an extension of the compliance requirement(s) affected by the delay by a period not exceeding the delay actually caused by such circumstances. Dominion shall not be liable for Stipulated Penalties for the period of any such delay.

35. If the United States does not agree with Dominion's claim of a delay or impediment to performance, either Party may submit the matter to the Court for resolution pursuant to the dispute resolution procedures established in this Consent Decree. If the Court determines that the violation has been or will be caused entirely by circumstances beyond the control of Dominion or any entity controlled by Dominion, including its contractors, and that Dominion could not have foreseen and prevented such delay by the exercise of due diligence, Dominion shall be excused as to that violation and delay (including Stipulated Penalties), but only for the delay actually caused by such circumstances.

36. Dominium shall bear the burden of proving that any delay of any requirement of this Consent Decree was caused entirely by or will be caused entirely by circumstances beyond the control of Dominium or any entity it controls, including its contractors, and that Dominium could not have foreseen and prevented such delay by the exercise of due diligence. Dominium shall also bear the burden of proving the duration and extent of any delay attributable to such circumstances. Absent written approval by the United States, an extension of one compliance date based on a particular event shall not of itself result in an extension of a subsequent compliance date or dates.

37. Unanticipated or increased costs or expenses associated with the performance of Dominium's obligations under this Consent Decree shall not constitute circumstances beyond Dominium's control, or serve as a basis for an extension of time under this Section.

## **XII. DISPUTE RESOLUTION**

38. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce the obligations of Dominium under this Consent

Decree that Dominion has not timely disputed in accordance with this Section.

39. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute.

40. If the Parties are not in agreement at the end of this informal negotiations period, the position of the United States shall be controlling unless Dominion files a petition with the Court for resolution of the dispute within twenty-one (21) days of receipt of the United States' final position. The petition shall set out the nature of the dispute with a proposal for its resolution. The United States shall have twenty-one (21) days to file a response with an alternate proposal for resolution. In any such dispute, Dominion shall have the burden of proving that the United States' proposal is arbitrary and capricious.

41. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect any obligation of Dominion under this Consent Decree not directly in dispute, unless the United States or the Court agrees otherwise. Stipulated Penalties with respect to the disputed matter shall

continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 31. Notwithstanding the stay of payment, Stipulated Penalties shall accrue from the first day of non-compliance with any applicable provision of this Consent Decree. In the event that Dominium does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Paragraph 31.

**XIII. RIGHT OF ENTRY**

42. HUD, EPA and their representatives, contractors, consultants, and attorneys shall have the right of entry into and upon all Subject Properties owned or controlled by Dominium, at all reasonable times, upon proper presentation of credentials, for the purposes of:

- a. monitoring the progress of activities required by this Consent Decree;
- b. verifying any data or information required to be submitted pursuant to this Consent Decree;
- c. obtaining samples and, upon request, splits of any samples taken by Dominium or its consultants (upon request, Dominium will be provided with splits of all samples taken by the United States); and
- d. otherwise assessing Dominium's compliance with this Consent Decree.

43. This Section in no way limits or affects any right of entry and inspection held by the United States, HUD, EPA, any State in which the property is located, or any City in which the property is located pursuant to applicable federal, state or local laws, regulations, or permits.

**XIV. COVENANT NOT TO SUE**

44. In consideration of the payments required by this Consent Decree and the work to be performed, and except as otherwise provided in this Consent Decree, the United States covenants not to sue or take administrative or other action against Dominion arising out of violations of Section 1018 at the Subject Properties that occurred on or before the date of lodging of this Consent Decree. This covenant not to sue with respect to Dominion is conditioned upon the complete and satisfactory performance by Dominion of its obligations under this Consent Decree. This covenant not to sue extends only to Dominion and does not extend to any other person or business entity.

**XV. PLAINTIFFS' RESERVATIONS OF RIGHTS**

45. The covenant not to sue set forth above does not pertain to any matters other than those expressly specified in Paragraph 44. The United States reserves, and this Consent Decree is without prejudice to, all rights against Dominion with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by Dominion to meet a requirement of this Consent Decree;
- b. claims based upon violations of Section 1018 that occur after the date of lodging of this Consent Decree;
- c. criminal liability; and
- d. all claims not barred by Paragraph 44 of this Consent Decree.

**XVI. MISCELLANEOUS**

46. This Consent Decree in no way affects Dominion's responsibilities to comply with all federal, state, or local laws and regulations.

47. Except as otherwise provided in this Consent Decree, each Party shall bear its own costs and attorneys' fees in this action.

**XVII. NOTICES AND SUBMISSIONS**

48. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be in writing and directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement

of this Consent Decree with respect to the United States and  
Dominium.

49. All notices and reports shall refer to this Consent  
Decree and the date of entry of the Consent Decree, and shall cite  
the case name of United States v. Dominium Management Services,  
Inc. and the case number.

*U.S. Attorney's Office:*

Chief, Civil Division  
United States Attorney's Office  
U.S. Department of Justice  
600 United States Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

*U.S. Department of Justice:*

Chief, Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044

*U.S. Department of Housing and Urban Development:*

Director, Compliance Assistance and  
Enforcement Division  
Office of Healthy Homes and Lead Hazard  
Control  
U.S. Department of Housing and Urban  
Development  
451 7th Street, SW  
Room P-7110  
Washington, DC 20410

*U.S. Environmental Protection Agency:*

Chief, Pesticides and Toxics Enforcement  
Section  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

*Dominium:*

Chief Operating Officer  
Dominium Management Services, Inc.  
Suite 100  
2355 Polaris Lane North  
Minneapolis, MN 55447

Robert J. Foster, Esq.  
Foster, Hedback, Brever, Arendt & Carlson, PLLC  
Suite 201 Anthony Place  
2855 Anthony Lane South  
St. Anthony, MN 55418

50. Any Party may change either the notice recipient or the address for providing notices to it by serving all other Parties with a notice setting forth such new notice recipient or address.

51. Any notice, report, certification, data presentation, or other document submitted by Dominium pursuant to this Consent Decree which discusses, describes, demonstrates, supports any findings, or makes any representation concerning Dominium's compliance or non-compliance with any requirement of this Consent Decree shall be certified by Dominium or a duly authorized representative of Dominium. A person is a "duly authorized representative" only if: (a) the authorization is made

in writing; (b) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (c) the written authorization is submitted to the United States consistent with this Paragraph.

52. The certification required by Paragraph 51, above, shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate and complete. With regard to [the/those identified portion(s)] of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such persons, the information submitted is, the best of my knowledge and belief, true, accurate and complete. I am aware that there

are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_

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

Title:

**XVIII. RETENTION OF JURISDICTION**

53. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XIX. INTEGRATION**

54. This Consent Decree and its Appendix constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. It may not be enlarged, modified, or altered unless such modifications are made in writing and approved by the Parties and the Court. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

**XX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

55. Dominion agrees and acknowledges that final approval of this Consent Decree by the United States and entry of this Consent Decree are subject to the requirements of 28 C.F.R. § 50.7,

which provides for notice of the lodging of this Consent Decree in the Federal Register, opportunity for public comment for at least thirty (30) days, and consideration of any comments prior to entry of the Consent Decree by the Court. The United States reserves its right to withdraw consent to this Consent Decree based on comments received during the public notice period. Dominion consents to entry of this Consent Decree without further notice to the Court.

56. If for any reason the Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

**XXI. EFFECTIVE DATE**

57. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

**XXII. RECORD RETENTION AND PRESERVATION**

58. Dominion shall preserve, during the pendency of this Consent Decree and for a minimum of at least twelve (12) months after its termination, all documents and records in its custody, control or possession and in the custody, control or possession of its employees, agents, assigns, contractors, subcontractors or consultants, which in any manner relate to this Consent Decree or to the performance of work under this Consent Decree. At the end of this twelve (12) month period and at least

thirty (30) calendar days before any document or record is destroyed, Dominion shall notify and make available to the United States such documents and records, or shall provide the originals or accurate, true and complete copies of such documents and records to the United States. Dominion shall not destroy any document or record to which the United States has requested access for inspection or copying until the United States has obtained such access or copies or withdrawn its request for such access or copies.

**XXIII. SIGNATORIES/SERVICE**

59. Each undersigned representative of the United States and Dominion certifies that he or she has reviewed this Consent Decree, and had the opportunity to have this Consent Decree reviewed by counsel, and is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

60. Dominion hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Dominion in writing that it no longer supports entry of the Consent Decree based on public comments received pursuant to Paragraph 55 above.

61. Dominion agrees that the person identified on its behalf under Section XVII is authorized to accept service of process by mail on behalf of Dominion with respect to all matters

arising under or relating to this Consent Decree. Dominion hereby agrees to accept service by certified mail in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

62. Upon approval and entry of this Consent Decree by the Court, the Consent Decree shall constitute a final judgment pursuant to Rules 54 and 58 of the Federal Rule of Civil Procedure.

#### **XXIV. TERMINATION**

63. This Consent Decree shall terminate within thirty (30) days after all of the following have occurred:

a. Dominion has completed all work required by this Consent Decree;

b. Dominion has paid all penalties and interest due under this Consent Decree and no penalties are outstanding or owed to the United States;

c. Dominion has certified compliance with the terms and conditions of this Consent Decree to the Court and the United States; and

d. The United States has not disputed Dominion's certification within sixty (60) days of receiving it. If the United States disputes Dominion's certification, the Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

So entered in accordance with the foregoing this \_\_\_\_\_ day  
of \_\_\_\_\_, 2004.

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UNITED STATES DISTRICT COURT JUDGE

United States v. Dominion Management Services, Inc., et al.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the above matter, relating to the sites enumerated in this Consent Decree:

FOR PLAINTIFF, UNITED STATES OF AMERICA:

THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources Division

\_\_\_\_\_ Date \_\_\_\_\_  
W. BENJAMIN FISHEROW  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

THOMAS B. HEFFELFINGER  
United States Attorney

JOAN HUMES  
Civil Division Chief

\_\_\_\_\_ Date \_\_\_\_\_  
GREGORY G. BROOKER  
Attorney Registration No. 166066  
Assistant U.S. Attorney  
District of Minnesota  
600 United States Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415  
(612) 664-5689

United States v. Dominion Management Services, Inc., et al.

FOR UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

\_\_\_\_\_ Date \_\_\_\_\_  
RICHARD A. HAUSER  
General Counsel

\_\_\_\_\_ Date \_\_\_\_\_  
JOHN P. KENNEDY  
Associate General Counsel

\_\_\_\_\_ Date \_\_\_\_\_  
JOHN B. SHUMWAY  
Deputy Assistant General Counsel  
Office of General Counsel  
U.S. Department of Housing and Urban Development  
451 Seventh Street, SW  
Washington, DC 20410

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United States v. Dominion Management Services, Inc., et al.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

\_\_\_\_\_ Date \_\_\_\_\_  
BERTRAM C. FREY  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

\_\_\_\_\_ Date \_\_\_\_\_  
MARY T. MCAULIFFE  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

United States v. Dominion Management Services, Inc., et al.

FOR DOMINIUM:

\_\_\_\_\_ Date \_\_\_\_\_  
Steve Radcliffe  
Chief Operating Officer  
Dominium Management Services, Inc.  
Suite 100  
2355 Polaris Lane North  
Minneapolis, MN 55447

\_\_\_\_\_ Date \_\_\_\_\_  
Robert J. Foster, Esq.  
Foster, Hedback, Brever, Arendt & Carlson, PLLC  
Suite 201 Anthony Place  
2855 Anthony Lane South  
St. Anthony, MN 55418  
  
Attorney for Defendants

**APPENDIX A**  
**Subject Properties with Street Addresses**  
**and State, and Number of Units**

1. Crossroads at Penn Apartments (Century Court Penn), 7600-7720 Penn Ave S, Richfield, MN, 698 units
2. Parkview Townhomes, 3200-3393 Country Brook St., Columbus, IN, 140 units.
3. Brooklane Apartments, 4363, 4475, and 4525 W Dean Rd. and 8250 and 8330 North 46<sup>th</sup> St, Brown Deer, WI, 278 units
4. Homestead Apartments, 140 Homestead Rd., Mankato, MN, 120 units
5. Homestead Village Apartments, 851-958 Homestead Village Lane, Rochester, MN, 102 units
6. Gateway Pointe on 74<sup>th</sup> Apartments, 7431-7521 Lyndale Ave S, Richfield, MN, 306 units
7. Gateway Pointe on 63<sup>rd</sup> Apartments, 6301-6335 Lyndale Ave. S, MN, 136 units
8. Huntington Pointe Apartments, 7451-7479 Brooklyn Blvd., Brooklyn Park, MN, 306 units
9. Park Edge Apartments, 2005-2025 Ide St. and 2024 Clarence St., Maplewood, MN, 51 units
10. City Limits, 127 E. 59<sup>th</sup> St., Minneapolis, MN, 198 units
11. Colony Apartments, 1621 Colony Court, North Mankato, MN, 120 units
12. Elmwood Estates, 703 N. Elmwood Ave, Sioux Falls, SD, 98 units

13. Fairview Apartments, 720 Ronne St., St. Peter, MN, 48 units
14. Fountains in the Park, 5800 73<sup>rd</sup> Ave, Brooklyn Park, MN, 98 units
15. Huntington Place, 5805 73<sup>rd</sup> Ave. N., Brooklyn Park, MN, 834 units
16. Meadowland Apartments, 3601 S. Marion Rd. Sioux Falls, SD, 120 units
17. Oakdale Village, 1213 Gentry Ave N., Oakdale, MN, 175 units
18. Park Haven, 6917 76<sup>th</sup> Ave., Brooklyn Park, MN, 176 units
19. Provinces, 153 E. Canada Rd., Little Canada, MN, 118 units
20. Summerchase, 2900 Northway Dr, Brooklyn Center, MN, 252 units
21. Trail Ridge, 875 Southeast 21<sup>st</sup> Ave, MN, 60 units
22. Wedgewood, 1501-1503 79<sup>th</sup> St. E, Bloomington, MN, 40 units